

111TH CONGRESS
1ST SESSION

H. R. 2177

To require accountability for personnel performing private security functions under Federal contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2009

Mr. PRICE of North Carolina (for himself, Mr. SPRATT, Mr. WAXMAN, Ms. SCHAKOWSKY, Mr. CONYERS, Mr. COOPER, Mr. MILLER of North Carolina, Mr. MCGOVERN, Mr. DINGELL, Mr. FILNER, Mrs. MALONEY, Mrs. CAPPS, Mr. BRADY of Pennsylvania, Mr. ELLISON, Ms. HIRONO, Mr. HALL of New York, Mr. ETHERIDGE, Mr. FARR, Mr. BLUMENAUER, and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Foreign Affairs and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require accountability for personnel performing private security functions under Federal contracts, 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 “Transparency and Accountability in Security Contracting
6 Act of 2009”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Requirements related to personnel performing private security functions under Federal contracts.
- Sec. 3. Requirements for improving coordination between the United States Armed Forces and contractors performing private security functions.
- Sec. 4. International framework for security contracting.
- Sec. 5. Definitions.
- Sec. 6. Effective date.

3 **SEC. 2. REQUIREMENTS RELATED TO PERSONNEL PER-**
 4 **FORMING PRIVATE SECURITY FUNCTIONS**
 5 **UNDER FEDERAL CONTRACTS.**

6 (a) ACCOUNTABILITY REQUIREMENTS FOR PER-
 7 SONNEL PERFORMING PRIVATE SECURITY FUNCTIONS
 8 UNDER FEDERAL CONTRACTS OR SUBCONTRACTS DUR-
 9 ING CONTINGENCY OPERATIONS.—

10 (1) REQUIREMENT TO PROVIDE CERTAIN IN-
 11 FORMATION ABOUT PERSONNEL PERFORMING PRI-
 12 VATE SECURITY FUNCTIONS.—Each covered contract
 13 shall require the contractor to provide to the con-
 14 tracting officer for the contract, not later than 5
 15 days after award of the contract, the following infor-
 16 mation regarding private security functions to be
 17 performed under the contract:

18 (A) The approximate number of persons to
 19 be used to perform the private security func-
 20 tions.

1 (B) A description of the process used to
2 hire such persons, including the method by
3 which and the extent to which background
4 checks regarding such persons are conducted.

5 (C) A description of how such persons are
6 trained to carry out tasks specified under the
7 contract relating to such functions.

8 (D) A description of each category of activ-
9 ity relating to such functions required by the
10 contract.

11 (2) UPDATES OF INFORMATION.—The informa-
12 tion provided under paragraph (1) shall be updated
13 by the contractor during contract performance as
14 necessary.

15 (3) SAFEGUARDING INFORMATION.—The head
16 of each agency awarding a covered contract shall
17 take such actions as are necessary to protect any in-
18 formation provided under paragraph (1) that is a
19 trade secret, or commercial or financial information,
20 from disclosure to persons outside the Government.
21 This paragraph shall not be construed to prevent ac-
22 cess to such information in the course of an inves-
23 tigation into alleged misconduct committed during
24 the performance of a covered contract.

1 (4) ACCOUNTING.—Each covered contract shall
2 include the following requirements:

3 (A) Upon award of the contract, the con-
4 tractor shall provide cost estimates of salary,
5 benefits, insurance, materials, logistics, travel,
6 administrative costs, and other costs of carrying
7 out private security functions under the con-
8 tract.

9 (B) Before contract closeout (other than
10 closeout of a firm, fixed price contract), the
11 contractor shall provide a report on—

12 (i) the actual costs of carrying out
13 private security functions under the con-
14 tract, in the same categories as provided
15 under subparagraph (A); and

16 (ii) any equipment or supplies issued
17 or provided by the Federal Government for
18 work under the contract.

19 (5) OVERSIGHT.—Before a covered contract is
20 awarded, the head of the agency awarding the con-
21 tract shall ensure that sufficient resources are avail-
22 able to enable contracting officers of the agency to
23 perform oversight of the performance of the con-
24 tract, including oversight inspections of facilities and
25 operations.

