

Subsec. (h). Pub. L. 100-26, §7(a)(5)(A)(i), (E)(i), redesignated former subsec. (f) as (h) and inserted heading.

Subsec. (h)(1). Pub. L. 100-26, §7(a)(5)(E)(ii)-(iv), substituted "the use or release restriction" for "the restriction on the right of the United States to use such technical data" in introductory provisions, struck out "on the right of the United States to use the technical data" after "the restriction" in subpar. (A), and substituted "asserting the restriction" for "as appropriate," in subpar. (B).

Subsec. (h)(2). Pub. L. 100-26, §7(a)(5)(E)(v), substituted "the use or release restriction" for "the restriction on the right of the United States to use such technical data" in introductory provisions.

Subsec. (i). Pub. L. 100-180, §1231(6)(B), inserted "or subcontractor" in introductory provisions.

Pub. L. 100-26, §7(a)(5)(F), added subsec. (i).

1986—Subsecs. (a), (b). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 amended generally subsecs. (a) and (b) identically. Prior to amendment, subsecs. (a) and (b) read as follows:

"(a) A contract for supplies or services entered into by the Department of Defense which 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 asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

"(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer 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 United States would make it impracticable to procure the item competitively at a later time.

"(b) If after such 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. Such notice shall—

"(1) state the grounds for challenging the asserted restriction; and

"(2) require a response within 60 days justifying the current validity of the asserted restriction."

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(d)(1) of Pub. L. 100-26 provided that: "The amendments to section 2321 of title 10, United States Code, made by section 7(a)(5) shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on October 18, 1986."

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 applicable to contracts for which solicitations are issued after end of 210-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and section 953(e) of Pub. L. 99-661, set out as a note under section 2320 of this title.

#### EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98-525, set out as a note under section 2319 of this title.

### **[§ 2322. Repealed. Pub. L. 102-484, div. A, title X, § 1052(25)(A), Oct. 23, 1992, 106 Stat. 2500]**

Section, added Pub. L. 98-525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 100-26, §7(a)(6),

Apr. 21, 1987, 101 Stat. 278; Pub. L. 100-180, div. A, title XII, §1231(7), Dec. 4, 1987, 101 Stat. 1160, limited small business set-asides under the Foreign Military Sales Program and provided that the section expired Jan. 17, 1987.

Another section 2322 of this title was contained in chapter 138 and was renumbered section 2342 of this title.

### **§ 2323. Contract goal for small disadvantaged businesses and certain institutions of higher education**

(a) GOAL.—(1) Except as provided in subsection (d), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration in each fiscal year for the total combined amount obligated for contracts and subcontracts entered into with—

(A) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals, and qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act);

(B) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986;

(C) minority institutions (as defined in section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k));

(D) Hispanic-serving institutions (as defined in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a))); and

(E) Native Hawaiian-serving institutions and Alaska Native-serving institutions (as defined in section 317 of the Higher Education Act of 1965).

(2) The head of the agency shall establish a specific goal within the overall 5 percent goal for the award of prime contracts and subcontracts to historically Black colleges and universities, Hispanic-serving institutions, Native Hawaiian-serving institutions and Alaska Native-serving institutions, and minority institutions in order to increase the participation of such colleges and universities and institutions in the program provided for by this section.

(3) The Federal Acquisition Regulation shall provide procedures or guidelines for contracting officers to set goals which agency prime contractors that are required to submit subcontracting plans under section 8(d)(4)(B) of the Small Business Act (15 U.S.C. 637(d)(4)(B)) in furtherance of the agency's program to meet the 5 percent goal specified in paragraph (1) should meet in awarding subcontracts, including subcontracts to minority-owned media, to entities described in that paragraph.

(b) AMOUNT.—(1) With respect to the Department of Defense, the requirements of subsection (a) for any fiscal year apply to the combined total of the following amounts:

(A) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for procurement.

(B) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for research, development, test, and evaluation.

(C) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for military construction.

(D) Funds obligated for contracts entered into with the Department of Defense for operation and maintenance.

(2) With respect to the Coast Guard, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the Coast Guard for such fiscal year.

