

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

§ 637. Additional powers

(a) Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates; Indian tribes

(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit wait-

ing for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 636(j)(15) of this title, if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed \$5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

(2) Notwithstanding subsections (a), (b), and (e) of section 3131 of title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any sub-

contract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958 [15 U.S.C. 692 et seq.]; and

(D) the small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B)(i) For purposes of paragraph (1) a “fair market price” shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Adminis-

tration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency’s estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency’s estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4)(A) For purposes of this section, the term “socially and economically disadvantaged small business concern” means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6)(A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree

of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

(B) Each Program Participant shall annually submit to the Administration—

(i) a personal financial statement for each disadvantaged owner;

(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 636(j)(10)(G) of this title subject to the right to a hearing as provided for under paragraph (9).

(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

(I) initiate a proceeding to terminate the Program Participant pursuant to section 636(j)(10)(F) of this title, subject to the right to a hearing under paragraph (9); or

(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5.

(B) The actions referred to in subparagraph (A) are—

(i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);

(ii) a termination pursuant to section 636(j)(10)(F) of this title;

(iii) a graduation pursuant to section 636(j)(10)(G) of this title; and

(iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is

found to be arbitrary, capricious, or contrary to law.

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

- (i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;
- (ii) is untimely filed;
- (iii) is not filed in accordance with the rules of procedure governing such proceedings; or
- (iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approx-

imate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

- (i) The approximate number of individual contract opportunities (and the number of opportunities within a class).
- (ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.
- (iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.
- (iv) The activity responsible for the award and administration of the contract.

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

- (i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 644(k) of this title for such agency; and
- (ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

(F) Such forecasts shall be available to small business concerns.

(13) For purposes of this subsection, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]) which—

- (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or
- (B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

(14) LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees to satisfy the requirements of section 657s of this title.

(15) For purposes of this subsection, the term "Native Hawaiian Organization" means any community service organization serving Native Hawaiians in the State of Hawaii which—

- (A) is a nonprofit corporation that has filed articles of incorporation with the director (or

the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant's business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 636(j)(10)(I) of this title.

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection, subsection (m), section 644(a) of this title, section 657a of this title, or section 657f of this title, solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to section 35(a)¹ of title 41 (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 636(j)(13)(C) of this title; and

(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(C) LIMITATION.—This paragraph shall not apply to a contract that has as its principal purpose the acquisition of services or construction.

(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 636(j)(10) of this title, or section 636(a)(20) of this title.

(B) The activities and transactions prohibited by subparagraph (A) include—

(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

(I) regional administrators;

(II) district directors;

(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 636(j)(10) of this title; and

(V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed² by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812).

(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 636(j) of this title, shall not, with respect to any such action, exer-

¹ See References in Text note below.

² So in original. Probably should be "proscribed".

cise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited³ or directed.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(20)(A) Small business concerns participating in the Program under section 636(j)(10) of this title and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered "good cause" for the initiation of a termination proceeding pursuant to section 636(j)(10)(F) of this title.

(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the Capital Ownership Development Program;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(III) the disadvantaged owners will maintain control of daily business operations.

(C) The Administrator may waive the requirements of subparagraph (A) if—

(i) in the case of subparagraph (B) (i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and

(ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.

(D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

(E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

(b) Procurement and property disposal powers; determination of small-business concerns

It shall also be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1)(A) to provide—

(i) technical, managerial, and informational aids to small business concerns—

(I) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

(II) by cooperating and advising with—

³So in original. Probably should be "solicited".

(aa) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and
(bb) other Federal and State agencies;

(III) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

(IV) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate; and

(ii) through cooperation with a profit-making concern (referred to in this paragraph as a "cosponsor"), training, information, and education to small business concerns, except that the Administration shall—

(I) take such actions as it determines to be appropriate to ensure that—

(aa) the Administration receives appropriate recognition and publicity;

(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

(dd) utilization of any one cosponsor in a marketing area is minimized; and

(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

(bb) the terms and conditions of the cooperation shall be specified;

(cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

(ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and

(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and

to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of subparagraph (A). To facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received.

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic services:

(i) such volunteers, while carrying out activities under this paragraph shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28; and for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee;

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this chapter, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to this paragraph shall be subject to any tax or charge or be

treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this paragraph, to which volunteers have been made parties.

(G) In carrying out its functions under this chapter and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988 [15 U.S.C. 7101 et seq.], the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to consult and cooperate with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small-business concerns" for the purpose of effectuating the provisions of this chapter. To carry out this purpose the Administrator, when requested to do so, shall issue in re-

sponse to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this chapter. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern". Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

(7)(A) To certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a)⁴ of title 41, he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

⁴See References in Text note below.

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this chapter;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this chapter;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this chapter and of the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.]; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5 to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meeting of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 636(b)(3) of this title, to local public agencies (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;

(15) to disseminate, without regard to the provisions of section 3204 of title 39 data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38), veterans, and members of a reserve component of the Armed Forces.

(c) [Reserved]

(d) Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed the simplified acquisition threshold;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

“(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled

by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

“(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor’s compliance with this clause.

“(C) As used in this contract, the term ‘small business concern’ shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term ‘small business concern owned and controlled by socially and economically disadvantaged individuals’ shall mean a small business concern—

“(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

“(ii) whose management and daily business operations are controlled by one or more of such individuals.

“The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

“(D) The term ‘small business concern owned and controlled by women’ shall mean a small business concern—

“(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

“(ii) whose management and daily business operations are controlled by one or more women.

“(E) The term ‘small business concern owned and controlled by veterans’ shall mean a small business concern—

“(i) which is at least 51 per centum owned by one or more eligible veterans; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more veterans; and

“(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

“(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concern owned and controlled by veterans, small business concern owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

“(G) In this contract, the term ‘qualified HUBZone small business concern’ has the meaning given that term in section 3(p) of the Small Business Act.”

(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed \$1,000,000, in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

(ii) is required to include the clause stated in paragraph (3),

(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000 in the case of all other contracts, and

(iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority deter-

mines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns, qualified HUBZone small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of the contract.

(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection and for small business concerns owned and controlled by women, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages and the amount thereof. The final decision of a contracting officer regarding the contractor's obligation to pay such damages, or the amounts thereof, shall be subject to chapter 71 of title 41.

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded pursuant to the formal advertising method of procurement,

(ii) is required to contain the clause stated in paragraph (3) of this subsection,

(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, and

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all sub-

contractors (except small business concerns) who receive subcontracts in excess of \$1,000,000 in the case of a contract for the construction of any public facility, or in excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5), and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—

(i) review and approve subcontracting plans submitted by their subcontractors;

(ii) monitor subcontractor compliance with their approved subcontracting plans;

(iii) ensure that subcontracting reports are submitted by their subcontractors when required;

(iv) acknowledge receipt of their subcontractors' reports;

(v) compare the performance of their subcontractors to subcontracting plans and goals; and

(vi) discuss performance with subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans;

(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan;

(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns;

(G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the plan established in accordance with subparagraph (D) of this paragraph, including—

(i) the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and

(ii) efforts to identify and award subcontracts to such small business concerns; and

(H) a representation that the offeror or bidder will—

(i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and

(ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).

(7) The head of the contracting agency shall ensure that—

(A) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

(B) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

(8) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

(9) MATERIAL BREACH.—The failure of any contractor or subcontractor to comply in good faith with—

(A) the clause contained in paragraph (3) of this subsection,

(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract, or

(C) assurances provided under paragraph (6)(E),

shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor.

(10) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

(11) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to

submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

(C) evaluate compliance with subcontracting plans as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

(12) For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protege firm under the pilot Mentor-Protege Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2301 note [2302 note]) shall be granted credit for such assistance in accordance with subsection (g) of such section.

(13) PAYMENT OF SUBCONTRACTORS.—

(A) DEFINITION.—In this paragraph, the term “covered contract” means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

(B) NOTICE.—

(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

(C) PERFORMANCE.—A contracting officer for a covered contract shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (E).

(E) Regulations.—Not later than 1 year after September 27, 2010, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41 shall amend the Federal Acquisition Regulation issued under section 1303(a) of title 41 to—

(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

(iii) require the identity of a contractor described in clause (i) to be incorporated in,

and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.

(14) An offeror for a covered contract that intends to identify a small business concern as a potential subcontractor in a bid or proposal for the contract, or in a plan submitted pursuant to this subsection in connection with the contract, shall notify the small business concern prior to making such identification.

(15) The Administrator shall establish a reporting mechanism that allows a subcontractor or potential subcontractor to report fraudulent activity or bad faith by a contractor with respect to a subcontracting plan submitted pursuant to this subsection.

(16) CREDIT FOR CERTAIN SUBCONTRACTORS.—

(A) For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

(i) if the subcontracting goals pertain only to a single contract with the executive agency, the prime contractor shall receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the dollar value of work awarded to such small business concerns; and

(ii) if the subcontracting goals pertain to more than one contract with one or more executive agencies, or to one contract with more than one executive agency, the prime contractor may only count first tier subcontractors that are small business concerns.

(B) Nothing in this paragraph shall abrogate the responsibility of a prime contractor to make a good-faith effort to achieve the first tier small business subcontracting goals negotiated under paragraph (6)(A), or the requirement for subcontractors with further opportunities for subcontracting to make a good-faith effort to achieve the goals established under paragraph (6)(D).

(17) PILOT PROGRAM PROVIDING PAST PERFORMANCE RATINGS FOR OTHER SMALL BUSINESS SUBCONTRACTORS.—

(A) ESTABLISHMENT.—The Administrator shall establish a pilot program for a small business concern without a past performance rating as a prime contractor performing as a first tier subcontractor for a covered contract (as defined in paragraph 13(A))⁵ to request a past performance rating in the system used by the Federal Government to monitor or record contractor past performance.

(B) APPLICATION.—A small business concern described in subparagraph (A) shall submit an application to the appropriate official for a past performance rating no later than 270 days after the small business concern completed the work for which it seeks a past performance rating or 180 days after the prime contractor completes work on the covered contract, whichever is earlier. Such application

⁵ So in original. Probably should be “(13(A))”.

shall include written evidence of the past performance factors for which the small business concern seeks a rating and a suggested rating.

(C) DETERMINATION.—The appropriate official shall submit the application from the small business concern to the Office of Small and Disadvantaged Business Utilization for the covered contract and to the prime contractor for review. The Office of Small and Disadvantaged Business Utilization and the prime contractor shall, not later than 30 days after receipt of the application, submit to the appropriate official a response regarding the application.

(i) AGREEMENT ON RATING.—If the Office of Small and Disadvantaged Business Utilization and the prime contractor agree on a past performance rating, or if either the Office of Small and Disadvantaged Business Utilization or the prime contractor fail to respond and the responding person agrees with the rating of the applicant small business concern, the appropriate official shall enter the agreed-upon past performance rating in the system described in subparagraph (A).

(ii) DISAGREEMENT ON RATING.—If the Office of Small and Disadvantaged Business Utilization and the prime contractor fail to respond within 30 days or if they disagree about the rating, or if either the Office of Small and Disadvantaged Business Utilization or the prime contractor fail to respond and the responding person disagrees with the rating of the applicant small business concern, the Office of Small and Disadvantaged Business Utilization or the prime contractor shall submit a notice contesting the application to the appropriate official. The appropriate official shall follow the requirements of subparagraph (D).

(D) PROCEDURE FOR RATING.—Not later than 14 calendar days after receipt of a notice under subparagraph (C)(ii), the appropriate official shall submit such notice to the applicant small business concern. Such concern may submit comments, rebuttals, or additional information relating to the past performance of such concern not later than 14⁶ calendar days after receipt of such notice. The appropriate official shall enter into the system described in subparagraph (A) a rating that is neither favorable nor unfavorable along with the initial application from such concern, any responses of the Office of Small and Disadvantaged Business Utilization and the prime contractor, and any additional information provided by such concern. A copy of the information submitted shall be provided to the contracting officer (or designee of such officer) for the covered contract.

(E) USE OF INFORMATION.—A small business subcontractor may use a past performance rating given under this paragraph to establish its past performance for a prime contract.

(F) DURATION.—The pilot program established under this paragraph shall terminate 3 years after the date on which the first appli-

cant small business concern receives a past performance rating for performance as a first tier subcontractor.

(G) REPORT.—The Comptroller General of the United States shall begin an assessment of the pilot program 1 year after the establishment of such program. Not later than 6 months after beginning such assessment, the Comptroller General shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, which shall include—

(i) the number of small business concerns that have received past performance ratings under the pilot program;

(ii) the number of applications in which the contracting officer (or designee) or the prime contractor contested the application of the small business concern;

(iii) any suggestions or recommendations the Comptroller General or the small business concerns participating in the program have to address disputes between the small business concern, the contracting officer (or designee), and the prime contractor on past performance ratings;

(iv) the number of small business concerns awarded prime contracts after receiving a past performance rating under this pilot program; and

(v) any suggestions or recommendation the Comptroller General has to improve the operation of the pilot program.

(H) APPROPRIATE OFFICIAL DEFINED.—In this paragraph, the term “appropriate official” means—

(i) a commercial market representative;

(ii) another individual designated by the senior official appointed by the Administrator with responsibilities under sections 637, 644, 657a, and 657f of this title; or

(iii) the Office of Small and Disadvantaged Business Utilization of a Federal agency, if the head of the Federal agency and the Administrator agree.

(e) Covered executive agency activities; procurement notice; publication; time limitations

(1) Except as provided in subsection (g)—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(ii) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall publish a notice described in subsection (f);

(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and

(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000;

⁶ So in original. Probably should be preceded by “than”.

(C) an executive agency awarding a contract for property or services for a price exceeding \$100,000, or placing an order referred to in clause (A)(ii) exceeding \$100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 1708(d) of title 41; or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Contents of notice

Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification require-

ment in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(g) Exempted, etc., activities of executive agency

(1) A notice is not required under subsection (e)(1) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically.

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of this title;

(D) the procurement is made against an order placed under a requirements contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of title 41 or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10.

(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(h) Award of contracts; procedures other than competitive ones; exceptions

(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

(i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the advocate for competition for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3) of title 41⁷ (without further delegation); and

(B) all other requirements applicable to the use of such procedures under division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 or chapter 137 of title 10, as appropriate, have been satisfied.

(2) The same exceptions as are provided in paragraphs (3) and (4) of section 3304(e) of title 41 or section 2304(f)(2) of title 10 shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 3304(e)(1) of title 41 or section 2304(f)(1) of title 10, as appropriate.

(i) Availability; complete solicitation package; fees

An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

⁷ See References in Text note below.

(j) “Executive agency” defined

For purposes of this section, the term “executive agency” has the meaning provided such term in section 133 of title 41.

(k) Notices of subcontracting opportunities

(1) In general

Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) by—

(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of \$10,000.

(2) Content of notice

The notice of a subcontracting opportunity shall include—

(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

(B) the due date for receipt of offers.

(l) Management assistance for small businesses affected by military operations

The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict (as defined in section 636(n)(1) of this title).

(m) Procurement program for women-owned small business concerns

(1) Definitions

In this subsection, the following definitions apply:

(A) Contracting officer

The term “contracting officer” has the meaning given such term in section 2101(1) of title 41.

(B) Small business concern owned and controlled by women

The term “small business concern owned and controlled by women” has the meaning given such term in section 632(n) of this title, except that ownership shall be determined without regard to any community property law.

(2) Authority to restrict competition

In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

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

(E) each of the concerns is certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the Administrator as a small business concern owned and controlled by women.

(3) Waiver

With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

(4) Identification of industries

The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

(5) Enforcement; penalties

(A) Verification of eligibility

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

(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (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 paragraph (2)(E)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(E).

(B) Examinations

The procedures established under subparagraph (A) 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 paragraph (2)(E).

(C) 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 small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

(i) section 1001 of title 18; and

(ii) sections 3729 through 3733 of title 31.

(6) Provision of data

Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

(7) Authority for sole source contracts for economically disadvantaged small business concerns owned and controlled by women

A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women described in paragraph (2)(A) and certified under paragraph (2)(E) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses described in paragraph (2)(A) will submit offers;

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

(i) \$6,500,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

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

(8) Authority for sole source contracts for small business concerns owned and controlled by women in substantially underrepresented industries

A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women certified under paragraph (2)(E) that is in an industry in which small business concerns owned and controlled by women are substantially underrepresented (as determined by the Administrator under paragraph (3)) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses in an industry that has received a waiver under paragraph (3) will submit offers;

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

(i) \$6,500,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(ii) \$4,000,000, in the case of any other contract opportunity; and

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

(n) Business grants and cooperative agreements

(1) In general

In accordance with this subsection, the Administrator may make grants to and enter

into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

(2) Matching requirement

Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

(Pub. L. 85-536, §2[8], July 18, 1958, 72 Stat. 389; Pub. L. 87-305, §§7, 8, Sept. 26, 1961, 75 Stat. 667, 668; Pub. L. 88-560, title III, §305(c), Sept. 2, 1964, 78 Stat. 786; Pub. L. 89-754, title X, §1017, Nov. 3, 1966, 80 Stat. 1295; Pub. L. 90-104, title I, §§105-107, Oct. 11, 1967, 81 Stat. 268, 269; Pub. L. 91-375, §6(g), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-89, title V, §501, Aug. 4, 1977, 91 Stat. 561; Pub. L. 95-507, title II, §§202(a), 211, Oct. 24, 1978, 92 Stat. 1761, 1767; Pub. L. 95-510, §101, Oct. 24, 1978, 92 Stat. 1780; Pub. L. 96-302, title I, §118(b), July 2, 1980, 94 Stat. 840; Pub. L. 96-481, title I, §§101, 105, Oct. 21, 1980, 94 Stat. 2321, 2322; Pub. L. 98-47, §§1(a), 2, 3, July 13, 1983, 97 Stat. 243; Pub. L. 98-72, §1(a), Aug. 11, 1983, 97 Stat. 403; Pub. L. 98-362, §5(a), July 16, 1984, 98 Stat. 433; Pub. L. 98-577, title IV, §§401, 402, 404(a), Oct. 30, 1984, 98 Stat. 3079, 3082; Pub. L. 99-272, title XVIII, §18015(b)-(d), Apr. 7, 1986, 100 Stat. 370, 371; Pub. L. 99-500, §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-147, 1783-151, 1783-152, and Pub. L. 99-591, §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-147, 3341-151, 3341-152; Pub. L. 99-567, §§1(a), 2, 3, Oct. 27, 1986, 100 Stat. 3188; Pub. L. 99-661, div. A, title IX, formerly title IV, §§921(b)(2), (c)(1), 922(a), (d)(1), Nov. 14, 1986, 100 Stat. 3927, 3930, 3932, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §10(b)(3), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100-533, title II, §§201, 202, Oct. 25, 1988, 102 Stat. 2690, 2692; Pub. L. 100-590, title I, §§127(a), (b), 131(b), Nov. 3, 1988, 102 Stat. 3001, 3003, 3004; Pub. L. 100-656, title II, §§201(b), 207(a), (c), 209, title III, §§303(b)-(e), (g), (h), 304(a), title IV, §§402-404, 407, 409, title V, §501, Nov. 15, 1988, 102 Stat. 3858, 3861, 3863, 3869, 3870, 3872-3874, 3876, 3878, 3880; Pub. L. 101-37, §§6(b), (d), 7(b), 10(c), (e), 12-14, 16, 17, June 15, 1989, 103 Stat. 72-74; Pub. L. 101-162, title V, (3), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101-510, div. A, title VIII, §806(e)(2), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101-574, title II, §§204(b), 207, 210, 244, Nov. 15, 1990, 104 Stat. 2819-2821, 2827; Pub. L. 102-190, div. A, title VIII, §814(c), Dec. 5, 1991, 105

Stat. 1425; Pub. L. 102-191, §3, Dec. 5, 1991, 105 Stat. 1591; Pub. L. 102-366, title II, §232(a), Sept. 4, 1992, 106 Stat. 1001; Pub. L. 102-564, title III, §§303(a), 304, Oct. 28, 1992, 106 Stat. 4262; Pub. L. 103-355, title I, §1055(b)(2), title IV, §§4202(d), 4404(b), title VII, §7106(b), Oct. 13, 1994, 108 Stat. 3265, 3345, 3349, 3375; Pub. L. 103-403, title IV, §§401(a)(1), 407, 415, Oct. 22, 1994, 108 Stat. 4190, 4192, 4198; Pub. L. 104-106, div. D, title XLIII, §4321(c)(1), (2), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105-85, div. A, title VIII, §850(e)(1), Nov. 18, 1997, 111 Stat. 1848; Pub. L. 105-135, title IV, §§415, 416(a), (c), title VI, §603(a), title VII, §708, Dec. 2, 1997, 111 Stat. 2619, 2620, 2631, 2637; Pub. L. 106-50, title III, §303(a), title V, §501, Aug. 17, 1999, 113 Stat. 243, 247; Pub. L. 106-398, §1 [div. A], title VIII, §810(c), Oct. 30, 2000, 114 Stat. 1654, 1654A-209; Pub. L. 106-554, §1(a)(8) [§2], §1(a)(9) [title V, §504(a), title VI, §615(b), title VIII, §§803, 807, 809, 811], Dec. 21, 2000, 114 Stat. 2763, 2763A-666, 2763A-695, 2763A-701, 2763A-702, 2763A-706, 2763A-708; Pub. L. 108-447, div. K, title I, §§132(b), (c), 141(a), 144, Dec. 8, 2004, 118 Stat. 3453, 3455; Pub. L. 111-240, title I, §§1322, 1334, Sept. 27, 2010, 124 Stat. 2540, 2542; Pub. L. 112-239, div. A, title XVI, §§1653(a), 1654, 1696(b)(2), 1697(a), Jan. 2, 2013, 126 Stat. 2081, 2083, 2091; Pub. L. 113-66, div. A, title XVI, §1614(a), Dec. 26, 2013, 127 Stat. 948; Pub. L. 113-291, div. A, title VIII, §825(a), Dec. 19, 2014, 128 Stat. 3437; Pub. L. 114-92, div. A, title VIII, §864(a), Nov. 25, 2015, 129 Stat. 927; Pub. L. 114-328, div. A, title XVIII, §§1821(a), 1822, 1832(c), Dec. 23, 2016, 130 Stat. 2654, 2660.)

AMENDMENT OF SUBSECTION (d)(3)

Pub. L. 114-328, div. A, title XVIII, §1832(c), (e), Dec. 23, 2016, 130 Stat. 2660, provided that, effective on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue implementing regulations, subsection (d)(3) of this section is amended by adding at the end the following new subparagraph:

“(H) In this contract, the term ‘small business concern owned and controlled by service-disabled veterans’ has the meaning given that term in section 632(q) of this title.”.

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsecs. (a)(2)(C), (21)(D), and (b)(13), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. Title IV of the Small Business Investment Act of 1958 is classified generally to subchapter IV-A (§692 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (a)(13), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 35(a) of title 41, referred to in subsecs. (a)(17)(B)(iii) and (b)(7)(B), was struck out and former section 35(b) of Title 41, Public Contracts, redesignated section 35(a) by Pub. L. 103-355, title VII, §7201(1), Oct. 13, 1994, 108 Stat. 3378. Section 35 of title 41 was subsequently repealed and restated as sections 6501(1) and 6502 of Title 41, Public Contracts, by Pub. L. 111-350, §3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Section 6510 of Title 41 now provides for determination of “regular

dealer” by Secretary of Labor. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The Program Fraud Civil Remedies Act of 1986, referred to in subsec. (a)(18)(C)(iv), is subtitle B of title VI of Pub. L. 99-509, Oct. 21, 1986, 100 Stat. 1934, which is classified generally to chapter 38 (§3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Women’s Business Ownership Act of 1988, referred to in subsec. (b)(1)(G), is Pub. L. 100-533, Oct. 25, 1988, 102 Stat. 2689. Title IV of the Act is classified generally to chapter 97 (§7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 631 of this title and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (b)(14), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

Sections 3 and 8 of the Small Business Act, referred to in subsec. (d)(3)(C), (E)(ii), (G), are classified to sections 632 and 637, respectively, of this title.

The General Schedule, referred to in subsec. (h)(1)(A)(ii), is set out under section 5332 of Title 5.

Section 414 of title 41, referred to in subsec. (h)(1)(A)(iii), was amended generally by Pub. L. 108-136, div. A, title XIV, §1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, the substance of par. (3) was restated in subsec. (c)(1) of section 414. Section 414(c) of title 41 was subsequently repealed and restated as section 1702(c) of Title 41, Public Contracts, by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

In subsec. (a)(2), “subsections (a), (b), and (e) of section 3131 of title 40” substituted for “subsections (a) and (c) of the first section of the Act entitled ‘An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,’ approved August 24, 1935 (49 Stat. 793)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (d)(4)(F)(ii), “chapter 71 of title 41” substituted for “the Contract Disputes Act of 1978 (41 U.S.C. 601-613)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (d)(13)(E), “section 1302(a) of title 41” substituted for “section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a))” and “section 1303(a) of title 41” substituted for “section 25 of such Act” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (e)(2)(A)(i), “section 1708(d) of title 41” substituted for “section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (g)(2), “paragraph (2), (3), (4), (5), or (7) of section 3304(a) of title 41” substituted for “paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (h)(1)(B), “division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of

title 41” substituted for “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (h)(2), “paragraphs (3) and (4) of section 3304(e) of title 41” substituted for “section 303(f)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(2))” and “section 3304(e)(1) of title 41 or section 2304(f)(1) of title 10” substituted for “section 303(f)(1) of such Act or section 2304(f)(1) of such title” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (j), “section 133 of title 41” substituted for “section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (m)(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.

PRIOR PROVISIONS

Prior similar provisions were contained in sections 207(b)(2), (b)(4), 208, 210, 212 and 216 of act July 30, 1953, ch. 282, title II, 67 Stat. 235-239, as amended by acts Aug. 9, 1955, ch. 628, §§2, 5, 7, 69 Stat. 547, 550; Feb. 2, 1956, ch. 29, §§2, 3, 70 Stat. 10, which were previously classified to this section and sections 636, 639, 641, and 645 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2016—Subsec. (d)(3)(H). Pub. L. 114-328, §1832(c), added subpar. (H).

Subsec. (d)(9). Pub. L. 114-328, §1821(a), inserted par. heading, added subpar. (C), and realigned margins.

Subsec. (d)(17). Pub. L. 114-328, §1822, added par. (17).

2015—Subsec. (a)(17)(A). Pub. L. 114-92, §864(a)(1), substituted “any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection, subsection (m), section 644(a) of this title, section 657a of this title, or section 657f of this title,” for “any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 644 of this title”.

Subsec. (a)(17)(C). Pub. L. 114-92, §864(a)(2), added subpar. (C).

2014—Subsec. (m)(2)(E). Pub. L. 113-291, §825(a)(1), amended subpar. (E) generally. Prior to amendment, text read as follows: “each of the concerns—

“(i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

“(ii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation, in accordance with standards established by the Administration, to support such certification.”

Subsec. (m)(5). Pub. L. 113-291, §825(a)(2), substituted “paragraph (2)(E)” for “paragraph (2)(F)” wherever appearing.

Subsec. (m)(7), (8). Pub. L. 113-291, §825(a)(3), added pars. (7) and (8).

2013—Subsec. (a)(14). Pub. L. 112-239, §1696(b)(2), added par. (14) and struck out former par. (14) which read as follows:

“(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

“(i) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

“(ii) in the case of a contract for procurement of supplies (other than procurement from a regular

dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

“(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 644(o) of this title.

“(C) The Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 644(o) of this title for the same industry category.”

Subsec. (d)(6)(D). Pub. L. 113-66, §1614(a)(1), substituted “, and assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—” for semicolon at end and added cls. (i) to (vi).

Subsec. (d)(6)(G), (H). Pub. L. 113-66, §1614(a)(2), (3), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (d)(7), (8). Pub. L. 112-239, §1653(a)(1), (2), added par. (7) and redesignated former par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (d)(9). Pub. L. 112-239, §1653(a)(3), substituted “shall be a material breach of such contract or subcontract and may be considered in any past performance evaluation of the contractor” for “shall be a material breach of such contract or subcontract” in concluding provisions.

Pub. L. 112-239, §1653(a)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (d)(10). Pub. L. 112-239, §1653(a)(1), redesignated par. (9) as (10). Former par. (10) redesignated (11).

Subsec. (d)(11). Pub. L. 112-239, §1653(a)(1), redesignated par. (10) as (11). Former par. (11) redesignated (12).

Subsec. (d)(11)(C). Pub. L. 112-239, §1653(a)(4), substituted “as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors” for “, either on a contract-by-contract basis, or in the case contractors”.

Subsec. (d)(12), (13). Pub. L. 112-239, §1653(a)(1), redesignated pars. (11) and (12) as (12) and (13), respectively.

Subsec. (d)(14), (15). Pub. L. 112-239, §1653(a)(5), added pars. (14) and (15).

Subsec. (d)(16). Pub. L. 113-66, §1614(a)(4), added par. (16).

Subsec. (k)(1). Pub. L. 112-239, §1654, substituted “on the appropriate Federal Web site (as determined by the Administrator)” for “in the Commerce Business Daily”.

Subsec. (m)(2)(D) to (F). Pub. L. 112-239, §1697(a), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: “the anticipated award price of the contract (including options) does not exceed—

“(i) \$5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

“(ii) \$3,000,000, in the case of all other contracts;”.

2010—Subsec. (d)(6)(G). Pub. L. 111-240, §1322, added subpar. (G).

Subsec. (d)(12). Pub. L. 111-240, §1334, added par. (12).

2004—Subsec. (b)(1)(A). Pub. L. 108-447, §132(b), (c), temporarily struck out cl. (ii), substituted “to provide technical, managerial, and informational aids to small business concerns—” for “to provide—

“(i) technical, managerial, and informational aids to small business concerns—”.

redesignated subcls. (I) to (IV) of former cl. (i) as cls. (i) to (iv), respectively, substituted a period for “; and” at end of cl. (iv), and redesignated items (aa) and (bb) of former subcl. (II) as subcls. (I) and (II), respectively.

Subsec. (b)(1)(B). Pub. L. 108-447, §141(a), substituted “purposes of subparagraph (A). To facilitate” for “purposes of subparagraph (A); and to facilitate”, “shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any” for “may maintain at its headquarters and pay the expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided*, That any”, and “and the management of the contributions received.” for period at end.

Subsec. (b)(17). Pub. L. 108-447, §144, inserted before period at end “, veterans, and members of a reserve component of the Armed Forces”.

2000—Subsec. (a)(15)(A). Pub. L. 106-554, §1(a)(9) [title VIII, §807], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “is a not-for-profit organization chartered by the State of Hawaii.”

Subsec. (b)(1)(A). Pub. L. 106-554, §1(a)(9) [title V, §504(a)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, computer security, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, including information on the benefits and risks of franchising, by disseminating such information, and by such other activities as are deemed appropriate by the Administration; and In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official.”

Subsec. (b)(1)(B). Pub. L. 106-554, §1(a)(9) [title VIII, §809], inserted at end “Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation.”

Subsec. (d)(1). Pub. L. 106-554, §1(a)(9) [title VIII, §803(1)], inserted “small business concerns owned and controlled by veterans,” after “small business concerns,” the first place appearing in the first and second sentences.

Subsec. (d)(3)(A). Pub. L. 106-554, §1(a)(9) [title VIII, §803(2)(A)], inserted “small business concerns owned and controlled by service-disabled veterans,” after “small business concerns owned and controlled by veterans,” in two places.

Subsec. (d)(3)(F). Pub. L. 106-554, §1(a)(9) [title VIII, §803(2)(B)], inserted “small business concern owned and controlled by service-disabled veterans,” after “small business concern owned and controlled by veterans,”.

Subsec. (d)(4)(D). Pub. L. 106-554, §1(a)(9) [title VIII, §803(3)], inserted “small business concerns owned and controlled by service-disabled veterans,” after “small business concerns owned and controlled by veterans,”.

Pub. L. 106-554, §1(a)(9) [title VI, §615(b)], inserted “qualified HUBZone small business concerns,” after “small business concerns.”

Subsec. (d)(4)(E), (6)(A), (C), (F), (10)(B). Pub. L. 106-554, §1(a)(9) [title VIII, §803(3)], inserted “small business concerns owned and controlled by service-disabled veterans,” after “small business concerns owned and controlled by veterans.”

Subsec. (e)(1)(A). Pub. L. 106-398, §1 [[div. A], title VIII, §810(c)(1)], substituted “publish” for “furnish for publication by the Secretary of Commerce” in concluding provisions.

