

§ 3746. Applicability of regulations to subcontractors

The regulations referred to in sections 3744 and 3745(a) and (b) of this title shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1832(a), (e), Jan. 1, 2021, 134 Stat. 4218, 4221.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1832(e), 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)(7), Oct. 13, 1994, 108 Stat. 3308.

Another section 1832(e) of Pub. L. 116-283 amended section 3745 of this title.

PRIOR PROVISIONS

A prior section 3746 was renumbered section 7276 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1832(e), transferred subsec. (g) of section 2324 of this title to this section, struck out subsec. (g) designation and heading “Applicability of Regulations to Subcontractors” at beginning, and substituted “sections 3744 and 3745(a) and (b) of this title” for “subsections (e) and (f)(1)”.

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.

§ 3747. Contractor certification

(a) **CONTENT AND FORM.**—A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official’s knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed in the Federal Acquisition Regulation.

(b) **WAIVER.**—The head of the agency or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under subsection (a) in the case of any contract if the head of the agency or the Secretary—

(1) determines in such case that it would be in the interest of the United States to waive such certification; and

(2) states in writing the reasons for that determination and makes such determination available to the public.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1832(a), (f), Jan. 1, 2021, 134 Stat. 4218, 4221.)

Editorial Notes

CODIFICATION

The text of subsec. (h) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1832(f), was based on Pub. L. 99-145, title IX, §911(a)(1), Nov. 8, 1985, 99 Stat. 684; Pub. L. 99-190, §101(b) [title VIII, §8112(a)(2)], Dec. 19, 1985, 99 Stat. 1185, 1223; Pub. L. 103-355, title II, §2101(a)(8), Oct. 13, 1994, 108 Stat. 3308; Pub. L. 104-106, div. D, title XLIII, §4321(b)(9)(B), Feb. 10, 1996, 110 Stat. 672.

PRIOR PROVISIONS

A prior section 3746 was renumbered section 7276 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1832(f)(1)(A), transferred subsec. (h) of section 2324 of this title to this section and struck out subsec. (h) designation and heading “Contractor Certification Required” at beginning.

Subsec. (a). Pub. L. 116-283, §1832(f)(1)(B), (2), redesignated par. (1) of section 2324(h) of this title as subsec. (a) of this section and inserted heading.

Subsec. (b). Pub. L. 116-283, §1832(f)(1)(B), (3), redesignated par. (2) of section 2324(h) of this title as subsec. (b) of this section, inserted heading, substituted “subsection (a)” for “paragraph (1)” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

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 subcon-

tractor, 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:

(1) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor or subcontractor, or personal services contractor liability on the basis of the violation or failure referred to in subsection (b).

(3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 4701 of this title by reason of the violation or failure referred to in subsection (b).

(4) A final decision—

(A) to debar or suspend the contractor or subcontractor, or personal services contractor;

(B) to rescind or void the contract, subcontract, or personal services contract; or

(C) to terminate the contract, subcontract, or personal services contract for default;

by reason of the violation or failure referred to in subsection (b).

(5) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in paragraphs (1), (2), (3), or (4).

(d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY UNITED STATES.—In the case of a proceeding referred to in subsection (b) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor or subcontractor, or personal services contractor and the United States, the costs incurred by the contractor or subcontractor, or personal services contractor in con-