

108TH CONGRESS
1ST SESSION

H. R. 2767

To improve Federal agency oversight of contracts and assistance and to strengthen accountability of the governmentwide debarment and suspension system.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2003

Mrs. MALONEY (for herself, Mr. KING of New York, Mr. KANJORSKI, Mr. GARY G. MILLER of California, Mr. TOWNS, Mr. OWENS, and Mr. KUCINICH) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To improve Federal agency oversight of contracts and assistance and to strengthen accountability of the governmentwide debarment and suspension system.

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 “Contractors Account-
5 ability Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) NEED FOR DATABASE.—(A) By spending
2 over \$215,000,000,000 a year on procurement and
3 nonprocurement awards for goods and services, the
4 Federal Government is the largest consumer in the
5 world.

6 (B) It is in the best interest of the Federal
7 Government and its taxpayers to award contract and
8 assistance to entities that are responsible and have
9 a suitable record of integrity and business ethics.

10 (C) There is no centralized, comprehensive
11 database on judicial actions, consent decrees, admin-
12 istrative agreements, terminations, or settlements
13 with respect to potential Federal contractors or as-
14 sistance participants.

15 (D) Federal officials do not have the resources
16 necessary to assemble such information for each
17 Federal procurement award.

18 (E) The lack of this information compromises
19 the Federal Government's ability to safeguard the
20 integrity of the Federal procurement and assistance
21 activities.

22 (F) It is in the best business interests of the
23 Federal Government to have all information possible
24 regarding potential contractors' and assistance par-
25 ticipants' performance and integrity records to as-

1 sure that persons with which the Government does
2 business are presently responsible.

3 (2) REALITY OF DEBARMENTS AND SUSPEN-
4 SIONS OF TOP 43 FEDERAL CONTRACTORS.—Since
5 1990—

6 (A) of the top 43 Federal contractors
7 based on total contract dollars received—

8 (i) 16 have a total of 28 criminal con-
9 victions; and

10 (ii) 4 of the top ten have at least 2
11 criminal convictions;

12 (B) such 43 contractors have paid a total
13 of \$3,400,000,000 in fines, penalties, restituti-
14 on, settlements, and clean-up costs under the
15 Superfund program; and

16 (C) despite such fines and criminal convic-
17 tions, only one of the 43 contractors has been
18 debarred or suspended from contracting with
19 the Federal Government, for only 5 days.

20 (3) NEED FOR DATABASE NOT FULFILLED.—

21 (A) There is no centralized listing of crimi-
22 nal or civil indictments, convictions, fines, pen-
23 alties, restitution, and settlement assessments
24 relating to contractors or assistance partici-
25 pants.

1 (B) Potential Federal contractors or assist-
2 ance participants are not required to disclose all
3 relevant criminal, civil, or administrative rulings
4 or resolutions during the Federal procurement
5 award process.

6 (C) Without such a database or disclosure,
7 Federal award officials and debarment officials
8 lack important information relevant to present
9 responsibility.

10 **SEC. 3. DATABASE FOR FEDERAL DEBARMENT OFFICIALS**
11 **AND CONTRACTING OFFICERS.**

12 (a) IN GENERAL.—The Administrator of General
13 Services shall establish and maintain a database of infor-
14 mation regarding integrity and performance of Federal
15 contracts and assistance recipients for use by Federal pro-
16 curement award officials and Federal officials having au-
17 thority to debar or suspend persons from Federal con-
18 tracts or assistance.

19 (b) INFORMATION INCLUDED.—The database—
20 (1) shall consist of information regarding judi-
21 cial and administrative proceedings initiated or con-
22 cluded by the Federal Government and State govern-
23 ments against Federal contractors or assistance re-
24 cipients; and

1 (2) shall include with respect to each entity
2 awarded a Federal contract or assistance—

3 (A) information regarding all proceedings
4 referred to in paragraph (1) against that person
5 in at least the most recent 5-year period;

6 (B) with respect to each proceeding—

7 (i) a brief description of the pro-
8 ceeding; and

9 (ii) any amount paid by the person to
10 the Federal Government or a State govern-
11 ment;

12 (C) all Federal contracts and assistance
13 awarded to the person that were terminated in
14 such period due to default;

15 (D) all Federal debarments and suspen-
16 sions of the person in that period; and

17 (E) all Federal suspension and debarment
18 or administrative agreements signed with such
19 person in that period.

20 (c) INPUT OF DATA.—The Administrator shall design
21 and maintain the database in a manner that allows the
22 appropriate officials of each Federal agency to directly
23 input and update in the database information relating to
24 actions it has taken with regard to contractors or assist-
25 ance recipients.

1 (d) AVAILABILITY.—The Administrator shall make
2 the database available to all Federal agencies and to the
3 public in accordance with section 552 of title 5, United
4 States Code, popularly known as the Freedom of Informa-
5 tion Act.

