

110TH CONGRESS
1ST SESSION

S. 1004

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 SENATE OF THE UNITED STATES

MARCH 28, 2007

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

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 “Restoring Integrity
5 in Contracting Act of 2007”.

1 **SEC. 2. DEFINITIONS.**

2 (a) CORPORATE EXPATRIATION TRANSACTION DE-
3 FINED.—

4 (1) IN GENERAL.—In this Act, the term “cor-
5 porate expatriation transaction”—

6 (A) means any transaction in which—

7 (i) a foreign corporation (referred to
8 in this section as the “acquiring corpora-
9 tion”) acquires, as a result of such trans-
10 action, directly or indirectly substantially
11 all of the properties held directly or indi-
12 rectly by a domestic corporation; and

13 (ii) immediately after the transaction,
14 more than 80 percent of the stock (by vote
15 or value) of the acquiring corporation is
16 held by former shareholders of the domes-
17 tic corporation by reason of holding stock
18 in the domestic corporation; and

19 (B) includes any transaction in which—

20 (i) a foreign corporation acquires, as a
21 result of such transaction, directly or indi-
22 rectly properties constituting a trade or
23 business of a domestic partnership; and

24 (ii) immediately after the transaction,
25 more than 80 percent of the stock (by vote
26 or value) of the acquiring corporation is

1 held by former partners of the domestic
2 partnership or related foreign partnership
3 (determined without regard to stock of the
4 acquiring corporation which is sold in a
5 public offering related to the transaction).

6 (2) LOWER STOCK OWNERSHIP THRESHOLD
7 FOR CERTAIN ACQUIRING CORPORATIONS.—Clause
8 (ii) of paragraph (1)(A) shall be applied by sub-
9 stituting “50 percent” for “80 percent” with respect
10 to any foreign corporation if—

11 (A) such corporation does not have sub-
12 stantial business activities (when compared to
13 the total business activities of the expanded af-
14 filiated group) in the foreign country in which
15 or under the law of which the corporation is
16 created or organized; and

17 (B) the stock of the corporation is publicly
18 traded and the principal market for the public
19 trading of such stock is in the United States.

20 (3) RULES FOR DETERMINING OWNERSHIP AND
21 SCOPE OF TRANSACTION.—For purposes of this sub-
22 section—

23 (A) a series of related transactions shall be
24 treated as 1 transaction; and

1 (B) stock held by members of the ex-
2 panded affiliated group which includes the ac-
3 quiring corporation shall not be taken into ac-
4 count in determining ownership.

5 (b) OTHER DEFINITIONS.—In this Act:

6 (1) DOMESTIC.—The term “domestic” means
7 created or organized in the United States or under
8 the law of the United States or of any State.

9 (2) EXECUTIVE AGENCY.—The term “executive
10 agency” has the meaning given the term in section
11 102 of title 31, United States Code.

12 (3) EXPANDED AFFILIATED GROUP.—The term
13 “expanded affiliated group” means an affiliated
14 group as defined in section 1504(a) of the Internal
15 Revenue Code of 1986, without regard to section
16 1504(b) of such Code.

17 (4) FOREIGN SUBSIDIARY.—The term “foreign
18 subsidiary” means any foreign entity owned or con-
19 trolled (directly or indirectly) by a potential con-
20 tractor.

21 (5) STATE SPONSOR OF TERRORISM.—The term
22 “state sponsor of terrorism” means any government
23 which the Secretary of State has determined, for
24 purposes of section 6(j) of the Export Administra-
25 tion Act of 1979 (50 U.S.C. App. 2405(j)), section

1 620A of the Foreign Assistance Act of 1961 (22
2 U.S.C. 2371), section 40 of the Arms Export Con-
3 trol Act (22 U.S.C. 2780), or any other provision of
4 law, to be a government that has provided support
5 for acts of international terrorism.

6 (6) FOREIGN TERRORIST ORGANIZATION.—The
7 term “foreign terrorist organization” means a for-
8 eign terrorist organization designated under section
9 219 of the Immigration and Nationality Act (8
10 U.S.C. 1189).

11 **SEC. 3. INELIGIBILITY OF EXPATRIATED CORPORATIONS**
12 **FOR FEDERAL CONTRACT AWARDS.**

13 (a) IN GENERAL.—No acquiring corporation or any
14 subsidiary of such a corporation that enters into a cor-
15 porate expatriation transaction after the date of the enact-
16 ment of this Act shall be eligible to be awarded a Federal
17 contract for the 5-year period beginning on the date that
18 a disclosure regarding such transaction is made under sec-
19 tion 5.

20 (b) PENALTIES FOR FAILURE TO DISCLOSE.—In the
21 event that the Administrator for Federal Procurement
22 Policy determines that an entity is ineligible for a Federal
23 contract under subsection (a) as a result of a corporate
24 expatriation transaction that the entity fails to disclose
25 under section 5(a), the period of ineligibility—

1 (1) shall begin on the date that the Adminis-
 2 trator makes such determination; and

3 (2) may be extended by the Administrator for
 4 a period that is longer than the period otherwise ap-
 5 plicable under subsection (a) as a penalty for such
 6 failure to disclose.

