

(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

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|-----------------------------------|---|
| 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

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 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

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 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

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 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

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 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