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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. (l) 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(l) 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. (l) 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(l)(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

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 under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits 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.

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

#### Editorial Notes

##### CODIFICATION

The text of subsec. (a) of section 2324 of this title, which was transferred to this section by Pub. L. 116-283, § 1832(c)(1), was based on Pub. L. 99-145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; Pub. L. 102-484, div. A, title VIII, § 818(a)(1)(A), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103-355, title II, § 2101(a), Oct. 13, 1994, 108 Stat. 3306.

The text of subsec. (b) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1832(c), was based on Pub. L. 99-145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; Pub. L. 102-484, div. A, title VIII, § 818(a)(1)(B), (2), Oct. 23, 1992, 106 Stat. 2457, 2458; Pub. L. 103-355, title II, § 2101(a)(2), Oct. 13, 1994, 108 Stat. 3306.

The text of subsec. (c) of section 2324 of this title, which was transferred to this section by Pub. L. 116-283, § 1832(c)(1), was based on Pub. L. 102-484, div. A, title VIII, § 818(a)(5), Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103-355, title II, § 2101(a)(3), Oct. 13, 1994, 108 Stat. 3307.

The text of subsec. (d) of section 2324 of this title, which was transferred to this section by Pub. L. 116-283, § 1832(c)(1), was based on Pub. L. 99-145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 683; Pub. L. 102-484, div. A, title VIII, § 818(a)(4), Oct. 23, 1992, 106 Stat. 2458; Pub.

L. 103-355, title II, § 2101(a)(4), Oct. 13, 1994, 108 Stat. 3307; Pub. L. 111-350, § 5(b)(19)(A), (B), Jan. 4, 2011, 124 Stat. 3844.

#### PRIOR PROVISIONS

A prior section 3743 was renumbered section 7273 of this title.

#### AMENDMENTS

2021—Pub. L. 116-283, § 1832(c)(1), transferred subsecs. (a) to (d) of section 2324 of this title to this section.

Subsec. (b). Pub. L. 116-283, § 1832(c)(2), realigned margins of pars. (1) and (2) and inserted par. (2) heading.

#### 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.

#### § 3744. Specific costs not allowable

(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, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a “golden parachute payment”) which is—

(i) in an amount in excess of the normal severance pay paid by the contractor to an