

103^D CONGRESS
1ST SESSION

H. R. 3068

To amend the Federal Property and Administrative Services Act of 1949 to ensure proper classification as employees and independent contractors of persons awarded Federal procurement contracts.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 1993

Mr. LANTOS (for himself and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Federal Property and Administrative Services Act of 1949 to ensure proper classification as employees and independent contractors of persons awarded Federal procurement contracts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CLASSIFICATION OF PERSONS AS EMPLOYEES**

4 **AND INDEPENDENT CONTRACTORS UNDER**

5 **CERTAIN PROCUREMENT CONTRACTS.**

6 (a) IN GENERAL.—Title III of the Federal Property
7 and Administrative Services Act of 1949 (41 U.S.C. 251

1 et seq.) is amended by adding at the end the following
2 new section:

3 **“SEC. 312. CLASSIFICATION OF PERSONS AS EMPLOYEES**
4 **AND INDEPENDENT CONTRACTORS.**

5 **“(a) INELIGIBILITY FOR GOVERNMENT CONTRACTS**
6 **AND SUBCONTRACTS.—**

7 **“(1) IN GENERAL.—**A person (including any
8 subsidiary, successor, or related entity of a person)
9 shall not be eligible for any Government contract
10 during the 2-year period beginning on the date of
11 the issuance of any final determination under Fed-
12 eral law that the person (including any subsidiary or
13 related entity of the person) willfully misclassified an
14 individual for purposes of any employment tax.

15 **“(2) FINAL DETERMINATION.—**For purposes of
16 this subsection, a determination is final if all rights
17 to appeal the determination, or to request a review,
18 rehearing, or redetermination of the matter that is
19 the subject of the determination, have been ex-
20 hausted or have lapsed.

21 **“(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY**
22 **EMPLOYMENT TAXES.—**A person who submits a bid or
23 proposal for a Government contract shall certify that the
24 amount of the bid or proposal is adequate to pay all em-

1 ployment taxes with respect to all work to be performed
2 under the contract by employees of the person.

3 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-
4 TORS.—Each Government contract shall include a require-
5 ment that the contractor shall provide, to each person who
6 performs work under the contract and who is treated by
7 the contractor as an independent contractor for purposes
8 of employment taxes, a notification regarding—

9 “(1) all obligations of the independent contrac-
10 tor under Federal and State law to withhold and pay
11 employment taxes with respect to work performed
12 under the contract by the independent contractor
13 (including work performed by employees of the inde-
14 pendent contractor); and

15 “(2) all statutory rights and protections that
16 are available under Federal and State law to em-
17 ployees of the contractor and are not available to the
18 independent contractor (including employees of the
19 independent contractor), including protections and
20 benefits under Federal laws relating to fair labor
21 standards, occupational health and safety, civil
22 rights, unemployment insurance, and worker’s com-
23 pensation.

24 “(d) RIGHT OF ACTION.—A person who submits a
25 bid or proposal for a Government contract and who suffers

1 damages as a result of the award of the contract to a per-
 2 son who knowingly and willfully submits a certification
 3 under subsection (b) with respect to the contract that is
 4 false, may bring an action for damages against the person
 5 awarded the contract in any district court of the United
 6 States in which the defendant is located.

7 “(e) DEFINITIONS.—For purposes of this section:

8 “(1) EMPLOYMENT TAX.—The term ‘employ-
 9 ment tax’ means any tax imposed by subtitle C of
 10 the Internal Revenue Code of 1986.

11 “(2) GOVERNMENT CONTRACT.—The term
 12 ‘Government contract’ means a contract awarded by
 13 an executive agency, and all subcontracts under such
 14 a contract.

15 “(3) MISCLASSIFY.—The term ‘misclassify’
 16 means to treat as an independent contractor an indi-
 17 vidual who is an employee.”.

18 (b) CLERICAL AMENDMENT.—The Federal Property
 19 and Administrative Services Act of 1949 is amended in
 20 the table of contents following the first section by adding
 21 at the end of the portion of the table relating to title III
 22 the following new item:

“Sec. 312. Classification of persons as employees and independent contractors.”.

23 **SEC. 2. APPLICABILITY.**

24 The amendments made by this title shall apply to—

1 (1) Government contracts entered into after the
2 expiration of the 180-day period beginning on the
3 date of the enactment of this Act;

4 (2) subcontracts under contracts covered by
5 paragraph (1); and

6 (3) options exercised under any Government
7 contract after the expiration of the 180-day period
8 beginning on the date of the enactment of this Act.

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