

S.1548

Department of Defense Authorization Act for Fiscal Year 2008 (Referred to Senate Committee with Instructions)

June 13, 2007

Referred to the Select Committee on Intelligence pursuant to section 3(b) of S. Res. 400, 94th Congress, as amended by S. Res. 445, 108th Congress, for a period not to exceed 10 days of session

A BILL

To authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, to prescribe military personnel strengths for such fiscal year, and for other purposes.

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SEC. 861. PROTECTION FOR CONTRACTOR EMPLOYEES FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION.

(a) Increased Protection From Reprisal- Subsection (a) of section 2409 of title 10, United States Code, is amended--

(1) by striking `disclosing to a Member of Congress or an authorized official of an agency or the Department of Justice' and inserting `disclosing to a Member of Congress, a representative of a committee of Congress, an Inspector General, the Government Accountability Office, a Department of Defense employee responsible for contract oversight or management, or an authorized official of an agency or the Department of Justice, including in the case of a disclosure made in the ordinary course of an employee's duties,'; and

(2) by striking `information relating to a substantial violation of law related to a contract' and inserting `information that the employee reasonably believes is evidence of gross mismanagement of a Department of Defense contract, a gross waste of Department of Defense funds, a substantial and specific danger to public health or safety, or a violation of law related to a Department of Defense contract'.

(b) Acceleration of Schedule for Denying Relief or Providing Remedy- Subsection (c) of such section is amended--

(1) in paragraph (1)--

(A) by inserting after `(1)' the following: `Not later than 90 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited under subsection (a).'; and

(B) by adding at the end the following new subparagraphs:

(D) In the event the disclosure relates to a cost-plus contract, prohibit the contractor from receiving one or more award fee payments to which the contractor would otherwise be eligible until such time as the contractor takes the actions ordered by the head of the agency pursuant to subparagraphs (A) through (C).

^ (E) Take the reprisal into consideration in any past performance evaluation of the contractor for the purpose of a contract award.';

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

^ (3)(A) In the case of a disclosure that relates to a contract covered under subsection (f), not later than 90 days after receipt of a written determination under paragraph (1), a complainant who is aggrieved by the determination or by an action that the agency head has taken or failed to take pursuant to such determination may bring an action at law or equity for de novo review to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

^ (B) In the event that a determination by an agency head pursuant to paragraph (1) has not been made within 15 months after a complaint is submitted under subsection (b), and such delay is not shown to be due to the bad faith of the complainant, the complainant shall be deemed to have exhausted the complainant's administrative remedies with respect to the complaint and may bring an action at law or equity described under subparagraph (A).'

(c) Legal Burden of Proof- Such section is further amended--

(1) by redesignating subsection (e) as subsection (g); and

(2) by inserting after subsection (d) the following new subsection:

^ (e) Legal Burden of Proof- The legal burdens of proof specified in section 1221(e) of title 5 shall be controlling for the purposes of any investigation conducted by an inspector general, decision by the head of an agency, or hearing to determine whether discrimination prohibited under this section has occurred.'

(d) Requirement To Notify Employees of Rights Related to Protection From Reprisal- Such section, as amended by subsection (c), is further amended by inserting after subsection (e) the following new subsection:

^ (f) Notice of Rights Related to Protection From Reprisal-

^ (1) IN GENERAL- Each Department of Defense contract in excess of \$5,000,000, other than a contract for the purchase of commercial items, shall include a clause requiring the contractor to ensure that all employees of the contractor who are working on Department of Defense contracts are notified of--

^ (A) their rights under this section;

^ (B) the fact that the restrictions imposed by any employee contract,

employee agreement, or non-disclosure agreement may not supersede, conflict with, or otherwise alter the employee rights provided for under this section; and

^ (C) the telephone number for the whistleblower hotline of the Inspector General of the Department of Defense.

^ (2) FORM OF NOTICE- The notice required by paragraph (1) shall be made by posting the required information at a prominent place in each workplace where employees working on the contract regularly work.'.

SEC. 862. REQUIREMENTS FOR DEFENSE CONTRACTORS RELATING TO CERTAIN FORMER DEPARTMENT OF DEFENSE OFFICIALS.

(a) Requirements-

(1) IN GENERAL- Chapter 141 of title 10, United States Code, as amended by section 826 of this Act, is further amended by adding at the end the following new section:

^ Sec. 2410r. Defense contractors: requirements concerning former Department of Defense officials

^ (a) In General- Each contract for the procurement of goods or services in excess of \$10,000,000, other than a contract for the procurement of commercial items, that is entered into by the Department of Defense shall include a provision under which the contractor agrees to submit to the Secretary of Defense, not later than April 1 of each year such contract is in effect, a written report setting forth the information required by subsection (b).

^ (b) Report Information- Except as provided in subsection (c), a report by a contractor under subsection (a) shall--

^ (1) list the name of each person who--

^ (A) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces who served--

^ (i) in an Executive Schedule position under subchapter II of chapter 53 of title 5;

^ (ii) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5;

^ (iii) in a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of title 37; or

^ (iv) as a program manager, deputy program manager, procuring

contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract with a value in excess of \$10,000,000; and

^ (B) during the preceding calendar year was provided compensation by the contractor, if such compensation was first provided by the contractor not more than two years after such officer, employee, or member left service in the Department of Defense; and

^ (2) in the case of each person listed under paragraph (1)--

^ (A) identify the agency in which such person was employed or served on active duty during the last two years of such person's service with the Department of Defense;

^ (B) state such person's job title and identify each major defense system, if any, on which such person performed any work with the Department of Defense during the last two years of such person's service with the Department; and

^ (C) state such person's current job title with the contractor and identify each major defense system on which such person has performed any work on behalf of the contractor.

