

112TH CONGRESS  
1ST SESSION

# S. 341

To require the rescission or termination of Federal contracts and subcontracts with enemies of the United States.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2011

Mr. BROWN of Massachusetts (for himself and Ms. AYOTTE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To require the rescission or termination of Federal contracts and subcontracts with enemies of the United States.

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 “No Contracting with  
5       the Enemy Act of 2011”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) ELEMENT OF THE INTELLIGENCE COMMU-  
9       NITY.—The term “element of the intelligence com-  
10      munity” means an element of the intelligence com-

1 munity specified or designated in section 3(4) of the  
2 National Security Act of 1947 (50 U.S.C. 401a(4)).

3 (2) ENEMY OF THE UNITED STATES.—The  
4 term “enemy of the United States” means any per-  
5 son or organization determined by the Secretary of  
6 Defense or the Secretary of State to be hostile to  
7 United States forces or interests or providing sup-  
8 port to any person or organization hostile to United  
9 States forces or interests during the time of a de-  
10 clared war, peacekeeping operation, or other military  
11 or contingency operation.

12 (3) EXECUTIVE AGENCY.—The term “executive  
13 agency” has the meaning given the term in section  
14 133 of title 41, United States Code.

15 (4) FEDERAL ACQUISITION REGULATION.—The  
16 term “Federal Acquisition Regulation” means the  
17 regulation maintained under section 1303(a)(1) of  
18 title 41, United States Code.

19 (5) FEDERAL CONTRACT.—The term “Federal  
20 contract” means any contract, including any order  
21 under a multiple award or indefinite delivery or in-  
22 definite quality contract, entered into by an execu-  
23 tive agency for the procurement of property or serv-  
24 ices.

1 **SEC. 3. PROHIBITION ON CONTRACTS WITH ENEMIES.**

2 (a) IN GENERAL.—Not later than 60 days after the  
3 date of the enactment of this Act, the Federal Acquisition  
4 Regulatory Council shall amend the Federal Acquisition  
5 Regulation—

6 (1) to prohibit the awarding of Federal con-  
7 tracts to enemies of the United States; and

8 (2) to provide that any Federal contract with  
9 an enemy of the United States shall be null and void  
10 and may be immediately terminated or rescinded by  
11 the head of the executive agency concerned at no  
12 cost to the United States Government, including any  
13 compensation otherwise due under termination for  
14 convenience, termination for default, or other con-  
15 tract provisions or provisions of law.

16 (b) PROHIBITION ON SUBCONTRACTS.—The regula-  
17 tions prescribed under subsection (a) shall prohibit the  
18 awarding of subcontracts under a Federal contract to en-  
19 emies of the United States, and shall include the following  
20 requirements:

21 (1) Federal contracts shall include a contract  
22 clause prohibiting the use of a subcontractor at any  
23 tier under the contract that is an enemy of the  
24 United States.

25 (2) If the head of an executive agency deter-  
26 mines that a prime contractor has subcontracted at

1 any tier under a Federal contract with a contractor  
2 that is an enemy of the United States, the con-  
3 tracting official shall—

4 (A) direct the prime contractor to termi-  
5 nate the subcontract immediately with no fur-  
6 ther payment or compensation to the subcon-  
7 tractor;

8 (B) notify the prime contractor that failure  
9 to terminate the subcontract shall be grounds  
10 for default on the prime contract; and

11 (C) take all necessary actions to ensure  
12 that no further payments, including previously  
13 approved payments and compensation otherwise  
14 due under termination for convenience, termi-  
15 nation for default, or other contract provisions  
16 or provisions of law, are made to the subcon-  
17 tractor.

18 (c) INTELLIGENCE COMMUNITY AND NATIONAL SE-  
19 CURITY EXCEPTION.—The prohibitions under subsections  
20 (a) and (b) shall not apply to contracts entered into by  
21 elements of the intelligence community in support of intel-  
22 ligence activities or any other contract where national se-  
23 curity may be compromised.

24 (d) MONITORING OF TERMINATED CONTRACTS.—  
25 Not later than 90 days after the date of the enactment

1 of this Act, the Administrator for Federal Procurement  
2 Policy shall direct the Administrator of General Services  
3 to add a field to the Federal Awardee Performance and  
4 Integrity Information System (“FAPIIS”) to record con-  
5 tracts voided or otherwise terminated based on a deter-  
6 mination that the contract, or any subcontract under the  
7 contract, was with an enemy of the United States as de-  
8 fined under section 2(1).

9 (e) DISSEMINATION.—The Administrator for Federal  
10 Procurement Policy, in coordination with the Secretary of  
11 Defense and the Secretary of State, shall ensure that the  
12 regulations implementing this Act are disseminated to all  
13 personnel affected and that all contractors are made aware  
14 of this policy prior to contract awards.

15 **SEC. 4. DETERMINATION OF ENEMY STATUS.**

16 (a) REGULATIONS.—

17 (1) IN GENERAL.—Not later than 60 days after  
18 the date of the enactment of this Act, the Secretary  
19 of Defense, in coordination with the Secretary of  
20 State, shall prescribe regulations establishing a pro-  
21 cess for the heads of executive agencies to make a de-  
22 termination that a party to a contract is an enemy  
23 of the United States as defined under section 2(1).

24 (2) ELEMENTS.—The regulations prescribed  
25 under paragraph (1) shall establish—

1 (A) a process for verifying the information  
2 on which a determination under such paragraph  
3 is sufficiently reliable;

4 (B) a process for protecting confidential  
5 sources;

6 (C) a process requiring the heads of execu-  
7 tive agencies to document the basis for deter-  
8 minations under paragraph (1) and the infor-  
9 mation relied upon in making such determina-  
10 tions; and

11 (D) a process for retaining such informa-  
12 tion for possible review under section 5.

13 **SEC. 5. DUE PROCESS PROCEDURE.**

14 (a) IN GENERAL.—Any contractor whose contract is  
15 voided or otherwise terminated under the procedures pre-  
16 scribed pursuant to section 3 may utilize the procedures  
17 established under chapter 71 of title 41, United States  
18 Code, except that the only basis for a claim under these  
19 procedures is that the contractor is not an enemy of the  
20 United States as defined under section 2(1).

21 (b) PROTECTION OF NATIONAL SECURITY.—The reg-  
22 ulations established under chapter 71 of title 41, United  
23 States Code, shall be amended to provide for the protec-  
24 tion of national security as appropriate when a claim is  
25 submitted under subsection (a).

1 **SEC. 6. APPLICABILITY.**

2       This Act and the amendments made pursuant to this  
3 Act shall apply with respect to contracts entered into on  
4 or after the date of the enactment of this Act.

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