

acquisition of advisory and assistance services if the head of the executive agency entering into the contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3780.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4105(a)	41:253i(i).	June 30, 1949, ch. 288, title III, §303I, as added Pub. L. 103-355, title I, §1054(a), Oct. 13, 1994, 108 Stat. 3262.
4105(b)	41:253i(a).	Pub. L. 109-364, div. A, title VIII, §834(b), (c) (related to (b)), Oct. 17, 2006, 120 Stat. 2333.
4105(c)(1)	41:253i(b).	
4105(c)(2)	41:253i note.	
4105(d)	41:253i(c).	
4105(e)	41:253i(d).	
4105(f)	41:253i(e).	
4105(g)	41:253i(f).	
4105(h)	41:253i(g).	
4105(i)	41:253i(h).	

In subsection (b)(1), the words “(as defined in section 253k of this title)” are omitted as unnecessary.

In subsection (c)(2)(C), the words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Reform” on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

SENATE REVISION AMENDMENT

Senate amendment to the bill effectively struck out subsec. (c)(2) and redesignated subsec. (c)(1) as (c). See S. Amdt. 4726 (111th Cong.), 156 Cong. Rec. 18683 (2010).

§ 4106. Orders

(a) APPLICATION.—This section applies to task and delivery order contracts entered into under sections 4103 and 4105 of this title.

(b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for the order under section 1708 of this title or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3304(e) of this title) that is separate from that used for entering into the contract.

(c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are awarded under section 4103(d)(1)(B) or 4105(f) of this title, all contractors awarded the contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of the micro-purchase threshold under section 1902 of this title that is to be issued under any of the contracts, unless—

(1) the executive agency’s need for the services or property ordered is of such unusual urgency that providing the opportunity to all of those contractors would result in unacceptable delays in fulfilling that need;

(2) only one of those contractors is capable of providing the services or property required at the level of quality required because the

services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor to satisfy a minimum guarantee.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF \$5,000,000.—In the case of a task or delivery order in excess of \$5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the executive agency’s requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the executive agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting—

(A) the basis for the award; and

(B) the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3704 of this title.

(e) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(f) PROTESTS.—

(1) PROTEST NOT AUTHORIZED.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of \$10,000,000.

(2) JURISDICTION OVER PROTESTS.—Notwithstanding section 3556 of title 31, the Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(g) TASK AND DELIVERY ORDER OMBUDSMAN.—

(1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The head of each executive agency who awards multiple task or delivery order contracts under section 4103(d)(1)(B) or 4105(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on those contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).

(2) WHO IS ELIGIBLE.—The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the executive agency's advocate for competition.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3782; Pub. L. 111-383, div. A, title X, §1075(f)(5)(B), Jan. 7, 2011, 124 Stat. 4376; Pub. L. 112-81, div. A, title VIII, §813, Dec. 31, 2011, 125 Stat. 1491; Pub. L. 114-260, §2, Dec. 14, 2016, 130 Stat. 1361; Pub. L. 114-328, div. A, title VIII, §835(b), Dec. 23, 2016, 130 Stat. 2285; Pub. L. 116-92, div. A, title VIII, §826, Dec. 20, 2019, 133 Stat. 1491.)

AMENDMENT NOT SHOWN IN TEXT

This section was derived from section 253j of former Title 41, Public Contracts, which was amended by Pub. L. 110-181, div. A, title VIII, §843(b)(2)(C), Jan. 28, 2008, 122 Stat. 239, to add subsec. (e), from which subsec. (f) of this section was derived, prior to being repealed and reenacted as this section by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. The directory language of section 843(b)(2)(C) of Pub. L. 110-181 was amended by Pub. L. 111-383, div. A, title X, §1075(f)(5)(B), Jan. 7, 2011, 124 Stat. 4376. For applicability of that amendment to this section, see section 6(a) of Pub. L. 111-350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 843(b)(2)(C) of Pub. L. 110-181 was amended by striking “paragraph (1)” and inserting “subparagraph (A)”.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4106(a)	41:253j(g).	June 30, 1949, ch. 288, title III, §303J, as added Pub. L. 103-355, title I, §1054(a), Oct. 13, 1994, 108 Stat. 3264; Pub. L. 110-181, div. A, title VIII, §843(b)(2), Jan. 28, 2008, 122 Stat. 238.
4106(b)	41:253j(a).	
4106(c)	41:253j(b).	
4106(d)	41:253j(d).	
4106(e)	41:253j(c).	
4106(f)	41:253j(e).	
4106(g)	41:253j(f).	

In subsection (g)(2), the words “advocate for competition” are substituted for “competition advocate” for consistency with section 1705 of the revised title.

Editorial Notes

AMENDMENTS

2019—Subsec. (c). Pub. L. 116-92 substituted “the micro-purchase threshold under section 1902 of this title” for “\$2,500” in introductory provisions.

2016—Subsec. (f)(3). Pub. L. 114-260 and Pub. L. 114-328 amended subsec. (f) identically by striking out par. (3). Text read as follows: “Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.”

2011—Subsec. (f)(3). Pub. L. 112-81 amended par. (3) generally. Prior to amendment, text read as follows: “This subsection shall be in effect for three years, beginning on the date that is 120 days after January 28, 2008.”

Statutory Notes and Related Subsidiaries

POSTAWARD EXPLANATIONS FOR UNSUCCESSFUL OFFERORS FOR CERTAIN CONTRACTS

Pub. L. 116-92, div. A, title VIII, §874, Dec. 20, 2019, 133 Stat. 1527, provided that: “Not later than 180 days after

the date of the enactment of this Act [Dec. 20, 2019], the Federal Acquisition Regulation shall be revised to require that with respect to an offer for a task order or delivery order in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41, United States Code) and less than or equal to \$5,500,000 issued under an indefinite delivery-indefinite quantity contract, the contracting officer for such contract shall, upon written request from an unsuccessful offeror, provide a brief explanation as to why such offeror was unsuccessful that includes a summary of the rationale for the award and an evaluation of the significant weak or deficient factors in the offeror's offer.”

CHAPTER 43—ALLOWABLE COSTS

Sec.

4301.	Definitions.
4302.	Adjustment of threshold amount of covered contract.
4303.	Effect of submission of unallowable costs.
4304.	Specific costs not allowable.
4305.	Required regulations.
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4308.	Penalties for submission of cost known to be unallowable.
4309.	Burden of proof on contractor.
4310.	Proceeding costs not allowable.

§ 4301. Definitions

In this chapter:

(1) COMPENSATION.—The term “compensation”, for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

(2) COVERED CONTRACT.—The term “covered contract” means a contract for an amount in excess of \$500,000 that is entered into by an executive agency, except that the term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial products or commercial services.

(3) FISCAL YEAR.—The term “fiscal year” means a fiscal year established by a contractor for accounting purposes.

(4) SENIOR EXECUTIVE.—The term “senior executive”, with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3784; Pub. L. 115-232, div. A, title VIII, §836(b)(17), Aug. 13, 2018, 132 Stat. 1864.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4301(1)	41:256(m)(1).	June 30, 1949, ch. 288, title III, §306(m), as added Pub. L. 105-85, title VIII, §808(b)(2), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 105-261, title VIII, §804(b), Oct. 17, 1998, 112 Stat. 2083.
4301(2)	41:256(l)(1).	June 30, 1949, ch. 288, title III, §306(l)(1), 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. 3315.
4301(3)	41:256(m)(3).	