Subsec. (e)(2). Pub. L. 106-398, §1 [[div. A], title VIII, §810(c)(2)], added par. (2) and struck out former par. (2) which read as follows: “The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).”

Subsec. (e)(3). Pub. L. 106-398, §1 [[div. A], title VIII, §810(c)(3)], substituted “publish a notice of solicitation” for “furnish a notice to the Secretary of Commerce” in introductory provisions and struck out “by the Secretary of Commerce” after “notice is published” in subpar. (A).

Subsec. (m). Pub. L. 106-554, §1(a)(9) [title VIII, §811], added subsec. (m).

Subsec. (n). Pub. L. 106-554, §1(a)(8) [§2], added subsec. (n).

1999—Subsec. (d)(1). Pub. L. 106-50, §501(a), inserted “small business concerns owned and controlled by service-disabled veterans,” after “small business concerns,” in two places.

Subsec. (d)(3)(A). Pub. L. 106-50, §501(b)(1), inserted “small business concerns owned and controlled by veterans,” after “small business concerns,” in two places.

Subsec. (d)(3)(E). Pub. L. 106-50, §501(b)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (d)(3)(F). Pub. L. 106-50, §501(b)(2), (3), redesignated subpar. (E) as (F) and inserted “small business concern owned and controlled by veterans,” after “small business concern,”. Former subpar. (F) redesignated (G).

Subsec. (d)(3)(G). Pub. L. 106-50, §501(b)(2), redesignated subpar. (F) as (G).

Subsec. (d)(4)(D), (E), (6)(A), (C), (F), (10)(B). Pub. L. 106-50, §501(c), inserted “small business concerns owned and controlled by veterans,” after “small business concerns,” the first place appearing.

Subsec. (l). Pub. L. 106-50, §303(a), added subsec. (l).

1997—Subsec. (b)(16). Pub. L. 105-135, §708(3), struck out the par. (16) added by Pub. L. 100-590, §127(b). See 1988 Amendment note below.

Subsec. (b)(17). Pub. L. 105-135, §708, added par. (17).

Subsec. (d)(1). Pub. L. 105-135, §603(a)(1)(B), inserted “qualified HUBZone small business concerns,” after “small business concerns,” in second sentence.

Pub. L. 105-135, §603(a)(1)(A), which directed substitution of “, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals” for “, small business concerns owned and controlled by socially and economically disadvantaged individuals” in first sentence, was executed by making the substitution for “, small business concerns owned and controlled by socially and economically disadvantaged individuals” to reflect the probable intent of Congress and the amendment by Pub. L. 104-106, §4321(c)(1)(A). See 1996 Amendment note below.

Subsec. (d)(3)(A). Pub. L. 105-135, §603(a)(2)(A), inserted “qualified HUBZone small business concerns,” after “small business concerns,” in two places.

Subsec. (d)(3)(F). Pub. L. 105-135, §603(a)(2)(B), added subpar. (F).

Subsec. (d)(4)(E). Pub. L. 105-135, §603(a)(3), substituted “small business concerns, qualified HUBZone small business concerns, and” for “small business concerns and” after “opportunities for”.

Subsec. (d)(4)(G). Pub. L. 105-135, §415, added subpar. (G).

Subsec. (d)(6). Pub. L. 105-135, §603(a)(4), inserted “qualified HUBZone small business concerns,” after “small business concerns,” wherever appearing.

Subsec. (d)(10)(B). Pub. L. 105-135, §603(a)(5), inserted “qualified HUBZone small business concerns,” after “small business concerns.”

Subsec. (e)(1)(C). Pub. L. 105-135, §416(c), substituted “\$100,000” for “\$25,000” in two places.

Subsec. (g)(1). Pub. L. 105-85 added subpar. (A), redesignated subpars. (C) to (H) as (B) to (G), respectively, and struck out former subpars. (A) and (B) which read as follows:

“(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 426a(a)(1) of title 41 or with full FACNET capability certified pursuant to section 426a(a)(2) of title 41;

“(B)(i) the proposed procurement is for an amount not greater than \$250,000 and is to be made through a system with full FACNET capability certified pursuant to section 426a(a)(2) of title 41; and

“(ii) a certification has been made pursuant to section 426a(b) title 41 that Government-wide FACNET capability has been implemented;”

Subsec. (k). Pub. L. 105-135, §416(a), added subsec. (k). 1996—Subsec. (d)(1). Pub. L. 104-106, §4321(c)(1)(A), substituted “that small business concerns,” for “that small business concerns,”.

Subsec. (d)(6)(C). Pub. L. 104-106, §4321(c)(1)(B), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by the socially and economically disadvantaged individuals”.

Subsec. (f)(5). Pub. L. 104-106, §4321(c)(2), inserted “and” at end.

1994—Subsec. (b)(1)(A). Pub. L. 103-403, §407, inserted “including information on the benefits and risks of franchising,” after “small-business enterprises,” in first sentence.

Pub. L. 103-403, §401(a)(1), repealed amendments made by Pub. L. 98-362, §5(a), effective Sept. 30, 2003. Amendment by Pub. L. 98-362, §5(a)(2), previously repealed effective Oct. 1, 1994, by section 7(b) of Pub. L. 98-362, as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Subsec. (b)(1)(G). Pub. L. 103-403, §415, substituted “this chapter and to carry out the activities authorized by title IV of the Women’s Business Ownership Act of 1988” for “this paragraph”.

Subsec. (d)(1). Pub. L. 103-355, §7106(b)(1), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals” in two places.

Subsec. (d)(2)(A). Pub. L. 103-355, §4404(b), substituted “simplified acquisition threshold” for “small purchase threshold”.

Subsec. (d)(3)(A). Pub. L. 103-355, §7106(b)(1), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals” in two places.

Subsec. (d)(3)(D), (E). Pub. L. 103-355, §7106(b)(2), (3), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: “Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.”

Subsec. (d)(4)(D). Pub. L. 103-355, §7106(b)(1), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals”.

Subsec. (d)(4)(E). Pub. L. 103-355, § 7106(b)(4), inserted “and for small business concerns owned and controlled by women” after “(3) of this subsection”.

Subsec. (d)(6)(A). Pub. L. 103-355, § 7106(b)(1), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals”.

Subsec. (d)(6)(C). Pub. L. 103-355, § 7106(b)(1), which directed that subpar. (C) be amended by substituting “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals”, could not be executed because the words “and small business concerns owned and controlled by socially and economically disadvantaged individuals” did not appear in subpar. (C).

Subsec. (d)(6)(F), (10)(B). Pub. L. 103-355, § 7106(b)(1), substituted “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women” for “and small business concerns owned and controlled by socially and economically disadvantaged individuals”.

Subsec. (e)(1). Pub. L. 103-355, § 4202(d)(1)(A), substituted “\$25,000” for “the small purchase threshold” wherever appearing.

Subsec. (e)(3)(B). Pub. L. 103-355, § 4202(d)(1)(B), inserted “in the case of a contract or order estimated to be greater than the simplified acquisition threshold,” after “(B)”.

Subsec. (f)(6). Pub. L. 103-355, § 4202(d)(2), added par. (6).

Subsec. (g)(1)(A) to (E). Pub. L. 103-355, § 4202(d)(3)(A), (B), added subpars. (A) and (B) and redesignated former subpars. (A) to (C) as (C) to (E), respectively. Former subpars. (D) and (E) redesignated (F) and (G), respectively.

Subsec. (g)(1)(F). Pub. L. 103-355, § 4202(d)(3)(A), redesignated subpar. (D) as (F). Former subpar. (F) redesignated (H).

Pub. L. 103-355, § 1055(b)(2), added subpar. (F).

Subsec. (g)(1)(G), (H). Pub. L. 103-355, § 4202(d)(3)(A), redesignated subpars. (E) and (F) as (G) and (H), respectively.

1992—Subsec. (a). Pub. L. 102-366, § 232(a)(1)–(5), substituted semicolon for period at end of par. (1)(B), “; and” for period at end of par. (1)(C), “to subparagraph (A)” for “to (A)” in par. (6)(C)(i), “636(j)(10)(G)” for “636(j)(10)(H)” in par. (6)(C)(ii), and “to subparagraph (D)” for “to (D)” in par. (12)(E).

Subsec. (b)(1)(E) to (G). Pub. L. 102-564, § 304, added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (c). Pub. L. 102-366, § 232(a)(7), designated subsec. (c) as reserved. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102-366, § 232(a)(6), (8), redesignated subsec. (c) as (d) and substituted “imposition” for “impositon” in par. (4)(F)(ii). Former subsec. (d) redesignated (e).

Subsec. (d)(11), (12). Pub. L. 102-564, § 303(a), redesignated par. (12) as (11) and struck out former par. (11) which read as follows: “At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.”

Subsecs. (e) to (g). Pub. L. 102-366, § 232(a)(6), redesignated subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102-366, § 232(a)(6), (9), redesignated subsec. (g) as (h) and substituted “Administrative” for “Administration” in par. (2). Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 102-366, § 232(a)(6), redesignated subsecs. (h) and (i) as (i) and (j), respectively.

1991—Subsec. (c). Pub. L. 102-191 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to management and technical assistance for small businesses owned by women. See section 656 of this title.

Subsec. (d). Pub. L. 102-191 redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(12). Pub. L. 102-190 added par. (12).

Subsecs. (e) to (j). Pub. L. 102-191, which directed the redesignation of subsecs. (e) to (j) as (d) to (k), was executed by redesignating subsecs. (e) to (j) as (d) to (i), respectively, to reflect the probable intent of Congress.

1990—Subsec. (a)(1). Pub. L. 101-574, § 207(2), struck out after subpar. (C) “No contract may be entered into under subparagraph (B) after September 30, 1988.”

Subsec. (a)(1)(B). Pub. L. 101-574, § 207(1), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “to enter into contracts with such agency as shall be designated by the President, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and”.

Subsec. (a)(1)(C). Pub. L. 101-574, § 207(4), added subpar. (C). Former subpar. (C) redesignated (B).

Subsec. (a)(4)(A)(i)(II), (ii)(II). Pub. L. 101-574, § 204(b), inserted “(or a wholly owned business entity of such tribe)” after “tribe”.

Subsec. (a)(17)(B)(iv). Pub. L. 101-574, § 210, amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of the clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors in the Federal market.”

Subsec. (d)(2)(A). Pub. L. 101-510, § 806(e)(2)(A), substituted “the small purchase threshold” for “\$10,000”.

Subsec. (e)(1)(A). Pub. L. 101-510, § 806(e)(2)(B), inserted “or” at end of subcl. (i), substituted a comma for “; or” at end of subcl. (ii), substituted “the small purchase threshold” for “\$25,000” in subcls. (i) and (ii), and struck out subcl. (iii) which read as follows: “solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors.”

Subsec. (e)(1)(B), (C). Pub. L. 101-510, § 806(e)(2)(B)(i), substituted “the small purchase threshold” for “\$25,000” wherever appearing.

