

112TH CONGRESS
2D SESSION

H. R. 4259

To prevent human trafficking in government contracting.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2012

Mr. LANKFORD (for himself, Mr. ISSA, Mr. CUMMINGS, Mr. CONNOLLY of Virginia, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent human trafficking in government contracting.

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 “End Trafficking in
5 Government Contracting Act of 2012”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **EXECUTIVE AGENCY.**—The term “executive
9 agency” has the meaning given the term in section
10 133 of title 41, United States Code.

1 (2) SUBCONTRACTOR.—The term “subcon-
2 tractor” means a recipient of a contract at any tier
3 under a grant, contract, or cooperative agreement.

4 (3) SUBGRANTEE.—The term “subgrantee”
5 means a recipient of a grant at any tier under a
6 grant or cooperative agreement.

7 (4) UNITED STATES.—The term “United
8 States” has the meaning provided in section 103(12)
9 of the Trafficking Victims Protection Act of 2000
10 (22 U.S.C. 7102(12)).

11 **SEC. 3. CONTRACTING REQUIREMENTS.**

12 Section 106(g) of the Trafficking Victims Protection
13 Act of 2000 (22 U.S.C. 7104(g)) is amended by striking
14 “if the grantee or any subgrantee,” and all that follows
15 through the period at the end and inserting the following:
16 “or take any of the other remedial actions authorized
17 under section 5(c) of the End Trafficking in Government
18 Contracting Act of 2012, if the grantee or any subgrantee,
19 or the contractor or any subcontractor, engages in, or uses
20 labor recruiters, brokers, or other agents who engage in,
21 (i) severe forms of trafficking in persons, (ii) the procure-
22 ment of a commercial sex act during the period of time
23 that the grant, contract, or cooperative agreement is in
24 effect, (iii) the use of forced labor in the performance of
25 the grant, contract, or cooperative agreement, or (iv) acts

1 that directly support or advance trafficking in persons, in-
2 cluding the following acts:

3 “(1) Destroying, concealing, removing, or con-
4 fiscating an employee’s immigration documents with-
5 out the employee’s consent.

6 “(2) Failing to repatriate an employee upon the
7 end of employment, unless—

8 “(A) exempted from the duty to repatriate
9 the employee by the Federal department or
10 agency providing or entering into the grant,
11 contract, or cooperative agreement; or

12 “(B) the employee is a victim of human
13 trafficking seeking victim services or legal re-
14 dress in the country of employment or a witness
15 in a human trafficking enforcement action.

16 “(3) Soliciting a person for the purpose of em-
17 ployment, or offering employment, by means of ma-
18 terially false or fraudulent pretenses, representa-
19 tions, or promises regarding that employment.

20 “(4) Charging recruited employees exorbitant
21 placement fees, including fees equal to or greater
22 than the employee’s monthly salary, or recruitment
23 fees that violate the laws of the country from which
24 an employee is recruited.

25 “(5) Providing inhumane living conditions.”.

1 **SEC. 4. COMPLIANCE PLAN AND CERTIFICATION REQUIRE-**
2 **MENT.**

3 (a) REQUIREMENT.—The head of an executive agen-
4 cy may not provide or enter into a grant, contract, or coop-
5 erative agreement valued at \$1,000,000 or more if per-
6 formance will predominantly be conducted overseas, unless
7 a duly designated representative of the recipient of such
8 grant, contract, or cooperative agreement certifies to the
9 contracting or grant officer prior to receiving an award
10 and on an annual basis thereafter, after having conducted
11 due diligence, that—

12 (1) the recipient has implemented a plan to pre-
13 vent the activities described in section 106(g) of the
14 Trafficking Victims Protection Act of 2000 (22
15 U.S.C. 7104(g)), as amended by section 3, and is in
16 compliance with that plan;

17 (2) the recipient has implemented procedures to
18 prevent any activities described in such section
19 106(g) and to monitor, detect, and terminate any
20 subcontractor, subgrantee, or employee of the recipi-
21 ent found to be engaged in any activities described
22 in such section; and

23 (3) to the best of the representative's knowl-
24 edge, neither the recipient, nor any subcontractor or
25 subgrantee of the recipient or any agent of the re-
26 cipient or of such a subcontractor or subgrantee, is

1 engaged in any of the activities described in such
2 section.