7 (c) WAIVER.—

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

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

19 **SEC. 4. INELIGIBILITY FOR FEDERAL CONTRACT AWARDS**
 20 **OF COMPANIES DOING BUSINESS WITH, AND**
 21 **COMPANIES WITH FOREIGN SUBSIDIARIES**
 22 **DOING BUSINESS WITH, STATE SPONSORS OF**
 23 **TERRORISM OR FOREIGN TERRORIST ORGA-**
 24 **NIZATIONS.**

25 (a) INELIGIBILITY.—

1 (1) IN GENERAL.—Except as provided under
2 paragraph (2), any entity doing business with, or
3 having a parent or subsidiary doing business with, a
4 state sponsor of terrorism or foreign terrorist orga-
5 nization after the date of the enactment of this Act
6 shall be ineligible to be awarded a Federal contract
7 for the period described in subsection (b).

8 (2) EXCEPTION FOR ENTITIES DOING BUSINESS
9 IN COMPLIANCE WITH THE TRADE SANCTIONS RE-
10 FORM AND EXPORT ENHANCEMENT ACT OF 2000.—

11 (A) AUTHORITY UNAFFECTED.—Nothing
12 in this section shall be construed to prohibit or
13 restrict an entity from selling food, agricultural
14 commodities, medicine, or medical products to a
15 state sponsor of terrorism or foreign terrorist
16 organization pursuant to section 906 of the
17 Trade Sanctions Reform and Export Enhance-
18 ment Act of 2000 (22 U.S.C. 7205).

19 (B) ELIGIBILITY FOR CONTRACTS UNAF-
20 FECTED.—No entity selling food, agricultural
21 commodities, medicine, or medical products to a
22 state sponsor of terrorism or foreign terrorist
23 organization in full compliance with the require-
24 ments of section 906 of the Trade Sanctions
25 Reform and Export Enhancement Act of 2000

1 (22 U.S.C. 7205), or any parent or subsidiary
2 of such entity, shall be deemed ineligible to be
3 awarded a Federal contract under subsection
4 (a) as a result of conducting such business.

5 (b) PERIOD OF INELIGIBILITY.—

6 (1) DURATION.—The period of ineligibility re-
7 ferred to in subsection (a)(1), as determined by the
8 Administrator for Federal Procurement Policy, in
9 cooperation with the Secretary of State, shall be—

10 (A) 5 years for a first offense;

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

12 (C) 15 years for any offense after a second
13 offense.

14 (2) COMMENCEMENT.—The period of ineligi-
15 bility under this subsection shall begin on the date
16 that a contractor makes a disclosure under section
17 5 that, according to the criteria under such section,
18 the contractor is doing or has done business with, or
19 has a subsidiary that is doing or has done business
20 with, a state sponsor of terrorism or foreign terrorist
21 organization.

22 (3) PENALTIES FOR FAILURE TO DISCLOSE.—

23 In the event that the Administrator for Federal Pro-
24 curement Policy determines that an entity is ineli-
25 gible for a Federal contract under subsection (a) as

1 a result of a transaction or activity that the entity
2 fails to disclose under section 5(a), the period of in-
3 eligibility—

4 (A) shall begin on the date that the Ad-
5 ministrator makes such determination; and

6 (B) may be extended by the Administrator
7 for a period longer than the period otherwise
8 applicable under paragraph (1) as a penalty for
9 such failure to disclose.

10 (c) COMPLAINTS.—

11 (1) IN GENERAL.—Any United States citizen
12 may file a complaint with an executive agency re-
13 garding a Federal contractor that has committed an
14 offense under this section.

15 (2) REPORT.—The head of each executive agen-
16 cy shall submit to Congress an annual report on the
17 complaints received by citizens under this sub-
18 section, including the nature of the complaint and
19 the manner in which the agency handled the com-
20 plaint.

21 **SEC. 5. DISCLOSURE REQUIREMENTS.**

22 (a) CERTIFICATION.—Not later than 180 days after
23 the date of the enactment of this Act, the Federal Acquisi-
24 tion Regulation issued pursuant to section 25 of the Office
25 of Federal Procurement Policy Act (41 U.S.C. 421) shall

1 be revised to require that every contractor that submits
2 a bid for a government contract shall be required to sub-
3 mit with such bid a certification describing—

4 (1) whether the contractor or the contractor’s
5 parent company has entered into a corporate expa-
6 triation transaction after the date of the enactment
7 of this Act; and

8 (2) whether the contractor, the contractor’s do-
9 mestic parent company, or any other domestic sub-
10 sidiaries of the domestic parent company are doing
11 business, or own a foreign subsidiary that is doing
12 business, or has done business since the date of the
13 enactment of this Act, with a state sponsor of ter-
14 rorism or a foreign terrorist organization.

15 (b) INFORMATION SHARING.—The head of each exec-
16 utive agency shall regularly transmit information disclosed
17 pursuant to subsection (a) to the Administrator for Fed-
18 eral Procurement Policy.