1 (6) WAIVER AUTHORITY.—

2 (A) WAIVER.—The head of the agency
3 awarding a covered contract may waive a re-
4 quirement of this section with respect to a con-
5 tract in an emergency or exceptional situation,
6 as determined by the head of the agency. Any
7 such waiver shall be limited to the requirements
8 that are impossible or impracticable to imple-
9 ment because of the emergency or exceptional
10 situation.

11 (B) REPORT.—In any case in which the
12 head of an agency waives a requirement under
13 this section with respect to a contract, the
14 agency head shall prepare a report that—

15 (i) describes the contract, the waiver,
16 and the emergency or exceptional situation
17 that justified the waiver; and

18 (ii) contains a plan for bringing the
19 contract into compliance with the waived
20 requirements as soon as possible or an ex-
21 planation of why the waiver needs to be
22 permanent.

23 (C) SUBMISSION OF REPORT.—The report
24 required by subparagraph (B) shall be sub-

mitted, within 30 days after the date of the waiver, to—

(i) the Committees on Appropriations, Armed Services, Oversight and Government Reform, and Foreign Affairs of the House of Representatives; and

(ii) the Committees on Appropriations, Armed Services, Homeland Security and Governmental Affairs, and Foreign Relations of the Senate.

(b) SECURITY CONTRACTING DATABASE.—

(1) REQUIREMENT TO ESTABLISH AND MAINTAIN.—No later than 30 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of State, shall establish and maintain a comprehensive security contracting database.

(2) INFORMATION TO BE INCLUDED.—The database required by paragraph (1) shall maintain up-to-date information on the following:

(A) Information regarding each active covered contract, including—

- (i) a brief description of the contract;
- (ii) the total value of the contract;

1 (iii) an estimate of the number of per-
2 sonnel working under the contract;

3 (iv) whether the contract was awarded
4 competitively; and

5 (v) a designation of whether the work
6 under the contract is to be performed in
7 support of a contingency operation or of an
8 international military force.

9 (B) For contracts awarded in support of or
10 in relation to a contingency operation or an op-
11 eration of an international military force—

12 (i) the total number and value of con-
13 tracts awarded since the beginning of the
14 operation; and

15 (ii) the total number of contractor
16 personnel killed or wounded during the
17 performance of such contracts since the be-
18 ginning of the operation.

19 (C) A list of each individual who, while in
20 performance of a contract awarded by the Fed-
21 eral Government, has been—

22 (i) convicted for violation of United
23 States law; or

24 (ii) subjected to legal or disciplinary
25 action for reliably attested involvement in

serious crime (including organized crime, violent crime, sexual offenses, violations of international humanitarian law, bribery, and corruption).

(3) ACCESS.—Access to the database established under paragraph (1) shall be provided to Congress and to the Government Accountability Office. The Secretary of Defense shall endeavor to make information within the database publicly available to the extent such information is not classified or sensitive to United States national security interests.

**SEC. 3. REQUIREMENTS FOR IMPROVING COORDINATION
BETWEEN THE UNITED STATES ARMED
FORCES AND CONTRACTORS PERFORMING
PRIVATE SECURITY FUNCTIONS.**

(a) REQUIREMENTS FOR THE APPROPRIATE USE OF SECURITY CONTRACTORS.—

(1) PROHIBITION.—No agency shall award a covered contract for performance of activities that require or involve—

(A) direct participation by contractor personnel in hostilities with an enemy combatant or force; or

(B) interrogation by contractor personnel of an individual who is a detainee or prisoner

1 in the custody or under the effective control of
2 the United States Government.

3 (2) REGULATION.—(A) Not later than 120 days
4 after the date of the enactment of this Act, the Sec-
5 retary of Defense, the Secretary of State, the Ad-
6 ministrator of the United States Agency for Inter-
7 national Development, and the Administrator of
8 General Services shall each prescribe regulations to
9 ensure that no covered contract is awarded in viola-
10 tion of paragraph (1).

11 (B) The Federal Acquisition Regulation shall be
12 revised to ensure compliance with paragraph (1).

13 (3) SPECIAL RULE RELATING TO LANGUAGE IN-
14 TERPRETATION.—Paragraph (1)(B) shall not be
15 construed to include the performance of work related
16 to language interpretation, so long as the work is
17 strictly limited to language interpretation and occurs
18 under the direct supervision of Federal Government
19 personnel.

