

110TH CONGRESS
2D SESSION

S. 3139

To provide for greater accountability and transparency in the Federal contracting process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2008

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

A BILL

To provide for greater accountability and transparency in the Federal contracting process, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Oversight of the Performance and Effectiveness of Na-
6 tional Contracting Act of 2008”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—ACCOUNTABILITY FOR CONTRACTORS

- Sec. 101. Governmental policy.
- Sec. 102. Prohibition on awarding of Government contracts or grants to companies purposefully organized in an offshore secrecy jurisdiction to avoid Federal tax obligations.
- Sec. 103. Prohibition on contracting with companies without financial report certifications.
- Sec. 104. Requirement for Federal contractors to possess satisfactory record of integrity and business ethics.
- Sec. 105. Preventing conflicts of interest of contractor personnel.
- Sec. 106. Award fees.

TITLE II—COMPETITION AND TRANSPARENCY

- Sec. 201. Database for contracting officers.
- Sec. 202. Enhancement of contracting information disclosed on USASpending.gov.

TITLE III—BUILDING A BETTER FEDERAL GOVERNMENT WORKFORCE

- Sec. 301. Contractors and inherently governmental functions.

TITLE IV—DISCLOSURE EXCEPTIONS

- Sec. 401. Exceptions to disclosure requirements.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **EXECUTIVE AGENCY.**—The term “executive
4 agency” has the meaning given the term in section
5 4 of the Office of Federal Procurement Policy (41
6 U.S.C. 403).

7 (2) **FUNCTIONS CLOSELY ASSOCIATED WITH**
8 **GOVERNMENTAL FUNCTIONS.**—The term “functions
9 closely associated with a governmental functions”
10 means functions described in section 7.503(d) of the
11 Federal Acquisition Regulation.

12 (3) **INHERENTLY GOVERNMENTAL FUNC-**
13 **TIONS.**—The term “inherently governmental func-

1 tions” has the meaning given the term in section
 2 2.101 of the Federal Acquisition Regulation.

3 **TITLE I—ACCOUNTABILITY FOR** 4 **CONTRACTORS**

5 **SEC. 101. GOVERNMENTAL POLICY.**

6 It is the policy of the United States Government that
 7 no Government contracts or grants should be awarded to
 8 companies purposefully organized in an offshore secrecy
 9 jurisdiction to avoid Federal tax obligations.

10 **SEC. 102. PROHIBITION ON AWARDING OF GOVERNMENT** 11 **CONTRACTS OR GRANTS TO COMPANIES PUR-** 12 **POSEFULLY ORGANIZED IN AN OFFSHORE** 13 **SECRECY JURISDICTION TO AVOID FEDERAL** 14 **TAX OBLIGATIONS.**

15 (a) IN GENERAL.—The head of any Executive agency
 16 that issues an invitation for bids or a request for proposals
 17 for a contract or offers a grant may not award such con-
 18 tract or grant to any person which is an offshore secrecy
 19 jurisdiction company.

20 (b) REGULATIONS AND GUIDANCE.—

21 (1) IN GENERAL.—Not later than 210 days
 22 after the date of the enactment of this section (in-
 23 cluding a period of not more than 30 days for com-
 24 ment), the Director of the Office of Management
 25 and Budget and the Secretary shall adopt and revise

1 such regulations or guidance as necessary to incor-
2 porate the requirements of this section, including
3 procedures under which—

4 (A) the Commissioner of Internal Revenue
5 shall notify the head of each Executive agency
6 of any determination that a person is an off-
7 shore secrecy jurisdiction company; and

8 (B) any person that is no longer deter-
9 mined by the Commissioner of Internal Revenue
10 to be an offshore secrecy jurisdiction company
11 can petition for reinstatement as a person eligi-
12 ble for the awarding of any such contract or
13 grant.

14 (2) DETERMINATION OF OFFSHORE SECRECY
15 JURISDICTION COMPANY.—As part of the regulations
16 or guidance under paragraph (1), the Secretary shall
17 provide guidelines for the determination by the Com-
18 missioner of Internal Revenue on whether a person
19 is purposefully organized in an offshore secrecy ju-
20 risdiction to avoid Federal tax obligations. Such
21 guidelines shall provide that as part of such deter-
22 mination, the Commissioner of Internal Revenue
23 shall review—

1 (A) whether such organization changes in
2 a meaningful way (apart from Federal tax ef-
3 fects) the persons's economic position;

4 (B) whether such person has a substantial
5 nontax purpose for organizing in an offshore se-
6 crecy jurisdiction and whether the organization
7 is a reasonable means of accomplishing such
8 purpose;

9 (C) whether the present value of the rea-
10 sonably expected pre-tax profit attributable to
11 the person's organization in an offshore secrecy
12 jurisdiction is substantial in relation to the
13 present value of the expected net tax benefits of
14 such organization; and

15 (D) whether the reasonably expected pre-
16 tax profit attributable to the person's organiza-
17 tion in an offshore secrecy jurisdiction exceeds
18 a risk-free rate of return.

19 In applying subparagraph (B), a purpose of achiev-
20 ing a financial accounting benefit shall not be taken
21 into account in determining whether an organization
22 has a substantial nontax purpose if the origin of
23 such financial accounting benefit is a reduction of
24 Federal income tax.

