

1076, §1(2), 68 Stat. 966, provided that if work, supplies, or services were provided for any department or agency of the Government, under a contract or subcontract, between Sept. 16, 1940, and Aug. 14, 1945, and a loss was incurred by the contractors or subcontractors without fault or negligence on their part, then those departments or agencies were authorized to adjust and settle these losses on a fair and equitable basis, if claims were filed within six months after Aug. 7, 1946, and granted claimants dissatisfied with the settlement the right of judicial review.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 107, 113, 124 of this title.

**§ 107. Settlement of subcontractors' claims**

**(a) Conclusiveness of settlement**

Where, in connection with the settlement of any termination claim by a contracting agency, any war contractor makes settlements of the termination claims of his subcontractors, the contracting agency shall limit or omit its review of such settlements with subcontractors to the maximum extent compatible with the public interest. Any contracting agency (1) may approve, ratify, or authorize such settlements with subcontractors upon such evidence, terms, and conditions as it deems proper; (2) shall vary the scope and intensity of its review of such settlements according to the reliability of the war contractor, the size, number, and complexity of such claims, and other relevant factors; and (3) shall authorize war contractors to make such settlements with subcontractors without review by the contracting agency, whenever the reliability of the war contractor, the amount or nature of the claims, or other reasons appear to the contracting agency to justify such action. Any such settlement of a subcontract approved, ratified, or authorized by a contracting agency shall be final and conclusive as to the amount due to the same extent as a settlement under subsection (c) of section 106 of this title, and no war contractor shall be liable to the United States on account of any amounts paid thereon except for his own fraud.

**(b) Supervision of payments to war contractors**

Whenever any contracting agency is satisfied of the inability of a war contractor to meet his obligations it shall exercise supervision or control over payments to the war contractor on account of termination claims of subcontractors of such war contractor to such extent and in such manner as it deems necessary or desirable for the purpose of assuring the receipt of the benefit of such payments by the subcontractors.

**(c) Group settlements**

The Administrator of General Services shall prescribe policies and methods for the settlement as a group, or otherwise, by any contracting agency of some or all of the termination claims of a war contractor under war contracts with one or more (1) bureaus or divisions within a contracting agency, (2) contracting agencies, or (3) prime contractors and subcontractors, to the extent he deems such action necessary or desirable for expeditious and equitable settlement of such claims. After consulting with the contracting agencies concerned,

the Administrator of General Services may provide for assigning any war contractor to a contracting agency for such settlement, and such agency shall have authority to settle, on behalf of any other contracting agency, some or all of the termination claims of such war contractor.

**(d) Direct settlement by contracting agency**

Any contracting agency may settle directly termination claims of subcontractors to the extent that it deems such action necessary or desirable for the expeditious and equitable settlement of such claims. In making such termination settlements any contracting agency may discharge the claim of the subcontractor by payment or may purchase such claim, and may agree to assume, or indemnify the subcontractor against, any claims by any person in connection with such claim or the termination settlement. Any contracting agency undertaking to settle the termination claim of any subcontractor shall deliver to the subcontractor and the war contractor liable to him written notice stating its acceptance of responsibility for settling his claim and the conditions applicable thereto, which may include the release, or assignment to the contracting agency, of his claim against the war contractor liable to him; upon consent thereto by the subcontractor, the Government shall become liable for the settlement of his claims upon the conditions specified in the notice.

**(e) Amount of settlement**

Any contracting agency may make settlements with subcontractors in accordance with any of the provisions of this chapter without regard to any limitation on the amount payable by the Government to the prime contractor.

**(f) Equitable payments**

If any contracting agency determines that in the circumstances of a particular case equity and good conscience require fair compensation for the termination of a war contract to be paid to a subcontractor who has been deprived of and cannot otherwise reasonably secure such fair compensation, the contracting agency concerned may pay such compensation to him although such compensation already has been included and paid as part of a settlement with another war contractor.

(July 1, 1944, ch. 358, §7, 58 Stat. 654; Ex. Ord. No. 9809, §8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, §201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, §102(b), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury transferred to Administrator of General Services by section 102(b) of act June 30, 1949, ch. 288, 63 Stat. 380, which was classified to section 752(b) of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 107-217, §6(b), Aug. 21, 2002, 116 Stat. 1304.

