

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this provision apply only to contracts for which solicitations were issued on or after 150 days after Nov. 8, 1985, was repealed and restated in subsec.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.