公共法律99-634
99届众议院

“法案

加强禁止有关子合同的回扣

法案由参议院和众议院于国会通过，这法案可被称为“1986年反回扣法”。”

第2条。该法案应作为《反回扣法》\(^\text{1946年3月8日通过。41 U.S.C. 51-54.}\)进行修正，内容如下：

“简短标题

第1条。此法案可被称为“1986年反回扣法”。”

“定义

第2条。在本法案中使用：

(1) 合同执行机构，当用于指代主要承包商时，意指任何联邦政府的部门、机构或建立的机构。

(2) 回扣，意思是指任何金钱、费用、补偿、礼物、特权、任何形式的补偿或任何形式的补偿，直接或间接地提供给主要承包商、主要承包商雇员、次级承包商或次级承包商雇员，用于不正当地获得或奖励与主要合同或次级合同有关的待遇。

(3) 人，指公司、协会、合伙、联合股票公司或个人。

(4) 主要合同，意指美国政府为了购买任何种类的供应品、材料、设备或服务而与某人所签署的合同。

(5) 主要承包商，意指已与美国政府签署主要合同的人。

(6) 主要承包商雇员，意指主要承包商的任何官员、合作伙伴、雇员或代理人。

(7) 次级合同，意指主要承包商或次级承包商根据主要合同签署的，用于购买任何种类的供应品、材料、设备或服务的合同。

(8) 次级承包商，"..."
“(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.

"PROHIBITED CONDUCT"

41 USC 53.

“Sec. 3. 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.

“CRIMINAL PENALTIES"

41 USC 54.

“Sec. 4. Any person who knowingly and willfully engages in conduct prohibited by section 3 shall be imprisoned for not more than 10 years or shall be subject to a fine in accordance with title 18, United States Code, or both.

“CIVIL ACTIONS"

41 USC 55.

“Sec. 5. (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 3. 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 3 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.

“ADMINISTRATIVE OFFSETS"

41 USC 56.

“Sec. 6. (a) A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 3 against any moneys owed by the United States to the prime contractor under the prime contract to which such kickback relates.
"(b)(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).

"(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) An offset under subsection (a) or a direction or order of a contracting officer under subsection (b) is a claim by the Government for the purposes of the Contract Disputes Act of 1978.

"(d) 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.

"CONTRACTOR RESPONSIBILITIES

"SEC. 7. (a) 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 3 in its own operations and direct business relationships.

"(b) 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 3.

"(c)(1)(A) Whenever a prime contractor or subcontractor has reasonable grounds to believe that a violation of section 3 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.

"INSPECTION AUTHORITY

"SEC. 8. For the purpose of ascertaining whether there has been a violation of section 3 with respect to any prime contract, the General Accounting 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."
(b) The title of such Act is amended to read as follows: "An Act to prohibit kickbacks relating to subcontracts under Federal Government contracts."

Sec. 3. (a) Except as provided in subsection (b), the Anti-Kickback Act of 1986 (as set out in section 2(a)) shall take effect with respect to conduct described in section 3 of such Act which occurs on or after the date of the enactment of this Act.
(b) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (as set out in section 2(a)) 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.

Approved November 7, 1986.