

(5) The term “direct labor” includes all work required for preparation, processing, and packing of a commodity, or work directly relating to the performance of a service, but not supervision, administration, inspection, or shipping.

(6) The term “fiscal year” means the twelve-month period beginning on October 1 of each year.

(7) The terms “Government” and “entity of the Government” include any entity of the legislative branch or the judicial branch, any executive agency or military department (as such agency and department are respectively defined by sections 102 and 105 of title 5), the United States Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

(8) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(June 25, 1938, ch. 697, §5, as added Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 81; amended Pub. L. 93-358, §1(3), July 25, 1974, 88 Stat. 393; Pub. L. 94-273, §3(22), Apr. 21, 1976, 90 Stat. 377.)

AMENDMENTS

1976—Pub. L. 94-273 substituted “October” for “July” in par. (6).

1974—Pub. L. 93-358 added par. (5) defining “direct labor”, struck out former par. (6) which defined “direct labor” without reference to work directly relating to the performance of a service, and redesignated former pars. (7), (8), and (9) as (6), (7), and (8), respectively.

EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2410d; title 40 section 502.

§ 48c. Authorization of appropriations

There are authorized to be appropriated to the Committee to carry out sections 46 to 48c of this title \$240,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the succeeding fiscal years.

(June 25, 1938, ch. 697, §6, as added Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 82; amended Pub. L. 93-76, July 30, 1973, 87 Stat. 176; Pub. L. 93-358, §1(4), July 25, 1974, 88 Stat. 393.)

AMENDMENTS

1974—Pub. L. 93-358 substituted “\$240,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the succeeding fiscal years” for “\$200,000 each for the fiscal year ending June 30, 1972, and the next succeeding fiscal year, and \$240,000 for the fiscal year ending June 30, 1974”.

1973—Pub. L. 93-76 increased authorization of appropriation to \$240,000 for fiscal year ending June 30, 1974.

EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 47, 48a, 48b of this title.

§ 49. Defense employment; honorable discharge from land and naval forces as equivalent to birth certificate

No defense contractor shall deny employment, on account of failure to produce a birth certificate, to any person who submits, in lieu of a birth certificate, an honorable discharge certificate or certificate issued in lieu thereof from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the United States, unless such honorable discharge certificate shows on its face that such person may have been an alien at the time of its issuance.

(June 22, 1942, ch. 432, §1, 56 Stat. 375; July 26, 1947, ch. 343, title II, §§205(a), 207(a), (f), 61 Stat. 501-503.)

CHANGE OF NAME

Air Force inserted in text under authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, 503. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947 were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces”, which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 50 of this title.

§ 50. “Defense contractor” defined

As used in sections 49 and 50 of this title the term “defense contractor” means an employer engaged in—

- (1) the production, maintenance, or storage of arms, armament, ammunition, implements of war, munitions, machinery, tools, clothing, food, fuel, or any articles or supplies, or parts or ingredients of any articles or supplies; or
- (2) the construction, reconstruction, repair, or installation of a building, plant, structure, or facility;

under a contract with the United States or under any contract which the President, the Secretary of the Army, the Secretary of the Air Force, the Secretary of the Navy, or the Secretary of Transportation certifies to such employer to be necessary to the national defense.

(June 22, 1942, ch. 432, §2, 56 Stat. 376; July 26, 1947, ch. 343, title II, §§205(a), 207(a), (f), 61 Stat. 501-503; Pub. L. 97-31, §12(16), Aug. 6, 1981, 95 Stat. 154.)

AMENDMENTS

1981—Pub. L. 97-31 substituted reference to Secretary of Transportation for reference to United States Maritime Commission.

CHANGE OF NAME

Secretary of the Air Force inserted in text under authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947 were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

§ 51. Short title

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

(Mar. 8, 1946, ch. 80, § 1, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3523.)

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'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

§ 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.

(Mar. 8, 1946, ch. 80, § 2, 60 Stat. 38; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3523.)

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 oc-