Public Law 99-634
99th Congress

An Act

To strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts.

Nov. 7, 1986
[S. 2250]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That this Act may be cited as the "Anti-Kickback Enforcement Act of 1986".**

Anti-Kickback Enforcement Act of 1986.
41 USC 51 note.

SEC. 2. (a) The Act entitled "An Act to eliminate the practice by subcontractors, under cost-plus-a-fixed-fee or cost reimbursable contracts of the United States, of paying fees or kickbacks, or of granting gifts or gratuities to employees of a cost-plus-fixed-fee or cost reimbursable prime contractors or of higher tier subcontractors for the purpose of securing the award of subcontracts or orders", approved March 8, 1946 (41 U.S.C. 51-54), is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Anti-Kickback Act of 1986'.

Anti-Kickback Act of 1986.
41 USC 51.

"DEFINITIONS

41 USC 52.

"SEC. 2. As used in this Act:

"(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'—

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"(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. Claims. 41 USC 601 note.

"(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. 41 USC 57.

"(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. Reports.

"(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. Reports.

"(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.". 41 USC 58.

(b) The title of such Act is amended to read as follows: "An Act to prohibit kickbacks relating to subcontracts under Federal Government contracts.".

Effective date.
41 USC 51 note.

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.

LEGISLATIVE HISTORY—S. 2250 (H.R. 4783):

HOUSE REPORTS: No. 99-964, Pt. 1 accompanying H.R. 4783 (Comm. on Government Operations).
SENATE REPORTS: No. 99-435 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD, Vol. 132 (1986):
Sept. 12, considered and passed Senate.
Oct. 7, H.R. 4783 considered and passed House; proceedings vacated and S. 2250, amended, passed in lieu.
Oct. 15, Senate concurred in House amendments.