

plementation 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.

§ 3808. Certain Navy contracts

(a) REPAIR, MAINTENANCE, OR OVERHAUL OF NAVAL VESSELS: RATE FOR PROGRESS PAYMENTS.—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—

- (1) 95 percent, in the case of a firm considered to be a small business; and
- (2) 90 percent, in the case of any other firm.

(b) AUTHORITY TO ADVANCE FUNDS FOR IMMEDIATE SALVAGE OPERATIONS.—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 subsection shall be made on terms that the Secretary considers adequate for the protection of the United States.

(c) SECURITY FOR CONSTRUCTION AND CONVERSION OF NAVAL VESSELS.—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.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (1)(1)–(4), as added and amended Pub. L. 117-81, div. A, title XVII, §1701(n)(1)(B), (2), Dec. 27, 2021, 135 Stat. 2145.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1834(i)(1)–(4), as added by Pub. L. 117-81, §1701(n)(2), was based on Pub. L. 103-355, title II, §2001(g), Oct. 13, 1994, 108 Stat. 3302.

PRIOR PROVISIONS

Prior sections 3811 to 3813 were repealed by Pub. L. 90-235, §3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 3811, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for discharge of enlisted members of Army and limitations thereon, and for issuance of discharge certificates. See section 1169 of this title.

Section 3812, act Aug. 1956, ch. 1041, 70A Stat. 220, provided for the discharge of members of the Army enlisted during war or emergency. See section 1172 of this title.

Section 3813, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for dependency discharges for enlisted members of the Army.

A prior section 3814, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, authorized Secretary of the Army to discharge a regular commissioned officer who has less than three years of continuous service as a commissioned officer therein, provided that such officer not be dismissed because of his marriage, unless marriage occurred within one year after date of his original appointment, prior to repeal by Pub. L. 96-513, title II, §214, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 630 of this title.

A prior section 3814a, added Pub. L. 93-558, §1, Dec. 30, 1974, 88 Stat. 1793, related to discharge, during a reduction in force, of regular commissioned officers, second lieutenants, first lieutenants, and captains, expired three years after its effective date, Dec. 30, 1974, in accordance with section 2 of Pub. L. 93-558, and was repealed by Pub. L. 103-337, div. A, title XVI, §§1629(a)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Prior sections 3815 and 3816 were repealed by Pub. L. 90-235, §3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 3815, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for resignation of regular enlisted members of Army enlisted on a career basis and limitations thereon.

Section 3816, act Aug. 10, 1956, ch. 1041, 70A Stat. 221, provided for minority discharges for regular enlisted members of Army. See section 1170 of this title.

A prior section 3818, acts Aug. 10, 1956, ch. 1041, 70A Stat. 221; Oct. 20, 1978, Pub. L. 95-485, title VIII, §820(g), 92 Stat. 1627, authorized the Secretary of the Army to terminate appointment of a female commissioned officer of Regular Army, other than by dismissal, under regulations prescribed by President, or to terminate the appointment of a female warrant officer or enlistment of a female member of Regular Army by discharge from the Army, prior to repeal by Pub. L. 96-513, title II, §236, title VII, §701, Dec. 12, 1980, 94 Stat. 2887, 2955, effective Sept. 15, 1981.

Prior sections 3819 and 3820 were repealed by Pub. L. 103-337, div. A, title XVI, §§1629(a)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3819, added Pub. L. 85-861, §1(93)(A), Sept. 2, 1958, 72 Stat. 1482; amended Pub. L. 98-525, title V, §528(b), Oct. 19, 1984, 98 Stat. 2526, related to discharge of Army Reserve officers for failure of promotion to first lieutenant. See section 14503 of this title.

Section 3820, acts Aug. 10, 1956, ch. 1041, 70A Stat. 221; Sept. 2, 1958, Pub. L. 85-861, §1(93)(B), 72 Stat. 1482, related to discharge and withdrawal of Federal recognition of officers of Army National Guard of United States absent without leave. See section 14907 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1834(i)(1), as added by Pub. L. 117-81, §1701(n)(2), transferred subsec. (g) of section 2307 of this title to this section, struck out subsec. (g) designation and heading “Certain Navy Contracts” at beginning, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116-283, §1834(i)(2), as added by Pub. L. 117-81, §1701(n)(2), inserted heading and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, §1834(i)(3), as added by Pub. L. 117-81, §1701(n)(2), inserted heading and substituted “this subsection” for “this paragraph” in second sentence.

Subsec. (c). Pub. L. 116-283, §1834(i)(4), as added by Pub. L. 117-81, §1701(n)(2), inserted heading.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and Effective Date note below.

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.

CHAPTER 279—CONTRACTOR AUDITS AND ACCOUNTING

Sec.	
3841.	Examination of records of contractor.
3842.	Performance of incurred cost audits.
3843.	[Reserved].
3844.	[Reserved].
3845.	Contractor inventory accounting systems: standards.
3846.	[Reserved].
3847.	Defense Contract Audit Agency: annual report.
3848.	Defense audit agencies: Small Business Ombudsmen.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 279 “CONTRACTOR AUDITS AND ACCOUNTING”, as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3841, was repealed by Pub. L. 116–283, div. A, title XVIII, §1835(a), Jan. 1, 2021, 134 Stat. 4239.

