

“(I) include in its subcontracts a payment term requiring payment within 7 days (or some other fixed term) after receiving payment from the Government; and

“(II) submit with its payment request to the Government a certification that it has timely paid its subcontractors in accordance with their subcontracts from funds previously received as progress payments and will timely make required payments to such subcontractors from the proceeds of the progress payment covered by the certification;

“(iii) evaluating the feasibility and desirability of requiring that all prime contractors (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) furnish with its payment request to the Government proof of payment of the amounts included in such payment request for payments made to subcontractors and suppliers;

“(iv) evaluating the feasibility and desirability of requiring a prime contractor to establish an escrow account at a federally insured financial institution and requiring direct disbursements to subcontractors and suppliers of amounts certified by the prime contractor in its payment request to the Government as being payable to such subcontractors and suppliers in accordance with their subcontracts; and

“(v) evaluating the feasibility and desirability of requiring direct disbursement of amounts certified by a prime contractor as being payable to its subcontractors and suppliers in accordance with their subcontracts (using techniques such as joint payee checks, escrow accounts, or direct payment by the Government), if the contracting officer has determined that the prime contractor is failing to make timely payments to its subcontractors and suppliers.

“(B) Payment protection of subcontractors and suppliers through the use of payment bonds or alternatives methods by—

“(i) evaluating the effectiveness of the modifications to part 28.2 of the Federal Acquisition Regulation Part 28.2 (48 C.F.R. 28.200) relating to the use of individual sureties, which became effective February 26, 1990;

“(ii) evaluating the effectiveness of requiring payment bonds pursuant to the Miller Act as a means of affording protection to construction subcontractors and suppliers relating to receiving—

“(I) timely payment of progress payments due in accordance with their subcontracts; and

“(II) ultimate payment of such amounts due;

“(iii) evaluating the feasibility and desirability of increasing the payment bond amounts required under the Miller Act from the current maximum amounts to an amount equal to 100 percent of the amount of the contract;

“(iv) evaluating the feasibility and desirability of requiring payment bonds for supply and services contracts (other than construction), and, if feasible and desirable, the amounts of such bonds; and

“(v) evaluating the feasibility and desirability of using letters of credit issued by federally insured financial institutions (or other alternatives) as substitutes for payment bonds in providing payment protection to subcontractors and suppliers on construction contracts (and other contracts).

“(C) Any evaluation of feasibility and desirability carried out pursuant to subparagraph (A) or (B) shall include the appropriateness of—

“(i) any differential treatment of, or impact on, small business concerns as opposed to concerns other than small business concerns;

“(ii) any differential treatment of subcontracts relating to commercial products entered into by the contractor in furtherance of its non-Government business, especially those subcontracts entered into prior to the award of a contract by the Government; and

“(iii) extending the protections regarding payment to all tiers of subcontractors or restricting them to first-tier subcontractors and direct suppliers.

“(3) The report required by paragraph (1) shall include a description of the results of the assessment carried out pursuant to paragraph (2) and may include recommendations pertaining to any of the following:

“(A) Statutory and regulatory changes providing payment protections for subcontractors and suppliers (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) that the Comptroller General believes to be desirable and feasible.

“(B) Proposals to assess the desirability and utility of a specific payment protection on a test basis.

“(C) Such other recommendations as the Comptroller General considers appropriate in light of the matters assessed pursuant to paragraph (2).

“(4) The report required by paragraph (1) shall be submitted not later than by February 1, 1993, to the Committees on Armed Services and on Small Business [now the Committee on Small Business and Entrepreneurship of the Senate] of the Senate and House of Representatives.

“(f) INSPECTOR GENERAL REPORT.—(1) The Inspector General of the Department of Defense shall submit to the Secretary of Defense a report on payment protections for subcontractors and suppliers under contracts entered into with the Department of Defense. The report shall include an assessment of the extent to which available judicial and administrative remedies, as well as suspension and debarment procedures, have been used (or recommended for use) by officials of the Department to deter false statements relating to (A) payment bonds provided by individuals pursuant to the Miller Act, and (B) certifications pertaining to payment requests by construction contractors pursuant to section 3903(b) of title 31, United States Code. The assessment shall cover actions taken during the period beginning on October 1, 1989, and ending on September 30, 1992.

“(2) The report required by paragraph (1) shall be submitted to the Secretary of Defense not later than March 1, 1993. The report may include recommendations by the Inspector General on ways to improve the effectiveness of existing methods of preventing false statements.

“(g) MILLER ACT DEFINED.—For purposes of this section, the term ‘Miller Act’ means the Act of August 24, 1935 (40 U.S.C. 270a–270d) [now 40 U.S.C. 3131, 3133].”

