

(2) Determination that consolidation is necessary and justified

(A) In general

A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

(B) Savings in administrative or personnel costs

For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

(C) Notice

Not later than 7 days after making a determination that an acquisition strategy involving a consolidation of contract requirements is necessary and justified under subparagraph (A), the senior procurement executive or Chief Acquisition Officer shall publish a notice on a public website that such determination has been made. Any solicitation for a procurement related to the acquisition strategy may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the senior procurement executive or Chief Acquisition Officer shall publish a justification for the determination, which shall include the information in subparagraphs (A) through (E) of paragraph (1).

(3) Benefits to be considered

The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

- (A) quality;
- (B) acquisition cycle;
- (C) terms and conditions; and
- (D) any other benefit.

(Pub. L. 85-536, §2[44], as added Pub. L. 111-240, title I, §1313(a)(2), Sept. 27, 2010, 124 Stat. 2538; amended Pub. L. 112-239, div. A, title XVI, §1671(a), (b), (c)(2), Jan. 2, 2013, 126 Stat. 2084, 2085; Pub. L. 113-291, div. A, title VIII, §822(b), Dec. 19, 2014, 128 Stat. 3436; Pub. L. 114-92, div. A, title VIII, §863(b), (c), Nov. 25, 2015, 129 Stat. 926, 927.)

PRIOR PROVISIONS

A prior section 2[44] of Pub. L. 85-536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2015—Subsec. (c)(1). Pub. L. 114-92, §863(c), substituted “The head” for “Subject to paragraph (4), the head” in introductory provisions.

Subsec. (c)(2)(C). Pub. L. 114-92, §863(b), added subpar. (C).

2014—Subsec. (a)(1). Pub. L. 113-291, §822(b)(1), inserted “appointed or” before “designated” and substituted “section 1702(a) of title 41” for “section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(a))”.

Subsec. (a)(3). Pub. L. 113-291, §822(b)(2), substituted “section 1702(c) of title 41” for “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))”.

2013—Subsec. (a)(2). Pub. L. 112-239, §1671(a), substituted “or a multiple award contract—” and subpars. (A) and (B) for “or a multiple award contract to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; and”.

Subsec. (c)(1)(E). Pub. L. 112-239, §1671(b), substituted “ensures” for “certifies to the head of the Federal agency”.

Subsec. (c)(4). Pub. L. 112-239, §1671(c)(2), struck out par. (4). Prior to amendment, text read as follows:

“(A) IN GENERAL.—The Department of Defense and each military department shall comply with this section until after the date described in subparagraph (C).

“(B) RULE.—After the date described in subparagraph (C), contracting by the Department of Defense or a military department shall be conducted in accordance with section 2382 of title 10.

“(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines the Department of Defense or a military department is in compliance with the Government-wide contracting goals under section 644 of this title.”

§ 657r. Mentor-protege programs

(a) Administration program

(1) Authority

The Administrator is authorized to establish a mentor-protege program for all small business concerns.

(2) Model for program

The mentor-protege program established under paragraph (1) shall be identical to the mentor-protege program of the Administration for small business concerns that participate in the program under section 637(a) of this title (as in effect on January 2, 2013), except that the Administrator may modify the program to the extent necessary given the types of small business concerns included as proteges.

(3) Puerto Rico businesses

During the period beginning on August 13, 2018, and ending on the date on which the Oversight Board established under section 2121 of title 48 terminates, the Administrator shall identify potential incentives to a covered mentor that awards a subcontract to its covered protege, including—

(A) positive consideration in any past performance evaluation of the covered mentor; and

(B) the application of costs incurred for providing training to such covered protege to the subcontracting plan (as required under paragraph (4) or (5) of section 637(d) of this title) of the covered mentor.

(b) Programs of other agencies

(1) Approval required

Except as provided in paragraph (4), a Federal department or agency may not carry out

a mentor-protege program for small business concerns unless—

(A) the head of the department or agency submits a plan to the Administrator for the program; and

(B) the Administrator approves such plan.

(2) Basis for approval

The Administrator shall approve or disapprove a plan submitted under paragraph (1) based on whether the program proposed—

(A) will assist proteges to compete for Federal prime contracts and subcontracts; and

(B) complies with the regulations issued under paragraph (3).

(3) Regulations

Not later than 270 days after January 2, 2013, the Administrator shall issue, subject to notice and comment, regulations with respect to mentor-protege programs, which shall ensure that such programs improve the ability of proteges to compete for Federal prime contracts and subcontracts and which shall address, at a minimum, the following:

(A) Eligibility criteria for program participants, including any restrictions on the number of mentor-protege relationships permitted for each participant, except that such restrictions shall not apply to up to 2 mentor-protege relationships if such relationships are between a covered protege and covered mentor.

(B) The types of developmental assistance to be provided by mentors, including how the assistance provided shall improve the competitive viability of the proteges.

(C) Whether any developmental assistance provided by a mentor may affect the status of a program participant as a small business concern due to affiliation.

(D) The length of mentor-protege relationships.

(E) The effect of mentor-protege relationships on contracting.

(F) Benefits that may accrue to a mentor as a result of program participation.

(G) Reporting requirements during program participation.

(H) Postparticipation reporting requirements.

(I) The need for a mentor-protege pair, if accepted to participate as a pair in a mentor-protege program of any Federal department or agency, to be accepted to participate as a pair in all Federal mentor-protege programs.

