

BURDEN OF PROOF IN GOVERNMENT CONTRACT DISPUTE  
RESOLUTION

Pub. L. 99-145, title IX, §933, Nov. 8, 1985, 99 Stat. 700, which provided that in proceeding before the Armed Services Board of Contract Appeals, United States Claims Court, or any other Federal court in which reasonableness of indirect costs for which a contractor seeks reimbursement from Department of Defense is in issue, the burden of proof is upon the contractor to establish that such costs are reasonable, was repealed and restated in subsec. (j) of this section by Pub. L. 100-370, §1(f)(3)(A)(ii), (B), July 19, 1988, 102 Stat. 846.

**§ 2325. Restructuring costs**

(a) **LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.**—(1) The Secretary of Defense may not pay, under section 2324 of this title, 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—

(A) 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

(B) 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.

(2) The Secretary may not delegate the authority to make a determination under paragraph (1), with respect to a business combination, to an official of the Department of Defense—

(A) 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

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

(b) **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; 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.)

**PRIOR PROVISIONS**

A prior section 2325, added Pub. L. 99-500, §101(c) [title X, §907(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-137, and Pub. L. 99-591, §101(c) [title X, §907(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-137; Pub. L. 99-661, div. A, title IX, formerly title IV, §907(a)(1), Nov. 14, 1986, 100 Stat. 3917, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101-189, div. A, title XVI, §1622(c)(5), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101-510, div. A, title VIII, §810, Nov. 5, 1990, 104 Stat. 1595; Pub. L. 103-160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, directed Secretary of Defense to ensure that requirements of Department of Defense with respect to procurement of supplies be stated in terms of functions to be performed, performance required, or essential physical characteristics, and related to preference for non-

developmental items in procurement of supplies, prior to repeal by Pub. L. 103-355, title VIII, §8104(b)(1), Oct. 13, 1994, 108 Stat. 3391. See sections 2376 and 2377 of this title.

Another prior section 2325 was renumbered section 2345 of this title.

**AMENDMENTS**

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.

**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, 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].”

**GAO REPORTS**

Pub. L. 105-85, div. A, title VIII, §804(b), Nov. 18, 1997, 111 Stat. 1832, directed the Comptroller General, not later than Apr. 1, 1998, to identify major market areas affected by business combinations of defense contractors since Jan. 1, 1990, and develop a methodology for determining the savings from business combinations of defense contractors on the prices paid on particular defense contracts, and to submit to committees of Congress a report describing the changes in numbers of businesses competing for major defense contracts since Jan. 1, 1990; and directed the Comptroller General, not later than Dec. 1, 1998, to submit to committees of Congress a report containing updated information on restructuring costs of business combinations paid by the Department of Defense pursuant to certifications under Pub. L. 103-337, §818 (set out as a note under section 2324 of this title), savings realized by the Department of Defense as a result of the business combinations for which the payment of restructuring costs was so certified, and an assessment of the savings on the prices paid on a meaningful sample of defense contracts.

**§ 2326. Undefinitized contractual actions: restrictions**

(a) **IN GENERAL.**—The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(b) **LIMITATIONS ON OBLIGATION OF FUNDS.**—(1) A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is