

curs 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 51 of this title.

§ 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.

(Mar. 8, 1946, ch. 80, § 3, 60 Stat. 38; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 741; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.)

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 52, 54, 55, 56, 57, 58 of this title.

§ 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.

(Mar. 8, 1946, ch. 80, § 4, 60 Stat. 38; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 741; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.)

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.”

1960—Pub. L. 86-695 reenacted section without change.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 52 of this title.

§ 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, § 5, as added Pub. L. 99-634, § 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 52 of this title.

§ 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