(3) With respect to the National Aeronautics and Space Administration, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the National Aeronautics and Space Administration for such fiscal year.

(c) TYPES OF ASSISTANCE.—(1) To attain the goal specified in subsection (a)(1), the head of an agency shall provide technical assistance to the entities referred to in that subsection and, in the case of historically Black colleges and universities, Hispanic-serving institutions, Native Hawaiian-serving institutions and Alaska Native-serving institutions, and minority institutions, shall also provide infrastructure assistance.

(2) Technical assistance provided under this section shall include information about the program, advice about agency procurement procedures, instruction in preparation of proposals, and other such assistance as the head of the agency considers appropriate. If the resources of the agency are inadequate to provide such assistance, the head of the agency may enter into contracts with minority private sector entities with experience and expertise in the design, development, and delivery of technical assistance services to eligible individuals, business firms and institutions, acquisition agencies, and prime contractors. Agency contracts with such entities shall be awarded annually, based upon, among other things, the number of minority small business concerns, historically Black colleges and universities, and minority institutions that each such entity brings into the program.

(3) Infrastructure assistance provided by the Department of Defense under this section to historically Black colleges and universities, to Hispanic-serving institutions, to Native Hawaiian-serving institutions and Alaska Native-serving institutions, and to minority institutions may include programs to do the following:

(A) Establish and enhance undergraduate, graduate, and doctoral programs in scientific disciplines critical to the national security functions of the Department of Defense.

(B) Make Department of Defense personnel available to advise and assist faculty at such colleges and universities in the performance of defense research and in scientific disciplines critical to the national security functions of the Department of Defense.

(C) Establish partnerships between defense laboratories and historically Black colleges and universities and minority institutions for

the purpose of training students in scientific disciplines critical to the national security functions of the Department of Defense.

(D) Award scholarships, fellowships, and the establishment of cooperative work-education programs in scientific disciplines critical to the national security functions of the Department of Defense.

(E) Attract and retain faculty involved in scientific disciplines critical to the national security functions of the Department of Defense.

(F) Equip and renovate laboratories for the performance of defense research.

(G) Expand and equip Reserve Officer Training Corps activities devoted to scientific disciplines critical to the national security functions of the Department of Defense.

(H) Provide other assistance as the Secretary determines appropriate to strengthen scientific disciplines critical to the national security functions of the Department of Defense or the college infrastructure to support the performance of defense research.

(4) The head of the agency shall, to the maximum extent practical, carry out programs under this section at colleges, universities, and institutions that agree to bear a substantial portion of the cost associated with the programs.

(d) APPLICABILITY.—Subsection (a) does not apply to the Department of Defense—

(1) to the extent to which the Secretary of Defense determines that compelling national security considerations require otherwise; and

(2) if the Secretary notifies Congress of such determination and the reasons for such determination.

(e) COMPETITIVE PROCEDURES AND ADVANCE PAYMENTS.—To attain the goal of subsection (a):

(1)(A) The head of the agency shall—

(i) ensure that substantial progress is made in increasing awards of agency contracts to entities described in subsection (a)(1);

(ii) exercise his utmost authority, resourcefulness, and diligence;

(iii) in the case of the Department of Defense, actively monitor and assess the progress of the military departments, Defense Agencies, and prime contractors of the Department of Defense in attaining such goal; and

(iv) in the case of the Coast Guard and the National Aeronautics and Space Administration, actively monitor and assess the progress of the prime contractors of the agency in attaining such goal.

(B) In making the assessment under clauses (iii) and (iv) of subparagraph (A), the head of the agency shall evaluate the extent to which use of the authority provided in paragraphs (2) and (3) and compliance with the requirement in paragraph (4) is effective for facilitating the attainment of the goal.

(2) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency shall make advance payments under section 2307 of this title to contractors described in subsection (a). The Federal Acqui-

sition Regulation shall provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.

(3)(A) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency may, except as provided in subparagraph (B), enter into contracts using less than full and open competitive procedures (including awards under section 8(a) of the Small Business Act) and partial set asides for entities described in subsection (a)(1), but shall pay a price not exceeding fair market cost by more than 10 percent in payment per contract to contractors or subcontractors described in subsection (a). The head of an agency shall adjust the percentage specified in the preceding sentence for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph.

