

(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, 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;

(C) the cost of the services of accountants and consultants retained by the contractor; and

(D) the pay of directors, officers, and employees of the contractor for time devoted by those directors, officers, and employees to the proceeding.

(2) PENALTY.—The term “penalty” does not include restitution, reimbursement, or compensatory damages.

(3) PROCEEDING.—The term “proceeding” includes an investigation.

(b) IN GENERAL.—Except as otherwise provided in this section, costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State are not allowable as reimbursable costs under a covered contract if the proceeding—

- (1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation; and
- (2) results in a disposition described in subsection (c).

(c) COVERED DISPOSITIONS.—A disposition referred to in subsection (b)(2) is any of the following:

(1) In a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in subsection (b).

(3) In any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in subsection (b).

(4) A final decision to do any of the following, by reason of the violation or failure referred to in subsection (b):

- (A) Debar or suspend the contractor.
- (B) Rescind or void the contract.
- (C) Terminate the contract for default.

(5) A disposition of the proceeding by consent or compromise if the disposition could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

(d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY FEDERAL GOVERNMENT.—In the case of a proceeding referred to in subsection (b) that is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the Federal Government, the costs incurred by the contractor in connection with the proceeding that are otherwise not allowable as reimbursable costs under subsection (b) may be allowed to the extent specifically provided in that agreement.

(e) COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PROCEEDING COMMENCED BY STATE.—In the case of a proceeding referred to in subsection (b) that is commenced by a State, the executive agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connec-