

“(B) identifying, and serving as a clearinghouse for information regarding, best practices in software development and acquisition in both the public and private sectors.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘Defense Agency’ has the meaning given the term in section 101(a)(11) of title 10, United States Code.

“(2) The term ‘major defense acquisition program’ has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.”

§ 4576. Requirement for consideration of certain matters during acquisition of noncommercial computer software

(a) CONSIDERATION REQUIRED.—As part of any negotiation for the acquisition of noncommercial computer software, the Secretary of Defense shall ensure that such negotiations consider, to the maximum extent practicable, acquisition, at the appropriate time in the life cycle of the noncommercial computer software, of all software and related materials necessary—

(1) to reproduce, build, or recompile the software from original source code and required libraries;

(2) to conduct required computer software testing; and

(3) to deploy working computer software system binary files on relevant system hardware.

(b) DELIVERY OF SOFTWARE AND RELATED MATERIALS.—Any noncommercial computer software or related materials required to be delivered as a result of considerations in subsection (a) shall, to the extent appropriate as determined by the Secretary—

(1) include computer software delivered in a useable, digital format;

(2) not rely on external or additional software code or data, unless such software code or data is included in the items to be delivered; and

(3) in the case of negotiated terms that do not allow for the inclusion of dependent software code or data, sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(Added Pub. L. 115–91, div. A, title VIII, § 871(a)(1), Dec. 12, 2017, 131 Stat. 1496, § 2322a; renumbered § 4576, Pub. L. 116–283, div. A, title XVIII, § 1857(c), Jan. 1, 2021, 134 Stat. 4276.)

Editorial Notes

PRIOR PROVISIONS

Prior sections 4591 to 4595 were renumbered sections 7591 to 7595 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2322a of this title as this section.

Statutory Notes and Related Subsidiaries

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.

GUIDANCE

Pub. L. 115–91, div. A, title VIII, § 871(b), Dec. 12, 2017, 131 Stat. 1497, provided that: “Not later than 180 days

after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall issue updated guidance to implement section 2322a of title 10, United States Code [now 10 U.S.C. 4576], as added by subsection (a).”

Subpart H—Contract Management

Editorial Notes

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1830, added subpart heading.

CHAPTER 361—CONTRACT ADMINISTRATION

Sec.

4601. Electronic submission and processing of claims for contract payments.

4602. Contracted property and services: prompt payment of vouchers.

4603. Advance notification of contract performance outside the United States.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 361 “CONTRACT ADMINISTRATION”, consisting of reserved section 4601, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1861(a), Jan. 1, 2021, 134 Stat. 4277.

Another prior chapter 361, consisting of sections 3811 to 3820 relating to separation for various reasons, some of which had previously been repealed, was repealed in its entirety 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.

Statutory Notes and Related Subsidiaries

CONTRACT CLOSEOUT AUTHORITY

Pub. L. 114–328, div. A, title VIII, § 836, Dec. 23, 2016, 130 Stat. 2285, as amended by Pub. L. 115–91, div. A, title VIII, § 824, Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116–283, div. A, title VIII, § 820, Jan. 1, 2021, 134 Stat. 3752, provided that:

“(a) AUTHORITY.—The Secretary of Defense may close out a contract or group of contracts as described in subsection (b) through the issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action. To accomplish closeout of such contracts—

“(1) remaining contract balances may be offset with balances in other contract line items within a contract regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation for such contract line item has closed; and

“(2) remaining contract balances may be offset with balances on other contracts regardless of the year or type of appropriation obligated to fund each contract and regardless of whether the appropriation has closed.

