

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.

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§ 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-