

retary of Defense may include a notation on such offerors in the system used by the Federal Government to monitor or record contractor past performance. The Under Secretary shall assess the extent to which these offerors are sole source providers within the defense industrial base and shall develop strategies to incentivize new entrants into the industrial base to increase the availability of other sources of supply for the product or service.

(c) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under subsection (a):

(1) Reasonable limitations on requests for sales data relating to commercial products or commercial services.

(2) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial products or commercial services from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(3) A statement that any information received relating to commercial products or commercial services that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1831(a), (f), Jan. 1, 2021, 134 Stat. 4209, 4213.)

Editorial Notes

CODIFICATION

The text of subsec. (d) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, §1831(f), was based on Pub. L. 103–355, title I, §1204, Oct. 13, 1994, 108 Stat. 3275; Pub. L. 104–106, div. D, title XLII, §4201(a)(1), Feb. 10, 1996, 110 Stat. 650; Pub. L. 105–261, div. A, title VIII, §808(a), Oct. 17, 1998, 112 Stat. 2085; Pub. L. 114–92, div. A, title VIII, §852(e), 853, Nov. 25, 2015, 129 Stat. 918; Pub. L. 115–91, div. A, title VIII, §811(b), Dec. 12, 2017, 131 Stat. 1459; Pub. L. 115–232, div. A, title VIII, §836(c)(5)(B), Aug. 13, 2018, 132 Stat. 1865, as amended by Pub. L. 116–283, div. A, title X, §1081(d)(4)(B)(i), Jan. 1, 2021, 134 Stat. 3874; Pub. L. 116–92, div. A, title VIII, §803, Dec. 20, 2019, 133 Stat. 1483.

AMENDMENTS

2021—Pub. L. 116–283, §1831(f)(1), transferred subsec. (d) of section 2306a of this title to this section, struck out subsec. (d) designation and heading “Submission of Other Information” at beginning, and redesignated pars. (1) to (3) as subssecs. (a) to (c), respectively, and realigned margins.

Subsec. (a). Pub. L. 116–283, §1831(f)(2), after redesignation of section 2306a(d)(1) of this title as subsec. (a) of this section, substituted “under this chapter” for “under this section” and “section 3703(a)(1) of this title” for “subsection (b)(1)(A)”.

Subsec. (b). Pub. L. 116–283, §1831(f)(3)(A), (B)(i), (C)(i), after redesignation of section 2306a(d)(2) of this title as subsec. (b) of this section, redesignated subpar. (A) and its cls. (i) to (vi) as par. (1) and subpars. (A) to (F), respectively, and redesignated subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively.

Subsec. (b)(1). Pub. L. 116–283, §1831(f)(3)(B)(ii), substituted “subsection (a)” for “paragraph (1)” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 116–283, §1831(f)(3)(C)(ii), substituted “paragraph (1)” for “subparagraph (A)”.

Subsec. (c). Pub. L. 116–283, §1831(f)(4), after redesignation of section 2306a(d)(3) of this title as subsec. (c) of this section, redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, and substituted “under subsection (a)” for “under paragraph (1)” in introductory provisions.

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.

§ 3706. Price reductions for defective cost or pricing data

(a) PROVISION REQUIRING ADJUSTMENT.—

(1) IN GENERAL.—A prime contract (or change or modification to a prime contract) under which a certificate under section 3702(b) of this title is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For the purposes of this chapter, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(b) VALID DEFENSE.—In determining for purposes of a contract price adjustment under a contract provision required by subsection (a) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(c) INVALID DEFENSES.—It is not a defense to an adjustment of the price of a contract under a contract provision required by subsection (a) that—

(1) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(A) was the sole source of the property or services procured; or

(B) otherwise was in a superior bargaining position with respect to the property or services procured;

(2) the contracting officer should have known that the cost and pricing data in issue

were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(3) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(4) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under section 3702(b) of this title.

(d) OFFSETS.—

(1) WHEN ALLOWED.—A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by subsection (a) if—

(A) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(B) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with subsection (a)(2), another date agreed upon between the parties, and that the data were not submitted as specified in section 3702(c) of this title before such date.

