

(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 notwithstanding¹ 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.

¹ So in original. The period probably should not appear.

EFFECTIVE DATE

Section 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.

CHAPTER 243—OTHER MATTERS RELATING TO AWARDING OF CONTRACTS

Sec.	
3341.	[Reserved].
3342.	[Reserved].
3343.	[Reserved].
3344.	Disclosure of identity of contractor.
[3345.	Omitted.]

Editorial Notes

PRIOR PROVISIONS

A prior chapter 243 “SPECIFIC TYPES OF CONTRACTS”, as added by Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3351, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1816(b), Jan. 1, 2021, 134 Stat. 4182.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, § 1701(v)(1)(B), Dec. 27, 2021, 135 Stat. 2154, amended Pub. L. 116-283, div. A, title XVIII, § 1818(a), Jan. 1, 2021, 134 Stat. 4188, which added this analysis, by striking out item 3345 “Contract authority for advanced development of initial or additional prototype units”.

Statutory Notes and Related Subsidiaries

ASSURING INTEGRITY OF OVERSEAS FUEL SUPPLIES

Pub. L. 117-81, div. A, title VIII, § 843, Dec. 27, 2021, 135 Stat. 1840, provided that:

“(a) IN GENERAL.—Before awarding a contract to an offeror for the supply of fuel for any overseas contingency operation, the Secretary of Defense shall—

“(1) ensure, to the maximum extent practicable, that no otherwise responsible offeror is disqualified for such award on the basis of an unsupported denial of access to a facility or equipment by the host nation government; and

“(2) require assurances that the offeror will comply with the requirements of subsections (b) and (c).

“(b) REQUIREMENT.—An offeror for the supply of fuel for any overseas contingency operation shall—

“(1) certify that the provided fuel, in whole or in part, or derivatives of such fuel, is not sourced from a nation or region prohibited from selling petroleum to the United States; and

“(2) furnish such records as are necessary to verify compliance with such anticorruption statutes and regulations as the Secretary determines necessary, including—

“(A) the Foreign Corrupt Practices Act [of 1977] ([see] 15 U.S.C. 78dd-1 et seq.);

“(B) the regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations, or successor regulations (commonly known as the ‘International Traffic in Arms Regulations’);

“(C) the regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations, or successor regulations (commonly known as the ‘Export Administration Regulations’); and

“(D) such regulations as may be promulgated by the Office of Foreign Assets Control of the Department of the Treasury.

“(c) APPLICABILITY.—Subsections (a) and (b) of this section shall apply with respect to contracts entered into on or after the date of the enactment of this Act [Dec. 27, 2021].

“(d) CONSIDERATION OF TRADEOFF PROCESSES.—If the Secretary of Defense awards a contract for fuel pro-

urement for an overseas contingency operation, the contracting officer for such contract shall consider tradeoff processes (as described in subpart 15 of the Federal Acquisition Regulation, or any successor regulation), including consideration of past performance evaluation, cost, anticorruption training, and compliance. With respect to any such contract awarded for which the contracting officer does not consider tradeoff processes, the contracting officer shall, before issuing a solicitation for such contract, submit to the Secretary a written justification for not considering tradeoff processes in awarding such contract.”

GUIDANCE, TRAINING, AND REPORT ON PLACE OF PERFORMANCE CONTRACT REQUIREMENTS

Pub. L. 117-81, div. A, title VIII, § 875, Dec. 27, 2021, 135 Stat. 1865, provided that:

“(a) GUIDANCE AND TRAINING.—Not later than July 1, 2022, the Secretary of Defense shall—

“(1) issue guidance on covered contracts to ensure that, to the maximum extent practicable, the terms of such covered contract avoid specifying an unnecessarily restrictive place of performance for such covered contract; and

“(2) implement any necessary training for appropriate individuals relating to the guidance required under paragraph (1).

“(b) REPORT.—

“(1) IN GENERAL.—Not later than July 1, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on covered contracts.

“(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

“(A) A description of the criteria that is considered when the Secretary specifies a particular place of performance in a covered contract.

“(B) The number of covered contracts awarded during each of fiscal years 2016 through 2020.

“(C) An assessment of the extent to which revisions to guidance or regulations related to the use of covered contracts could improve the effectiveness and efficiency of the Department of Defense, including a description of such revisions.

“(c) COVERED CONTRACT DEFINED.—In this section, the term ‘covered contract’ means a contract for which the Secretary of Defense specifies the place of performance for such contract.”

DEPARTMENT OF DEFENSE CONTRACTING DISPUTE MATTERS

Pub. L. 115-232, div. A, title VIII, § 822, Aug. 13, 2018, 132 Stat. 1853, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall carry out a study of the frequency and effects of bid protests involving the same contract award or proposed award that have been filed at both the Government Accountability Office and the United States Court of Federal Claims. The study shall cover Department of Defense contracts and include, at a minimum—

“(1) the number of protests that have been filed with both tribunals and results;

“(2) the number of such protests where the tribunals differed in denying or sustaining the action;

“(3) the length of time, in average time and median time—

“(A) from initial filing at the Government Accountability Office to decision in the United States Court of Federal Claims;

“(B) from filing with each tribunal to decision by such tribunal;

“(C) from the time at which the basis of the protest is known to the time of filing in each tribunal; and

“(D) in the case of an appeal from a decision of the United States Court of Federal Claims, from