§ 4601. Electronic submission and processing of claims for contract payments

(a) SUBMISSION OF CLAIMS.—The Secretary of Defense shall require that any claim for payment under a Department of Defense contract shall be submitted to the Department of Defense in electronic form.

(b) PROCESSING.—A contracting officer, contract administrator, certifying official, or other officer or employee of the Department of Defense who receives a claim for payment in electronic form in accordance with subsection (a) and is required to transmit the claim to any other officer or employee of the Department of Defense for processing under procedures of the department shall transmit the claim and any additional documentation necessary to support the determination and payment of the claim to such other officer or employee electronically.

(c) WAIVER AUTHORITY.—If the Secretary of Defense determines that the requirement for using electronic means for submitting claims under subsection (a), or for transmitting claims and supporting documentation under subsection

(b), is unduly burdensome in any category of cases, the Secretary may exempt the cases in that category from the application of the requirement.

(d) IMPLEMENTATION OF REQUIREMENTS.—In implementing subsections (a) and (b), the Secretary of Defense shall provide for the following:

(1) Policies, requirements, and procedures for using electronic means for the submission of claims for payment to the Department of Defense and for the transmission, between Department of Defense officials, of claims for payment received in electronic form, together with supporting documentation (such as receiving reports, contracts and contract modifications, and required certifications).

(2) The format in which information can be accepted by the corporate database of the Defense Finance and Accounting Service.

(3) The requirements to be included in contracts regarding the electronic submission of claims for payment by contractors.

(e) CLAIM FOR PAYMENT DEFINED.—In this section, the term “claim for payment” means an invoice or any other demand or request for payment.

(Added Pub. L. 106-398, §1 [[div. A], title X, §1008(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-249, §2227; renumbered §4601, Pub. L. 116-283, div. A, title XVIII, §1861(b), Jan. 1, 2021, 134 Stat. 4277.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2227 of this title as this section.

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.

EFFECTIVE DATE

Pub. L. 106-398, §1 [[div. A], title X, §1008(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-250, provided that:

“(1) Subject to paragraph (2), the Secretary of Defense shall apply section 2227 of title 10, United States Code [now 10 U.S.C. 4601] (as added by subsection (a)), with respect to contracts for which solicitations of offers are issued after June 30, 2001.

“(2)(A) The Secretary may delay the implementation of section 2227 [now 4601] to a date after June 30, 2001, upon a finding that it is impracticable to implement that section until that later date. In no event, however, may the implementation be delayed to a date after October 1, 2002.

“(B) Upon determining to delay the implementation of such section 2227 [now 4601] to a later date under subparagraph (A), the Secretary shall promptly publish a notice of the delay in the Federal Register. The notice shall include a specification of the later date on which the implementation of that section is to begin. Not later than 30 days before the later implementation date, the Secretary shall publish in the Federal Register another notice that such section is being implemented beginning on that date.”

[Notice by Department of Defense of delay in the implementation of this section from June 30, 2001, until Oct. 1, 2002, was published on Aug. 21, 2001, at 66 F.R. 43841.]

§ 4602. Contracted property and services: prompt payment of vouchers

(a) REQUIREMENT.—Of the contract vouchers that are received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system, the number of such vouchers that remain unpaid for more than 30 days as of the last day of each month may not exceed 5 percent of the total number of the contract vouchers so received that remain unpaid on that day.

(b) CONTRACT VOUCHER DEFINED.—In this section, the term “contract voucher” means a voucher or invoice for the payment to a contractor for services or deliverable items provided by the contractor under a contract funded by the Department of Defense.

(Added Pub. L. 106-398, §1 [[div. A], title X, §1006(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-247, §2226; amended Pub. L. 111-350, §5(b)(7), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 115-232, div. A, title VIII, §836(e)(1), Aug. 13, 2018, 132 Stat. 1869; renumbered §4602, Pub. L. 116-283, div. A, title XVIII, §1861(b), Jan. 1, 2021, 134 Stat. 4277.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2226 of this title as this section.

2018—Subsec. (b). Pub. L. 115-232 substituted “for services or deliverable items” for “for services, commercial items (as defined in section 103 of title 41), or other deliverable items”.

2011—Subsec. (b). Pub. L. 111-350 substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

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.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 106-398, §1 [[div. A], title X, §1006(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-248, provided that: “Section 2226 of title 10, United States Code [now 10 U.S.C. 4602] (as added by subsection (a)), shall take effect on December 1, 2000.”

§ 4603. Advance notification of contract performance outside the United States

(a) NOTIFICATION.—(1) A firm that is performing a Department of Defense contract for an amount exceeding \$10,000,000, or is submitting a bid or proposal for such a contract, shall notify the Department of Defense in advance of any intention of the firm or any first-tier subcontractor of the firm to perform outside the United States and Canada any part of the contract that exceeds \$500,000 in value and could be performed inside the United States or Canada.