

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

the person requesting the release if the person pays all reasonable costs attributable to search, duplication, and review.

(2) The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

(b) CREDITING OF RECEIPTS.—An amount received under this section—

(1) shall be retained by the Department of Defense or the element of the Department of Defense receiving the amount; and

(2) shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs incurred in complying with requests for technical data were paid.

(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in an amount greater than the costs that would be required for such a release of information under section 552 of title 5 if—

(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99-500, §101(c) [title X, §954(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-172, and Pub. L. 99-591, §101(c) [title X, §954(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-172; Pub. L. 99-661, div. A, title IX, formerly title IV, §954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-26, §7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278.)

#### 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 2328 was renumbered section 2348 of this title.

#### AMENDMENTS

1987—Pub. L. 100-26, §7(a)(7)(B)(i), substituted “Release of technical data under Freedom of Information Act: recovery of costs” for “Release of technical data” in section catchline.

Subsec. (a)(1). Pub. L. 100-26, §7(a)(7)(A)(i)(I), substituted “such technical data to the person requesting

the” for “technical data to a person requesting such a”.

Pub. L. 100-26, §7(a)(7)(A)(i)(II), substituted “search, duplication, and review” for “search and duplication”. Subsec. (b). Pub. L. 100-26, §7(a)(7)(A)(ii), substituted “Crediting of receipts” for “Disposition of costs” in heading.

Subsec. (c)(3). Pub. L. 100-26, §7(a)(7)(A)(iii), substituted “section 552(a)(4)(A)(iii)” for “section 552(a)(4)(A)”.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-26, §12(d)(2), Apr. 21, 1987, 101 Stat. 289, provided that: “The amendment to section 2328 of such title made by section 7(a)(7)(A)(i)(II) shall take effect on the same date and in the same manner as provided in section 1804(b) of Public Law 99-570 [set out as an Effective Date of 1986 Amendment note under section 552 of Title 5, Government Organization and Employees] for the amendment made by section 1803 of that Public Law to section 552a of title 5, United States Code [probably means amendment by section 1803 of Pub. L. 99-570 to section 552(a) of Title 5].”

#### EFFECTIVE DATE

Pub. L. 99-500, §101(c) [title X, §954(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-173, Pub. L. 99-591, §101(c) [title X, §954(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-173, and Pub. L. 99-661, div. A, title IX, formerly title IV, §954(b), Nov. 14, 1986, 100 Stat. 3953, renumbered title IX by Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “The amendments made by this section [enacting this section] shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

#### [§ 2329. Repealed. Pub. L. 103-355, title I, § 1506(a), Oct. 13, 1994, 108 Stat. 3298]

Section, added Pub. L. 100-180, div. A, title VIII, §810(a)(1), Dec. 4, 1987, 101 Stat. 1130; amended Pub. L. 100-456, div. A, title XII, §1233(j), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103-160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to contract terms and conditions for production special tooling and production special test equipment.

#### § 2330. Procurement of contract services: management structure

(a) REQUIREMENT FOR MANAGEMENT STRUCTURE.—The Secretary of Defense shall establish and implement a management structure for the procurement of contract services for the Department of Defense. The management structure shall provide, at a minimum, for the following:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall—

(A) develop and maintain (in consultation with the service acquisition executives) policies, procedures, and best practices guidelines addressing the procurement of contract services, including policies, procedures, and best practices guidelines for—

- (i) acquisition planning;
- (ii) solicitation and contract award;
- (iii) requirements development and management;
- (iv) contract tracking and oversight;
- (v) performance evaluation; and
- (vi) risk management;

(B) work with the service acquisition executives and other appropriate officials of the Department of Defense—

- (i) to identify the critical skills and competencies needed to carry out the procure-