

CONTRACTING AND TAX ACCOUNTABILITY ACT OF 2008

APRIL 10, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4881]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4881) to prohibit the awarding of a contract or grant in excess of the simplified acquisition threshold unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that the contractor or grantee has no seriously delinquent tax debts, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Contracting and Tax Accountability Act of 2008”.

SEC. 2. GOVERNMENTAL POLICY.

It is the policy of the United States Government that no Government contracts or grants should be awarded to individuals or companies with seriously delinquent Federal tax debts.

SEC. 3. PROHIBITION ON AWARDING OF CONTRACTS TO DELINQUENT FEDERAL DEBTORS.

Section 3720B of title 31, United States Code, is amended—

(1) in the section heading, by adding at the end “**OR CONTRACTS**”;

(2) by adding at the end the following:

“(c)(1) Unless this subsection is waived by the head of a Federal agency, a person who has a seriously delinquent tax debt shall be proposed for debarment from any contract awarded by the Federal Government.

“(2) The head of any Federal agency that issues an invitation for bids or a request for proposals for a contract in an amount greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 401(11))) shall require each person that submits a bid or proposal to submit with the bid or proposal a form—

“(A) certifying that the person does not have a seriously delinquent tax debt; and

“(B) authorizing the Secretary of the Treasury to disclose to the head of the agency information limited to describing whether the person has a seriously delinquent tax debt.

“(3) The Secretary shall make available to all Federal agencies a standard form for the certification and authorization described in paragraph (2).

“(4) Not later than 270 days after the date of enactment of this subsection, the Federal Acquisition Regulation shall be revised to incorporate the requirements of this subsection.

“(5) For purposes of this subsection:

“(A) The term ‘contract’ means a binding agreement entered into by a Federal agency for the purpose of obtaining property or services, but does not include—

“(i) a contract designated by the head of the agency as assisting the agency in the performance of disaster relief authorities; or

“(ii) a contract designated by the head of the agency as necessary to the national security of the United States.

“(B)(i) The term ‘person’ includes—

“(I) an individual;

“(II) a partnership; and

“(III) a corporation.

“(ii) A partnership shall be treated as a person with a seriously delinquent tax debt if such partnership has a partner who—

“(I) holds an ownership interest of 50 percent or more in that partnership; and

“(II) who has a seriously delinquent tax debt.

“(iii) A corporation shall be treated as a person with a seriously delinquent tax debt if such corporation has an officer or a shareholder who—

“(I) holds 50 percent or more, or a controlling interest that is less than 50 percent, of the outstanding shares of corporate stock in that corporation; and

“(II) who has a seriously delinquent tax debt.

“(C)(i) The term ‘seriously delinquent tax debt’ means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of such Code.

“(ii) Such term does not include—

“(I) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of such Code; and

“(II) a debt with respect to which a collection due process hearing under section 6330 of such Code, or relief under subsections (a), (b), or (f) of section 6015 of such Code, is requested or pending.”.

SEC. 4. PROHIBITION ON AWARDING OF GRANTS TO DELINQUENT FEDERAL DEBTORS.

(a) IN GENERAL.—The head of any Executive agency that offers a grant in excess of an amount equal to the simplified acquisition threshold (as defined in section

4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 401(11)) may not award such grant to any person unless such person submits with the application for such grant a form—

- (1) certifying that the person does not have a seriously delinquent tax debt; and
 - (2) authorizing the Secretary of the Treasury to disclose to the head of the Executive agency information limited to describing whether the person has a seriously delinquent tax debt.
- (b) RELEASE OF INFORMATION.—The Secretary shall make available to all Executive agencies a standard form for the certification and authorization described in subsection (a)(2).
- (c) REVISION OF REGULATIONS.—Not later than 270 days after the date of the enactment of this section, the Director of the Office of Management and Budget shall revise such regulations as necessary to incorporate the requirements of this section.
- (d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1) PERSON.—

(A) IN GENERAL.—The term “person” includes—

- (i) an individual;
- (ii) a partnership; and
- (iii) a corporation.

(B) TREATMENT OF CERTAIN PARTNERSHIPS.—A partnership shall be treated as a person with a seriously delinquent tax debt if such partnership has a partner who—

- (i) holds an ownership interest of 50 percent or more in that partnership; and
- (ii) who has a seriously delinquent tax debt.

