

ed for or on behalf of the Department of Defense on or after May 1, 2007.”

#### REIMBURSEMENT OF INDIRECT COSTS OF INSTITUTIONS OF HIGHER EDUCATION UNDER DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 103–160, div. A, title VIII, §841, Nov. 30, 1993, 107 Stat. 1719, as amended by Pub. L. 105–244, title I, §102(a)(2)(C), Oct. 7, 1998, 112 Stat. 1617, provided that:

“(a) PROHIBITION.—The Secretary of Defense may not by regulation place a limitation on the amount that the Department of Defense may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for the Department of Defense under a Department of Defense contract unless that same limitation is applied uniformly to all other organizations performing similar work for the Department of Defense under Department of Defense contracts.

“(b) WAIVER.—The Secretary of Defense may waive the application of the prohibition in subsection (a) in the case of a particular institution of higher education if the governing body of the institution requests the waiver in order to simplify the overall management by that institution of cost reimbursements by the Department of Defense for contracts awarded by the Department to the institution.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘allowable indirect costs’ means costs that are generally considered allowable as indirect costs under regulations that establish the cost reimbursement principles applicable to an institution of higher education for purposes of Department of Defense contracts.

“(2) The term ‘institution of higher education’ has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].”

#### § 3761. Restructuring costs

(a) LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.—The Secretary of Defense may not pay, under subchapter I, a defense contractor for restructuring costs associated with a business combination of the contractor that occurs after November 18, 1997, unless the Secretary determines in writing either—

(1) that the amount of projected savings for the Department of Defense associated with the restructuring will be at least twice the amount of the costs allowed; or

(2) that the amount of projected savings for the Department of Defense associated with the restructuring will exceed the amount of the costs allowed and that the business combination will result in the preservation of a critical capability that otherwise might be lost to the Department.

(b) LIMITATION ON DELEGATION.—The Secretary may not delegate the authority to make a determination under subsection (a), with respect to a business combination, to an official of the Department of Defense—

(1) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed \$25,000,000 over a 5-year period; or

(2) below the level of the Director of the Defense Contract Management Agency for all other cases.

(c) DEFINITION.—In this section, the term “business combination” includes a merger or acquisition.

(Added Pub. L. 105–85, div. A, title VIII, §804(a)(1), Nov. 18, 1997, 111 Stat. 1832, §2325;

amended Pub. L. 106–65, div. A, title X, §1066(a)(19), Oct. 5, 1999, 113 Stat. 771; Pub. L. 108–375, div. A, title VIII, §819, Oct. 28, 2004, 118 Stat. 2016; Pub. L. 112–239, div. A, title X, §1076(g)(2), Jan. 2, 2013, 126 Stat. 1955; renumbered §3761 and amended Pub. L. 116–283, div. A, title XVIII, §1832(j)(2), (3), Jan. 1, 2021, 134 Stat. 4225.)

#### Editorial Notes

##### AMENDMENTS

2021—Pub. L. 116–283, §1832(j)(2), renumbered section 2325 of this title as this section.

Subsec. (a). Pub. L. 116–283, §1832(j)(3)(B), (E), in introductory provisions, struck out par. (1) designation before “The Secretary” and substituted “subchapter I” for “section 2324 of this title” and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former par. (2) of subsec. (a) redesignated subsec. (b).

Subsec. (b). Pub. L. 116–283, §1832(j)(3)(C)–(E), redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, substituted “subsection (a)” for “paragraph (1)” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, §1832(j)(3)(A), redesignated subsec. (b) as (c).

2013—Subsec. (b). Pub. L. 112–239 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required reports relating to business combinations occurring on or after August 15, 1994.

2004—Subsec. (a)(2). Pub. L. 108–375 substituted “paragraph (1), with respect to a business combination, to an official of the Department of Defense—” for “paragraph (1) to an official of the Department of Defense below the level of an Assistant Secretary of Defense.” and added subpars. (A) and (B).

1999—Subsec. (a)(1). Pub. L. 106–65 inserted “that occurs after November 18, 1997,” after “of the contractor” in introductory provisions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

##### EFFECTIVE DATE

Pub. L. 105–85, div. A, title VIII, §804(c), Nov. 18, 1997, 111 Stat. 1834, provided that: “Section 2325(a) of title 10, United States Code [now 10 U.S.C. 3761(a)], as added by subsection (a), shall apply with respect to business combinations that occur after the date of the enactment of this Act [Nov. 18, 1997].”

#### § 3762. Independent research and development costs: allowable costs

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment by the Department of Defense of expenses incurred by contractors for independent research and development costs. Such regulations shall provide that expenses incurred for independent research and development shall be reported independently from other allowable indirect costs.

