

low-on FAR case, provisions that require timely notification by Federal contractors of violations of Federal criminal law or overpayments in connection with the award or performance of covered contracts or subcontracts, including those performed outside the United States and those for commercial items.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3770.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3509	41:251 note.	Pub. L. 110-252, title VI, §§ 6102, 6103, June 30, 2008, 122 Stat. 2386, 2387.

In subsection (b), the words “shall include” are substituted for “shall be amended” and “to include” to reflect the permanence of the provision. The words “within 180 days after the date of the enactment of this Act” are omitted as obsolete.

CHAPTER 37—AWARDING OF CONTRACTS

- Sec. 3701. Basis of award and rejection.
- 3702. Sealed bids.
- 3703. Competitive proposals.
- 3704. Post-award debriefings.
- 3705. Pre-award debriefings.
- 3706. Encouragement of alternative dispute resolution.
- 3707. Antitrust violations.
- 3708. Protests.

§ 3701. Basis of award and rejection

(a) AWARD.—An executive agency shall evaluate sealed bids and competitive proposals, and award a contract, based solely on the factors specified in the solicitation.

(b) REJECTION.—All sealed bids or competitive proposals received in response to a solicitation may be rejected if the agency head determines that rejection is in the public interest.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3770.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3701(a)	41:253b(a).	June 30, 1949, ch. 288, title III, § 303B(a), (b), as added Pub. L. 98-369, title VII, § 2711(a)(2), July 18, 1984, 98 Stat. 1179; Pub. L. 103-355, title I, § 1061(c)(1), Oct. 13, 1994, 108 Stat. 3267.
3701(b)	41:253b(b).	

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 98-577, title I, § 101, Oct. 30, 1984, 98 Stat. 3066, provided that: “The purposes of this Act [see Tables for classification] are to—

- “(1) eliminate procurement procedures and practices that unnecessarily inhibit full and open competition for contracts;
- “(2) promote the use of contracting opportunities as a means to expand the industrial base of the United States in order to ensure adequate responsive capability of the economy to the increased demands of the Government in times of national emergency; and
- “(3) foster opportunities for the increased participation in the competitive procurement process of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.”

EX. ORD. NO. 12979. AGENCY PROCUREMENT PROTESTS

Ex. Ord. No. 12979, Oct. 25, 1995, 60 F.R. 55171, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure effective and efficient expenditure of public funds and fair and expeditious resolution of protests to the award of Federal procurement contracts, it is hereby ordered as follows:

SECTION 1. Heads of executive departments and agencies (“agencies”) engaged in the procurement of supplies and services shall prescribe administrative procedures for the resolution of protests to the award of their procurement contracts as an alternative to protests in fora outside the procuring agencies. Procedures prescribed pursuant to this order shall:

- (a) emphasize that whenever conduct of a procurement is contested, all parties should use their best efforts to resolve the matter with agency contracting officers;
- (b) to the maximum extent practicable, provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests, including, where appropriate and as permitted by law, the use of alternative dispute resolution techniques, third party neutrals, and another agency’s personnel;
- (c) allow actual or prospective bidders or offerors whose direct economic interests would be affected by the award or failure to award the contract to request a review, at a level above the contracting officer, of any decision by a contracting officer that is alleged to have violated a statute or regulation and, thereby, caused prejudice to the protester; and
- (d) except where immediate contract award or performance is justified for urgent and compelling reasons or is determined to be in the best interest of the United States, prohibit award or performance of the contract while a timely filed protest is pending before the agency. To allow for the withholding of a contract award or performance, the agency must have received notice of the protest within either 10 calendar days after the contract award or 5 calendar days after the bidder or offeror who is protesting the contract award was given the opportunity to be debriefed by the agency, whichever date is later.

SEC. 2. The Administrator for Federal Procurement Policy shall: (a) work with the heads of executive agencies to provide policy guidance and leadership necessary to implement provisions of this order; and (b) review and evaluate agency experience and performance under this order, and report on any findings to the President within 2 years from the date of this order.

SEC. 3. The Administrator of General Services, the Secretary of Defense, and the Administrator of the National Aeronautics and Space Administration, in coordination with the Office of Federal Procurement Policy, shall amend the Federal Acquisition Regulation, 48 C.F.R. 1, within 180 days of the date of this order to further the purposes of this order.

WILLIAM J. CLINTON.

§ 3702. Sealed bids

(a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time and place stated in the solicitation.

(b) CRITERIA FOR AWARDING CONTRACT.—The executive agency shall evaluate the bids in accordance with section 3701(a) of this title without discussions with the bidders and, except as provided in section 3701(b) of this title, shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the Federal Government, considering only price and the other price-related factors included in the solicitation.