

basis of new best and final offers requested for that contract, the head of the executive agency shall make available to all offerors—

- (1) the information provided in debriefings under this section regarding the offer of the contractor awarded the contract; and
- (2) the same information that would have been provided to the original offerors.

(g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3771.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3704(a)	41:253b(e)(1) (1st sentence).	June 30, 1949, ch. 288, title III, §303B(e), as added Pub. L. 103-355, title I, §1064(2), Oct. 13, 1994, 108 Stat. 3268; Pub. L. 104-106, title XLI, §4104(b)(1), Feb. 10, 1996, 110 Stat. 645.
3704(b)	41:253b(e)(1) (last sentence).	
3704(c)	41:253b(e)(2).	
3704(d)	41:253b(e)(3).	
3704(e)	41:253b(e)(4).	
3704(f)	41:253b(e)(5).	
3704(g)	41:253b(g) (related to 41:253b(e)).	June 30, 1949, ch. 288, title III, §303B(g) (related to §303B(e)), as added Pub. L. 104-106, title XLI, §4104(b)(3), Feb. 10, 1996, 110 Stat. 645.

§ 3705. Pre-award debriefings

(a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes that offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Federal Government to conduct a debriefing at that time.

(c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting officer is required to debrief an excluded offeror in accordance with section 3704 of this title only if that offeror requested and was refused a pre-award debriefing under subsections (a) and (b).

(d) INFORMATION TO BE PROVIDED.—The debriefing conducted under this section shall include—

- (1) the executive agency's evaluation of the significant elements in the offeror's offer;
- (2) a summary of the rationale for the offeror's exclusion; and
- (3) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted pursuant to this section may not disclose the number or identity of

other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3772.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3705(a)	41:253b(f)(1) (1st sentence).	June 30, 1949, ch. 288, title III, §303B(f), (g) (related to §303B(f)), as added Pub. L. 104-106, title XLI, §4104(b)(3), Feb. 10, 1996, 110 Stat. 645.
3705(b)	41:253b(f)(1) (last sentence).	
3705(c)	41:253b(f)(2).	
3705(d)	41:253b(f)(3).	
3705(e)	41:253b(f)(4).	
3705(f)	41:253b(g) (related to 41:253b(f)).	

§ 3706. Encouragement of alternative dispute resolution

The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3706	41:253b(h).	June 30, 1949, ch. 288, title III, §303B(h), as added Pub. L. 104-106, title XLI, §4104(b)(3), Feb. 10, 1996, 110 Stat. 645.

§ 3707. Antitrust violations

If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, the agency head shall refer the bid or proposal to the Attorney General for appropriate action.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3707	41:253b(i).	June 30, 1949, ch. 288, title III, §303B(i), formerly §303B(e), as added Pub. L. 98-369, title VII, §2711(a)(2), July 18, 1984, 98 Stat. 1180; redesignated as §303B(f), Pub. L. 103-355, title I, §1064(1), Oct. 13, 1994, 108 Stat. 3268; redesignated as §303B(i), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645.

§ 3708. Protests

(a) PROTEST FILE.—

(1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract

by, the head of an executive agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, and an actual or prospective offeror requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the executive agency may—

(1) take any action set out in subparagraphs (A) to (F) of subsection (b)(1) of section 3554 of title 31; and

(2) pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of section 3554(c).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3708(a)	41:253b(k).	June 30, 1949, ch. 288, title III, §303B(k), formerly §303B(h), as added Pub. L. 103-355, title I, §1065, Oct. 13, 1994, 108 Stat. 3269; redesignated as §303B(k), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645; Pub. L. 104-106, title XLI, §5607(c), Feb. 10, 1996, 110 Stat. 701, as amended Pub. L. 104-201, title X, §1074(b)(7) (less effective date), Sept. 23, 1996, 110 Stat. 2660.
3708(b)	41:253b(l).	June 30, 1949, ch. 288, title III, §303B(l), formerly §303B(i), as added Pub. L. 103-355, title I, §1066, Oct. 13, 1994, 108 Stat. 3269; redesignated as §303B(l), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645.

CHAPTER 39—SPECIFIC TYPES OF CONTRACTS

Sec.	
3901.	Contracts awarded using procedures other than sealed-bid procedures.
3902.	Severable services contracts for periods crossing fiscal years.
3903.	Multiyear contracts.
3904.	Contract authority for severable services contracts and multiyear contracts.
3905.	Cost contracts.
3906.	Cost-reimbursement contracts.

SEPARABILITY

Act June 30, 1949, ch. 288, title VI, §604, formerly title V, §504, 63 Stat. 403, renumbered by act Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583, provided that: “If any provision of this Act [see Tables for classification], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.”

SHARE-IN-SAVINGS CONTRACTS

Act June 30, 1949, ch. 288, title III, §317, as added Pub. L. 107-347, title II, §210(b), Dec. 17, 2002, 116 Stat. 2934, provided that:

“(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an executive agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40, United States Code) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

“(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

“(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

“(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

“(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

“(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

“(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

“(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

“(B) Amounts retained by the agency under this subsection shall—

“(i) without further appropriation, remain available until expended; and

“(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

“(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

“(A) appropriations available for the performance of the contract;

“(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

“(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

“(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

“(3)(A) Subject to subparagraph (B), the head of an executive agency may enter into share-in-savings con-