(b) COSTS TREATED AS FAIR AND REASONABLE, AND ALLOWABLE, EXPENSES.—The regulations prescribed under subsection (a) shall provide that independent research and development costs shall be considered a fair and reasonable,

and allowable, indirect expense on Department of Defense contracts.

(c) **ADDITIONAL CONTROLS.**—Subject to subsection (d), the regulations prescribed under subsection (a) may include the following provisions:

(1) Controls on the reimbursement of costs to the contractor for expenses incurred for independent research and development to ensure that such costs were incurred for independent research and development.

(2) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected needs of the Department of Defense for future technology and advanced capability; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the independent research and development programs of the contractor.

(d) **LIMITATIONS ON REGULATIONS.**—Regulations prescribed under subsection (a) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program if the chief executive officer of the contractor determines that expenditures will advance the needs of the Department of Defense for future technology and advanced capability as transmitted pursuant to subsection (c)(2)(A).

(e) **EFFECTIVE DATE.**—The regulations prescribed under subsection (a) shall apply to indirect costs incurred on or after October 1, 2017.

(Added Pub. L. 101-510, div. A, title VIII, § 824(a)(1), Nov. 5, 1990, 104 Stat. 1603, § 2372; amended Pub. L. 102-25, title VII, § 701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102-190, div. A, title VIII, § 802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102-484, div. A, title X, § 1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103-35, title II, § 201(c)(5), May 31, 1993, 107 Stat. 98; Pub. L. 104-106, div. D, title XLIII, § 4321(b)(11), Feb. 10, 1996, 110 Stat. 672; Pub. L. 114-328, div. A, title VIII, § 824(a)(1), Dec. 23, 2016, 130 Stat. 2277; Pub. L. 115-91, div. A, title X, § 1081(a)(35), Dec. 12, 2017, 131 Stat. 1596; renumbered § 3762, Pub. L. 116-283, div. A, title XVIII, § 1832(j)(2), Jan. 1, 2021, 134 Stat. 4225.)

## Editorial Notes

### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2372 of this title as this section.

2017—Subsec. (d). Pub. L. 115-91 substituted “subsection (c)(2)(A)” for “subsection (c)(3)(A)”.

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to payments to contractors for independent research and development and bid and proposal costs.

1996—Subsec. (i)(1). Pub. L. 104-106 substituted “2324(l)” for “2324(m)”.

1993—Subsec. (g)(5). Pub. L. 103-35 substituted “section 2506” for “section 2522”.

1992—Subsec. (e)(1). Pub. L. 102-484 substituted “on December 4, 1991” for “on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993”.

1991—Pub. L. 102-190 substituted section catchline for one which read “Independent research and development” and amended text generally, substituting present provisions for provisions authorizing payment of independent research and development or bid and proposal costs, encouraging contractors to engage in research and development activities, and authorizing advance agreements regarding the manner and extent in which the Department of Defense may pay independent research and development costs or bid and proposal costs.

Subsec. (d)(2)(B). Pub. L. 102-25 substituted “subsection (b), including” for “subsection (b) or”.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2220 of this title.

### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title VIII, § 802(e), Dec. 5, 1991, 105 Stat. 1414, provided that: “The amendments made by this section [amending this section and section 4501 of this title] shall take effect on October 1, 1992, and shall apply to independent research and development and bid and proposal costs incurred by a contractor during fiscal years of that contractor that begin on or after that date.”

### REGULATIONS

Pub. L. 102-190, div. A, title VIII, § 802(b), Dec. 5, 1991, 105 Stat. 1414, provided that: “The Secretary of Defense shall prescribe proposed regulations to implement the amendment made by subsection (a)(1) [amending this section] not later than April 1, 1992, and shall prescribe final regulations for that purpose not later than June 1, 1992.”

## § 3763. Bid and proposal costs: allowable costs

(a) **REGULATIONS.**—The Secretary of Defense shall prescribe regulations governing the payment by the Department of Defense of expenses incurred by contractors for bid and proposal costs. Such regulations shall provide that expenses incurred for bid and proposal costs shall be reported independently from other allowable indirect costs.

(b) **COSTS ALLOWABLE AS INDIRECT EXPENSES.**—The regulations prescribed under subsection (a) shall provide that bid and proposal costs shall be allowable as indirect expenses on covered contracts, as defined in section 3741 of this title, to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) **GOAL FOR REIMBURSABLE BID AND PROPOSAL COSTS.**—The Secretary shall establish a goal each fiscal year limiting the amount of reimbursable bid and proposal costs paid by the Department of Defense to an amount equal to not more than one percent of the total aggregate industry sales to the Department of Defense. To achieve such goal, the Secretary may not limit the payment of allowable bid and proposal costs for the covered year.

(d) **PANEL.**—(1) If the Department of Defense exceeds the goal established under subsection (c)