

(e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

(1) SOLICITATION.—The solicitation shall include the information (regarding services) described in section 4103(b) of this title.

(2) CONTRACT.—A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(f) MULTIPLE AWARDS.—

(1) AUTHORITY TO MAKE MULTIPLE AWARDS.—On the basis of one solicitation, the head of an executive agency may award separate task order contracts under this section for the same or similar services to 2 or more sources if the solicitation states that the head of the executive agency has the option to do so.

(2) CONTENT OF SOLICITATION.—In the case of a task order contract for advisory and assistance services to be entered into under this section, if the contract period is to exceed 3 years and the contract amount is estimated to exceed \$10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the executive agency may also elect to award only one task order contract if the head of the executive agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

(3) NONAPPLICATION.—Paragraph (2) does not apply in the case of a solicitation for which the head of the executive agency concerned determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

(g) CONTRACT MODIFICATIONS.—

(1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY MODIFICATION OF CONTRACT.—A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures other than competitive procedures is authorized by an exception in section 3304(a) of this title and approved in accordance with section 3304(e) of this title, competitive procedures shall be used for making such a modification.

(3) NOTICE.—Notice regarding the modification shall be provided in accordance with section 1708 of this title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(h) CONTRACT EXTENSIONS.—

(1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the limitation on the contract period set forth in subsection (c) or in a solicitation or contract pursuant to subsection (f), a contract entered into by the head of an executive agency under this section may be extended on a sole-source basis for a period not

exceeding 6 months if the head of the executive agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) LIMIT OF ONE EXTENSION.—A task order contract may be extended under paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes 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).	
4105(c)(1)	41:253i(b).	Pub. L. 109-364, div. A, title VIII, §834(b), (c) (related to (b)), Oct. 17, 2006, 120 Stat. 2333.
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. S8442, Dec. 2, 2010 (daily ed.).

§ 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 \$2,500 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 Comptrol-

ler General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(3) EFFECTIVE PERIOD.—Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.

(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.)

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.

AMENDMENTS

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.”

CHAPTER 43—ALLOWABLE COSTS

Sec.	
4301.	Definitions.
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§ 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 items.

(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.)

HISTORICAL AND REVISION NOTES

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

§ 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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—