3 (b) LIMITATION.—Any plan or procedures imple-
4 mented pursuant to subsection (a) shall be appropriate to
5 the size and complexity of the grant, contract, or coopera-
6 tive agreement and to the nature and scope of its activi-
7 ties, including the number of non-United States citizens
8 expected to be employed.

9 (c) DISCLOSURE.—The recipient shall provide a copy
10 of the plan to the contracting or grant officer upon re-
11 quest, and, as appropriate, shall post the useful and rel-
12 evant contents of the plan or related materials on its
13 website and at the workplace.

14 (d) PERFORMANCE PREDOMINATELY OVERSEAS.—
15 For purposes of subsection (a), a grant, contract, or coop-
16 erative agreement shall be considered to be performed pre-
17 dominantly overseas if the estimated value of the services
18 required to be performed under the grant, contract, or co-
19 operative agreement outside the United States exceeds
20 \$500,000.

21 **SEC. 5. MONITORING AND INVESTIGATION OF TRAF-**
22 **FICKING IN PERSONS.**

23 (a) INVESTIGATION.—If the contracting or grant offi-
24 cer of an executive agency for a grant, contract, or cooper-
25 ative agreement receives credible evidence that a recipient

1 of the grant, contract, or cooperative agreement; any sub-
2 grantee or subcontractor of the recipient; or any agent of
3 the recipient or of such a subgrantee or subcontractor, has
4 engaged in an activity described in section 106(g) of the
5 Trafficking Victims Protection Act of 2000 (22 U.S.C.
6 7104(g)), as amended by section 3, including a report
7 from a contracting officer representative, an inspector
8 general, an auditor, an alleged victim or victim's rep-
9 resentative, or any other credible source, the contracting
10 or grant officer shall, before exercising any option to
11 renew such grant, contract, or cooperative agreement, re-
12 quest that the agency's Office of Inspector General imme-
13 diately initiate an investigation of the allegation or allega-
14 tions contained in the report. If the agency's Office of In-
15 spector General is unable to conduct a timely investiga-
16 tion, the suspension and debarment office or another in-
17 vestigative unit of the agency shall conduct the investiga-
18 tion.

19 (b) REPORT.—Upon completion of an investigation
20 under subsection (a), the office or unit that conducted the
21 investigation shall submit to the contracting or grant offi-
22 cer and, if such investigation was not conducted by the
23 agency's Office of Inspector General, to the agency's Of-
24 fice of Inspector General, a report on the investigation,
25 including conclusions about whether credible evidence ex-

1 ists that the recipient of a grant, contract, or cooperative
2 agreement; any subcontractor or subgrantee of the recipi-
3 ent; or any agent of the recipient or of such a subcon-
4 tractor or subgrantee, engaged in any of the activities de-
5 scribed in section 106(g) of the Trafficking Victims Pro-
6 tection Act of 2000 (22 U.S.C. 7104(g)), as amended by
7 section 3.

8 (c) REMEDIAL ACTIONS.—

9 (1) IN GENERAL.—If a contracting or grant of-
10 ficial determines that a recipient of a grant, con-
11 tract, or cooperative agreement, or any subcon-
12 tractor or subgrantee of the recipient, has engaged
13 in any of the activities described in such section
14 106(g), the contracting or grant officer shall con-
15 sider taking one or more of the following remedial
16 actions:

17 (A) Requiring the recipient to remove an
18 employee from the performance of work under
19 the grant, contract, or cooperative agreement.

20 (B) Requiring the recipient to terminate a
21 subcontract or subgrant.

22 (C) Suspending payments under the grant,
23 contract, or cooperative agreement.

24 (D) Withholding award fees, consistent
25 with the award fee plan, for the performance

1 period in which the agency determined the con-
2 tractor or subcontractor engaged in any of the
3 activities described in such section 106(g).

4 (E) Declining to exercise available options
5 under the contract.

6 (F) Terminating the contract for default
7 or cause, in accordance with the termination
8 clause for the contract.

9 (G) Referring the matter to the agency
10 suspension and debarment official.

11 (H) Referring the matter to the Depart-
12 ment of Justice for prosecution under any ap-
13 plicable law.

14 (2) SAVINGS CLAUSE.—Nothing in this sub-
15 section shall be construed as limiting the scope of
16 applicable remedies available to the Federal Govern-
17 ment.

