Statutory Notes and Related Subsidaries

**Effective Date of 2021 Amendment**

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

**Effective Date of 1987 Amendment**

Pub. L. 100–26, §12(d)(2), Apr. 21, 1987, 101 Stat. 289, provided that: “The amendment to section 2328 of such title [now 10 U.S.C. 3794] made by section 7(a)(7)(A)(I) shall take effect on the same date and in the same manner as provided in section 1804(b) of Public Law 99–570 [set out as an Effective Date of 1986 Amendment note under section 552 of Title 5, Government Organization and Employees] for the amendment made by section 1803 of that Public Law to section 552a of title 5, United States Code [probably means amendment by section 1803 of Pub. L. 99–570 to section 552(a) of Title 5].”

**Effective Date**


**CHAPTER 277—CONTRACT FINANCING**

Sec. 3801. Authority of agency.
Sec. 3802. Payment.
Sec. 3803. Security for advance payments.
Sec. 3804. Conditions for progress payments.
Sec. 3805. Payments for commercial products and commercial services.
Sec. 3806. Action in case of fraud.
Sec. 3807. Vesting of title in the United States.
Sec. 3808. Certain Navy contracts.

**Editorial Notes**


§ 3802. Payment

(a) PREFERENCE FOR PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under section 3801 of this title shall be made using performance-based payments on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(b) BASIS FOR PERFORMANCE-BASED PAYMENTS.—Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes listed in subsection (a).

(c) CONTRACTOR ACCOUNTING SYSTEMS.—

(1) In order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(2) Nothing in this chapter shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(d) PAYMENT AMOUNT.—Payments made under section 3801 of this title may not exceed the unpaid contract price.

(e) ELIGIBILITY OF NONTRADITIONAL DEFENSE CONTRACTORS.—The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.


Editorial Notes

CODIFICATION


AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1834(b)(1)(A), (2), transferred subsec. (a) of section 2307 of this title to this section, struck out par. (1) designation before "The head of", and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former par. (2) of subsec. (a) redesignated subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1834(b)(3)(B), (3)(A)–(C)(1), redesignated par. (2) of subsec. (a) as subsec. (b), inserted subsec. heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and inserted par. headings.

Subsec. (b)(2). Pub. L. 116–283, § 1834(b)(3)(C)(1), which directed amendment of par. (2) by redesignating cl. (i) and (ii) as subpars. (A) and (B), respectively, could not be executed because of the amendment made by section 201 of Pub. L. 116–283, which struck out cl. (i) and (ii) in section 2307(a)(4)(B) of this title prior to its transfer and redesignation as subsec. (b)(2) of this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.