

(c) **INFORMATION TO BE PROVIDED.**—The debriefing shall include, at a minimum—

(1) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(2) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(3) the overall ranking of all offers;

(4) a summary of the rationale for the award;

(5) in the case of a proposal that includes a commercial product that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

(6) 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.

(d) **INFORMATION NOT TO BE INCLUDED.**—The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(e) **INCLUSION OF STATEMENT IN SOLICITATION.**—Each solicitation for competitive proposals shall include a statement that information described in subsection (c) may be disclosed in post-award debriefings.

(f) **AFTER SUCCESSFUL PROTEST.**—If, within one year after the date of the contract award and as a result of a successful procurement protest, the executive agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the 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; Pub. L. 115-232, div. A, title VIII, §836(b)(15), Aug. 13, 2018, 132 Stat. 1864.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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).	

#### HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (c)(5). Pub. L. 115-232 substituted “commercial product” for “commercial item”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

#### § 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

**Statutory Notes and Related Subsidiaries**

## 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.”

## PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Pub. L. 115-232, div. A, title VIII, § 889, Aug. 13, 2018, 132 Stat. 1917, as amended by Pub. L. 116-283, div. A, title X, § 1081(d)(5), Jan. 1, 2021, 134 Stat. 3874, provided that:

“(a) PROHIBITION ON USE OR PROCUREMENT.—(1) The head of an executive agency may not—

“(A) procure or obtain or extend or renew a contract to procure or obtain any equipment, system, or