

a contract for the purchase of services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

[(g) Repealed. Pub. L. 108-136, div. A, title VIII, § 843(a), Nov. 24, 2003, 117 Stat. 1553.]

(h) MILITARY INSTALLATION DEFINED.—In this section, the term “military installation” has the meaning given such term in section 2801(c)(4) of this title.

(Added Pub. L. 106-398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-203; amended Pub. L. 107-314, div. A, title VIII, §§ 811(a), 827, Dec. 2, 2002, 116 Stat. 2608, 2617; Pub. L. 108-136, div. A, title VIII, § 843(a), title X, § 1043(c)(1), Nov. 24, 2003, 117 Stat. 1553, 1611; Pub. L. 108-375, div. A, title VIII, § 814(b), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 111-84, div. A, title X, § 1073(a)(22), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Subsec. (h). Pub. L. 111-84 substituted “section 2801(c)(4)” for “section 2801(c)(2)”.

2004—Subsec. (d)(1), (3), (4). Pub. L. 108-375, § 814(b)(1), substituted “congressional defense committees” for “committees of Congress named in paragraph (5)”.

Subsec. (d)(5). Pub. L. 108-375, § 814(b)(2), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The committees of Congress referred to in paragraphs (1), (3), and (4) are as follows:

“(A) The Committee on Armed Services and the Committee on Appropriations of the Senate.

“(B) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

2003—Subsec. (g). Pub. L. 108-136, § 843(a), struck out heading and text of subsec. (g). Text read as follows:

“(1) The authority and restrictions of this section, including the authority to enter into contracts for periods of not more than five years, shall apply with respect to task order and delivery order contracts entered into under the authority of section 2304a, 2304b, or 2304c of this title.

“(2) The regulations implementing this subsection shall establish a preference that, to the maximum extent practicable, multi-year requirements for task order and delivery order contracts be met with separate awards to two or more sources under the authority of section 2304a(d)(1)(B) of this title.”

Subsec. (h). Pub. L. 108-136, § 1043(c)(1), substituted “MILITARY INSTALLATION DEFINED.—In this section, the term” for “ADDITIONAL DEFINITIONS.—In this section:

“(1) The term ‘base closure law’ has the meaning given such term in section 2667(h)(2) of this title.

“(2) The term”.

2002—Subsec. (b)(5). Pub. L. 107-314, § 827(a), added par. (5).

Subsec. (g). Pub. L. 107-314, § 811(a), added subsec. (g). Subsec. (h). Pub. L. 107-314, § 827(b), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VIII, § 811(b), Dec. 2, 2002, 116 Stat. 2608, as amended by Pub. L. 108-11, title I, § 1315, Apr. 16, 2003, 117 Stat. 570, provided that: “Subsection (g) of section 2306c of title 10, United States Code, as added by subsection (a), shall apply to all task order and delivery order contracts entered into on or after January 1, 2004.”

EFFECTIVE DATE

Pub. L. 106-398, § 1 [[div. A], title VIII, § 802(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-205, provided that: “Sec-

tion 2306c of title 10, United States Code (as added by subsection (a)), shall apply with respect to contracts for which solicitations of offers are issued after the date of the enactment of this Act [Oct. 30, 2000].”

§ 2307. Contract financing

(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) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (a) shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(c) PAYMENT AMOUNT.—Payments made under subsection (a) may not exceed the unpaid contract price.

(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments made under subsection (a) 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.

(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) 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.

(2) The Secretary shall ensure that progress payments referred to in paragraph (1) 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.

(3) This subsection applies to any contract in an amount greater than \$25,000.

(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL ITEMS.—(1) Payments under subsection (a) for commercial items 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. 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.

(2) Advance payments made under subsection (a) for commercial items 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.

(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).

(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

(A) 95 percent, in the case of a firm considered to be a small business; and

(B) 90 percent, in the case of any other firm.

(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

(3) The Secretary of the Navy shall provide, in each contract for construction or conversion of a naval vessel, that, when partial, progress, or other payments are made under such contract, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.

(h) VESTING OF TITLE IN THE UNITED STATES.—If a contract paid by a method authorized under subsection (a)(1) provides for title to property to vest in the United States, the title to the property shall vest in accordance with the terms of the contract, regardless of any security interest in the property that is asserted before or after the contract is entered into.

(i) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the head of the agency reduce or suspend further payments to such contractor.

(2) The head of an agency receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

(3) The extent of any reduction or suspension of payments by the head of an agency under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

(4) A written justification for each decision of the head of an agency whether to reduce or sus-

pend payments under paragraph (2) and for each recommendation received by such agency head in connection with such decision shall be prepared and be retained in the files of such agency.

(5) The head of an agency shall prescribe procedures to ensure that, before such agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.

(6) Not later than 180 days after the date on which the head of an agency reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of such agency shall—

(A) review the determination of fraud on which the reduction or suspension is based; and

(B) transmit a recommendation to the head of such agency whether the suspension or reduction should continue.