6 **SEC. 4. SUSPENSION AND DEBARMENT PRESUMPTION FOR**
7 **REPEAT VIOLATORS AND POOR PER-**
8 **FORMERS.**

9 (a) IN GENERAL.—Federal agency suspension and
10 debarment regulations shall be amended by no later than
11 180 days after the date of the enactment of this Act to
12 provide that an entity shall be presumed nonresponsible
13 with respect to award of a Federal contract or assistance
14 if the entity has rendered against it twice within any 3-
15 year period a judgment or conviction for the same offense,
16 or similar offenses, if each conviction constitutes a cause
17 for debarment under the governmentwide debarment sys-
18 tem.

19 (b) REBUTTAL.—The presumption under subsection
20 (a) shall be rebutted only if the entity demonstrates, by
21 clear and convincing evidence, that the entity is presently
22 responsible and has corrected the conditions that gave rise
23 to the violations.

24 (c) REPEAT VIOLATIONS.—An agency suspending of-
25 ficial may deem evidence of repeat violations under sub-

1 section (a) as sufficient reason to find that immediate ac-
2 tion is necessary to suspend an entity under the regula-
3 tions until the entity fulfills the requirements of subsection
4 (b).

5 **SEC. 5. DISCLOSURE IN APPLICATIONS.**

6 Federal regulations shall be amended by no later than
7 180 days after the date of the enactment of this Act to
8 require that in applying for any Federal contract or assist-
9 ance, whether by submission of a proposal, any solicita-
10 tion, bid, or other offer, an entity shall disclose in writ-
11 ing—

12 (1) all Federal or State debarments or suspen-
13 sions of the entity from contracts or assistance in
14 the 5-year period preceding the date of submission
15 of the application;

16 (2) all judicial and administrative proceedings
17 against the entity by the Federal Government or any
18 State that occurred in the 5-year period preceding
19 the date of the application; and

20 (3) all administrative agreements with respect
21 to Federal contracts or assistance that the entity is
22 implementing to avoid suspension or debarment
23 within 5 years of the date of the submission of the
24 application.

1 **SEC. 6. ROLE OF INTERAGENCY COMMITTEE.**

2 The Interagency Committee on Debarment and Sus-
3 pension shall—

4 (1) resolve issues regarding which of several
5 Federal agencies is the lead agency having responsi-
6 bility to initiate suspension or debarment pro-
7 ceedings;

8 (2) coordinate actions among interested agen-
9 cies with respect to such action;

10 (3) encourage and assist Federal agencies in
11 entering into cooperative efforts to pool resources
12 and achieve operational efficiencies in the govern-
13 mentwide suspension and debarment system;

14 (4) recommend to the Office of Management
15 and Budget changes to Government debarment and
16 suspension system and its rules, if such rec-
17 ommendations are approved by a majority of the
18 Interagency Committee;

19 (5) authorize the Office of Management and
20 Budget to issue guidelines that implement those rec-
21 ommendations;

22 (6) authorize the chair of the Committee to es-
23 tablish subcommittees as appropriate to best enable
24 the Interagency Committee to carry out its func-
25 tions; and

1 (7) submit to the Congress an annual report
2 on—

3 (A) the progress and efforts to improve the
4 suspension and debarment system;

5 (B) member agencies' active participation
6 in the committee's work; and

7 (C) a summary of each agency's activities
8 and accomplishments in the governmentwide de-
9 barment system.

10 **SEC. 7. AUTHORIZATION OF INDEPENDENT AGENCIES.**

11 Any agency, commission, or organization of the Fed-
12 eral Government to which Executive Order 12549 does not
13 apply is authorized to participate in the governmentwide
14 suspension and debarment system and may recognize the
15 suspension or debarment issued by an executive branch
16 agency in its own procurement or assistance activities.

17 **SEC. 8. USE OF PAYMENTS UNDER ADMINISTRATIVE**
18 **AGREEMENTS.**

19 (a) IN GENERAL.—A Federal agency may—

20 (1) retain amounts described in subsection (b);
21 and

22 (2) use those amounts solely—

23 (A) to administer, review, or oversee com-
24 pliance with suspension or debarment adminis-
25 trative agreements; and

1 (B) for costs associated with establishing
2 and maintaining the database under section 3,
3 including for input and update of information
4 in the database.

5 (b) AMOUNTS DESCRIBED.—The amounts referred to
6 in subsection (a) are amounts received by the agency as
7 payment made by any Federal contractor or assistance
8 participant pursuant to an administrative agreement with
9 respect to a Federal contract or assistance activity.

10 (c) RESTRICTION.—Amounts retained under sub-
11 section (a)(1) may not be used for agency administration
12 or expenses not described in subsection (a)(2).

13 **SEC. 9. DEFINITIONS.**

14 In this Act:

15 (1) INTERAGENCY COMMITTEE.—The term
16 “Interagency Committee on Debarment and Suspen-
17 sion” means such committee constituted under sec-
18 tions 4 and 5 and of Executive Order 12549.

19 (2) ASSISTANCE.—The term “assistance”
20 means Federal grants, cooperative agreements,
21 loans, loan guarantees, and other benefits included
22 as covered transactions under the governmentwide
23 nonprocurement suspension and debarment rules.

1 (3) CONTRACT.—The term “contract” means
2 those direct procurement transactions covered by
3 subpart 9.4 of the Federal Acquisition Regulation.

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