(B)(i) The Secretary of Defense may not exercise the authority under subparagraph (A) to enter into a contract for a price exceeding fair market cost if the regulations implementing that authority are suspended under clause (ii) with respect to that contract.

(ii) At the beginning of each fiscal year, the Secretary shall determine, on the basis of the most recent data, whether the Department of Defense achieved the 5 percent goal described in subsection (a) during the fiscal year to which the data relates. Upon determining that the Department achieved the goal for the fiscal year to which the data relates, the Secretary shall issue a suspension, in writing, of the regulations that implement the authority under subparagraph (A). Such a suspension shall be in effect for the one-year period beginning 30 days after the date on which the suspension is issued and shall apply with respect to contracts awarded pursuant to solicitations issued during that period.

(iii) For purposes of clause (ii), the term "most recent data" means data relating to the most recent fiscal year for which data are available.

(4) To the extent practicable, the head of an agency shall maximize the number of minority small business concerns, historically Black colleges and universities, and minority institutions participating in the program.

(5) Each head of an agency shall prescribe regulations which provide for the following:

(A) Procedures or guidance for contracting officers to provide incentives for prime contractors referred to in subsection (a)(3) to increase subcontractor awards to entities described in subsection (a)(1).

(B) A requirement that contracting officers emphasize the award of contracts to entities described in subsection (a)(1) in all industry categories, including those categories in which such entities have not traditionally dominated.

(C) Guidance to agency personnel on the relationship among the following programs:

(i) The program implementing this section.

(ii) The program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(iii) The small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

(D) With respect to an agency procurement which is reasonably likely to be set aside for entities described in subsection (a)(1), a requirement that (to the maximum extent practicable) the procurement be designated as such a set-aside before the solicitation for the procurement is issued.

(E) Policies and procedures which, to the maximum extent practicable, will ensure that current levels in the number or dollar value of contracts awarded under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and under the small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)) are maintained and that every effort is made to provide new opportunities for contract awards to eligible entities, in order to meet the goal of subsection (a).

(F) Implementation of this section in a manner which will not alter the procurement process under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(G) A requirement that one factor used in evaluating the performance of a contracting officer be the ability of the officer to increase contract awards to entities described in subsection (a)(1).

(H) Increased technical assistance to entities described in subsection (a)(1).

(f) PENALTIES AND REGULATIONS RELATING TO STATUS.—(1) Whoever for the purpose of securing a contract or subcontract under subsection (a) misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)) or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act), shall be punished by imprisonment for not more than one year, or a fine under title 18, or both.

(2) The Federal Acquisition Regulation shall prohibit awarding a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(o)(1) of the Small Business Act (15 U.S.C. 644(o)(1)).

(g) INDUSTRY CATEGORIES.—(1) To the maximum extent practicable, the head of the agency shall—

(A) ensure that no particular industry category bears a disproportionate share of the contracts awarded to attain the goal established by subsection (a); and

(B) ensure that contracts awarded to attain the goal established by subsection (a) are made across the broadest possible range of industry categories.

(2) Under procedures prescribed by the head of the agency, a person may request the Secretary

to determine whether the use of small disadvantaged business set asides by a contracting activity of the agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity for the purposes of this section. Upon making a determination that a particular industry category is bearing a disproportionate share, the head of the agency shall take appropriate actions to limit the contracting activity's use of set asides in awarding contracts in that particular industry category.

(h) COMPLIANCE WITH SUBCONTRACTING PLAN REQUIREMENTS.—(1) The Federal Acquisition Regulation shall contain regulations to ensure that potential contractors submitting sealed bids or competitive proposals to the agency for procurement contracts to be awarded under the program provided for by this section are complying with applicable subcontracting plan requirements of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(2) The regulations required by paragraph (1) shall ensure that, with respect to a sealed bid or competitive proposal for which the bidder or offeror is required to negotiate or submit a subcontracting plan under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), the subcontracting plan shall be a factor in evaluating the bid or proposal.

