AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
110–49

PROVIDING FOR CONSIDERATION OF H.R. 1362—ACCOUNTABILITY IN CONTRACTING ACT

MARCH 14, 2007.—Referred to the House Calendar and ordered to be printed

Ms. CASTOR, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 242]

The Committee on Rules, having had under consideration House Resolution 242, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1362 the Accountability in Contracting Act under a structured rule. The rule provides 60 minutes of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Oversight and Government Reform and 20 minutes of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services.

The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that in lieu of the amendments recommended by the Committee on Oversight & Government Reform and the Committee on Armed Services now printed in the bill, the amendment in the nature of a substitute printed in Part A of this report shall be considered as an original bill for the purpose of amendment. All points of order except clauses 9 and 10 of rule XXI are waived against the substitute and the substitute shall be considered as read.

The rule makes in order only those amendments printed in Part B of this report accompanying the resolution. The amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not

59–008

be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of rule XXI are waived. Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report). The waiver is necessary because the Committee on Armed Services filed its report (H. Rept. 110–47, Part 2) with the House on Wednesday, March 14, 2007 and the bill may be considered by the House as early as Thursday, March 15, 2007.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 67

Date: March 14, 2007.
Measure: H.R. 1362.
Motion by: Mr. Dreier.
Summary of motion: To report an open rule.
Results: Defeated 2–8.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Sessions—Yea; Slaughter—Nay.

SUMMARY OF AMENDMENT IN THE NATURE OF A SUBSTITUTE CONSIDERED AS AN ORIGINAL BILL

The amendment in the nature of a substitute is identical to the text, as amended, of H.R. 1362 as ordered reported by the Committee on Armed Services on March 13, 2007, with the following exceptions:

Adds a provision to sec. 102 to clarify that statutory preferences for contracts to disadvantaged minority contractors and service disabled veterans, and in HUBZones, will not be covered in the plan to reduce sole-source contracts.

Adds senior level personnel who participate personally and substantially in a decision to award a contract to the current revolving door restrictions for acquisition personnel.

Prevents such senior level personnel who enter government service from the private sector from administering a contract awarded to their former employer.

SUMMARY OF AMENDMENTS MADE ORDER

1. Matheson (UT): This amendment would provide Congress with prior notice of any sole source contract expected to be awarded to a foreign-owned company that is based in or has majority operations in a country known to sponsor terrorist activity, with the intent of allowing Congress to review and comment on the proposed contract. (10 minutes)

2. Castle (DE): This amendment would require the Office of Government Ethics to submit recommendations on requiring government contractors and federally funded research and development centers that advise the government to comply with personal financial interest restrictions. (10 minutes)

PART A—TEXT OF AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE CONSIDERED AS AN ORIGINAL BILL

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Accountability in Contracting Act".

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVING THE QUALITY OF CONTRACTS

Sec. 101. Limitation on length of noncompetitive contracts.
Sec. 102. Minimizing sole-source contracts.
Sec. 103. Maximizing fixed-price procurement contracts.

TITLE II—INCREASING CONTRACT OVERSIGHT

Sec. 201. Public disclosure of justification and approval documents for noncompetitive contracts.
Sec. 202. Disclosure of Government contractor audit findings.
Sec. 203. Study of acquisition workforce.
Sec. 204. Repeal of sunset of training fund.

TITLE III—PROMOTING INTEGRITY IN CONTRACTING

Sec. 301. Additional provisions relating to procurement officials.

TITLE I—IMPROVING THE QUALITY OF CONTRACTS

SEC. 101. LIMITATION ON LENGTH OF NONCOMPETITIVE CONTRACTS.

(a) REVISION OF FAR.—Not later than one year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to restrict the contract period of any contract described in subsection (c) to the minimum contract period necessary—

(1) to meet the urgent and compelling requirements of the work to be performed under the contract; and

(2) to enter into another contract for the required goods or services through the use of competitive procedures.

(b) CONTRACT PERIOD.—The regulations promulgated under subsection (a) shall require the contract period to not exceed one year, unless the head of the executive agency concerned determines that the Government would be seriously injured by the limitation on the contract period.

(c) COVERED CONTRACTS.—This section applies to any contract in an amount greater than $1,000,000 entered into by an executive agency using procedures other than competitive procedures pursuant to the exception provided in section 303(c)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(2)) or section 2304(c)(2) of title 10, United States Code.

(d) DEFINITIONS.—In this section:

(1) The term "executive agency" has the meaning provided in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(2) The term "head of the executive agency" means the head of an executive agency except that, in the case of the Department of Defense, the term means—

(A) in the case of a military department, the Secretary of the military department;

(B) in the case of a Defense Agency, the head of the Defense Agency; and

(C) in the case of any part of the Department of Defense other than a military department or Defense Agency, the Under Secretary of Defense for Acquisition, Technology, and Logistics.

SEC. 102. MINIMIZING SOLE-SOURCE CONTRACTS.

