

110TH CONGRESS
1ST SESSION

S. 2398

To phase out the use of private military contractors.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2007

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To phase out the use of private military contractors.

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 “Stop Outsourcing Se-
5 curity Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States is increasingly relying on
9 private security contractors to perform mission crit-
10 ical and emergency essential functions that histori-
11 cally have been performed by United States military
12 or government personnel.

1 (2) The number of private security contractors
2 in Iraq is reported to be at least 48,000 and Depart-
3 ment of State funding for private security and law
4 enforcement contractors is estimated to have in-
5 creased from \$1,000,000,000 to \$4,000,000,000.

6 (3) The Congressional Research Service reports
7 that about one-quarter of private security contrac-
8 tors are third-party nationals.

9 (4) On October 18, 2007, Secretary of Defense
10 Robert Gates said that the work of many contractors
11 in Iraq was “at cross-purposes to our larger mission
12 in Iraq”, and that “right now those missions are in
13 conflict . . .”.

14 (5) A December 2006 report by the Govern-
15 ment Accountability Office found multiple defi-
16 ciencies in the Army’s oversight of contractors in
17 Iraq, including “limited visibility over contractors”,
18 a lack of “adequate contractor oversight personnel”,
19 and “little or no training on the use of contractors”.

20 (6) The Congress does not have access to secu-
21 rity contracts, the number of private security con-
22 tractors working in Iraq, Afghanistan and other
23 combat zones, the number of contractors who have
24 died or any disciplinary actions taken against them.

1 (7) The relationship between the governments
2 of the United States and Iraq has been negatively
3 impacted by violent incidents involving private mili-
4 tary contractors and Iraqi citizens, including a De-
5 cember 24, 2006, shooting of the guard of the Iraqi
6 Vice President and a September 16, 2007, shooting
7 by Blackwater employees that killed 17 Iraqi citizens
8 and wounded 24.

9 (8) The Government of Iraq has demanded that
10 the United States Government sever all contracts in
11 Iraq with Blackwater and expel the company from
12 Iraq within six months, highlighting the danger in
13 relying on private security contractors for mission
14 critical functions.

15 (9) The use of private security contractors for
16 mission critical functions undermines the mission,
17 jeopardizes the safety of American troops conducting
18 military operations in Iraq and other combat zones,
19 and should be phased out.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) MISSION CRITICAL OR EMERGENCY ESSEN-
23 TIAL FUNCTIONS.—The term “mission critical or
24 emergency essential functions”—

25 (A) means—

1 (i) activities for which continued per-
2 formance is considered essential to support
3 combat systems and operational activities;
4 or

5 (ii) activities whose delay, absence, or
6 failure of performance would significantly
7 affect the broader success or failure of a
8 military operation; and

9 (B) includes—

10 (i) the provision of protective services;

11 (ii) the provision of security advice
12 and planning;

13 (iii) military and police training;

14 (iv) repair and maintenance for weap-
15 ons systems;

16 (v) prison administration;

17 (vi) interrogation; and

18 (vii) intelligence.

19 (2) SPECIFIED CONGRESSIONAL COMMITTEE.—

20 The term “specified congressional committee” means
21 each of the following committees:

22 (A) The Committees on Armed Services,
23 Oversight and Government Reform, Appropria-
24 tions, and Foreign Affairs, and the Permanent

1 Select Committee on Intelligence, of the House
2 of Representatives.

3 (B) The Committees on Armed Services,
4 Homeland Security and Governmental Affairs,
5 Appropriations, and Foreign Relations, and the
6 Select Committee on Intelligence, of the Senate.

7 **SEC. 4. REQUIREMENT FOR GOVERNMENT PERSONNEL TO**
8 **PERFORM DIPLOMATIC SECURITY IN IRAQ.**

9 Not later than 6 months after the date of the enact-
10 ment of this Act, the Secretary of State shall ensure that
11 all personnel at any United States diplomatic or consular
12 mission in Iraq are provided security services only by Fed-
13 eral Government personnel.

14 **SEC. 5. REQUIREMENTS RELATING TO CONTRACTORS PER-**
15 **FORMING MISSION CRITICAL OR EMERGENCY**
16 **ESSENTIAL FUNCTIONS IN ALL CONFLICT**
17 **ZONES IN WHICH CONGRESS HAS AUTHOR-**
18 **IZED THE USE OF FORCE.**

19 (a) REPORT BY PRESIDENT.—

20 (1) REQUIREMENT.—Not later than June 1,
21 2008, the President shall submit to each specified
22 congressional committee a report on the status of
23 planning for the transition away from the use of pri-
24 vate contractors for mission critical or emergency es-
25 sential functions by January 1, 2009, in all conflict

1 zones in which Congress has authorized the use of
2 force.

3 (2) ADDITIONAL MATTERS COVERED.—If the
4 report states that the relevant agencies will not be
5 able to transition to government and military per-
6 sonnel for such functions by January 1, 2009, the
7 President shall include the following in the report:

8 (A) A statement of the reasons why the
9 relevant agencies are unable to do so, the date
10 by which they will be able to do so, and the
11 plan to ensure that they will be able to do so
12 by that date.

