

111TH CONGRESS
2D SESSION

S. 3361

To require the Secretary of Defense to take illegal subsidization into account in evaluating proposals for contracts for major defense acquisition programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2010

Mr. BROWNBACK (for himself, Mrs. MURRAY, Mr. BOND, and Mr. ROBERTS) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To require the Secretary of Defense to take illegal subsidization into account in evaluating proposals for contracts for major defense acquisition programs, 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.**

4 This Act may be cited as the “Fair Defense Competi-
5 tion Act”.

1 **SEC. 2. ACCOUNTING FOR ILLEGAL SUBSIDIZATION IN**
2 **EVALUATION OF PROPOSALS FOR CON-**
3 **TRACTS FOR MAJOR DEFENSE ACQUISITION**
4 **PROGRAMS.**

5 (a) REQUIREMENT.—

6 (1) IN GENERAL.—In awarding a contract for
7 any major defense acquisition program, the Sec-
8 retary of Defense shall, in conducting the cost or
9 price evaluation of any proposal for that contract,
10 take into account any final panel report described in
11 paragraph (2) and take the action described in para-
12 graph (3).

13 (2) FINAL PANEL REPORT DESCRIBED.—A final
14 panel report described in this paragraph is the final
15 report of a dispute settlement panel of the World
16 Trade Organization, submitted to the parties to a
17 dispute pursuant to article 4.6 or 7.4 of the Agree-
18 ment on Subsidies and Countervailing Measures,
19 that either a prohibited or actionable subsidy has
20 been provided with respect to any merchandise or
21 major component thereof, or the development of any
22 merchandise or major component thereof, if that
23 merchandise or component is part of a proposal de-
24 scribed in paragraph (1).

25 (3) ACTION DESCRIBED.—If the subsidy found
26 to be prohibited or actionable in the final panel re-

1 port has not been withdrawn pursuant to article 4.7
2 or 7.8 of the Agreement on Subsidies and Counter-
3 vailing Measures, the action described in this para-
4 graph is, in conducting the cost or price evaluation
5 of a proposal, the Secretary shall increase the cost
6 or price of the proposal by the amount of the sub-
7 sidy found to be prohibited or actionable in the final
8 panel report described in paragraph (2), as cal-
9 culated jointly by the Secretary of Commerce and
10 the United States Trade Representative after notifi-
11 cation is made by the Secretary of Defense for the
12 need for such a calculation.

13 (b) DEFINITIONS.—In this section:

14 (1) AGREEMENT ON SUBSIDIES AND COUNTER-
15 VAILING MEASURES.—The term “Agreement on Sub-
16 sidies and Countervailing Measures” means the
17 Agreement on Subsidies and Countervailing Meas-
18 ures described in section 101(d)(12) of the Uruguay
19 Round Agreements Act (19 U.S.C. 3511(d)(12)).

20 (2) COST OR PRICE EVALUATION.—The term
21 “cost or price evaluation” means an evaluation con-
22 ducted by a source selection authority pursuant to
23 subpart 15.305(a)(1) of the Federal Acquisition
24 Regulation.

1 (3) MAJOR DEFENSE ACQUISITION PROGRAM.—

2 The term “major defense acquisition program” has
3 the meaning given that term in section 2430 of title
4 10, United States Code.

5 (4) PROHIBITED OR ACTIONABLE SUBSIDY.—

6 The term “prohibited or actionable subsidy” means
7 a subsidy that is inconsistent with the Agreement on
8 Subsidies and Countervailing Measures because the
9 subsidy is a prohibited or actionable subsidy under
10 the Agreement.

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