TITLE 41--PUBLIC CONTRACTS

CHAPTER 1--GENERAL PROVISIONS

Sec. 51. Short title

Sections 51 to 58 of this title may be cited as the "Anti-Kickback Act of 1986".


Amendments

1986--Pub. L. 99-634 amended section generally, substituting short title provision for provisions relating to fees or kick-backs by subcontractors on negotiated contracts, recovery thereof by the United States, conclusive presumption that such payments by such subcontractors were included in the price of the subcontract or order and ultimately borne by the United States, and withholding by the prime contractor of such amounts from sums otherwise due a subcontractor.

1960--Pub. L. 86-695 inserted "negotiated" before "contract" and struck out ", on a cost-plus-a-fixed-fee or other cost reimbursable basis" after "whatsoever" in cl. (1), and substituted "setoff" for "set-off" and "contract" for "cost-plus-a-fixed-fee or cost reimbursable contract," before "or by an action".

Effective Date of 1986 Amendment

Section 3 of Pub. L. 99-634 provided that:

"(a) Except as provided in subsection (b), the Anti-Kickback Act of 1986 (as set out in section 2(a)) [sections 51 to 58 of this title] shall take effect with respect to conduct described in section 3 of such Act [section 53 of this title] which occurs on or after the date of the enactment of this Act [Nov. 7, 1986]."

"(b) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (as set out in section 2(a)) [section 57(a) and (b) of this title] shall take effect with respect to contract solicitations issued by an agency, department, or other establishment of the Federal Government on or after the date which is 90 days after the date of the enactment of this Act [Nov. 7, 1986]."

Short Title of 1986 Amendment

Section 1 of Pub. L. 99-634 provided: "That this Act [enacting sections 55 to 58 of this title, amending this section and sections 52 to 54 of this title, and enacting provisions set out as a note above] may be cited as the 'Anti-Kickback Enforcement Act of 1986'."
Sec. 52. Definitions

As used in sections 51 to 58 of this title:

(1) The term "contracting agency", when used with respect to a prime contractor, means any department, agency, or establishment of the United States which enters into a prime contract with a prime contractor.

(2) The term "kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(3) The term "person" means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(4) The term "prime contract" means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(5) The term "prime contractor" means a person who has entered into a prime contract with the United States.

(6) The term "prime contractor employee" means any officer, partner, employee, or agent of a prime contractor.

(7) The term "subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(8) The term "subcontractor"--

(A) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

(B) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

(9) The term "subcontractor employee" means any officer, partner, employee, or agent of a subcontractor.


Amendments

1986—Pub. L. 99-634 amended section generally. Prior to amendment, section read as follows: "For the purpose of sections 51 to 54 of this
title, the term 'subcontractor' is defined as any person, including a
corporation, partnership, or business association of any kind, who holds
an agreement or purchase order to perform all or any part of the work or
to make or to furnish any article or service required for the
performance of a negotiated contract or of a subcontract entered into
thereunder; the term 'person' shall include any subcontractor,
corporation, association, trust, joint-stock company, partnership, or
individual; and the term 'negotiated contract' means made without formal
advertising.'

1960--Pub. L. 86-695 substituted ''negotiated contract'' for ''cost-
plus-a-fixed-fee or cost reimbursable contract'' in definition of
''subcontractor'' and defined ''negotiated contract''.

Effective Date of 1986 Amendment

Amendment by Pub. L. 99-634 effective with respect to conduct
described in section 53 of this title which occurs on or after Nov. 7,
1986, see section 3(a) of Pub. L. 99-634, set out as a note under
section 51 of this title.
Sec. 53. Prohibited conduct

It is prohibited for any person--
(1) to provide, attempt to provide, or offer to provide any kickback;
(2) to solicit, accept, or attempt to accept any kickback; or
(3) to include, directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.


Amendments

1986--Pub. L. 99-634 amended section generally. Prior to amendment, section read as follows: "For the purpose of ascertaining whether such fees, commissions, compensation, gifts, or gratuities have been paid or granted by a subcontractor, the General Accounting Office shall have the power to inspect the plants and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a negotiated contract.''

1960--Pub. L. 86-695 substituted "negotiated contract" for "cost-plus-a-fixed-fee or cost reimbursable contract".

Effective Date of 1986 Amendment

Amendment by Pub. L. 99-634 effective with respect to conduct described in this section which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as a note under section 51 of this title.
Sec. 54. Criminal penalties

Any person who knowingly and willfully engages in conduct prohibited by section 53 of this title shall be imprisoned for not more than 10 years or shall be subject to a fine in accordance with title 18, or both.


Amendments

1986--Pub. L. 99-634 amended section generally. Prior to amendment, section read as follows: 'Any person who shall knowingly, directly or indirectly, make or receive any such prohibited payment shall be fined not more than $10,000 or be imprisoned for not more than two years, or both.'


Effective Date of 1986 Amendment

Amendment by Pub. L. 99-634 effective with respect to conduct described in section 53 of this title which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as a note under section 51 of this title.
Sec. 55. Civil actions

(a)(1) The United States may, in a civil action, recover a civil penalty from any person who knowingly engages in conduct prohibited by section 53 of this title. The amount of such civil penalty shall be--
   (A) twice the amount of each kickback involved in the violation;
   and
   (B) not more than $10,000 for each occurrence of prohibited conduct.