“(b) COVERED CONTRACTS.—This section covers any contract or group of contracts between the Department of Defense and a defense contractor, each one of which—

“(1) was entered into—

“(A) with respect to a contract or group of contracts not described in subparagraph (B), at least 7 fiscal years before the current fiscal year; and

“(B) with respect to a contract or group of contracts for military construction (as defined in section 2801 of title 10, United States Code) or shipbuilding, at least 10 fiscal years before the current fiscal year;

“(2) the performance or delivery has been completed at least 4 years before the current fiscal year; and

“(3) is determined by the Secretary of Defense to be not otherwise reconcilable because—

“(A) the records have been destroyed or lost; or

“(B) the records are available but the Secretary of Defense has determined that the time or effort required to determine the exact amount owed to the United States Government or amount owed to the contractor is disproportionate to the amount at issue.

“(c) NEGOTIATED SETTLEMENT AUTHORITY.—Any contract or group of contracts covered by this section may be closed out through a negotiated settlement with the contractor.

“(d) WAIVER AUTHORITY.—

“(1) IN GENERAL.—The Secretary of Defense is authorized to waive any provision of acquisition law or regulation to carry out the authority under subsection (a).

“(2) NOTIFICATION REQUIREMENT.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 10 days after exercising the authority under subsection (d). The notice shall include an identification of each provision of law or regulation waived.

“(e) ADJUSTMENT AND CLOSURE OF RECORDS.—After closeout of any contract described in subsection (b) using the authority under this section, the payment or accounting offices concerned may adjust and close any open finance and accounting records relating to the contract.

“(f) NO LIABILITY.—No liability shall attach to any accounting, certifying, or payment official, or any contracting officer, for any adjustments or closeout made pursuant to the authority under this section.

“(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of the authority under this section.”

CONSIDERATION OF POTENTIAL PROGRAM COST INCREASES AND SCHEDULE DELAYS RESULTING FROM OVERSIGHT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 114-92, div. A, title VIII, §881, Nov. 25, 2015, 129 Stat. 942, as amended by Pub. L. 115-232, div. A, title X, §1081(f)(1)(A)(iv), Aug. 13, 2018, 132 Stat. 1986, provided that:

“(a) AVOIDANCE OF UNNECESSARY COST INCREASES AND SCHEDULE DELAYS.—The Director of Operational Test and Evaluation, the Chief Management Officer, the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, the Inspector General of the Department of Defense, and the heads of other defense audit, testing, acquisition, and management agencies shall ensure that policies, procedures, and activities implemented by their offices and agencies in connection with defense acquisition program oversight do not result in unnecessary increases in program costs or cost estimates or delays in schedule or schedule estimates.

“(b) CONSIDERATION OF PRIVATE SECTOR BEST PRACTICES.—In considering potential cost increases and schedule delays as a result of oversight efforts pursuant to subsection (a), the officials described in such subsection shall consider private sector best practices with respect to oversight implementation.”

MOTOR CARRIER FUEL SURCHARGES

Pub. L. 110-417, [div. A], title VIII, §884, Oct. 14, 2008, 122 Stat. 4560, provided that:

“(a) PASS THROUGH TO COST BEARER.—The Secretary of Defense shall take appropriate actions to ensure that, to the maximum extent practicable, in all carriage contracts in which a fuel-related adjustment is provided for, any fuel-related adjustment is passed through to the person who bears the cost of the fuel that the adjustment relates to.

“(b) USE OF CONTRACT CLAUSE.—The actions taken by the Secretary under subsection (a) shall include the in-

sertion of a contract clause, with appropriate flow-down requirements, into all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services in which a fuel-related adjustment is provided for.

“(c) DISCLOSURE.—The Secretary shall publicly disclose any decision by the Department of Defense to pay fuel-related adjustments under contracts (or a category of contracts) covered by this section.

“(d) REPORT.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the committees on Armed Services of the Senate and the House of Representatives a report on the actions taken in accordance with the requirements of subsection (a).”

LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES

Pub. L. 111-84, div. A, title VIII, §823, Oct. 28, 2009, 123 Stat. 2412, as amended by Pub. L. 111-383, div. A, title VIII, §834(a)-(c), Jan. 7, 2011, 124 Stat. 4278, 4279, provided that:

“(a) AUTHORITY TO REDUCE OR DENY AWARD FEES.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall revise the guidance issued pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 129 [120] Stat. 2321) [set out below] to ensure that all covered contracts using award fees—

“(1) provide for the consideration of any incident described in subsection (b) in evaluations of contractor performance for the relevant award fee period; and

“(2) authorize the Secretary to reduce or deny award fees for the relevant award fee period, or to recover all or part of award fees previously paid for such period, on the basis of the negative impact of such incident on contractor performance.

“(b) COVERED INCIDENTS.—An incident referred to in subsection (a) is any incident in which the contractor—

“(1) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), in the performance of a covered contract to have caused serious bodily injury or death to any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

“(2) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), to be liable for actions of a subcontractor of the contractor that caused serious bodily injury or death to any civilian or military personnel of the Government, through gross negligence or with reckless disregard for the safety of such personnel.

“(c) LIST OF DISPOSITIONS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE PROCEEDINGS.—For purposes of subsection (b), the dispositions listed in this subsection are as follows:

“(1) In a criminal proceeding, a conviction.

“(2) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

“(3) In an administrative proceeding, a finding of fault and liability that results in—

“(A) the payment of a monetary fine or penalty of \$5,000 or more; or

“(B) the payment of a reimbursement, restitution, or damages in excess of \$100,000.

“(4) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the person if the proceeding could have led to any of the outcomes specified in paragraph (1), (2), or (3).

“(5) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to subsection (d).

“(d) DETERMINATIONS OF CONTRACTOR FAULT BY SECRETARY OF DEFENSE.—

“(1) IN GENERAL.—In any case described by paragraph (2), the Secretary of Defense shall—

“(A) provide for an expeditious independent investigation of the causes of the serious bodily injury or death alleged to have been caused by the contractor as described in that paragraph; and

“(B) make a final determination, pursuant to procedures established by the Secretary for purposes of this subsection, whether the contractor, in the performance of a covered contract, caused such serious bodily injury or death through gross negligence or with reckless disregard for the safety of civilian or military personnel of the Government.

“(2) COVERED CASES.—A case described in this paragraph is any case in which the Secretary has reason to believe that—

“(A) a contractor, in the performance of a covered contract, may have caused the serious bodily injury or death of any civilian or military personnel of the Government; and

“(B) such contractor is not subject to the jurisdiction of United States courts.

“(3) CONSTRUCTION OF DETERMINATION.—A final determination under this subsection may be used only for the purpose of evaluating contractor performance, and shall not be determinative of fault for any other purpose.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘contractor’ means a company awarded a covered contract and a subcontractor at any tier under such contract.

“(2) The term ‘covered contract’ means a contract awarded by the Department of Defense for the procurement of goods or services.

“(3) The term ‘serious bodily injury’ means a grievous physical harm that results in a permanent disability.

“(f) EFFECTIVE DATE.—This section shall apply with respect to contracts entered into after the date occurring 180 days after the date of the enactment of this Act [Oct. 28, 2009].”

[Pub. L. 111-383, div. A, title VIII, §834(e), Jan. 7, 2011, 124 Stat. 4279, provided that: “The requirements of section 823 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111-84, set out above], as amended by subsections (a) through (c), shall apply with respect to the following:

[“(1) Any contract entered into on or after the date of the enactment of this Act [Jan. 7, 2011].

[“(2) Any task order or delivery order issued on or after the date of the enactment of this Act under a contract entered into before, on, or after that date.”]

Pub. L. 110-329, div. C, title VIII, §8105, Sept. 30, 2008, 122 Stat. 3644, provided that: “During the current fiscal year and hereafter, none of the funds appropriated or otherwise available to the Department of Defense may be obligated or expended to provide award fees to any defense contractor contrary to the provisions of section 814 of the National Defense Authorization Act, Fiscal Year 2007 (Public Law 109-364) [set out below].”

