

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: