

§ 737(a), Feb. 10, 1996, 110 Stat. 383; Pub. L. 105-115, title I, § 125(b)(2)(E), Nov. 21, 1997, 111 Stat. 2325.)

### Editorial Notes

#### 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, 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).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title VII, §737(b), Feb. 10, 1996, 110 Stat. 383, 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

Pub. L. 103-18, §1(b), Apr. 12, 1993, 107 Stat. 54, 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 subcontract 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.—Except as provided in subsection (d)(2), 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 or a small business concern owned and controlled by veterans with service-connected disabilities 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.—Except as provided in subsection (d)(2), 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 or a small business con-

cern owned and controlled by veterans with service-connected disabilities 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.**—(1) Except as provided in paragraph (2) and 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 or small business concerns owned and controlled by veterans with service-connected disabilities if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans or small business concerns owned and controlled by veterans with service-connected disabilities will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

(2)(A) Notwithstanding paragraph (1) and except as provided by subparagraph (B) of this paragraph, with respect to the procurement of a covered product or service, a contracting officer of the Department shall procure such product or service from a source designated under chapter 85 of title 41, and in accordance with the regulations prescribed under such chapter.

(B)(i) Subject to clause (ii), subparagraph (A) shall not apply in the case of a covered product or service for which a contract was—

(I) awarded under paragraph (1) after December 22, 2006; and

(II) in effect on the day before the date of the enactment of the Department of Veterans Affairs Contracting Preference Consistency Act of 2020.

(ii) Clause (i) shall cease to apply to a covered product or service described in such clause upon a determination of the Secretary that when the current contract for the covered product or service is terminated or expires there is no reasonable expectation that—

(I) two or more small business concerns owned and controlled by veterans will submit offers as described in paragraph (1); and

(II) the award can be made at a fair and reasonable price that offers best value to the United States.

(C) In this paragraph, the term “covered product or service” means—

(i) a product or service that—

(I) is included on the procurement list under section 8503(a) of title 41; and

(II) was included on such procurement list on or before December 22, 2006; or

(ii) a product or service that—

(I) is a replacement for a product or service described under clause (i);

(II) is essentially the same and meeting the same requirement as the product or service being replaced; and

(III) a contracting officer determines meets the quality standards and delivery schedule of the Department.

(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 Administrator under section 36 of the Small Business Act.

[(f) Transferred. Pub. L. 116-283, div. A, title VIII, §862(b)(2), Jan. 1, 2021, 134 Stat. 3778.]

(g) **ENFORCEMENT PENALTIES FOR MISREPRESENTATION.**—(1) Any business concern that is determined by the Secretary to have willfully and intentionally 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 period of not less than five years.

(2) In the case of a debarment under paragraph (1), the Secretary shall commence debarment action against the business concern by not later than 30 days after determining that the concern willfully and intentionally misrepresented the status of the concern as described in paragraph (1) and shall complete debarment actions against such concern by not later than 90 days after such determination.

(3) The debarment of a business concern under paragraph (1) includes the debarment of all principals in the business concern for a period of not less than five years.

(h) **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.

(i) **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.).

(j) 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.

(k) ANNUAL TRANSFER FOR CERTIFICATION COSTS.—For each fiscal year, the Secretary of Veterans Affairs shall reimburse the Administrator in an amount necessary to cover any cost incurred by the Administrator for certifying small business concerns owned and controlled by veterans that do not qualify as small business concerns owned and controlled by service-disabled veterans for the Secretary for purposes of this section and section 8128 of this title. The Administrator is authorized to accept such reimbursement. The amount of any such reimbursement shall be determined jointly by the Secretary and the Administrator and shall be provided from fees collected by the Secretary under multiple-award schedule contracts. Any disagreement about the amount shall be resolved by the Director of the Office of Management and Budget.

(l) LIMITATIONS ON SUBCONTRACTING.—(1)(A) The requirements applicable to a covered small business concern under section 46 of the Small Business Act (15 U.S.C. 657s) shall apply with respect to a small business concern owned and controlled by veterans that is awarded a contract under this section.

