

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

2021—Subsec. (a)(4). Pub. L. 116-283, § 866(c)(1), added par. (4).

Subsec. (b)(3)(A). Pub. L. 116-283, § 866(c)(2), substituted “relationships—” and cls. (i) and (ii) for “relationships are between a covered protege and covered mentor.”

Subsec. (d)(6), (7). Pub. L. 116-283, § 866(c)(3), added pars. (6) and (7).

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.

(3) Construction projects

The Administrator shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) 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 paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (1).

(e) Definitions

In this section, the following definitions apply:

(1) Covered small business concern

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

(A) with respect to a contract awarded under section 637(a) of this title, is a small business concern eligible to receive contracts under that section;

(B) with respect to a contract awarded under section 637(m) of this title—

(i) is a small business concern owned and controlled by women (as defined in that section); or

(ii) is a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(C) with respect to a contract awarded under section 644(a) of this title, is a small business concern;

(D) with respect to a contract awarded under section 657a of this title, is a qualified HUBZone small business concern; or

(E) with respect to a contract awarded under section 657f of this title, is a small business concern owned and controlled by service-disabled veterans.

(2) Similarly situated entity

The term “similarly situated entity” means a subcontractor that—

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 637(a) of this title, is such a concern;

(C) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern;

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

(Pub. L. 85-536, §2[46], as added Pub. L. 112-239, div. A, title XVI, §1651, Jan. 2, 2013, 126 Stat. 2079; amended Pub. L. 114-92, div. A, title VIII, §864(b), Nov. 25, 2015, 129 Stat. 927.)

AMENDMENTS

2015—Subsec. (a)(4). Pub. L. 114-92 substituted “which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction” for “for supplies from a regular dealer in such supplies” in introductory provisions.

INAPPLICABILITY OF REQUIREMENT TO REVIEW AND JUSTIFY CERTAIN CONTRACTS

Pub. L. 113-66, div. A, title XVI, §1615, Dec. 26, 2013, 127 Stat. 950, provided that: “In the case of a contract to which the provisions of section 46 of the Small Business Act (15 U.S.C. 657s) apply, the requirements under section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1824; 10 U.S.C. 2304 note) do not apply.”

§ 657t. Office of Credit Risk Management

(a) Establishment

There is established within the Administration the Office of Credit Risk Management (in this section referred to as the “Office”).

(b) Duties

The Office shall be responsible for supervising—

(1) any lender making loans under section 7(a) [15 U.S.C. 636(a)] (in this section referred to as a “7(a) lender”);

(2) any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration; and

(3) any small business lending company or a non-Federally regulated lender without regard to the requirements of section 650 of this title.

(c) Director

(1) In general

The Office shall be headed by the Director of the Office of Credit Risk Management (in this section referred to as the “Director”), who shall be a career appointee in the Senior Executive Service (as defined in section 3132 of title 5).

(2) Duties

The Director shall be responsible for oversight of the lenders and participants described in subsection (b), including by conducting periodic reviews of the compliance and performance of such lenders and participants.

(d) Supervision duties for 7(a) lenders

(1) Reviews

With respect to 7(a) lenders, an employee of the Office shall—

(A) be present for and supervise any such review that is conducted by a contractor of the Office on the premise¹ of the 7(a) lender; and

(B) supervise any such review that is not conducted on the premise¹ of the 7(a) lender.

(2) Review report timeline

(A) In general

Notwithstanding any other requirements of the Office or the Administrator, the Administrator shall develop and implement a review report timeline which shall—

(i) require the Administrator to—

(I) deliver a written report of the review to the 7(a) lender not later than 60 business days after the date on which the review is concluded; or

(II) if the Administrator expects to submit the report after the end of the 60-day period described in clause (i), notify the 7(a) lender of the expected date of submission of the report and the reason for the delay; and

(ii) if a response by the 7(a) lender is requested in a report submitted under subparagraph (A), require the 7(a) lender to submit responses to the Administrator not later than 45 business days after the date on which the 7(a) lender receives the report.

(B) Extension

The Administrator may extend the time frame described in subparagraph (A)(i)(II) with respect to a 7(a) lender as the Administrator determines necessary.

(e) Enforcement authority against 7(a) lenders

(1) Informal enforcement authority

The Director may take an informal enforcement action against a 7(a) lender if the Direc-

¹ So in original. Probably should be “premises”.