

section (b), the Director shall make the report available on the publicly available website of the Agency or such other publicly available website as the Director considers appropriate.

(d) DEFINITIONS.—

(1) The terms “incurred cost audit” and “qualified incurred cost submission” have the meaning given those terms in section 3842 of this title.

(2) The term “sustained questioned costs” means questioned costs that were recovered by the Federal Government as a result of contract negotiations related to such questioned costs.

(Added Pub. L. 112–81, div. A, title VIII, §805(a), Dec. 31, 2011, 125 Stat. 1486, §2313a; amended Pub. L. 114–92, div. A, title VIII, §893(b), Nov. 25, 2015, 129 Stat. 952; Pub. L. 114–328, div. A, title VIII, §824(d)(1), Dec. 23, 2016, 130 Stat. 2279; Pub. L. 115–91, div. A, title VIII, §811(d)(1), title X, §1081(d)(5), Dec. 12, 2017, 131 Stat. 1460, 1600; renumbered §3847 and amended Pub. L. 116–283, div. A, title XVIII, §1835(c), (d)(3), Jan. 1, 2021, 134 Stat. 4240.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3847, added Pub. L. 85–861, §1(94), Sept. 2, 1958, 72 Stat. 1484; Pub. L. 86–559, §1(25), June 30, 1960, 74 Stat. 272, provided for transfer to Retired Reserve or discharge from his reserve appointment, after July 1, 1960, of each officer in a reserve grade below lieutenant colonel with 25 years service assigned to Army Nurse Corps, Army Medical Specialist Corps, or Women’s Army Corps who had not been recommended for promotion to reserve grade of lieutenant colonel or who has not remained on active duty since such a recommendation, prior to repeal by Pub. L. 90–130, §1(12)(A), Nov. 8, 1967, 81 Stat. 376.

AMENDMENTS

2021—Pub. L. 116–283, §1835(c), renumbered section 2313a of this title as this section.

Subsec. (d)(1). Pub. L. 116–283, §1835(d)(3), substituted “section 3842” for “section 2313b”.

2017—Subsec. (a)(2)(A). Pub. L. 115–91, §811(d)(1)(A)(i), inserted “and dollar value” after “number” and “, set forth separately by type of audit” after “pending”.

Subsec. (a)(2)(C). Pub. L. 115–91, §811(d)(1)(A)(ii), inserted “, both from the date of receipt of a qualified incurred cost submission and from the date the audit begins” after “audit”.

Subsec. (a)(2)(D). Pub. L. 115–91, §811(d)(1)(A)(iii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “the total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs; and”.

Subsec. (a)(2)(E) to (H). Pub. L. 115–91, §811(d)(1)(A)(iv), (v), added subpars. (E) to (H) and struck out former subpar. (E) which read as follows: “an assessment of the number and types of audits pending for a period longer than allowed pursuant to guidance of the Defense Contract Audit Agency;”.

Subsec. (a)(4), (5). Pub. L. 115–91, §1081(d)(5), amended Pub. L. 114–328, §824(d)(1)(B). See 2016 Amendment note below.

Subsec. (d). Pub. L. 115–91, §811(d)(1)(B), added subsec. (d).

2016—Subsec. (a)(4), (5). Pub. L. 114–328, §824(d)(1)(B), as amended by Pub. L. 115–91, §1081(d)(5), added pars. (4) and (5). Former pars. (4) and (5) redesignated (6) and (7), respectively.

Subsec. (a)(6), (7). Pub. L. 114–328, §824(d)(1)(A), redesignated pars. (4) and (5) as (6) and (7), respectively.

2015—Subsec. (a)(2)(D). Pub. L. 114–92, §893(b)(1), amended subpar. (D) generally. Prior to amendment,

subpar. (D) read as follows: “the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs); and”.

Subsec. (a)(4), (5). Pub. L. 114–92, §893(b)(2)–(4), added par. (4) and redesignated former par. (4) as (5).

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 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, §1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(5) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VIII, §824(d)(2), Dec. 23, 2016, 130 Stat. 2279, provided that: “The amendments made by this subsection [amending this section] shall take effect on October 1, 2018.”

§3848. Defense audit agencies: Small Business Ombudsmen

(a) SMALL BUSINESS OMBUDSMAN.—The Secretary of Defense shall designate within each defense audit agency an official as the Small Business Ombudsman to have the duties described in subsection (b) and such other responsibilities as may be determined by the Secretary.

(b) DUTIES.—The Small Business Ombudsman of a defense audit agency shall—

(1) advise the Director of the defense audit agency on policy issues related to small business concerns;

(2) serve as the defense audit agency’s primary point of contact and source of information for small business concerns;

(3) collect and monitor relevant data regarding the defense audit agency’s conduct of audits of small business concerns, including—

(A) data regarding the timeliness of audit closeouts for small business concerns; and

(B) data regarding the responsiveness of the defense audit agency to issues or other matters raised by small business concerns; and

(4) make recommendations to the Director regarding policies, processes, and procedures related to the timeliness of audits of small business concerns and the responsiveness of the defense audit agency to issues or other matters raised by small business concerns.

