

SITIONS”, which consisted of subchapters I “General” and II “Prohibition on Contracting with the Enemy”. Subchapter I consisted of section 3881 “Contracts: consideration of national security objectives”, as transferred from section 2327 of this title, and subchapter II consisted of reserved sections 3891 to 3893. Subsequently, Pub. L. 117–81, div. A, title XVII, §1701(i)(8)(B), Dec. 27, 2021, 135 Stat. 2142, generally amended section 1837 of Pub. L. 116–283, effective as if included therein, so that this chapter would consist only of the chapter 283 designation and “[RESERVED]”, thereby omitting the contents of this chapter in their entirety.

CHAPTER 287—OTHER CONTRACTING PROGRAMS

Sec.	
3901.	Contracts: prohibition on competition between Department of Defense and small businesses.
3902.	Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses.
3903.	Subcontracting plans: credit for certain purchases.
3904.	[Reserved].
3905.	Products of Federal Prison Industries: procedural requirements.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 285 “SMALL BUSINESS PROGRAMS”, as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3901, was repealed by Pub. L. 116–283, div. A, title XVIII, §1871(a)(1), Jan. 1, 2021, 134 Stat. 4287.

A prior chapter 287 “SOCIOECONOMIC PROGRAMS”, as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1829, and consisting of reserved section 3961, was repealed by Pub. L. 116–283, div. A, title XVIII, §1838(a), Jan. 1, 2021, 134 Stat. 4242.

AMENDMENTS

2021—Pub. L. 117–81, div. A, title XVII, §1701(i)(1)(B), (v)(2)(B), Dec. 27, 2021, 135 Stat. 2144, 2154, amended Pub. L. 116–283, div. A, title XVIII, §1838(a), Jan. 1, 2021, 134 Stat. 4242, which added this analysis, by substituting “OTHER CONTRACTING” for “SOCIOECONOMIC” in chapter heading and “[Reserved]” for “Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education” in item 3904.

Statutory Notes and Related Subsidiaries

DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES

Pub. L. 115–232, div. A, title VIII, §888, Aug. 13, 2018, 132 Stat. 1916, provided that: “Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall update the Defense Federal Acquisition Regulatory Supplement to include an instruction on the pilot program regarding employment of persons with disabilities authorized under section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2302 note).”

Pub. L. 108–136, div. A, title VIII, §853, Nov. 24, 2003, 117 Stat. 1557, as amended by Pub. L. 108–199, div. H, §110, Jan. 23, 2004, 118 Stat. 438; Pub. L. 115–232, div. A, title VIII, §812(a)(2)(C)(i), Aug. 13, 2018, 132 Stat. 1846, provided that:

“(a) AUTHORITY.—The Secretary of Defense may carry out a demonstration project by entering into one or more contracts with an eligible contractor for the purpose of providing defense contracting opportunities for severely disabled individuals.

“(b) EVALUATION FACTOR.—In evaluating an offer for a contract under the demonstration program, the per-

centage of the total workforce of the offeror consisting of severely disabled individuals employed by the offeror shall be one of the evaluation factors.

“(c) CREDIT TOWARD CERTAIN SMALL BUSINESS CONTRACTING GOALS.—Department of Defense contracts entered into with eligible contractors under the demonstration project under this section, and subcontracts entered into with eligible contractors under such contracts, shall be credited toward the attainment of goals established under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) regarding the extent of the participation of disadvantaged small business concerns in contracts of the Department of Defense and subcontracts under such contracts.

“(d) DEFINITIONS.—In this section:

“(1) ELIGIBLE CONTRACTOR.—The term ‘eligible contractor’ means a business entity operated on a for-profit or nonprofit basis that—

“(A) employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over a period prescribed by the Secretary;

“(B) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) to the employees who are severely disabled individuals; and

“(C) provides for its employees health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

“(2) SEVERELY DISABLED INDIVIDUAL.—The term ‘severely disabled individual’ means an individual with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) who has a severe physical or mental impairment that seriously limits one or more functional capacities.”

§ 3901. Contracts: prohibition on competition between Department of Defense and small businesses

(a) EXCLUSION.—In any case in which the Secretary of Defense plans to use competitive procedures for a procurement, if the procurement is to be conducted as described in subsection (b), then the Secretary shall exclude the Department of Defense from competing in the procurement.

(b) PROCUREMENT DESCRIPTION.—The requirement to exclude the Department of Defense under subsection (a) applies in the case of a procurement to be conducted by excluding from competition entities in the private sector other than small business concerns in furtherance of section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644).

(Added Pub. L. 103–160, div. A, title VIII, §848(a)(1), Nov. 30, 1993, 107 Stat. 1724, §2304a; renumbered §2304e, Pub. L. 104–106, div. D, title XLIII, §4321(b)(6)(A), Feb. 10, 1996, 110 Stat. 672; amended Pub. L. 115–232, div. A, title VIII, §812(a)(2)(C)(vi), Aug. 13, 2018, 132 Stat. 1847; Pub. L. 116–92, div. A, title XVII, §1731(a)(39)(A), Dec. 20, 2019, 133 Stat. 1814; renumbered §3901, Pub. L. 116–283, div. A, title XVIII, §1838(b), Jan. 1, 2021, 134 Stat. 4242; Pub. L. 117–81, div. A, title XVII, §1701(v)(2)(A), Dec. 27, 2021, 135 Stat. 2154.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, §1838(b), as amended by Pub. L. 117–81, §1701(v)(2)(A), renumbered section 2304e of this title as this section.

2018—Subsec. (b). Pub. L. 115–232 substituted “other than” for “other than—”, struck out par. (1) designa-

tion before “small business”, and struck out par. (2) which read as follows: “entities described in subsection (a)(1) of section 2323 of this title in furtherance of the goal specified in that subsection.”

1996—Pub. L. 104-106 renumbered section 2304a of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

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.

EFFECTIVE DATE

Pub. L. 103-160, div. A, title VIII, §848(b), Nov. 30, 1993, 107 Stat. 1725, provided that: “Section 2304a of title 10, United States Code [now 10 U.S.C. 3901], as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 30, 1993].”

§ 3902. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses

(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 employ-

ment 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 (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. 5304(d)).

(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. 5304(e)).

(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, §2323a; 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; Pub. L. 116-92, div. A, title XVII, §1731(a)(39)(B), Dec. 20, 2019, 133 Stat. 1814; renumbered §3902, Pub. L. 116-283, div. A, title XVIII, §1838(b), Jan. 1, 2021, 134 Stat. 4242; Pub. L. 117-81, div. A, title XVII, §1701(v)(2)(A), Dec. 27, 2021, 135 Stat. 2154.)

Editorial Notes

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

2021—Pub. L. 116-283, §1838(b), as amended by Pub. L. 117-81, §1701(v)(2)(A), renumbered section 2323a of this title as this section.

2019—Pub. L. 116-92, §1731(a)(39)(B)(i), struck out “and certain institutions of higher education” after “businesses” in section catchline.