1 (c) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section:

3 (1) CONTRACT.—The term “contract” means a
4 binding agreement entered into by an Executive
5 agency for the purpose of obtaining property or serv-
6 ices, but does not include—

7 (A) a contract designated by the head of
8 the agency as assisting the agency in the per-
9 formance of disaster relief authorities; or

10 (B) a contract designated by the head of
11 the agency as necessary to the national security
12 of the United States.

13 (2) EXECUTIVE AGENCY.—The term “executive
14 agency” has the meaning given such term in section
15 4 of the Office of Federal Procurement Policy Act
16 (41 U.S.C. 403).

17 (3) OFFSHORE SECRECY JURISDICTION COM-
18 PANY.—

19 (A) IN GENERAL.—The term “offshore se-
20 crecy jurisdiction company” means any person
21 which the Commissioner of Internal Revenue
22 determines that for the purpose of avoiding
23 Federal tax obligations—

24 (i) is organized in an offshore secrecy
25 jurisdiction; or

1 (ii) is a member of a domestically con-
2 trolled group of entities any member of
3 which is organized in an offshore secrecy
4 jurisdiction.

5 (B) OFFSHORE SECRECY JURISDICTION.—

6 (i) IN GENERAL.—The term “offshore
7 secrecy jurisdiction” means any foreign ju-
8 risdiction which is listed by the Secretary
9 as an offshore secrecy jurisdiction for pur-
10 poses of this title.

11 (ii) DETERMINATION OF JURISDIC-
12 TIONS ON LIST.—A jurisdiction shall be
13 listed under clause (i) if the Secretary de-
14 termines that such jurisdiction has cor-
15 porate, business, bank, or tax secrecy rules
16 and practices which, in the judgment of
17 the Secretary, unreasonably restrict the
18 ability of the United States to obtain infor-
19 mation relevant to the enforcement of the
20 Internal Revenue Code of 1986, unless the
21 Secretary also determines that such coun-
22 try has effective information exchange
23 practices.

24 (iii) SECRECY OR CONFIDENTIALITY
25 RULES AND PRACTICES.—For purposes of

1 clause (ii), corporate, business, bank, or
2 tax secrecy or confidentiality rules and
3 practices include both formal laws and reg-
4 ulations and informal government or busi-
5 ness practices having the effect of inhib-
6 iting access of law enforcement and tax ad-
7 ministration authorities to beneficial own-
8 ership and other financial information.

9 (iv) INEFFECTIVE INFORMATION EX-
10 CHANGE PRACTICES.—For purposes of
11 clause (ii), a jurisdiction shall be deemed
12 to have ineffective information exchange
13 practices unless the Secretary determines,
14 on an annual basis, that—

15 (I) such jurisdiction has in effect
16 a treaty or other information ex-
17 change agreement with the United
18 States that provides for the prompt,
19 obligatory, and automatic exchange of
20 such information as is foreseeably rel-
21 evant for carrying out the provisions
22 of the treaty or agreement or the ad-
23 ministration or enforcement of such
24 Code,

1 (II) during the 12-month period
2 preceding the annual determination,
3 the exchange of information between
4 the United States and such jurisdic-
5 tion was in practice adequate to pre-
6 vent evasion or avoidance of United
7 States income tax by United States
8 persons and to enable the United
9 States effectively to enforce such
10 Code, and

11 (III) during the 12-month period
12 preceding the annual determination,
13 such jurisdiction was not identified by
14 an intergovernmental group or organi-
15 zation of which the United States is a
16 member as uncooperative with inter-
17 national tax enforcement or informa-
18 tion exchange and the United States
19 concurs in such identification.

20 (v) INITIAL LIST OF OFFSHORE SE-
21 CRECY JURISDICTIONS.—For purposes of
22 this subparagraph, each of the following
23 foreign jurisdictions, which have been pre-
24 viously and publicly identified by the Inter-
25 nal Revenue Service as secrecy jurisdic-

tions in Federal court proceedings, shall be deemed listed by the Secretary as an off-shore secrecy jurisdiction unless delisted by the Secretary under clause (vi)(II):

(I) Anguilla.

(II) Antigua and Barbuda.

(III) Aruba.

(IV) Bahamas.

(V) Barbados.

(VI) Belize.

(VII) Bermuda.

(VIII) British Virgin Islands.

(IX) Cayman Islands.

(X) Cook Islands.

(XI) Costa Rica.

(XII) Cyprus.

(XIII) Dominica.

(XIV) Gibraltar.

(XV) Grenada.

(XVI) Guernsey/Sark/Alderney.

(XVII) Hong Kong.

(XVIII) Isle of Man.

(XIX) Jersey.

(XX) Latvia.

(XXI) Liechtenstein.

- 1 (XXII) Luxembourg.
- 2 (XXIII) Malta.
- 3 (XXIV) Nauru.
- 4 (XXV) Netherlands Antilles.
- 5 (XXVI) Panama.
- 6 (XXVII) Samoa.
- 7 (XXVIII) St. Kitts and Nevis.
- 8 (XXIX) St. Lucia.
- 9 (XXX) St. Vincent and the Gren-
- 10 adines.
- 11 (XXXI) Singapore.
- 12 (XXXII) Switzerland.
- 13 (XXXIII) Turks and Caicos.
- 14 (XXXIV) Vanuatu.
- 15 (vi) MODIFICATIONS TO LIST.—The
- 16 Secretary—
- 17 (I) shall add to the list under
- 18 clause (i) jurisdictions which meet the
- 19 requirements of clause (ii), and
- 20 (II) may remove from such list
- 21 only those jurisdictions which meet
- 22 none of the requirements of clause
- 23 (ii).

