

month period, submit to the defense committees an unclassified report concerning—

“(i) the amount of funds obligated for contractual actions under the jurisdiction of the Secretary that were entered into during the six-month period with respect to which the report is submitted; and

“(ii) the amount of such funds obligated for undefinitized contractual actions; and

“(B) except with respect to the six-month period described in paragraph (4)(A), may not enter into any additional undefinitized contractual actions until the date on which the Secretary certifies to Congress that such limit is not exceeded by the cumulative amount of funds obligated for undefinitized contractual actions under the jurisdiction of the Secretary that are not definitized on or before such date and were entered into—

“(i) during the six-month period for which such limit was exceeded; or

“(ii) after the end of such six-month period.

“(4) This subsection applies to the following six-month periods:

“(A) The period beginning on October 1, 1986, and ending on March 31, 1987.

“(B) The period beginning on April 1, 1987, and ending on September 30, 1987.

“(C) The period beginning on October 1, 1987, and ending on March 31, 1988.

“(D) The period beginning on April 1, 1988, and ending on September 30, 1988.

“(E) The period beginning on October 1, 1988, and ending on March 31, 1989.

“(b) OVERSIGHT BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall—

“(1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and

“(2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

“(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the application of subsections (a) and (b) for urgent and compelling considerations relating to national security or public safety if the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives of such waiver before the end of the 30-day period beginning on the date that the waiver is made.

“(e) DEFINITION.—For purposes of this section, the term ‘undefinitized contractual action’ has the meaning given such term in section 2326(g) of title 10, United States Code (as added by subsection (d)(1)).”

§ 2327. Contracts: consideration of national security objectives

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—

Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary if in the best interests of the Government.

(B) The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) LIST OF FIRMS SUBJECT TO PROHIBITION.—(1) The Secretary of Defense shall develop and maintain a list of all firms and subsidiaries of firms that the Secretary has identified as being subject to the prohibition in subsection (b).

(2)(A) A person may request the Secretary to include on the list maintained under paragraph (1) any firm or subsidiary of a firm that the person believes to be owned or controlled by a foreign government described in subsection (b)(2). Upon receipt of such a request, the Secretary

shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do exist, the Secretary shall include the firm or subsidiary on the list.

(B) A firm or subsidiary of a firm included on the list may request the Secretary to remove such firm or subsidiary from the list on the basis that it has been erroneously included on the list or its ownership circumstances have significantly changed. Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do not exist, the Secretary shall remove the firm or subsidiary from the list.

(C) The Secretary shall establish procedures to carry out this paragraph.

(3) The head of an agency shall prohibit each firm or subsidiary of a firm awarded a contract by the agency from entering into a subcontract under that contract in an amount in excess of \$25,000 with a firm or subsidiary included on the list maintained under paragraph (1) unless there is a compelling reason to do so. In the case of any subcontract requiring consent by the head of an agency, the head of the agency shall not consent to the award of the subcontract to a firm or subsidiary included on such list unless there is a compelling reason for such approval.

(e) DISTRIBUTION OF LIST.—The Administrator of General Services shall ensure that the list developed and maintained under subsection (d) is made available to Federal agencies and the public in the same manner and to the same extent as the list of suspended and debarred contractors compiled pursuant to subpart 9.4 of the Federal Acquisition Regulation.

(f) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than \$100,000.

(2) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term “significant interest”.

(Added Pub. L. 99-500, §101(c) [title X, §951(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-164, and Pub. L. 99-591, §101(c) [title X, §951(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-164; Pub. L. 99-661, div. A, title IX, formerly title IV, §951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-180, div. A, title XII, §1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100-224, §5(b)(2), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 105-85, div. A, title VIII, §843, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 108-136, div. A, title X, §1031(a)(16), Nov. 24, 2003, 117 Stat. 1597.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

PRIOR PROVISIONS

A prior section 2327 was renumbered section 2347 of this title.

AMENDMENTS

2003—Subsec. (c)(1)(A). Pub. L. 108-136, §1031(a)(16)(A), substituted “if in the best interests of the Government” for “after the date on which such head of an agency submits to Congress a report on the contract”.

Subsec. (c)(1)(B). Pub. L. 108-136, §1031(a)(16)(B), substituted “The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records” for “A report under subparagraph (A)”.

Subsec. (c)(1)(C). Pub. L. 108-136, §1031(a)(16)(C), struck out subpar. (C) which read as follows: “After the head of an agency submits a report to Congress under subparagraph (A) with respect to a firm or a subsidiary, such head of an agency is not required to submit a report before entering into any subsequent contract with such firm or subsidiary unless the information required to be included in such report under subparagraph (B) has materially changed since the submission of the previous report.”

1997—Subsecs. (d) to (g). Pub. L. 105-85 added subsecs. (d) and (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

1987—Subsecs. (a), (b)(2). Pub. L. 100-224 substituted “50 U.S.C. App.” for “50 U.S.C.” in parenthetical after “Export Administration Act of 1979”.

Subsec. (d)(1). Pub. L. 100-180 inserted par. (1) designation.

EFFECTIVE DATE

Pub. L. 99-500, §101(c) [title X, §951(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-165, Pub. L. 99-591, §101(c) [title X, §951(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-165, and Pub. L. 99-661, div. A, title IX, formerly title IV, §951(c), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2327 of title 10, United States Code (as added by subsection (a)(1)), shall apply to contracts entered into by the Secretary of Defense after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

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.

REPORTS BY DEFENSE CONTRACTORS OF DEALINGS WITH TERRORIST COUNTRIES

Pub. L. 103-160, div. A, title VIII, §843, Nov. 30, 1993, 107 Stat. 1720, as amended by Pub. L. 103-355, title VIII, §8105(j), Oct. 13, 1994, 108 Stat. 3393, directed the Secretary of Defense to require any person with whom the Secretary proposed to enter into a contract for the provision of goods or services in an amount in excess of \$5,000,000, to report to the Secretary each commercial transaction which that person had conducted with the government of any terrorist country during the preceding three years and during the course of the contract, required the Secretary to prescribe regulations and to submit an annual report to Congress setting forth those commercial transactions with terrorist countries that had been included in the reports made during the preceding fiscal year, and provided that section 843 of Pub. L. 103-160 would expire on Sept. 30, 1996.

§ 2328. Release of technical data under Freedom of Information Act: recovery of costs

(a) IN GENERAL.—(1) The Secretary of Defense shall, if required to release technical data under section 552 of title 5 (relating to the Freedom of Information Act), release such technical data to