20 (b) RULES FOR USE OF FORCE.—

21 (1) REQUIREMENT TO ISSUE.—Not later than
22 15 days after the initiation of a contingency oper-
23 ation, the Chairman of the Joint Chiefs of Staff
24 shall issue rules regarding the circumstances under
25 which force may be used by contract personnel per-

1 forming private security functions within the area
2 covered by the contingency operation and the types
3 of force authorized. Each covered contract shall re-
4 quire contract personnel to adhere to the rules for
5 the use of force issued under this subsection.

6 (2) NOTIFICATION.—The commander of the
7 combatant command whose area of responsibility in-
8 cludes the contingency operation shall communicate
9 the rules for the use of force to contract personnel
10 in accordance with subsection (c).

11 (3) EXCEPTIONS AND SPECIAL RULES.—As ap-
12 propriate, the Chairman of the Joint Chiefs of Staff
13 may provide exceptions or special rules in the rules
14 for the use of force for specific contractors.

15 (c) HIRING, TRAINING, AND EQUIPMENT STANDARDS
16 RELATING TO PRIVATE SECURITY CONTRACTORS.—

17 (1) REGULATIONS.—Not later than 30 days
18 after the initiation of a contingency operation, the
19 head of each agency awarding a covered contract
20 shall prescribe in regulations minimum standards
21 (appropriate for the agency) for contract personnel,
22 including minimum hiring, screening, training, and
23 certification standards. The standards may vary
24 based on the duties of personnel, shall, at a min-
25 imum—

1 (A) require training of all contractor per-
2 sonnel, in advance of the performance of work
3 under a covered contract, on—

4 (i) applicable rules for the use of force
5 and firearms;

6 (ii) international humanitarian law
7 and international human rights law;

8 (iii) measures against corruption,
9 bribery, and related crimes;

10 (iv) relevant religious, gender, and
11 cultural issues in the host nation; and

12 (v) proper reporting and investigation
13 of incidents involving the use of force or
14 firearms by contractor personnel;

15 (B) prohibit the employment by a con-
16 tractor performing a covered contract of an in-
17 dividual who—

18 (i) is listed in a database under sec-
19 tion 2(b)(2)(C);

20 (ii) has a reliably attested record of
21 involvement in serious crime (including or-
22 ganized crime, violent crime, sexual of-
23 fenses, violations of international humani-
24 tarian law, bribery, and corruption); or

1 (iii) has been dishonorably discharged
2 from armed or security forces;

3 (C) include guidance on identifiability of
4 contractor personnel and vehicles during per-
5 formance of security contracts; and

6 (D) address security clearance require-
7 ments and other issues that the head of the
8 agency determines may lead to security or per-
9 formance concerns.

10 (2) GUIDANCE FOR EQUIPMENT.—The head of
11 each agency awarding a covered contract shall issue
12 guidance (appropriate for the agency) on equipment
13 used for private security functions under covered
14 contracts with the agency, including appropriate uni-
15 forms and levels of body armor and equipment
16 armor, and a recommended list of re-armors and
17 weapons and armor manufacturers for complying
18 with such guidelines.

19 (3) CONSULTATION WITH SECRETARY OF DE-
20 FENSE.—The head of each agency shall consult with
21 the Secretary of Defense in developing regulations
22 and guidance under this subsection.

23 (d) IMPROVED COORDINATION AND COMMUNICATION
24 BETWEEN UNITED STATES ARMED FORCES AND CON-

1 TRACTORS PERFORMING PRIVATE SECURITY FUNC-
2 TIONS.—

3 (1) ESTABLISHMENT OF A THEATER SECURITY
4 CONTRACT COORDINATING OFFICER.—For each con-
5 tingency operation with respect to which one or more
6 covered contracts are awarded for performance of
7 work, the Chairman of the Joint Chiefs of Staff
8 shall designate a Theater Security Contract Coordi-
9 nating Officer.

