

“(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-