(J) Actions to be taken to ensure benefits for proteges and to protect a protege against actions by a mentor that—

(i) may adversely affect the protege's status as a small business concern; or

(ii) provide disproportionate economic benefits to the mentor relative to those provided the protege.

(K) The types of assistance provided by a mentor to assist with compliance with the requirements of contracting with the Federal Government after award of a contract or subcontract under this section.

(4) Limitation on applicability

Paragraph (1) does not apply to the following:

(A) Any mentor-protege program of the Department of Defense.

(B) Any mentoring assistance provided under a Small Business Innovation Research Program or a Small Business Technology Transfer Program.

(C) Until the date that is 1 year after the date on which the Administrator issues regulations under paragraph (3), any Federal department or agency operating a mentor-protege program in effect on January 2, 2013.

(c) Reporting

(1) In general

Not later than 2 years after January 2, 2013, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that—

(A) identifies each Federal mentor-protege program;

(B) specifies the number of participants in each such program, including the number of participants that are—

(i) small business concerns;

(ii) small business concerns owned and controlled by service-disabled veterans;

(iii) qualified HUBZone small business concerns;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals; or

(v) small business concerns owned and controlled by women;

(C) describes the type of assistance provided to proteges under each such program;

(D) describes the benefits provided to mentors under each such program; and

(E) describes the progress of proteges under each such program with respect to competing for Federal prime contracts and subcontracts.

(2) Provision of information

The head of each Federal department or agency carrying out a mentor-protege program shall provide to the Administrator, on an annual basis, the information necessary for the Administrator to submit a report required under paragraph (1).

(d) Definitions

In this section, the following definitions apply:

(1) Mentor

The term “mentor” means a for-profit business concern, of any size, that—

(A) has the ability to assist and commits to assisting a protege to compete for Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(2) Mentor-protege program

The term “mentor-protege program” means a program that pairs a mentor with a protege for the purpose of assisting the protege to compete for Federal prime contracts and subcontracts.

(3) Protege

The term “protege” means a small business concern that—

(A) is eligible to enter into Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(4) Covered mentor

The term “covered mentor” means a mentor that enters into an agreement under this chapter, or under any mentor-protege program approved under subsection (b)(1), with a covered protege.

(5) Covered protege

The term “covered protege” means a protege of a covered mentor that is a Puerto Rico business.

(e) Current mentor protege agreements

Mentors and proteges with approved agreement in a program operating pursuant to subsection (b)(4)(C) shall be permitted to continue their relationship according to the terms specified in their agreement until the expiration date specified in the agreement.

(f) Submission of agency plans

Agencies operating mentor protege programs pursuant to subsection (b)(4)(C) shall submit the plans specified in subsection (b)(1)(A) to the Administrator within 6 months of the promulgation of rules required by subsection (b)(3). The Administrator shall provide initial comments on each plan within 60 days of receipt, and final approval or denial of each plan within 180 days after receipt.

(Pub. L. 85-536, §2[45], as added Pub. L. 112-239, div. A, title XVI, §1641(2), Jan. 2, 2013, 126 Stat. 2077; amended Pub. L. 114-328, div. A, title XVIII, §1813(e), Dec. 23, 2016, 130 Stat. 2653; Pub. L. 115-232, div. A, title VIII, §861(d), (e), Aug. 13, 2018, 132 Stat. 1896, 1897.)

PRIOR PROVISIONS

A prior section 2[45] of Pub. L. 85-536 was renumbered section 2[49] and is set out as a note under section 631 of this title.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115-232, §861(d)(1), added par. (3).

Subsec. (b)(3)(A). Pub. L. 115-232, §861(e), inserted “, except that such restrictions shall not apply to up to 2 mentor-protege relationships if such relationships are between a covered protege and covered mentor” after “each participant”.

Subsec. (d)(4), (5). Pub. L. 115-232, §861(d)(2), added pars. (4) and (5).

2016—Subsec. (b)(3)(K). Pub. L. 114-328 added subpar. (K).

§ 657s. Limitations on subcontracting

(a) In general

If awarded a contract under section 637(a), 637(m), 644(a), 657a, or 657f of this title, a covered small business concern—

(1) in the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount paid to the concern under the contract;

(2) in the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of

materials, paid to the concern under the contract;

(3) in the case of a contract described in paragraphs (1) and (2)—

(A) shall determine for which category, services (as described in paragraph (1)) or supplies (as described in paragraph (2)), the greatest percentage of the contract is awarded;

(B) shall determine the amount awarded under the contract for that category of services or supplies; and

(C) may not expend on subcontractors, with respect to the amount determined under subparagraph (B), more than 50 percent of that amount; and

(4) in the case of a contract which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction, shall supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(A) by the Administrator, after reviewing a determination by the applicable 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 by the contract; or

(B) 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.

(b) Similarly situated entities

Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted for purposes of determining whether the covered small business concern has violated a requirement established under subsection (a) or (d).

(c) Modifications of percentages

The Administrator may change, by rule (after providing notice and an opportunity for public comment), a percentage specified in paragraphs (1) through (4) of subsection (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.

(d) Other contracts

(1) In general

With respect to a category of contracts to which a requirement under subsection (a) does not apply, the Administrator is authorized to establish, by rule (after providing notice and an opportunity for public comment), a requirement that a covered small business concern may not expend on subcontractors more than a specified percentage of the amount paid to the concern under a contract in that category.

(2) Uniformity

A requirement established under paragraph (1) shall apply to all covered small business concerns.