(C) TREATMENT OF CERTAIN CORPORATIONS.—A corporation shall be treated as a person with a seriously delinquent tax debt if such corporation has an officer or a shareholder who—

- (i) holds 50 percent or more, or a controlling interest that is less than 50 percent, of the outstanding shares of corporate stock in that corporation; and
- (ii) who has a seriously delinquent tax debt.

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

(3) SERIOUSLY DELINQUENT TAX DEBT.—

(A) IN GENERAL.—The term “seriously delinquent tax debt” means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of such Code.

(B) EXCEPTIONS.—Such term does not include—

- (i) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of such Code; and
- (ii) a debt with respect to which a collection due process hearing under section 6330 of such Code, or relief under subsections (a), (b), or (f) of section 6015 of such Code, is requested or pending.

PURPOSE AND SUMMARY

H.R. 4881, the Contracting and Tax Accountability Act of 2008, was introduced by Rep. Brad Ellsworth and Rep. Edolphus Towns, the Chairman of the Subcommittee on Government Management, Organization, and Procurement, on December 19, 2007. H.R. 4881 establishes a process through which persons with seriously delinquent federal tax debts may be prohibited from receiving federal contracts and grants.

BACKGROUND AND NEED FOR LEGISLATION

Contractors owe the federal government billions of dollars in delinquent taxes, and the Contracting and Tax Accountability Act is designed to mandate that tax compliance be a prerequisite for receiving a federal contract. In 2004 and 2005, GAO reported that government contractors owed over \$5 billion in unpaid federal taxes.

According to the GAO, the contractors are typically closely-held businesses with unpaid payroll and corporate income taxes. These payroll taxes include amounts withheld from employee wages for Social Security, Medicare, and individual income taxes, but never remitted to the Internal Revenue Service (IRS). Many of the contractors have repeatedly failed to fulfill their tax obligations and have delinquencies that extend over multiple tax periods. GAO also identified instances in which companies that are delinquent in their taxes have won contracts by submitting lower offers than companies that comply with tax obligations.

This bill will encourage contractors wishing to do business with the government to comply with the nation's tax laws, thereby reducing the level of tax delinquencies and promoting compliance. This bill will also afford companies that do comply with tax responsibilities a fair opportunity to compete for contracts.

LEGISLATIVE HISTORY

H.R. 4881 was introduced by Reps. Ellsworth and Towns on December 19, 2007, and referred to the Committee on Oversight and Government Reform.

H.R. 4881 combines elements of two other bills on contractor tax compliance: H.R. 1870, the Contractor Tax Enforcement Act, which was introduced by Rep. Towns on April 17, 2007, and H.R. 1986, the Federal Contractor Accountability Act of 2007, which was introduced by Rep. Ellsworth on April 20, 2007.

The Subcommittee on Government Management, Organization, and Procurement held a hearing on H.R. 1870 and H.R. 1986 on April 19, 2007. The witnesses were Paul A. Denett, Administrator for Federal Procurement Policy, Office of Management and Budget; Russell George, Treasury Inspector General for Tax Administration, Internal Revenue Service; and Gregory D. Kutz, Managing Director, Forensic Audits and Special Investigations, U.S. Government Accountability Office.

The Subcommittee on Government Management, Organization, and Procurement held a hearing on H.R. 4881 on February 27, 2008. The witnesses were Paul A. Denett, Administrator for Federal Procurement Policy, Office of Management and Budget; John Hutton, Director, Acquisition and Sourcing Management, U.S. Government Accountability Office; Marcia Madsen, Chair, Acquisition Advisory Panel; Scott Amey, General Counsel, Project on Government Oversight; and Alan Chvotkin, Senior Vice President and Counsel, Professional Services Council.

The Subcommittee on Government Management, Organization, and Procurement held a markup to consider H.R. 4881 on March 11, 2008, and ordered the bill to be reported, as amended, by voice vote. The Committee on Oversight and Government Reform held a markup to consider H.R. 4881 on March 13, 2008, and ordered the bill to be reported by voice vote.

SECTION-BY-SECTION

Section 1: Short title

The short title of the bill is the Contracting and Tax Accountability Act of 2007.