(B) For purposes of applying the requirements of section 46 of the Small Business Act (15 U.S.C. 657s) pursuant to subparagraph (A), the term “similarly situated entity” used in such section 46 includes a subcontractor for a small business concern owned and controlled by veterans described in such subparagraph (A).

(2) The Secretary may award a contract under this section only after the Secretary obtains from the offeror a certification that the offeror will comply with the requirements described in paragraph (1)(A) if awarded the contract. Such certification shall—

(A) specify the exact performance requirements applicable under such paragraph; and

(B) explicitly acknowledge that the certification is subject to section 1001 of title 18.

(3)(A) The Director of Small and Disadvantaged Business Utilization for the Department, established pursuant to section 15(k) of the Small Business Act (15 U.S.C. 644(k)), and the Chief Acquisition Officer of the Department, established pursuant to section 1702 of title 41, shall jointly implement a process using the systems described in section 16(g)(2) of the Small Business Act (15 U.S.C. 645(g)(2)), or any other relevant systems available, to monitor compliance with this subsection.

(B) The Director of Small and Disadvantaged Business Utilization and the Chief Acquisition Officer shall jointly refer any violations or suspected violations of this subsection to the Inspector General of the Department.

(C) If the Secretary determines, in consultation with the Inspector General of the Department, that a small business concern that is awarded a contract under this section did not act in good faith with respect to the requirements described in paragraph (1)(A), the small business concern shall be subject to any or all of the following consequences—

(i) referral to the Debarment and Suspension Committee of the Department;

(ii) a fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) prosecution for violating section 1001 of title 18.

(D) Not later than November 30 for each of fiscal years 2021 through 2025, the Inspector General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report for the fiscal year preceding the fiscal year during which the report is submitted that includes, for the fiscal year covered by the report—

(i) the number of referred violations and suspected violations received under subparagraph (B); and

(ii) the disposition of such referred violations, including the number of small business concerns suspended or debarred from Federal contracting or referred to the Attorney General for prosecution.

(m) DEFINITIONS.—In this section:

(1) The term “Administrator” means the Administrator of the Small Business Administration.

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

(3) The term “small business concern owned and controlled by veterans” has the meaning given that term under section 3(q)(3) of the Small Business Act (15 U.S.C. 632(q)(3)).

(4) The term “small business concern owned and controlled by veterans with service-connected disabilities” has the meaning given the term “small business concern owned and controlled by service-disabled veterans” under section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)).

(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; Pub. L. 112-154, title VII, §706, Aug. 6, 2012, 126 Stat. 1206; Pub. L. 114-315, title V, §501(a), Dec. 16, 2016, 130 Stat. 1566; Pub. L. 114-328, div. A, title XVIII, §1832(b), (d), (f)(1), Dec. 23, 2016, 130 Stat. 2659, 2660; Pub. L. 116-155, §2(a), (b), Aug. 8, 2020, 134 Stat. 698, 699; Pub. L. 116-183, §2(a), Oct. 30, 2020, 134 Stat. 895; Pub. L. 116-283, div. A, title VIII, §862(b)(1), (2), Jan. 1, 2021, 134 Stat. 3776, 3778; Pub. L. 116-315, title VII, §7009, Jan. 5, 2021, 134 Stat. 5061.)

### Editorial Notes

#### REFERENCES IN TEXT

The date of the enactment of the Department of Veterans Affairs Contracting Preference Consistency Act of 2020, referred to in subsec. (d)(2)(B)(i)(II), is the date of enactment of Pub. L. 116-155, which was approved Aug. 8, 2020.

The Small Business Act, referred to in subsecs. (e) and (i)(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. Section 36 of the Act is classified to section 657f of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

#### AMENDMENTS

2021—Subsec. (e). Pub. L. 116-283, §862(b)(1)(A), substituted “the Administrator under section 36 of the Small Business Act” for “the Secretary under subsection (f)”.

