

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)   |
|-----------------|--------------------|--|
| 8703(a) .....   | 41:57(a), (b).     | Mar. 8, 1946, ch. 80, § 7, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103-355, title IV, §4104(a), title VIII, §8301(c)(1), Oct. 13, 1994, 108 Stat. 3341, 3397; Pub. L. 104-106, div. D, title XLIII, §4321(g), Feb. 10, 1996, 110 Stat. 675. |
| 8703(b) .....   | 41:57(e).          |  |
| 8703(c) .....   | 41:57(c).          |  |
| 8703(d) .....   | 41:57(d).          |  |

In subsection (c)(1), the words ‘‘Attorney General’’ are substituted for ‘‘Department of Justice’’ because of 28:503.

AMENDMENTS

2018—Subsec. (d)(2). Pub. L. 115-232 substituted ‘‘commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title)’’ for ‘‘commercial items (as defined in section 103 of this title)’’.

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.

§ 8704. Inspection authority

(a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of this title with respect to a prime contract, the Comptroller General and the inspector general of the contracting agency, or a representative of the contracting agency designated by the head of the 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 electronic data or records, of a prime contractor or subcontractor under a prime contract awarded by the agency.

(b) EXCEPTION.—This section does not apply to a prime contract for the acquisition of commercial items (as defined in section 103 of this title). (Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3839; Pub. L. 115-232, div. A, title VIII, §836(b)(20), Aug. 13, 2018, 132 Stat. 1864.)

AMENDMENT OF SUBSECTION (b)

*Pub. L. 115-232, div. A, title VIII, §836(b)(20), (h), Aug. 13, 2018, 132 Stat. 1864, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, subsection (b) of this section is amended by striking ‘‘commercial items (as defined in section 103 of this title)’’ and inserting ‘‘commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title)’’. See 2018 Amendment note below.*

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)   |
|-----------------|--------------------|--|
| 8704 .....      | 41:58.             | Mar. 8, 1946, ch. 80, § 8, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103-355, title VIII, §8301(c)(2), Oct. 13, 1994, 108 Stat. 3397. |

In subsection (a), the words ‘‘Comptroller General’’ are substituted for ‘‘General Accounting Office’’ because of 31:702.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-232 substituted ‘‘commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title)’’ for ‘‘commercial items (as defined in section 103 of this title)’’.

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.

§ 8705. Administrative offsets

(a) DEFINITION.—In this section, the term ‘‘contracting officer’’ has the meaning given that term in chapter 71 of this title.

(b) OFFSET AUTHORITY.—A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 8702 of this title against amounts the Federal Government owes the prime contractor under the prime contract to which the kickback relates.

(c) DUTIES OF PRIME CONTRACTOR.—

(1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from amounts owed to a subcontractor under a subcontract of the prime contract the amount of a kickback which was or may be offset against the prime contractor under subsection (b). The contracting officer may order that amounts withheld—

- (A) be paid over to the contracting agency;
- or
- (B) be retained by the prime contractor if the Federal Government has already offset the amount against the prime contractor.

(2) NOTICE.—The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (1)(B).

(d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERNMENT.—An offset under subsection (b) or a direction or order of a contracting officer under subsection (c) is a claim by the Federal Government for the purposes of chapter 71 of this title.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3840.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)  |
|-----------------|--------------------|---|
| 8705(a) .....   | 41:56(d).          | Mar. 8, 1946, ch. 80, § 6, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3524. |
| 8705(b) .....   | 41:56(a).          |   |
| 8705(c) .....   | 41:56(b).          |   |
| 8705(d) .....   | 41:56(c).          |   |

§ 8706. Civil actions

(a) AMOUNT.—The Federal Government in a civil action may recover from a person—

- (1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—