(i) ANNUAL REPORT.—(1) Not later than December 15 of each year, the head of the agency shall submit to Congress a report on the progress of the agency toward attaining the goal of subsection (a) during the preceding fiscal year.

(2) The report required under paragraph (1) shall include the following:

(A) A full explanation of any progress toward attaining the goal of subsection (a).

(B) A plan to achieve the goal, if necessary.

(j) DEFINITIONS.—In this section:

(1) The term “agency” means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(2) The term “head of an agency” means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(k) EFFECTIVE DATE.—(1) This section applies in the Department of Defense to each of fiscal years 1987 through 2009.

(2) This section applies in the Coast Guard and the National Aeronautics and Space Administration in each of fiscal years 1995 through 2009.

(Added and amended Pub. L. 102-484, div. A, title VIII, §§ 801(a)(1), (b)-(f), 802, Oct. 23, 1992, 106 Stat. 2442-2444, 2446; Pub. L. 103-35, title II, § 202(a)(6), May 31, 1993, 107 Stat. 101; Pub. L. 103-160, div. A, title VIII, § 811(a)-(c), (e), Nov. 30, 1993, 107 Stat. 1702; Pub. L. 103-355, title VII, § 7105, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 104-106, div. D, title XLIII, § 4321(b)(8), Feb. 10, 1996, 110 Stat. 672; Pub. L. 105-135, title VI, § 604(a), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 105-261, div. A, title VIII, § 801, Oct. 17, 1998, 112 Stat. 2080; Pub. L. 106-65, div. A, title VIII, § 808, Oct. 5, 1999, 113 Stat. 705; Pub. L. 107-107, div. A, title X, § 1048(a)(17), Dec. 28, 2001, 115 Stat. 1223; Pub. L.

107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VIII, § 816, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 108-136, div. A, title X, § 1031(a)(15), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 109-163, div. A, title VIII, § 842, Jan. 6, 2006, 119 Stat. 3389; Pub. L. 109-364, div. A, title VIII, § 858, Oct. 17, 2006, 120 Stat. 2349; Pub. L. 110-181, div. A, title VIII, § 891, Jan. 28, 2008, 122 Stat. 270; Pub. L. 111-383, div. A, title X, § 1075(b)(31), Jan. 7, 2011, 124 Stat. 4370.)

#### REFERENCES IN TEXT

Section 3(p) of the Small Business Act, referred to in subsecs. (a)(1)(A) and (f)(1), is classified to section 632(p) of Title 15, Commerce and Trade.

Section 317 of the Higher Education Act of 1965, referred to in subsec. (a)(1)(E), is classified to section 1059d of Title 20, Education.

Section 8(a) of the Small Business Act, referred to in subsec. (e)(3)(A), is classified to section 637(a) of Title 15, Commerce and Trade.

#### CODIFICATION

Section, as added by Pub. L. 102-484, § 801(a)(1), consists of text of Pub. L. 99-661, div. A, title XII, § 1207, Nov. 14, 1986, 100 Stat. 3973, revised by Pub. L. 102-484 by substituting “each of fiscal years 1987 through 2000” for “each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993” in subsec. (a)(1), “of this title” for “of title 10, United States Code,” in subsec. (e)(2), and “each of fiscal years 1987 through 2000” for “each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993” in subsec. (h). Section 1207 of Pub. L. 99-661, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102-484, div. A, title VIII, § 801(h)(1), Oct. 23, 1992, 106 Stat. 2445.

#### PRIOR PROVISIONS

A prior section 2323, added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 99-500, § 101(c) [title X, § 926(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-153, and Pub. L. 99-591, § 101(c) [title X, § 926(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-153; Pub. L. 99-661, div. A, title IX, formerly title IV, § 926(a)(1), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, related to commercial pricing for spare or repair parts, prior to repeal by Pub. L. 101-510, div. A, title VIII, § 804(a), Nov. 5, 1990, 104 Stat. 1591.

#### AMENDMENTS

2011—Subsec. (a)(1)(D). Pub. L. 111-383 inserted closing parenthesis before semicolon.

