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 agreement 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

substantial violation of law related to a contract (including the competition for, or negotiation of, a contract).

(c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the individual has been subjected to a reprisal prohibited by subsection (b) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, on completion of the investigation, submit a report of the findings of the investigation to the individual, the contractor concerned, and the head of the agency. If the executive agency does not have an Inspector General, the duties of the Inspector General under this section shall be performed by an official designated by the head of the executive agency.

(d) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head of an executive agency determines that a contractor has subjected an individual to a reprisal prohibited by subsection (b), the head of the executive agency may take one or more of the following actions:

(A) ABATEMENT.—Order the contractor to take affirmative action to abate the reprisal.

(B) REINSTATEMENT.—Order the contractor to reinstate the individual to the position that the individual held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the individual in that position if the reprisal had not been taken.

(C) PAYMENT.—Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that the complainant reasonably incurred for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) ENFORCEMENT ORDER.—When a contractor fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of the order in the United States district court for a district in which the reprisal was found to have occurred. In an action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. A petition seeking review must be filed no more than 60 days after the head of the agency issues the order. Review shall conform to chapter 7 of title 5.

(e) SCOPE OF SECTION.—This section does not—

(1) authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (b); or

(2) modify or derogate from a right or remedy otherwise available to the employee.

(f) FOUR-YEAR SUSPENSION OF EFFECTIVENESS WHILE PILOT PROGRAM IS IN EFFECT.—While section 4712[1] of this title is in effect, this section shall not be in effect.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3796; Pub. L. 112–239, div. A, title VIII, § 828(c), Jan. 2, 2013, 126 Stat. 1841; Pub. L. 117–286, § 4(b)(72), Dec. 27, 2022, 136 Stat. 4351.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4705(a)	41:265(e).	June 30, 1949, ch. 288, title III, § 315, as added Pub. L. 103–355, title VI, § 6006, Oct. 13, 1994, 108 Stat. 3365; Pub. L. 104–106, title XLIII, § 4321(e)(8), Feb. 10, 1996, 110 Stat. 675.
4705(b)	41:265(a).	
4705(c)	41:265(b).	
4705(d)	41:265(c).	
4705(e)	41:265(d).	

In subsection (d)(2), the word ''contractor'' is substituted for ''person'' for clarity and for consistency with subsection (d)(1).

Editorial Notes

REFERENCES IN TEXT

Section 4712 of this title, referred to in subsec. (f), formerly referred to a pilot program in the section catchline and contained a subsec. (i) which provided that section 4712 would be in effect for a specified four-year period. The section catchline was amended and subsec. (i) was struck out by Pub. L. 114–261, § 1(a)(3)(A), Dec. 14, 2016, 130 Stat. 1362.

AMENDMENTS

2022—Subsec. (a)(3). Pub. L. 117–286 substituted ''chapter 4 of title 5.'' for ''the Inspector General Act of 1978 (5 U.S.C. App.).''

2013—Subsec. (f). Pub. L. 112–239 added subsec. (f).

§ 4706. Examination of facilities and records of contractor

(a) DEFINITION.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) AGENCY AUTHORITY.—

(1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of an executive agency, acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of those contracts, the executive agency makes under this division; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract, or any combination of those sub-

[1] See References in Text note below.