

(B) Civilian personnel from within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands may be assigned to serve as members of the cadre, upon request of the Director.

(C) The Under Secretary may use the authorities for highly qualified experts under section 9903 of title 5, to hire experts as members of the cadre who are skilled professionals in intellectual property and related matters.

(D) The Under Secretary may enter into a contract with a private-sector entity for specialized expertise to support the cadre. Such entity may be considered a covered Government support contractor, as defined in section 2320 of this title.

(E) In establishing the cadre, the Under Secretary shall give preference to civilian employees of the Department of Defense, rather than members of the armed forces, to maintain continuity in the cadre.

(F) The Under Secretary is authorized to use amounts in the Defense Acquisition Workforce Development Fund for the purpose of recruitment, training, and retention of the cadre, including paying salaries of newly hired members of the cadre for up to three years.

(Added Pub. L. 115-91, div. A, title VIII, § 802(a)(1), Dec. 12, 2017, 131 Stat. 1450.)

PRIOR PROVISIONS

A prior section 2322, added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 100-26, § 7(a)(6), Apr. 21, 1987, 101 Stat. 278; Pub. L. 100-180, div. A, title XII, § 1231(7), Dec. 4, 1987, 101 Stat. 1160, limited small business set-asides under the Foreign Military Sales Program and provided that the section expired Jan. 17, 1987, prior to repeal by Pub. L. 102-484, div. A, title X, § 1052(25)(A), Oct. 23, 1992, 106 Stat. 2500.

Another prior section 2322 was contained in chapter 138 and was renumbered section 2342 of this title.

§ 2322a. Requirement for consideration of certain matters during acquisition of noncommercial computer software

(a) CONSIDERATION REQUIRED.—As part of any negotiation for the acquisition of noncommercial computer software, the Secretary of Defense shall ensure that such negotiations consider, to the maximum extent practicable, acquisition, at the appropriate time in the life cycle of the noncommercial computer software, of all software and related materials necessary—

(1) to reproduce, build, or recompile the software from original source code and required libraries;

(2) to conduct required computer software testing; and

(3) to deploy working computer software system binary files on relevant system hardware.

(b) DELIVERY OF SOFTWARE AND RELATED MATERIALS.—Any noncommercial computer software or related materials required to be delivered as a result of considerations in subsection (a) shall, to the extent appropriate as determined by the Secretary—

(1) include computer software delivered in a useable, digital format;

(2) not rely on external or additional software code or data, unless such software code

or data is included in the items to be delivered; and

(3) in the case of negotiated terms that do not allow for the inclusion of dependent software code or data, sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(Added Pub. L. 115-91, div. A, title VIII, § 871(a)(1), Dec. 12, 2017, 131 Stat. 1496.)

GUIDANCE

Pub. L. 115-91, div. A, title VIII, § 871(b), Dec. 12, 2017, 131 Stat. 1497, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall issue updated guidance to implement section 2322a of title 10, United States Code, as added by subsection (a).”

§ 2323. Repealed. Pub. L. 115-232, div. A, title VIII, § 812(a)(2)(A), Aug. 13, 2018, 132 Stat. 1846]

Section, added and amended Pub. L. 102-484, div. A, title VIII, §§ 801(a)(1), (b)-(f), 802, Oct. 23, 1992, 106 Stat. 2442-2444, 2446; Pub. L. 103-35, title II, § 202(a)(6), May 31, 1993, 107 Stat. 101; Pub. L. 103-160, div. A, title VIII, § 811(a)-(c), (e), Nov. 30, 1993, 107 Stat. 1702; Pub. L. 103-355, title VII, § 7105, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 104-106, div. D, title XLIII, § 4321(b)(8), Feb. 10, 1996, 110 Stat. 672; Pub. L. 105-135, title VI, § 604(a), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 105-261, div. A, title VIII, § 801, Oct. 17, 1998, 112 Stat. 2080; Pub. L. 106-65, div. A, title VIII, § 808, Oct. 5, 1999, 113 Stat. 705; Pub. L. 107-107, div. A, title X, § 1048(a)(17), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VIII, § 816, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 108-136, div. A, title X, § 1031(a)(15), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 109-163, div. A, title VIII, § 842, Jan. 6, 2006, 119 Stat. 3389; Pub. L. 109-364, div. A, title VIII, § 858, Oct. 17, 2006, 120 Stat. 2349; Pub. L. 110-181, div. A, title VIII, § 891, Jan. 28, 2008, 122 Stat. 270; Pub. L. 111-383, div. A, title X, § 1075(b)(31), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 115-91, div. A, title XVII, § 1701(a)(4)(B), Dec. 12, 2017, 131 Stat. 1796, related to contract goals for small disadvantaged businesses and certain institutions of higher education.

A prior section 2323, added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 99-500, § 101(c) [title X, § 926(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-153, and Pub. L. 99-591, § 101(c) [title X, § 926(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-153; Pub. L. 99-661, div. A, title IX, formerly title IV, § 926(a)(1), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, related to commercial pricing for spare or repair parts, prior to repeal by Pub. L. 101-510, div. A, title VIII, § 804(a), Nov. 5, 1990, 104 Stat. 1591.

§ 2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term “Indian lands” has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4)).

(2) The term “Indian” has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).¹

(3) The term “Indian tribe” has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).¹

(4) The term “tribally owned corporation” means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102-484, div. A, title VIII, §801(g)(1), Oct. 23, 1992, 106 Stat. 2445; amended

Pub. L. 104-201, div. A, title X, §1074(a)(13), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 115-232, div. A, title VIII, §812(a)(2)(C)(vii), Aug. 13, 2018, 132 Stat. 1847.)

REFERENCES IN TEXT

Section 4 of the Indian Self-Determination and Education Assistance Act, referred to in subsec. (e)(2), (3), was classified to section 450b of Title 25, Indians, prior to editorial reclassification as section 5304 of Title 25.

CODIFICATION

Section, as added by Pub. L. 102-484, consists of text of Pub. L. 101-189, div. A, title VIII, §832, Nov. 29, 1989, 103 Stat. 1508, revised by Pub. L. 102-484 by substituting “section 2323 of this title” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)” in subsec. (a). Section 832 of Pub. L. 101-189, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102-484, div. A, title VIII, §801(h)(5), Oct. 23, 1992, 106 Stat. 2445.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-232 struck out “section 2323 of this title and” after “implementation of”.

1996—Subsec. (a). Pub. L. 104-201, which directed amendment of subsec. (a) by substituting “section 2323 of this title” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)”, could not be executed because the language “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)” did not appear. See Codification note above.

§ 2324. Allowable costs under defense contracts

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) If the head of the agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the head of the agency shall assess a penalty against the

¹ See References in Text note below.