

112TH CONGRESS  
2D SESSION

# H. R. 6360

To increase accountability in contracts for overseas contingency operations,  
and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

AUGUST 7, 2012

Mr. TIERNEY introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Armed Services, Oversight and Government Reform, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To increase accountability in contracts for overseas  
contingency operations, 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 “Oversight and Ac-  
5 countability in Wartime Contracting Act of 2012”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.

TITLE I—ACCOUNTABILITY IN OVERSEAS CONTINGENCY  
OPERATIONS

- Sec. 101. Limitations applicable to certain contracts in connection with overseas contingency operations.
- Sec. 102. Revisions to justification and approval requirements for contracts awarded using procedures other than competitive procedures.
- Sec. 103. Contractor consent to jurisdiction for certain civil actions under certain contracts for work overseas.
- Sec. 104. Information on corporate contractor performance and integrity through the Federal Awardee Performance and Integrity Information System.
- Sec. 105. Inclusion of data on contractor performance in past performance databases for executive agency source selection decisions.
- Sec. 106. Sustainability requirements for certain capital projects funded by the Department of Defense for overseas contingency operations.
- Sec. 107. Expansion of oversight offices in Department of Defense, the Department of State, and the United States Agency for International Development.
- Sec. 108. Inspector General reviews and evaluations.
- Sec. 109. Tax treatment of certain civilian employees of Department of Defense in combat zones.

TITLE II—MATTERS RELATING TO SECURITY ASSISTANCE AND  
COUNTERTERRORISM

- Sec. 201. Report on United States strategy relating to Afghanistan.
- Sec. 202. Improving United States foreign police assistance activities.
- Sec. 203. United States plan for sustaining the Afghanistan National Security Forces.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE COMMITTEES OF CON-  
4 GRESS.—The term “appropriate committees of Con-  
5 gress” means—

6 (A) the Committee on Armed Services, the  
7 Committee on Foreign Relations, the Com-  
8 mittee on Homeland Security and Govern-  
9 mental Affairs, and the Committee on Appro-  
10 priations of the Senate; and

11 (B) the Committee on Armed Services, the  
12 Committee on Foreign Affairs, the Committee

1 on Oversight and Government Reform, and the  
2 Committee on Appropriations of the House of  
3 Representatives.

4 (2) FEDERAL ACQUISITION REGULATORY COUN-  
5 CIL.—The term “Federal Acquisition Regulatory  
6 Council” means the Federal Acquisition Regulatory  
7 Council under section 1302(a) of title 41, United  
8 States Code.

9 (3) OVERSEAS CONTINGENCY OPERATION.—The  
10 term “overseas contingency operation” means a mili-  
11 tary operation outside the United States and its ter-  
12 ritories and possessions that is—

13 (A) a contingency operation, as that term  
14 is defined in subparagraph (A) of section  
15 101(a)(13) of title 10, United States Code; or

16 (B) a contingency operation, as that term  
17 is defined in subparagraph (B) of section  
18 101(a)(13) of title 10, United States Code, but  
19 only if such operation involves actual or poten-  
20 tial hostilities against an enemy of the United  
21 States or against an opposing military force.

1 **TITLE I—ACCOUNTABILITY IN**  
2 **OVERSEAS CONTINGENCY OP-**  
3 **ERATIONS**

4 **SEC. 101. LIMITATIONS APPLICABLE TO CERTAIN CON-**  
5 **TRACTS IN CONNECTION WITH OVERSEAS**  
6 **CONTINGENCY OPERATIONS.**

7 (a) **LIMITATION ON CONTRACT PERIODS.—**

8 (1) **IN GENERAL.**—Not later than 180 days  
9 after the date of the enactment of this Act, the Fed-  
10 eral Acquisition Regulatory Council shall amend the  
11 Federal Acquisition Regulation to provide that the  
12 contract period of contracts entered into by a cov-  
13 ered agency in connection with an overseas contin-  
14 gency operation shall be limited to the contract peri-  
15 ods specified in paragraph (2), except as provided in  
16 paragraph (3).

17 (2) **CONTRACT PERIODS.**—The contract periods  
18 specified in this paragraph are as follows:

19 (A) Three years in the case of competi-  
20 tively bid contracts.

21 (B) One year in the case of non-competi-  
22 tively bid contracts and competitively bid con-  
23 tracts for which only one offer was received by  
24 the covered agency.

1           (3) WAIVER.—The amendment of the Federal  
2 Acquisition Regulation required by this subsection  
3 shall provide that the head of a covered agency may  
4 waive the applicability of the limitations in para-  
5 graph (2) to a contract if—

6           (A) the contracting officer certifies in writ-  
7 ing as part of a justification and approval  
8 (J&A) that the agency has concluded, on the  
9 basis of market research conducted for purposes  
10 of the justification and approval, that—

11           (i) the period of performance for the  
12 contract in excess of the limitations in  
13 paragraph (2) will be in the best interest  
14 of the United States; and

15           (ii) the offeror has submitted informa-  
16 tion in a bid or proposal sufficient to show  
17 that representations by the offeror about  
18 the offeror’s ability to timely, sufficiently,  
19 and cost-effectively perform the contract, if  
20 awarded, are reasonable;

21           (B) the contracting officer conducts the  
22 cost analysis required by section 15.404–1 of  
23 the Federal Acquisition Regulation; and

24           (C) the head of the agency determines in  
25 writing based on the information obtained pur-

1           suant to subparagraphs (A) and (B) that the  
2           waiver is in the best interests of the United  
3           States.

