

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4701	41:257.	June 30, 1949, ch. 288, title III, §307, 63 Stat. 396; Pub. L. 85-800, §5, Aug. 28, 1958, 72 Stat. 967; Pub. L. 89-343, §§3, 4, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 98-369, title VII, §2714(a)(4), July 18, 1984, 98 Stat. 1184; Pub. L. 104-106, title XLIII, §4321(e)(6), Feb. 10, 1996, 110 Stat. 675; Pub. L. 104-316, title I, §121(c), Oct. 19, 1996, 110 Stat. 3836.
	41:262.	June 30, 1949, ch. 288, title III, §312, as added Pub. L. 103-355, title I, §1553, Oct. 13, 1994, 108 Stat. 3300.

§ 4702. Prohibition on release of contractor proposals

(a) DEFINITION.—In this section, the term “proposal” means a proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) PROHIBITION.—A proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5.

(c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3794.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4702(a)	41:253b(m)(3).	June 30, 1949, ch. 288, title III, §303B(m), as added Pub. L. 104-201, title VIII, §821(b), Sept. 23, 1996, 110 Stat. 2609.
4702(b)	41:253b(m)(1).	
4702(c)	41:253b(m)(2).	

In subsection (b), the words “Except as provided in paragraph (2)” are omitted as unnecessary.

§ 4703. Validation of proprietary data restrictions

(a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—A contract for property or services entered into by an executive agency that provides for the delivery of technical data shall provide that—

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction the contractor or subcontractor asserts on the right of the Federal Government to use the data; and

(2) the contracting officer may review the validity of a restriction the contractor or subcontractor asserts under the contract on the right of the Federal Government to use technical data furnished to the Federal Government under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the Federal Government would make it impracticable

to procure the item competitively at a later time.

(b) CHALLENGE OF RESTRICTION.—If after a review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. The notice shall state—

(1) the grounds for challenging the asserted restriction; and

(2) the requirement for a response within 60 days justifying the current validity of the asserted restriction.

(c) ADDITIONAL TIME FOR RESPONSES.—If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, the contracting officer shall provide appropriate additional time to adequately permit the justification to be submitted.

(d) MULTIPLE CHALLENGES.—If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the earliest challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each challenge.

(e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

(1) NO RESPONSE SUBMITTED.—The contracting officer shall issue a decision pertaining to the validity of the asserted restriction if the contractor or subcontractor does not submit a response under subsection (b).

(2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justification submitted in response to the notice provided pursuant to subsection (b), a contracting officer shall issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(f) CLAIM DEEMED CLAIM WITHIN CHAPTER 71.—A claim pertaining to the validity of the asserted restriction that is submitted in writing to a contracting officer by a contractor or subcontractor at any tier is deemed to be a claim within the meaning of chapter 71 of this title.

(g) FINAL DISPOSITION OF CHALLENGE.—

(1) CHALLENGE IS SUSTAINED.—If the contracting officer’s challenge to the restriction on the right of the Federal Government to use technical data is sustained on final disposition—

(A) the restriction is cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, is liable to the Federal Government for payment of the cost to the Federal Government of reviewing the asserted restriction and the fees and