

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 subssecs. (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 subssecs. (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)”.

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.

§ 3804. Conditions for progress payments

(a) **PAYMENT COMMENSURATE WITH WORK.**—The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(b) **LIMITATION.**—The Secretary shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(c) **APPLICABILITY.**—This section applies to any contract in an amount greater than \$25,000.

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

Editorial Notes

CODIFICATION

The text of subsec. (e) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1834(e), was based on Pub. L. 100-370, §1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101-510, div. A, title XIII, §1322(a)(4)(B), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102-25, title VII, §701(d)(4), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103-355, title II, §2001(a)(5), (7), (e), Oct. 13, 1994, 108 Stat. 3301, 3302.

AMENDMENTS

2021—Pub. L. 116-283, §1834(e)(1), transferred subsec. (e) of section 2307 of this title to this section and struck out subsec. (e) designation and heading “Conditions for Progress Payments” at beginning.

Subsec. (a). Pub. L. 116-283, §1834(e)(1)(B), (2), after transfer of section 2307(e) of this title to this section, redesignated par. (1) as subsec. (a) and inserted heading.

Subsec. (b). Pub. L. 116-283, §1834(e)(1)(B), (3), after transfer of section 2307(e) of this title to this section, redesignated par. (2) as subsec. (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, §1834(e)(1)(B), (4), after transfer of section 2307(e) of this title to this section, redesignated par. (3) as subsec. (c), inserted heading, and substituted “This section” for “This subsection”.

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.

PILOT PROGRAM TO INCENTIVIZE PROGRESS PAYMENTS

Pub. L. 118-31, div. A, title VIII, §874, Dec. 22, 2023, 137 Stat. 352, provided that:

“(a) **PILOT PROGRAM.**—The Under Secretary of Defense for Acquisition and Sustainment shall establish and implement a pilot program to incentivize contractor performance by paying covered contractors a progress payment rate that is up to 10 percent higher than the customary progress payment rate on a contract-by-contract basis.

“(b) **INCENTIVE CRITERIA.**—The Under Secretary shall develop and establish clear and measurable criteria for the payment to contractors of higher progress payments as described in subsection (a), including criteria for qualifying for such payments and the amount of such payments.

“(c) **APPLICABILITY.**—The Under Secretary shall apply the criteria established under subsection (b) and any associated incentive on a contract-by-contract basis when determining whether to pay a contractor a higher progress payment under the pilot program established under subsection (a) and the amount of such payment.

“(d) **PARTICIPATION VOLUNTARY.**—Participation in the pilot program established under subsection (a) shall be on a voluntary basis.

“(e) **NOTICE AND COMMENT.**—The Under Secretary shall issue the regulations implementing the pilot program established under subsection (a) and establishing the criteria required by subsection (b) after notice and an opportunity for public comment of not more than 30 days.

“(f) **REPORT.**—Not later than September 30, 2024, and annually thereafter, the Under Secretary for Acquisition and Sustainment shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation and activities of the pilot program established under subsection (a), including a comprehensive list of contractors that received increased progress payments under the pilot program and the contracts with respect to which such increased progress payments were made.

“(g) **DEFINITIONS.**—In this section:

“(1) **COVERED CONTRACTOR.**—The term ‘covered contractor’ means a contractor of the Department of Defense that is eligible for progress payments under section 3804 of title 10, United States Code.

“(2) **CUSTOMARY PROGRESS PAYMENT RATE.**—The term ‘customary progress payment rate’ refers to the rate of progress payments provided for under section 3804 of title 10, United States Code, and payable in accordance with the applicable provisions of the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

“(3) **UNDER SECRETARY.**—The term ‘Under Secretary’ means the Under Secretary for Acquisition and Sustainment.

“(h) **SUNSET.**—

“(1) **IN GENERAL.**—Except as provided by paragraph (2), the authority to carry out the pilot program established under subsection (a) shall terminate on January 1, 2029.

“(2) **EXISTING CONTRACTS.**—Notwithstanding paragraph (1), a contractor that the Under Secretary determines under the pilot program established under subsection (a) shall be paid a higher progress payment under such pilot program with respect to a contract in effect as of the date described in paragraph (1) shall receive such higher progress payments until the earlier of—

“(A) the termination or expiration of the contract; or

“(B) the date on which the contractor becomes ineligible for progress payments or higher progress payments under such pilot program.”

WAIVERS OF CERTAIN CONDITIONS FOR PROGRESS PAYMENTS UNDER CERTAIN CONTRACTS DURING THE COVID-19 NATIONAL EMERGENCY

Pub. L. 116-283, div. A, title VIII, §891, Jan. 1, 2021, 134 Stat. 3793, provided that:

“(a) **WAIVER OF PROGRESS PAYMENTS REQUIREMENTS.**—The Secretary of Defense may waive the requirements of section 2307(e)(2) of title 10, United