4           (b) LIMITATION ON SUBCONTRACTING TIERS FOR  
5 SERVICE CONTRACTS.—

6           (1) IN GENERAL.—Not later than 180 days  
7           after the date of the enactment of this Act, the Fed-  
8           eral Acquisition Regulatory Council shall amend the  
9           Federal Acquisition Regulation to provide that, com-  
10          mencing 90 days after the date of the commence-  
11          ment or designation of a military operation as an  
12          overseas contingency operation, any contract for  
13          services entered into by a covered agency in connec-  
14          tion with such contingency operation may only have  
15          a single tier of subcontractors, except as provided in  
16          paragraph (2).

17          (2) WAIVER.—The amendment of the Federal  
18          Acquisition Regulation required by this subsection  
19          shall provide that the head of a covered agency may  
20          waive the applicability of the limitation in paragraph  
21          (1) to a contract if—

22                  (A) the contracting officer includes in the  
23                  contract a provision for liquidated damages (in  
24                  an amount specified by the contracting officer  
25                  in the contract) in favor of the United States

1 in the event a subcontractor under the contract  
2 at any tier is determined by the contracting of-  
3 ficer to have acted in the performance of the  
4 contract in a manner that is illegal or unethical  
5 or harms the strategic political or military goals  
6 of the United States;

7 (B) the contracting officer certifies in writ-  
8 ing a justification and approval that the agency  
9 has concluded, on the basis of market research  
10 conducted for purposes of the justification and  
11 approval, that, if the contract is performed in  
12 component parts, no combination of contractors  
13 within the market exists that could perform the  
14 contract either by prime contractor alone or  
15 through the use of subcontractors only at a sin-  
16 gle tier; and

17 (C) the head of the agency determines in  
18 writing based on the information obtained pur-  
19 suant to subparagraphs (A) and (B) that the  
20 waiver is in the best interests of the United  
21 States.

22 (3) REPORT.—Each covered agency shall com-  
23 pile and submit to the appropriate committees of  
24 Congress an annual report on the waivers (if any)  
25 under paragraph (2) granted by the agency during

1 the year covered by the report. The report shall con-  
2 tain a description of the manner in which subpara-  
3 graphs (A), (B), and (C) of paragraph (2) were im-  
4 plemented with respect to each waiver, including, in  
5 the case of subparagraph (B), a copy of the jus-  
6 tification and approval.

7 (c) DEFINITIONS.—In this section:

8 (1) COVERED AGENCY.—The term “covered  
9 agency” means the following:

10 (A) The Department of Defense.

11 (B) The Department of State.

12 (C) The United States Agency for Inter-  
13 national Development.

14 (2) COMPETITIVELY BID.—The term “competi-  
15 tively bid”, with respect to a contract, means a con-  
16 tract awarded through the use of competitive proce-  
17 dures.

18 (3) NON-COMPETITIVELY BID.—The term “non-  
19 competitively bid”, with respect to a contract, means  
20 a contract awarded through the use of procedures  
21 other than competitive procedures.

1 **SEC. 102. REVISIONS TO JUSTIFICATION AND APPROVAL**  
2 **REQUIREMENTS FOR CONTRACTS AWARDED**  
3 **USING PROCEDURES OTHER THAN COMPETITIVE**  
4 **PROCEDURES.**

5 (a) ADDITIONAL JUSTIFICATION AND APPROVAL FOR  
6 USE OF NONCOMPETITIVE PROCEDURES FOR SOLE-  
7 SOURCE CONTRACTS OF UNUSUAL AND COMPELLING UR-  
8 GENCY.—

9 (1) DEPARTMENT OF DEFENSE AND RELATED  
10 AGENCIES.—Section 2304(c)(2) of title 10, United  
11 States Code, is amended by inserting before the  
12 semicolon at the end the following: “, except that in  
13 any case in which the agency solicits a bid or pro-  
14 posal from only one source, the head of an agency  
15 may use the authority in this paragraph only if the  
16 contracting officer certifies in writing a justification  
17 and approval (J&A) (in addition to the justification  
18 and approval required under subsection (f)) of the  
19 reasons necessary for using the authority in this  
20 paragraph to solicit a bid or proposal from only one  
21 source, and such certifications are compiled and sub-  
22 mitted annually in a report to the Committee on  
23 Armed Services, the Committee on Foreign Rela-  
24 tions, the Committee on Homeland Security and  
25 Governmental Affairs, and the Committee on Appro-  
26 priations of the Senate and the Committee on

1 Armed Services, the Committee on Foreign Affairs,  
2 the Committee on Oversight and Government Re-  
3 form, and the Committee on Appropriations of the  
4 House of Representatives”.

