

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 other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the Federal Government in challenging the asserted restriction, unless special circumstances would make the payment unjust.

(2) CHALLENGE NOT SUSTAINED.—If the contracting officer’s challenge to the restriction on the right of the Federal Government to use technical data is not sustained on final disposition, the Federal Government—

(A) continues to be bound by the restriction; and

(B) is liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the Federal Government is found not to be made in good faith.

(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)
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 agree-

ment between the contractor in a contract for the acquisition of commercial products or commercial services 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 products or commercial services from that subcontractor.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3795; Pub. L. 115-232, div. A, title VIII, §836(b)(19), Aug. 13, 2018, 132 Stat. 1864.)

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).	
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.

Editorial Notes

AMENDMENTS

2018—Subsec. (d). Pub. L. 115-232 substituted “commercial products or commercial services” for “commercial items” in two places.

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.

§ 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 chapter 4 of title 5.

(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