

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4703(a)	41:253d(a).	June 30, 1949, ch. 288, title III, § 303D, formerly § 303E, as added Pub. L. 98-577, title II, § 203(a), Oct. 30, 1984, 98 Stat. 3071; renumbered § 303D, Pub. L. 99-145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.
4703(b)	41:253d(b).	
4703(c)	41:253d(c) (1st sentence).	
4703(d)	41:253d(c) (last sentence).	
4703(e)	41:253d(d).	
4703(f)	41:253d(e).	
4703(g)	41:253d(f).	

§ 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government

(a) CONTRACT RESTRICTIONS.—Each contract for the purchase of property or services made by an executive agency shall provide that the contractor will not—

(1) enter into an agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the Federal Government of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales described in paragraph (1) to the Federal Government.

(b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for an amount that is not greater than the simplified acquisition threshold.

(d) INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO OTHER PURCHASERS.—An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under the contract that restricts sales by the subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the Federal Government in violation of the provision included in the contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of the commercial items from that subcontractor.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3795.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4704(a)	41:253g(a).	June 30, 1949, ch. 288, title III, § 303G(a), (b), formerly § 303H, as added Pub. L. 98-577, title II, § 206(a), Oct. 30, 1984, 98 Stat. 3073; renumbered § 303G, Pub. L. 99-145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.
4704(b)	41:253g(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4704(c)	41:253g(c).	June 30, 1949, ch. 288, title III, § 303G(c), as added Pub. L. 103-355, title IV, § 4103(b), Oct. 13, 1994, 108 Stat. 3341.
4704(d)	41:253g(d).	June 30, 1949, ch. 288, title III, § 303G(d), as added Pub. L. 103-355, title VIII, § 8204(a), Oct. 13, 1994, 108 Stat. 3396.

§ 4705. Protection of contractor employees from reprisal for disclosure of certain information

(a) DEFINITIONS.—In this section:

(1) CONTRACT.—The term “contract” means a contract awarded by the head of an executive agency.

(2) CONTRACTOR.—The term “contractor” means a person awarded a contract with an executive agency.

(3) INSPECTOR GENERAL.—The term “Inspector General” means an Inspector General appointed under the Inspector General Act of 1978 (5 U.S.C. App.).

(b) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an executive agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for, or negotiation of, a contract).

(c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the individual has been subjected to a reprisal prohibited by subsection (b) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, on completion of the investigation, submit a report of the findings of the investigation to the individual, the contractor concerned, and the head of the agency. If the executive agency does not have an Inspector General, the duties of the Inspector General under this section shall be performed by an official designated by the head of the executive agency.

(d) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head of an executive agency determines that a contractor has subjected an individual to a reprisal prohibited by subsection (b), the head of the executive agency may take one or more of the following actions:

(A) ABATEMENT.—Order the contractor to take affirmative action to abate the reprisal.

(B) REINSTATEMENT.—Order the contractor to reinstate the individual to the position that the individual held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the individual in that position if the reprisal had not been taken.

(C) PAYMENT.—Order the contractor to pay the complainant an amount equal to the ag-

gregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that the complainant reasonably incurred for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) ENFORCEMENT ORDER.—When a contractor fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of the order in the United States district court for a district in which the reprisal was found to have occurred. In an action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. A petition seeking review must be filed no more than 60 days after the head of the agency issues the order. Review shall conform to chapter 7 of title 5.

(e) SCOPE OF SECTION.—This section does not—

(1) authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (b); or

(2) modify or derogate from a right or remedy otherwise available to the employee.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3796.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4705(a)	41:265(e).	June 30, 1949, ch. 288, title III, § 315, as added Pub. L. 103-355, title VI, § 6006, Oct. 13, 1994, 108 Stat. 3365; Pub. L. 104-106, title XLIII, § 4321(e)(8), Feb. 10, 1996, 110 Stat. 675.
4705(b)	41:265(a).	
4705(c)	41:265(b).	
4705(d)	41:265(c).	
4705(e)	41:265(d).	

In subsection (d)(2), the word "contractor" is substituted for "person" for clarity and for consistency with subsection (d)(1).

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(3), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 4706. Examination of facilities and records of contractor

(a) DEFINITION.—In this section, the term "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) AGENCY AUTHORITY.—

(1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of an executive agency,

acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of those contracts, the executive agency makes under this division; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract, or any combination of those subcontracts, under a contract referred to in subparagraph (A).

(2) EXAMINATION OF RECORDS.—The head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to chapter 35 of this title with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract;

or
(D) performance of the contract or subcontract.

(c) SUBPOENA POWER.—

(1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Inspector General of an executive agency appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or, on request of the head of an executive agency, the Director of the Defense Contract Audit Agency (or any successor agency) of the Department of Defense or the Inspector General of the General Services Administration may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by subsection (b).

(2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph (1), in the case of contumacy or refusal to obey, is enforceable by order of an appropriate United States district court.

(3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may not be delegated.

(4) REPORT.—In the year following a year in which authority provided in paragraph (1) is exercised for an executive agency, the head of the executive agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the exercise of the authority during the preceding year and the reasons why the authority was exercised in any instance.

(d) AUTHORITY OF COMPTROLLER GENERAL.—

(1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and representatives of the Comptroller Gen-