

place or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall—

(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) Regional Small Business Regulatory Fairness Boards

(1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b) of this section.

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the

Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

(d) Powers of Boards

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.

(Pub. L. 85-536, §2[30], as added Pub. L. 104-121, title II, §222(2), Mar. 29, 1996, 110 Stat. 860.)

REFERENCES IN TEXT

Section 7 of the Inspector General Act of 1978, referred to in subsec. (b)(2)(B), is section 7 of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 2[30] of Pub. L. 85-536 was renumbered section 2[44] and is set out as a note under section 631 of this title.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE

Section effective on expiration of 90 days after Mar. 29, 1996, see section 224 of Pub. L. 104-121 set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

§ 657a. HUBZone program

(a) In general

There is established within the Administration a program to be carried out by the Administrator to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this section.

(b) Eligible contracts**(1) Definitions**

In this subsection—

(A) the term “contracting officer” has the meaning given that term in section 2101(1) of title 41; and

(B) the term “full and open competition” has the meaning given that term in section 107 of title 41.

(2) Authority of contracting officer**(A) Sole source contracts**

A contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if—

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(ii) the anticipated award price of the contract (including options) will not exceed—

(I) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) \$3,000,000, in the case of all other contract opportunities; and

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(B) Restricted competition

A contract opportunity may be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price.

(C) Appeals

Not later than 5 days from the date the Administration is notified of a procurement officer’s decision not to award a contract opportunity under this section to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer’s decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer’s decision with the Secretary of the department or agency head.

(3) Price evaluation preference in full and open competitions**(A) In general**

Subject to subparagraph (B), in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern),

if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(B) Procurement of commodities

For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

(C) Procurement of commodities for international food aid export operations

The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.

(D) Treatment of preference

A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

(4) Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or chapter 85 of title 41.

(c) Enforcement; penalties**(1) Verification of eligibility**

In carrying out this section, the Administrator shall establish procedures relating to—

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this section (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under section 632(p)(5) of this title); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under section 632(p)(5) of this title.

(2) Examinations

The procedures established under paragraph (1) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 632(p)(5) of this title.

(3) Provision of data

Upon the request of the Administrator, the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs), shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(4) Penalties

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a “HUBZone small business concern” for purposes of this section, shall be subject to—

- (A) section 1001 of title 18; and
- (B) sections 3729 through 3733 of title 31.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out the program established by this section \$10,000,000 for each of fiscal years 2004 through 2006.

(Pub. L. 85-536, §2[31], as added Pub. L. 105-135, title VI, §602(b)(1)(B), Dec. 2, 1997, 111 Stat. 2629; amended Pub. L. 106-554, §1(a)(9) [title V, §503(b), title VI, §612(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-695, 2763A-699; Pub. L. 108-447, div. K, title I, §§153, 154, Dec. 8, 2004, 118 Stat. 3458; Pub. L. 111-240, title I, §1347(b)(1), (c), Sept. 27, 2010, 124 Stat. 2547.)

CODIFICATION

In subsec. (b)(1)(A), “section 2101(1) of title 41” substituted for “section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(1)(B), “section 107 of title 41” substituted for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(4), “chapter 85 of title 41” substituted for “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section 2[31] of Pub. L. 85-536 was renumbered section 2[44] and is set out as a note under section 631 of this title.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-240, §1347(c)(1), struck out introductory provisions which read as follows: “Notwithstanding any other provision of law—”.

Subsec. (b)(2)(A). Pub. L. 111-240, §1347(c)(2)(A), inserted heading and substituted “A contracting” for “a contracting” in introductory provisions.

Subsec. (b)(2)(A)(iii). Pub. L. 111-240, §1347(c)(2)(B), substituted period for semicolon at end.

Subsec. (b)(2)(B). Pub. L. 111-240, §1347(c)(3), which directed amendment of subpar. (B) by inserting heading and substituting “A contract opportunity may” for “a contract opportunity shall”, and period for “; and”, was executed by inserting heading and substituting “A contract opportunity may” for “a contract opportunity may” and period for “; and”, to reflect the probable intent of Congress and the intervening amendment by Pub. L. 111-240, §1347(b)(1). See below.

Pub. L. 111-240, §1347(b)(1), substituted “may” for “shall”.

Subsec. (b)(2)(C). Pub. L. 111-240, §1347(c)(4), inserted heading and substituted “Not later” for “not later”.

2004—Subsec. (b)(3)(C), (D). Pub. L. 108-447, §153, which directed amendment of par. (3) by redesignating subpar. (C) as (D) and adding a new subpar. (C) at the end, was executed by making the redesignation as directed but by adding the new subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 108-447, §154, substituted “2004 through 2006” for “2001 through 2003”.

2000—Subsec. (b)(3). Pub. L. 106-554, §1(a)(9) [title VI, §612(a)], designated existing provisions as subpar. (A), inserted heading, substituted “Subject to subparagraph (B), in any” for “In any”, and added subpars. (B) and (C).

Subsec. (d). Pub. L. 106-554, §1(a)(9) [title V, §503(b)], added subsec. (d).

EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as an Effective Date of 1997 Amendment note under section 631 of this title.

INITIAL LIMITED APPLICABILITY

Pub. L. 105-135, title VI, §602(b)(2), Dec. 2, 1997, 111 Stat. 2631, as amended by Pub. L. 106-113, div. B, §1000(a)(5) [title II, §212], Nov. 29, 1999, 113 Stat. 1536, 1501A-295, provided that: “During the period beginning on the date of enactment of this Act [Dec. 2, 1997] and ending on September 30, 2000, section 31 of the Small Business Act [15 U.S.C. 657a] (as added by paragraph (1) of this subsection) shall apply only to procurements by—

- “(A) the Department of Defense;
- “(B) the Department of Agriculture;
- “(C) the Department of Health and Human Services;
- “(D) the Department of Transportation;
- “(E) the Department of Energy;
- “(F) the Department of Housing and Urban Development;
- “(G) the Environmental Protection Agency;
- “(H) the National Aeronautics and Space Administration;
- “(I) the General Services Administration;
- “(J) the Department of Veterans Affairs;
- “(K) the Department of Commerce;
- “(L) the Department of Justice; and
- “(M) the Department of State.”

REPORT

Pub. L. 105-135, title VI, §606, Dec. 2, 1997, 111 Stat. 2635, provided that: “Not later than March 1, 2002, the Administrator shall submit to the Committees a report on the implementation of the HUBZone program established under section 31 of the Small Business Act [15 U.S.C. 657a] (as added by section 602(b) of this title) and the degree to which the HUBZone program has resulted in increased employment opportunities and an increased level of investment in HUBZones (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))), as added by section 602(a) of this title.”

§ 657b. Veterans programs**(a) Office of Veterans Business Development**

There is established in the Administration an Office of Veterans Business Development, which