(7) The head of an agency shall prepare for each year a report containing the recommendations made by the remedy coordination official of that agency to reduce or suspend payments under paragraph (2), the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. The Secretary of each military department shall transmit the annual report of such department to the Secretary of Defense. Each such report shall be available to any member of Congress upon request.

(8) This subsection applies to the agencies named in paragraphs (1), (2), (3), (4), and (6) of section 2303(a) of this title.

(9) The head of an agency may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

(10) In this subsection, the term “remedy coordination official”, with respect to an agency, means the person or entity in that agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85-800, §9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 93-155, title VIII, §807(c), Nov. 16, 1973, 87 Stat. 616; Pub. L. 100-370, §1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101-510, div. A, title VIII, §836(a), (b), title XIII, §1322(a)(4), Nov. 5, 1990, 104 Stat. 1615, 1616, 1671; Pub. L. 102-25, title VII, §701(d)(4), (j)(2)(A), Apr. 6, 1991, 105 Stat. 114, 116; Pub. L. 102-190, div. A, title X, §1061(a)(10), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102-484, div. A, title X, §1052(24), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103-355, title II, §2001(a)-(g), Oct. 13, 1994, 108 Stat. 3301, 3302; Pub. L. 105-85, div. A, title VIII, §802, Nov. 18, 1997, 111 Stat. 1831; Pub. L. 106-391, title III, §306, Oct. 30, 2000, 114 Stat. 1592.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2307(a)	41:154(a).	Feb. 19, 1948, ch. 65, § 5, 62 Stat. 23.
2307(b)	41:154 (less (a)).	

In subsection (a), the words “and appropriate” are omitted as surplusage. The words “whether or not the contract previously provided for such payments” are substituted for the words “heretofore or hereafter executed”.

In subsection (b), the words “under subsection (a)” are inserted for clarity. The words “provide for” are substituted for the words “include as security provision for”. The words “United States” are substituted for the word “Government”.

1988 ACT

Subsection (e) is based on Pub. L. 99-145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (i)(9), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in subsec. (g) of this section were contained in sections 7312, 7364, and 7521 of this title prior to repeal by Pub. L. 103-355, § 2001(j)(1).

AMENDMENTS

2000—Subsec. (i)(8). Pub. L. 106-391 substituted “(4), and (6)” for “and (4)”.

1997—Subsecs. (h), (i). Pub. L. 105-85 added subsec. (h) and redesignated former subsec. (h) as (i).

1994—Pub. L. 103-355, § 2001(a)(1), substituted “Contract financing” for “Advance payments” in section catchline.

Subsec. (a). Pub. L. 103-355, § 2001(a)(2), inserted heading.

Subsec. (a)(2). Pub. L. 103-355, § 2001(c), struck out “bid” before “solicitations”.

Subsec. (b). Pub. L. 103-355, § 2001(a)(7), (b), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 103-355, § 2001(a)(3), inserted heading.

Subsec. (c). Pub. L. 103-355, § 2001(a)(7), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 103-355, § 2001(a)(4), inserted heading.

Subsec. (d). Pub. L. 103-355, § 2001(d), inserted before period at end “and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States”.

Pub. L. 103-355, § 2001(a)(7), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 103-355, § 2001(a)(5), inserted heading.

Subsec. (e). Pub. L. 103-355, § 2001(a)(7), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (h).

Pub. L. 103-355, § 2001(a)(6), inserted heading.

Subsec. (e)(1). Pub. L. 103-355, § 2001(e)(1), substituted “work accomplished that meets standards established under the contract” for “work, which meets standards of quality established under the contract, that has been accomplished”.

Subsec. (e)(3). Pub. L. 103-355, § 2001(e)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “This subsection does not apply to any contract for an amount not in excess of the amount of the small purchase threshold.”

Subsecs. (f), (g). Pub. L. 103-355, § 2001(f), (g), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 103-355, § 2001(a)(7), redesignated subsec. (e) as (h).

1992—Subsec. (e)(1). Pub. L. 102-484 substituted “(1)” for “(I)” as par. designation after “(e)”.

1991—Subsec. (d)(3). Pub. L. 102-25, § 701(d)(4), substituted “any contract for an amount not in excess of

the amount of the small purchase threshold” for “contracts for amounts less than the maximum amount for small purchases specified in section 2304(g)(2) of this title”.

Subsec. (e). Pub. L. 102-25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 102-190, which directed the substitution of “(1)” for “(I)” as par. designation after “(f)”, could not be executed because “(I)” did not appear after “(f)”.

Pub. L. 102-25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

1990—Subsec. (d). Pub. L. 101-510, § 1322(a)(4), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: “Payments under subsection (a) in the case of any contract, other than partial, progress, or other payments specifically provided for in such contract at the time such contract was initially entered into, may not exceed \$25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.”