1 (C) DOMESTICALLY CONTROLLED GROUP
 2 OF ENTITIES.—For purposes of this sub-
 3 section—

4 (i) IN GENERAL.—The term “domesti-
 5 cally controlled group of entities” means a
 6 controlled group of entities the common
 7 parent of which is a domestic corporation.

8 (ii) CONTROLLED GROUP OF ENTI-
 9 TIES.—The term “controlled group of enti-
 10 ties” means a controlled group of corpora-
 11 tions as defined in section 1563(a)(1) of
 12 the Internal Revenue Code of 1986, except
 13 that—

14 (I) “more than 50 percent” shall
 15 be substituted for “at least 80 per-
 16 cent” each place it appears therein,
 17 and

18 (II) the determination shall be
 19 made without regard to subsections
 20 (a)(4) and (b)(2) of section 1563 of
 21 such Code.

22 A partnership or any other entity (other
 23 than a corporation) shall be treated as a
 24 member of a controlled group of entities if
 25 such entity is controlled (within the mean-

1 ing of section 954(d)(3) of such Code) by
 2 members of such group (including any en-
 3 tity treated as a member of such group by
 4 reason of this sentence).

5 (4) PERSON.—The term “person” means—

6 (A) a corporation; or

7 (B) a partnership or any other entity
 8 (other than a corporation).

9 (5) SECRETARY.—The term “Secretary” means
 10 the Secretary of the Treasury or the Secretary’s del-
 11 egate.

12 (d) REPORT.—The Secretary shall make an annual
 13 report to Congress and the Office of Management and
 14 Budget beginning 1 year after the effective date of this
 15 section regarding efforts to make determinations regard-
 16 ing persons purposefully organized in an offshore secrecy
 17 jurisdiction to avoid Federal tax obligations.

18 (e) EFFECTIVE DATE.—This section shall apply to
 19 contracts and grants awarded after the date which is 210
 20 days after the date of the enactment of this Act.

21 **SEC. 103. PROHIBITION ON CONTRACTING WITH COMPA-**
 22 **NIES WITHOUT FINANCIAL REPORT CERTIFI-**
 23 **CATIONS.**

24 (a) PROHIBITION ON CONTRACTING WITH COMPA-
 25 NIES THAT FAIL TO CERTIFY FINANCIAL REPORTS.—Ex-

cept as provided under subsection (c), the head of an executive agency may not enter into or approve any contract or approve any subcontract under a contract with any company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) that has failed to make the certification required under section 302(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241(a)) for the most recent periodic report due.

(b) PERIOD OF PROHIBITION.—A prohibition under subsection (a) shall remain in effect with respect to a company for the one-year period beginning on the date that the periodic report for which the certification was not made was due.

(c) WAIVER.—

(1) IN GENERAL.—The head of an executive agency may waive the prohibition under subsection (a) with respect to a contract if such agency head determines that—

(A) the waiver is in the national security interest of the United States; or

(B) the failure of the company to make the certification required under section 302(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241(a)) was a minor or technical infraction.

1 (2) JUSTIFICATIONS.—

2 (A) NATIONAL SECURITY WAIVER.—The
3 head of an executive agency granting a waiver
4 under paragraph (1)(A) shall submit a justifica-
5 tion for the waiver to the Director of the Office
6 of Management and Budget and the chairs and
7 ranking members of the appropriate oversight
8 committees of Congress.

9 (B) WAIVER FOR MINOR OR TECHNICAL
10 INFRACTION.—The head of an executive agency
11 granting a waiver under paragraph (1)(B)
12 shall, in coordination with the company for
13 which the waiver is granted—

14 (i) submit a justification for the waiv-
15 er to the Director of the Office of Manage-
16 ment and Budget and the chairs and rank-
17 ing members of the appropriate oversight
18 committees of Congress; and

19 (ii) post the justification on the
20 searchable website required under the Fed-
21 eral Funding Accountability and Trans-
22 parency Act of 2006 (Public Law 109–
23 282; 31 U.S.C. 6101 note).

24 (d) LIST OF COMPANIES FAILING TO CERTIFY.—The
25 Securities and Exchange Commission shall make publicly

1 available on the searchable website required under the
 2 Federal Funding Accountability and Transparency Act of
 3 2006 (Public Law 109–282; 31 U.S.C. 6101 note) a list
 4 of the companies that failed to make the certification re-
 5 quired under section 302(a) of the Sarbanes-Oxley Act of
 6 2002 (15 U.S.C. 7241(a)) for the most recent periodic re-
 7 port due. The list shall be updated on a quarterly basis.

8 (e) APPLICABILITY.—This section applies to con-
 9 tracts and subcontracts entered into after the date of the
 10 enactment of this Act.

11 **SEC. 104. REQUIREMENT FOR FEDERAL CONTRACTORS TO**
 12 **POSSESS SATISFACTORY RECORD OF INTEG-**
 13 **RITY AND BUSINESS ETHICS.**

14 (a) DEFENSE CONTRACTORS.—

15 (1) IN GENERAL.—Chapter 137 of title 10,
 16 United States Code, is amended by inserting after
 17 section 2305a the following new section:

18 **“§ 2305b. Satisfactory record of integrity and busi-**
 19 **ness ethics**

20 “(a) IN GENERAL.—No prospective contractor may
 21 be awarded a contract with an agency under this title un-
 22 less the contracting officer for the contract determines
 23 that such prospective contractor has a satisfactory record
 24 of integrity and business ethics, including satisfactory
 25 compliance with the law (including tax, labor and employ-

1 ment, environmental, antitrust, and consumer protection
2 laws).