Section 2: Governmental policy

This section states that the policy of the United States is that no government contracts or grants should be awarded to individuals or companies with seriously delinquent Federal tax debts.

Section 3: Prohibition on awarding of contracts to delinquent federal debtors

This section establishes procedures through which persons with seriously delinquent tax debts may be debarred from federal contracts. It requires that bids or proposals for federal contracts include a certification that the person does not have a seriously delinquent tax debt and an authorization to verify this certification with the Secretary of the Treasury. It requires the Secretary of the Treasury to develop a standard form, and the Federal Acquisition Regulation to be revised to require the certification and authorization.

“Contract” is defined as a binding agreement entered into by a federal agency for the purpose of obtaining property or services. Contracts designated as necessary to disaster relief or national security are exempted from the requirements of this section.

A “person” subject to the requirements of this section includes an individual; a partnership; a corporation; a partnership in which a partner with an ownership interest of 50 percent or more has a seriously delinquent tax debt; and a corporation in which an officer or shareholder who holds 50 percent or more, or a controlling interest that is less than 50 percent of the outstanding shares of corporate stock in that corporation has a seriously delinquent tax debt.

“Seriously delinquent tax debt” is defined as an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records. The term excludes tax debt that is being repaid pursuant to an installment agreement and tax debt for which a collection due process hearing or innocent spouse relief has been requested.

Section 4: Prohibition on awarding of grants to delinquent federal debtors

This requires that grant applications include a certification that the person does not have a seriously delinquent tax debt and an authorization to verify this certification with the Secretary of the Treasury. It requires the Secretary of the Treasury to develop a standard form, and the Director of the Office of Management and Budget to issue regulations to require the certification and authorization.

A “person” subject to the requirements of this section includes an individual; a partnership; a corporation; a partnership in which a partner with an ownership interest of 50 percent or more has a seriously delinquent tax debt; and a corporation in which an officer or shareholder who holds 50 percent or more, or a controlling interest that is less than 50 percent, of the outstanding shares of corporate stock in that corporation has a seriously delinquent tax debt.

“Seriously delinquent tax debt” is defined as an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records. The term excludes tax debt that

is being repaid pursuant to an installment agreement and tax debt for which a collection due process hearing or innocent spouse relief has been requested.

EXPLANATION OF AMENDMENTS

The following amendments were adopted in the Subcommittee on Government Management, Organization, and Procurement:

Mr. Towns offered an amendment in the nature of a substitute. The amendment clarified that the requirements of section 3 apply only to contracts in an amount exceeding the simplified acquisition threshold, and made technical corrections.

The Towns amendment in the nature of a substitute passed by voice vote.

COMMITTEE CONSIDERATION

On Thursday, March 13, 2008, the Committee met in open session and favorably ordered H.R. 4881 to be reported to the House by a voice vote.

ROLLCALL VOTES

No rollcall votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. The bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including promoting fairness in federal procurement.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 4881. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 4881 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4881. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4881 from the Director of the Congressional Budget Office:

APRIL 10, 2008.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4881, the Contracting and Tax Accountability Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 4881—Contracting and Tax Accountability Act of 2008

Summary: H.R. 4881 would prohibit federal agencies from awarding contracts to persons or companies that have failed to pay their federal taxes. Additionally, under the bill, certain contractors and grantees that receive federal funds would have to certify that they do not have federal tax debt, and the Internal Revenue Service (IRS) would be authorized to confirm or refute those claims for the federal agencies involved.

CBO estimates that implementing H.R. 4881 would cost \$5 million in 2009 and \$14 million over the 2009–2013 period, assuming appropriation of the necessary amounts. The Joint Committee on Taxation (JCT) estimates that the legislation would have a negligible effect on revenues. H.R. 4881 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4881 is shown in the following table. The cost of this legislation falls within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	5	3	2	2	2
Estimated Outlays	5	3	2	2	2

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2009, that the necessary funds will be provided for each year, and that spending will follow historical patterns for similar programs.

According to the Office of Management and Budget and the General Services Administration, the government currently collects information on contractors and grants through a variety of databases. In addition, the IRS has a database regarding tax liens and already provides tax-debt information to the Treasury Department's Offset Program, which withholds or reduces certain federal payments to collect delinquent tax and nontax debt owed to federal agencies. Using that information, CBO estimates that updating and combining the databases to meet the bill's requirements would cost about \$5 million in 2009 and \$14 million over the 2009–2013 period. This would include costs to create regulations, provide training to federal employees, and update and maintain the databases.

