

tion with the proceeding as reimbursable costs if the executive agency determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of—

- (1) a specific term or condition of the contract; or
- (2) specific written instructions of the executive agency.

(f) OTHER ALLOWABLE COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (3), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if the costs are not disallowable under subsection (b), but only to the extent provided in paragraph (2).

(2) AMOUNT OF ALLOWABLE COSTS.—

(A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that the costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(B) CONTENT OF REGULATIONS.—Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the Federal Government as a party, and other factors as may be appropriate.

(3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—In the case of a proceeding referred to in paragraph (1), contractor costs otherwise allowable as reimbursable costs under this subsection are not allowable if—

- (A) the proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding; and
- (B) the costs of the other proceeding are not allowable under subsection (b).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3789.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4310(a)	41:256(k)(6).	June 30, 1949, ch. 288, title III, §306(k), 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(b)	41:256(k)(1).	
4310(c)	41:256(k)(2).	
4310(d)	41:256(k)(3).	
4310(e)	41:256(k)(4).	
4310(f)	41:256(k)(5).	

CHAPTER 45—CONTRACT FINANCING

- Sec. 4501. Authority of executive agency.
- 4502. Payment.
- 4503. Security for advance payments.
- 4504. Conditions for progress payments.
- 4505. Payments for commercial items.
- 4506. Action in case of fraud.

§ 4501. Authority of executive agency

An executive agency may—

(1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3790.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4501	41:255(a).	June 30, 1949, ch. 288, title III, §305(a), 63 Stat. 396; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85-800, §4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, §2051(a)(2), (c), Oct. 13, 1994, 108 Stat. 3304.

RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS

Pub. L. 103-355, title II, §2051(f), Oct. 13, 1994, 108 Stat. 3306, provided that: “The amendments made by this section [see Tables for classification] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.”

§ 4502. Payment

(a) BASIS FOR PAYMENT.—When practicable, payments under section 4501 of this title shall be made on any of the following bases:

- (1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.
- (2) Accomplishment of events defined in the program management plan.
- (3) Other quantifiable measures of results.

(b) PAYMENT AMOUNT.—Payments made under section 4501 of this title may not exceed the un-paid contract price.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4502(a)	41:255(b).	June 30, 1949, ch. 288, title III, §305(b), as added Pub. L. 103-355, title II, §2051(b), Oct. 13, 1994, 108 Stat. 3304.
4502(b)	41:255(c).	June 30, 1949, ch. 288, title III, §305(c), 63 Stat. 396; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85-800, §4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, §2051(a)(3), (5), Oct. 13, 1994, 108 Stat. 3304.

§ 4503. Security for advance payments

Advance payments under section 4501 of this title may be made only on adequate security and a determination by the agency head that to do so would be in the public interest. The security may be in the form of a lien in favor of the Federal Government on the property contracted for, on the balance in an account in which the payments are deposited, and on such of the prop-