

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

Pub. L. 101-510, div. A, title VIII, §836(c), Nov. 5, 1990, 104 Stat. 1616, 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.”

REGULATIONS

Pub. L. 114-328, div. A, title VIII, §831(b), Dec. 23, 2016, 130 Stat. 2283, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Department of Defense Federal Acquisition Regulation Supplement to conform with section 2307(b) of title 10, United States Code, as amended by subsection (a).”

RELATIONSHIP OF 1994 AMENDMENT TO PROMPT PAYMENT REQUIREMENTS

Pub. L. 103-355, title II, §2001(h), Oct. 13, 1994, 108 Stat. 3303, 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

Pub. L. 93-155, title VIII, §807(e), Nov. 16, 1973, 87 Stat. 616, provided that: “The amendments made by this section [amending this section and sections 1431, 3816, and 4532 of Title 50, War and National Defense] 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 Depart-

ment 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.—(1) 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, except as provided in paragraph (2), shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

(2) A notification is not required under paragraph (1) if the end item being acquired in a higher quantity is an end item under a tactical missile program or a munitions program.

(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition 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; Pub. L. 114-328, div. A, title VIII, §852, Dec. 23, 2016, 130 Stat. 2296.)

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

2016—Subsec. (c). Pub. L. 114-328 designated existing provisions as par. (1), inserted “, except as provided in paragraph (2),” after “but”, and added par. (2).

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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 97-258, §2(b)(1)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2309(a)	41:159 (2d sentence).	Feb. 19, 1948, ch. 65, §10 (less 1st sentence), 62 Stat. 25.
2309(b)	41:159 (less 1st and 2d sentences).	

In subsection (a), the words “an agency named in section 2303 of this title” are substituted for the words “any such agency”.