

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)(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 552(a) 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

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#### 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 A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3801, was repealed by Pub.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 CONCERN.—

(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 cl. (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 cl. (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 ac-

ceptable 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.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (c), Jan. 1, 2021, 134 Stat. 4234, 4235.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (b) of section 2307 of this title, which was transferred to this section, redesignated as subsecs. (a), (b), (c), and (e), and amended by Pub. L. 116-283, §1834(c)(1)-(5), (7), was based on Pub. L. 103-355, title II, §2001(b), Oct. 13, 1994, 108 Stat. 3302; Pub. L. 114-328, div. A, title VIII, §831(a), Dec. 23, 2016, 130 Stat. 2282.

The text of subsec. (c) of section 2307 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116-283, §1834(c)(1), (6), 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)(3), (7), Oct. 13, 1994, 108 Stat. 3301.

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1834(c)(1)-(3), redesignated subsec. (b) of section 2307 of this title as subsec. (a) of this section, struck out par. (1) designation before “Whenever practicable”, substituted “section 3801 of this title” for “subsection (a)” in introductory provisions, and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively. Amendment directing striking out par. (1) designation before “Whenever possible” was executed by striking it out before “Whenever practicable” to reflect the probable intent of Congress. Former pars. (2) to (4) of subsec. (a) redesignated subsecs. (b), (e), and (c), respectively.

Subsec. (b). Pub. L. 116-283, §1834(c)(2)(B), (4), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, §1834(c)(2)(D), (5), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (4) of subsec. (a) as subsec. (c), inserted heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins, and, in par. (2), substituted “this chapter” for “this section”.

Subsec. (d). Pub. L. 116-283, §1834(c)(1), (6), redesignated subsec. (c) of section 2307 of this title as subsec. (d) of this section and substituted “section 3801 of this title” for “subsection (a)”.

Subsec. (e). Pub. L. 116-283, §1834(c)(2)(C), (7), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (3) of subsec. (a) as subsec. (e), moved it to the end of the section, and inserted heading.

#### 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.

##### REGULATIONS

Pub. L. 114-328, div. A, title VIII, §831(b), Dec. 23, 2016, 130 Stat. 2283, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Department of Defense Federal Acquisition Regulation Supplement to conform with section 2307(b) of title 10, United States Code [see 10 U.S.C. 3802(a)-(c), (e)], as amended by subsection (a).”

#### § 3803. Security for advance payments

Advance payments made under section 3801 of this title may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (d), Jan. 1, 2021, 134 Stat. 4234, 4236.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (d) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1834(d), 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)(4), (7), (d), Oct. 13, 1994, 108 Stat. 3301, 3302.

##### AMENDMENTS

2021—Pub. L. 116-283, §1834(d), transferred subsec. (d) of section 2307 of this title to this section, struck out subsec. (d) designation and heading “Security for Advance Payments” at beginning, and substituted “section 3801 of this title” for “subsection (a)”.