5 (2) OTHER EXECUTIVE AGENCIES.—Section  
6 3304(a)(2) of title 41, United States Code, is  
7 amended by inserting before the semicolon at the  
8 end the following: “, except that in any case in  
9 which the agency solicits a bid or proposal from only  
10 one source, the head of an agency may use the au-  
11 thority in this paragraph only if the contracting offi-  
12 cer certifies in writing a justification and approval  
13 (J&A) (in addition to the justification and approval  
14 required under subsection (e)) of the reasons nec-  
15 essary for using the authority in this paragraph to  
16 solicit a bid or proposal from only one source, and  
17 such certifications are compiled and submitted annu-  
18 ally in a report to the Committee on Armed Services,  
19 the Committee on Foreign Relations, the Committee  
20 on Homeland Security and Governmental Affairs,  
21 and the Committee on Appropriations of the Senate  
22 and the Committee on Armed Services, the Com-  
23 mittee on Foreign Affairs, the Committee on Over-  
24 sight and Government Reform, and the Committee  
25 on Appropriations of the House of Representatives”.

1 (b) ADDITIONAL REQUIREMENTS RELATING TO AP-  
2 PROVAL OF JUSTIFICATION FOR CONTRACTS AWARDED  
3 USING NONCOMPETITIVE PROCEDURES.—

4 (1) DEPARTMENT OF DEFENSE AND RELATED  
5 AGENCIES.—Section 2304(f)(1)(B) of title 10,  
6 United States Code, is amended—

7 (A) in clause (ii), by striking “or” after  
8 the semicolon at the end;

9 (B) in clause (iii)—

10 (i) by striking “\$75,000,000” and in-  
11 sserting “\$50,000,000”; and

12 (ii) by striking “and” after the semi-  
13 colon at the end and inserting “or”; and

14 (C) by adding at the end the following new  
15 clause:

16 “(iv) in the case of a contract for an  
17 amount exceeding \$100,000,000, by the  
18 head of the agency; and”.

19 (2) OTHER EXECUTIVE AGENCIES.—Section  
20 3304(e)(B) of title 41, United States Code, is  
21 amended—

22 (A) in clause (ii), by striking “or” after  
23 the semicolon at the end;

1 (B) in clause (iii), by striking “and” after  
2 the semicolon at the end and inserting “or”;  
3 and

4 (C) by adding at the end the following new  
5 clause:

6 “(iv) exceeding \$100,000,000, by the  
7 head of the executive agency; and”.

8 **SEC. 103. CONTRACTOR CONSENT TO JURISDICTION FOR**  
9 **CERTAIN CIVIL ACTIONS UNDER CERTAIN**  
10 **CONTRACTS FOR WORK OVERSEAS.**

11 (a) CONSENT TO JURISDICTION.—The Federal Ac-  
12 quisition Regulatory Council shall amend the Federal Ac-  
13 quisition Regulation to require that any covered contract  
14 provides that—

15 (1) the contractor consents to personal jurisdic-  
16 tion over the contractor with respect to any covered  
17 civil action, including a covered civil action against  
18 one or more employees of the contractor for which  
19 the contractor may be liable under theories of vicari-  
20 ous liability;

21 (2) the contractor consents to personal jurisdic-  
22 tion in the United States District Court for the Dis-  
23 trict of Columbia for a covered civil action in  
24 which—

1 (A) the events giving rise to the cause of  
2 action occurred outside the United States; and

3 (B) personal jurisdiction cannot be estab-  
4 lished in another Federal court;

5 (3) consent to personal jurisdiction under para-  
6 graph (2) shall not operate to deprive or terminate  
7 personal jurisdiction of the contractor in any court  
8 that otherwise has personal jurisdiction under an-  
9 other provision of law or to limit any cause of action  
10 or remedy under any other provision of law;

11 (4) if the covered contract was awarded to a  
12 contractor that does not maintain an office in the  
13 United States, the contractor shall designate an  
14 agent located in the United States for service of  
15 process in any covered civil action;

16 (5) except as provided in paragraph (6), any  
17 covered civil action shall be analyzed in accordance  
18 with the laws of the United States; and

19 (6) the substantive law of the State (including  
20 the District of Columbia) in which the covered civil  
21 action is brought shall be the law applicable to a  
22 covered civil action if—

23 (A) the substantive law otherwise applica-  
24 ble to the covered civil action would be the law

1 of the location where the events giving rise to  
2 the cause of action occurred; and

3 (B) the location is designated as a haz-  
4 arduous duty zone by the Secretary of Defense.

5 (b) APPLICABILITY.—The amendment to the Federal  
6 Acquisition Regulation made under subsection (a) shall  
7 apply with respect to any covered contract that is entered  
8 into on or after the effective date of the amendment under  
9 subsection (a).

10 (c) DEFINITIONS.—In this section:

11 (1) The term “contractor”, with respect to a  
12 covered contract, includes the contractor under the  
13 contract, any subcontractor under the contract, any  
14 subordinate contractor under the contract, any sub-  
15 sidiary, parent company, or successor entity of the  
16 contractor formed to act as a successor in interest  
17 of the contractor, and any employee thereof per-  
18 forming work under or in connection with the con-  
19 tract.

20 (2) The term “covered civil action” includes the  
21 following:

22 (A) A civil action alleging a rape or sexual  
23 assault of or serious bodily injury to a member  
24 of the Armed Forces of the United States, a ci-  
25 vilian employee of the United States, or an em-

1            ployee of a company performing work arising  
2            out of the performance of a covered contract for  
3            the United States who is a citizen or national  
4            of the United States.