10 (2) RESPONSIBILITIES OF THEATER SECURITY
11 CONTRACT COORDINATING OFFICER.—The Theater
12 Security Contract Coordinating Officer shall—

13 (A) issue guidance providing for reliable
14 lines of communications between contract per-
15 sonnel and United States Armed Forces;

16 (B) communicate the rules for the use of
17 force, established under subsection (b), to con-
18 tractors and contract personnel;

19 (C) communicate other critical informa-
20 tion, including guidance on Department of De-
21 fense responsibilities for force protection of con-
22 tract personnel and guidance on equipment, to
23 contractors and contract personnel; and

24 (D) as appropriate, communicate up-to-
25 date information about the security environ-

1 ment that may be relevant to contract per-
2 sonnel.

3 (3) REQUIREMENTS FOR CONTRACTORS RELAT-
4 ING TO THE THEATER SECURITY CONTRACT COORDI-
5 NATING OFFICER.—Contractors shall be required
6 to—

7 (A) register with the designated Theater
8 Security Contract Coordinating Officer for the
9 theater in which the covered contract is per-
10 formed, and to report to the Officer the number
11 of personnel assigned to perform the covered
12 contract;

13 (B) immediately report any incidents in
14 which contract personnel use force or are at-
15 tacked by hostile forces;

16 (C) immediately report to the Theater Se-
17 curity Contract Coordinating Officer any cas-
18 ualties suffered by covered contract personnel;

19 (D) communicate to the Theater Security
20 Contract Coordinating Officer, in accordance
21 with the guidance issued under paragraph
22 (2)(A), tactical information, such as informa-
23 tion on the movement of contractor personnel
24 into and out of a battle space; and

1 (E) communicate to the Theater Security
2 Contract Coordinating Officer relevant informa-
3 tion, including intelligence, reports of hostile ac-
4 tivity, or information relevant to military plan-
5 ning.

6 (e) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that the Secretary of Defense and the Secretary of
8 State should work with contractors, industry associations,
9 and nongovernmental organizations to develop a system
10 of independent third-party accreditation of private busi-
11 nesses competing for contracts for private security func-
12 tions and, further, should ensure that covered contracts
13 are awarded only to contractors who obtain such accredi-
14 tation.

15 **SEC. 4. INTERNATIONAL FRAMEWORK FOR SECURITY CON-**
16 **TRACTING.**

17 (a) INTERNATIONAL FRAMEWORK ON SECURITY
18 CONTRACTING.—The Secretary of State shall work
19 through appropriate existing or new international fora to
20 achieve agreement on an international framework regu-
21 lating the use of private contractors for security functions
22 and facilitating cooperation among states, international
23 organizations, contractors, and private clients of such con-
24 tractors on measures to ensure the transparency and legal
25 accountability of security contractors.

1 (b) PRINCIPAL ISSUES.—The Secretary of State shall
2 work to ensure that the international framework sought
3 under subsection (a) shall address the following areas of
4 concern:

5 (1) Legal obligations of international organiza-
6 tions, contracting states, contractors and their per-
7 sonnel, and private clients of such contractors relat-
8 ing to the use of private contractors for security
9 functions to ensure compliance with and enforce-
10 ment of international humanitarian law and inter-
11 national human rights law.

12 (2) Standards for the use of force and firearms
13 by contractor personnel.

14 (3) Obligations of contracting states to ensure
15 the appropriate training and equipping of private se-
16 curity contractors, including training on the fol-
17 lowing:

18 (A) Rules for the use of force and fire-
19 arms.

20 (B) International humanitarian law and
21 international human rights law.

22 (C) Measures against corruption, bribery,
23 and related crimes.

24 (D) Relevant religious, gender, and cul-
25 tural issues in the host nation.

1 (E) Identifiability of contractor personnel
2 and vehicles during performance of security
3 contracts.

4 (F) Proper reporting and investigation of
5 complaints relating to the conduct of contractor
6 personnel.

7 (4) Obligations of contracting states to ensure
8 the appropriate vetting of private security contrac-
9 tors, including a mechanism by which contracting
10 states shall ensure that contracting organizations
11 performing security functions do not employ an indi-
12 vidual who has a reliably attested record of involve-
13 ment in serious crime (including organized crime,
14 violent crime, sexual offenses, violations of inter-
15 national humanitarian law, bribery, and corruption)
16 or who has been dishonorably discharged from
17 armed or security forces.