Pub. L. 109-364, div. A, title VIII, §814, Oct. 17, 2006, 120 Stat. 2321, provided that:

“(a) GUIDANCE ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall issue guidance, with detailed implementation instructions (including definitions), for the Department of Defense on the appropriate use of award and incentive fees in Department of Defense acquisition programs.

“(b) ELEMENTS.—The guidance under subsection (a) shall—

“(1) ensure that all new contracts using award fees link such fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

“(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

“(3) provide guidance on the circumstances in which contractor performance may be judged to be ‘excellent’ or ‘superior’ and the percentage of the available award fee which contractors should be paid for such performance;

“(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be ‘acceptable’, ‘average’, ‘expected’, ‘good’, or ‘satisfactory’;

“(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

“(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

“(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the military departments and Defense Agencies;

“(8) ensure that the Department of Defense—

“(A) collects relevant data on award and incentive fees paid to contractors; and

“(B) has mechanisms in place to evaluate such data on a regular basis;

“(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

“(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

“(c) ASSESSMENT OF INDEPENDENT EVALUATION MECHANISMS.—

“(1) IN GENERAL.—The Secretary of Defense shall select a federally funded research and development center to assess various mechanisms that could be used to ensure an independent evaluation of contractor performance for the purpose of making determinations applicable to the judging and payment of award fees.

“(2) CONSIDERATIONS.—The assessment conducted pursuant to paragraph (1) shall include consideration of the advantages and disadvantages of a system in which award fees are—

“(A) held in a separate fund or funds of the Department of Defense; and

“(B) allocated to a specific program only upon a determination by an independent board, charged with comparing contractor performance across programs, that such fees have been earned by the contractor for such program.

“(3) REPORT.—The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the assessment conducted pursuant to paragraph (1) not later than one year after the date of the enactment of this Act [Oct. 17, 2006].”

PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS

Pub. L. 102-190, div. A, title VIII, §806, Dec. 5, 1991, 105 Stat. 1417, as amended by Pub. L. 102-484, div. A, title X, §1053(5), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 103-355, title II, §2091, title VIII, §8105(k), Oct. 13, 1994, 108 Stat. 3306, 3393; Pub. L. 113-291, div. A, title X, §1071(b)(15), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 115-232, div. A, title VIII, §836(f)(1), Aug. 13, 2018, 132 Stat. 1870, provided that:

“(a) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the following requirements:

“(1) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.—(A) Subject to section 552(b)(1) of title 5, United States Code, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the

Department of Defense shall promptly make available to such subcontractor or supplier the following information:

“(i) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

“(ii) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

“(B) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

“(2) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.—(A) Upon the request of a subcontractor or supplier described in subparagraph (B), the Department of Defense shall promptly make available to such subcontractor or supplier any of the following:

“(i) The name and address of the surety or sureties on the payment bond.

“(ii) The penal amount of the payment bond.

“(iii) A copy of the payment bond.

“(B) Subparagraph (A) applies to—

“(i) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

“(ii) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

“(C) With respect to the information referred to in subparagraphs (A)(i) and (A)(ii), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

“(D) With respect to the information referred to in subparagraph (A)(iii), the regulations may impose reasonable fees to cover the cost of copying and providing requested bonds.

“(E) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

“(3) INFORMATION PROVIDED BY CONTRACTORS RELATING TO PAYMENT BONDS.—(A) Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly make available to such prospective subcontractor or supplier a copy of the payment bond.

“(B) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act for which a solicitation is issued after the expiration of the 60-day period beginning on the effective date of the regulations promulgated under this subsection.

“(4) PROCEDURES RELATING TO COMPLIANCE WITH PAYMENT TERMS.—(A) Under procedures established in the regulations, upon the assertion by a subcontractor or supplier of a contractor performing a Department of Defense contract that the subcontractor or supplier has not been paid by the prime contractor in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine the following:

“(i) With respect to a construction contract, whether the contractor has made progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code.

“(ii) With respect to a contract other than a construction contract, whether the contractor has

made progress or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

“(iii) With respect to either a construction contract or a contract other than a construction contract, whether the contractor has made final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

“(iv) With respect to either a construction contract or a contract other than a construction contract, whether any certification of payment of the subcontractor or supplier accompanying the contractor's payment request to the Government is accurate.

