

in connection with the decision, shall be prepared and be retained in the files of the executive agency.

(f) NOTICE.—The head of each executive agency shall prescribe procedures to ensure that, before the head of the executive agency decides to reduce or suspend payments in the case of a contractor under subsection (c), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the executive agency in response to the proposed reduction or suspension.

(g) REVIEW.—Not later than 180 days after the date on which the head of an executive agency reduces or suspends payments to a contractor under subsection (c), the remedy coordination official of the executive agency shall—

- (1) review the determination of fraud on which the reduction or suspension is based; and
- (2) transmit a recommendation to the head of the executive agency whether the suspension or reduction should continue.

(h) REPORT.—The head of each executive agency who receives recommendations made by the remedy coordination official of the executive agency to reduce or suspend payments under subsection (c) during a fiscal year shall prepare for that year a report that contains the recommendations, the actions taken on the recommendations and the reasons for those actions, and an assessment of the effects of those actions on the Federal Government. The report shall be available to any Member of Congress on request.

(i) RESTRICTION ON DELEGATION.—The head of an executive agency may not delegate responsibilities under this section to an individual in a position below level IV of the Executive Schedule.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3792.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4506	41:255(g).	June 30, 1949, ch. 288, title III, § 305(g), as added Pub. L. 103-355, title II, § 2051(e), Oct. 13, 1994, 108 Stat. 3305, as amended Pub. L. 104-106, title XLIII, § 4321(a)(4), Feb. 10, 1996, 110 Stat. 671.

CHAPTER 47—MISCELLANEOUS

- Sec. 4701. Determinations and decisions.
- 4702. Prohibition on release of contractor proposals.
- 4703. Validation of proprietary data restrictions.
- 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government.
- 4705. Protection of contractor employees from reprisal for disclosure of certain information.
- 4706. Examination of facilities and records of contractor.
- 4707. Remission of liquidated damages.
- 4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions.
- 4709. Implementation of electronic commerce capability.

- Sec. 4710. Limitations on tiering of subcontractors.
- 4711. Linking of award and incentive fees to acquisition outcomes.
- 4712. Enhancement of contractor protection from reprisal for disclosure of certain information.
- 4713. Authorities relating to mitigating supply chain risks in the procurement of covered articles.
- 4714. Prohibition on criminal history inquiries by contractors prior to conditional offer.

Editorial Notes

AMENDMENTS

- 2019—Pub. L. 116-92, div. A, title XI, § 1123(a)(2), Dec. 20, 2019, 133 Stat. 1612, added item 4714.
- 2018—Pub. L. 115-390, title II, § 203(b), Dec. 21, 2018, 132 Stat. 5192, added item 4713.
- 2016—Pub. L. 114-261, § 1(a)(3)(B), Dec. 14, 2016, 130 Stat. 1362, added item 4712 and struck out former item 4712 ‘‘Pilot program for enhancement of contractor protection from reprisal for disclosure of certain information’’.
- 2013—Pub. L. 112-239, div. A, title VIII, § 828(a)(2), Jan. 2, 2013, 126 Stat. 1840, added item 4712.

§ 4701. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—

(1) IN GENERAL.—Determinations and decisions required to be made under this division by the head of an executive agency or provided in this division or chapters 1 to 11 of title 40 to be made by the Administrator of General Services or other agency head may be made for an individual purchase or contract or, except for determinations or decisions made under sections 3105, 3301, 3303 to 3305, 3306(a)–(e), and 3308, chapter 37, and section 4702 of this title or to the extent expressly prohibited by another law, for a class of purchases or contracts.

(2) DELEGATION.—Except as provided in section 3304(a)(7) of this title, and except as provided in section 121(d)(1) and (2) of title 40 with respect to the Administrator of General Services, the agency head, in the discretion and subject to the direction of the agency head, may delegate powers provided by this division or chapters 1 to 11 of title 40, including the making of determinations and decisions described in paragraph (1), to other officers or officials of the agency.

(3) FINALITY.—The determinations and decisions are final.

(b) WRITTEN FINDINGS.—

(1) BASIS FOR CERTAIN DETERMINATIONS.—Each determination or decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title shall be based on a written finding by the individual making the determination or decision. A finding under section 4503 or 4706(d)(2)(B) shall set out facts and circumstances that support the determination or decision.

(2) FINALITY.—Each finding referred to in paragraph (1) is final.

(3) MAINTAINING COPIES OF FINDINGS.—The head of an executive agency shall maintain for a period of not less than 6 years a copy of each finding referred to in paragraph (1) that is made by an individual in that executive agen-

cy. The period begins on the date of the determination or decision to which the finding relates.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3793.)

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 of-

ficer 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