

(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 (f) of this section was derived, prior to being repealed and reenacted as this section by Pub.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.
4306.	Applicability of regulations to subcontractors.
4307.	Contractor certification.
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).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4301(4)	41:256(m)(2).	

Editorial Notes

AMENDMENTS

2018—Par. (2). Pub. L. 115-232 substituted “commercial products or commercial services” for “commercial items”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 4302. Adjustment of threshold amount of covered contract

Effective on October 1 of each year that is divisible by 5, the amount set forth in section 4301(2) of this title shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An adjusted amount that is not evenly divisible by \$50,000 shall be rounded to the nearest multiple of \$50,000. If an amount is evenly divisible by \$25,000 but is not evenly divisible by \$50,000, the amount shall be rounded to the next higher multiple of \$50,000.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3784.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4302	41:256(l)(2).	June 30, 1949, ch. 288, title III, §306(l)(2), 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.

§ 4303. Effect of submission of unallowable costs

(a) INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULATION COST PRINCIPLE.—An executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued and if that proposal includes the submission of a cost that is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an executive agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

(1) UNALLOWABLE COST IN PROPOSAL.—If the executive agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the executive agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the Federal Government for the use of the amount which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.—If the executive agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of that contractor before the submission of that proposal, the executive agency shall assess a penalty against the contractor in an amount equal to 2 times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor’s proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and re-submits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer’s satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor’s proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—An action of an executive agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of this title; and

(2) is appealable in the manner provided in section 7104(a) of this title.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3784.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4303(a)	41:256(a).	June 30, 1949, ch. 288, title III, §306(a)–(d), 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. 3309.
4303(b)	41:256(b).	
4303(c)	41:256(c).	
4303(d)	41:256(d).	

In subsection (a), the words “(referred to in section 421(c)(1) of this title)” are omitted as unnecessary.

§ 4304. Specific costs not allowable

(a) SPECIFIC COSTS.—The following costs are not allowable under a covered contract: