

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 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.

### § 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.

### § 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.

### § 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.