Subsec. (f). Pub. L. 116-283, §862(b)(2), transferred subsec. (f) of this section to section 36(f) of the Small Business Act, which is classified to section 657f of Title 15, Commerce and Trade.

Pub. L. 116-283, §862(b)(1)(B)(i), substituted “the Administrator” for “the Secretary” wherever appearing except in the last place it appears in par. (2)(A).

Subsec. (f)(1). Pub. L. 116-283, §862(b)(1)(B)(ii), substituted “small business concerns owned and controlled by service-disabled veterans” for “small business concerns owned and controlled by veterans with service-connected disabilities”.

Subsec. (f)(2)(A). Pub. L. 116-283, §862(b)(1)(B)(iii)(I), inserted “, United States Code,” after “title 5” and substituted “to obtain from the Secretary of Veterans Affairs” for “to access”.

Subsec. (f)(2)(B), (C). Pub. L. 116-283, §862(b)(1)(B)(iii)(II), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: “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.”

Subsec. (f)(3). Pub. L. 116-283, §862(b)(1)(B)(iv), substituted “a veteran described in paragraph (1)” for “such veterans”.

Subsec. (f)(4). Pub. L. 116-283, §862(b)(1)(B)(vii), substituted “The Administrator” for “The Secretary”.

Pub. L. 116-283, §862(b)(1)(B)(v), (vi), redesignated par. (5) as (4) and struck out former par. (4), which required verification of veteran ownership or control.

Subsec. (f)(5). Pub. L. 116-283, §862(b)(1)(B)(vi), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (f)(6). Pub. L. 116-283, §862(b)(1)(B)(vi), redesignated par. (8) as (6). Former par. (6) redesignated (5).

Subsec. (f)(6)(A). Pub. L. 116-283, §862(b)(1)(B)(viii)(I), substituted “certify the status of the concern as a small business concern owned and controlled by vet-

erans (under section 36A) or a small business concern owned and controlled by service-disabled veterans (under subsection (g) of this section)” for “verify the status of the concern as a small business concern or the ownership or control of the concern”, “certification” for “verification”, and “the Administration (as established under section 5(i))” for “the Small Business Administration (as established under section 5(i) of the Small Business Act)”.

Subsec. (f)(6)(B)(i). Pub. L. 116-283, §862(b)(1)(B)(viii)(II)(aa), substituted “small business concern owned and controlled by service-disabled veterans” for “small business concern owned and controlled by veterans with service-connected disabilities” and struck out “of the Small Business Administration” after “Hearings and Appeals”.

Subsec. (f)(6)(B)(ii)(I). Pub. L. 116-283, §862(b)(1)(B)(viii)(II)(bb)(AA), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “the Secretary; or”.

Subsec. (f)(6)(B)(ii)(II). Pub. L. 116-283, §862(b)(1)(B)(viii)(II)(bb)(BB), substituted “the applicable contracting officer” for “the contracting officer of the Department”.

Subsec. (f)(6)(C). Pub. L. 116-283, §862(b)(1)(B)(viii)(III), struck out subpar. (C) which read as follows: “For each fiscal year, the Secretary shall reimburse the Administrator of the Small Business Administration in an amount necessary to cover any cost incurred by the Office of Hearings and Appeals of the Small Business Administration for actions taken by the Office under this paragraph. The Administrator is authorized to accept such reimbursement. The amount of any such reimbursement shall be determined jointly by the Secretary and the Administrator and shall be provided from fees collected by the Secretary under multiple-award schedule contracts. Any disagreement about the amount shall be resolved by the Director of the Office of Management and Budget.”

Subsec. (f)(7). Pub. L. 116-283, §862(b)(1)(B)(v), struck out par. (7) which read as follows: “The Secretary may not issue regulations related to the status of a concern as a small business concern and the ownership and control of such small business concern.”

Subsec. (f)(8). Pub. L. 116-283, §862(b)(1)(B)(vi), redesignated par. (8) as (6).

