

substantial violation of law related to a contract (including the competition for, or negotiation of, a contract).

(c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the individual has been subjected to a reprisal prohibited by subsection (b) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, on completion of the investigation, submit a report of the findings of the investigation to the individual, the contractor concerned, and the head of the agency. If the executive agency does not have an Inspector General, the duties of the Inspector General under this section shall be performed by an official designated by the head of the executive agency.

(d) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head of an executive agency determines that a contractor has subjected an individual to a reprisal prohibited by subsection (b), the head of the executive agency may take one or more of the following actions:

(A) ABATEMENT.—Order the contractor to take affirmative action to abate the reprisal.

(B) REINSTATEMENT.—Order the contractor to reinstate the individual to the position that the individual held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the individual in that position if the reprisal had not been taken.

(C) PAYMENT.—Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that the complainant reasonably incurred for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) ENFORCEMENT ORDER.—When a contractor fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of the order in the United States district court for a district in which the reprisal was found to have occurred. In an action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. A petition seeking review must be filed no more than 60 days after the head of the agency issues the order. Review shall conform to chapter 7 of title 5.

(e) SCOPE OF SECTION.—This section does not—

(1) authorize the discharge of, demotion of, or discrimination against an employee for a

disclosure other than a disclosure protected by subsection (b); or

(2) modify or derogate from a right or remedy otherwise available to the employee.

(f) FOUR-YEAR SUSPENSION OF EFFECTIVENESS WHILE PILOT PROGRAM IS IN EFFECT.—While section 4712¹ of this title is in effect, this section shall not be in effect.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3796; Pub. L. 112-239, div. A, title VIII, §828(c), Jan. 2, 2013, 126 Stat. 1841; Pub. L. 117-286, §4(b)(72), Dec. 27, 2022, 136 Stat. 4351.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4705(a)	41:265(e).	June 30, 1949, ch. 288, title III, §315, as added Pub. L. 103-355, title VI, §6006, Oct. 13, 1994, 108 Stat. 3365; Pub. L. 104-106, title XLIII, §4321(e)(8), Feb. 10, 1996, 110 Stat. 675.
4705(b)	41:265(a).	
4705(c)	41:265(b).	
4705(d)	41:265(c).	
4705(e)	41:265(d).	

In subsection (d)(2), the word “contractor” is substituted for “person” for clarity and for consistency with subsection (d)(1).

Editorial Notes

REFERENCES IN TEXT

Section 4712 of this title, referred to in subsec. (f), formerly referred to a pilot program in the section catchline and contained a subsec. (i) which provided that section 4712 would be in effect for a specified four-year period. The section catchline was amended and subsec. (i) was struck out by Pub. L. 114-261, §1(a)(3)(A), Dec. 14, 2016, 130 Stat. 1362.

AMENDMENTS

2022—Subsec. (a)(3), Pub. L. 117-286 substituted “chapter 4 of title 5.” for “the Inspector General Act of 1978 (5 U.S.C. App.).”

2013—Subsec. (f), Pub. L. 112-239 added subsec. (f).

§ 4706. Examination of facilities and records of contractor

(a) DEFINITION.—In this section, the term “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) AGENCY AUTHORITY.—

(1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of an executive agency, acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of those contracts, the executive agency makes under this division; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract, or any combination of those sub-

¹ See References in Text note below.

contracts, under a contract referred to in subparagraph (A).

(2) EXAMINATION OF RECORDS.—The head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to chapter 35 of this title with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to—

- (A) the proposal for the contract or subcontract;
- (B) the discussions conducted on the proposal;
- (C) pricing of the contract or subcontract; or
- (D) performance of the contract or subcontract.

(c) SUBPOENA POWER.—

(1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Inspector General of an executive agency appointed under section 403 or 415 of title 5 or, on request of the head of an executive agency, the Director of the Defense Contract Audit Agency (or any successor agency) of the Department of Defense or the Inspector General of the General Services Administration may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by subsection (b).

(2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph (1), in the case of contumacy or refusal to obey, is enforceable by order of an appropriate United States district court.

(3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may not be delegated.

(4) REPORT.—In the year following a year in which authority provided in paragraph (1) is exercised for an executive agency, the head of the executive agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the exercise of the authority during the preceding year and the reasons why the authority was exercised in any instance.

(d) AUTHORITY OF COMPTROLLER GENERAL.—

(1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and representatives of the Comptroller General may examine records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract and to interview any current employee regarding the transactions.

(2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the executive agency concerned determines, with the concurrence of the Comptroller General or the designee of the Comptroller General, that applying paragraph (1) to the contract or sub-

contract would not be in the public interest. The concurrence of the Comptroller General or the designee is not required when—

- (A) the contractor or subcontractor is—
 - (i) the government of a foreign country or an agency of that government; or
 - (ii) precluded by the laws of the country involved from making its records available for examination; and

(B) the executive agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not require a contractor or subcontractor to create or maintain a record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another law.

(e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—An executive agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by another department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(f) EXPIRATION OF AUTHORITY.—The authority of an executive agency under subsection (b) and the authority of the Comptroller General under subsection (d) shall expire 3 years after final payment under the contract or subcontract.

(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is not greater than the simplified acquisition threshold.

(h) ELECTRONIC FORM ALLOWED.—This section does not preclude a contractor from duplicating or storing original records in electronic form.

(i) ORIGINAL RECORDS NOT REQUIRED.—An executive agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) INDEXING SYSTEM MAINTAINED.—The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) ORIGINAL RECORDS RETAINED.—The contractor or subcontractor retains the original

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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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) 4706(b)(2)	41:254d(a)(1). 41:254d(a)(2).	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(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. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§ 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

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

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

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