Subsec. (g)(1). Pub. L. 101-574, §244, substituted “subsection (e)(1)” for “subsection (a)(1)”.

1989—Subsec. (a)(1)(D)(i). Pub. L. 101-37, §10(c), substituted “Program Participants” for “program participants”.

Subsec. (a)(4)(A)(i). Pub. L. 101-37, §6(d)(1), inserted “unconditionally” after “per centum”.

Subsec. (a)(4)(A)(ii). Pub. L. 101-37, §6(d)(2), inserted “unconditionally” after “which is”.

Subsec. (a)(6)(C). Pub. L. 101-37, §7(b), which directed substitution of “636(j)(10)(G)” for “636(j)(10)(H)” in cl. (iii), could not be executed because there was no cl. (iii). See 1992 Amendment note above.

Subsec. (a)(9). Pub. L. 101-37, §17, substituted “Administration” for “Administrator” in subpar. (A), “section 636(j)(10)(G) of this title” for “section 636(j)(10)(H) of this title” in subpar. (B)(iii), and “Administration’s” for “Administrator’s” in subpar. (C).

Subsec. (a)(15). Pub. L. 101-37, §6(b), substituted “Organization” for “organizations”.

Subsec. (a)(17)(B)(ii) to (iv). Pub. L. 101-37, §10(e), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (a)(18)(A). Pub. L. 101-37, §12, struck out “certified” before “during such person’s term”.

Subsec. (a)(19)(B). Pub. L. 101-37, §13, struck out “, imposed by the Administrator,” after “disciplinary action”.

Subsec. (a)(20)(A). Pub. L. 101-37, §14, substituted “Business Opportunity Specialist” for “business opportunity specialist”.

Subsec. (a)(21). Pub. L. 101-37, §16, in subpar. (B) struck out discretionary authority of the Administrator and preconditions respecting request prior to relinquishment of ownership or control in introductory provisions, added subpar. (C), and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(1)(A). Pub. L. 101-162 amended last sentence generally, substituting “the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official” for “that the Administration is given primary recognition in all cosponsored printed materials, whether the participant is a profit-making concern or a governmental agency or official”.

1988—Subsec. (a)(1)(A). Pub. L. 100-656, §303(d), inserted provisions authorizing Administration appeal from procurement officer’s adverse decisions and providing for decision by the Secretary or agency head on the appeal.

Subsec. (a)(1)(D). Pub. L. 100-656, §303(b), added subpar. (D).

Subsec. (a)(3). Pub. L. 100-656, §303(e), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.”

Subsec. (a)(4). Pub. L. 100-656, §207(c), amended par. (4) generally, in subpar. (A)(i) adding subcl. (III), in subpar. (A)(ii) adding subcl. (III), and in subpar. (B) adding cl. (iii).

Subsec. (a)(4)(C). Pub. L. 100-656, §209(b), added subpar. (C).

Subsec. (a)(6). Pub. L. 100-656, §209(a), designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (a)(7). Pub. L. 100-656, §303(g), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(9). Pub. L. 100-656, §409, amended par. (9) generally. Prior to amendment, par. (9) read as follows: “Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participa-

tion in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5.”

Subsec. (a)(10). Pub. L. 100-656, §201(b), inserted sentence at end requiring such program to make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment.

Subsec. (a)(12). Pub. L. 100-656, §501, amended par. (12) generally. Prior to amendment, par. (12) read as follows: “To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program.”

Subsec. (a)(15). Pub. L. 100-656, §207(a), added par. (15).

Subsec. (a)(16). Pub. L. 100-656, §303(c), added par. (16).

Subsec. (a)(17). Pub. L. 100-656, §303(h), added par. (17).

Subsec. (a)(18). Pub. L. 100-656, §402, added par. (18).

Subsec. (a)(19). Pub. L. 100-656, §403, added par. (19).

Subsec. (a)(20). Pub. L. 100-656, §404, added par. (20).

Subsec. (a)(21). Pub. L. 100-656, §407, added par. (21).

Subsec. (b)(1)(A). Pub. L. 100-590, §131(b), inserted “that any Administration program participating in such cosponsored activities receives appropriate recognition and publicity, and” in provisions preceding cl. (i), inserted “, executed on behalf of the agency by an employee of the agency in Washington, District of Columbia, and who shall also approve, in advance, any printed materials to be distributed at the conference,” in cl. (1), and inserted provisions at end which authorized Administration, in case of cosponsored activities, to ensure that cooperation does not constitute endorsement or give undue recognition to public official or agency, and that Administration is given primary recognition in all cosponsored printed materials.

Subsec. (b)(16). Pub. L. 100-533, §202, and Pub. L. 100-590, §127(b), made identical amendments adding par. (16).

Subsec. (c). Pub. L. 100-590, §127(a), amended subsec. (c) generally, inserting provisions substantially identical to provisions contained in prior general amendment by Pub. L. 100-533, §201.

Pub. L. 100-533, §201, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Administration shall from time to time make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and shall make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.”

Subsec. (d)(4)(F). Pub. L. 100-656, §304(a), added subpar. (F).

1987—Subsec. (a)(14)(B), (C). Pub. L. 100-26, §10(b)(3), substituted “section 644(o)” for “section 644(n)”.

1986—Subsec. (a)(1). Pub. L. 99-567, §2, substituted provision that no contract may be entered into under subpar. (B) after Sept. 30, 1988, for provision that no such contract could be entered into prior to Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(1)(A). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(b)(2)], Pub. L. 99-661, §921(b)(2), amended subpar. (A) identically, inserting provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (a)(1)(B). Pub. L. 99-567, §1(a), struck out “(other than the Department of Defense or any component thereof)” after “contracts with such agency”.

Subsec. (a)(2). Pub. L. 99-567, §3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised after Sept. 30, 1988, for provision that such authority could not be exercised prior to

Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(4). Pub. L. 99-272, §18015(b), in amending par. (4) generally, included economically disadvantaged Indian tribe within definition of "socially and economically disadvantaged small business concern".

Subsec. (a)(6). Pub. L. 99-272, §18015(c), inserted provision enumerating factors to be considered by the Administration in determining the economic disadvantage of an Indian tribe.

Subsec. (a)(13). Pub. L. 99-272, §18015(d), added par. (13).

Subsec. (a)(14). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(c)(1)], Pub. L. 99-661, §921(c)(1), amended subsec. (a) identically, adding par. (14).

Subsec. (e)(1). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§921(a)], Pub. L. 99-661, §921(a), amended par. (1) identically, in subpar. (A) substituting "\$25,000" for "\$10,000" in cls. (i) and (ii), adding cl. (iii), and in provision following cl. (iii) substituting "subsection (f)" for "subsection (b)", adding subpar. (B), and redesignating former subpar. (B) as (C).

Subsec. (f). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§922(d)], Pub. L. 99-661, §922(d), amended subsec. (f) identically, substituting "subparagraph (A) or (B) of subsection (e)(1)" for "subsection (e)(1)(A)" in provisions preceding par. (1).

1984—Subsec. (b)(1)(A). Pub. L. 98-362, §5(a)(2), which inserted provisions at end of subpar. (A) relating to providing of assistance through cooperation of cosponsors, and provisions respecting activities of the Administration related to furnishing of assistance by cosponsors, was repealed effective Oct. 1, 1994, by Pub. L. 98-362, §7(b), as amended, and effective Sept. 30, 2003, by Pub. L. 103-403, §401(a), as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Pub. L. 98-362, §5(a)(1), which inserted "computer security," after "wage incentives," was repealed effective Sept. 30, 2003, by Pub. L. 103-403, §401(a), as amended. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(7)(C). Pub. L. 98-577, §401, inserted "Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed."

Subsec. (d)(1). Pub. L. 98-577, §402(a), inserted ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(3)(A). Pub. L. 98-577, §402(b), inserted ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsecs. (e) to (j). Pub. L. 98-577, §404(a), added subsecs. (e) to (j) and struck out former subsec. (e) which related to notice and publication of procurement actions, exceptions, departmental procedures, contents of notice, sole source contracts and unsolicited proposals.

1983—Subsec. (a)(1). Pub. L. 98-47, §2, substituted provision that no contract may be entered into under subpar. (B) prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that such contracts may not be entered into after Sept. 30, 1981.

Subsec. (a)(1)(B). Pub. L. 98-47, §1(a), substituted "(other than the Department of Defense or any component thereof) as shall be designated by the President;" for ", as shall be designated by the President within 60 days after the effective date of this paragraph".

Subsec. (a)(2). Pub. L. 98-47, §3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that par. (2) shall not apply after Sept. 30, 1981.

Subsec. (e). Pub. L. 98-72 amended subsec. (e) generally, designating existing provisions as par. (1) and in par. (1) as so designated substituting: "It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable" for "It shall be the duty of the Secretary of Commerce, and he is empowered, to obtain notice of all proposed defense procurement actions of \$10,000 and above, and all civilian procurement actions of \$5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication 'United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards', immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which

are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable", and adding pars. (2) to (6).

1980—Subsec. (a)(1), (2). Pub. L. 96-481, §101, substituted "September 30, 1981" for "September 30, 1980".

Subsec. (a)(8). Pub. L. 96-481, §105, substituted provisions that all determinations may pursuant to par. (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development and that all other determinations made pursuant to (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to the Administrator, for provision that all determinations made pursuant to pars. (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (d)(3)(C). Pub. L. 96-302 included in the presumption of being disadvantaged individuals Asian Pacific Americans.

1978—Subsec. (a). Pub. L. 95-507, §202(a), redesignated pars. (1) and (2) as (1)(A) and (C) and as redesignated inserted provision giving the Administration sole discretion in choosing procurement requirements from agencies or departments for use in the program, provided that the terms and conditions of the proposed contract are to be negotiated, made provision for the submission of stalemated matters for resolution, and added pars. (1)(B) and (2) to (12).

Subsec. (b)(1). Pub. L. 95-510 substituted in subpar. (B) provisions relating to the establishment and implementation of volunteer programs for provisions relating to the use of office facilities etc., and the payment of transportation expenses and per diem allowances and added subpars. (C) to (F).

Subsec. (d). Pub. L. 95-507, §211, substituted provisions relating to the performance of contracts by small business concerns, requiring, among other things, the inclusion of a specific contract clause in most Federal prime contracts, requiring as a condition of the solicitation of any offer of a Federal contract in excess of \$500,000, the submission of a summary contract plan, and relating to incentives for small business subcontracting, contract eligibility, breach of contract or subcontract, administrative review of contract solicitation and subcontract planning, and relating to submission to congressional committees of a report on subcontracting plans for provisions relating generally to the small business subcontract program and regulations issued thereunder.

1977—Subsec. (b)(7). Pub. L. 95-89, in revising par. (7), incorporated existing introductory text in provisions designated subpar. (A) and substituted "with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract" for "with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract"; added subpar. (B); and incorporated existing end text in provisions designated subpar. (C), substituting therein "certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract" for "certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract" and "shall let" and "other requirement of responsibility or eligibility" for "are authorized to let" and "other requirement with respect to capacity and credit".