Subsec. (k). Pub. L. 116-283, §862(b)(1)(D), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (k)(3)(A). Pub. L. 116-315 substituted “or any other” for “and any other”.

Subsec. (l). Pub. L. 116-283, §862(b)(1)(C), redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 116-283, §862(b)(1)(E), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

Pub. L. 116-283, §862(b)(1)(C), redesignated subsec. (l) as (m).

2020—Subsecs. (b), (c). Pub. L. 116-155, §2(b), substituted “Except as provided in subsection (d)(2), for purposes” for “For purposes”.

Subsec. (d). Pub. L. 116-155, §2(a), designated existing provisions as par. (1), inserted “in paragraph (2) and” before “in subsections (b) and (c)”, and added par. (2).

Subsecs. (k), (l). Pub. L. 116-183 added subsec. (k) and redesignated former subsec. (k) as (l).

2016—Subsec. (b). Pub. L. 114-328, §1832(b)(2)(A), inserted “or a small business concern owned and controlled by veterans with service-connected disabilities” after “a small business concern owned and controlled by veterans”.

Subsec. (c). Pub. L. 114-328, §1832(b)(2)(B), inserted “or a small business concern owned and controlled by veterans with service-connected disabilities” after “a small business concern owned and controlled by veterans” in introductory provisions.

Subsec. (d). Pub. L. 114-328, §1832(b)(2)(C), inserted “or small business concerns owned and controlled by veterans with service-connected disabilities” after “small business concerns owned and controlled by veterans” in two places.

Subsec. (f)(1). Pub. L. 114-328, § 1832(b)(2)(D), inserted “, small business concerns owned and controlled by veterans with service-connected disabilities,” after “small business concerns owned and controlled by veterans”.

Subsec. (f)(4). Pub. L. 114-328, § 1832(d)(1), substituted “verified, using regulations issued by the Administrator of the Small Business Administration with respect to the status of the concern as a small business concern and the ownership and control of such concern,” for “verified” in introductory provisions.

Subsec. (f)(7). Pub. L. 114-328, § 1832(d)(2), added par. (7).

Subsec. (f)(8). Pub. L. 114-328, § 1832(f)(1), added par. (8).

Subsec. (h). Pub. L. 114-328, § 1832(b)(1)(A), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to treatment of businesses after death of veteran-owner.

Subsec. (h)(2)(C). Pub. L. 114-315, § 501(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “The date that is ten years after the date of the veteran’s death.”

Subsec. (h)(3). Pub. L. 114-315, § 501(a)(1), substituted period at end for “rated as 100 percent disabling or who dies as a result of a service-connected disability.”

Subsecs. (i), (j). Pub. L. 114-328, § 1832(b)(1)(A), redesignated subsecs. (j) and (k) as (i) and (j), respectively. Former subsec. (i) redesignated (h).

Subsec. (k). Pub. L. 114-328, § 1832(b)(1)(A), redesignated subsec. (l) as (k). Former subsec. (k) redesignated (j).

Subsec. (k)(2). Pub. L. 114-328, § 1832(b)(1)(B)(i), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “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.”

Subsec. (k)(3). Pub. L. 114-328, § 1832(b)(1)(B)(ii), added par. (3).

Subsec. (l). Pub. L. 114-328, § 1832(b)(1)(A), redesignated subsec. (l) as (k).

2012—Subsec. (g). Pub. L. 112-154 designated existing provisions as par. (1), inserted “willfully and intentionally” before “misrepresented”, substituted “a period of not less than five years” for “a reasonable period of time, as determined by the Secretary”, and added pars. (2) and (3).

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.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. A, title VIII, § 862(b)(1), Jan. 1, 2021, 134 Stat. 3776, provided that the amendment made by section 862(b) of Pub. L. 116-283 shall take effect on the transfer date, which is 2 years after Jan. 1, 2021, see section 862(a) of Pub. L. 116-283, set out as a note under section 657f of Title 15, Commerce and Trade.

### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-183, § 2(b), Oct. 30, 2020, 134 Stat. 896, provided that: “Subsection (k) of section 8127 of title 38, United States Code, as added by subsection (a), shall apply with respect to a contract entered into after the date of the enactment of this Act [Oct. 30, 2020].”

Pub. L. 116-155, § 2(c), Aug. 8, 2020, 134 Stat. 699, provided that: “The amendments made by this section [amending this section] shall apply with respect to a contract entered into on or after the date of the enactment of this Act [Aug. 8, 2020].”

### EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by section 1832(b), (d) of Pub. L. 114-328 effective on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue implementing regulations [regulations effective Oct. 1, 2018], see section 1832(e) of Pub. L. 114-328, set out as a note under section 632 of Title 15, Commerce and Trade.

Pub. L. 114-328, div. A, title XVIII, § 1832(f)(2), Dec. 23, 2016, 130 Stat. 2661, provided that: “Paragraph (8) of subsection (f) of title 38, United States Code, as added by paragraph (1), shall apply with respect to a verification decision made by the Secretary of Veterans Affairs on or after the date of the enactment of this Act [Dec. 23, 2016].”

Pub. L. 114-315, title V, § 501(b), Dec. 16, 2016, 130 Stat. 1566, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 16, 2016] and shall apply with respect to contracts awarded on or after such date.”

### 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 business 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 Administrator of the Small Business Administration under section 36 of the Small Business Act.

(Added Pub. L. 109–461, title V, § 503(a)(1), Dec. 22, 2006, 120 Stat. 3435; amended Pub. L. 116–283, div. A, title VIII, § 862(b)(3)(B), Jan. 1, 2021, 134 Stat. 3779.)

#### **Editorial Notes**

##### **REFERENCES IN TEXT**

Section 36 of the Small Business Act, referred to in subsec. (b), is classified to section 657f of Title 15, Commerce and Trade.

##### **AMENDMENTS**

2021—Subsec. (b). Pub. L. 116–283 substituted “maintained by the Administrator of the Small Business Administration under section 36 of the Small Business Act” for “maintained by the Secretary under section 8127(f) of this title”.

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE OF 2021 AMENDMENT**

Pub. L. 116–283, div. A, title VIII, § 862(b)(3), Jan. 1, 2021, 134 Stat. 3778, provided that the amendment made by section 862(b)(3)(B) shall take effect on the transfer date, which is 2 years after Jan. 1, 2021, see section 862(a) of Pub. L. 116–283, set out as a note under section 657f of Title 15, Commerce and Trade.

##### **EFFECTIVE DATE**

Pub. L. 109–461, title V, § 503(b), Dec. 22, 2006, 120 Stat. 3436, provided that: “This section [enacting this sec-

tion] 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].”

#### **§ 8129. Preference for offerors employing veterans**

(a) **PREFERENCE.**—(1) In awarding a contract for the procurement of goods or services, the Secretary may give a preference to offerors that employ veterans on a full-time basis.

(2) The Secretary shall determine such preference based on the percentage of the full-time employees of the offeror who are veterans.

(b) **ENFORCEMENT PENALTIES FOR MISREPRESENTATION.**—(1) Any offeror that is determined by the Secretary to have willfully and intentionally misrepresented the veteran status of the employees of the offeror for purposes of subsection (a) may be debarred from contracting with the Department for a period of not less than five years.

(2) If the Secretary carries out a debarment under paragraph (1), the Secretary shall—

(A) commence debarment action against the offeror by not later than 30 days after determining that the offeror willfully and intentionally misrepresented the veteran status of the employees of the offeror as described in paragraph (1); and

(B) complete debarment actions against such offeror by not later than 90 days after such termination.

(3) The debarment of an offeror under paragraph (1) includes the debarment of all principals in the offeror for a period of not less than five years.

(Added Pub. L. 116–315, title VII, § 7003(a), Jan. 5, 2021, 134 Stat. 5058.)

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

#### **Editorial Notes**

##### **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” includes each Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) but 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.