

§ 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.

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 States Code [now 10 U.S.C. 3804(b)], with respect to progress payments for any undefinitized contractual

action (as defined in section 2326 of title 10, United States Code [see 10 U.S.C. 3377(b)(1)]); in this section referred to as ‘UCA’) if the Secretary determines that the waiver is necessary due to the national emergency for the Coronavirus Disease 2019 (COVID-19) and—

“(1) a contractor performing the contract for which a UCA is entered into has not already received increased progress payments from the Secretary of Defense on contractual actions other than UCAs; or

“(2) a contractor performing the contract for which a UCA is entered into, and that has received increased progress payments from the Secretary of Defense on contractual actions other than UCAs, can demonstrate that the contractor has promptly provided the amount of the increase to any subcontractors (at any tier), small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), or suppliers of the contractor.

“(b) **DEFINITIZATION.**—With respect to a UCA that not been definitized for a period of 180 days beginning on the date on which such UCA was entered into, the Secretary of Defense may only use the waiver authority described in subsection (a) if the Secretary (or a designee at a level not below the head of a contracting activity) provides a certification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such UCA will be definitized within 60 days after the date on which the waiver is issued.

“(c) **SUBMISSION.**—For each use of the waiver authority under subsection (a), the Secretary of Defense shall submit to the congressional defense committees an estimate of the amounts to be provided to subcontractors (at any tier), small business concerns, and suppliers, including an identification of the specific entities receiving an amount from an increased progress payment described under such subsection (a).”

§ 3805. Payments for commercial products and commercial services

(a) **TERMS AND CONDITIONS FOR PAYMENTS.**—Payments under section 3801 of this title for commercial products and commercial services may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States.

(b) **SECURITY FOR PAYMENTS.**—The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(c) **LIMITATION ON ADVANCE PAYMENTS.**—Advance payments made under section 3801 of this title for commercial products and commercial services may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(d) **NONAPPLICATION OF CERTAIN CONDITIONS.**—The conditions of sections 3803 and 3804 of this title need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to this section.

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