5            (B) A civil action alleging the wrongful  
6            death of a member of the Armed Forces of the  
7            United States, a civilian employee of the United  
8            States, or an employee of a company per-  
9            forming work arising out of the performance of  
10           a covered contract for the United States who is  
11           a citizen or national of the United States  
12           brought by a family member of the deceased.

13           (C) A civil action alleging breach of con-  
14           tract or misrepresentation of a covered con-  
15           tract.

16           (3) The term “covered contract”—

17                (A) means a contract—

18                        (i) for work to be performed outside  
19                        the United States that is awarded or en-  
20                        tered into by the United States (including  
21                        any executive department, agency, or inde-  
22                        pendent establishment thereof); and

23                        (ii) with a value of not less than  
24                        \$1,000,000; and

1           (B) includes any subcontract or subordi-  
2           nate contract under a contract described in sub-  
3           paragraph (A).

4           (4) The term “rape” means conduct that would  
5           violate section 920(a) of title 10, United States Code  
6           (article 120(a) of the Uniform Code of Military Jus-  
7           tice), if the conduct was committed by a person sub-  
8           ject to chapter 47 of title 10, United States Code  
9           (the Uniform Code of Military Justice).

10          (5) The term “serious bodily injury” has the  
11          meaning given that term in section 1365 of title 18,  
12          United States Code.

13          (6) The term “sexual assault” means conduct  
14          that would violate section 920 (c), (h), or (m) of title  
15          10, United States Code (article 120 (c), (h), or (m)  
16          of the Uniform Code of Military Justice), if the con-  
17          duct was committed by a person subject to chapter  
18          47 of title 10, United States Code (the Uniform  
19          Code of Military Justice).

20          (7) The term “United States”, in a geographic  
21          sense—

22                  (A) means the several States and the Dis-  
23                  trict of Columbia; and

1 (B) does not include any military installa-  
2 tion or facility located outside the area de-  
3 scribed in subparagraph (A).

4 **SEC. 104. INFORMATION ON CORPORATE CONTRACTOR**  
5 **PERFORMANCE AND INTEGRITY THROUGH**  
6 **THE FEDERAL AWARDEE PERFORMANCE AND**  
7 **INTEGRITY INFORMATION SYSTEM.**

8 (a) INCLUSION OF CORPORATIONS AMONG COVERED  
9 PERSONS.—Subsection (b) of section 872 of the Duncan  
10 Hunter National Defense Authorization Act for Fiscal  
11 Year 2009 (Public Law 110–417; 122 Stat. 4555) is  
12 amended by inserting “(including a corporation)” after  
13 “Any person” both places it appears.

14 (b) INFORMATION ON CORPORATIONS.—Subsection  
15 (d) of such section is amended by adding at the end the  
16 following new paragraph:

17 “(3) INFORMATION ON CORPORATIONS.—The  
18 information on a corporation in the database shall,  
19 to the extent practicable, include information on any  
20 parent, subsidiary, or successor entities to the cor-  
21 poration in manner designed to give the acquisition  
22 officials using the database a comprehensive under-  
23 standing of the performance and integrity of the cor-  
24 poration in carrying out Federal contracts and  
25 grants.”.

1 **SEC. 105. INCLUSION OF DATA ON CONTRACTOR PERFORM-**  
2 **ANCE IN PAST PERFORMANCE DATABASES**  
3 **FOR EXECUTIVE AGENCY SOURCE SELEC-**  
4 **TION DECISIONS.**

5 (a) STRATEGY REQUIRED.—Not later than 180 days  
6 after the date of the enactment of this Act, the Federal  
7 Acquisition Regulatory Council shall develop a strategy for  
8 ensuring that timely, accurate, and complete information  
9 on contractor performance is included in past performance  
10 databases used by executive agencies for making source  
11 selection decisions.

12 (b) ELEMENTS.—The strategy required by subsection  
13 (a) shall, at a minimum—

14 (1) establish standards for the timeliness and  
15 completeness of past performance submissions for  
16 purposes of databases described in subsection (a);

17 (2) assign responsibility and management ac-  
18 countability for the completeness of past perform-  
19 ance submissions for such purposes; and

20 (3) ensure that past performance submissions  
21 for such purposes are consistent with award fee eval-  
22 uations in cases where such evaluations have been  
23 conducted.

24 (c) CONTRACTOR COMMENTS.—Not later than 180  
25 days after the date of the enactment of this Act, the Fed-

1 eral Acquisition Regulatory Council shall revise the Fed-  
2 eral Acquisition Regulation to require the following:

3 (1) That affected contractors are provided, in a  
4 timely manner, information on contractor perform-  
5 ance to be included in past performance databases  
6 in accordance with subsection (a).

7 (2) That such contractors are afforded up to 14  
8 calendar days, from the date of delivery of the infor-  
9 mation provided in accordance with paragraph (1),  
10 to submit comments, rebuttals, or additional infor-  
11 mation pertaining to past performance for inclusion  
12 in such databases.

