

HISTORICAL AND REVISION NOTES—CONTINUED

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

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.