18 (3) MITIGATING FACTOR.—Where applicable,
19 the contracting or grant official may consider wheth-
20 er the contractor or grantee had a plan in place
21 under section 4, and was in compliance with that
22 plan at the time of the violation, as a mitigating fac-
23 tor in determining which remedies, if any, should
24 apply.

1 (d) INCLUSION OF REPORT CONCLUSIONS IN
2 FAPIIS.—The contracting or grant officer shall ensure
3 that relevant findings contained in the report under sub-
4 section (b) are included in the Federal Awardee Perform-
5 ance and Integrity Information System (FAPIIS). These
6 findings shall be considered relevant past performance
7 data for the purpose of awarding future contracts, grants,
8 or cooperative agreements.

9 **SEC. 6. NOTIFICATION TO INSPECTORS GENERAL AND CO-**
10 **OPERATION WITH GOVERNMENT.**

11 The head of an executive agency making or awarding
12 a grant, contract, or cooperative agreement shall require
13 that the recipient of the grant, contract, or cooperative
14 agreement—

15 (1) immediately inform the Inspector General of
16 the executive agency of any information it receives
17 from any source that alleges credible evidence that
18 the recipient; any subcontractor or subgrantee of the
19 recipient; or any agent of the recipient or of such a
20 subcontractor or subgrantee, has engaged in conduct
21 described in section 106(g) of the Trafficking in Vic-
22 tims Protection Act of 2000 (22 U.S.C. 7104(g)), as
23 amended by section 3 of this Act; and

1 (2) fully cooperate with any Federal agencies
2 responsible for audits, investigations, or corrective
3 actions relating to trafficking in persons.

4 **SEC. 7. EXPANSION OF FRAUD IN FOREIGN LABOR CON-**
5 **TRACTING TO INCLUDE WORK OUTSIDE THE**
6 **UNITED STATES.**

7 Section 1351 of title 18, United States Code, is
8 amended—

9 (1) by striking “Whoever knowingly” and in-
10 serting “(a) WORK INSIDE THE UNITED STATES.—
11 Whoever knowingly”; and

12 (2) by adding at the end the following new sub-
13 section:

14 “(b) WORK OUTSIDE THE UNITED STATES.—Who-
15 ever knowingly and with intent to defraud recruits, solici-
16 its, or hires a person outside the United States or causes
17 another person to recruit, solicit, or hire a person outside
18 the United States, or attempts to do so, for purposes of
19 work performed on a United States Government contract
20 performed outside the United States, or on a United
21 States military installation or mission or other property
22 or premises owned or controlled by the United States Gov-
23 ernment, by means of materially false or fraudulent pre-
24 tenses, representations, or promises regarding that em-

1 ployment, shall be fined under this title or imprisoned for
2 not more than 5 years, or both.”.

3 **SEC. 8. IMPROVING DEPARTMENT OF DEFENSE ACCOUNT-**
4 **ABILITY FOR REPORTING TRAFFICKING IN**
5 **PERSONS CLAIMS AND VIOLATIONS.**

6 Section 105(d)(7)(H) of the Trafficking Victims Pro-
7 tection Act of 2000 (22 U.S.C. 7103(d)(7)(H)) is amend-
8 ed—

9 (1) in clause (ii), by striking “and” at the end;

10 (2) by redesignating clause (iii) as clause (iv);

11 (3) by inserting after clause (ii) the following

12 new clause:

13 “(iii) all known trafficking in persons

14 cases reported to the Under Secretary of

15 Defense for Personnel and Readiness;”;

16 (4) in clause (iv), as redesignated by paragraph

17 (2), by inserting “and” at the end after the semi-

18 colon; and

19 (5) by adding at the end the following new

20 clause:

21 “(v) all trafficking in persons activi-

22 ties of contractors reported to the Under

23 Secretary of Defense for Acquisition, Tech-

24 nology, and Logistics;”.

1 **SEC. 9. RULE OF CONSTRUCTION.**

2 Excluding section 7, nothing in this Act shall be con-
3 strued to supersede, enlarge, or diminish the common law
4 or statutory liabilities of any grantee, subgrantee, con-
5 tractor, subcontractor, or other party covered by section
6 106(g) of the Trafficking Victims Protection Act of 2000
7 (22 U.S.C. 7104(g)), as amended by section 3.

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