2008—Subsec. (a)(1)(E). Pub. L. 110-181, § 891(1), added subpar. (E).

Subsecs. (a)(2), (c)(1). Pub. L. 110-181, § 891(2), (3), inserted “Native Hawaiian-serving institutions and Alaska Native-serving institutions,” after “Hispanic-serving institutions.”

Subsec. (c)(3). Pub. L. 110-181, § 891(4), inserted “to Native Hawaiian-serving institutions and Alaska Native-serving institutions,” after “Hispanic-serving institutions,” in introductory provisions.

2006—Subsec. (a)(1)(D). Pub. L. 109-364, § 858(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 109-364, § 858(2), inserted “, Hispanic-serving institutions,” before “and minority institutions” and “and institutions” before “in the program”.

Subsec. (c)(1). Pub. L. 109-364, § 858(3), inserted “, Hispanic-serving institutions,” before “and minority institutions”.

Subsec. (c)(3). Pub. L. 109-364, § 858(4), inserted “, to Hispanic-serving institutions,” before “and to minority institutions” in introductory provisions.

Subsec. (k). Pub. L. 109-163 substituted “2009” for “2006” in pars. (1) and (2).

2003—Subsec. (i)(3). Pub. L. 108-136 struck out par. (3) which listed certain items to be included in the report required under par. (1).

2002—Subsec. (j)(2). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

Subsec. (k). Pub. L. 107-314 substituted “2006” for “2003” in pars. (1) and (2).

2001—Subsec. (a)(1)(C). Pub. L. 107-107 substituted “section 365(3)” for “section 1046(3)” and “20 U.S.C. 1067k” for “20 U.S.C. 1135d-5(3)” and struck out before period at end “, which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)))”.

1999—Subsec. (k). Pub. L. 106-65 substituted “2003” for “2000” in pars. (1) and (2).

1998—Subsec. (e)(3). Pub. L. 105-261 designated existing provisions as subpar. (A), inserted “, except as provided in subparagraph (B),” after “the head of an agency may” in first sentence, and added subpar. (B).

1997—Subsec. (a)(1)(A). Pub. L. 105-135, § 604(a)(1), inserted before semicolon at end “, and qualified HUB-Zone small business concerns (as defined in section 3(p) of the Small Business Act)”.

Subsec. (f)(1). Pub. L. 105-135, § 604(a)(2), inserted “or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act)” after “(as described in subsection (a))”.

1996—Subsec. (a)(1)(C). Pub. L. 104-106, § 4321(b)(8)(A), inserted closing parenthesis after “1135d-5(3)” and “1059c(b)(1)”.

Subsec. (a)(3). Pub. L. 104-106, § 4321(b)(8)(B), struck out “(issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c))” after “Acquisition Regulation”.

Subsec. (b). Pub. L. 104-106, § 4321(b)(8)(C), inserted “(1)” after “Amount—”.

Subsec. (i)(3)(D). Pub. L. 104-106, § 4321(b)(8)(D), added subpar. (D).

1994—Pub. L. 103-355 amended section generally to extend defense contract goal for small disadvantaged businesses and certain institutions of higher education to Coast Guard and National Aeronautics and Space Administration.

1993—Subsec. (a)(1)(B). Pub. L. 103-160, § 811(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “historically Black colleges and universities; and”.

Subsec. (a)(1)(C). Pub. L. 103-160, § 811(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “minority institutions (as defined in paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058)), including any nonprofit research institution that was an integral part of a historically Black college or university before November 14, 1986.”

Subsec. (f)(2). Pub. L. 103-160, § 811(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The Secretary of Defense shall prescribe regulations which provide for the following:

“(A) A requirement that a business which represents itself as an entity described in subsection (a)(1) and is seeking a Department of Defense contract maintain its status as an entity at the time of contract award.

“(B) A prohibition on the award of a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(o)(1) of the Small Business Act (15 U.S.C. 644(o)(1)).”

Subsec. (i). Pub. L. 103-35 amended and made technical amendment to directory language of Pub. L. 102-484, § 801(f). See 1992 Amendment note for subsec. (h) below.

Subsec. (i)(3)(D). Pub. L. 103-160, § 811(e), added subpar. (D).