13 (B) A certification that—

14 (i) all contract employees have under-
15 gone background checks to ensure that
16 they do not have criminal records and have
17 not been accused of human rights abuses;

18 (ii) contract employees cannot have
19 been charged with crime in other employ-
20 ment if that charge is still pending;

21 (iii) contract employees are under the
22 jurisdiction of section 3261 of title 18,
23 United States Code (relating to military
24 extraterritorial jurisdiction);

1 (iv) contract employees, if accused of
2 crimes by the host country, must remain in
3 United States custody; and

4 (v) contracts include whistleblower
5 protections for employees to provide good
6 faith information to management, govern-
7 ment agencies, and Congress of any con-
8 tract violations, human rights abuses, or
9 criminal actions.

10 (3) FORM OF REPORT.—The report required by
11 this subsection shall be submitted in unclassified
12 form, to the maximum extent possible, but may con-
13 tain a classified annex, if necessary.

14 (b) EXAMINATION OF CONTRACTOR ACCOUNTING
15 PRACTICES.—Any individual or entity under contract with
16 the Federal Government to provide mission critical or
17 emergency essential functions after January 1, 2009, shall
18 allow the specified congressional committees to examine
19 their accounting practices with respect to any such con-
20 tract quarterly and upon request.

21 (c) REQUIREMENTS RELATING TO CONTRACT RE-
22 NEWALS.—Any contract with the Federal Government re-
23 quiring personnel to perform mission critical or emergency
24 essential functions that is proposed to be renewed after

1 the date of the enactment of this Act may be renewed only
2 if—

3 (1) the President reports to the specified con-
4 gressional committees that the relevant agency does
5 not have adequate personnel to perform the duties
6 stipulated in the contract; and

7 (2) the President certifies that—

8 (A) all contract employees have undergone
9 background checks to ensure that they do not
10 have criminal records and have not been ac-
11 cused of human rights abuses;

12 (B) contract employees are under force of
13 law and cannot have been charged with crime
14 in other employment if that charge is still pend-
15 ing;

16 (C) contract employees, if accused of
17 crimes by the host country, must remain in the
18 custody of the United States;

19 (D) the contract includes whistleblower
20 protections for employees to provide good faith
21 information to management, government agen-
22 cies, and Congress of any contract violations,
23 human rights abuses, or criminal actions.

1 **SEC. 6. CONGRESSIONAL ACCESS TO CONTRACTS.**

2 (a) REQUIREMENT TO ALLOW CONGRESS ACCESS TO
3 COPIES AND DESCRIPTIONS OF CONTRACTS AND TASK
4 ORDERS IN EXCESS OF \$5,000,000 FOR WORK TO BE
5 PERFORMED IN IRAQ AND AFGHANISTAN.—

6 (1) REQUIREMENT REGARDING CONTRACTS
7 AND TASK ORDERS BEFORE ENACTMENT.—The Sec-
8 retary of Defense, the Secretary of State, the Sec-
9 retary of the Interior, and the Administrator of the
10 United States Agency for International Development
11 shall allow the chairman and the ranking minority
12 member of each specified congressional committee
13 access to a copy of, and a description of the work
14 performed or to be performed under, each contract,
15 and each task order issued under an existing con-
16 tract, in an amount greater than \$5,000,000 entered
17 into by the Department of Defense, the Department
18 of State, the Department of the Interior, and the
19 Agency for International Development, respectively,
20 during the period beginning October 1, 2001, and
21 ending on the last day of the month during which
22 this Act is enacted for work to be performed in Iraq
23 and Afghanistan.

24 (2) FORM OF SUBMISSIONS.—The copies and
25 descriptions required by paragraph (1) shall be sub-
26 mitted in unclassified form, to the maximum extent

1 possible, but may contain a classified annex, if nec-
2 essary.

3 (b) REPORTS ON IRAQ AND AFGHANISTAN CON-
4 TRACTS.—The Secretary of Defense, the Secretary of
5 State, the Secretary of the Interior, and the Administrator
6 of the United States Agency for International Develop-
7 ment shall each submit to each specified congressional
8 committee a report not later than 60 days after the date
9 of the enactment of this Act that contains the following
10 information:

11 (1) The number of persons performing work in
12 Iraq and Afghanistan under contracts (and sub-
13 contracts at any tier) entered into by Department of
14 Defense, the Department of State, the Department
15 of the Interior, and the United States Agency for
16 International Development, respectively.

17 (2) The total cost of such contracts.

18 (3) The total number of persons who have been
19 wounded or killed in performing work under such
20 contracts.

21 (4) A description of the disciplinary actions
22 that have been taken against persons performing
23 work under such contracts by the contractor, the

- 1 United States Government, or the Government of
- 2 Iraq or Afghanistan.

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