AMENDMENTS

2021—Pub. L. 117–81, div. A, title XVII, §1701(i)(7)(A), Dec. 27, 2021, 135 Stat. 2142, amended Pub. L. 116–283, div. A, title XVIII, §1835(a), Jan. 1, 2021, 134 Stat. 4239, which added this analysis, by substituting “[Reserved]” for “Contractor internal audit reports: Department of Defense access to, use of, and safeguards and protections for” in item 3843, for “Contractor business systems” in item 3844, and for “Defense Contract Audit Agency: legal resources and expertise” in item 3846.

Statutory Notes and Related Subsidiaries

CONTRACTOR BUSINESS SYSTEMS

Pub. L. 115–232, div. A, title VIII, §824(b), Aug. 13, 2018, 132 Stat. 1856, provided that: “Not later than 120 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement to conform with the amendments to section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 2302 note [now 10 U.S.C. 3841 note prec.] made by this section.”

Pub. L. 111–383, div. A, title VIII, §893, Jan. 7, 2011, 124 Stat. 4311, as amended by Pub. L. 112–81, div. A, title VIII, §816, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 113–291, div. A, title X, §1071(b)(1)(C), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 114–328, div. A, title VIII, §893, Dec. 23, 2016, 130 Stat. 2324; Pub. L. 115–91, div. A, title X, §1081(d)(8), Dec. 12, 2017, 131 Stat. 1600; Pub. L. 115–232, div. A, title VIII, §824(a), Aug. 13, 2018, 132 Stat. 1856; Pub. L. 116–283, div. A, title VIII, §806, Jan. 1, 2021, 134 Stat. 3742, provided that:

“(a) **IMPROVEMENT PROGRAM.**—The Secretary of Defense shall develop and initiate a program for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of Department of Defense programs by the contractor and by the Department.

“(b) **APPROVAL OR DISAPPROVAL OF BUSINESS SYSTEMS.**—The program developed pursuant to subsection (a) shall—

“(1) include clear and specific business system requirements that are identified and made publicly available for each type of contractor business system covered by the program;

“(2) establish a process for reviewing contractor business systems and identifying material weaknesses in such systems;

“(3) identify officials of the Department of Defense who are responsible for the approval or disapproval of contractor business systems;

“(4) provide for the approval of any contractor business system that does not have a material weakness; and

“(5) provide for—

“(A) the disapproval of any contractor business system that has a material weakness; and

“(B) reduced reliance on, and enhanced scrutiny of, data provided by a contractor business system that has been disapproved.

“(c) **REVIEW BY THIRD-PARTY INDEPENDENT AUDITORS.**—The review process for contractor business systems pursuant to subsection (b)(2) shall—

“(1) if a registered public accounting firm attests to the internal control assessment of a contractor, pursuant to section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), allow the contractor, subject to paragraph (3), to submit certified documentation from such registered public accounting firm that the contractor business systems of the contractor meet the business system requirements referred to in subsection (b)(1) and to thereby eliminate the need for further review of the contractor business systems by the Secretary of Defense;

“(2) limit the review, subject to paragraph (3), of the contractor business systems of a contractor that is not a covered contractor to confirming that the contractor uses the same contractor business system for its Government and commercial work and that the outputs of the contractor business system based on statistical sampling are reasonable; and

“(3) allow a milestone decision authority to require a review of a contractor business system of a contractor that submits documentation pursuant to paragraph (1) or that is not a covered contractor after determining in writing that such a review is necessary to appropriately manage contractual risk.

“(d) **REMEDIAL ACTIONS.**—The program developed pursuant to subsection (a) shall provide the following:

“(1) In the event a contractor business system is disapproved pursuant to subsection (b)(5), appropriate officials of the Department of Defense will be available to work with the contractor to develop a corrective action plan defining specific actions to be taken to address the material weaknesses identified in the system and a schedule for the implementation of such actions.

“(2) An appropriate official of the Department of Defense may withhold up to 10 percent of progress payments, performance-based payments, and interim payments under covered contracts from a covered contractor, as needed to protect the interests of the Department and ensure compliance, if one or more of the contractor business systems of the contractor has been disapproved pursuant to subsection (b)(5) and has not subsequently received approval.

“(3) The amount of funds to be withheld under paragraph (2) shall be reduced if a contractor adopts an effective corrective action plan pursuant to paragraph (1) and is effectively implementing such plan.

“(e) **GUIDANCE AND TRAINING.**—The program developed pursuant to subsection (a) shall provide guidance and training to appropriate government officials on the data that is produced by contractor business systems and the manner in which such data should be used to effectively manage Department of Defense programs.

“(f) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to prohibit an official of the Department of Defense from reviewing, approving, or disapproving a contractor business system pursuant to any applicable law or regulation in force as of the date of the enactment of this Act during the period between the date of the enactment of this Act and the date on which the Secretary implements the requirements of this section with respect to such system.

“(g) **DEFINITIONS.**—In this section:

“(1) The term ‘contractor business system’ means an accounting system, estimating system, purchasing system, earned value management system, material management and accounting system, or property management system of a contractor.

“(2) The term ‘covered contractor’ means a contractor that has covered contracts with the United States Government accounting for greater than 1 per-