

ber of package units of the drug sold during the period; divided by

(B) the total number of package units of the drug sold during the period.

(i)(1) If the Secretary modifies a multi-year contract described in subsection (d) to include a covered drug of the manufacturer that was not available for inclusion under the contract at the time the contract went into effect, the price of the drug shall be determined as follows:

(A) For the portion of the first contract year during which the drug is so included, the price of the drug shall be determined in accordance with subsection (a)(2), except that the reference in such subsection to "the one-year period beginning on the date the agreement takes effect" shall be considered a reference to such portion of the first contract year.

(B) For any subsequent contract year, the price of the drug shall be determined in accordance with subsection (d), except that each reference in such subsection to "the first year for which the contract is in effect" shall be considered a reference to the portion of the first contract year during which the drug is included under the contract.

(2) In this subsection, the term "contract year" means any one-year period for which a multi-year contract described in subsection (d) is in effect.

(Added Pub. L. 102-585, title VI, §603(a)(1), Nov. 4, 1992, 106 Stat. 4971; amended Pub. L. 103-18, §1(a), Apr. 12, 1993, 107 Stat. 53; Pub. L. 103-446, title XII, §1201(e)(27), (f)(6), Nov. 2, 1994, 108 Stat. 4686, 4687; Pub. L. 104-106, div. A, title VII, §737(a), Feb. 10, 1996, 110 Stat. 383; Pub. L. 105-115, title I, §125(b)(2)(E), Nov. 21, 1997, 111 Stat. 2325.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(4)(A), (e)(2), (g)(1), and (h)(2)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of Title 42. Section 1927 of the Act is classified to section 1396r-8 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Public Health Service Act, referred to in subsec. (a)(4)(C), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Enactment of this section, referred to in subsec. (g)(2), means enactment of Pub. L. 102-585, which enacted this section and was approved Nov. 4, 1992.

AMENDMENTS

1997—Subsec. (h)(2). Pub. L. 105-115 inserted "or" at end of subpar. (B), substituted a period for "; or" at end of subpar. (C), and struck out subpar. (D), which read as follows: "insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act."

1996—Subsec. (b)(4). Pub. L. 104-106 added par. (4).

1994—Subsec. (e)(1)(A). Pub. L. 103-446, §1201(e)(27)(A), (f)(6)(A), substituted "December 4, 1992" for "30 days after the date of the enactment of this section" and "one-year period" for "1-year period".

Subsec. (f)(2). Pub. L. 103-446, §1201(e)(27)(B), substituted a period for ", and" at end.

Subsec. (g)(1), (2). Pub. L. 103-446, §1201(f)(6)(B), substituted "November 4, 1992" for "the date of the enactment of this section".

1993—Subsec. (a)(2). Pub. L. 103-18, §1(a)(1), struck out "preceding such date" before "as the Secretary considers appropriate".

Subsec. (c). Pub. L. 103-18, §1(a)(2), in introductory provisions, struck out "for calendar quarters" after "subsection (a)(2)", and in par. (1), struck out "preceding the month during which the contract goes into effect" after "during such period" and substituted "multiplied by" for "increased by".

Subsec. (d)(1). Pub. L. 103-18, §1(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "during any one-year period that follows the first year for which the contract is in effect, the price charged may not exceed the price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last months of such one-year periods for which Consumer Price Index data is available; and".

Subsec. (i). Pub. L. 103-18, §1(a)(4), added subsec. (i).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 737(b) of Pub. L. 104-106 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 603 of the Veterans Health Care Act of 1992 (Public Law 102-585; 106 Stat. 4971)."

EFFECTIVE DATE OF 1993 AMENDMENT

Section 1(b) of Pub. L. 103-18 provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 603 of the Veterans Health Care Act of 1992 [Pub. L. 102-585]."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

(a) CONTRACTING GOALS.—(1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall—

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph (1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the

Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a sub-contract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) USE OF NONCOMPETITIVE PROCEDURES FOR CERTAIN SMALL CONTRACTS.—For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 134 of title 41), a contracting officer of the Department may use procedures other than competitive procedures.

(c) SOLE SOURCE CONTRACTS FOR CONTRACTS ABOVE SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if—

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 134 of title 41) but will not exceed \$5,000,000; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

(d) USE OF RESTRICTED COMPETITION.—Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

(e) ELIGIBILITY OF SMALL BUSINESS CONCERNS.—A small business concern may be awarded a contract under this section only if the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f).