"Secretary" substituted for "Director" by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947. Reorg. Plan No. 1 of 1947 is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605, formerly section 505, of act

June 30, 1949, ch. 288, 63 Stat. 403; renumbered by act Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583.

#### APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 124 of this title.

### § 108. Interim financing

#### (a) Prime contractors

It is the policy of the Government, and it shall be the responsibility of the contracting agencies and the Administrator of General Services, in accordance with and subject to the provisions of this chapter, to provide war contractors having any termination claim or claims, pending their settlement, with adequate interim financing, within thirty days after proper application therefor.

#### (b) Method of financing; amounts payable

Each contracting agency shall, to the greatest extent it deems practicable, make available interim financing through loans and discounts, and commitments and guaranties in connection therewith, in contemplation of or related to termination of war contracts. Where interim financing is made by advance payments or partial payments, it shall, insofar as practicable, consist of the following:

- (1) An amount equal to 100 per centum of the amount payable, at the contract price, on account of acceptable items completed prior to the termination date under the terms of the contract, or completed thereafter with the approval of the contracting agency; plus
- (2) An amount equal to 90 per centum of the cost of raw materials, purchased parts, supplies, direct labor, and manufacturing overhead allocable to the terminated portion of the war contract; plus
- (3) A reasonable percentage of other allowable costs, including administrative overhead, allocable to the terminated portion of the war contract not included in the foregoing; plus
- (4) Such additional amounts, if any, as the contracting agency deems necessary to provide the war contractor with adequate interim financing.
- (5) In lieu of the costs referred to in clauses (2) and (3) of this subsection, where a detailed ascertainment of such costs is not suitable to the conditions of any war contractor and is apt to cause delay in the obtaining of interim financing by him, that portion of such interim financing shall be equal to an amount not greater than 90 per centum of the estimated costs which are allocable to the terminated part or parts of the war contract or group of war contracts, and are ascertained in accordance with such methods and standards as the Administrator of General Services shall prescribe.
- (6) There shall be deducted from the amount of such interim financing any unliquidated balances of advance and partial payments theretofore made to such war contractor, which are allocable to the terminated war con-

tract or the terminated part of the war contract.

#### (c) Evidence to support financing

The Administrator of General Services shall prescribe (1) the types of estimates, certificates, or other evidence to be required to support such interim financing; (2) the terms and conditions upon which such interim financing shall be made including the use of standard forms for agreements with respect to such interim financing to the extent practicable; (3) the classes of cases in which such interim financing shall be refused; and (4) such methods of supervision and control over such interim financing as he deems necessary or desirable to assure adequate and speedy interim financing to subcontractors of the war contractor.

#### (d) Penalty for overstatement of claims

In case of an overstatement by any war contractor of the amount due on his termination claim or claims in connection with any interim financing under this chapter, such contractor shall pay to the United States, as a penalty, an amount equal to 6 per centum of the amount of the overstatement, but the Administrator of General Services may suspend or modify any such penalty if in his opinion the imposition thereof would be inequitable. Any penalty may be deducted from any amounts due the war contractor upon such termination claim or claims, or otherwise, or may be collected from the war contractor by suit. The obligation to pay any penalty imposed and to repay any interim financing made or assumed by the United States under this chapter shall constitute a debt due to the United States within the meaning of section 3713(a) of title 31.

#### (e) Advance payments as part of termination settlement

Any contracting agency may allow any advance payments, previously made or authorized by it in connection with the performance of a war contract, to be used for payments and expenses related to the termination settlement of such contract, upon such terms and conditions as it deems necessary or appropriate to protect the interest of the Government.

#### (f) Liquidation of loans, etc., prior to final settlement

No interim financing shall be made by any contracting agency under this chapter unless the terms of such financing provide for the liquidation by the war contractor of all loans, discounts, advance payments, or partial payments thereunder not later than the time of final payment of the amount due on the settlement of the termination claim or claims of the war contractor involved or such time thereafter as the contracting agency deems necessary for the liquidation of such interim financing in an orderly manner.

#### (g) Settlement of claims; validation of prior financing

Any contracting agency may settle, upon such terms and conditions as it deems proper, any claim or obligation due by or to the Government arising from or related to any interim financing made, acquired, or authorized by it. Any interim