

**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.

**§ 3748. Penalties for submission of cost known as not allowable**

The submission to an agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18 and section 3729 of title 31.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1832(a), (g), Jan. 1, 2021, 134 Stat. 4218, 4222.)

**Editorial Notes****CODIFICATION**

The text of subsec. (i) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1832(g), was based on Pub. L. 99-145, title IX, §911(a)(1), Nov. 8, 1985, 99 Stat. 684; Pub. L. 103-355, title II, §2101(a)(9), Oct. 13, 1994, 108 Stat. 3308.

**PRIOR PROVISIONS**

A prior section 3748 was renumbered section 7278 of this title.

**AMENDMENTS**

2021—Pub. L. 116-283, §1832(g), transferred subsec. (i) of section 2324 of this title to this section and struck out subsec. (i) designation and heading “Penalties for Submission of Cost Known as Not Allowable” at beginning.

**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.

**§ 3749. Burden of proof on contractor**

In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1832(a), (h), Jan. 1, 2021, 134 Stat. 4218, 4222.)

**Editorial Notes****CODIFICATION**

The text of subsec. (j) of section 2324 of this title, which was transferred to this section and amended by

Pub. L. 116-283, §1832(h), was based on Pub. L. 100-370, §1(f)(3)(A), July 19, 1988, 102 Stat. 846; Pub. L. 103-355, title II, §2101(a)(10), Oct. 13, 1994, 108 Stat. 3308.

**PRIOR PROVISIONS**

A prior section 3749 was renumbered section 7279 of this title.

**AMENDMENTS**

2021—Pub. L. 116-283, §1832(h), transferred subsec. (j) of section 2324 of this title to this section and struck out subsec. (j) designation and heading “Contractor To Have Burden of Proof” at beginning.

**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.

**§ 3750. Proceeding costs not allowable**

(a) **DEFINITIONS.**—In this section:

(1) **COSTS.**—The term “costs”, with respect to a proceeding—

(A) means all costs incurred by a contractor or subcontractor, or personal services contractor, whether before or after the commencement of any such proceeding; and

(B) includes—

(i) administrative and clerical expenses;

(ii) the cost of legal services, including legal services performed by an employee of the contractor or subcontractor, or personal services contractor;

(iii) the cost of the services of accountants and consultants retained by the contractor or subcontractor, or personal services contractor; and

(iv) the pay of directors, officers, and employees of the contractor or subcontractor, or personal services contractor for time devoted by such directors, officers, and employees to such proceeding.

(2) **PENALTY.**—The term “penalty” does not include restitution, reimbursement, or compensatory damages.

(3) **PROCEEDINGS.**—The term “proceeding” includes an investigation.

(b) **IN GENERAL.**—Except as otherwise provided in this section, costs incurred by a contractor or subcontractor, or personal services contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States, by a State, or by a contractor or subcontractor, or personal services contractor employee submitting a complaint under section 4701 of this title are not allowable as reimbursable costs under a covered contract, subcontract, or personal services contract if the proceeding—

(1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation or to any other activity described in section 4701(a)(1) of this title; and

(2) results in a disposition described in subsection (c).

(c) **COVERED DISPOSITIONS.**—A disposition referred to in subsection (b)(2) is any of the following: