

records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3797; Pub. L. 117-286, §4(b)(73), Dec. 27, 2022, 136 Stat. 4351.)

#### HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                                                                                                                                                                     |
|------------------------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4706(a) .....          | 41:254d(i).               | June 30, 1949, ch. 288, title III, §304C(a)(1), (b), (g)-(i), as added Pub. L. 103-355, title II, §2251(a), Oct. 13, 1994, 108 Stat. 3318, 3320.                                                      |
| 4706(b)(1) ....        | 41:254d(a)(1).            | June 30, 1949, ch. 288, title III, §304C(a)(2), as added Pub. L. 103-355, title II, §2251(a), Oct. 13, 1994, 108 Stat. 3318; Pub. L. 104-106, title XLIII, §4321(e)(5), Feb. 10, 1996, 110 Stat. 675. |
| 4706(b)(2) ....        | 41:254d(a)(2).            |                                                                                                                                                                                                       |
| 4706(c) .....          | 41:254d(b).               | June 30, 1949, ch. 288, title III, §304C(c), as added Pub. L. 103-355, title II, §2251(a), Oct. 13, 1994, 108 Stat. 3319; Pub. L. 110-417, title VIII, §871(a), Oct. 14, 2008, 122 Stat. 4555.        |
| 4706(d) .....          | 41:254d(c).               |                                                                                                                                                                                                       |
| 4706(e) .....          | 41:254d(d).               | June 30, 1949, ch. 288, title III, §304C(d), as added Pub. L. 103-355, title II, §2251(a), Oct. 13, 1994, 108 Stat. 3319; Pub. L. 104-201, title VIII, §808(b), Sept. 23, 1996, 110 Stat. 2607.       |
| 4706(f) .....          | 41:254d(e).               | June 30, 1949, ch. 288, title III, §304C(f), as added and amended Pub. L. 103-355, title II, §2251(a), title IV, §4103(d), Oct. 13, 1994, 108 Stat. 3320, 3341.                                       |
| 4706(g) .....          | 41:254d(f).               |                                                                                                                                                                                                       |
| 4706(h) .....          | 41:254d(g).               |                                                                                                                                                                                                       |
| 4706(i) .....          | 41:254d(h).               |                                                                                                                                                                                                       |

In subsection (c)(4), the words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Operations” on authority of section 1(a)(6) of Public Law 104-14 (2 U.S.C. note prec. 21), Rule X(1)(h) of the Rules of the House of Representatives, adopted by House Resolution No. 5 (106th Congress, January 6, 1999), and Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007). The words “Committee on Homeland Security and Governmental Affairs” are substituted for “Committee on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004).

#### Editorial Notes

##### AMENDMENTS

2022—Subsec. (c)(1). Pub. L. 117-286 substituted “section 403 or 415 of title 5” for “section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.)”.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

#### § 4707. Remission of liquidated damages

When a contract made on behalf of the Federal Government by the head of a Federal agency, or by an authorized officer of the agency, includes a provision for liquidated damages for delay, the Secretary of the Treasury on recommendation 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

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

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

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

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

(4) establish standards for determining the percentage of the available award fee, if any,

which contractors should be paid for performance that is judged to be “acceptable”, “average”, “expected”, “good”, or “satisfactory”;

(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the Federal Government;

(8) ensure that each executive agency—

(A) collects relevant data on award and incentive fees paid to contractors; and

(B) has mechanisms in place to evaluate the data on a regular basis;

(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

(d) GUIDANCE FOR DEPARTMENT OF DEFENSE.—The Department of Defense shall continue to be subject to guidance on award and incentive fees issued by the Secretary of Defense pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364, 10 U.S.C. 2302 note).

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

#### HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                                           |
|------------------------|---------------------------|-----------------------------------------------------------------------------|
| 4711 .....             | 41:251 note.              | Pub. L. 110-417, [div. A], title VIII, §867, Oct. 14, 2008, 122 Stat. 4551. |

In subsection (b), the words “Not later than 1 year after the date of the enactment of this Act” are omitted because of section 6(f) of the bill. The words “shall provide” are substituted for “shall be amended to provide” to reflect the permanence of the provision.

#### § 4712. Enhancement of contractor protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—

(1) IN GENERAL.—An employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.