

(c) ADDITIONAL REQUIREMENTS.—

(1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until he has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the contract auditor on the allowability of such costs.

(2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, the contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUESTIONED COSTS.—The Federal Acquisition Regulation shall require that all categories of costs designated in the report of the contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(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. (f) 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. 683; Pub. L. 100–456, div. A, title VIII, §826(a), Sept. 29, 1988, 102 Stat. 1952; Pub. L. 100–463, title VIII, §8105(a), Oct. 1, 1988, 102 Stat. 2270–36; Pub. L. 100–526, title I, §106(a)(2), Oct. 24, 1988, 102 Stat. 2625; Pub. L. 102–484, div. A, title X, §1052(26)(A), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title II, §2101(a)(6), (c), Oct. 13, 1994, 108 Stat. 3307, 3308, as amended by Pub. L. 104–106, div. D, title XLIII, §4321(a)(5), Feb. 10, 1996, 110 Stat. 671.

Another section 1832(e) of Pub. L. 116–283 amended section 3746 of this title.

PRIOR PROVISIONS

A prior section 3745 was renumbered section 7275 of this title.

AMENDMENTS

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

Subsec. (a). Pub. L. 116–283, §1832(e)(1)(B), (2), redesignated first two sentences of par. (1) of section 2324(f) of this title as subsec. (a) of this section and inserted heading. Third sentence designated subsec. (b).

Subsec. (b). Pub. L. 116–283, §1832(e)(1)(C), (3), designated third sentence of subsec. (a) as subsec. (b), inserted heading, and redesignated subpars. (A) to (Q) as pars. (1) to (17), respectively.

Subsec. (c). Pub. L. 116–283, §1832(e)(1)(D), (E), (4), redesignated pars. (2) to (4) of section 2324(f) of this title collectively as subsec. (c) of this section and individually as pars. (1) to (3), respectively, thereof, inserted subsec. and par. headings, and realigned margins.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation 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.

REGULATIONS

For requirement to prescribe and periodically review regulations required by this section (formerly subsec. (f) of section 2324 of this title), see section 911(b) of Pub. L. 99–145, set out as a note under section 3744 of this title.

§ 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;