1970—Subsec. (b)(15). Pub. L. 91-375 substituted "section 3204 of title 39" for "section 4154 of title 39".

1967—Subsec. (b)(1)(B). Pub. L. 90-104, §105, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(13). Pub. L. 90-104, §106, substituted "advisory boards and committees" for "small business advisory boards and committees truly representative of small business", included achievement of purposes of the Small Business Investment Act of 1958, and required the Administrator to call board and committee meetings, pay transportation expenses and per diem allowances, and rent temporarily necessary accommodations to facilitate conduct of meetings.

Subsec. (b)(15). Pub. L. 90-104, §107, added par. (15).

1966—Subsec. (b)(1). Pub. L. 89-754 designated existing provisions as subpar. (A) and added subpar. (B).

1964—Subsec. (b)(14). Pub. L. 88-560 added par. (14).

1961—Subsec. (d). Pub. L. 87-305, §7, added subsec. (d).

Subsec. (e). Pub. L. 87-305, §8, added subsec. (e).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by section 1832(c) of Pub. L. 114-328 effective on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue implementing regulations, see section 1832(e) of Pub. L. 114-328, set out as a note under section 632 of this title.

TERMINATION DATE OF 2004 AMENDMENT

Amendment by section 132(b) of Pub. L. 108-447 repealed Oct. 1, 2006, see section 132(c) of Pub. L. 108-447, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title VIII, §810(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A-210, provided that: "The amendments made by this section [amending this section and sections 416 and 426 of Title 41, Public Contracts] shall take effect on October 1, 2000. The amendments made by subsections (a), (b), and (c) [amending this section and section 416 of Title 41] shall apply with respect to solicitations issued on or after that date."

EFFECTIVE DATE OF 1997 AMENDMENTS

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 this title.

Amendment by Pub. L. 105-85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105-85, set out as a note under section 2304 of Title 10, Armed Forces.

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 Title 10, Armed Forces.

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 Title 10, Armed Forces.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-37 applicable as if included in Pub. L. 100-656, see section 32 of Pub. L. 101-37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 207(a), (c) and 303(d), (e) of Pub. L. 100-656 effective Nov. 15, 1988, see section 803(a) of Pub. L. 100-656, set out as a note under section 631 of this title.

Amendment by sections 201(b), 303(c), (g), (h), 304(a), 402-404, and 409 of Pub. L. 100-656 effective Aug. 15, 1989, see section 803(b)(1)(A)-(C) of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

Amendment by section 407 of Pub. L. 100-656 effective with respect to contracts entered into on or after June

1, 1989, see section 803(b)(3) of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

Amendment by sections 209 and 303(b) of Pub. L. 100-656 effective Oct. 1, 1989, see section 803(b)(4)(A), (B) of Pub. L. 100-656, as amended, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10(b)(3) of Pub. L. 100-26 applicable as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2 of Pub. L. 100-26) [title X of section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and title IX of div. A of Pub. L. 99-661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively], see section 12(c) of Pub. L. 100-26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, § 921(b)(2), (c)(1)] of Pub. L. 99-500 and Pub. L. 99-591, and section 921(b)(2), (c)(1) of Pub. L. 99-661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and section 921(g) of Pub. L. 99-661, set out as a note under section 632 of this title.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Pub. L. 103-403, title IV, § 401(a), Oct. 22, 1994, 108 Stat. 4190, as amended by Pub. L. 105-135, title V, § 504, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106-554, § 1(a)(9) [title V, § 504(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-696, provided that:

“(1) REPEAL.—The amendments made by section 5(a) of Small Business Computer Security and Education Act of 1984 [Pub. L. 98-362, amending this section] (15 U.S.C. 633 note) are hereby repealed.

“(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on September 30, 2003.”

[Repeal by section 401(a) of Pub. L. 103-403, set out as a note above, effective Sept. 30, 1997, was not executed to reflect the probable intent of Congress and subsequent amendment by Pub. L. 105-135, changing the effective date to Sept. 30, 2000. Similarly, repeal effective Sept. 30, 2000, was not executed because of subsequent amendment by Pub. L. 106-554, changing the effective date to Sept. 30, 2003.]

Amendment by section 5(a)(1), (2) of Pub. L. 98-362 effective Oct. 1, 1984, and amendment by section 5(a)(2) of Pub. L. 98-362 repealed Oct. 1, 1994, see section 7 of Pub. L. 98-362, as amended, set out as a note under section 633 of this title.

Pub. L. 98-577, title IV, § 404(b), Oct. 30, 1984, 98 Stat. 3084, provided that: “The amendment made by subsection (a) [amending this section] shall take effect with respect to any solicitation for bids or proposals issued after March 31, 1985.”

EFFECTIVE DATE OF 1983 AMENDMENTS

Pub. L. 98-72, § 1(b)(1), (2), Aug. 11, 1983, 97 Stat. 403, provided that:

“(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act [subsec. (e)(4) of this section], the amendments made by this Act [amending this section] shall apply to procurement actions initiated ninety days after the date of enactment of this Act [Aug. 11, 1983].

“(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.”

Pub. L. 98-47, § 1(b), July 13, 1983, 97 Stat. 243, provided that: “The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [July 13, 1983].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-302 effective Oct. 1, 1980, see section 507 of Pub. L. 96-302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-510 effective Oct. 1, 1979, see section 105 of Pub. L. 95-510, set out as a note under section 634 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-375, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

REGULATIONS

Pub. L. 108-447, div. K, title I, § 141(b), Dec. 8, 2004, 118 Stat. 3454, provided that: “The Administration shall, not later than 180 days after the date of enactment of this Act [Dec. 8, 2004], promulgate regulations to carry out the amendments made by subsection (a) [amending this section].”

Pub. L. 106-50, § 303(c), Aug. 17, 1999, 113 Stat. 243, provided that: “Not later than 30 days after the date of the enactment of this section [Aug. 17, 1999], the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section [amending this section and enacting provisions set out as a note under this section] and the amendment made by this section.”

TRANSFER OF FUNCTIONS

Transfer to Director of ACTION [now Corporation for National and Community Service] of functions of Small Business Administration under subsec. (b) of this section insofar as they relate to individuals or groups of persons cooperating with it in the furtherance of purposes of this section, except that such individuals or groups of persons, in providing technical and managerial aids to small concerns, remain subject to direction of Small Business Administration. See section 601 of Pub. L. 93-113, 87 Stat. 416, formerly set out as a note under section 5041 of Title 42, The Public Health and Welfare, which superseded section 2(a)(3) of Reorg. Plan No. 1 of 1971, eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, set out in the Appendix to Title 5, Government Organization and Employees.

GOOD FAITH COMPLIANCE WITH SUBCONTRACTING REQUIREMENTS

Pub. L. 114-328, div. A, title XVIII, § 1821(c), Dec. 23, 2016, 130 Stat. 2654, provided that: “Not later than 270 days after the date of enactment of this title [Dec. 23, 2016], the Administrator of the Small Business Administration shall provide examples of activities that would be considered a failure to make a good faith effort to comply with the requirements imposed on an entity (other than a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632)) that is awarded a prime contract containing the clauses required under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).”

SUBCONTRACTING MISREPRESENTATIONS

Pub. L. 111-240, title I, § 1321, Sept. 27, 2010, 124 Stat. 2540, provided that: “Not later than 1 year after the date of enactment of this Act [Sept. 27, 2010], the Administrator, in consultation with the Administrator for Federal Procurement Policy, shall promulgate regulations relating to, and the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302(a)] shall amend the Federal Acquisition Regulation issued under section 25 of such Act [see 41 U.S.C. 1303(a)] to establish a policy on, subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities.”

[For definitions of “Administrator” and “small business concern” as used in section 1321 of Pub. L. 111-240,

set out above, see section 1001 of Pub. L. 111-240, set out as a note under section 632 of this title.]

SMALL BUSINESS CONTRACTING PARITY

Pub. L. 111-240, title I, §1347(a), (b), Sept. 27, 2010, 124 Stat. 2546, 2547, provided that:

“(a) DEFINITIONS.—In this section—

“(1) the terms ‘Administration’ and ‘Administrator’ mean the Small Business Administration and the Administrator thereof, respectively; and

“(2) the terms ‘HUBZone small business concern’, ‘small business concern’, ‘small business concern owned and controlled by service-disabled veterans’, and ‘small business concern owned and controlled by women’ have the same meanings as in section 3 of the Small Business Act (15 U.S.C. 632).

“(b) CONTRACTING IMPROVEMENTS.—

“(1) CONTRACTING OPPORTUNITIES.—[Amended section 657a of this title.]

“(2) CONTRACTING GOALS.—[Amended section 644 of this title.]

“(3) MENTOR-PROTEGE PROGRAMS.—The Administrator may establish mentor-protege programs for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns modeled on the mentor-protege program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).”

INCREASING NUMBER OF OUTREACH CENTERS

Pub. L. 110-186, title I, §105, Feb. 14, 2008, 122 Stat. 626, provided that:

“(a) IN GENERAL.—The Administrator [of the Small Business Administration] shall use the authority in section 8(b)(17) of the Small Business Act (15 U.S.C. 637(b)(17)) to ensure that the number of Veterans Business Outreach Centers throughout the United States increases—

“(1) subject to subsection (b), by at least 2, for each of fiscal years 2008 and 2009; and

“(2) by the number that the Administrator considers appropriate, based on need, for each fiscal year thereafter.

“(b) LIMITATION.—Subsection (a)(1) shall apply in a fiscal year if, for that fiscal year, the amount made available for the Office of Veterans Business Development is more than the amount made available for the Office of Veterans Business Development for fiscal year 2007.”

ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE

Pub. L. 106-50, §303(b), Aug. 17, 1999, 113 Stat. 243, provided that: “For the duration of Operation Allied Force and for 120 days thereafter, the Administration shall enhance its publicity of the availability of assistance provided pursuant to the amendment made by this section [amending this section], including information regarding the appropriate local office at which affected small businesses may seek such assistance.”

FEDERAL ACQUISITION REGULATION

Pub. L. 105-135, title IV, §416(b), Dec. 2, 1997, 111 Stat. 2620, provided that: “The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section [amending this section].”

IMPLEMENTATION OF AMENDMENT BY PUB. L. 105-85

Pub. L. 105-85, div. A, title VIII, §850(e)(3), Nov. 18, 1997, 111 Stat. 1849, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 416 of Title 41, Public Contracts] shall be implemented in a manner consistent with any applicable international agreements.”

MOBILE RESOURCE CENTER PILOT PROGRAM

Pub. L. 103-403, title IV, §406, Oct. 22, 1994, 108 Stat. 4192, provided that the Administrator of the Small

Business Administration could establish and carry out in each of fiscal years 1995, 1996, and 1997 a mobile resource pilot program and, if it was carried out, required the Administrator to transmit to Congress by Dec. 31, 1996, a report containing the results of such program, together with recommendations for appropriate legislative and administrative action.