13 (3) That agency evaluations of contractor past  
14 performance, including any information submitted  
15 under paragraph (2), are included in the relevant  
16 past performance database not later than the date  
17 that is 14 days after the date of delivery of the in-  
18 formation provided in accordance with paragraph  
19 (1).

20 (d) CONSTRUCTION.—Nothing in this section shall be  
21 construed to prohibit a contractor from submitting com-  
22 ments, rebuttals, or additional information pertaining to  
23 past performance after the period described in subsection  
24 (c)(2) has elapsed or to prohibit a contractor from chal-

1 lenging a past performance evaluation in accordance with  
2 applicable laws, regulations, or procedures.

3 (e) EXECUTIVE AGENCY DEFINED.—In this section,  
4 the term “executive agency” has the meaning given that  
5 term in section 133 of title 41, United States Code, except  
6 that the term excludes the Department of Defense and  
7 the military departments.

8 **SEC. 106. SUSTAINABILITY REQUIREMENTS FOR CERTAIN**  
9 **CAPITAL PROJECTS FUNDED BY THE DE-**  
10 **PARTMENT OF DEFENSE FOR OVERSEAS**  
11 **CONTINGENCY OPERATIONS.**

12 (a) CERTIFICATION ON SUSTAINABILITY REQUIRED  
13 BEFORE COMMENCEMENT OF PROJECTS.—

14 (1) IN GENERAL.—Commencing 60 days after  
15 the date of the enactment of this Act—

16 (A) amounts authorized to be appropriated  
17 for the Department of Defense may not be obli-  
18 gated or expended for a capital project de-  
19 scribed in subsection (b) unless the Secretary of  
20 Defense, in consultation with the United States  
21 commander of military operations in the coun-  
22 try in which the project will be carried out, cer-  
23 tifies to the appropriate committees of Congress  
24 that the country has the capability (in both fi-

1           nancial and human resources) to effectively  
2           maintain and utilize the project;

3           (B) amounts authorized to be appropriated  
4           for the Department of State may not be obli-  
5           gated or expended for a capital project de-  
6           scribed in subsection (b) unless the Secretary of  
7           State, in consultation with the Chief of Mission  
8           in the country in which the project will be car-  
9           ried out, certifies to the appropriate committees  
10          of Congress that the country has the capability  
11          (in both financial and human resources) to ef-  
12          fectively maintain and utilize the project; and

13          (C) amounts authorized to be appropriated  
14          for the United States Agency for International  
15          Development may not be obligated or expended  
16          for a capital project described in subsection (b)  
17          unless the Administrator of the United States  
18          Agency for International Development, in con-  
19          sultation with the Mission Director and the  
20          Chief of Mission in the country in which the  
21          project will be carried out, certifies to the ap-  
22          propriate committees of Congress that the  
23          country has the capability (in both financial  
24          and human resources) to effectively maintain  
25          and utilize the project.

1           (2) CONSIDERATIONS.—In making a certifi-  
2           cation under paragraph (1) with respect to a capital  
3           project, the Secretary of Defense, the Secretary of  
4           State, and the Administrator of the United States  
5           Agency for International Development shall take  
6           into account the status of the maintenance and utili-  
7           zation of capital projects, if any, in the country in  
8           which the project is to be carried out that were pre-  
9           viously financed or assisted by the United States.

10          (b) CAPITAL PROJECTS.—

11           (1) IN GENERAL.—A capital project described  
12           in this subsection is any capital project overseas for  
13           an overseas contingency operation that is for the  
14           benefit of the host country, is funded by the Depart-  
15           ment of Defense, the Department of State, or the  
16           United States Agency for International Development  
17           using covered funds, and has an estimated value in  
18           excess of \$1,000,000.

19           (2) EXCLUSION.—A capital project described in  
20           this subsection does not include any project for mili-  
21           tary construction (as that term is defined in section  
22           114(b) of title 10, United States Code) or a military  
23           family housing project under section 2821 of such  
24           title.

1           (c) TERMINATION OF UNSUSTAINABLE PROJECTS IN  
2 PROGRESS.—

3           (1) IN GENERAL.—Effective 180 days after the  
4 date of the enactment of this Act, the Secretary of  
5 Defense, the Secretary of State, or the Adminis-  
6 trator of the United States Agency for International  
7 Development, as applicable, shall terminate each  
8 capital project described in subsection (b) that is in  
9 progress, but not completed, as of the date of the  
10 enactment of this Act if the Secretary or Adminis-  
11 trator, as applicable—

12           (A) determines, in consultation with the  
13 United States commander of military operations  
14 in the country in which the project is being car-  
15 ried out, that the country does not have the ca-  
16 pability (in both financial and human resources)  
17 to effectively maintain and utilize the project;  
18 or

19           (B) has not made any determination on  
20 the matters described in subparagraph (A) with  
21 respect to the project.

22           (2) WAIVER.—The Secretary of Defense, the  
23 Secretary of State, or the Administrator of the  
24 United States Agency for International Develop-  
25 ment, as applicable, may waive the requirement for

1 termination of a project under paragraph (1) if the  
2 Secretary or Administrator, as applicable, submits to  
3 the appropriate committees of Congress—

4 (A) a written certification that the project  
5 is vital to a military or security objective of the  
6 United States; and

7 (B) a plan of how the country will have the  
8 capability required under paragraph (1) by the  
9 time of the capital project's completion.