(f) DATABASE OF VETERAN-OWNED BUSINESSES.—(1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

(2)(A) To be eligible for inclusion in the database, such a veteran shall submit to the Sec-

retary such information as the Secretary may require with respect to the small business concern or the veteran. Application for inclusion in the database shall constitute permission under section 552a of title 5 (commonly referred to as the Privacy Act) for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application.

(B) If the Secretary receives an application for inclusion in the database from an individual whose status as a veteran cannot be verified because the Secretary does not maintain information with respect to the veteran status of the individual, the Secretary may not include the small business concern owned and controlled by the individual in the database maintained by the Secretary until the Secretary receives such information as may be necessary to verify that the individual is a veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) No small business concern may be listed in the database until the Secretary has verified that—

(A) the small business concern is owned and controlled by veterans; and

(B) in the case of a small business concern for which the person who owns and controls the concern indicates that the person is a veteran with a service-connected disability, that the person is a veteran with a service-connected disability.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(g) ENFORCEMENT PENALTIES FOR MISREPRESENTATION.—Any business concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.

(h) TREATMENT OF BUSINESSES AFTER DEATH OF VETERAN-OWNER.—(1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(A) The date on which the surviving spouse remarries.

(B) The date on which the surviving spouse relinquishes an ownership interest in the small business concern.

(C) The date that is ten years after the date of the veteran's death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability.

(i) PRIORITY FOR CONTRACTING PREFERENCES.—Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.

(2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).

(3) Contracts awarded pursuant to—

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(B) section 31 of such Act (15 U.S.C. 657a).

(4) Contracts awarded pursuant to any other small business contracting preference.

(j) APPLICABILITY OF REQUIREMENTS TO CONTRACTS.—(1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services.

(2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

(k) ANNUAL REPORTS.—Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

(1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) DEFINITIONS.—In this section:

(1) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term “small business concern owned and controlled by veterans” means a small business concern—

(A)(i) not less than 51 percent of which is owned by one or more veterans or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) the management and daily business operations of which are controlled by one or more veterans; or

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

(Added Pub. L. 109-461, title V, §502(a)(1), Dec. 22, 2006, 120 Stat. 3431; amended Pub. L. 110-389, title VIII, §806, Oct. 10, 2008, 122 Stat. 4189; Pub. L. 111-275, title I, §104(b)(1), Oct. 13, 2010, 124 Stat. 2867; Pub. L. 111-350, §5(j)(7), Jan. 4, 2011, 124 Stat. 3850.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (j)(2), is Pub. L. 85-536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2011—Subsecs. (b), (c)(2). Pub. L. 111-350 substituted “section 134 of title 41” for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)”.

2010—Subsec. (f)(2). Pub. L. 111-275, §104(b)(1)(A), designated existing provisions as subpar. (A), inserted at end of subpar. (A) “Application for inclusion in the database shall constitute permission under section 552a of title 5 (commonly referred to as the Privacy Act) for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application.”, and added subpar. (B).

Subsec. (f)(4). Pub. L. 111-275, §104(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: “In maintaining the database, the Secretary shall carry out at least the following two verification functions:

“(A) Verification that each small business concern listed in the database is owned and controlled by veterans.

“(B) In the case of a veteran who indicates a service-connected disability, verification of the service-disabled status of such veteran.”

2008—Subsecs. (j) to (l). Pub. L. 110-389 added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

EFFECTIVE DATE

Pub. L. 109-461, title V, §502(d), Dec. 22, 2006, 120 Stat. 3435, provided that: “This section [enacting this section and provisions set out as a note below] and the amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006].”

TRANSITION PROVISIONS

Pub. L. 111-275, title I, §104(b)(2), Oct. 13, 2010, 124 Stat. 2868, provided that: “In the case of a small busi-

ness concern included in the database as of the date of the enactment of this Act [Oct. 13, 2010] for which, as of such date, the Secretary of Veterans Affairs has not verified the status of such concern in accordance with paragraph (4) of subsection (f) of section 8127 of title 38, United States Code, as amended by paragraph (1), not later than 60 days after the date of the enactment of this Act, the Secretary shall notify the person who owns and controls the concern that—

“(A) the Secretary is required to verify the status of the concern in accordance with such paragraph, as so amended;

“(B) verification of such status shall require that the person who owns and controls the concern apply for inclusion in the database in accordance with such subsection, as so amended;

“(C) application for inclusion in the database shall constitute permission under section 552a of title 5, United States Code (commonly referred to as the Privacy Act), for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application; and

“(D) the person who owns and controls the concern must submit to the Secretary all information required by the Secretary under this paragraph within 90 days of receiving the Secretary's notice of such requirement or the concern shall be removed from the database.”

