

112TH CONGRESS
2D SESSION

S. 2234

To prevent human trafficking in government contracting.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2012

Mr. BLUMENTHAL (for himself, Mr. PORTMAN, Mr. FRANKEN, Mr. RUBIO, Ms. COLLINS, Mr. LIEBERMAN, and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To prevent human trafficking in government contracting.

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 “End Trafficking in
5 Government Contracting Act of 2012”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) EXECUTIVE AGENCY.—The term “executive
9 agency” has the meaning given the term in section
10 133 of title 41, United States Code.

1 (2) SUBCONTRACTOR.—The term “subcon-
2 tractor” means a recipient of a contract at any tier
3 under a grant, contract, or cooperative agreement.

4 (3) SUBGRANTEE.—The term “subgrantee”
5 means a recipient of a grant at any tier under a
6 grant or cooperative agreement.

7 (4) UNITED STATES.—The term “United
8 States” has the meaning provided in section 103(12)
9 of the Trafficking Victims Protection Act of 2000
10 (22 U.S.C. 7102(12)).

11 **SEC. 3. CONTRACTING REQUIREMENTS.**

12 Section 106(g) of the Trafficking Victims Protection
13 Act of 2000 (22 U.S.C. 7104(g)) is amended by striking
14 “if the grantee or any subgrantee,” and all that follows
15 through the period at the end and inserting the following:
16 “or take any of the other remedial actions authorized
17 under section 5(c) of the End Trafficking in Government
18 Contracting Act of 2012, if the grantee or any subgrantee,
19 or the contractor or any subcontractor, engages in, or uses
20 labor recruiters, brokers, or other agents who engage in—

21 “(i) severe forms of trafficking in per-
22 sons;

23 “(ii) the procurement of a commercial
24 sex act during the period of time that the

1 grant, contract, or cooperative agreement
2 is in effect;

3 “(iii) the use of forced labor in the
4 performance of the grant, contract, or co-
5 operative agreement, or

6 “(iv) acts that directly support or ad-
7 vance trafficking in persons, including the
8 following acts:

9 “(I) Destroying, concealing, re-
10 moving, or confiscating an employee’s
11 immigration documents without the
12 employee’s consent.

13 “(II) Failing to repatriate an em-
14 ployee upon the end of employment,
15 unless—

16 “(aa) exempted from the
17 duty to repatriate by the Federal
18 department or agency providing
19 or entering into the grant, con-
20 tract, or cooperative agreement;
21 or

22 “(bb) the employee is a vic-
23 tim of human trafficking seeking
24 victim services or legal redress in
25 the country of employment or a

1 witness in a human trafficking
2 enforcement action.

3 “(III) Soliciting a person for the
4 purpose of employment, or offering
5 employment, by means of materially
6 false or fraudulent pretenses, rep-
7 resentations, or promises regarding
8 that employment.

9 “(IV) Charging recruited employ-
10 ees exorbitant placement fees, includ-
11 ing fees equal to or greater than the
12 employee’s monthly salary, or recruit-
13 ment fees that violate the laws of the
14 country from which an employee is re-
15 cruited.

16 “(V) Providing inhumane living
17 conditions.”.

18 **SEC. 4. COMPLIANCE PLAN AND CERTIFICATION REQUIRE-**

19 **MENT.**

20 (a) **REQUIREMENT.**—The head of an executive agen-
21 cy may not provide or enter into a grant, contract, or coop-
22 erative agreement valued at \$1,000,000 or more if per-
23 formance will predominantly be conducted overseas, unless
24 a duly designated representative of the recipient of such
25 grant, contract, or cooperative agreement certifies to the

1 contracting or grant officer prior to receiving an award
2 and on an annual basis thereafter, after having conducted
3 due diligence, that—

4 (1) the recipient has implemented a plan to pre-
5 vent the activities described in section 106(g) of the
6 Trafficking Victims Protection Act of 2000 (22
7 U.S.C. 7104(g)), as amended by section 3, and is in
8 compliance with that plan;

9 (2) the recipient has implemented procedures to
10 prevent any activities described in such section
11 106(g) and to monitor, detect, and terminate any
12 subcontractor, subgrantee, or employee of the recipi-
13 ent found to be engaged in any activities described
14 in such section; and

15 (3) to the best of the representative's knowl-
16 edge, neither the recipient, nor any subcontractor or
17 subgrantee of the recipient or any agent of the re-
18 cipient or of such a subcontractor or subgrantee, is
19 engaged in any of the activities described in such
20 section.

