

mitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99-500, §101(c) [title X, §954(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-172, and Pub. L. 99-591, §101(c) [title X, §954(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-172, §2328; Pub. L. 99-661, div. A, title IX, formerly title IV, §954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-26, §7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278; renumbered §3794, Pub. L. 116-283, div. A, title XVIII, §1833(o)(2), Jan. 1, 2021, 134 Stat. 4234.)

PRIOR PROVISIONS

Prior sections 3794 to 3797 were repealed by Pub. L. 96-513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

Section 3794, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 389, authorized Secretary of the Army to remove an officer from active list of Regular Army if his removal is recommended by a board of review and provided that decision of Secretary in such a case is final and conclusive. See section 1184 of this title.

Section 3795, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 389, provided that each officer under consideration for removal from active list of Regular Army under this chapter be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on active list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of proceedings, except records that Secretary determines be withheld in interests of national security, in which case, a summary, to extent national security permits, be furnished. See section 1185 of this title.

Section 3796, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 389, authorized Secretary of the Army, at any time during proceedings under this chapter and before removal of an officer from active list of Regular Army, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 3797, added Pub. L. 86-616, §3(a), July 12, 1960, 74 Stat. 390, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board and that no person be a member of more than one board convened under this chapter for same officer. See section 1187 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1833(o)(2), renumbered section 2328 of this title as this section.

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.

CHAPTER 277—CONTRACT FINANCING

Sec.	
3801.	Authority of agency.
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PRIOR PROVISIONS

A prior chapter 277 "CONTRACT FINANCING", as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3801, was repealed by Pub. L. 116-283, div. A, title XVIII, §1834(a), Jan. 1, 2021, 134 Stat. 4234.

§ 3801. Authority of agency

(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) PAYMENT DATES FOR CONTRACTORS THAT ARE SMALL BUSINESS CONCERNS.—

(1) PRIME CONTRACTORS.—For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due.

(2) SUBCONTRACTORS.—For a prime contractor that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if the prime contractor agrees or proposes to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (b), Jan. 1, 2021, 134 Stat. 4234.)

CODIFICATION

The text of subsec. (a) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1834(b), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85-800, §9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103-355, title II, §2001(a)(2), (c), Oct. 13, 1994, 108 Stat. 3301, 3302; Pub. L. 115-232, div. A, title VIII, §852, Aug. 13, 2018, 132 Stat. 1884; Pub. L. 116-92, div. A, title XVII, §1731(a)(40), Dec. 20, 2019, 133 Stat. 1814; Pub. L. 116-283, div. A, title VIII, §815, Jan. 1, 2021, 134 Stat. 3750.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1834(b)(1)(A), (2), transferred subsec. (a) of section 2307 of this title to

this section, struck out par. (1) designation before “The head of”, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former par. (2) of subsec. (a) redesignated subsec. (b).

Subsec. (b). Pub. L. 116-283, §1834(b)(1)(B), (3)(A)–(C)(i), redesignated par. (2) of subsec. (a) as subsec. (b), inserted subsec. heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and inserted par. headings.

Subsec. (b)(2). Pub. L. 116-283, §1834(b)(3)(C)(ii), which directed amendment of par. (2) by redesignating cls. (i) and (ii) as subpars. (A) and (B), respectively, could not be executed because of the amendment made by section 815(2) of Pub. L. 116-283, which struck out cls. (i) and (ii) in section 2307(a)(2)(B) of this title prior to its transfer and redesignation as subsec. (b)(2) of this section.

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3802. Payment

(a) PREFERENCE FOR PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under section 3801 of this title shall be made using performance-based payments 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.

(b) BASIS FOR PERFORMANCE-BASED PAYMENTS.—Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes listed in subsection (a).

(c) CONTRACTOR ACCOUNTING SYSTEMS.—

(1) In order to receive performance-based payments, a contractor’s accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(2) Nothing in this chapter shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(d) PAYMENT AMOUNT.—Payments made under section 3801 of this title may not exceed the unpaid contract price.

(e) ELIGIBILITY OF NONTRADITIONAL DEFENSE CONTRACTORS.—The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (c), Jan. 1, 2021, 134 Stat. 4234, 4235.)

CODIFICATION

The text of subsec. (b) of section 2307 of this title, which was transferred to this section, redesignated as

subsecs. (a), (b), (c), and (e), and amended by Pub. L. 116-283, §1834(c)(1)–(5), (7), was based on Pub. L. 103-355, title II, §2001(b), Oct. 13, 1994, 108 Stat. 3302; Pub. L. 114-328, div. A, title VIII, §831(a), Dec. 23, 2016, 130 Stat. 2282.

The text of subsec. (c) of section 2307 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116-283, §1834(c)(1), (6), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85-800, §9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103-355, title II, §2001(a)(3), (7), Oct. 13, 1994, 108 Stat. 3301.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1834(c)(1)–(3), redesignated subsec. (b) of section 2307 of this title as subsec. (a) of this section, struck out par. (1) designation before “Whenever practicable”, substituted “section 3801 of this title” for “subsection (a)” in introductory provisions, and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively. Amendment directing striking out par. (1) designation before “Whenever possible” was executed by striking it out before “Whenever practicable” to reflect the probable intent of Congress. Former pars. (2) to (4) of subsec. (a) redesignated subsecs. (b), (e), and (c), respectively.

Subsec. (b). Pub. L. 116-283, §1834(c)(2)(B), (4), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, §1834(c)(2)(D), (5), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (4) of subsec. (a) as subsec. (c), inserted heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins, and, in par. (2), substituted “this chapter” for “this section”.

Subsec. (d). Pub. L. 116-283, §1834(c)(1), (6), redesignated subsec. (c) of section 2307 of this title as subsec. (d) of this section and substituted “section 3801 of this title” for “subsection (a)”.

Subsec. (e). Pub. L. 116-283, §1834(c)(2)(C), (7), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (3) of subsec. (a) as subsec. (e), moved it to the end of the section, and inserted heading.

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3803. Security for advance payments

Advance payments made under section 3801 of this title 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.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (d), Jan. 1, 2021, 134 Stat. 4234, 4236.)