

108TH CONGRESS
2D SESSION

H. R. 4394

To make ineligible for Federal contract awards any expatriated corporations and any companies that do business with, or own foreign subsidiaries that do business with, state sponsors of terrorism or foreign terrorist organizations.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2004

Mr. BROWN of Ohio (for himself, Mr. NEAL of Massachusetts, Ms. DELAURO, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To make ineligible for Federal contract awards any expatriated corporations and any companies that do business with, or own foreign subsidiaries that do business with, state sponsors of terrorism or foreign terrorist organizations.

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. SHORT TITLE.**

4 This Act may be cited as the “Accountability and Re-
5 sponsibility in Contracting Act”.

1 **SEC. 2. INELIGIBILITY OF EXPATRIATED CORPORATIONS**
2 **FOR FEDERAL CONTRACT AWARDS.**

3 (a) IN GENERAL.—No acquiring corporation or any
4 subsidiary of such a corporation that enters into a cor-
5 porate expatriation transaction shall be eligible to be
6 awarded a Federal contract.

7 (b) PERIOD OF INELIGIBILITY.—The period of ineli-
8 gibility under subsection (a) shall be 3 years, beginning
9 on the date of completion of the corporate expatriation
10 transaction.

11 (c) EXCEPTION FOR REPATRIATED CORPORA-
12 TIONS.—If an acquiring corporation reorganizes as a do-
13 mestic corporation within one year after the date of the
14 enactment of this Act under the applicable incorporation
15 laws of a State, subsection (a) shall not apply.

16 (d) DEFINITIONS.—In this Act:

17 (1) CORPORATE EXPATRIATION TRANS-
18 ACTION.—(A) The term “corporate expatriation
19 transaction”—

20 (i) means any transaction if—

21 (I) a foreign corporation (referred to
22 in this section as the “acquiring corpora-
23 tion”) acquires, as a result of such trans-
24 action, directly or indirectly substantially
25 all of the properties held directly or indi-
26 rectly by a domestic corporation; and

1 (II) immediately after the transaction,
2 more than 80 percent of the stock (by vote
3 or value) of the acquiring corporation is
4 held by former shareholders of the domes-
5 tic corporation by reason of holding stock
6 in the domestic corporation; and

7 (ii) includes any transaction if—

8 (I) a foreign corporation acquires, as
9 a result of such transaction, directly or in-
10 directly properties constituting a trade or
11 business of a domestic partnership;

12 (II) immediately after the transaction,
13 more than 80 percent of the stock (by vote
14 or value) of the acquiring corporation is
15 held by former partners of the domestic
16 partnership or related foreign partnership
17 (determined without regard to stock of the
18 acquiring corporation which is sold in a
19 public offering related to the transaction);
20 and

21 (III) the acquiring corporation meets
22 the requirements of clauses (i) and (ii) of
23 subparagraph (B).

1 (B) Subclause (II) of subparagraph (A)(i) shall
2 be applied by substituting “50 percent” for “80 per-
3 cent” with respect to any foreign corporation if—

4 (i) such corporation does not have substan-
5 tial business activities (when compared to the
6 total business activities of the expanded affili-
7 ated group) in the foreign country in which or
8 under the law of which the corporation is cre-
9 ated or organized; and

10 (ii) the stock of the corporation is publicly
11 traded and the principal market for the public
12 trading of such stock is in the United States.

13 (C) For purposes of this paragraph—

14 (i) a series of related transactions shall be
15 treated as 1 transaction; and

16 (ii) stock held by members of the expanded
17 affiliated group which includes the acquiring
18 corporation shall not be taken into account in
19 determining ownership.

20 (2) DOMESTIC.—The term “domestic” means
21 created or organized in the United States or under
22 the law of the United States or of any State.

23 (3) EXPANDED AFFILIATED GROUP.—The term
24 “expanded affiliated group” means an affiliated
25 group as defined in section 1504(a) of the Internal

1 Revenue Code of 1986, without regard to section
2 1504(b) of such Code.

3 (e) APPLICABILITY.—This section shall apply with re-
4 spect to a corporate expatriation transaction occurring be-
5 fore, on, or after the date of the enactment of this Act.

6 (f) WAIVER.—

7 (1) IN GENERAL.—Subject to paragraph (2),
8 the President may waive this section with respect to
9 any specific contract if the President certifies to
10 Congress that the waiver is required in the interest
11 of national security.

12 (2) REPORT.—The President may not carry out
13 a waiver under paragraph (1) until a period of 30
14 days has expired after the President submits to Con-
15 gress a report containing the certification described
16 in paragraph (1) and setting forth the rationale for
17 the waiver.

18 **SEC. 3. INELIGIBILITY FOR FEDERAL CONTRACT AWARDS**
19 **OF COMPANIES DOING BUSINESS WITH, AND**
20 **COMPANIES WITH FOREIGN SUBSIDIARIES**
21 **DOING BUSINESS WITH, STATE SPONSORS OF**
22 **TERRORISM OR FOREIGN TERRORIST ORGA-**
23 **NIZATIONS.**

24 (a) IN GENERAL.—No entity doing business with a
25 state sponsor of terrorism or foreign terrorist organiza-

1 tion, and no entity with a foreign subsidiary doing busi-
2 ness with a state sponsor of terrorism or foreign terrorist
3 organization, shall be eligible to be awarded a Federal con-
4 tract.

5 (b) PERIOD OF INELIGIBILITY.—The period of ineli-
6 gibility under subsection (a), as determined by the head
7 of the executive agency entering into the contract con-
8 cerned, in cooperation with the Secretary of State, shall
9 be—

10 (1) 3 years for a first offense;

11 (2) 10 years for a second offense; and

12 (3) 15 years for any offense after a second of-
13 fense,

14 beginning on the date of certification under subsection (c)
15 or (d).

16 (c) CERTIFICATION FOR CURRENT CONTRACTS.—
17 Each executive agency shall require, for each contract with
18 the agency that is in effect on the date of the enactment
19 of this Act, that the contractor certify in writing that the
20 contractor, the contractor's domestic parent company, and
21 all other domestic subsidiaries of the domestic parent com-
22 pany did not do business, and did not own a foreign sub-
23 sidiary that did business, during the 10-year period ending
24 on the date of the enactment of this Act, with a state spon-
25 sor of terrorism or a foreign terrorist organization. A cer-

1 tification that the contractor, the parent, or other subsidi-
2 aries did do such business, or did own one or more foreign
3 subsidiaries that did such business, shall be considered a
4 first offense under subsection (b).

5 (d) CERTIFICATION FOR FUTURE CONTRACTS.—

6 Each executive agency shall require, as a condition of en-
7 tering into a contract after the date of the enactment of
8 this Act, that a potential contractor certify in writing that
9 the potential contractor, the potential contractor's domes-
10 tic parent company, and all other domestic subsidiaries of
11 the domestic parent company is not doing business, and
12 does not own a foreign subsidiary that is doing business,
13 or has done business within the last ten years, with a state
14 sponsor of terrorism or a foreign terrorist organization.
15 Each certification that the potential contractor, the par-
16 ent, or other subsidiaries is doing such business, or owned
17 one or more foreign subsidiaries doing such business cur-
18 rently or in the last ten years, shall be considered a sepa-
19 rate offense under subsection (b).

20 (e) COMPLAINTS.—

21 (1) IN GENERAL.—Citizens may file complaints
22 with executive agencies regarding Federal contrac-
23 tors.

24 (2) REPORT.—The head of each executive agen-
25 cy shall submit to Congress an annual report on the

1 complaints received by citizens under this sub-
2 section, including the nature of the complaint and
3 the manner in which the agency handled the com-
4 plaint.

5 (f) DEFINITIONS.—In this section:

6 (1) EXECUTIVE AGENCY.—The term “executive
7 agency” has the meaning provided in section 102 of
8 title 31, United States Code.

9 (2) FOREIGN SUBSIDIARY.—The term “foreign
10 subsidiary” means any foreign entity owned or con-
11 trolled (directly or indirectly) by a potential con-
12 tractor.

13 (3) STATE SPONSOR OF TERRORISM.—The term
14 “state sponsor of terrorism” means any government
15 which the Secretary of State has determined, for
16 purposes of section 6(j) of the Export Administra-
17 tion Act of 1979, section 620A of the Foreign As-
18 sistance Act of 1961, section 40 of the Arms Export
19 Control Act, or other provision of law, is a govern-
20 ment that has provided support for acts of inter-
21 national terrorism.

22 (4) FOREIGN TERRORIST ORGANIZATION.—The
23 term “foreign terrorist organization” means a for-
24 eign terrorist organization designated under section

1 219 of the Immigration and Nationality Act (8
2 U.S.C. 1189).

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