

111TH CONGRESS
1ST SESSION

H. R. 2825

To require the Secretary of Defense to debar from contracting with the Department of Defense any company found to have jeopardized the health or safety of Government personnel or found guilty of contract fraud, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2009

Ms. SHEA-PORTER (for herself, Ms. MOORE of Wisconsin, Mr. CARNAHAN, Mr. MCGOVERN, Ms. SCHAKOWSKY, Mr. DEFAZIO, Mr. NYE, and Mr. BISHOP of New York) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To require the Secretary of Defense to debar from contracting with the Department of Defense any company found to have jeopardized the health or safety of Government personnel or found guilty of contract fraud, 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 “Safety in Defense Con-
5 tracting Act”.

1 **SEC. 2. REQUIREMENT FOR SECRETARY OF DEFENSE TO**
2 **DEBAR COMPANIES FOUND TO JEOPARDIZE**
3 **HEALTH OR SAFETY OF GOVERNMENT PER-**
4 **SONNEL OR FOUND GUILTY OF CONTRACT**
5 **FRAUD.**

6 (a) REQUIREMENT TO DEBAR.—

7 (1) PRIME CONTRACTORS.—The Secretary of
8 Defense shall debar from contracting with the De-
9 partment of Defense any defense contractor—

10 (A) that has been determined, through a
11 criminal, civil, or administrative proceeding that
12 results in a disposition listed in subsection (f),
13 in the performance of a covered contract—

14 (i) to have caused serious injury or
15 death to any civilian or military personnel
16 of the Government through gross neg-
17 ligence or with reckless disregard for the
18 safety of such personnel; or

19 (ii) to have committed fraud; or

20 (B) that awarded a subcontract under a
21 covered contract to a subcontractor that has
22 been determined, through a criminal, civil, or
23 administrative proceeding that results in a dis-
24 position listed in subsection (f), in the perform-
25 ance of the subcontract—

1 (i) to have caused serious injury or
2 death to any civilian or military personnel
3 of the Government, through gross neg-
4 ligence or with reckless disregard for the
5 safety of such personnel; or

6 (ii) to have committed fraud.

7 (2) SUBCONTRACTORS.—The Secretary of De-
8 fense shall debar from contracting with the Depart-
9 ment of Defense any subcontractor under a covered
10 contract with respect to which a determination de-
11 scribed in paragraph (1)(B) has been made. The
12 Secretary of Defense also shall require, as a condi-
13 tion of any defense contract, that no subcontract
14 may be awarded under the contract to any subcon-
15 tractor with respect to which a determination de-
16 scribed in paragraph (1)(B) has been made.

17 (b) DEFINITIONS.—In this section:

18 (1) The term “defense contractor” means a
19 company awarded a covered contract.

20 (2) The term “covered contract” means a con-
21 tract awarded by the Department of Defense in an
22 amount in excess of \$500,000 for the procurement
23 of goods or services.

24 (c) APPLICABILITY OF DEBARMENT.—A debarment
25 required by subsection (a) shall apply only with respect

1 to contracts sought by an offeror for the same or similar
2 goods or services as those provided or performed under
3 the contract or subcontract with respect to which a deter-
4 mination described in subparagraph (A) or (B) of sub-
5 section (a)(1) was made.

6 (d) PERIOD OF DEBARMENT.—The debarment re-
7 quired by subsection (a) shall apply for a period of not
8 less than five years after the date of the determination
9 described in subsection (a)(1).

10 (e) WAIVER.—The debarment required by subsection
11 (a) may be waived by the Secretary of Defense on a case-
12 by-case basis if the Secretary finds that the debarment
13 would jeopardize national security.

14 (f) LIST OF DISPOSITIONS IN CRIMINAL, CIVIL, OR
15 ADMINISTRATIVE PROCEEDINGS.—For purposes of sub-
16 section (a), the dispositions listed in this subsection are
17 as follows:

18 (1) In a criminal proceeding, a conviction.

19 (2) In a civil proceeding, a finding of fault and
20 liability that results in the payment of a monetary
21 fine, penalty, reimbursement, restitution, or damages
22 of \$5,000 or more.

23 (3) In an administrative proceeding, a finding
24 of fault and liability that results in—

1 (A) the payment of a monetary fine or
2 penalty of \$5,000 or more; or

3 (B) the payment of a reimbursement, res-
4 titution, or damages in excess of \$100,000.

5 (4) To the maximum extent practicable and
6 consistent with applicable laws and regulations, in a
7 criminal, civil, or administrative proceeding, a dis-
8 position of the matter by consent or compromise
9 with an acknowledgment of fault by the person if the
10 proceeding could have led to any of the outcomes
11 specified in paragraph (1), (2), or (3).

12 **SEC. 3. WITHHOLDING OF CERTAIN CONTRACT FEES.**

13 In the case of any defense contractor that receives
14 a level III corrective action request from the Defense Con-
15 tract Management Agency in a fiscal year, the Secretary
16 of Defense shall withhold any award or incentive fees on
17 the contract for that fiscal year. With respect to any such
18 fees already paid to the contractor during that fiscal year,
19 the Secretary shall require the contractor to pay back the
20 fees.

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