

112TH CONGRESS
1ST SESSION

S. 1428

To phase out the use of private military contractors.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2011

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To phase out the use of private military contractors.

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 “Stop Outsourcing Se-
5 curity Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The United States Government is increas-
9 ingly relying on armed private security contractors
10 to perform mission-critical and emergency essential
11 functions that historically have been performed by
12 United States military or Government personnel.

1 (2) As of March 2011, the Department of De-
2 fense had approximately 155,000 contract employees
3 operating in Iraq and Afghanistan, as compared to
4 145,000 members of the United States Armed
5 Forces operating in these two theaters of war.

6 (3) As of March 2011, the Department of De-
7 fense had deployed 9,207 armed private security
8 contractors in Iraq and 18,971 in Afghanistan, a
9 change from 10,743 and 4,111, respectively, in
10 March 2009.

11 (4) As of April 1, 2011, the Department of
12 State had over 2,500 security contractors in Iraq
13 and 1,272 in Afghanistan, under the Worldwide Per-
14 sonal Protective Services (WPPS) contract.

15 (5) In September 2009, photos were published
16 showing employees of ArmorGroup North America
17 (AGNA), hired by the Department of State to pro-
18 vide security at the United States Embassy in
19 Kabul, engaging in lewd sexual hazing and harass-
20 ment.

21 (6) Before the September 2009 incident, the
22 Department of State had issued multiple deficiency
23 notices, a cure notice, and a show-cause notice ex-
24 pressing grave concerns about the company's per-
25 formance on the contract; one Department of State

1 official even wrote that the company’s deficiencies
2 “endanger performance of the contract to such a de-
3 gree that the security of the U.S. Embassy in Kabul
4 is in jeopardy”.

5 (7) On July 7, 2011, the Department of Justice
6 announced that Armor Group North America paid a
7 \$7,500,000 settlement to resolve charges that the
8 company submitted false claims for payment on a
9 Department of State contract; the settlement re-
10 solves claims that AGNA guards violated the Traf-
11 ficking Victims Protection Act of 2000 (22 U.S.C.
12 7101 et seq.) by visiting brothels in Kabul with the
13 knowledge of AGNA’s management, as well as alle-
14 gations that AGNA misrepresented the prior work
15 experience of 38 third country nationals hired to
16 guard the embassy.

17 (8) A 2010 investigation by the Committee on
18 Armed Services of the Senate found that EOD
19 Technology, the company hired to take over protec-
20 tion of the Kabul Embassy from AGNA, was sus-
21 pected of hiring local warlords with possible Taliban
22 ties, and in March 2011, the EODT contract was
23 terminated for default.

24 (9) In May 2009, four men employed as mili-
25 tary trainers for Paravant LLC, a Blackwater affil-

1 iate, fired on a civilian vehicle in Kabul, killing one
2 Afghan and wounding two others; two of the guards
3 were convicted of involuntary manslaughter in
4 March 2011.

5 (10) On September 16, 2007, individuals hired
6 by the company then known as Blackwater USA
7 opened fire on Baghdad's Nisour Square, killing 17
8 Iraqis and wounding at least 20 others.

9 (11) In August 2010, XE Services, LLC, the
10 company formerly known as Blackwater, entered
11 into a civil settlement with the Department of State,
12 under which the company agreed to pay a penalty of
13 \$42,000,000 for 288 alleged violations of the Arms
14 Export Control Act (AECA) (22 U.S.C. 2751 et
15 seq.) and the International Traffic in Arms Regula-
16 tions (ITAR) (22 C.F.R. 120.1 et seq.).

17 (12) In July 2010, The Washington Post
18 quoted Secretary of Defense Robert Gates as saying,
19 "This is a terrible confession . . . I can't get a num-
20 ber on how many contractors work for the Office of
21 the Secretary of Defense."

22 (13) On October 18, 2007, Secretary Gates
23 stated that the work of many contractors in Iraq is
24 "at cross-purposes to our larger mission in Iraq,"
25 and that "right now those missions are in conflict".