19 (c) DATABASE.—The Office of Federal Procurement
20 Policy Act (41 U.S.C. 403 et seq.) is amended by adding
21 at the end the following new section:

1 **“SEC. 43. DATABASE OF CORPORATE EXPATRIATION**
2 **TRANSACTIONS AND TRANSACTIONS WITH**
3 **STATE SPONSORS OF TERRORISM OR FOR-**
4 **EIGN TERRORIST ORGANIZATIONS.**

5 “(a) DATABASE.—The Administrator for Federal
6 Procurement Policy shall establish and maintain a data-
7 base listing each contractor that, after the date of the en-
8 actment of the Restoring Integrity in Contracting Act of
9 2007—

10 “(1) has entered into a corporate expatriation
11 transaction, or has a parent company that has en-
12 tered into such a transaction; or

13 “(2) has done business with, or owns a foreign
14 subsidiary that has done business with, a state spon-
15 sor of terrorism or a foreign terrorist organization,
16 or has a domestic parent company that has done, or
17 has any other domestic subsidiaries that have done,
18 such business.

19 “(b) COLLECTION OF INFORMATION.—The Adminis-
20 trator shall establish and maintain the database under
21 subsection (a) using information compiled from certifi-
22 cations submitted by contractors pursuant to section 5(a)
23 of the Restoring Integrity in Contracting Act of 2007.

24 “(c) CORPORATE EXPATRIATION TRANSACTION DE-
25 FINED.—

1 “(1) IN GENERAL.—In this section, the term
2 ‘corporate expatriation transaction’—

3 “(A) means any transaction in which—

4 “(i) a foreign corporation (referred to
5 in this section as the ‘acquiring corpora-
6 tion’) acquires, as a result of such trans-
7 action, directly or indirectly substantially
8 all of the properties held directly or indi-
9 rectly by a domestic corporation; and

10 “(ii) immediately after the trans-
11 action, more than 80 percent of the stock
12 (by vote or value) of the acquiring corpora-
13 tion is held by former shareholders of the
14 domestic corporation by reason of holding
15 stock in the domestic corporation; and

16 “(B) includes any transaction in which—

17 “(i) a foreign corporation acquires, as
18 a result of such transaction, directly or in-
19 directly properties constituting a trade or
20 business of a domestic partnership; and

21 “(ii) immediately after the trans-
22 action, more than 80 percent of the stock
23 (by vote or value) of the acquiring corpora-
24 tion is held by former partners of the do-
25 mestic partnership or related foreign part-

1 nership (determined without regard to
2 stock of the acquiring corporation which is
3 sold in a public offering related to the
4 transaction).

5 “(2) LOWER STOCK OWNERSHIP THRESHOLD
6 FOR CERTAIN ACQUIRING CORPORATIONS.—Clause
7 (ii) of paragraph (1)(A) shall be applied by sub-
8 stituting ‘50 percent’ for ‘80 percent’ with respect to
9 any foreign corporation if—

10 “(A) such corporation does not have sub-
11 stantial business activities (when compared to
12 the total business activities of the expanded af-
13 filiated group) in the foreign country in which
14 or under the law of which the corporation is
15 created or organized; and

16 “(B) the stock of the corporation is pub-
17 licly traded and the principal market for the
18 public trading of such stock is in the United
19 States.

20 “(3) RULES FOR DETERMINING OWNERSHIP
21 AND SCOPE OF TRANSACTION.—For purposes of this
22 subsection—

23 “(A) a series of related transactions shall
24 be treated as 1 transaction; and

1 “(B) stock held by members of the ex-
2 panded affiliated group which includes the ac-
3 quiring corporation shall not be taken into ac-
4 count in determining ownership.

5 “(d) OTHER DEFINITIONS.—In this section:

6 “(1) DOMESTIC.—The term ‘domestic’ means
7 created or organized in the United States or under
8 the law of the United States or of any State.

9 “(2) EXPANDED AFFILIATED GROUP.—The
10 term ‘expanded affiliated group’ means an affiliated
11 group as defined in section 1504(a) of the Internal
12 Revenue Code of 1986, without regard to section
13 1504(b) of such Code.

14 “(3) FOREIGN SUBSIDIARY.—The term ‘foreign
15 subsidiary’ means any foreign entity owned or con-
16 trolled (directly or indirectly) by a potential con-
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18 “(4) STATE SPONSOR OF TERRORISM.—The
19 term ‘state sponsor of terrorism’ means any govern-
20 ment which the Secretary of State has determined,
21 for purposes of section 6(j) of the Export Adminis-
22 tration Act of 1979 (50 U.S.C. App. 2405(j)), sec-
23 tion 620A of the Foreign Assistance Act of 1961 (22
24 U.S.C. 2371), section 40 of the Arms Export Con-
25 trol Act (22 U.S.C. 2780), or any other provision of

1 law, to be a government that has provided support
2 for acts of international terrorism.

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4 The term ‘foreign terrorist organization’ means a
5 foreign terrorist organization designated under sec-
6 tion 219 of the Immigration and Nationality Act (8
7 U.S.C. 1189).”.

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