18 (5) Measures to ensure appropriate communica-
19 tion and coordination between private security con-
20 tractors, armed forces, and other lawful authorities
21 operating in the same area.

22 (6) Procedures for territorial states to register,
23 authorize, and oversee private contractors per-
24 forming security functions on their territories.

1 (7) Obligations of contracting states, contrac-
2 tors, and other relevant parties relating to prosecu-
3 tion, reparations and other remedies for violations of
4 international humanitarian law or human rights law.

5 (8) Measures to facilitate information-sharing
6 and other cooperation among contracting states, ter-
7 ritorial states, and home states of contractor per-
8 sonnel, especially in relation to contractor perform-
9 ance, contractor oversight, and the occurrence and
10 remedy of violations of international humanitarian
11 law or human rights law.

12 (9) Obligations to ensure the rights of private
13 security contractor personnel.

14 (10) A categorization of functions not appro-
15 priate for performance by private security contrac-
16 tors, including functions deemed inherently govern-
17 mental, deemed to constitute direct participation in
18 hostilities, or otherwise impermissible.

19 (c) REPORT.—Not later than 365 days after the date
20 of the enactment of this Act, the Secretary of State shall
21 submit to Congress a report on the activities carried out
22 to implement this section.

23 **SEC. 5. DEFINITIONS.**

24 In this Act:

1 (1) COVERED CONTRACT.—The term “covered
2 contract” means—

3 (A) a prime contract awarded by an agen-
4 cy, if the work to be performed under the con-
5 tract includes private security functions;

6 (B) a subcontract at any tier under any
7 prime contract awarded by an agency, if the
8 work to be performed under the subcontract in-
9 cludes private security functions; or

10 (C) a task order issued under a task or de-
11 livery order contract entered into by an agency,
12 if the work to be performed under the task
13 order includes private security functions.

14 (2) PRIVATE SECURITY FUNCTIONS.—The term
15 “private security functions”, with respect to activi-
16 ties carried out under a covered contract in a the-
17 ater in which the United States is engaged in a con-
18 tingency operation, means—

19 (A) any activities for which personnel are
20 allowed to carry weapons in the performance of
21 the contract;

22 (B) the performance of—

23 (i) military logistics and maintenance;

24 (ii) interrogation of prisoners;

25 (iii) convoy security;

1 (iv) guarding vital facilities and per-
2 sonnel;

3 (v) tactical security work;

4 (vi) local force training; or

5 (vii) security advice or planning; or

6 (C) any other activity in support of the
7 contingency operation, as determined by the
8 Theater Security Contract Coordinating Officer.

9 (3) AGENCY.—The term “agency” has the
10 meaning given the term “Executive agency” in sec-
11 tion 105 of title 5, United States Code.

12 (4) CONTINGENCY OPERATION.—The term
13 “contingency operation” has the meaning given the
14 term section 101(a)(13) of title 10, United States
15 Code.

16 (5) CONTRACTOR.—The term “contractor”
17 means an entity performing a covered contract.

18 (6) CONTRACT PERSONNEL.—The term “con-
19 tract personnel” means persons assigned by a con-
20 tractor (including subcontractors at any tier) to per-
21 form work under a covered contract.

22 **SEC. 6. EFFECTIVE DATE.**

23 (a) APPLICABILITY.—The provisions of this Act shall
24 apply to the following:

1 (1) All covered contracts and all covered con-
2 tract personnel in which the work under the contract
3 is carried out in a theater in which the United
4 States is currently conducting contingency oper-
5 ations.

6 (2) In the event that the United States begins
7 new contingency operations, all covered contracts
8 and all covered contract personnel in which the work
9 under the contract is carried out in a theater in
10 which the United States is conducting such contin-
11 gency operations.

12 (b) IMMEDIATE EFFECTIVENESS.—The provisions of
13 this Act shall enter into effect immediately upon the enact-
14 ment of this Act.

15 (c) IMPLEMENTATION.—With respect to covered con-
16 tracts and covered contract personnel discussed in sub-
17 section (a)(1), the United States Government shall have
18 90 days following the date of the enactment of this Act
19 to ensure compliance with the provisions of this Act.

○