3 “(b) INFORMATION TO BE CONSIDERED.—In mak-
4 ing a determination as to whether a prospective contractor
5 has a satisfactory record of integrity and business ethics,
6 a contracting officer—

7 “(1) shall consider all relevant credible informa-
8 tion, but shall give the greatest weight to violations
9 of law that have been adjudicated within the last 5
10 years preceding the offer;

11 “(2) shall give consideration to any administra-
12 tive agreements entered into with the prospective
13 contractor if the prospective contractor has taken
14 corrective action after disclosing a violation of law,
15 and may consider such a contractor to be a respon-
16 sible contractor if the contractor has corrected the
17 conditions that led to the misconduct;

18 “(3) shall consider failure to comply with the
19 terms of an administrative agreement as evidence of
20 a lack of integrity and business ethics under this
21 section;

22 “(4) shall consider in descending order of im-
23 portance—

1 “(A) convictions of and civil judgments
2 rendered against the prospective contractor
3 for—

4 “(i) commission of fraud or a criminal
5 offense in connection with obtaining, at-
6 tempting to obtain, or performing a public
7 Federal, State, or local contract or sub-
8 contract;

9 “(ii) violation of Federal or State
10 antitrust law relating to the submission of
11 offers; or

12 “(iii) commission of embezzlement,
13 theft, forgery, bribery, falsification, or de-
14 struction of records, making false state-
15 ment, tax evasion, or receiving stolen prop-
16 erty; and

17 “(B) relative to tax, labor, employment,
18 environmental, antitrust, or consumer protec-
19 tion laws—

20 “(i) Federal or State felony convic-
21 tions;

22 “(ii) adverse Federal court judgments
23 in civil cases brought by the United States;

1 “(iii) adverse decisions by a Federal
 2 administrative law judge, board, or com-
 3 mission indicating violations of law;

4 “(iv) Federal or State felony indict-
 5 ments; and

6 “(v) any other civil judgment rendered
 7 against the prospective contractor; and

8 “(5) may consider other relevant information,
 9 such as civil or administrative complaints or similar
 10 actions filed by or on behalf of a Federal agency,
 11 board, or commission, if such action reflects an ad-
 12 judicated determination by the agency.

13 “(c) REPEATED VIOLATIONS OF LAW.—A single vio-
 14 lation of law normally should not give rise to a determina-
 15 tion that the prospective contractor has an unsatisfactory
 16 record of integrity and business ethics, but evidence of re-
 17 peated, pervasive, or significant violations of the law may
 18 indicate an unsatisfactory record of integrity and business
 19 ethics.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
 21 tions at the beginning of such chapter is amended
 22 by inserting after the item relating to section 2305a
 23 the following new item:

“2305b. Contractor requirement for satisfactory record of integrity and business
 ethics.”.

1 (b) CIVILIAN CONTRACTORS.—Title III of the Fed-
 2 eral Property and Administrative Services Act of 1949 (41
 3 U.S.C. 251 et seq.) is amended by inserting after section
 4 303L the following new section:

5 **“SEC. 303M. SATISFACTORY RECORD OF INTEGRITY AND**
 6 **BUSINESS ETHICS.**

7 “(a) IN GENERAL.—No prospective contractor may
 8 be awarded a contract with an executive agency under this
 9 title unless the contracting officer for the contract deter-
 10 mines that such prospective contractor has a satisfactory
 11 record of integrity and business ethics, including satisfac-
 12 tory compliance with the law (including tax, labor and em-
 13 ployment, environmental, antitrust, and consumer protec-
 14 tion laws).

15 “(b) INFORMATION TO BE CONSIDERED.—In mak-
 16 ing a determination as to whether a prospective contractor
 17 has a satisfactory record of integrity and business ethics,
 18 a contracting officer—

19 “(1) shall consider all relevant credible informa-
 20 tion, but shall give the greatest weight to violations
 21 of law that have been adjudicated within the last 5
 22 years preceding the offer;

23 “(2) shall give consideration to any administra-
 24 tive agreements entered into with the prospective
 25 contractor if the prospective contractor has taken

1 corrective action after disclosing a violation of law,
2 and may consider such a contractor to be a respon-
3 sible contractor if the contractor has corrected the
4 conditions that led to the misconduct;

5 “(3) shall consider failure to comply with the
6 terms of an administrative agreement as evidence of
7 a lack of integrity and business ethics under this
8 section;

9 “(4) shall consider in descending order of im-
10 portance—

11 “(A) convictions of and civil judgments
12 rendered against the prospective contractor
13 for—

14 “(i) commission of fraud or a criminal
15 offense in connection with obtaining, at-
16 tempting to obtain, or performing a public
17 Federal, State, or local contract or sub-
18 contract;

19 “(ii) violation of Federal or State
20 antitrust law relating to the submission of
21 offers; or

22 “(iii) commission of embezzlement,
23 theft, forgery, bribery, falsification, or de-
24 struction of records, making false state-

1 ment, tax evasion, or receiving stolen prop-
2 erty; and

3 “(B) relative to tax, labor, employment,
4 environmental, antitrust, or consumer protec-
5 tion laws—

6 “(i) Federal or State felony convic-
7 tions;

8 “(ii) adverse Federal court judgments
9 in civil cases brought by the United States;

10 “(iii) adverse decisions by a Federal
11 administrative law judge, board, or com-
12 mission indicating violations of law; and

13 “(iv) Federal or State felony indict-
14 ments; and

15 “(5) may consider other relevant information,
16 such as civil or administrative complaints or similar
17 actions filed by or on behalf of an executive agency,
18 board, or commission, if such action reflects an ad-
19 judicated determination by the agency.