21 (b) LIMITATION.—Any plan or procedures imple-
22 mented pursuant to subsection (a) shall be appropriate to
23 the size and complexity of the grant, contract, or coopera-
24 tive agreement and to the nature and scope of its activi-

1 ties, including the number of non-United States citizens
2 expected to be employed.

3 (c) DISCLOSURE.—The recipient shall provide a copy
4 of the plan to the contracting or grant officer upon re-
5 quest, and as appropriate, shall post the useful and rel-
6 evant contents of the plan or related materials on its
7 website and at the workplace.

8 (d) PERFORMANCE PREDOMINATELY OVERSEAS.—
9 For purposes of subsection (a), a grant, contract, or coop-
10 erative agreement shall be considered to be performed pre-
11 dominantly overseas if the estimated value of the services
12 required to be performed under the grant, contract, or co-
13 operative agreement outside the United States exceeds
14 \$500,000.

15 **SEC. 5. MONITORING AND INVESTIGATION OF TRAF-**
16 **FICKING IN PERSONS.**

17 (a) INVESTIGATION.—If the contracting or grant offi-
18 cer of an executive agency for a grant, contract, or cooper-
19 ative agreement receives credible evidence that a recipient
20 of the grant, contract, or cooperative agreement; any sub-
21 grantee or subcontractor of the recipient; or any agent of
22 the recipient or of such a subgrantee or subcontractor, has
23 engaged in an activity described in section 106(g) of the
24 Trafficking Victims Protection Act of 2000 (22 U.S.C.
25 7104(g)), as amended by section 3, including a report

1 from a contracting officer representative, an inspector
2 general, an auditor, an alleged victim or victim's rep-
3 resentative, or any other credible source, the contracting
4 or grant officer shall, before exercising any option to
5 renew such grant, contract, or cooperative agreement, re-
6 quest that the agency's Office of Inspector General imme-
7 diately initiate an investigation of the allegation or allega-
8 tions contained in the report. If the agency's Office of In-
9 spector General is unable to conduct a timely investiga-
10 tion, the suspension and debarment office or another in-
11 vestigative unit of the agency shall conduct the investiga-
12 tion.

13 (b) REPORT.—Upon completion of an investigation
14 under subsection (a), the office or unit that conducted the
15 investigation shall submit to the contracting or grant offi-
16 cer and, if such investigation was not conducted by the
17 agency's Office of Inspector General, to the agency's Of-
18 fice of Inspector General, a report on the investigation,
19 including conclusions about whether credible evidence ex-
20 ists that the recipient of a grant, contract, or cooperative
21 agreement; any subcontractor or subgrantee of the recipi-
22 ent; or any agent of the recipient or of such a subcon-
23 tractor or subgrantee, engaged in any of the activities de-
24 scribed in section 106(g) of the Trafficking Victims Pro-

1 tention Act of 2000 (22 U.S.C. 7104(g)), as amended by
2 section 3.

3 (c) REMEDIAL ACTIONS.—

4 (1) IN GENERAL.—If a contracting or grant of-
5 ficial determines that a recipient of a grant, con-
6 tract, or cooperative agreement, or any subcon-
7 tractor or subgrantee of the recipient, has engaged
8 in any of the activities described in such section
9 106(g), the contracting or grant officer shall con-
10 sider taking one or more of the following remedial
11 actions:

12 (A) Requiring the recipient to remove an
13 employee from the performance of work under
14 the grant, contract, or cooperative agreement.

15 (B) Requiring the recipient to terminate a
16 subcontract or subgrant.

17 (C) Suspending payments under the grant,
18 contract, or cooperative agreement.

19 (D) Withholding award fees, consistent
20 with the award fee plan, for the performance
21 period in which the agency determined the con-
22 tractor or subcontractor engaged in any of the
23 activities described in such section 106(g).

24 (E) Declining to exercise available options
25 under the contract.

1 (F) Terminating the contract for default
2 or cause, in accordance with the termination
3 clause for the contract.

4 (G) Referring the matter to the agency
5 suspension and debarment official.

6 (H) Referring the matter to the Depart-
7 ment of Justice for prosecution under any ap-
8 plicable law.

9 (2) SAVINGS CLAUSE.—Nothing in this sub-
10 section shall be construed as limiting the scope of
11 applicable remedies available to the Federal Govern-
12 ment.