1 (14) In 2007, the Committee on Oversight and
2 Government Reform of the House of Representatives
3 investigated Blackwater's employment practices and
4 found that the company's classification of its secu-
5 rity guards may have allowed the firm to avoid pay-
6 ing Social Security, Medicare, and Federal income
7 and employment taxes.

8 (15) On Christmas Eve 2006, Blackwater con-
9 tractor Andrew Moonen, while drunk, shot and killed
10 a guard to Iraqi Vice President Adil Abd-al-Mahdi
11 in the Green Zone, and though Mr. Moonen lost his
12 job with Blackwater as a result of this incident, he
13 was promptly hired by Combat Support Associates,
14 another Department of Defense contractor, and sent
15 to work in Kuwait.

16 (16) In the wake of the 2004 killing of four
17 Blackwater contractors in Fallujah, the families of
18 the men killed filed a civil suit against the company,
19 alleging that Blackwater failed to properly equip and
20 man its armored vehicles; after nearly seven years in
21 court, the case was thrown out when the families
22 could reportedly no longer pay the court costs.

23 (17) Xe Services, LLC, the company formerly
24 known as Blackwater, has also faced allegations of
25 weapons smuggling and improperly licensing fire-

1 arms; in April 2010, five former Blackwater employ-
2 ees, including former president Gary Jackson, were
3 indicted on charges including conspiring to violate
4 Federal firearm laws, possession of unregistered fire-
5 arms, and obstruction of justice.

6 (18) In response to a request from the Com-
7 mittee on Oversight and Government Reform of the
8 House of Representatives, the Inspector General of
9 the Small Business Administration investigated
10 Blackwater in 2008 and found that the company
11 may have misrepresented its small business status,
12 enabling it to qualify for \$110,000,000 in govern-
13 ment contracts set aside specifically for small busi-
14 nesses.

15 (19) Signed affidavits were filed in a civil law-
16 suit against Blackwater that company founder Erik
17 Prince views himself “as a Christian crusader tasked
18 with eliminating Muslims and the Islamic faith from
19 the globe”, that he knowingly deployed “demon-
20 strably unfit men” to Iraq, and that he used illegal
21 ammunition, including a bullet designed to explode
22 after entering the human body, among other
23 charges.

24 (20) In November 2007, a contractor employed
25 by DynCorp International, LLC, reportedly shot and

1 killed an unarmed taxi driver who, according to wit-
2 nesses, posed no threat to the DynCorp convoy.

3 (21) A January 2007 report by the Special In-
4 spector General for Iraq Reconstruction stated that
5 DynCorp billed the United States for millions of dol-
6 lars of work that was never authorized.

7 (22) In October 2007, an audit report issued by
8 the Special Inspector General for Iraq Reconstruc-
9 tion stated that the Department of State “does not
10 know specifically what it received for most of the
11 \$1,200,000,000 in expenditures under its DynCorp
12 Contract for the Iraqi Police Training Program”.

13 (23) Congress does not have complete access to
14 information about all security contracts, the number
15 of armed private security contractors working in
16 Iraq, Afghanistan, and other combat zones, the
17 number of contractors who have died, and any dis-
18 ciplinary actions taken against contract personnel or
19 companies.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) MISSION CRITICAL OR EMERGENCY ESSEN-
23 TIAL FUNCTIONS.—The term “mission critical or
24 emergency essential functions”—

25 (A) means—

1 (i) activities for which continued per-
2 formance is considered essential to support
3 combat systems and operational activities;
4 or

5 (ii) activities the delay, absence, or
6 failure of performance of which would sig-
7 nificantly affect the broader success or fail-
8 ure of a military operation; and

9 (B) includes—

10 (i) the provision of protective services,
11 including diplomatic security services;

12 (ii) the provision of security advice
13 and planning;

14 (iii) military and police training;

15 (iv) prison administration;

16 (v) interrogation; and

17 (vi) intelligence.

