

(Aug. 24, 1935, ch. 642, §1, 49 Stat. 793; Pub. L. 89-719, title I, §105(b), Nov. 2, 1966, 80 Stat. 1139; Pub. L. 95-585, Nov. 2, 1978, 92 Stat. 2484; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-355, title IV, §4104(b)(1)(B), Oct. 13, 1994, 108 Stat. 3342; Pub. L. 106-49, §2(a), Aug. 17, 1999, 113 Stat. 231.)

AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106-49 substituted “The amount of the payment bond shall be equal to the total amount payable by the terms of the contract unless the contracting officer awarding the contract makes a written determination supported by specific findings that a payment bond in that amount is impractical, in which case the amount of the payment bond shall be set by the contracting officer. In no case shall the amount of the payment bond be less than the amount of the performance bond.” for “Whenever the total amount payable by the terms of the contract shall be not more than \$1,000,000 the said payment bond shall be in a sum of one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$1,000,000 and not more than \$5,000,000, the said payment bond shall be in a sum of 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$5,000,000 the said payment bond shall be in the sum of \$2,500,000.”

1994—Subsec. (a). Pub. L. 103-355 struck out “, exceeding \$25,000 in amount,” after “Before any contract” in introductory provisions.

1986—Subsec. (d). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95-585 substituted “\$25,000” for “\$2,000”.

1966—Subsec. (d). Pub. L. 89-719 added subsec. (d).

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 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable to contract entered into pursuant to invitations for bids issued after June 30, 1967, see section 114(c)(2) of Pub. L. 89-719, set out as a note under section 6323 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 7, formerly §5, of act Aug. 24, 1935, as renumbered by Pub. L. 104-106, div. D, title XLIII, §4321(i)(8), Feb. 10, 1996, 110 Stat. 676, provided in part: “That this act [enacting this section and sections 270b to 270d of this title] shall take effect upon the expiration of sixty days after the date of its enactment [Aug. 24, 1935], but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract.”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-49, §1, Aug. 17, 1999, 113 Stat. 231, provided that: “This Act [amending this section and section 270b of this title and enacting provisions set out as a note under this section] may be cited as the ‘Construction Industry Payment Protection Act of 1999’.”

SHORT TITLE

Section 6 of act Aug. 24, 1935, as added by Pub. L. 103-355, title X, §10005(f)(1), Oct. 13, 1994, 108 Stat. 3408, provided that: “This Act [enacting this section, sec-

tions 270b to 270d-1 of this title, and provisions set out as a note above] may be cited as the ‘Miller Act’.”

IMPLEMENTATION THROUGH GOVERNMENT-WIDE PROCUREMENT REGULATIONS

Pub. L. 106-49, §3, Aug. 17, 1999, 113 Stat. 231, provided that:

“(a) PROPOSED REGULATIONS.—Proposed revisions to the Government-wide Federal Acquisition Regulation to implement the amendments made by this Act [amending this section and section 270b of this title] shall be published not later than 120 days after the date of the enactment of this Act [Aug. 17, 1999] and provide not less than 60 days for public comment.

“(b) FINAL REGULATIONS.—Final regulations shall be published not less than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of publication.”

ALTERNATIVES TO PAYMENT BONDS PROVIDED BY FEDERAL ACQUISITION REGULATION

Section 4104(b)(2) of Pub. L. 103-355 provided that:

“(2)(A) The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers of labor and materials under contracts referred to in subparagraph (C).

“(B) The contracting officer for a contract shall—

“(i) select, from among the payment protections provided for in the Federal Acquisition Regulation pursuant to subparagraph (A), one or more payment protections which the offeror awarded the contract is to submit to the Federal Government for the protection of suppliers of labor and materials for such contract; and

“(ii) specify in the solicitation of offers for such contract the payment protection or protections so selected.

“(C) The regulations required under subparagraph (A) and the requirements of subparagraph (B) apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act [40 U.S.C. 270a(a)] that are greater than \$25,000 but not greater than \$100,000.”