“(B) If the contracting officer determines that the prime contractor is not in compliance with any matter referred to in clause (i), (ii), or (iii) of subparagraph (A), the contracting officer may, under procedures established in the regulations—

“(i) encourage the prime contractor to make timely payment to the subcontractor or supplier; or

“(ii) reduce or suspend progress payments with respect to amounts due to the prime contractor.

“(C) If the contracting officer determines that a certification referred to in clause (iv) of subparagraph (A) is inaccurate in any material respect, the contracting officer shall, under procedures established in the regulations, initiate appropriate administrative or other remedial action.

“(D) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date of promulgation of the regulations under this subsection or that is awarded after such date.

“(b) INAPPLICABILITY TO CERTAIN CONTRACTS.—Regulations prescribed under this section shall not apply to a contract for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41, United States Code).

“(c) GOVERNMENT-WIDE APPLICABILITY.—The Federal Acquisition Regulatory Council (established by section 1302(a) of title 41, United States Code) shall modify the Federal Acquisition Regulation (issued pursuant to section 1303(a)(1) of such title 41[]) to apply Government-wide the requirements that the Secretary is required under subsection (a) to prescribe in regulations applicable with respect to the Department of Defense contracts.

“(d) ASSISTANCE TO SMALL BUSINESS CONCERNS.—[Amended section 15(k)(5) of the Small Business Act (15 U.S.C. 644(k)(5)).]

“(e) GAO REPORT.—(1) The Comptroller General of the United States shall conduct an assessment of the matters described in paragraph (2) and submit a report pursuant to paragraph (3).

“(2) In addition to such other related matters as the Comptroller General considers appropriate, the matters to be assessed pursuant to paragraph (1) are the following:

“(A) Timely payment of progress or other periodic payments to subcontractors and suppliers by prime contractors on Federal contracts by—

“(i) identifying all existing statutory and regulatory provisions, categorized by types of contracts covered by such provisions;

“(ii) evaluating the feasibility and desirability of requiring that a prime contractor (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) be required to—

“(I) include in its subcontracts a payment term requiring payment within 7 days (or some other fixed term) after receiving payment from the Government; and

“(II) submit with its payment request to the Government a certification that it has timely paid its subcontractors in accordance with their subcontracts from funds previously received as

progress payments and will timely make required payments to such subcontractors from the proceeds of the progress payment covered by the certification;

“(iii) evaluating the feasibility and desirability of requiring that all prime contractors (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) furnish with its payment request to the Government proof of payment of the amounts included in such payment request for payments made to subcontractors and suppliers;

“(iv) evaluating the feasibility and desirability of requiring a prime contractor to establish an escrow account at a federally insured financial institution and requiring direct disbursements to subcontractors and suppliers of amounts certified by the prime contractor in its payment request to the Government as being payable to such subcontractors and suppliers in accordance with their subcontracts; and

“(v) evaluating the feasibility and desirability of requiring direct disbursement of amounts certified by a prime contractor as being payable to its subcontractors and suppliers in accordance with their subcontracts (using techniques such as joint payee checks, escrow accounts, or direct payment by the Government), if the contracting officer has determined that the prime contractor is failing to make timely payments to its subcontractors and suppliers.

“(B) Payment protection of subcontractors and suppliers through the use of payment bonds or alternatives methods by—

“(i) evaluating the effectiveness of the modifications to part 28.2 of the Federal Acquisition Regulation Part 28.2 (48 C.F.R. 28.200) relating to the use of individual sureties, which became effective February 26, 1990;

“(ii) evaluating the effectiveness of requiring payment bonds pursuant to the Miller Act as a means of affording protection to construction subcontractors and suppliers relating to receiving—

“(I) timely payment of progress payments due in accordance with their subcontracts; and

“(II) ultimate payment of such amounts due;

“(iii) evaluating the feasibility and desirability of increasing the payment bond amounts required under the Miller Act from the current maximum amounts to an amount equal to 100 percent of the amount of the contract;

“(iv) evaluating the feasibility and desirability of requiring payment bonds for supply and services contracts (other than construction), and, if feasible and desirable, the amounts of such bonds; and

“(v) evaluating the feasibility and desirability of using letters of credit issued by federally insured financial institutions (or other alternatives) as substitutes for payment bonds in providing payment protection to subcontractors and suppliers on construction contracts (and other contracts).