10 (d) DEFINITIONS.—In this section:

11 (1) The term “capital project” has the meaning  
12 given the term in section 308 of the Aid, Trade, and  
13 Competitiveness Act of 1992 (title III of Public Law  
14 102–549; 22 U.S.C. 2421e; 106 Stat. 3660).

15 (2) The term “covered funds” means the fol-  
16 lowing:

17 (A) Amounts in the Afghanistan Infra-  
18 structure Fund.

19 (B) Amounts in the Afghanistan Security  
20 Forces Funds.

21 (C) Amounts available for the Com-  
22 manders' Emergency Response Program.

23 (D) Amounts available for the Iraq Relief  
24 and Reconstruction Fund.

1           (E) Any other funds authorized to be ap-  
2           propriated for the Department of Defense, the  
3           Department of State, or the United States  
4           Agency for International Development, as appli-  
5           cable, that are made available for a capital  
6           project.

7 **SEC. 107. EXPANSION OF OVERSIGHT OFFICES IN DEPART-**  
8           **MENT OF DEFENSE, THE DEPARTMENT OF**  
9           **STATE, AND THE UNITED STATES AGENCY**  
10          **FOR INTERNATIONAL DEVELOPMENT.**

11          (a) DEPARTMENT OF DEFENSE.—

12           (1) ASSISTANT SECRETARY OF DEFENSE FOR  
13          CONTINGENCY CONTRACTING.—Section 138(b) of  
14          title 10, United States Code, is amended by adding  
15          at the end the following new paragraph:

16          “(11) One of the Assistant Secretaries shall be the  
17          Assistant Secretary of Defense for Contingency Con-  
18          tracting. The Assistant Secretary of Defense for Contin-  
19          gency Contracting is the principal adviser to the Secretary  
20          of Defense and the Under Secretary of Defense for Acqui-  
21          sition, Technology, and Logistics on matters relating to  
22          planning, funding, staffing, and managing contingency  
23          contracting of the Department of Defense.”.

24           (2) REQUIREMENT TO ESTABLISH OFFICE OF  
25          CONTINGENCY CONTRACTING.—The Secretary of De-

1       fense shall rename and expand the Office of Pro-  
2       gram Support in the Office of the Under Secretary  
3       of Defense for Acquisition, Technology, and Logis-  
4       tics as the Office of Contingency Contracting. The  
5       Office of Contingency Contracting shall be headed  
6       by the Assistant Secretary of Defense for Contin-  
7       gency Contracting and shall be responsible for plan-  
8       ning, funding, staffing, and managing contingency  
9       contracting in the Department of Defense.

10       (b) DEPARTMENT OF STATE.—

11               (1) ASSISTANT SECRETARY OF STATE FOR CON-  
12       TINGENCY CONTRACTING.—

13               (A) IN GENERAL.—There shall be in the  
14       Department of State an Assistant Secretary of  
15       State for Contingency Contracting who shall be  
16       the principal adviser to the Secretary of State  
17       on matters relating to planning, funding, staff-  
18       ing, and managing contingency contracting of  
19       the Department of State.

20               (B) CONFORMING AMENDMENTS.—(i) Sec-  
21       tion 1(c)(1) of the State Department Basic Au-  
22       thorities Act of 1956 (22 U.S.C. 2651a(c)(1))  
23       is amended by striking “24” and inserting  
24       “25”.

1           (ii) Section 5315 of title 5, United States  
2           Code, is amended by striking “Assistant Secre-  
3           taries of State (24)” and inserting “Assistant  
4           Secretaries of State (25)”.

5           (2) REQUIREMENT TO ESTABLISH OFFICE OF  
6           CONTINGENCY CONTRACTING.—The Secretary of  
7           State shall establish an Office of Contingency Con-  
8           tracting in the Department of State. The Office of  
9           Contingency Contracting shall be headed by the As-  
10          sistant Secretary of State for Contingency Con-  
11          tracting and shall be responsible for planning, fund-  
12          ing, staffing, and managing contingency contracting  
13          in the Department of State.

14          (3) DEFINITION.—In this subsection, the term  
15          “contingency contracting” means all stages of the  
16          process of acquiring property or services by the De-  
17          partment of State during an overseas contingency  
18          operation.

19          (c) USAID.—

20          (1) ASSISTANT ADMINISTRATOR FOR CONTIN-  
21          GENCY CONTRACTING.—There shall be in the United  
22          States Agency for International Development an As-  
23          sistant Administrator for Contingency Contracting  
24          who shall be the principal adviser to the Adminis-  
25          trator of the Agency on matters relating to planning,

1 funding, staffing, and managing contingency con-  
2 tracting of the Agency.

3 (2) REQUIREMENT TO ESTABLISH OFFICE OF  
4 CONTINGENCY CONTRACTING.—The Administrator  
5 of the United States Agency for International Devel-  
6 opment shall establish an Office of Contingency Con-  
7 tracting in the Agency. The Office of Contingency  
8 Contracting shall be headed by the Assistant Admin-  
9 istrator for Contingency Contracting and shall be re-  
10 sponsible for planning, funding, staffing, and man-  
11 aging contingency contracting in the Agency.

