

Calendar No. 571

112TH CONGRESS
2D SESSION**S. 2234**

To prevent human trafficking in government contracting.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2012

Mr. BLUMENTHAL (for himself, Mr. PORTMAN, Mr. FRANKEN, Mr. RUBIO, Ms. COLLINS, Mr. LIEBERMAN, Mrs. MCCASKILL, Mr. TESTER, Mr. MENENDEZ, Ms. AYOTTE, Mr. LAUTENBERG, Ms. MIKULSKI, Mrs. HUTCHISON, Mrs. GILLIBRAND, and Mr. BOOZMAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 19, 2012

Reported by Mr. LIEBERMAN, with amendments

[Omit the part struck through and insert the part printed in *italic*]**A BILL**

To prevent human trafficking in government contracting.

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 “End Trafficking in
5 Government Contracting Act of 2012”.

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
5 133 of title 41, United States Code.

6 (2) SUBCONTRACTOR.—The term “subcon-
7 tractor” means a recipient of a contract at any tier
8 under a grant, contract, or cooperative agreement.

9 (3) SUBGRANTEE.—The term “subgrantee”
10 means a recipient of a grant at any tier under a
11 grant or cooperative agreement.

12 (4) UNITED STATES.—The term “United
13 States” has the meaning provided in section 103(12)
14 of the Trafficking Victims Protection Act of 2000
15 (22 U.S.C. 7102(12)).

16 **SEC. 3. CONTRACTING REQUIREMENTS.**

17 Section 106(g) of the Trafficking Victims Protection
18 Act of 2000 (22 U.S.C. 7104(g)) is amended by striking
19 “if the grantee or any subgrantee,” and all that follows
20 through the period at the end and inserting the following:
21 “or take any of the other remedial actions authorized
22 under section 5(c) of the End Trafficking in Government
23 Contracting Act of 2012, if the grantee or any subgrantee,
24 or the contractor or any subcontractor, engages in, or uses
25 labor recruiters, brokers, or other agents who engage in—

1 “(i) severe forms of trafficking in per-
2 sons;

3 “(ii) the procurement of a commercial
4 sex act during the period of time that the
5 grant, contract, or cooperative agreement
6 is in effect;

7 “(iii) the use of forced labor in the
8 performance of the grant, contract, or co-
9 operative agreement, or

10 “(iv) acts that directly support or ad-
11 vance trafficking in persons, including the
12 following acts:

13 “(I) Destroying, concealing, re-
14 moving, or confiscating an employee’s
15 immigration documents without the
16 employee’s consent.

17 “(II) Failing to repatriate an em-
18 ployee upon the end of employment,
19 unless—

20 “(aa) exempted from the
21 duty to repatriate by the Federal
22 department or agency providing
23 or entering into the grant, con-
24 tract, or cooperative agreement;
25 or

1 “(bb) the employee is a vic-
 2 tim of human trafficking seeking
 3 victim services or legal redress in
 4 the country of employment or a
 5 witness in a human trafficking
 6 enforcement action.

7 “(III) Soliciting a person for the
 8 purpose of employment, or offering
 9 employment, by means of materially
 10 false or fraudulent pretenses, rep-
 11 resentations, or promises regarding
 12 that employment.

13 “(IV) Charging recruited employ-
 14 ees exorbitant placement fees, ~~includ-~~
 15 ~~ing~~ *such as* fees equal to or greater
 16 than the employee’s monthly salary,
 17 or recruitment fees that violate the
 18 laws of the country from which an
 19 employee is recruited.

20 “(V) Providing inhumane living
 21 conditions.”.

22 **SEC. 4. COMPLIANCE PLAN AND CERTIFICATION REQUIRE-**
 23 **MENT.**

24 (a) REQUIREMENT.—The head of an executive agen-
 25 cy may not provide or enter into a grant, contract, or coop-

1 erative agreement valued at \$1,000,000 or more if per-
 2 formance will ~~predominantly be conducted overseas~~ *sub-*
 3 *stantially be conducted overseas*, unless a duly designated
 4 representative of the recipient of such grant, contract, or
 5 cooperative agreement certifies to the contracting or grant
 6 officer prior to receiving an award and on an annual basis
 7 thereafter, after having conducted due diligence, that—

8 (1) the recipient has implemented a plan to pre-
 9 vent the activities described in section 106(g) of the
 10 Trafficking Victims Protection Act of 2000 (22
 11 U.S.C. 7104(g)), as amended by section 3, and is in
 12 compliance with that plan;

13 (2) the recipient has implemented procedures to
 14 prevent any activities described in such section
 15 106(g) and to monitor, detect, and terminate any
 16 subcontractor, subgrantee, or employee of the recipi-
 17 ent ~~found to be engaged~~ *engaging* in any activities
 18 described in such section; and

19 (3) to the best of the representative’s knowl-
 20 edge, neither the recipient, nor any subcontractor or
 21 subgrantee of the recipient or any agent of the re-
 22 cipient or of such a subcontractor or subgrantee, is
 23 engaged in any of the activities described in such
 24 section.