Subsec. (e). Pub. L. 101-510, § 1322(a)(4)(B), redesignated subsec. (e) as (d).

Pub. L. 101-510, § 836(b), inserted at end of par. (1) “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.”

Subsec. (f). Pub. L. 101-510, § 836(a), added subsec. (f). 1988—Subsec. (e). Pub. L. 100-370 added subsec. (e).

1973—Subsec. (d). Pub. L. 93-155 added subsec. (d).

1958—Pub. L. 85-800 authorized advance or other payments under contracts for property or services by agency, authorized insertion in bid solicitations of provision limiting advance or progress payments to small business concerns, restricted payments under subsec. (a) to unpaid contract price, and reworded generally conditions for making advance payments.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 836(c) of Pub. L. 101-510, as amended by Pub. L. 102-25, title VII, § 701(j)(2)(B), Apr. 6, 1991, 105 Stat. 116, provided that: “The provisions of section 2307 of title 10, United States Code, that are added by the amendments made by subsections (a) and (b) shall apply with respect to contracts entered into on or after May 6, 1991.”

RELATIONSHIP OF 1994 AMENDMENT TO PROMPT PAYMENT REQUIREMENTS

Section 2001(h) of Pub. L. 103-355 provided that: “The amendments made by this section [amending this section and section 7522 of this title and repealing sections 7312, 7364, and 7521 of this title] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.”

LIMITATIONS ON PROGRESS PAYMENTS

Pub. L. 99-145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688, which required Secretary of Defense to ensure that any

progress payment under a defense contract be commensurate with work accomplished at standard of quality in contract, that such payments be limited to 80 percent of work accomplished so long as contract terms are indefinite, that this provision be waived for small purchases, and that this provision apply only to contracts for which solicitations were issued on or after 150 days after Nov. 8, 1985, was repealed and restated in subsec. (e) of this section by Pub. L. 100-370, §1(f)(1), July 19, 1988, 102 Stat. 846.

OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Section 807(e) of Pub. L. 93-155 provided that: "The amendments made by this section [amending this section, section 1431 of Title 50, War and National Defense, and sections 468 and 2092 of Appendix to Title 50] shall not affect the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to the date of enactment of this section [Nov. 16, 1973]."

§ 2308. Buy-to-budget acquisition: end items

(a) **AUTHORITY TO ACQUIRE ADDITIONAL END ITEMS.**—Using funds available to the Department of Defense for the acquisition of an end item, the head of an agency making the acquisition may acquire a higher quantity of the end item than the quantity specified for the end item in a law providing for the funding of that acquisition if that head of an agency makes each of the following findings:

(1) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition.

(2) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions.

(3) The amount of the funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item.

(4) The amount so provided is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

(b) **REGULATIONS.**—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall include, at a minimum, the following:

(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

(2) Authority (subject to subsection (a)) to acquire up to 10 percent more than the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under section 2304 of this title.

(c) **NOTIFICATION OF CONGRESS.**—The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

(d) **WAIVER BY OTHER LAW.**—A provision of law may not be construed as prohibiting the acquisi-

tion of a higher quantity of an end item under this section unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

(e) **DEFINITIONS.**—(1) For the purposes of this section, a quantity of an end item shall be considered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text included in a joint explanatory statement or governing committee report accompanying the law.

(2) In this section:

(A) The term "end item" means a production product assembled, completed, and ready for issue or deployment.

(B) The term "head of an agency" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(Added Pub. L. 107-314, div. A, title VIII, §801(a)(1), Dec. 2, 2002, 116 Stat. 2600; amended Pub. L. 108-136, div. A, title X, §1043(b)(11), Nov. 24, 2003, 117 Stat. 1611.)

PRIOR PROVISIONS

A prior section 2308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 131; Oct. 23, 1992, Pub. L. 102-484, div. A, title VIII, §820(a), 106 Stat. 2458; May 31, 1993, Pub. L. 103-35, title II, §201(e)(2), 107 Stat. 99; Nov. 30, 1993, Pub. L. 103-160, div. A, title IX, §904(d)(1), 107 Stat. 1728, related to assignment and delegation of procurement functions and responsibilities, prior to repeal by Pub. L. 103-355, title I, §1503(b)(1), title X, §10001, Oct. 13, 1994, 108 Stat. 3297, 3404, effective Oct. 13, 1994, except as otherwise provided.

AMENDMENTS

2003—Subsec. (e)(2). Pub. L. 108-136 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: "The term 'congressional defense committees' means—

"(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

"(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives."

TIME FOR ISSUANCE OF FINAL REGULATIONS

Pub. L. 107-314, div. A, title VIII, §801(b), Dec. 2, 2002, 116 Stat. 2602, provided that: "The Secretary of Defense shall issue the final regulations under section 2308(b) of title 10, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002]."

§ 2309. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.