12 (3) DEFINITION.—In this subsection, the term  
13 “contingency contracting” means all stages of the  
14 process of acquiring property or services by the  
15 United States Agency for International Development  
16 during an overseas contingency operation.

17 **SEC. 108. INSPECTOR GENERAL REVIEWS AND EVALUA-**  
18 **TIONS.**

19 (a) ANNUAL REVIEW AND EVALUATION.—Not later  
20 than 30 days after the date of the enactment of this Act,  
21 the Inspector General of the Department of Defense, the  
22 Department of State, and the United States Agency for  
23 International Development shall each review and evaluate  
24 noncompetitive contracts and one-offer contracts in the  
25 Department of Defense, the Department of State, and the

1 United States Agency for International Development, re-  
2 spectively.

3 (b) ANNUAL REPORT.—Not later than one year after  
4 the date of the enactment of this Act, and each year there-  
5 after, each Inspector General referred to in subsection (a)  
6 shall prepare a report on the following:

7 (1) The number of noncompetitive contracts  
8 awarded by the Department of Defense, the Depart-  
9 ment of State, or the United States Agency for  
10 International Development, as applicable, in the pre-  
11 vious year.

12 (2) The number of one-offer contracts awarded  
13 by such department or agency, as applicable, in the  
14 previous year.

15 (3) The justification and approvals required  
16 under section 3304 of title 41, United States Code,  
17 or section 2304(f) of title 10, United States Code,  
18 as applicable, and associated regulations for each  
19 noncompetitive and one-offer contracted listed under  
20 paragraphs (1) and (2).

21 (4) An assessment of whether the contracting  
22 practices of the Department of Defense, the Depart-  
23 ment of State, or the United States Agency for  
24 International Development, as applicable, are in  
25 keeping with the purposes and goals of promoting

1 and providing for full and open competition in solici-  
2 iting offers and awarding contracts over the sim-  
3 plified acquisition threshold.

4 (c) SUBMISSION OF REPORT.—Each Inspector Gen-  
5 eral referred to in subsection (a) shall submit the report  
6 required by subsection (b) to the appropriate committees  
7 of Congress and, in addition, to the head of the applicable  
8 department or agency.

9 (d) DEFINITIONS.—In this section:

10 (1) NONCOMPETITIVE CONTRACT.—The term  
11 “noncompetitive contract” means a contract that is  
12 awarded without soliciting bids from more than one  
13 vendor.

14 (2) ONE-OFFER CONTRACTS.—The term “one-  
15 offer contract” means a contract awarded after re-  
16 ceiving a bid from only one qualified vendor.

17 **SEC. 109. TAX TREATMENT OF CERTAIN CIVILIAN EMPLOY-**  
18 **EES OF DEPARTMENT OF DEFENSE IN COM-**  
19 **BAT ZONES.**

20 (a) EXCLUSION OF COMBAT ZONE COMPENSA-  
21 TION.—

22 (1) IN GENERAL.—Subsection (d) of section  
23 112 of the Internal Revenue Code of 1986 (relating  
24 to prisoners of war, etc.) is amended by adding at  
25 the end the following new paragraph:

1           “(4) CIVILIAN CONTRACTING EMPLOYEES OF  
2 DEPARTMENT OF DEFENSE.—

3           “(A) SERVICE IN COMBAT ZONE.—Gross  
4 income does not include so much of compensa-  
5 tion as does not exceed the maximum enlisted  
6 amount received for active service as a civilian  
7 employee of the Department of Defense serving  
8 in the acquisition workforce (as defined in sec-  
9 tion 1705(g) of title 10, United States Code) in  
10 support of the Armed Forces of the United  
11 States for any month during any part of which  
12 such employee—

13                   “(i) served in a combat zone,

14                   “(ii) was hospitalized as a result of  
15 wounds, disease, or injury incurred while  
16 serving in a combat zone, or

17                   “(iii) is in a missing status as a result  
18 of such service.

19 Clause (ii) shall not apply for any month begin-  
20 ning more than 2 years after the date of the  
21 termination of combatant activities in such  
22 zone.

23           “(B) MISSING STATUS.—For purposes of  
24 this paragraph, the terms ‘active service’ and  
25 ‘missing status’ have the respective meanings

1 given to such terms by section 5561 of title 5  
2 of the United States Code.”.

3 (2) CLERICAL AMENDMENTS.—

4 (A) The heading for section 112 of such  
5 Code is amended to read as follows:

6 **“SEC. 112. CERTAIN COMBAT ZONE COMPENSATION.”.**

7 (B) The item relating to section 112 in the  
8 table of sections for part III of subchapter B of  
9 chapter 1 of such Code is amended to read as  
10 follows:

“Sec. 112. Certain combat zone compensation.”.

11 (3) EFFECTIVE DATE.—The amendments made  
12 by this subsection shall apply to compensation for  
13 periods after the date of the enactment of this Act.

14 (b) ADDITIONAL ESTATE TAX NOT TO APPLY.—

15 (1) IN GENERAL.—Subsection (b) of section  
16 2201 of such Code is amended by inserting “or  
17 while in service as a civilian employee of the Depart-  
18 ment of Defense in the acquisition workforce (as de-  
19 fined in section 1705(g) of title 10, United States  
20 Code) in support of the Armed Forces of the United  
21 States,” after “United States,”.