18 (2) CONTINGENCY OPERATION.—The term
19 “contingency operation” has the meaning given the
20 term in section 101(a)(13) of title 10, United States
21 Code.

22 (3) OTHER SIGNIFICANT MILITARY OPER-
23 ATIONS.—The term “other significant military oper-
24 ations” means activities, other than combat oper-
25 ations, that are carried out by United States Armed

1 Forces in an uncontrolled or unpredictable high-
2 threat environment where personnel performing se-
3 curity functions may be called upon to use deadly
4 force.

5 (4) SPECIFIED CONGRESSIONAL COMMIT-
6 TEES.—The term “specified congressional commit-
7 tees” means the following committees:

8 (A) The Committee on Armed Services, the
9 Committee on Homeland Security and Govern-
10 mental Affairs, the Committee on Appropria-
11 tions, the Committee on Foreign Relations, and
12 the Select Committee on Intelligence of the
13 Senate.

14 (B) The Committee on Armed Services,
15 the Committee on Oversight and Government
16 Reform, the Committee on Appropriations, the
17 Committee on Foreign Affairs, and the Perma-
18 nent Select Committee on Intelligence of the
19 House of Representatives.

20 **SEC. 4. REQUIREMENT FOR GOVERNMENT PERSONNEL TO**
21 **PERFORM DIPLOMATIC SECURITY IN AREAS**
22 **OF CONTINGENCY OPERATIONS AND OTHER**
23 **SIGNIFICANT MILITARY OPERATIONS.**

24 Not later than 180 days after the date of the enact-
25 ment of this Act, the Secretary of State shall ensure that

1 all personnel working on behalf of the United States at
2 any United States diplomatic or consular mission in areas
3 of contingency operations and other significant military
4 operations are provided diplomatic security services only
5 by United States Government personnel.

6 **SEC. 5. REQUIREMENTS RELATING TO CONTRACTORS PER-**
7 **FORMING MISSION CRITICAL OR EMERGENCY**
8 **ESSENTIAL FUNCTIONS IN ALL AREAS OF**
9 **CONTINGENCY OPERATIONS AND OTHER SIG-**
10 **NIFICANT MILITARY OPERATIONS.**

11 (a) REPORT BY PRESIDENT.—

12 (1) REQUIREMENT.—Not later than June 1,
13 2012, the President shall submit to the specified
14 congressional committees a report on the status of
15 planning for the transition away from the use of pri-
16 vate contractors for mission critical or emergency es-
17 sential functions by January 1, 2013, in all areas of
18 contingency operations and other significant military
19 operations.

20 (2) ADDITIONAL MATTERS COVERED.—If the
21 report submitted under paragraph (1) states that
22 the relevant agencies will not be able to transition to
23 government and military personnel for such func-
24 tions by January 1, 2013, the President shall in-
25 clude in the report the following:

1 (A) A statement of the reasons why the
2 relevant agencies are unable to do so, the date
3 by which they will be able to do so, and the
4 plan to ensure that they will be able to do so
5 by that date.

6 (B) A certification that—

7 (i) all contract employees have under-
8 gone background checks to ensure that
9 they do not have criminal records and have
10 not been accused of human rights abuses;

11 (ii) no contract employees are subject
12 to pending criminal charges;

13 (iii) all contract employees are under
14 the jurisdiction of section 3261 of title 18,
15 United States Code (relating to military
16 extraterritorial jurisdiction);

17 (iv) contract employees, if accused of
18 crimes by the host country, must remain in
19 United States custody; and

20 (v) contracts include whistleblower
21 protections for employees to provide good
22 faith information to management, govern-
23 ment agencies, and Congress of any con-
24 tract violations, human rights abuses, or
25 criminal actions.

1 (3) FORM OF REPORT.—The report required by
2 this subsection shall be submitted in unclassified
3 form, to the maximum extent possible, but may con-
4 tain a classified annex, if necessary.