(a) PLANS REQUIRED.—Subject to subsection (c), the head of each executive agency covered by title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall develop and implement a plan to minimize, to the maximum extent practicable, the use of contracts entered into using procedures other than competitive procedures by the agency or department concerned. The plan shall contain measurable goals and shall be completed and submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate and, in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives, with a copy provided to the Comptroller General, not later than 1 year after the date of the enactment of this Act.

(b) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review the plans provided under subsection (a) and submit a report to Congress on the plans not later than 18 months after the date of the enactment of this Act.

(c) REQUIREMENT LIMITED TO CERTAIN AGENCIES.—The requirement of subsection (a) shall apply only to those agencies that awarded contracts in a total amount of at least $1,000,000,000 in the fiscal year preceding the fiscal year in which the report is submitted.

(d) CERTAIN CONTRACTS EXCLUDED.—The following contracts shall not be included in the plans developed and implemented under subsection (a):

(1) Contracts entered into under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), in amounts less than the amounts listed in paragraph (1)(D)(i)(II) of that section.

(2) Contracts entered into under section 31 (15 U.S.C. 657a) of such Act, in amounts less than the amounts listed in subsection (b)(2)(A)(ii) of that section.

(3) Contracts entered into under section 36 of such Act (15 U.S.C. 657f), in amounts less than the amounts listed in subsection (a)(2) of that section.

SEC. 103. MAXIMIZING FIXED-PRICE PROCUREMENT CONTRACTS.

(a) PLANS REQUIRED.—Subject to subsection (c), the head of each executive agency covered by title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall develop and implement a plan to maximize, to the fullest extent practicable, the use of fixed-price type contracts for the procurement of goods and services by the agency or department concerned. The plan shall contain measurable goals and shall be completed and submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate and, in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives, with a copy provided to the Comptroller General, not later than 1 year after the date of the enactment of this Act.

(b) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review the plans provided under subsection (a) and submit a report to Congress on the plans not later than 18 months after the date of the enactment of this Act.

(c) REQUIREMENT LIMITED TO CERTAIN AGENCIES.—The requirement of subsection (a) shall apply only to those agencies that awarded contracts in a total amount of at least $1,000,000,000 in the fiscal year preceding the fiscal year in which the report is submitted.

TITLE II—INCREASING CONTRACT OVERSIGHT

SEC. 201. PUBLIC DISCLOSURE OF JUSTIFICATION AND APPROVAL DOCUMENTS FOR NONCOMPETITIVE CONTRACTS.

(a) CIVILIAN AGENCY CONTRACTS.—

(1) IN GENERAL.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended by adding at the end the following new subsection:

"(j)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

"(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting '30 days' for '14 days'.

"(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

"(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code.".

(2) CONFORMING AMENDMENT.—Section 303(f) of such Act is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(b) DEFENSE AGENCY CONTRACTS.—

(1) IN GENERAL.—Section 2304 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(l)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

"(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting '30 days' for '14 days'.

"(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

"(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.".

(2) CONFORMING AMENDMENT.—Section 2304(f) of such title is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

SEC. 202. DISCLOSURE OF GOVERNMENT CONTRACTOR AUDIT FINDINGS.

(a) QUARTERLY REPORT TO CONGRESS.—

(1) The head of each Federal agency or department or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall submit to the chairman and ranking member of each committee specified in paragraph (2) on a quarterly basis a report that includes the following:

(A) A list of completed audits performed by such agency or department issued during the applicable quarter that describe contractor costs in excess of $10,000,000 that have been identified as unjustified, unsupported, questioned, or unreasonable under any contract, task or delivery order, or subcontract.

(B) The specific amounts of costs identified as unjustified, unsupported, questioned, or unreasonable and the percentage of their total value of the contract, task or delivery order, or subcontract.

(C) A list of completed audits performed by such agency or department issued during the applicable quarter that identify material deficiencies in the performance of any contractor or in any business system of any contractor under any contract, task or delivery order, or subcontract.

(2) The report described in paragraph (1) shall be submitted to—

(A) the Committee on Oversight and Government Reform of the House of Representatives;

(B) the Committee on Homeland Security and Governmental Affairs of the Senate;

(C) the Committees on Appropriations of the House of Representatives and the Senate;

(D) in the case of reports from the Department of Defense or the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives; and

(E) the committees of primary jurisdiction over the agency or department submitting the report.

(3) Paragraph (1) shall not apply to an agency or department with respect to a calendar quarter if no audits described in paragraph (1) were issued during that quarter.

(b) SUBMISSION OF INDIVIDUAL AUDITS.—

(1) The head of each Federal agency or department shall provide, within 14 days after a request in writing by the chairman or ranking member of any committee listed in paragraph (2), a full and unredacted copy of any audit described in subsection (a)(1). Such copy shall include an identification of information in the audit exempt from public disclosure under section 552(b) of title 5, United States Code.

(2) The committees listed in this paragraph are the following:

(A) The Committee on Oversight and Government Reform of the House of Representatives.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate.

(C) The Committees on Appropriations of the House of Representatives and the Senate.