22 (2) CLERICAL AMENDMENTS.—

23 (A) The heading for section 2201 of such  
24 Code is amended by inserting “**AND CERTAIN**



1 **TITLE II—MATTERS RELATING**  
2 **TO SECURITY ASSISTANCE**  
3 **AND COUNTERTERRORISM**

4 **SEC. 201. REPORT ON UNITED STATES STRATEGY RELAT-**  
5 **ING TO AFGHANISTAN.**

6 (a) REPORT.—Not later than 180 days after the date  
7 of the enactment of this Act, the Secretary of Defense,  
8 in consultation with the Director of National Intelligence,  
9 the Secretary of State, the Secretary of the Treasury (act-  
10 ing through the head of the Office of Foreign Assets Con-  
11 trol), the Attorney General, and any other officials the  
12 Secretary of Defense considers appropriate, shall submit  
13 to the appropriate congressional committees, the congress-  
14 sional intelligence committees, and the Director of the Na-  
15 tional Security Council a report on the success of the  
16 United States mission in Afghanistan, including the suc-  
17 cess of the strategy in Afghanistan in achieving the United  
18 States global counterterrorism goals and the success of the  
19 strategy of relying on the international donor community  
20 to provide development assistance and other related assist-  
21 ance to Afghanistan.

22 (b) FORM OF SUBMISSION.—The report required  
23 under subsection (a) shall be submitted in an unclassified  
24 form, but may include a classified annex.

25 (c) DEFINITIONS.—In this section:

1           (1) APPROPRIATE CONGRESSIONAL COMMIT-  
2           TEES.—The term “appropriate congressional com-  
3           mittees” has the meaning provided by section 3 and  
4           also includes the following:

5                   (A) The Committee on the Budget; the  
6                   Committee on Banking, Housing, and Urban  
7                   Affairs; and the Committee on the Judiciary of  
8                   the Senate.

9                   (B) The Committee on the Budget; the  
10                  Committee on Financial Services; and the Com-  
11                  mittee on the Judiciary of the House of Rep-  
12                  resentatives.

13           (2) CONGRESSIONAL INTELLIGENCE COMMIT-  
14           TEES.—The term “congressional intelligence com-  
15           mittees” means—

16                   (A) the Select Committee on Intelligence of  
17                   the Senate; and

18                   (B) the Permanent Select Committee on  
19                   Intelligence of the House of Representatives.

20 **SEC. 202. IMPROVING UNITED STATES FOREIGN POLICE AS-**  
21 **SISTANCE ACTIVITIES.**

22           (a) FINAL REPORT.—

23                   (1) IN GENERAL.—Not later than 60 days after  
24                   the date of the enactment of this Act, the President  
25                   shall submit to the relevant congressional commit-

1       tees the final report from the National Security  
2       Council’s Interagency Policy Committee on Security  
3       Sector Assistance.

4               (2) ADDITIONAL MATTERS.—The report shall  
5       include associated recommendations on—

6                       (A) the roles and responsibilities of Fed-  
7                       eral departments and agencies responsible for  
8                       security sector assistance; and

9                       (B) United States Government policy guid-  
10                      ance on security sector assistance.

11       (b) PLAN.—Not later than 180 days after the date  
12 of the enactment of this Act, the Secretaries of Defense  
13 and State shall jointly submit to the relevant congressional  
14 committees a plan to institute mechanisms to better co-  
15 ordinate, document, disseminate, and share information  
16 analysis and assessments regarding United States foreign  
17 police assistance activities with, by, and between each Fed-  
18 eral department and agency responsible for foreign police  
19 assistance activities, the international community, and  
20 partner countries in the region.

21       (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-  
22 FINED.—In this section, the term “relevant congressional  
23 committees” means the appropriate committees of Con-  
24 gress other than the Committees on Appropriations.

1 **SEC. 203. UNITED STATES PLAN FOR SUSTAINING THE AF-**  
2 **GHANISTAN NATIONAL SECURITY FORCES.**

3 (a) **PLAN REQUIRED.**—Section 1231(a) of the Na-  
4 tional Defense Authorization Act for Fiscal Year 2008  
5 (Public Law 110–181; 122 Stat. 390) is amended—

6 (1) by striking “fiscal year 2010” and inserting  
7 “fiscal year 2013”; and

8 (2) by adding at the end the following new sen-  
9 tence: “The report shall include metrics that evalu-  
10 ate the value and utility of ANSF development ac-  
11 tivities at the program level and that ties such ac-  
12 tivities to long-term strategic objectives.”.

13 (b) **APPROPRIATE CONGRESSIONAL COMMITTEES**  
14 **DEFINED.**—Section 1231(d) of the National Defense Au-  
15 thorization Act for Fiscal Year 2008 (Public Law 110–  
16 181; 122 Stat. 390) is amended—

17 (1) in paragraph (1), by inserting “the Com-  
18 mittee on Oversight and Government Reform,” after  
19 “Appropriations,”; and

20 (2) in paragraph (2), by inserting “the Com-  
21 mittee on Homeland Security and Governmental Af-  
22 fairs,” after “Appropriations,”.

○