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§ 3741. Definitions

In this subchapter:

(1) **COMPENSATION.**—The term “compensation”, for a year, means the total amount of wages, salary, bonuses and deferred compensation for the year, whether paid, earned, or otherwise accruing, as recorded in an employer’s cost accounting records for the year.

(2) **COVERED CONTRACT.**—The term “covered contract” means a contract for an amount in excess of \$500,000 that is entered into by the head of an agency, except that such term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial products or commercial services.

(3) **FISCAL YEAR.**—The term “fiscal year” means a fiscal year established by a contractor for accounting purposes.

(4) **HEAD OF THE AGENCY.**—The term “head of the agency” or “agency head” does not include the Secretary of a military department.

(5) **AGENCY.**—The term “agency” means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1832(a), (b)(1)–(3), Jan. 1, 2021, 134 Stat. 4218.)

Editorial Notes

CODIFICATION

The text of pars. (1)(A), (2)–(4), and (6) of subsec. (I) of section 2324 of this title, which were transferred to this section and amended by Pub. L. 116–283, §1832(b)(1)–(3), was based on Pub. L. 103–355, title II, §2101(d), Oct. 13, 1994, 108 Stat. 3308; Pub. L. 105–85, div. A, title VIII, §808(a)(2), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 115–232, div. A, title VIII, §836(c)(9), Aug. 13, 2018, 132 Stat. 1866.

PRIOR PROVISIONS

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(I) 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.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1832(a), (b)(4), Jan. 1, 2021, 134 Stat. 4218, 4219.)

Editorial Notes

CODIFICATION

The text of par. (1)(B) of subsec. (I) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1832(b)(4), was based on Pub. L. 103–355, title II, §2101(d), Oct. 13, 1994, 108 Stat. 3308; Pub. L. 115–91, div. A, title VIII, §811(e), Dec. 12, 2017, 131 Stat. 1460.

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(I)(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.

(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 allowability 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