

(1) IN GENERAL.—Except as provided in paragraph (2), each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(A) a cost-plus-a-fixed-fee subcontract; or

(B) a fixed-price subcontract or purchase order involving more than the greater of (i) the simplified acquisition threshold, or (ii) 5 percent of the estimated cost of the prime contract.

(2) EXCEPTION.—Paragraph (1) shall not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1817(a), (c), (e), (f), Jan. 1, 2021, 134 Stat. 4186, 4187.)

#### Editorial Notes

##### CODIFICATION

For derivation of subsec. (a) of this section, see Codification note related to subsec. (a) of section 2306 of this title set out under section 3321 of this title.

The text of subsec. (d) of section 2306 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1817(e), (f)(2), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131.

The text of subsec. (e) of section 2306 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1817(e), (f)(3), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 98–369, div. B, title VII, § 2724, July 18, 1984, 98 Stat. 1193; Pub. L. 102–25, title VII, § 701(d)(3), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title IV, 4401(c), Oct. 13, 1994, 108 Stat. 3348; Pub. L. 108–136, div. A, title VIII, § 842, Nov. 24, 2003, 117 Stat. 1552.

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1817(c), (f)(1), transferred first sentence of subsec. (a) of section 3321 of this title to this section, designated it as subsec. (a), and inserted heading.

Subsec. (b). Pub. L. 116–283, § 1817(e), (f)(2), redesignated subsec. (d) of section 2306 of this title as subsec. (b) of this section and inserted heading.

Subsec. (c). Pub. L. 116–283, § 1817(e), (f)(3), redesignated subsec. (e) of section 2306 of this title as subsec. (c) of this section, inserted subsec. and par. headings, and realigned margin of par. (2).

#### 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.

#### § 3323. Cost-plus contracting prohibited for military construction and military family housing projects

(a) PROHIBITION.—A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting.

(b) APPLICABILITY.—The prohibition specified in subsection (a)—

(1) is in addition to the prohibition specified in section 3322(a) of this title on the use of the

cost-plus-a-percentage-of-cost system of contracting; and

(2) applies notwithstanding,<sup>1</sup> a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1817(a), (g), Jan. 1, 2021, 134 Stat. 4186, 4187.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (c) of section 2306 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1817(g), was based on Pub. L. 112–81, div. B, title XXVIII, § 2801(a), Dec. 31, 2011, 125 Stat. 1684.

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1817(g)(1), (2), redesignated subsec. (c) of section 2306 of this title as subsec. (a) of this section and inserted heading. Former second sentence of subsec. (a) designated subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1817(g)(1), (3), designated second sentence of subsec. (a) as subsec. (b), inserted heading, and substituted “The prohibition specified in subsection (a)—

“(1) is in addition to the prohibition specified in section 3322(a) of this title on the use of the cost-plus-a-percentage-of-cost system of contracting; and

“(2) applies notwithstanding a declaration”

for “This prohibition is in addition to the prohibition specified in subsection (a) on the use of the cost-plus-a-percentage-of-cost system of contracting and applies notwithstanding a declaration”.

#### 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.

#### § 3324. [Reserved]

(Added Pub. L. 116–283, div. A, title XVIII, § 1817(a), Jan. 1, 2021, 134 Stat. 4186; amended Pub. L. 117–81, div. A, title XVII, § 1701(i)(4)(B), Dec. 27, 2021, 135 Stat. 2141.)

#### Editorial Notes

##### AMENDMENTS

2021—Pub. L. 117–81, § 1701(i)(4)(B), amended Pub. L. 116–283, § 1817(a), which enacted this section, by adding section 3324 designation and heading “[Reserved]” and striking out former section 3324 heading and catchline “Preference for fixed-price contracts”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment made to Pub. L. 116–283 by Pub. L. 117–81, resulting in omission of this section, applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

<sup>1</sup> So in original. The period probably should not appear.