

title [now 10 U.S.C. 3794] made by section 7(a)(7)(A)(i)(II) 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

Pub. L. 99-500, § 101(c) [title X, § 954(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-173, Pub. L. 99-591, § 101(c) [title X, § 954(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-173, and Pub. L. 99-661, div. A, title IX, formerly title IV, § 954(b), Nov. 14, 1986, 100 Stat. 3953, renumbered title IX by Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “The amendments made by this section [enacting this section] shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

### CHAPTER 277—CONTRACT FINANCING

Sec.

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

#### Editorial Notes

##### PRIOR PROVISIONS

A prior chapter 277 “CONTRACT FINANCING”, as added by Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3801, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1834(a), Jan. 1, 2021, 134 Stat. 4234.

##### AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, § 1701(n)(1)(A), Dec. 27, 2021, 135 Stat. 2145, amended Pub. L. 116-283, div. A, title XVIII, § 1834(a), Jan. 1, 2021, 134 Stat. 4234, which added this analysis, by adding item 3808. Amendment directing “adding at the following new item” was executed as if it had read “adding at the end the following new item” to reflect the probable intent of Congress.

#### § 3801. Authority of agency

(a) PAYMENT AUTHORITY.—The head of any agency may—

- (1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and
- (2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) PAYMENT DATES FOR CONTRACTORS THAT ARE SMALL BUSINESS CONCERNS.—

- (1) PRIME CONTRACTORS.—For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due.

(2) SUBCONTRACTORS.—For a prime contractor that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if the prime contractor agrees to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1834(a), (b), Jan. 1, 2021, 134 Stat. 4234.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (a) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1834(b), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85-800, § 9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103-355, title II, § 2001(a)(2), (c), Oct. 13, 1994, 108 Stat. 3301, 3302; Pub. L. 115-232, div. A, title VIII, § 852, Aug. 13, 2018, 132 Stat. 1884; Pub. L. 116-92, div. A, title XVII, § 1731(a)(40), Dec. 20, 2019, 133 Stat. 1814; Pub. L. 116-283, div. A, title VIII, § 815, Jan. 1, 2021, 134 Stat. 3750; Pub. L. 117-81, div. A, title VIII, § 814, Dec. 27, 2021, 135 Stat. 1823.

##### 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)(1)(B), (3)(A)–(C)(i), 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)(ii), which directed amendment of par. (2) by redesignating cls. (i) and (ii) as subpars. (A) and (B), respectively, could not be executed because of the amendment made by section 815(2) of Pub. L. 116-283, which struck out cls. (i) and (ii) in section 2307(a)(2)(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.

#### § 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