

dures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term “suspend” means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41). The requirement shall not apply in the case of a subcontract for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(Added Pub. L. 97-86, title IX, §914(a), Dec. 1, 1981, 95 Stat. 1124, §2393; amended Pub. L. 100-180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101-510, div. A, title VIII, §813, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102-190, div. A, title X, §1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103-355, title IV, §4102(e), title VIII, §8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111-350, §5(b)(24), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 113-66, div. A, title VIII, §813, Dec. 26, 2013, 127 Stat. 808; Pub. L. 115-232, div. A, title VIII, §836(e)(3), Aug. 13, 2018, 132 Stat. 1869; renumbered §4654, Pub. L. 116-283, div. A, title XVIII, §1862(b), Jan. 1, 2021, 134 Stat. 4277.)

#### PRIOR PROVISIONS

A prior section 4654 was renumbered section 7654 of this title.

#### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2393 of this title as this section.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

### § 4655. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial products or commercial services and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial products or commercial services from that subcontractor.

(2) In paragraph (1), the terms “commercial product” and “commercial service” have the meanings given those terms in sections 103 and 103a, respectively, of title 41.

(Added Pub. L. 98-525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2601, §2402; amended Pub. L. 103-355, title IV, §4102(f), title VIII, §8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111-350, §5(b)(25), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, §836(e)(4), Aug. 13, 2018, 132 Stat. 1869; renumbered §4655, Pub. L. 116-283, div. A, title XVIII, §1862(b), Jan. 1, 2021, 134 Stat. 4277.)

#### PRIOR PROVISIONS

A prior section 4655 was renumbered section 7655 of this title.

#### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2402 of this title as this section.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

### § 4656. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the

Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) **CRIMINAL PENALTY.**—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than \$500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) **SINGLE POINT OF CONTACT FOR INFORMATION.**—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99-500, §101(c) [title X, §941(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-161, and Pub. L. 99-591, §101(c) [title X, §941(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-161, §2408; Pub. L. 99-661, div. A, title IX, formerly title IV, §941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-456, div. A, title VIII, §831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101-510, div. A, title VIII, §812, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102-484, div. A, title VIII, §815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103-355, title IV, §4102(g), title VIII, §8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; Pub. L. 104-106, div. A, title X, §1062(e), Feb. 10, 1996, 110 Stat. 444; Pub. L. 111-350, §5(b)(26), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, §836(e)(5), Aug. 13, 2018, 132 Stat. 1870; renumbered §4656, Pub. L. 116-283, div. A, title XVIII, §1862(b), Jan. 1, 2021, 134 Stat. 4277.)

#### CODIFICATION

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

#### PRIOR PROVISIONS

A prior section 4656 was renumbered section 7656 of this title.

#### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2408 of this title as this section.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

### § 4657. Prohibition on criminal history inquiries by contractors prior to conditional offer

(a) **LIMITATION ON CRIMINAL HISTORY INQUIRIES.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), the head of an agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

(B) shall require as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally or through written form request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before such contractor extends a conditional offer to the applicant.

(2) **OTHERWISE REQUIRED BY LAW.**—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(3) **EXCEPTION FOR CERTAIN POSITIONS.**—

(A) **IN GENERAL.**—The prohibition under paragraph (1) does not apply with respect to—

(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

(ii) a position that the Secretary of Defense identifies under the regulations issued under subparagraph (B).

(B) **REGULATIONS.**—

(i) **ISSUANCE.**—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Secretary of Defense, in consultation with the Administrator of General Services, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

(ii) **COMPLIANCE WITH CIVIL RIGHTS LAWS.**—The regulations issued under clause (i) shall—