(D) In the case of the Department of Defense or the Department of Energy, the Committees on Armed Services of the Senate and House of Representatives.

(E) The committees of primary jurisdiction over the agency or department to which the request is made.

SEC. 203. STUDY OF ACQUISITION WORKFORCE.

(a) REQUIREMENT FOR STUDY.—The Administrator for Federal Procurement Policy shall conduct a study of the composition, scope, and functions of the Government-wide acquisition workforce and develop a comprehensive definition of, and method of measuring the size of, such workforce.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the relevant congressional committees a report on the results of the study required by subsection (a), with such findings and recommendations as the Administrator determines appropriate.

SEC. 204. REPEAL OF SUNSET OF TRAINING FUND.

Subparagraph (H) of section 37(h)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(h)(3)) is repealed.

TITLE III—PROMOTING INTEGRITY IN CONTRACTING

SEC. 301. ADDITIONAL PROVISIONS RELATING TO PROCUREMENT OFFICIALS.

(a) ELIMINATION OF LOOPHOLES THAT ALLOW FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSATION FROM CONTRACTORS OR RE-

LATED ENTITIES.—Section 27(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(d)) is amended—

(1) in paragraph (1)—

(A) by striking "or consultant" and inserting "consultant, lawyer, or lobbyist"; and

(B) in subparagraph (C), by striking "Federal agency—" and inserting "Federal agency or participated personally and substantially at a senior personnel level in—"

(2) by amending paragraph (2) to read as follows:

"(2) Paragraph (1) shall not prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph if the agency's designated ethics officer determines that the former official's acceptance of compensation would not damage public confidence in the integrity of the procurement process.".

(b) REQUIREMENT FOR FEDERAL PROCUREMENT OFFICERS TO DISCLOSE JOB OFFERS MADE ON BEHALF OF RELATIVES.—Section 27(c)(1) of such Act (41 U.S.C. 423(c)(1)) is amended by inserting after "that official" the following: "or for a relative of that official (as defined in section 3110 of title 5, United States Code)".

(c) REQUIREMENT ON AWARD OF GOVERNMENT CONTRACTS TO FORMER EMPLOYERS.—Section 27 of such Act (41 U.S.C. 423) is amended by adding at the end the following new subsection:

"(i) PROHIBITION ON INVOLVEMENT BY CERTAIN FORMER CONTRACTOR EMPLOYEES IN PROCUREMENTS.—An employee of the Federal Government who is a former employee of a contractor with the Federal Government shall not be personally and substantially involved with any award of a contract to the employee's former employer, or in the administration of such contract at a senior personnel level, for the one-year period beginning on the date on which the employee leaves the employment of the contractor unless the employee has received a waiver from the agency's designated ethics officer. In determining whether to issue a waiver, the designated ethics officer shall take into account the agency's need for the involvement of the employee and the impact a waiver would have on public confidence in the integrity of the procurement process.".

(d) REGULATIONS.—Section 27 of such Act (41 U.S.C. 423) is further amended by adding at the end the following new subsection:

"(j) REGULATIONS.—The Administrator, in consultation with the Director of the Office of Government Ethics, shall—

"(1) promulgate regulations to carry out and ensure the enforcement of this section; and

"(2) monitor and investigate individual and agency compliance with this section.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

PART B—TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MATHESON OF UTAH, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title II, add the following new section:

SEC. 2——. NOTICE TO CONGRESS OF NONCOMPETITIVE CONTRACTS AWARDED TO FOREIGN-OWNED COMPANIES IN COUNTRIES SPONSORING TERRORISM.

(a) NOTICE TO CONGRESS REQUIRED.—If a contract is expected to be awarded by a department or agency of the Federal Government without the use of competitive procedures to a foreign-owned company that is based or has majority operations in a country described in subsection (b), the department or agency shall notify the appropriate congressional committees at least 30 days before awarding the contract, for purposes of providing Congress time to review the proposed contract and provide comments to the department or agency.

(b) FOREIGN COUNTRIES DESCRIBED.—A country described in this subsection is a country the government of which the Secretary of State has determined, for purposes of section 6(j) of Export Administration Act of 1979, section 620A of the Foreign Assistance Act of 1961, section 40 of the Arms Export Control Act, or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

---

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CASTLE OF DELAWARE, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end of title III the following:

SEC. 302. REPORT TO CONGRESS.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Government Ethics shall submit a report to Congress that contains the Director's recommendations on requiring Government contractors that advise one or more Federal agencies on procurement policy, and requiring federally funded research and development centers, to comply with restrictions relating to personal financial interests, such as those that apply to Federal employees.

(b) DEFINITION.—In this section—

(1) The term "Government contractor" means any person (other than a Federal agency) with which a Federal agency has entered into a contract to acquire goods or services.

(2) The term "Federal agency" means—

(A) any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation; and

(B) any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the Architect's direction).

(3) The term "federally funded research and development center" means a federally funded research and development

center as identified by the National Science Foundation in accordance with the Federal Acquisition Regulation.

○