

(2) **PRESENCE OF CONTRACT AUDITOR.**—The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, a contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(3) **SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUESTIONED COSTS.**—The Federal Acquisition Regulation shall require that all categories of costs designated in the report of a contract auditor as questioned with respect to a proposal for settlement be resolved in a manner so that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3787.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4305(a)	41:256(f)(1) (1st, 2d sentences).	June 30, 1949, ch. 288, title III, §306(f), 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. 3312.
4305(b)	41:256(f)(1) (last sentence).	
4305(c)	41:256(f)(2)–(4).	

§ 4306. Applicability of regulations to subcontractors

The regulations referred to in sections 4304 and 4305(a) and (b) of this title shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of those regulations to all subcontractors of the covered contract.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4306	41:256(g).	June 30, 1949, ch. 288, title III, §306(g), 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.

§ 4307. Contractor certification

(a) **CONTENT AND FORM.**—A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. The certification shall be in a form prescribed in the Federal Acquisition Regulation.

(b) **WAIVER.**—An executive agency may, in an exceptional case, waive the requirement for certification under subsection (a) in the case of a contract if the agency—

(1) determines that it would be in the interest of the Federal Government to waive the certification; and

(2) states in writing the reasons for the determination and makes the determination available to the public.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4307	41:256(h).	June 30, 1949, ch. 288, title III, §306(h), 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.

§ 4308. Penalties for submission of cost known to be unallowable

The submission to an executive agency of a proposal for settlement of costs for any period after those costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that the cost is unallowable, is subject to section 287 of title 18 and section 3729 of title 31.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4308	41:256(i).	June 30, 1949, ch. 288, title III, §306(i), 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.

§ 4309. Burden of proof on contractor

In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Federal Government is in issue, the burden of proof is on the contractor to establish that those costs are reasonable.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3788.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4309	41:256(j).	June 30, 1949, ch. 288, title III, §306(j), 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. Proceeding costs not allowable

(a) **DEFINITIONS.**—In this section:

(1) **COSTS.**—The term “costs”, with respect to a proceeding, means all costs incurred by a contractor, subcontractor, or personal services contractor, whether before or after the commencement of the proceeding, including—

(A) administrative and clerical expenses;

(B) the cost of legal services, including legal services performed by an employee of the contractor, subcontractor, or personal services contractor;

(C) the cost of the services of accountants and consultants retained by the contractor, subcontractor, or personal services contractor; and

(D) the pay of directors, officers, and employees of the contractor, subcontractor, or

personal services contractor for time devoted by those directors, officers, and employees to the proceeding.

(2) **PENALTY.**—The term “penalty” does not include restitution, reimbursement, or compensatory damages.

(3) **PROCEEDING.**—The term “proceeding” includes an investigation.

(b) **IN GENERAL.**—Except as otherwise provided in this section, costs incurred by a contractor, subcontractor, or personal services contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government, by a State, or by a contractor, subcontractor, or personal services contractor or grantee employee submitting a complaint under section 4712 of this title are not allowable as reimbursable costs under a covered contract, subcontract, or personal services contract if the proceeding—

(1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation or to any other activity described in section 4712(a)(1) of this title; and

(2) results in a disposition described in subsection (c).

(c) **COVERED DISPOSITIONS.**—A disposition referred to in subsection (b)(2) is any of the following:

(1) In a criminal proceeding, a conviction (including a conviction pursuant to a plea of 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).	

Editorial Notes

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.
4504.	Conditions for progress payments.
4505.	Payments for commercial products and commercial services.
4506.	Action in case of fraud.

Editorial Notes

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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

Statutory Notes and Related Subsidiaries

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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.