(c) AUDIT INDEPENDENCE.—The Small Business Ombudsman of a defense audit agency shall be segregated from ongoing audits in the field and shall not engage in activities with regard to particular audits that could compromise the independence of the defense audit agency or undermine compliance with applicable audit standards.

(d) DEFENSE AUDIT AGENCY DEFINED.—In this section, the term “defense audit agency” means the Defense Contract Audit Agency and the Defense Contract Management Agency.

(Added Pub. L. 112–239, div. A, title XVI, §1612(a), Jan. 2, 2013, 126 Stat. 2064, §204; renun-

bered § 3848 and amended Pub. L. 116-283, div. A, title XVIII, § 1835(c), (d)(4), Jan. 1, 2021, 134 Stat. 4240.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3848, added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 86-559, § 1(26), June 30, 1960, 74 Stat. 272; Pub. L. 90-130, § 1(12)(B), Nov. 8, 1967, 81 Stat. 376; Pub. L. 90-486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 95-485, title VIII, § 820(h), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 96-513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 99-145, title V, § 522(a)(1), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 100-456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve first lieutenants, captains, majors, and lieutenant colonels with 28 years of service, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14501 et seq. of this title.

A prior section 3849, added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1485, related to separation or transfer to retired reserve of officers in the reserve grade of lieutenant colonel assigned to the Women's Army Corps upon completion of 28 years of service, prior to repeal by Pub. L. 86-559, § 1(27), June 30, 1960, 74 Stat. 272.

Prior sections 3850 to 3855 were repealed by Pub. L. 103-337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3850, added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 104-106, div. A, title XV, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer or discharge of excessive reserve commissioned officers in active status with thirty or more years of service. See sections 14514 and 14704 of this title.

Section 3851, added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86-559, § 1(28), June 30, 1960, 74 Stat. 272; Pub. L. 90-486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 96-513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98-525, title V, § 513, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-145, title V, § 522(a)(2), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 99-661, div. A, title XIII, § 1342(g), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100-456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve colonels and brigadier generals with 30 years of service or five years in grade. See section 14508(a), (e) of this title.

Section 3852, added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86-559, § 1(29), June 30, 1960, 74 Stat. 272; Pub. L. 99-145, title V, § 523, title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 632, 739; Pub. L. 100-456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve major generals with 35 years of service or five years in grade. See section 14508(b), (f) of this title.

Section 3853, added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86-559, § 1(30), June 30, 1960, 74 Stat. 273; Pub. L. 86-651, title I, § 115, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96-513, title V, § 512(9), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98-94, title X, § 1016(a), Sept. 24, 1983, 97 Stat. 668; Pub. L. 103-337, div. A, title XVI, § 1635(a), Oct. 5, 1994, 108 Stat. 2968, related to computation of years of service. See section 14706 of this title.

Section 3854, added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1486, authorized Secretary of the Army to prescribe regulations to carry out this chapter.

Section 3855, added Pub. L. 86-559, § 1(31), June 30, 1960, 74 Stat. 273; amended Pub. L. 96-107, title IV, § 403(a), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96-513, title II, § 215(a), Dec. 12, 1980, 94 Stat. 2885; Pub. L. 100-180, div. A, title VII, § 717(a), (d)(1)(A), Dec. 4, 1987, 101 Stat. 1113, 1114; Pub. L. 101-189, div. A, title VII, §§ 710(a), 711(a), Nov. 29, 1989, 103 Stat. 1476, 1477, related to retention in active status of certain reserve officers. See section 14703(a)(1), (b) of this title.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 204 of this title as this section and substituted “Defense audit agencies: Small Business Ombudsmen” for “Small Business Ombudsman for defense audit agencies” in section catchline.

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.

CHAPTER 281—CLAIMS AND DISPUTES

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| Sec.
3861. | Research and development contracts: indemnification provisions. |
| 3862. | Requests for equitable adjustment or other relief. |
| 3863. | Retention of amounts collected from contractor during the pendency of contract dispute. |

Editorial Notes

PRIOR PROVISIONS

A prior chapter 281 “CLAIMS AND DISPUTES”, as added by Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3861, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1836(a), Jan. 1, 2021, 134 Stat. 4241.

AMENDMENTS

2022—Pub. L. 117-263, div. A, title VIII, § 805(b), Dec. 23, 2022, 136 Stat. 2702, added item 3862 and struck out former item 3862 “Requests for equitable adjustment or other relief: certification”.

§ 3861. Research and development contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department con-