20 “(c) REPEATED VIOLATIONS OF LAW.—A single vio-
21 lation of law normally should not give rise to a determina-
22 tion that the prospective contractor has an unsatisfactory
23 record of integrity and business ethics, but evidence of re-
24 peated, pervasive, or significant violations of the law may

1 indicate an unsatisfactory record of integrity and business
2 ethics.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to contracts for which
5 solicitations are issued after the date of the enactment of
6 this Act.

7 **SEC. 105. PREVENTING CONFLICTS OF INTEREST OF CON-**
8 **TRACTOR PERSONNEL.**

9 (a) IN GENERAL.—The head of an executive agency
10 may not enter into a covered contract unless the contract
11 includes a conflicts of interest clause as described in sub-
12 section (b).

13 (b) CONFLICT OF INTEREST CLAUSE.—The conflict
14 of interest clause required under subsection (a) shall in-
15 clude the following:

16 (1) A requirement that no employee of the con-
17 tractor may perform a covered function relating to
18 a program, company, contract, or other matter in
19 which the employee (or a member of the employee’s
20 immediate family) has a financial interest without
21 the express written approval of the contracting offi-
22 cer.

23 (2) A requirement that the contractor shall ob-
24 tain, review, update, and maintain as part of its per-
25 sonnel records a financial disclosure statement from

1 each employee assigned to perform a covered func-
2 tion under the contract sufficient to enable the con-
3 tractor to verify compliance of such employee with
4 the requirements under paragraph (1).

5 (3) A prohibition against employees of the con-
6 tractor responsible for performing a covered function
7 under the contract relating to a program, company,
8 contract, or other matter from accepting a gift from
9 the company or from an individual or entity that has
10 a financial interest in the program, company, con-
11 tract, or other matter.

12 (4) A prohibition against contractor personnel
13 who have access to non-public government informa-
14 tion obtained while performing work on the contract
15 from using such information for personal gain.

16 (5) A requirement that the contractor take ap-
17 propriate disciplinary action in the case of employees
18 who fail to comply with requirements and prohibi-
19 tions described in this subsection.

20 (6) A requirement for the contractor to prompt-
21 ly report any failure to comply with such require-
22 ments and prohibitions to the contracting officer.

23 (7) Penalties for failures to comply with the re-
24 quirements and prohibitions described in paragraphs
25 (1) through (6).

1 (8) A requirement that the contractor report
2 any failure to comply with the requirements and pro-
3 hibitions described in paragraphs (1) through (6) to
4 the applicable contracting officer of the executive
5 agency or representative of such officer as soon as
6 such failure is identified.

7 (9) Such additional safeguards, definitions, and
8 exceptions as may be necessary to safeguard the
9 public interest.

10 (c) DEFINITIONS.—In this section:

11 (1) The term “covered contract” means a con-
12 tract (or task or delivery order) in excess of
13 \$500,000 for the performance of functions closely
14 associated with governmental functions.

15 (2) The term “covered function” means an in-
16 herently governmental function or a function de-
17 scribed in section 7.503(d) of the Federal Acquisi-
18 tion Regulation.

19 (d) EFFECTIVE DATE; APPLICABILITY.—This section
20 shall take effect on the date that is 30 days after the date
21 of the enactment of this Act and shall apply to—

22 (1) contracts entered into on or after such ef-
23 fective date; and

24 (2) task or delivery orders awarded on or after
25 such effective date, regardless of whether the con-

1 tracts pursuant to which such task or delivery orders
2 are awarded were entered into before, on, or after
3 such effective date.

4 **SEC. 106. AWARD FEES.**

5 (a) LINKAGE OF AWARD FEES TO SUCCESSFUL AC-
6 QUISTION OUTCOMES.—Every contract entered into by
7 an executive agency that provides for award fees shall link
8 such fees to successful acquisition outcomes (which out-
9 comes shall be specified in terms of cost, schedule, and
10 performance).

11 (b) PROHIBITION ON AWARD OF UNWARRANTED
12 AWARD FEES.—The head of an executive agency may
13 not—

14 (1) award a bonus or other incentive payment
15 to a contractor for work the contractor did not per-
16 form or with respect to which the contractor received
17 a poor performance rating; or

18 (2) provide to a contractor award fees unless
19 the contractor, to the extent reasonably within the
20 control of the contractor, achieved the successful ac-
21 quisition outcome to which such fees were linked
22 under the contract.

TITLE II—COMPETITION AND TRANSPARENCY

SEC. 201. DATABASE FOR CONTRACTING OFFICERS.

(a) DATABASE.—

(1) **IN GENERAL.**—Subject to the authority, direction, and control of the Director of the Office of Management and Budget, the Administrator of General Services shall establish and maintain a database of information regarding integrity and performance of persons awarded Federal contracts and grants for use by Federal officials having authority over contracts and grants.

