§ 3741

TITe 10—ARMED FORCES

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out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 273—ALLOWABLE COSTS

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Editorial Notes

PRIOR PROVISIONS


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A prior section 3741 was renumbered section 7271 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(b)(1)–(3), redesignated pars. (4), (1)(A), (6), (2), and (3) of section 2324(1) of this title as pars. (1) to (5), respectively, of this section and inserted headings.

Statutory Notes and Related Subsidiaries

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.

§ 3742. Adjustment of threshold amount of covered contract

Effective on October 1 of each year that is divisible by five, the amount set forth in section 3741(2) of this title shall be adjusted in accordance with section 1908 of title 41.


Editorial Notes

CODIFICATION


PRIOR PROVISIONS

A prior section 3742 was renumbered section 7272 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(b)(4), transferred subpar. (B) of section 2324(1) of this title to this section, struck out subpar. (B) designation at beginning, and substituted “section 3741(2) of this title” for “subparagraph (A)”.

Statutory Notes and Related Subsidiaries

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.

§ 3743. Effect of submission of unallowable costs

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

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(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

(1) If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowance of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.—If the head of the agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the head of the agency shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty for settlement of indirect costs submitted by a contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and re-submits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DisPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of the head of an agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of title 41; and

(2) is appealable in the manner provided in section 7104(a) of title 41.

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deferred by the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(a) SPECIFIC Costs.—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with,