Pub. L. 109-461, title V, § 502(b), Dec. 22, 2006, 120 Stat. 3435, provided that: “A small business concern that is listed in any small business database maintained by the Secretary of Veterans Affairs on the date of the enactment of this Act [Dec. 22, 2006] shall be presumed to be eligible for inclusion in the database under subsection (f) of section 8127 of title 38, United States Code, as added by subsection (a), during the period beginning on the effective date of that section [see Effective Date note above] and ending one year after such effective date. Such a small business concern may be removed from the database during that period if it is found not to be a small business concern owned and controlled by veterans (as defined in subsection (k) of such section).”

§ 8128. Small business concerns owned and controlled by veterans: contracting priority

(a) CONTRACTING PRIORITY.—In procuring goods and services pursuant to a contracting preference under this title or any other provision of law, the Secretary shall give priority to a small business concern owned and controlled by veterans, if such business concern also meets the requirements of that contracting preference.

(b) DEFINITION.—For purposes of this section, the term “small business concern owned and controlled by veterans” means a small business concern that is included in the small business database maintained by the Secretary under section 8127(f) of this title.

(Added Pub. L. 109-461, title V, § 503(a)(1), Dec. 22, 2006, 120 Stat. 3435.)

EFFECTIVE DATE

Pub. L. 109-461, title V, § 503(b), Dec. 22, 2006, 120 Stat. 3436, provided that: “This section [enacting this section] and the amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006].”

SUBCHAPTER III—STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

AMENDMENTS

1977—Pub. L. 95-62, § 4(a), July 5, 1977, 91 Stat. 263, substituted “DOMICILIARY, NURSING HOME, AND

HOSPITAL CARE” for “NURSING HOME CARE” in subchapter heading.

§ 8131. Definitions

For the purpose of this subchapter—

(1) The veteran population of each State shall be determined on the basis of the latest figures certified by the Department of Commerce.

(2) The term “State” does not include any possession of the United States.

(3) The term “construction” means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, adult day health, or hospital care in State homes, and the provision of initial equipment for any such buildings.

(4) The term “cost of construction” means the amount found by the Secretary to be necessary for a construction project, including architect fees, but excluding land acquisition costs.

(Added Pub. L. 88-450, § 4(a), Aug. 19, 1964, 78 Stat. 501, § 5031; amended Pub. L. 94-581, title II, § 206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, § 3(1), (2), July 5, 1977, 91 Stat. 262; Pub. L. 99-576, title II, § 224(d), Oct. 28, 1986, 100 Stat. 3263; renumbered § 8131, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 104-262, title III, § 342(b)(1), Oct. 9, 1996, 110 Stat. 3206.)

AMENDMENTS

1996—Par. (3), Pub. L. 104-262 inserted “adult day health,” before “or hospital care”.

1991—Pub. L. 102-40 renumbered section 5031 of this title as this section.

Par. (4), Pub. L. 102-83 substituted “Secretary” for “Administrator”.

1986—Pub. L. 99-576 redesignated pars. (a) to (d) as pars. (1) to (4), respectively.

1977—Par. (c), Pub. L. 95-62, § 3(1), inserted construction of new domiciliary buildings, expansion, remodeling, or alteration of existing domiciliary and hospital buildings, and provision of initial equipment for any such buildings to definition of “construction”.

Par. (d), Pub. L. 95-62, § 3(2), struck out provisions which had limited definition of “cost of construction” to the cost of construction of nursing home facilities.

1976—Par. (a), Pub. L. 94-581 substituted “veteran” for “war veteran”.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 224(e) of Pub. L. 99-576 provided that: “The amendments made by this section [amending this section and sections 5033 and 5035 [now 8133 and 8135] of this title] shall take effect on July 1, 1987.”

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95-62 provided that:

“(a) Except as provided in subsection (b) of this section, the amendments made by this Act [amending this section and sections 5032 to 5036 [now 8132 to 8136] of this title and repealing section 644 of this title] shall be effective October 1, 1977.

“(b)(1) The terms and conditions of any grant made prior to October 1, 1977, under section 644 of title 38, United States Code [former section 644 of this title], and regulations prescribed thereunder, shall remain in full force and effect unless modified, by the mutual agreement of the parties, in accordance with the provi-