(2) **PERSONS COVERED.**—The database shall cover any person awarded a Federal contract or grant if any information described in paragraph (3) exists with respect to such person.

(3) **INFORMATION INCLUDED.**—With respect to a person awarded a Federal contract or grant, the database shall include information (in the form of a brief description) for at least the most recent 5-year period regarding—

(A) all Federal contracts and grants awarded to the person that were terminated in such period due to default;

1 (B) all Federal suspensions and
2 debarments of the person in that period;

3 (C) all Federal administrative agreements
4 entered into by the person and the Federal
5 Government in that period to resolve a suspen-
6 sion or debarment proceeding and, to the max-
7 imum extent practicable, agreements involving a
8 suspension or debarment proceeding entered
9 into by the person and a State government in
10 that period;

11 (D) all final findings by a Federal official
12 in that period that the person has been deter-
13 mined not to be a responsible source under ei-
14 ther subparagraph (C) or (D) of section 4(7) of
15 the Office of Federal Procurement Policy Act
16 (41 U.S.C. 403(7));

17 (E) evidence of repeated, pervasive, or sig-
18 nificant violations of the law that may indicate
19 an unsatisfactory record of integrity and busi-
20 ness ethics;

21 (F) all convictions of, or civil judgments
22 rendered against, the prospective contractor
23 for—

24 (i) commission of fraud or a criminal
25 offense in connection with obtaining, at-

1 tempting to obtain, or performing a public
2 Federal, State, or local government con-
3 tract or subcontract;

4 (ii) violation of Federal or State anti-
5 trust law relating to the submission of of-
6 fers; and

7 (iii) commission of embezzlement,
8 theft, forgery, bribery, falsification, or ob-
9 struction of records, making a false state-
10 ment, tax evasion, or receiving stolen prop-
11 erty;

12 (G) relative to tax, labor, employment, en-
13 vironmental, antitrust, or consumer protection
14 laws—

15 (i) all Federal or State felony convic-
16 tions;

17 (ii) all adverse Federal court judg-
18 ments in civil cases brought by the United
19 States;

20 (iii) all adverse decisions by a Federal
21 administrative law judge, board, or com-
22 mission indicating violations of law;

23 (iv) all Federal or State felony indict-
24 ments; and

1 (v) any other civil judgment rendered
2 against the prospective contractor;

3 (H) all administrative agreements or com-
4 pliance agreements entered into between an ex-
5 ecutive agency and the contractor;

6 (I) all civil or administrative complains or
7 similar actions filed by or on behalf of a Fed-
8 eral agency, board, or commission; and

9 (J) other information, such as civil or ad-
10 ministrative complaints or similar actions filed
11 by or on behalf of a Federal agency, board, or
12 commission, determined by the Director of the
13 Office of Management and Budget to be rel-
14 evant.

15 (4) REQUIREMENTS RELATING TO INFORMA-
16 TION IN DATABASE.—

17 (A) DIRECT INPUT AND UPDATE.—The
18 Administrator of General Services shall design
19 and maintain the database in a manner that al-
20 lows the appropriate officials of each Federal
21 agency to directly input and update in the data-
22 base information relating to actions it has
23 taken with regard to contractors or grant re-
24 cipients.

1 (B) TIMELINESS AND ACCURACY.—The
2 Administrator shall develop policies to require—

3 (i) the timely and accurate input of
4 information into the database;

5 (ii) notification of any covered person
6 when information relevant to the person is
7 entered into the database; and

8 (iii) an opportunity for any covered
9 person to append comments to information
10 about such person in the database.

11 (5) AVAILABILITY.—

12 (A) AVAILABILITY TO ALL EXECUTIVE
13 AGENCIES AND CONGRESS.—The Administrator
14 shall make the database available to all execu-
15 tive agencies and Congress.

16 (B) LIMITATION.—This subsection does
17 not require the public availability of information
18 that is exempt from public disclosure under sec-
19 tion 552(b) of title 5, United States Code.

20 (b) REVIEW OF DATABASE.—

21 (1) REQUIREMENT TO REVIEW DATABASE.—
22 Prior to the award of a contract or grant, an official
23 responsible for awarding a contract or grant shall
24 review the database established under subsection (a).

1 (2) REQUIREMENT TO DOCUMENT PRESENT RE-
2 SPONSIBILITY.—In the case of a prospective awardee
3 of a contract or grant against which a judgment or
4 conviction has been rendered more than once within
5 any 3-year period for the same or similar offences,
6 if each judgment or conviction is a cause for debar-
7 ment, the official responsible for awarding the con-
8 tract or grant shall document why the prospective
9 awardee is considered presently responsible.

10 (c) DISCLOSURE IN APPLICATIONS.—

11 (1) REQUIREMENT.—Not later than 180 days
12 after the date of the enactment of this Act, the Fed-
13 eral Acquisition Regulation shall be amended to re-
14 quire that in applying for any Federal grant or sub-
15 mitting a proposal or bid for any Federal contract
16 a person shall disclose in writing information de-
17 scribed in subsection (a)(3).

18 (2) COVERED CONTRACTS AND GRANTS.—This
19 subsection shall apply only to contracts and grants
20 in an amount greater than the simplified acquisition
21 threshold, as defined in section 4(11) of the Office
22 of Federal Procurement Policy Act (41 U.S.C.
23 401(11)).