“(C) Any evaluation of feasibility and desirability carried out pursuant to subparagraph (A) or (B) shall include the appropriateness of—

“(i) any differential treatment of, or impact on, small business concerns as opposed to concerns other than small business concerns;

“(ii) any differential treatment of subcontracts relating to commercial products entered into by the contractor in furtherance of its non-Government business, especially those subcontracts entered into prior to the award of a contract by the Government; and

“(iii) extending the protections regarding payment to all tiers of subcontractors or restricting them to first-tier subcontractors and direct suppliers.

“(3) The report required by paragraph (1) shall include a description of the results of the assessment carried out pursuant to paragraph (2) and may include recommendations pertaining to any of the following:

“(A) Statutory and regulatory changes providing payment protections for subcontractors and suppliers (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) that the Comptroller General believes to be desirable and feasible.

“(B) Proposals to assess the desirability and utility of a specific payment protection on a test basis.

“(C) Such other recommendations as the Comptroller General considers appropriate in light of the matters assessed pursuant to paragraph (2).

“(4) The report required by paragraph (1) shall be submitted not later than by February 1, 1993, to the Committees on Armed Services and on Small Business [now the Committee on Small Business and Entrepreneurship of the Senate] of the Senate and House of Representatives.

“(f) INSPECTOR GENERAL REPORT.—(1) The Inspector General of the Department of Defense shall submit to the Secretary of Defense a report on payment protections for subcontractors and suppliers under contracts entered into with the Department of Defense. The report shall include an assessment of the extent to which available judicial and administrative remedies, as well as suspension and debarment procedures, have been used (or recommended for use) by officials of the Department to deter false statements relating to (A) payment bonds provided by individuals pursuant to the Miller Act, and (B) certifications pertaining to payment requests by construction contractors pursuant to section 3903(b) of title 31, United States Code. The assessment shall cover actions taken during the period beginning on October 1, 1989, and ending on September 30, 1992.

“(2) The report required by paragraph (1) shall be submitted to the Secretary of Defense not later than March 1, 1993. The report may include recommendations by the Inspector General on ways to improve the effectiveness of existing methods of preventing false statements.

“(g) MILLER ACT DEFINED.—For purposes of this section, the term ‘Miller Act’ means the Act of August 24, 1935 (40 U.S.C. 270a–270d) [now 40 U.S.C. 3131, 3133].”

§ 4601. Electronic submission and processing of claims for contract payments

(a) SUBMISSION OF CLAIMS.—The Secretary of Defense shall require that any claim for payment under a Department of Defense contract shall be submitted to the Department of Defense in electronic form.

(b) PROCESSING.—A contracting officer, contract administrator, certifying official, or other officer or employee of the Department of Defense who receives a claim for payment in electronic form in accordance with subsection (a) and is required to transmit the claim to any other officer or employee of the Department of Defense for processing under procedures of the department shall transmit the claim and any additional documentation necessary to support the determination and payment of the claim to such other officer or employee electronically.

(c) WAIVER AUTHORITY.—If the Secretary of Defense determines that the requirement for using electronic means for submitting claims under subsection (a), or for transmitting claims and supporting documentation under subsection (b), is unduly burdensome in any category of cases, the Secretary may exempt the cases in that category from the application of the requirement.

(d) IMPLEMENTATION OF REQUIREMENTS.—In implementing subsections (a) and (b), the Secretary of Defense shall provide for the following: