

paragraph (1)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified by section 3902(a) of this title.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Government of any such notice issued by a prime contractor), specifying—

- (1) the amount to be withheld;
- (2) the specific causes for the withholding under the terms of the subcontract; and
- (3) the remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) A prime contractor may not request payment from the agency of any amount withheld or retained in accordance with subsection (d) of this section until such time as the prime contractor has determined and certified to the agency that the subcontractor is entitled to the payment of such amount.

(i) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (b) or (c) of this section does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in subsection (i) of this section, this section shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) A contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under subsection (b) or (c) of this section may not be construed to be an obligation of the United States for such interest penalty. A contract modification may not be made for the purpose of providing reimbursement of such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(Added Pub. L. 100-496, §9(a)(2), Oct. 17, 1988, 102 Stat. 2460; amended Pub. L. 107-217, §3(h)(7), Aug. 21, 2002, 116 Stat. 1300.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3905 was renumbered section 3906 of this title.

AMENDMENTS

2002—Subsec. (f)(1). Pub. L. 107-217 substituted “section 3133(b) of title 40” for “section 2 of the Act of August 24, 1935 (40 U.S.C. 270b)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to payments under contracts awarded, contracts renewed, and contract options exer-

cised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988, see section 14(a) of Pub. L. 100-496, set out as an Effective Date of 1988 Amendment note under section 3902 of this title.

[§ 3906. Repealed. Pub. L. 105-362, title XIII, § 1301(c)(1), Nov. 10, 1998, 112 Stat. 3293]

Section, added Pub. L. 97-452, §1(18)(A), Jan. 12, 1983, 96 Stat. 2476, §3905; renumbered §3906 and amended Pub. L. 100-496, §§9(a)(1), 10, Oct. 17, 1988, 102 Stat. 2460, 2463, required submission of reports to Director of the Office of Management and Budget by 60th day after end of fiscal year by head of each agency concerning agency's payment practices during that fiscal year.

A prior section 3906 was renumbered section 3907 of this title.

§ 3907. Relationship to other laws

(a) A claim for an interest penalty not paid under this chapter may be filed under section 7103 of title 41.

(b)(1) An interest penalty under this chapter does not continue to accrue—

- (A) after a claim for a penalty is filed under chapter 71 of title 41; or
- (B) for more than one year.

(2) Paragraph (1) of this subsection does not prevent an interest penalty from accruing under section 7109(a)(1) and (b) of title 41 after a penalty stops accruing under this chapter. A penalty accruing under section 7109(a)(1) and (b) may accrue on an unpaid contract payment and on the unpaid penalty under this chapter.

(c) Except as provided in section 3904 of this title, this chapter does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a business concern over the amount of payment or compliance with the contract. A claim related to the dispute, and interest payable for the period during which the dispute is being resolved, is subject to chapter 71 of title 41.

(Added Pub. L. 97-452, §1(18)(A), Jan. 12, 1983, 96 Stat. 2477, §3906; renumbered §3907, Pub. L. 100-496, §9(a)(1), Oct. 17, 1988, 102 Stat. 2460; amended Pub. L. 111-350, §5(h)(8), Jan. 4, 2011, 124 Stat. 3849.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3906(a)	31 App.:1803(a)(1).	May 21, 1982, Pub. L. 97-177, §4, 96 Stat. 87.
3906(b)	31 App.:1803(a)(2), (3).	
3906(c)	31 App.:1803(b).	

In the section, the words “be construed to” are omitted as surplus.

In subsection (a), the words “not paid under this chapter” are substituted for “which a Federal agency has failed to pay in accordance with the requirements of section 2 or 3 of this chapter” to eliminate unnecessary words.

In subsection (b)(2), the word “accruing” is added for clarity. The word “both” is omitted as surplus.

In subsection (c), the words “with respect to disputes concerning discounts”, “by the required payment date”, and “other allegations concerning” are omitted as surplus.