24 (d) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Administrator of

1 General Services such funds as may be necessary to estab-
 2 lish the database described in subsection (a).

3 (e) REPORT TO CONGRESS.—

4 (1) REPORT REQUIRED.—Not later than 180
 5 days after the date of the enactment of this Act, the
 6 Administrator of General Services shall submit to
 7 Congress a report.

8 (2) CONTENTS OF REPORT.—The report shall
 9 contain the following:

10 (A) A list of all databases that include in-
 11 formation about Federal contracting and Fed-
 12 eral grants.

13 (B) Recommendations for further legisla-
 14 tion or administrative action that the Adminis-
 15 trator considers appropriate to create a central-
 16 ized, comprehensive Federal contracting and
 17 Federal grant database.

18 **SEC. 202. ENHANCEMENT OF CONTRACTING INFORMATION**

19 **DISCLOSED ON USASPENDING.GOV.**

20 The Director of the Office of Management and Budg-
 21 et shall maintain on the searchable website required under
 22 the Federal Funding Accountability and Transparency
 23 Act of 2006 (Public Law 109–282; 31 U.S.C. 6101 note)
 24 the following information:

1 (1) A detailed description of the type and pur-
2 pose of work to be performed under each contract
3 included on the website, unless the inclusion of such
4 information is determined by the Director not to be
5 in the interest of the United States in the case of
6 a contract awarded in connection with a national
7 emergency, a national security situation, or in the
8 national defense.

9 (2) Sworn affidavits by procurement managers
10 and political appointees involved in the award of a
11 contract stating that they complied with contracting
12 rules regarding full and open competition, including
13 the restrictions on disclosing and obtaining con-
14 tractor bid or proposal information or source selec-
15 tion information under section 27 of the Office of
16 Federal Procurement Policy Act (41 U.S.C. 423),
17 and addressing any conflicts of interest.

18 (3) Award fees awarded to contractors and jus-
19 tifications for such award fees.

20 (4) Contractors performing work under con-
21 tracts that is closely associated with inherently gov-
22 ernmental functions (as that term is described in
23 section 7.503 of the Federal Acquisition Regulation).

24 (5) The identities of any senior personnel, offi-
25 cers, or board members of, or senior lobbyists or

1 consultants for, contractors who serve in a capacity
2 where they provide media commentary on the per-
3 formance of an executive agency.

4 (6) The price range of bids that were competi-
5 tive with the winning bid for each contract included
6 on the website, including the lowest price, median
7 price, and highest price.

8 (7) The performance range of the top 100 Fed-
9 eral contractors (according to value of contracts
10 awarded per fiscal year), including a listing of rat-
11 ings for unsatisfactory performance, performance
12 meeting expectations, and performance exceeding ex-
13 pectations.

14 (8) For each contractor included on the
15 website, a list of executive agencies for which the
16 contractor is currently performing services under a
17 contract.

18 (9) Any administrative agreements or compli-
19 ance agreements entered into between an executive
20 agency and a contractor with respect to a contract
21 included on the website.

1 **TITLE III—BUILDING A BETTER**
2 **FEDERAL GOVERNMENT**
3 **WORKFORCE**

4 **SEC. 301. CONTRACTORS AND INHERENTLY GOVERN-**
5 **MENTAL FUNCTIONS.**

6 (a) DEPARTMENT OF DEFENSE.—

7 (1) REPORT ON PERFORMANCE BY CONTRAC-
8 TORS OF CERTAIN FUNCTIONS.—Not later than 120
9 days after the date of the enactment of this Act, the
10 Inspector General of the Department of Defense
11 shall submit to the Secretary of Defense and the
12 Committees on Armed Services of the Senate and
13 the House of Representatives a report listing func-
14 tions of the Department that are inherently govern-
15 mental functions or are closely associated with the
16 performance of inherently governmental functions
17 and are performed by contractor personnel.

18 (2) STAFFING PLAN.—Not later than 120 days
19 after the submission of the report required under
20 subsection (a), the Secretary of Defense shall submit
21 to the Committees on Armed Services of the Senate
22 and the House of Representatives a plan for staffing
23 with Department of Defense personnel the functions
24 identified in such report.

1 (3) INCREMENTAL STAFFING REQUIRE-
2 MENTS.—

3 (A) ONE YEAR AFTER INSPECTOR GEN-
4 ERAL REPORT.—Not later than one year after
5 the submission of the report required under
6 subsection (a), the Secretary of Defense shall—

7 (i) ensure that—

8 (I) at least 50 percent of the
9 functions identified in the report as
10 inherently governmental functions are
11 staffed by Department of Defense
12 personnel;

13 (II) at least 10 percent of the
14 functions identified in the report as
15 closely associated with the perform-
16 ance of inherently governmental func-
17 tions are staffed by Department of
18 Defense personnel; and

19 (III) the remainder of the func-
20 tions identified in the report as inher-
21 ently governmental functions or as
22 closely associated with the perform-
23 ance of inherently governmental func-
24 tions are individually screened for po-

1 tentia conflicts of interest involving
2 contractor personnel; and

3 (ii) implement a contract oversight
4 plan within the Department of Defense to
5 mitigate the risk that functions identified
6 as inherently governmental functions or as
7 closely associated with the performance of
8 inherently governmental functions are per-
9 formed by contractor personnel, particu-
10 larly personnel who may experience con-
11 flicts of interest.