WAIVER OF SECTIONS 270a TO 270d OF THIS TITLE BY SECRETARY OF THE TREASURY

Act July 11, 1941, ch. 290, §3(b), 55 Stat. 585, which authorized the Secretary of the Treasury, in his discretion, to waive sections 270a to 270d of this title with respect to certain contracts entered into for the Coast Guard during the national emergency, was repealed by Joint Res. July 25, 1947, ch. 327, §1, 61 Stat. 449.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 sections 636, 637; title 25 sections 47a, 1656; title 31 section 9303; title 39 section 410; title 42 sections 1594, 9619, 11707.

§ 270b. Rights of persons furnishing labor or material

(a) Right to sue on payment bond

Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under sections 270a to 270d-1 of this title and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or

sums justly due him: *Provided, however,* That any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by any means which provides written, third-party verification of delivery,¹ to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

(b) Civil action; jurisdiction; statute of limitations; costs and expenses

Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The United States shall not be liable for the payment of any costs or expenses of any such suit.

(c) Nonwaiver of rights

Any waiver of the right to sue on the payment bond required by sections 270a to 270d-1 of this title shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(Aug. 24, 1935, ch. 642, § 2, 49 Stat. 794; Pub. L. 86-135, § 1, Aug. 4, 1959, 73 Stat. 279; Pub. L. 106-49, § 2(b), (c), Aug. 17, 1999, 113 Stat. 231.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-49, § 2(b), which directed the substitution of “any means which provides written, third-party verification of delivery.” for “mailing the same by registered mail, postage prepaid, in an envelope addressed”, was executed by making the substitution for “mailing the same by registered mail, postage prepaid, in an envelope addressed”, to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 106-49, § 2(c), added subsec. (c).

1959—Subsec. (b). Pub. L. 86-135 substituted “day on which the last of the labor was performed or material was supplied by him” for “date of final settlement of such contract”.

EFFECTIVE DATE

Section effective upon expiration of sixty days after Aug. 24, 1935, but not applicable to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 7 of act

Aug. 24, 1935, set out as a note under section 270a of this title.

RETROACTIVE EFFECT

Section 3 of Pub. L. 86-135 provided that: “The rights of laborers and material men under contracts entered into before the effective date [Aug. 4, 1959] of this amendment [amending this section and section 270c of this title] shall not be affected.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270d, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 section 636; title 25 sections 47a, 1656; title 31 sections 3905, 9303; title 39 section 410; title 42 sections 9619, 11707.

§ 270c. Right of person furnishing labor or material to copy of bond

The department secretary or agency head of the contracting agency is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the department secretary or agency head of the contracting agency fixes to cover the cost of preparation thereof.

(Aug. 24, 1935, ch. 642, § 3, 49 Stat. 794; Pub. L. 86-135, § 2, Aug. 4, 1959, 73 Stat. 279; Pub. L. 98-269, Apr. 18, 1984, 98 Stat. 156.)

AMENDMENTS

1984—Pub. L. 98-269 substituted “department secretary or agency head of the contracting agency” for “Comptroller General” in two places.

1959—Pub. L. 86-135 struck out “, and, in case final settlement of such contract, has been made, a certified statement of the date of such settlement, which shall be conclusive as to such date upon the parties” and “and certified statements” after “original” and “certified copies”, respectively.

EFFECTIVE DATE

Section effective upon expiration of sixty days after Aug. 24, 1935, but not applicable to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 7 of act Aug. 24, 1935, set out as a note under section 270a of this title.

RETROACTIVE EFFECT

Rights of laborers and material men under contracts entered into before Aug. 4, 1959, unaffected, see section 3 of Pub. L. 86-135, set out as a note under section 270b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 section 636; title 25 sections 47a, 1656; title 31 section 3903; title 39 section 410; title 42 sections 9619, 11707.

§ 270d. “Person” defined

The term “person” and the masculine pronoun as used in sections 270a to 270d-1 of this title shall include all persons whether individuals, associations, copartnerships, or corporations.

(Aug. 24, 1935, ch. 642, § 4, 49 Stat. 794.)

¹ So in original. The period probably should not appear.