

Subsec. (d)(2). Pub. L. 115-232, § 836(e)(4)(B), substituted “the terms ‘commercial product’ and ‘commercial service’ have the meanings given those terms in sections 103 and 103a, respectively, of title 41.” for “the term ‘commercial item’ has the meaning given such term in section 103 of title 41.”

2011—Subsec. (c). Pub. L. 111-350, § 5(b)(25)(A), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

Subsec. (d)(2). Pub. L. 111-350, § 5(b)(25)(B), substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

1994—Subsecs. (c), (d). Pub. L. 103-355 added subsecs. (c) and (d).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 98-525, title XII, § 1234(c), Oct. 19, 1984, 98 Stat. 2604, provided that: “Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

[§ 2403. Repealed. Pub. L. 105-85, div. A, title VIII, § 847(a), Nov. 18, 1997, 111 Stat. 1845]

Section, added Pub. L. 98-525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 99-433, title I, § 110(g)(5), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100-26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103-355, title II, § 2402, Oct. 13, 1994, 108 Stat. 3324; Pub. L. 104-106, div. A, title XV, § 1502(a)(21), Feb. 10, 1996, 110 Stat. 505, related to major weapon systems and contractor guarantees.

[§ 2404. Renumbered § 2922e]

[§ 2405. Repealed. Pub. L. 105-85, div. A, title VIII, § 810(a)(1), Nov. 18, 1997, 111 Stat. 1839]

Section, added Pub. L. 98-525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 102-484, div. A, title VIII, § 813(c), Oct. 23, 1992, 106 Stat. 2453; Pub. L. 103-355, title II, § 2302(a), (b), Oct. 13, 1994, 108 Stat. 3321; Pub. L. 104-106, div. D, title XLIII, § 4321(b)(14), Feb. 10, 1996, 110 Stat. 673, related to limitation on adjustment of shipbuilding contracts.

EFFECTIVE DATE OF REPEAL

Pub. L. 105-85, div. A, title VIII, § 810(b), Nov. 18, 1997, 111 Stat. 1839, provided that:

“(1) Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall be effective with respect to claims, requests for equitable adjustment, and demands for payment under shipbuilding contracts that have been or are submitted before, on, or after the date of the enactment of this Act [Nov. 18, 1997].

“(2) Section 2405 of title 10, United States Code, as in effect immediately before the date of the enactment of this Act, shall continue to apply to a contractor’s claim, request for equitable adjustment, or demand for payment under a shipbuilding contract that was submitted before such date if—

“(A) a contracting officer denied the claim, request, or demand, and the period for appealing the decision to a court or board under the Contract Disputes Act

of 1978 [see 41 U.S.C. 7101 et seq.] expired before such date;

“(B) a court or board of contract appeals considering the claim, request, or demand (including any appeal of a decision of a contracting officer to deny the claim, request, or demand) denied or dismissed the claim, request, or demand (or the appeal), and the action of the court or board became final and unappealable before such date; or

“(C) the contractor released or releases the claim, request, or demand.”

[§ 2406. Repealed. Pub. L. 103-355, title II, § 2201(b)(1), Oct. 13, 1994, 108 Stat. 3318]

Section, added Pub. L. 99-145, title IX, § 917(a), Nov. 8, 1985, 99 Stat. 689; amended Pub. L. 99-500, § 101(c) [title X, § 943(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-162, and Pub. L. 99-591, § 101(c) [title X, § 943(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-162; Pub. L. 99-661, div. A, title IX, formerly title IV, § 943(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-180, div. A, title XII, § 1231(13), Dec. 4, 1987, 101 Stat. 1160, required contractor under covered contract with an agency to make cost and pricing data available to agency in timely manner.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

[§ 2407. Renumbered § 2350b]

NATO COOPERATIVE LOGISTIC SUPPORT AGREEMENTS

Pub. L. 99-661, div. A, title XI, § 1102, Nov. 14, 1986, 100 Stat. 3961, which authorized Secretary of Defense to enter Weapon System Partnership Agreements with one or more governments of other member countries of NATO, was repealed by Pub. L. 101-189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535. See section 2350d of this title.

NATO COOPERATIVE RESEARCH AND DEVELOPMENT

Pub. L. 99-145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which urged and requested member nations of NATO to cooperate in research and development of defense equipment and munitions and in the production of defense equipment, was repealed by Pub. L. 101-189, div. A, title IX, § 931(d)(1), Nov. 29, 1989, 103 Stat. 1535. See section 2350a of this title.

AUTHORITY OF SECRETARY OF DEFENSE IN CONNECTION WITH NATO AWACS PROGRAM

Pub. L. 97-86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended by Pub. L. 97-252, title I, § 106, Sept. 8, 1982, 96 Stat. 720; Pub. L. 98-94, title I, § 105, Sept. 24, 1983, 97 Stat. 620; Pub. L. 98-525, title I, § 106, Oct. 19, 1984, 98 Stat. 2503; Pub. L. 99-145, title I, § 106(b), Nov. 8, 1985, 99 Stat. 596; Pub. L. 99-661, title I, § 106, Nov. 14, 1986, 100 Stat. 3827; Pub. L. 100-180, title I, § 109, Dec. 4, 1987, 101 Stat. 1036, which set forth authority of Secretary of Defense in connection with NATO AWACS Program, was repealed by Pub. L. 101-189, div. A, title IX, § 932(b), Nov. 29, 1989, 103 Stat. 1537. See section 2350e of this title. Similar provisions were contained in the following prior authorization acts:

Pub. L. 96-342, title I, § 103, Sept. 8, 1980, 94 Stat. 1078.