13 (3) MITIGATING FACTOR.—Where applicable,
14 the contracting or grant official may consider wheth-
15 er the contractor or grantee had a plan in place
16 under section 4, and was in compliance with that
17 plan at the time of the violation, as a mitigating fac-
18 tor in determining which remedies, if any, should
19 apply.

20 (d) INCLUSION OF REPORT CONCLUSIONS IN
21 FAPIIS.—The contracting or grant officer shall ensure
22 that relevant findings contained in the report under sub-
23 section (b) are included in the Federal Awardee Perform-
24 ance and Integrity Information System (FAPIIS). These
25 findings shall be considered relevant past performance

1 data for the purpose of awarding future contracts, grants,
2 or cooperative agreements.

3 **SEC. 6. NOTIFICATION TO INSPECTORS GENERAL AND CO-**
4 **OPERATION WITH GOVERNMENT.**

5 The head of an executive agency making or awarding
6 a grant, contract, or cooperative agreement shall require
7 that the recipient of the grant, contract, or cooperative
8 agreement—

9 (1) immediately inform the Inspector General of
10 the executive agency of any information it receives
11 from any source that alleges credible evidence that
12 the recipient; any subcontractor or subgrantee of the
13 recipient; or any agent of the recipient or of such a
14 subcontractor or subgrantee, has engaged in conduct
15 described in section 106(g) of the Trafficking in Vic-
16 tims Protection Act of 2000 (22 U.S.C. 7104(g)), as
17 amended by section 3 of this Act; and

18 (2) fully cooperate with any Federal agencies
19 responsible for audits, investigations, or corrective
20 actions relating to trafficking in persons.

21 **SEC. 7. EXPANSION OF FRAUD IN FOREIGN LABOR CON-**
22 **TRACTING TO INCLUDE WORK OUTSIDE THE**
23 **UNITED STATES.**

24 Section 1351 of title 18, United States Code, is
25 amended—

1 (1) by striking “Whoever knowingly” and in-
2 serting “(a) WORK INSIDE THE UNITED STATES.—
3 Whoever knowingly”; and

4 (2) by adding at the end the following new sub-
5 section:

6 “(b) WORK OUTSIDE THE UNITED STATES.—Who-
7 ever knowingly and with intent to defraud recruits, solie-
8 its, or hires a person outside the United States or causes
9 another person to recruit, solicit, or hire a person outside
10 the United States, or attempts to do so, for purposes of
11 work performed on a United States Government contract
12 performed outside the United States, or on a United
13 States military installation or mission or other property
14 or premises owned or controlled by the United States Gov-
15 ernment, by means of materially false or fraudulent pre-
16 tenses, representations, or promises regarding that em-
17 ployment, shall be fined under this title or imprisoned for
18 not more than 5 years, or both.”.

19 **SEC. 8. IMPROVING DEPARTMENT OF DEFENSE ACCOUNT-**
20 **ABILITY FOR REPORTING TRAFFICKING IN**
21 **PERSONS CLAIMS AND VIOLATIONS.**

22 Section 105(d)(7)(H) of the Trafficking Victims Pro-
23 tection Act of 2000 (22 U.S.C. 7103(d)(7)(H)) is amend-
24 ed—

25 (1) in clause (ii), by striking “and” at the end;

1 (2) by redesignating clause (iii) as clause (iv);

2 (3) by inserting after clause (ii) the following

3 new clause:

4 “(iii) all known trafficking in persons
5 cases reported to the Under Secretary of
6 Defense for Personnel and Readiness;”;

7 (4) in clause (iv), as redesignated by paragraph
8 (2), by inserting “and” at the end after the semi-
9 colon; and

10 (5) by adding at the end the following new
11 clause:

12 “(v) all trafficking in persons activi-
13 ties of contractors reported to the Under
14 Secretary of Defense for Acquisition, Tech-
15 nology, and Logistics;”.

16 **SEC. 9. RULE OF CONSTRUCTION.**

17 Excluding section 7, nothing in this Act shall be con-
18 strued to supersede, enlarge, or diminish the common law
19 or statutory liabilities of any grantee, subgrantee, con-
20 tractor, subcontractor, or other party covered by section
21 106(g) of the Trafficking Victims Protection Act of 2000
22 (22 U.S.C. 7104(g)), as amended by section 3.

○