(2) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under paragraph (1) if—

(A) the certification under section 3702(b) of this title with respect to the cost or pricing data involved was known to be false when signed; or

(B) the United States proves that, had the cost or pricing data referred to in paragraph (1)(B) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with subsection (a)(2), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1831(a), (g), Jan. 1, 2021, 134 Stat. 4209, 4214.)

Editorial Notes

CODIFICATION

The text of subsec. (e) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1831(g), was based on Pub. L. 99-500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-166, and Pub. L. 99-591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-166; Pub. L. 99-661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103-355, title I, § 1204(1), Oct. 13, 1994, 108 Stat. 3275; Pub. L. 104-106, div. D, title XLIII, § 4321(b)(7)(B), Feb. 10, 1996, 110 Stat. 672. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections. Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2021—Pub. L. 116-283, § 1831(g)(1), transferred subsec. (e) of section 2306a of this title to this section, struck out subsec. (e) designation and heading “Price Reductions for Defective Cost or Pricing Data” at beginning, and redesignated pars. (1) to (4) as subsecs. (a) to (d), respectively.

Subsec. (a). Pub. L. 116-283, § 1831(g)(2), after redesignation of section 2306a(e)(1) of this title as subsec. (a) of this section, inserted subsec. heading, redesignated subpar. (A) as par. (1), inserted heading, and substituted “section 3702(b) of this title” for “subsection (a)(2)”, and redesignated subpar. (B) as par. (2), inserted heading, and substituted “of this chapter” for “of this section”.

Subsec. (b). Pub. L. 116-283, § 1831(g)(3), after redesignation of section 2306a(e)(2) of this title as subsec. (b) of this section, inserted heading and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, § 1831(g)(4)(A)–(D), after redesignation of section 2306a(e)(3) of this title as subsec. (c) of this section, inserted heading, redesignated subpar. (A), and its cls. (i) and (ii), and subpars. (B) to (D) as par. (1), subpars. (A) and (B), and pars. (2) to (4), respectively, and substituted “subsection (a)” for “paragraph (1)” in introductory provisions.

Subsec. (c)(4). Pub. L. 116-283, § 1831(g)(4)(E), substituted “section 3702(b) of this title” for “subsection (a)(2)”.

Subsec. (d). Pub. L. 116-283, § 1831(g)(5)(A)–(C), after redesignation of section 2306a(e)(4) of this title as subsec. (d) 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.

Subsec. (d)(1). Pub. L. 116-283, § 1831(g)(5)(A), (B), (D), inserted heading, substituted “subsection (a)” for “paragraph (1)” in introductory provisions, and redesignated cls. (i) and (ii) of former section 2306a(e)(4)(A) as subpars. (A) and (B), respectively.

Subsec. (d)(1)(B). Pub. L. 116-283, § 1831(g)(5)(E), substituted “subsection (a)(2)” for “paragraph (1)(B)” and “section 3702(c) of this title” for “subsection (a)(3)”.

Subsec. (d)(2). Pub. L. 116-283, § 1831(g)(5)(F)(i), (ii), substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions and redesignated cls. (i) and (ii) of former section 2306a(e)(4)(B) as subpars. (A) and (B), respectively.

Subsec. (d)(2)(A). Pub. L. 116-283, § 1831(g)(5)(F)(iii), substituted “section 3702(b) of this title” for “subsection (a)(2)”.

Subsec. (d)(2)(B). Pub. L. 116-283, § 1831(g)(5)(F)(iv), substituted “in paragraph (1)(B)” for “in subparagraph (A)(ii)” and “with subsection (a)(2)” for “with paragraph (1)(B)”.

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.

§ 3707. Interest and penalties for certain overpayments

(a) IN GENERAL.—If the United States makes an overpayment to a contractor under a contract subject to this chapter and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

(1) for interest on the amount of such overpayment, to be computed—

(A) for the period beginning on the date the overpayment was made to the contractor