of the head of the agency may remit any part of the damages as the Secretary of the Treasury believes is just and equitable.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3799.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4707	41:256a.	Sept. 5, 1950, ch. 849, § 10(a), 64 Stat. 591; Pub. L. 104–316, title II, § 202(u), Oct. 19, 1996, 110 Stat. 3845.

§ 4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions

A cost-type research and development contract (including a grant) with a university, college, or other educational institution may provide for payment of reimbursable indirect costs on the basis of predetermined fixed-percentage rates applied to the total of the reimbursable direct costs incurred or to an element of the total of the reimbursable direct costs incurred.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3799.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4708	41:254a.	Pub. L. 87–638, Sept. 5, 1962, 76 Stat. 437.

The words ''On and after September 5, 1962'' are omitted as obsolete.

§ 4709. Implementation of electronic commerce capability

(a) ROLE OF HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall implement the electronic commerce capability required by section 2301 of this title. In implementing the capability, the head of an executive agency shall consult with the Administrator.

(b) PROGRAM MANAGER.—The head of each executive agency shall designate a program manager to implement the electronic commerce capability for the agency. The program manager reports directly to an official at a level not lower than the senior procurement executive designated for the agency under section 1702(c) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3800.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4709	41:252c.	June 30, 1949, ch. 288, title III, § 302C, as added Pub. L. 103–355, title IX, § 9003, Oct. 13, 1994, 108 Stat. 3403; Pub. L. 105–85, title VIII, § 850(f)(4)(A), Nov. 18, 1997, 111 Stat. 1850.

§ 4710. Limitations on tiering of subcontractors

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) REGULATIONS.—For executive agencies other than the Department of Defense, the Federal Acquisition Regulation shall—

(1) require contractors to minimize the excessive use of subcontractors, or of tiers of subcontractors, that add no or negligible value; and

(2) ensure that neither a contractor nor a subcontractor receives indirect costs or profit on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value (but not to limit charges for indirect costs and profit based on the direct costs of managing lower-tier subcontracts).

(c) COVERED CONTRACTS.—This section applies to any cost-reimbursement type contract or task or delivery order in an amount greater than the simplified acquisition threshold (as defined by section 134 of this title).

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the ability of the Department of Defense to implement more restrictive limitations on the tiering of subcontractors.

(e) APPLICABILITY.—The Department of Defense shall continue to be subject to guidance on limitations on tiering of subcontractors issued by the Department of Defense pursuant to section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, 10 U.S.C. 2324 note).

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3800.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4710	41:254b note.	Pub. L. 110–417, [div. A], title VIII, § 866, Oct. 14, 2008, 122 Stat. 4551.

In subsection (b), the words ''Not later than one year after the date of the enactment of this Act'' are omitted because of section 6(f) of the bill. The word ''shall'' is substituted for the words ''shall be amended'' to reflect the permanence of the provision.

§ 4711. Linking of award and incentive fees to acquisition outcomes

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) GUIDANCE FOR EXECUTIVE AGENCIES ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—The Federal Acquisition Regulation shall provide executive agencies other than the Department of Defense with instructions, including definitions, on the appropriate use of award and incentive fees in Federal acquisition programs.

(c) ELEMENTS.—The regulations under subsection (b) shall—

(1) ensure that all new contracts using award fees link the fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

(3) provide guidance on the circumstances in which contractor performance may be judged to be ''excellent'' or ''superior'' and the percentage of the available award fee which contractors should be paid for the performance;