(2) The United States may, in a civil action, recover a civil penalty from any person whose employee, subcontractor or subcontractor employee violates section 53 of this title by providing, accepting, or charging a kickback. The amount of such civil penalty shall be the amount of that kickback.

(b) A civil action under this section shall be barred unless the action is commenced within 6 years after the later of (1) the date on which the prohibited conduct establishing the cause of action occurred, and (2) the date on which the United States first knew or should reasonably have known that the prohibited conduct had occurred.

(Mar. 8, 1946, ch. 80, Sec. 5, as added Pub. L. 99-634, Sec. 2(a), Nov. 7, 1986, 100 Stat. 3524.)

Effective Date

Section effective with respect to conduct described in section 53 of this title which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as an Effective Date of 1986 Amendment note under section 51 of this title.
Sec. 56. Administrative offsets

(a) Offset authority

A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 53 of this title against any moneys owed by the United States to the prime contractor under the prime contract to which such kickback relates.

(b) Duties of prime contractor

(1) Upon direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against that prime contractor under subsection (a) of this section.

(2) Such contracting officer may order that sums withheld under paragraph (1) --

(A) be paid over to the contracting agency; or

(B) if the United States has already offset the amount of such sums against that prime contractor, be retained by the prime contractor.

(3) The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (2)(B).

(c) Claim of Government

An offset under subsection (a) of this section or a direction or order of a contracting officer under subsection (b) of this section is a claim by the Government for the purposes of the Contract Disputes Act of 1978 [41 U.S.C. 601 et seq.].

(d) "Contracting officer" defined

As used in this section, the term "contracting officer" has the meaning given that term for the purposes of the Contract Disputes Act of 1978 [41 U.S.C. 601 et seq.].

(Mar. 8, 1946, ch. 80, Sec. 6, as added Pub. L. 99-634, Sec. 2(a), Nov. 7, 1986, 100 Stat. 3524.)

References in Text

The Contract Disputes Act of 1978, referred to in subsecs. (c) and (d), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (Sec. 601 et seq.) of this title. For complete classification of this Act to the Code see Short Title note set out under section 601 of this title and Tables.
Effective Date

Section effective with respect to conduct described in section 53 of this title which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99–634, set out as an Effective Date of 1986 Amendment note under section 51 of this title.
Sec. 57. Contractor responsibilities

(a) Procedural requirements for prevention and detection of violations

Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall have in place and follow reasonable procedures designed to prevent and detect violations of section 53 of this title in its own operations and direct business relationships.

(b) Cooperation in investigations requirement

Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall cooperate fully with any Federal Government agency investigating a violation of section 53 of this title.

(c) Reporting requirement; supplying information as favorable evidence of responsibility

(1)(A) Whenever a prime contractor or subcontractor has reasonable grounds to believe that a violation of section 53 of this title may have occurred, the prime contractor or subcontractor shall promptly report the possible violation in writing.

(B) A contractor shall make the reports required by subparagraph (A) to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(2) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, evidence that such person has supplied information to the United States pursuant to paragraph (1) shall be favorable evidence of such person's responsibility for the purposes of Federal procurement laws and regulations.

(d) Partial inapplicability to small contracts

Subsections (a) and (b) of this section do not apply to a prime contract that is not greater than $100,000 or to a prime contract for the acquisition of commercial items (as defined in section 403(12) of this title).

(e) Cooperation in investigations regardless of contract amount

Notwithstanding subsection (d) of this section, a prime contractor shall cooperate fully with any Federal Government agency investigating a violation of section 53 of this title.

(Mar. 8, 1946, ch. 80, Sec. 7, as added Pub. L. 99-634, Sec. 2(a), Nov.
Amendments

1996--Subsec. (d). Pub. L. 104-106 made technical amendment to reference in original act which appears in text as reference to section 403(12) of this title and struck out second period at end.

1994--Subsec. (d). Pub. L. 103-355, Sec. 8301(c)(1), inserted before period at end "or to a prime contract for the acquisition of commercial items (as defined in section 403(12) of this title)."

Pub. L. 103-355, Sec. 4104(a), added subsec. (d).

Subsec. (e). Pub. L. 103-355, Sec. 4104(a), added subsec. (e).

Effective Date of 1996 Amendment

For effective date and applicability of amendment by Pub. L. 104-106, see section 4101 of Pub. L. 104-106, set out as a note under section 251 of this title.

Effective Date of 1994 Amendment

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

Effective Date

Subsecs. (a) and (b) effective with respect to contract solicitations issued by an agency, department, or other establishment of the Federal Government on or after the date which is 90 days after Nov. 7, 1986, and subsec. (c) effective with respect to conduct described in section 52 of this title which occurs on or after Nov. 7, 1986, see section 3 of Pub. L. 99-634, set out as an Effective Date of 1986 Amendment note under section 51 of this title.
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Sec. 58. Inspection authority

For the purpose of ascertaining whether there has been a violation of section 53 of this title with respect to any prime contract, the Government Accountability Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of such agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency. This section does not apply with respect to a prime contract for the acquisition of commercial items (as defined in section 403(12) of this title).


Amendments


1994--Pub. L. 103-355 inserted at end "'This section does not apply with respect to a prime contract for the acquisition of commercial items (as defined in section 403(12) of this title)'."

Effective Date of 1994 Amendment

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

Effective Date

Section effective with respect to conduct described in section 53 of this title which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as an Effective Date of 1986 Amendment note under section 51 of this title.