

cerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

- (1) funds obligated for the performance of the contract concerned;
- (2) funds available for research or development, or both, and not otherwise obligated; or
- (3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134, §2354; renumbered §3861 and amended Pub. L. 116-283, div. A, title XVIII, §1836(b), (c), Jan. 1, 2021, 134 Stat. 4241.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2354 of this title as this section and substituted “Research and development contracts: indemnification provisions” for “Contracts: indemnification provisions” in section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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.

§ 3862. Requests for equitable adjustment or other relief

(a) **CERTIFICATION REQUIREMENT.**—A request for equitable adjustment to contract terms or request for relief under Public Law 85-804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

- (1) the request is made in good faith, and
- (2) the supporting data are accurate and complete to the best of that person’s knowledge and belief.

(b) **RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.**—In the case of a contract of an agency named in section 3063 of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85-804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

- (1) specifically refers to this subsection; and
- (2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

(c) **TREATMENT OF CERTAIN CLAUSES IMPLEMENTING EXECUTIVE ORDERS.**—The unilateral insertion of a covered clause into an existing Department of Defense contract, order, or other transaction by a contracting officer shall be treated as a change directed by the contracting officer pursuant to, and subject to, the Changes

clause of the underlying contract, order, or other transaction.

(d) **DEFINITIONS.**—In this section:

(1) The term “simplified acquisition threshold” has the meaning given that term in section 134 of title 41.

(2) The term “Changes clause” means the clause described in part 52.243-4 of the Federal Acquisition Regulation or any successor regulation.

(3) The term “covered clause” means any clause implementing the requirements of an Executive order issued by the President.

(Added Pub. L. 103-355, title II, §2301(a), Oct. 13, 1994, 108 Stat. 3320, §2410; amended Pub. L. 111-350, §5(b)(27), Jan. 4, 2011, 124 Stat. 3845; renumbered §3862 and amended Pub. L. 116-283, div. A, title XVIII, §§1836(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4241, 4294; Pub. L. 117-81, div. A, title XVII, §1701(d)(6), Dec. 27, 2021, 135 Stat. 2136; Pub. L. 117-263, div. A, title VIII, §805(a), Dec. 23, 2022, 136 Stat. 2701.)

Editorial Notes

REFERENCES IN TEXT

Public Law 85-804, referred to in subsecs. (a) and (b), is Pub. L. 85-804, Aug. 28, 1958, 72 Stat. 972, which is classified generally to chapter 29 (§1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2022—Pub. L. 117-263, §805(a)(1), struck out “certification” after “relief” in section catchline.

Subsec. (c). Pub. L. 117-263, §805(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 117-263, §805(a)(2), (4), redesignated subsec. (c) as (d), substituted “Definitions” for “Definition” in heading, substituted “In this section:” for “In this section,” designated remainder of existing provisions as par. (1), substituted “The term” for “the term”, and added pars. (2) and (3).

2021—Pub. L. 116-283, §1836(b), renumbered section 2410 of this title as this section.

Subsec. (b). Pub. L. 117-81 substituted “section 3063” for “section 2303(a)” in introductory provisions.

Pub. L. 116-283, §1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116-283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to “section 2303(a)”, which was redesignated as multiple sections.

2011—Subsec. (c). Pub. L. 111-350 substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116-283 have taken effect, see section 1701(a)(3) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and 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

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective

Date of 1994 Amendment note under section 8752 of this title.

CONFORMING REGULATIONS

Pub. L. 117-263, div. A, title VIII, §805(c), Dec. 23, 2022, 136 Stat. 2702, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2022], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to implement the requirements of section 3862 of title 10, United States Code, as amended by subsection (a).”

CONFORMING POLICY GUIDANCE

Pub. L. 117-263, div. A, title VIII, §805(d), Dec. 23, 2022, 136 Stat. 2702, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2022], the Secretary of Defense shall revise applicable policy guidance on other transactions to implement the requirements of section 3862 of title 10, United States Code, as amended by subsection (a).”

§ 3863. Retention of amounts collected from contractor during the pendency of contract dispute

(a) **RETENTION OF FUNDS.**—Notwithstanding sections 1552(a) and 3302(b) of title 31, any amount, including interest, collected from a contractor as a result of a claim made by a military department or Defense Agency under chapter 71 of title 41, shall remain available in accordance with this section to pay—

(1) any settlement of the claim by the parties;

(2) any judgment rendered in the contractor's favor on an appeal of the decision on that claim to the Armed Services Board of Contract Appeals under section 7104(a) of title 41; or

(3) any judgment rendered in the contractor's favor in an action on that claim in a court of the United States.

(b) **PERIOD OF AVAILABILITY.**—(1) The period of availability of an amount under subsection (a), in connection with a claim—

(A) expires 180 days after the expiration of the period for bringing an action on that claim in the United States Court of Federal Claims under section 7104(b) of title 41 if, within that 180-day period—

(i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7104(a) of such title; and

(ii) no action on the claim is commenced in a court of the United States; or

(B) if not expiring under subparagraph (A), expires—

(i) in the case of a settlement of the claim, 180 days after the date of the settlement; or

(ii) in the case of a judgment rendered on the claim in an appeal to the Armed Services Board of Contract Appeals under section 7104(a) of title 41 or an action in a court of the United States, 180 days after the date on which the judgment becomes final and not appealable.

(2) While available under this section, an amount may be obligated or expended only for a purpose described in subsection (a).

(3) Upon the expiration of the period of availability of an amount under paragraph (1), the

amount shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105-85, div. A, title VIII, §831(a), Nov. 18, 1997, 111 Stat. 1841, §2410m; amended Pub. L. 108-136, div. A, title X, §1031(a)(21), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 111-350, §5(b)(32), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112-81, div. A, title X, §1061(15), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 113-291, div. A, title X, §1071(a)(8), Dec. 19, 2014, 128 Stat. 3504; renumbered §3863, Pub. L. 116-283, div. A, title XVIII, §1836(b), Jan. 1, 2021, 134 Stat. 4241.)

Editorial Notes

PRIOR PROVISIONS

Prior sections 3881 and 3882 were repealed by Pub. L. 85-155, title IV, §401(1), Aug. 21, 1957, 71 Stat. 390.

Section 3881, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized Secretary of the Army to retire regular commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is below major.

Section 3882, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized Secretary of the Army to retire regular commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is above captain.

Prior sections 3883 to 3886 were repealed by Pub. L. 96-513, title II, §216, title VII, §701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

Section 3883, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85-600, §1(6), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115; Oct. 30, 1978, Pub. L. 95-551, §2, 92 Stat. 2069, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, other than a professor or the director of admissions of the United States Military Academy, be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3884, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under cl. (1) of that section, be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3885, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date or unless retained under section 3923(2) of this title, each commissioned officer whose regular grade is major general be retired when he becomes 62 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3886, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85-600, §1(7), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115; Oct. 30, 1978, Pub. L. 95-551, §2, 92 Stat. 2069, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under cl. (2) of that section, and each permanent professor and the director of admissions of the United States Military Academy, be retired when he becomes 64 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

A prior section 3887, act Aug. 10, 1956, ch. 1041, 70A Stat. 223, related to computation of years of service of commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps for purposes of retirement under former sections 3881 or 3882 of this title, or retirement pay under section 3991 of this title, prior to repeal by Pub. L. 85-155, title IV, §401(1), Aug. 21, 1957, 71 Stat. 390.