PROJECTS FUNDED PURSUANT TO FORMER PROVISIONS

Pub. L. 102-191, §3, Dec. 5, 1991, 105 Stat. 1591, provided in part that: “Projects funded pursuant to the provisions of former subsection (c) [15 U.S.C. 637(c)] shall be deemed to be funded under and shall be treated as if funded under section 28 of the Small Business Act [15 U.S.C. 656], as added by section 2.”

TWO-YEAR RULE FOR ELIGIBILITY IN MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

Pub. L. 101-574, title II, §203, Nov. 15, 1990, 104 Stat. 2818, provided that:

“(a) IN GENERAL.—The Small Business Administration may prescribe a minimum period of time during which a prospective Program Participant must be in operation in order to meet the eligibility requirements of section 8(a)(7)(A) of the Small Business Act (15 U.S.C. 637(a)(7)(A)), only if the Administration provides a waiver of such minimum period as set forth in subsection (b).

“(b) WAIVER OF MINIMUM PERIOD OF OPERATION.—(1) The Administration shall provide that any requirement it establishes regarding the period of time a prospective Program Participant must be in operation may be waived and, a prospective Program Participant, who otherwise meets the requirements of section 8(a)(7)(A) of the Small Business Act [15 U.S.C. 637(a)(7)(A)], shall be considered to have demonstrated reasonable prospects for success, if—

“(A) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

“(B) the prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

“(C) the prospective Program Participant has adequate capital to carry out its business plan;

“(D) the prospective Program Participant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category in which the prospective Program Participant is seeking Program certification; and

“(E) the prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

“(2) The authority to make the determination that a prospective Program Participant has demonstrated its potential for success by meeting the criteria specified in paragraph (1) of this subsection shall be made by the Administrator of the Small Business Administration, or a designee of such officer.”

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

For provisions that credit toward meeting a subcontracting goal specified in a Department of Defense contract in implementing subsec. (d) of this section may be given for work performed on Indian land or by

certain Indian joint ventures, see section 2323a of Title 10, Armed Forces.

TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE
SMALL BUSINESS SUBCONTRACTING PLANS

Pub. L. 101-574, title IV, §402, Nov. 15, 1990, 104 Stat. 2832, which suspended subsec. (d) of section 834 of Pub. L. 101-189, set out below, for the test program period specified in subsec. (e) of that section, was repealed by Pub. L. 113-291, div. A, title VIII, §821(c)(2), Dec. 19, 2014, 128 Stat. 3434.

Pub. L. 101-189, div. A, title VIII, §834, Nov. 29, 1989, 103 Stat. 1509, as amended by Pub. L. 102-484, div. A, title VIII, §805, Oct. 23, 1992, 106 Stat. 2447; Pub. L. 103-355, title VII, §7103, Oct. 13, 1994, 108 Stat. 3368; Pub. L. 104-106, div. A, title VIII, §811, Feb. 10, 1996, 110 Stat. 394; Pub. L. 105-85, div. A, title VIII, §822, Nov. 18, 1997, 111 Stat. 1840; Pub. L. 106-65, div. A, title VIII, §817, Oct. 5, 1999, 113 Stat. 712; Pub. L. 106-398, §1 [[div. A], title X, §1087(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293; Pub. L. 108-375, div. A, title VIII, §843, Oct. 28, 2004, 118 Stat. 2019; Pub. L. 111-383, div. A, title VIII, §863(i), Jan. 7, 2011, 124 Stat. 4295; Pub. L. 112-81, div. A, title VIII, §866, Dec. 31, 2011, 125 Stat. 1526; Pub. L. 112-239, div. A, title X, §1076(a)(16), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113-291, div. A, §821(a)-(c)(1), (d)-(f), Dec. 19, 2014, 128 Stat. 3433, 3434; Pub. L. 114-92, div. A, title VIII, §872, Nov. 25, 2015, 129 Stat. 939; Pub. L. 114-328, div. A, title VIII, §826, Dec. 23, 2016, 130 Stat. 2280, provided that:

“(a) TEST PROGRAM.—(1) The Secretary of Defense shall establish a test program under which contracting activities in the military departments and the Defense Agencies are authorized to undertake one or more demonstration projects to determine whether the negotiation and administration of comprehensive subcontracting plans will reduce administrative burdens on contractors while enhancing opportunities provided under Department of Defense contracts for covered small business concerns. In selecting the contracting activities to undertake demonstration projects, the Secretary shall take such action as is necessary to ensure that a broad range of the supplies and services acquired by the Department of Defense are included in the test program.

“(2) In developing the test program, the Secretary of Defense shall—

“(A) consult with the Administrator of the Small Business Administration; and

“(B) provide an opportunity for public comment on the test program.

“(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—(1) In a demonstration project under the test program, the Secretary of a military department or head of a Defense Agency shall negotiate, monitor, and enforce compliance with a comprehensive subcontracting plan with a Department of Defense contractor described in paragraph (4).

“(2) The comprehensive subcontracting plan of a contractor—

“(A) shall apply to the entire business organization of the contractor or to one or more of the contractor's divisions or operating elements, as specified in the subcontracting plan; and

“(B) shall cover each Department of Defense contract that is entered into by the contractor and each subcontract that is entered into by the contractor as the subcontractor under a Department of Defense contract.

“(3) Each comprehensive subcontracting plan of a contractor shall require that the contractor report to the Secretary of Defense on a semi-annual basis the following information:

“(A) The amount of first-tier subcontract dollars awarded during the six-month period covered by the report to covered small business concerns, with the information set forth separately—

“(i) by North American Industrial Classification System code;

“(ii) by major defense acquisition program, as defined in section 2430(a) of title 10, United States Code;

“(iii) by contract, if the contract is for the maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment and the total value of the contract, including options, exceeds \$100,000,000; and

“(iv) by military department.

“(B) The total number of subcontracts active under the test program during the six-month period covered by the report that would have otherwise required a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

“(C) Costs incurred in negotiating, complying with, and reporting on comprehensive subcontracting plans.

“(D) Costs avoided by adoption of a comprehensive subcontracting plan.

“(4) A Department of Defense contractor referred to in paragraph (1) is, with respect to a comprehensive subcontracting plan negotiated in any fiscal year, a business concern that, during the immediately preceding fiscal year, furnished the Department of Defense with supplies or services (including professional services, research and development services, and construction services) pursuant to at least three Department of Defense contracts having an aggregate value of at least \$100,000,000.

“(c) WAIVER OF CERTAIN SMALL BUSINESS ACT SUBCONTRACTING PLAN REQUIREMENTS.—A Department of Defense contractor is not required to negotiate or submit a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) with respect to a Department of Defense contract if—

“(1) the contractor has negotiated a comprehensive subcontracting plan under the test program that includes the matters specified in section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6));

“(2) such matters have been determined acceptable by the Secretary of the military department or head of a Defense Agency negotiating such comprehensive subcontracting plan; and

“(3) the comprehensive subcontracting plan applies to the contract.

“(d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A COMPREHENSIVE SUBCONTRACTING PLAN.—(1) A contractor that has negotiated a comprehensive subcontracting plan under the test program shall be subject to section 8(d)(4)(F) of the Small Business Act (15 U.S.C. 637(d)(4)(F)) regarding the assessment of liquidated damages for failure to make a good faith effort to comply with its comprehensive subcontracting plan and the goals specified in that plan. In addition, any such failure shall be a factor considered as part of the evaluation of past performance of an offeror.

“(2) Effective in fiscal year 2016 and each fiscal year thereafter in which the test program is in effect, the Secretary of Defense shall report to Congress on any negotiated comprehensive subcontracting plan that the Secretary determines did not meet the subcontracting goals negotiated in the plan for the prior fiscal year.

“(e) TEST PROGRAM PERIOD.—The test program authorized by subsection (a) shall begin on October 1, 1990, unless Congress adopts a resolution disapproving the test program. The test program shall terminate on December 31, 2027.

“(f) REPORT.—Not later than September 30, 2015, the Comptroller General of the United States shall submit a report on the results of the test program to the Committees on Armed Services and on Small Business of the House of Representatives and the Committees on Armed Services and on Small Business and Entrepreneurship of the Senate.

“(g) DEFINITIONS.—In this section, the term ‘covered small business concern’ includes each of the following:

“(1) A small business concern, as that term is defined under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

“(2) A small business concern owned and controlled by veterans, as that term is defined in section 3(q)(3) of such Act (15 U.S.C. 632(q)(3)).

“(3) A small business concern owned and controlled by service-disabled veterans, as that term is defined in section 3(q)(2) of such Act (15 U.S.C. 632(q)(2)).

“(4) A qualified HUBZone small business concern, as that term is defined under section 3(p)(5) of such Act (15 U.S.C. 632(p)(5)).

“(5) A small business concern owned and controlled by socially and economically disadvantaged individuals, as that term is defined in section 8(d)(3)(C) of such Act (15 U.S.C. 637(d)(3)(C)).

“(6) A small business concern owned and controlled by women, as that term is defined under section 3(n) of such Act (15 U.S.C. 632(n)).”

CONTRACT OPTIONS AND MODIFICATIONS

Pub. L. 100-656, title III, §303(f), Nov. 15, 1988, 102 Stat. 3871, as amended by Pub. L. 101-37, §10(d), June 15, 1989, 103 Stat. 73, provided that:

“(1) The Small Business Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and submitted to such Administration for approval.

“(2) Within sixty days after the date of enactment of this Act [Nov. 15, 1988], the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in active contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

“(3) During the period of time described in paragraph (2), such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred pursuant to this paragraph that would cause substantial harm to a public interest.

“(4) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise small business concerns and Federal agencies of the requirements of this subsection.

“(5) The Administration shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) and the award of contracts pursuant to section 8(a) of such Act (15 U.S.C. 637(a)).”

LIQUIDATED DAMAGES CLAUSES

Pub. L. 100-656, title III, §304(b), Nov. 15, 1988, 102 Stat. 3873, provided that: “The contract clause required by section 8(d)(4)(F) of the Small Business Act [15 U.S.C. 637(d)(4)(F)] (as added by subsection (a)) shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707].”

[Section 304(b) of Pub. L. 100-656 effective Aug. 15, 1989, see section 803(b)(1)(B) of Pub. L. 100-656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

NATIVE AMERICAN ORGANIZATIONS EXEMPTIONS

Pub. L. 109-289, div. A, title VIII, §8018, Sept. 29, 2006, 120 Stat. 1277, provided in part: “That, during the current fiscal year and hereafter, businesses certified as 8(a) by the Small Business Administration pursuant to section 8(a)(15) of Public Law 85-536 [15 U.S.C. 637(a)(15)], as amended, shall have the same status as other program participants under section 602 of Public Law 100-656, 102 Stat. 3825 (Business Opportunity Development Reform Act of 1988) [set out as a note below] for purposes of contracting with agencies of the Department of Defense.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 109-148, div. A, title VIII, §8020, Dec. 30, 2005, 119 Stat. 2702.