1 (b) LIMITATION.—Any plan or procedures imple-
 2 mented pursuant to subsection (a) shall be appropriate to
 3 the size and complexity of the grant, contract, or coopera-
 4 tive agreement and to the nature and scope of its activi-
 5 ties, including the number of non-United States citizens
 6 expected to be employed.

7 (c) DISCLOSURE.—The recipient shall provide a copy
 8 of the plan to the contracting or grant officer upon re-
 9 quest, and as appropriate, shall post the useful and rel-
 10 evant contents of the plan or related materials on its
 11 website and at the workplace.

12 (d) ~~PERFORMANCE PREDOMINATELY OVERSEAS~~
 13 *PERFORMANCE SUBSTANTIALLY OVERSEAS*.—For purposes
 14 of subsection (a), a grant, contract, or cooperative agree-
 15 ment shall be considered to be ~~performed predominantly~~
 16 ~~overseas~~ *performed substantially overseas* if the estimated
 17 value of the services required to be performed under the
 18 grant, contract, or cooperative agreement outside the
 19 United States exceeds \$500,000.

20 **SEC. 5. MONITORING AND INVESTIGATION OF TRAF-**
 21 **FICKING IN PERSONS.**

22 (a) INVESTIGATION.—If the contracting or grant offi-
 23 cer of an executive agency for a grant, contract, or cooper-
 24 ative agreement receives credible evidence that a recipient
 25 of the grant, contract, or cooperative agreement; any sub-

1 grantee or subcontractor of the recipient; or any agent of
2 the recipient or of such a subgrantee or subcontractor, has
3 engaged in an activity described in section 106(g) of the
4 Trafficking Victims Protection Act of 2000 (22 U.S.C.
5 7104(g)), as amended by section 3, including a report
6 from a contracting officer representative, an inspector
7 general, an auditor, an alleged victim or victim's rep-
8 resentative, or any other credible source, the contracting
9 or grant officer shall, before exercising any option to
10 renew such grant, contract, or cooperative agreement, re-
11 quest that the agency's Office of Inspector General imme-
12 diately initiate an investigation of the allegation or allega-
13 tions contained in the report. If the agency's Office of In-
14 spector General is unable to conduct a timely investiga-
15 tion, the suspension and debarment office or another in-
16 vestigative unit of the agency shall conduct the investiga-
17 tion.

18 (b) REPORT.—Upon completion of an investigation
19 under subsection (a), the office or unit that conducted the
20 investigation shall submit to the contracting or grant offi-
21 cer and, if such investigation was not conducted by the
22 agency's Office of Inspector General, to the agency's Of-
23 fice of Inspector General, a report on the investigation,
24 including conclusions about whether credible evidence ex-
25 ists that the recipient of a grant, contract, or cooperative

1 agreement; any subcontractor or subgrantee of the recipi-
2 ent; or any agent of the recipient or of such a subcon-
3 tractor or subgrantee, engaged in any of the activities de-
4 scribed in section 106(g) of the Trafficking Victims Pro-
5 tection Act of 2000 (22 U.S.C. 7104(g)), as amended by
6 section 3.

7 (c) REMEDIAL ACTIONS.—

8 (1) IN GENERAL.—If a contracting or grant of-
9 ficial determines that a recipient of a grant, con-
10 tract, or cooperative agreement, or any subcon-
11 tractor or subgrantee of the recipient, has engaged
12 in any of the activities described in such section
13 106(g), the contracting or grant officer shall con-
14 sider taking one or more of the following remedial
15 actions:

16 (A) Requiring the recipient to remove an
17 employee from the performance of work under
18 the grant, contract, or cooperative agreement.

19 (B) Requiring the recipient to terminate a
20 subcontract or subgrant.

21 (C) Suspending payments under the grant,
22 contract, or cooperative agreement.

23 (D) Withholding award fees, consistent
24 with the award fee plan, for the performance
25 period in which the agency determined the con-

1 tractor or subcontractor engaged in any of the
2 activities described in such section 106(g).

3 (E) Declining to exercise available options
4 under the contract.

5 (F) Terminating the contract for default
6 or cause, in accordance with the termination
7 clause for the contract.

8 (G) Referring the matter to the agency
9 suspension and debarment official.

10 (H) Referring the matter to the Depart-
11 ment of Justice for prosecution under any ap-
12 plicable law.

13 (2) SAVINGS CLAUSE.—Nothing in this sub-
14 section shall be construed as limiting the scope of
15 applicable remedies available to the Federal Govern-
16 ment.