Intergovernmental and private-sector impact: H.R. 4881 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Matthew Pickford; Impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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Subtitle III—FINANCIAL MANAGEMENT

* * * * *

CHAPTER 37—CLAIMS

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SUBCHAPTER II—CLAIMS OF THE UNITED STATES GOVERNMENT

* * * * *

§ 3720B. Barring delinquent Federal debtors from obtaining Federal loans or loan insurance guarantees or contracts

(a) * * *

* * * * *

(c)(1) *Unless this subsection is waived by the head of a Federal agency, a person who has a seriously delinquent tax debt shall be proposed for debarment from any contract awarded by the Federal Government.*

(2) *The head of any Federal agency that issues an invitation for bids or a request for proposals for a contract in an amount greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 401(11)) shall require each person that submits a bid or proposal to submit with the bid or proposal a form—*

(A) certifying that the person does not have a seriously delinquent tax debt; and

(B) authorizing the Secretary of the Treasury to disclose to the head of the agency information limited to describing whether the person has a seriously delinquent tax debt.

(3) *The Secretary shall make available to all Federal agencies a standard form for the certification and authorization described in paragraph (2).*

(4) *Not later than 270 days after the date of enactment of this subsection, the Federal Acquisition Regulation shall be revised to incorporate the requirements of this subsection.*

(5) *For purposes of this subsection:*

(A) The term “contract” means a binding agreement entered into by a Federal agency for the purpose of obtaining property or services, but does not include—

(i) a contract designated by the head of the agency as assisting the agency in the performance of disaster relief authorities; or

- (ii) a contract designated by the head of the agency as necessary to the national security of the United States.
- (B)(i) The term “person” includes—
 - (I) an individual;
 - (II) a partnership; and
 - (III) a corporation.
- (ii) A partnership shall be treated as a person with a seriously delinquent tax debt if such partnership has a partner who—
 - (I) holds an ownership interest of 50 percent or more in that partnership; and
 - (II) who has a seriously delinquent tax debt.
- (iii) A corporation shall be treated as a person with a seriously delinquent tax debt if such corporation has an officer or a shareholder who—
 - (I) holds 50 percent or more, or a controlling interest that is less than 50 percent, of the outstanding shares of corporate stock in that corporation; and
 - (II) who has a seriously delinquent tax debt.
- (C)(i) The term “seriously delinquent tax debt” means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of such Code.
- (ii) Such term does not include—
 - (I) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of such Code; and
 - (II) a debt with respect to which a collection due process hearing under section 6330 of such Code, or relief under subsections (a), (b), or (f) of section 6015 of such Code, is requested or pending.

* * * * *

ADDITIONAL VIEWS OF RANKING MEMBER TOM DAVIS

H.R. 4881 would subject any firm that has a seriously delinquent tax debt—defined to mean any time the Internal Revenue Service has filed a tax lien against the company—to a debarment proceeding with the aim of preventing the firm from obtaining a government contract or grant.

Potential contractors and grant recipients must certify that the company does not have any “seriously delinquent tax debt” in order to be eligible for federal grants and contracts.

This is a reasonable requirement.

In fact, the Administration is currently finalizing a regulation that would require federal contractors and grantees to certify, among other things, that they have not been notified by the IRS of liability for delinquent taxes. The proposed regulation would also include the failure to pay taxes as a specific cause for a company to be debarred from receiving federal contracts.

Since the issue addressed in H.R. 4881 is already being addressed through the regulatory process it is not totally clear to me what we are accomplishing with this legislation. Nevertheless I have no real objection and therefore supported the legislation in Committee.

I do hope, however, that the majority would spend more time on matters that would address the problems facing the acquisition system like providing our acquisition workforce with better tools and training. H.R. 4881 does nothing to improve our ability to obtain the best value goods and services so urgently needed to operate our government. It will not remedy poorly defined requirements or provide us with a sufficient number of federal acquisition personnel with the right skills to select the best contractor and manage performance.

TOM DAVIS.

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