12 (B) TWO YEARS AFTER INSPECTOR GEN-
13 ERAL REPORT.—Not later than two years after
14 the submission of the report required under
15 subsection (a), the Secretary of Defense shall
16 ensure that—

17 (i) all functions identified in the re-
18 port as inherently governmental functions
19 are staffed by Department of Defense per-
20 sonnel;

21 (ii) at least 30 percent of the func-
22 tions identified in the report as closely as-
23 sociated with the performance of inherently
24 governmental functions are staffed by De-
25 partment of Defense personnel; and

1 (iii) the remainder of the functions
2 identified in the report as inherently gov-
3 ernmental functions or as closely associ-
4 ated with the performance of inherently
5 governmental functions are individually
6 screened for potential conflicts of interest
7 involving contractor personnel.

8 (C) THREE YEARS AFTER INSPECTOR GEN-
9 ERAL REPORT.—Not later than three years
10 after the submission of the report required
11 under subsection (a), the Secretary of Defense
12 shall ensure that at least 50 percent of the
13 functions identified in the report as closely as-
14 sociated with the performance of inherently gov-
15 ernmental functions are staffed by Department
16 of Defense personnel.

17 (b) DEPARTMENT OF HOMELAND SECURITY.—

18 (1) REPORT ON PERFORMANCE BY CONTRAC-
19 TORS OF CERTAIN FUNCTIONS.—Not later than 120
20 days after the date of the enactment of this Act, the
21 Inspector General of the Department of Homeland
22 Security shall submit to the Secretary of Homeland
23 Security and the Committee on Homeland Security
24 and Governmental Affairs of the Senate and the
25 Committee on Homeland Security of the House of

Representatives a report listing functions of the Department that are inherently governmental functions or are closely associated with the performance of inherently governmental functions and are performed by contractor personnel.

(2) STAFFING PLAN.—Not later than 120 days after the submission of the report required under subsection (a), the Secretary of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a plan for staffing with Department of Homeland Security personnel the functions identified in such report.

(3) INCREMENTAL STAFFING REQUIREMENTS.—

(A) ONE YEAR AFTER INSPECTOR GENERAL REPORT.—Not later than one year after the submission of the report required under subsection (a), the Secretary of Homeland Security shall—

(i) ensure that—

(I) at least 50 percent of the functions identified in the report as inherently governmental functions are

1 staffed by Department of Homeland
2 Security personnel;

3 (II) at least 10 percent of the
4 functions identified in the report as
5 closely associated with the perform-
6 ance of inherently governmental func-
7 tions are staffed by Department of
8 Homeland Security personnel; and

9 (III) the remainder of the func-
10 tions identified in the report as inher-
11 ently governmental functions or as
12 closely associated with the perform-
13 ance of inherently governmental func-
14 tions are individually screened for po-
15 tential conflicts of interest involving
16 contractor personnel; and

17 (ii) implement a contract oversight
18 plan within the Department of Homeland
19 Security to mitigate the risk that functions
20 identified as inherently governmental func-
21 tions or as closely associated with the per-
22 formance of inherently governmental func-
23 tions are performed by contractor per-
24 sonnel, particularly personnel who may ex-
25 perience conflicts of interest.

1 (B) TWO YEARS AFTER INSPECTOR GEN-
2 ERAL REPORT.—Not later than two years after
3 the submission of the report required under
4 subsection (a), the Secretary of Homeland Se-
5 curity shall ensure that—

6 (i) all functions identified in the re-
7 port as inherently governmental functions
8 are staffed by Department of Homeland
9 Security personnel;

10 (ii) at least 30 percent of the func-
11 tions identified in the report as closely as-
12 sociated with the performance of inherently
13 governmental functions are staffed by De-
14 partment of Homeland Security personnel;
15 and

16 (iii) the remainder of the functions
17 identified in the report as inherently gov-
18 ernmental functions or as closely associ-
19 ated with the performance of inherently
20 governmental functions are individually
21 screened for potential conflicts of interest
22 involving contractor personnel.

23 (C) THREE YEARS AFTER INSPECTOR GEN-
24 ERAL REPORT.—Not later than three years
25 after the submission of the report required

under subsection (a), the Secretary of Homeland Security shall ensure that at least 50 percent of the functions identified in the report as closely associated with the performance of inherently governmental functions are staffed by Department of Homeland Security personnel.

TITLE IV—DISCLOSURE EXCEPTIONS

SEC. 401. EXCEPTIONS TO DISCLOSURE REQUIREMENTS.

Nothing in this Act shall be construed to require the disclosure of the following information:

(1) Information exempted from disclosure under the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, Subpart 206.3, and the Agency for International Development Acquisition Regulations, Subpart 706.3.

(2) Information exempted from disclosure pursuant to—

(A) paragraphs (1) through (7) of section 2304(c) of title 10, United States Code; or

(B) paragraphs (1) through (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)–(7)).

1 (3) Information exempt from disclosure in ac-
2 cordance with contracting procedures designed to
3 promote procurement opportunities for minority and
4 women small business owners.

5 (4) Information exempt from disclosure in ac-
6 cordance with the exercise of special emergency pro-
7 curement authority exercised under section 32A of
8 the Office of Federal Procurement Policy Act (41
9 U.S.C. 428a).

10 (5) Proprietary information.

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