5 (b) EXAMINATION OF CONTRACTOR ACCOUNTING
6 PRACTICES.—Any individual or entity under contract with
7 the Federal Government to provide mission critical or
8 emergency essential functions after January 1, 2013, shall
9 allow the specified congressional committees to examine
10 their accounting practices with respect to any such con-
11 tract quarterly and upon request.

12 (c) REQUIREMENTS RELATING TO CONTRACT RE-
13 NEWALS.—Any contract with the Federal Government re-
14 quiring personnel to perform mission critical or emergency
15 essential functions that is proposed to be renewed after
16 the date of the enactment of this Act may be renewed only
17 if—

18 (1) the President reports to the specified con-
19 gressional committees that the relevant agency does
20 not have adequate personnel to perform the duties
21 stipulated in the contract; and

22 (2) the President certifies that—

23 (A) all contract employees have undergone
24 background checks to ensure that they do not

1 have criminal records and have not been ac-
2 cused of human rights abuses;

3 (B) no contract employees are subject to
4 pending criminal charges;

5 (C) all contract employees are under the
6 jurisdiction of section 3261 of title 18, United
7 States Code (relating to military extraterritorial
8 jurisdiction);

9 (D) contract employees, if accused of
10 crimes by the host country, must remain in the
11 custody of the United States; and

12 (E) the contract includes whistleblower
13 protections for employees to provide good faith
14 information to management, government agen-
15 cies, and Congress of any contract violations,
16 human rights abuses, or criminal actions.

17 **SEC. 6. CONGRESSIONAL ACCESS TO CONTRACTS.**

18 (a) REQUIREMENT TO ALLOW CONGRESS ACCESS TO
19 COPIES AND DESCRIPTIONS OF CERTAIN CONTRACTS AND
20 TASK ORDERS.—

21 (1) REQUIREMENT REGARDING CONTRACTS
22 AND TASK ORDERS BEFORE ENACTMENT.—The Sec-
23 retary of Defense, the Secretary of State, the Sec-
24 retary of the Interior, and the Administrator of the
25 United States Agency for International Development

1 shall allow the chairman and the ranking minority
2 member of each specified congressional committee
3 access to a copy of, and a description of the work
4 performed or to be performed under, each contract,
5 and each task order issued under an existing con-
6 tract, in an amount greater than \$5,000,000 entered
7 into by the Department of Defense, the Department
8 of State, the Department of the Interior, and the
9 United States Agency for International Develop-
10 ment, respectively, during the period beginning on
11 October 1, 2001, and ending on the last day of the
12 month during which this Act is enacted for work to
13 be performed in areas of contingency operations and
14 other significant military operations.

15 (2) FORM OF SUBMISSIONS.—The copies and
16 descriptions required by paragraph (1) shall be sub-
17 mitted in unclassified form, to the maximum extent
18 possible, but may contain a classified annex, if nec-
19 essary.

20 (b) REPORTS ON CONTRACTS FOR WORK TO BE
21 PERFORMED IN AREAS OF CONTINGENCY OPERATIONS
22 AND OTHER SIGNIFICANT MILITARY OPERATIONS.—The
23 Secretary of Defense, the Secretary of State, the Secretary
24 of the Interior, and the Administrator of the United States
25 Agency for International Development shall each submit

1 to each specified congressional committee a report not
2 later than 60 days after the date of the enactment of this
3 Act that contains the following information:

4 (1) The number of persons performing work in
5 areas of contingency operations and other significant
6 military operations under contracts (and sub-
7 contracts at any tier) entered into by Department of
8 Defense, the Department of State, the Department
9 of the Interior, and the United States Agency for
10 International Development, respectively.

11 (2) The total cost of such contracts.

12 (3) The total number of persons who have been
13 wounded or killed in performing work under such
14 contracts.

15 (4) A description of the disciplinary actions
16 that have been taken against persons performing
17 work under such contracts by the contractor, the
18 United States Government, or the government of
19 any country in which the area of contingency oper-
20 ations or other significant military operations is lo-
21 cated.

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