17 (3) MITIGATING FACTOR.—Where applicable,
18 the contracting or grant official may consider wheth-
19 er the contractor or grantee had a plan in place
20 under section 4, and was in compliance with that
21 plan at the time of the violation, as a mitigating fac-
22 tor in determining which remedies, if any, should
23 apply.

24 (d) INCLUSION OF REPORT CONCLUSIONS IN
25 FAPIIS.—The contracting or grant officer shall ensure

1 that relevant findings contained in the report under sub-
2 section (b) are included in the Federal Awardee Perform-
3 ance and Integrity Information System (FAPIIS). These
4 findings shall be considered relevant past performance
5 data for the purpose of awarding future contracts, grants,
6 or cooperative agreements.

7 **SEC. 6. NOTIFICATION TO INSPECTORS GENERAL AND CO-**
8 **OPERATION WITH GOVERNMENT.**

9 The head of an executive agency making or awarding
10 a grant, contract, or cooperative agreement shall require
11 that the recipient of the grant, contract, or cooperative
12 agreement—

13 (1) immediately inform the Inspector General of
14 the executive agency of any information it receives
15 from any source that alleges credible evidence that
16 the recipient; any subcontractor or subgrantee of the
17 recipient; or any agent of the recipient or of such a
18 subcontractor or subgrantee, has engaged in conduct
19 described in section 106(g) of the Trafficking in Vic-
20 tims Protection Act of 2000 (22 U.S.C. 7104(g)), as
21 amended by section 3 of this Act; and

22 (2) fully cooperate with any Federal agencies
23 responsible for audits, investigations, or corrective
24 actions relating to trafficking in persons.

1 **SEC. 7. EXPANSION OF FRAUD IN FOREIGN LABOR CON-**
2 **TRACTING TO INCLUDE WORK OUTSIDE THE**
3 **UNITED STATES.**

4 Section 1351 of title 18, United States Code, is
5 amended—

6 (1) by striking “Whoever knowingly” and in-
7 serting “(a) WORK INSIDE THE UNITED STATES.—
8 Whoever knowingly”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(b) WORK OUTSIDE THE UNITED STATES.—Who-
12 ever knowingly and with intent to defraud recruits, solie-
13 its, or hires a person outside the United States or causes
14 another person to recruit, solicit, or hire a person outside
15 the United States, or attempts to do so, for purposes of
16 work performed on a United States Government contract
17 performed outside the United States, or on a United
18 States military installation or mission or other property
19 or premises owned or controlled by the United States Gov-
20 ernment, by means of materially false or fraudulent pre-
21 tensions, representations, or promises regarding that em-
22 ployment, shall be fined under this title or imprisoned for
23 not more than 5 years, or both.”.

1 **SEC. 8. IMPROVING DEPARTMENT OF DEFENSE ACCOUNT-**
 2 **ABILITY FOR REPORTING TRAFFICKING IN**
 3 **PERSONS CLAIMS AND VIOLATIONS.**

4 Section 105(d)(7)(H) of the Trafficking Victims Pro-
 5 tection Act of 2000 (22 U.S.C. 7103(d)(7)(H)) is amend-
 6 ed—

7 (1) in clause (ii), by striking “and” at the end;

8 ~~(2) by redesignating clause (iii) as clause (iv);~~

9 ~~(3) by inserting after clause (ii) the following~~
 10 ~~new clause:~~

11 ~~“(iii) all known trafficking in persons~~
 12 ~~cases reported to the Under Secretary of~~
 13 ~~Defense for Personnel and Readiness;”;~~

14 ~~(4) in clause (iv), as redesignated by paragraph~~
 15 ~~(2), by inserting “and” at the end after the semi-~~
 16 ~~colon; and~~

17 ~~(5) by adding at the end the following new~~
 18 ~~clause:~~

19 ~~“(v) all trafficking~~

20 ~~(2) in clause (iii), by inserting “and” at the end~~
 21 ~~after the semicolon; and~~

22 ~~(3) by adding at the end the following new~~
 23 ~~clause:~~

24 ~~“(iv) all trafficking in persons activi-~~
 25 ~~ties of contractors reported to the Under~~

1 Secretary of Defense for Acquisition, Tech-
2 nology, and Logistics;”.

3 **SEC. 9. RULE OF CONSTRUCTION.**

4 Excluding section 7, nothing in this Act shall be con-
5 strued to supersede, enlarge, or diminish the common law
6 or statutory liabilities of any grantee, subgrantee, con-
7 tractor, subcontractor, or other party covered by section
8 106(g) of the Trafficking Victims Protection Act of 2000
9 (22 U.S.C. 7104(g)), as amended by section 3.

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