1992—Subsec. (a)(3). Pub. L. 102-484, § 801(b), added par. (3).

Subsec. (e). Pub. L. 102-484, § 801(c)(1), substituted “subsection (a):” for “subsection (a)—” in introductory provisions.

Subsec. (e)(1). Pub. L. 102-484, § 801(c)(2), added par. (1) and struck out former par. (1) which read as follows: “The Secretary of Defense shall exercise his utmost authority, resourcefulness, and diligence.”

Subsec. (e)(2). Pub. L. 102-484, § 801(c)(3), inserted at end “The Secretary shall prescribe regulations that provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.”

Subsec. (e)(3). Pub. L. 102-484, § 801(c)(4), inserted “and partial set asides for entities described in subsection (a)(1)” after “Act”.

Subsec. (e)(5). Pub. L. 102-484, § 801(c)(5), added par. (5).

Subsec. (f). Pub. L. 102-484, § 801(d), substituted “Penalties and Regulations Relating to Status” for “Penalties for Misrepresentation” in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (g). Pub. L. 102-484, § 801(e)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102-484, § 802(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 102-484, § 801(f), as amended by Pub. L. 103-35, substituted “Report” for “Reports” in heading, struck out “July 15 of each year, the Secretary of Defense shall submit to Congress a report on the progress toward meeting the goal of subsection (a) during the current fiscal year. (2) Not later than” after “(1) Not later than”, struck out “final” after “Congress a”, and substituted “Secretary toward attaining” for “Secretary with” in former par. (2), redesignated par. (3) as (2) and substituted “report required under paragraph (1) shall” for “reports described in paragraphs (1) and (2) shall each”, redesignated par. (4) as (3) and substituted “report required under paragraph (1)” for “reports required under paragraph (2)”, and struck out par. (5) which read as follows: “The first report required by this subsection shall be submitted between May 1 and May 30, 1987.”

Pub. L. 102-484, § 801(e)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102-484, § 802(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 102-484, § 801(e)(1), redesignated subsec. (h) as (i).

Subsec. (j). Pub. L. 102-484, § 802(1), redesignated subsec. (i) as (j).

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135 set out as a note under section 631 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-35 applicable as if included in the enactment of Pub. L. 102-484, see section 202(b) of Pub. L. 103-35, set out as a note under section 155 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 801(f) of Pub. L. 102-484 provided that the amendment made by that section is effective Oct. 1, 1993.

#### REGULATIONS

Pub. L. 103-160, div. A, title VIII, § 811(d), Nov. 30, 1993, 107 Stat. 1702, provided that:

“(1) The Secretary of Defense shall propose amendments to the Department of Defense Supplement to the Federal Acquisition Regulation that address the matters described in subsection (g) and subsection (h)(2) of section 2323 of title 10, United States Code.

“(2) Not later than 15 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall publish such proposed amendments in accordance with section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707]. The Secretary shall provide a period of at least 60 days for public comment on the proposed amendments.

“(3) The Secretary shall publish the final regulations not later than 120 days after the date of the enactment of this Act.”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 2323 of this title and section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employ-

ment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term “Indian lands” has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4)).

(2) The term “Indian” has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

(3) The term “Indian tribe” has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(4) The term “tribally owned corporation” means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102-484, div. A, title VIII, § 801(g)(1), Oct. 23, 1992, 106 Stat. 2445; amended Pub. L. 104-201, div. A, title X, § 1074(a)(13), Sept. 23, 1996, 110 Stat. 2659.)

#### CODIFICATION

Section, as added by Pub. L. 102-484, consists of text of Pub. L. 101-189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, revised by Pub. L. 102-484 by substituting “section 2323 of this title” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)” in subsec. (a). Section 832 of Pub. L. 101-189, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102-484, div. A, title VIII, § 801(h)(5), Oct. 23, 1992, 106 Stat. 2445.

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-201, which directed amendment of subsec. (a) by substituting “section 2323 of this title” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)”, could not be executed because the language “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)” did not appear. See Codification note above.

#### § 2324. Allowable costs under defense contracts

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for set-