Pub. L. 108-287, title VIII, §8021, Aug. 5, 2004, 118 Stat. 975.

Pub. L. 108-87, title VIII, §8021, Sept. 30, 2003, 117 Stat. 1076.

Pub. L. 100-656, title VI, §602, Nov. 15, 1988, 102 Stat. 3887, as amended by Pub. L. 101-37, §22, June 15, 1989, 103 Stat. 75; Pub. L. 101-515, title V, §2, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 101-574, title II, §205, Nov. 15, 1990, 104 Stat. 2819; Pub. L. 103-403, title VI, §608, Oct. 22, 1994, 108 Stat. 4204, provided that:

“(a) COMPETITIVE THRESHOLDS.—Section 8(a)(1)(D) of the Small Business Act [15 U.S.C. 637(a)(1)(D)], as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)).

“(b) JOINT VENTURES.—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

“(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)); and

“(2) such Program Participant:

“(A) owns 51 per centum or more of such joint venture;

“(B) is located on the reservation or former reservation of such tribe as determined by the Secretary of the Interior of such tribe;

“(C) performs most of its activities on such reservation, or such former reservation; and

“(D) employs members of such tribe for at least 50 per centum of its total workforce.

“(c) LIMITATIONS.—A Program Participant, as a party to a joint venture shall receive no more than 5 contracts due solely to the provisions of subsection (b).

“(d) SUNSET.—Subsection (b) shall cease to be effective after September 30, 1997.”

[Section 602 of Pub. L. 100-656 effective Aug. 15, 1989, see section 803(b)(1)(D) of Pub. L. 100-656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

GAO EVALUATION OF SERVICE CORPS OF RETIRED EXECUTIVES; REPORT

Pub. L. 100-590, title I, §107, Nov. 3, 1988, 102 Stat. 2993, directed Comptroller General, not later than Dec. 1, 1989, to transmit a report to Small Business Committees of Senate and House of Representatives on functions being performed by volunteers in Service Corps of Retired Executives and Active Corps of Executives, including his evaluation of programs and including conclusions and recommendations concerning efficiency and cost effectiveness of such volunteers.

AUTHORIZATION OF APPROPRIATIONS FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Pub. L. 100-590, title I, §127(c), Nov. 3, 1988, 102 Stat. 3003, provided that: “There is authorized to be appropriated \$10,000,000 to carry out the demonstration projects required pursuant to subsection (a) [amending this section]. The initial projects authorized to be financed by this section [amending this section and enacting provisions set out as notes under this section] shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this subsection, except that it shall insure that all eligible sources are provided a reasonable opportunity to submit proposals.”

Similar provisions were contained in Pub. L. 100-533, title II, §203, Oct. 25, 1988, 102 Stat. 2692.

SPENDING AUTHORITY FOR CONTRACTS AUTHORIZED FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Pub. L. 100-590, title I, §127(e), Nov. 3, 1988, 102 Stat. 3003, provided that: "New spending authority or authority to enter into contracts as authorized in this section [amending this section and enacting provisions set out as notes under this section] shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts."

RURAL AREA BUSINESS DEVELOPMENT PLANS

Pub. L. 100-590, title I, §129, Nov. 3, 1988, 102 Stat. 3004, provided that: "Within six months of the effective date of this Act [see Effective Date of 1988 Amendment note set out under section 631 of this title], the Administrator shall identify each Federal agency having substantial procurement or grantmaking authority and shall notify each agency so identified. Within six months of notification, each agency shall develop rural area business enterprise development plans. Such plans shall establish rural area enterprise development objectives for the agency and methods for encouraging prime contractors, subcontractors and grant recipients to use small business concerns located in rural areas as subcontractors, suppliers, and otherwise. Such plans shall, to the extent the agency deems appropriate and feasible, include incentive techniques as encouragement."

BACKGROUND CHECK POLICY; FINGERPRINTING

Pub. L. 100-590, title I, §132, Nov. 3, 1988, 102 Stat. 3005, provided that: "The Small Business Administration shall not require fingerprints to be obtained for background check purposes from any participant in any Administration program who is serving on a voluntary basis and without compensation unless the Administration has reasonable grounds to believe that the participant's record or background is such as to make the participant ineligible to participate in the relevant program."

TIME FOR DESIGNATION OF AGENCY

Pub. L. 99-567, §1(b), Oct. 27, 1986, 100 Stat. 3188, provided that: "The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [Oct. 27, 1986]."

REPORT TO CONGRESS RESPECTING ASSISTANCE FURNISHED BY PROFITMAKING CONCERNS TO SMALL BUSINESS CONCERNS; CONTENTS

Pub. L. 98-362, §5(b), July 16, 1984, 98 Stat. 434, directed Small Business Administration, not later than Dec. 1, 1987, to report to Committees on Small Business of Senate and House of Representatives on impact of assistance provided in cooperation with profitmaking concerns pursuant to amendment made by section 5(a)(2) of the Small Business Computer Security and Education Act of 1984 [amending this section], including information on benefits provided to small business concerns assisted by Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns.

TENNESSEE VALLEY AUTHORITY; PROCUREMENT PROCEDURES UNDER 1983 AND 1984 AMENDMENTS APPLICABLE ONLY TO PROCUREMENTS PAID FROM APPROPRIATED FUNDS

Pub. L. 98-577, title IV, §404(c), Oct. 30, 1984, 98 Stat. 3084, provided that: "The provisions of the amendment made by subsection (a) of this section [enacting subsections (e) to (j) of this section and striking out former subsection (e) of this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

Pub. L. 98-72, §1(b)(3), Aug. 11, 1983, 97 Stat. 405, provided that: "The provisions of this Act [amending this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

ASIAN PACIFIC AMERICANS AS DISADVANTAGED MINORITY IN 1978

Pub. L. 96-302, title I, §118(c)(2), July 2, 1980, 94 Stat. 840, provided that the amendment of subsec. (d)(3)(C) by Pub. L. 96-302, including Asian Pacific Americans among the disadvantaged minorities, shall apply as if included in the amendment made by section 211 of Pub. L. 95-507, to subsec. (d) of this section.

BUSINESS PLANS; SUBMITTAL BY CONCERNS ELIGIBLE TO RECEIVE CONTRACTS

Concerns eligible to receive contracts pursuant to subsec. (a) of this section required to submit business plans required under section 636(j)(10)(A)(i) of this title within certain time limits, provided that no determination made under this paragraph shall be considered a denial of total participation for the purposes of subsec. (a)(9) of this section, see section 106(b) of Pub. L. 96-481 set out as a note under section 636 of this title.

REPORTS TO CONGRESS; GENERAL ACCOUNTING OFFICE REPORT ON BUSINESS DEVELOPMENT; QUARTERLY REPORTS BY SMALL BUSINESS ADMINISTRATION TO CONGRESSIONAL COMMITTEES

Pub. L. 95-507, title II, §202(b), Oct. 24, 1978, 92 Stat. 1763, as amended by Pub. L. 96-481, title I, §102, Oct. 21, 1980, 94 Stat. 2321, provided not later than Jan. 31, 1981, the General Accounting Office submit to Congress a report which, with respect to provisions of subsec. (a)(1)(B) and (2) of this section, evaluated the implementation of such provisions and whether such implementation furthered the purposes under section 631(e) of this title, and required the Small Business Administration and the agency designated pursuant to subsec. (a)(1)(B) of this section to submit separate quarterly reports to specific congressional committees, which reports were to contain a review and evaluation of all activities conducted pursuant to subsec. (a)(1)(B) during the previous three-month period, with the first such report submitted commencing on Jan. 2, 1981, for the preceding three-month period, and to continue quarterly through, and include, the quarter ending Sept. 30, 1981.

TERMINATION OF ADVISORY BOARDS AND COMMITTEES

Advisory boards and committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board or committee established by the President or an officer of the Federal Government, such board or committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board or committee established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

DEFINITION

Pub. L. 100-590, title I, §127(d), Nov. 3, 1988, 102 Stat. 3003, provided that: "For the purposes of this section [amending this section and enacting provisions set out as notes under this section], the term 'small business concern owned and controlled by women' means any small business concern—

"(1) that is at least 51 per centum owned by one or more women; and

"(2) whose management and daily business operations are controlled by one or more of such women."

Similar provisions were contained in Pub. L. 100-533, title II, §204, Oct. 25, 1988, 102 Stat. 2692.

§ 637a. Repealed. Pub. L. 89-409, § 3(b), May 2, 1966, 80 Stat. 133

Section, Pub. L. 87-550, § 2, July 25, 1962, 76 Stat. 221, authorized the Administration to make loans to assist in adjusting to competition from imports, described such authority as additional to that under the Small Business Act, provided for application of the Trade Expansion Act of 1962, authorized appropriations, and provided for an effective date. See section 636(e) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on July 1, 1966, see section 3(c) of Pub. L. 89-409, set out as a note under section 636 of this title.

§ 637b. Availability of information

(a) Requests for information

For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

- (1) a copy of bid sets and specifications with respect to such contract;
- (2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and
- (3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

(b) Exempt contracts

Subsection (a) shall not apply to any contract or subcontract under such contract which—

- (1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or
- (2) is for services which are personal in nature.

(Pub. L. 95-507, title II, § 223, Oct. 24, 1978, 92 Stat. 1772.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

§ 637c. Definitions

For purposes of this Act—

- (1) the term “Administrator” means the Administrator of the Small Business Administration;
- (2) the term “Federal agency” has the meaning given the term “agency” by section 551(1) of title 5, but does not include the United States Postal Service or the Government Accountability Office; and
- (3) the term “Government procurement contract” means any contract for the procurement of any goods or services by any Federal agency.

(Pub. L. 95-507, title II, § 224(a), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 95-507, Oct. 24, 1978, 92 Stat. 1757. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2004—Par. (2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

§ 637d. Subcontracting plan reports

(1) Reporting requirements

Not later than 1 year after January 2, 2013, the Administrator of the Small Business Administration shall take such actions as are necessary to ensure that the electronic subcontracting reporting system established by the Administration to carry out the requirement of section 637(d)(6)(E) of this title is modified to ensure that it can identify entities that fail to submit required reports.

(2) Annual report

Not later than March 31 of each year, the Administrator of the Small Business Administration shall provide the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report, based on data available through existing systems, that sets forth, by agency (and to the extent practicable, by type of goal or plan), the following information:

- (A) the percentage of entities required to submit reports pursuant to section 637(d)(6) of this title that filed such reports and that failed to file such reports during the prior fiscal year;
- (B) the percentage of entities filing such reports that met, exceeded, or failed to meet goals set forth in their subcontracting plans during the prior fiscal year; and
- (C) the aggregate value by which such entities exceeded, or failed to meet, their subcontracting goals during the prior fiscal year.

(Pub. L. 112-239, div. A, title XVI, § 1653(b), Jan. 2, 2013, 126 Stat. 2082.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Small Business Act which comprises this chapter.

§ 638. Research and development

(a) Declaration of policy

Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

(b) Assistance to small-business concerns

It shall be the duty of the Administration, and it is empowered—