

nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor, subcontractor, or personal services contractor liability on the basis of the violation or failure referred to in subsection (b).

(3) In any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 4712 of this title by reason of the violation or failure referred to in subsection (b).

(4) A final decision to do any of the following, by reason of the violation or failure referred to in subsection (b):

(A) Debar or suspend the contractor, subcontractor, or personal services contractor.

(B) Rescind or void the contract, subcontract, or personal services contract.

(C) Terminate the contract, subcontract, or personal services contract for default.

(5) A disposition of the proceeding by consent or compromise if the disposition could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

(d) **COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY FEDERAL GOVERNMENT.**—In the case of a proceeding referred to in subsection (b) that is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by a contractor, subcontractor, or personal services contractor and the Federal Government, the costs incurred by the contractor, subcontractor, or personal services contractor in connection with the proceeding that are otherwise not allowable as reimbursable costs under subsection (b) may be allowed to the extent specifically provided in that agreement.

(e) **COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PROCEEDING COMMENCED BY STATE.**—In the case of a proceeding referred to in subsection (b) that is commenced by a State, the executive agency that awarded the covered contract, subcontract, or personal services contract involved in the proceeding may allow the costs incurred by the contractor, subcontractor, or personal services contractor in connection with the proceeding as reimbursable costs if the executive agency determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of—

(1) a specific term or condition of the contract, subcontract, or personal services contract; or

(2) specific written instructions of the executive agency.

(f) **OTHER ALLOWABLE COSTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (3), costs incurred by a contractor, subcontractor, or personal services contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State in connection with a covered contract, subcontract, or personal services contract may be allowed as reimbursable costs under the contract, subcontract, or personal services contract if the costs are not disallowable under subsection (b), but only to the extent provided in paragraph (2).

(2) **AMOUNT OF ALLOWABLE COSTS.**—

(A) **MAXIMUM AMOUNT ALLOWED.**—The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that the costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(B) **CONTENT OF REGULATIONS.**—Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the Federal Government as a party, and other factors as may be appropriate.

(3) **WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.**—In the case of a proceeding referred to in paragraph (1), contractor, subcontractor, or personal services contractor costs otherwise allowable as reimbursable costs under this subsection are not allowable if—

(A) the proceeding involves the same contractor, subcontractor, or personal services contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding; and

(B) the costs of the other proceeding are not allowable under subsection (b).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3789; Pub. L. 112-239, div. A, title VIII, §828(d), Jan. 2, 2013, 126 Stat. 1841; Pub. L. 114-261, §1(b)(2)(A), Dec. 14, 2016, 130 Stat. 1362.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4310(a)	41:256(k)(6).	June 30, 1949, ch. 288, title III, §306(k), as added Pub. L. 100-700, §8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103-355, title II, §2151, Oct. 13, 1994, 108 Stat. 3313.
4310(b)	41:256(k)(1).	
4310(c)	41:256(k)(2).	
4310(d)	41:256(k)(3).	
4310(e)	41:256(k)(4).	
4310(f)	41:256(k)(5).	

AMENDMENTS

2016—Pub. L. 114-261, §1(b)(2)(A)(i), (ii), inserted “, subcontractor, or personal services contractor” after “contractor” and “, subcontract, or personal services contract” after “contract” wherever appearing.

Subsec. (b)(1). Pub. L. 114-261, §1(b)(2)(A)(iii), inserted “or to any other activity described in section 4712(a)(1) of this title” after “statute or regulation”.

2013—Subsec. (b). Pub. L. 112-239, §828(d)(1), substituted “commenced by the Federal Government, by a State, or by a contractor or grantee employee submitting a complaint under section 4712 of this title” for “commenced by the Federal Government or a State”.

Subsec. (c)(3). Pub. L. 112-239, §828(d)(2), substituted “the imposition of a monetary penalty or an order to take corrective action under section 4712 of this title” for “the imposition of a monetary penalty”.

CHAPTER 45—CONTRACT FINANCING

- Sec. 4501. Authority of executive agency.
- 4502. Payment.
- 4503. Security for advance payments.

- Sec.
- 4504. Conditions for progress payments.
- 4505. Payments for commercial items.
- 4506. Action in case of fraud.

AMENDMENT OF ANALYSIS

Pub. L. 115-232, div. A, title VIII, § 836(b)(18)(B)(ii), (h), Aug. 13, 2018, 132 Stat. 1864, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, this analysis is amended by striking item 4505 and inserting a new item 4505 “Payments for commercial products and commercial services.” See 2018 Amendment note below.

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, § 836(b)(18)(B)(ii), Aug. 13, 2018, 132 Stat. 1864, substituted “Payments for commercial products and commercial services” for “Payments for commercial items” in item 4505.

§ 4501. Authority of executive agency

An executive agency may—

- (1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and
- (2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3790.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4501	41:255(a).	June 30, 1949, ch. 288, title III, § 305(a), 63 Stat. 396; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85-800, § 4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, § 2051(a)(2), (c), Oct. 13, 1994, 108 Stat. 3304.

RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS

Pub. L. 103-355, title II, § 2051(f), Oct. 13, 1994, 108 Stat. 3306, provided that: “The amendments made by this section [see Tables for classification] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.”

§ 4502. Payment

(a) BASIS FOR PAYMENT.—When practicable, payments under section 4501 of this title shall be made on any of the following bases:

- (1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.
- (2) Accomplishment of events defined in the program management plan.
- (3) Other quantifiable measures of results.

(b) PAYMENT AMOUNT.—Payments made under section 4501 of this title may not exceed the unpaid contract price.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4502(a)	41:255(b).	June 30, 1949, ch. 288, title III, § 305(b), as added Pub. L. 103-355, title II, § 2051(b), Oct. 13, 1994, 108 Stat. 3304.
4502(b)	41:255(c).	June 30, 1949, ch. 288, title III, § 305(c), 63 Stat. 396; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85-800, § 4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, § 2051(a)(3), (5), Oct. 13, 1994, 108 Stat. 3304.

§ 4503. Security for advance payments

Advance payments under section 4501 of this title may be made only on adequate security and a determination by the agency head that to do so would be in the public interest. The security may be in the form of a lien in favor of the Federal Government on the property contracted for, on the balance in an account in which the payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the Federal Government.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4503	41:255(d).	June 30, 1949, ch. 288, title III, § 305(d), 63 Stat. 396; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85-800, § 4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, § 2051(a)(4), (5), (d), Oct. 13, 1994, 108 Stat. 3304.

§ 4504. Conditions for progress payments

(a) PAYMENT COMMENSURATE WITH WORK.—The executive agency shall ensure that a payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for those payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide information and evidence the executive agency determines is necessary to permit the executive agency to carry out this subsection.

(b) LIMITATION.—The executive agency shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under the contract as long as the executive agency has not made the contractual terms, specifications, and price definite.

(c) APPLICATION.—This section applies to a contract in an amount greater than \$25,000.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3791.)