Pub. L. 96-107, title I, § 104, Nov. 9, 1979, 93 Stat. 804.

§ 2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 103 of title 41).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) CRIMINAL PENALTY.—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than \$500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) SINGLE POINT OF CONTACT FOR INFORMATION.—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99-500, §101(c) [title X, §941(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-161, and Pub. L. 99-591, §101(c) [title X, §941(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-161; Pub. L. 99-661, div. A, title IX, formerly title IV, §941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-456, div. A, title VIII, §831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101-510, div. A, title VIII, §812, Nov. 5, 1990, 104 Stat. 1596; Pub.

L. 102-484, div. A, title VIII, §815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103-355, title IV, §4102(g), title VIII, §8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; Pub. L. 104-106, div. A, title X, §1062(e), Feb. 10, 1996, 110 Stat. 444; Pub. L. 111-350, §5(b)(26), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, §836(e)(5), Aug. 13, 2018, 132 Stat. 1870.)

AMENDMENT OF SUBSECTION (a)(4)(B)

Pub. L. 115-232, div. A, title VIII, §836(e)(5), (h), Aug. 13, 2018, 132 Stat. 1870, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, subsection (a)(4)(B) of this section is amended by striking “commercial items (as defined in section 103 of title 41)” and inserting “commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41)”. See 2018 Amendment note below.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

AMENDMENTS

2018—Subsec. (a)(4)(B). Pub. L. 115-232 substituted “commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41)” for “commercial items (as defined in section 103 of title 41)”.

2011—Subsec. (a)(4)(A). Pub. L. 111-350, §5(b)(26)(A), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

Subsec. (a)(4)(B). Pub. L. 111-350, §5(b)(26)(B), substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

1996—Subsec. (a)(3). Pub. L. 104-106 struck out at end “If the five-year period is waived, the Secretary shall submit to Congress a report stating the reasons for the waiver.”

1994—Subsec. (a)(4). Pub. L. 103-355, §4102(g), added introductory provisions and subpar. (A).

Subsec. (a)(4)(B). Pub. L. 103-355, §8105(h)(1), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 103-355, §8105(h)(2), inserted “or (B)” before period at end.

Pub. L. 103-355, §4102(g), added subpar. (C).

1992—Subsec. (c). Pub. L. 102-484 added subsec. (c).

1990—Subsec. (a)(1)(A). Pub. L. 101-510, §812(a)(1), inserted before period at end “or any first tier subcontract of a defense contract”.

Subsec. (a)(1)(B). Pub. L. 101-510, §812(a)(2), inserted before period at end “or any subcontractor awarded a contract directly by a defense contractor”.

Subsec. (a)(1)(C). Pub. L. 101-510, §812(a)(3), inserted before period at end “or any subcontractor awarded a contract directly by a defense contractor”.

Subsec. (a)(1)(D). Pub. L. 101-510, §812(a)(4), inserted before period at end “or first tier subcontract of a defense contract”.

Subsec. (b). Pub. L. 101-510, §812(b), inserted “or subcontractor” after “contractor” wherever appearing.

1988—Subsec. (a). Pub. L. 100-456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from working in a management or supervisory capacity on any defense contract, or serving on the board of directors of any defense contractor, for a period, as determined by the Secretary of Defense, of not less than one year from the date of the conviction.”

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub.

L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-456, div. A, title VIII, §831(b), Sept. 29, 1988, 102 Stat. 2023, provided that: "Section 2408(a) of title 10, United States Code, as amended by subsection (a), shall apply with respect to individuals convicted after the date of the enactment of this Act [Sept. 29, 1988]."

EFFECTIVE DATE

Pub. L. 99-500, §101(c) [title X, §941(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-162, Pub. L. 99-591, §101(c) [title X, §941(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-162, and Pub. L. 99-661, div. A, title IX, formerly title IV, §941(c), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: "Section 2408 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to employment or service on a board of directors after the date of the enactment of this Act [Oct. 18, 1986]."

DEADLINE FOR SINGLE POINT OF CONTACT

Pub. L. 102-484, div. A, title VIII, §815(b), Oct. 23, 1992, 106 Stat. 2454, directed that the single point of contact required by subsec. (c) of this section be established not later than 120 days after Oct. 23, 1992.

§ 2409. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—(1) An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:

(A) Gross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract (including the competition for or negotiation of a contract) or grant.

(B) Gross mismanagement of a National Aeronautics and Space Administration contract or grant, a gross waste of Administration funds, an abuse of authority relating to an Administration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract) or grant.

(C) A substantial and specific danger to public health or safety.

(2) The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) An employee of the Department of Defense or the National Aeronautics and Space Administration, as applicable, responsible for contract oversight or management.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(3) For the purposes of paragraph (1)—

(A) an employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Department of Defense or National Aeronautics and Space Administration contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of a Department or Administration official, unless the request takes the form of a nondiscretionary directive and is within the authority of the Department or Administration official making the request.

(b) INVESTIGATION OF COMPLAINTS.—(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

(2)(A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or