^ (c) Duplicate Information Not Required- An annual report submitted by a contractor pursuant to subsection (b) need not provide information with respect to any former officer or employee of the Department of Defense or former or retired member of the armed forces if such information has already been provided in a previous annual report filed by such contractor under this section.'

(2) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 141 of such title, as so amended, is further amended by adding at the end the following new item:

^ 2410r. Defense contractors: requirements concerning former Department of Defense officials.'

(b) Effective Date- The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to contracts entered into on or after that date.

SEC. 863. REPORT ON CONTRACTOR ETHICS PROGRAMS OF MAJOR DEFENSE CONTRACTORS.

(a) Report Required- Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the internal ethics programs of major defense contractors.

(b) Elements- The report required by subsection (a) shall address, at a minimum--

(1) the extent to which major defense contractors have internal ethics programs in place;

(2) the extent to which the ethics programs described in paragraph (1) include--

(A) the availability of internal mechanisms, such as hotlines, for contractor employees to report conduct that may violate applicable requirements of law or regulation;

(B) notification to contractor employees of the availability of external mechanisms, such as the hotline of the Inspector General of the Department of Defense, for the reporting of conduct that may violate applicable requirements of law or regulation;

(C) notification to contractor employees of their right to be free from reprisal for disclosing a substantial violation of law related to a contract, in accordance with section 2409 of title 10, United States Code;

(D) ethics training programs for contractor officers and employees;

(E) internal audit or review programs to identify and address conduct that may violate applicable requirements of law or regulation;

(F) self-reporting requirements, under which contractors report conduct that may violate applicable requirements of law or regulation to appropriate government officials;

(G) disciplinary action for contractor employees whose conduct is determined to have violated applicable requirements of law or regulation; and

(H) appropriate management oversight to ensure the successful implementation of such ethics programs;

(3) the extent to which the Department of Defense monitors or approves the ethics programs of major defense contractors; and

(4) the advantages and disadvantages of legislation requiring that defense contractors develop internal ethics programs and requiring that specific elements be included in such ethics programs.

(c) Access to Information- In accordance with the contract clause required pursuant to section 2313(c) of title 10, United States Code, each major defense contractor shall provide the Comptroller General access to information requested by the Comptroller General that is within the scope of the report required by this section.

(d) Major Defense Contractor Defined- In this section, the term `major defense

contractor' means any company that received more than \$500,000,000 in contract awards from the Department of Defense during fiscal year 2006.

SEC. 864. REPORT ON DEPARTMENT OF DEFENSE CONTRACTING WITH CONTRACTORS OR SUBCONTRACTORS EMPLOYING MEMBERS OF THE SELECTED RESERVE.

(a) Study Required- The Secretary of Defense shall conduct a study on contracting with the Department of Defense by actual and potential contractors and subcontractors of the Department who employ members of the Selected Reserve of the reserve components of the Armed Forces.

(b) Elements- The study required by subsection (a) shall address the following:

(1) The extent to which actual and potential contractors and subcontractors of the Department, including small businesses, employ members of the Selected Reserve.

(2) The extent to which actual and potential contractors and subcontractors of the Department have been or are likely to be disadvantaged in the performance of contracts with the Department, or in competition for new contracts with the Department, when employees who are such members are mobilized as part of a United States military operation overseas.

(3) Any actions that, in the view of the Secretary, should be taken to address any such disadvantage, including--

(A) the extension of additional time for the performance of contracts to contractors and subcontractors of the Department who employ members of the Selected Reserve who are mobilized as part of a United States military operation overseas; and

(B) the provision of assistance in forming contracting relationships with other entities to ameliorate the temporary loss of qualified personnel.

(c) Report- Not later than one year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study required by this section. The report shall set forth the findings and recommendations of the Secretary as a result of the study.

(d) Repeal of Superseded Authority- Section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3385; 10 U.S.C. 2305 note) is repealed.

Subtitle E--Other Matters

SEC. 871. CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS.

(a) Regulations on Contractors Performing Private Security Functions-

(1) IN GENERAL- Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract or covered subcontract in an area of combat operations.

(2) ELEMENTS- The regulations prescribed under subsection (a) shall, at a minimum, establish--

(A) a process for registering, processing, and accounting for personnel performing private security functions in an area of combat operations;

(B) a process for authorizing and accounting for weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations;

(C) a process for the reporting of all incidents in which--

(i) a weapon is discharged by personnel performing private security functions in an area of combat operations; or

(ii) personnel performing private security functions in an area of combat operations are killed or injured;

(D) a process for investigating--

(i) incidents reported pursuant to subparagraph (C); and

(ii) incidents of alleged misconduct by personnel performing private security functions in an area of combat operations;

(E) qualification, training, screening, and security requirements for personnel performing private security functions in an area of combat operations;

(F) guidance to the commanders of the combatant commands on the issuance of--

(i) orders, directives, and instructions to contractors and subcontractors performing private security functions relating to force protection, security, health, safety, or relations and interaction with locals; and

(ii) rules of engagement for personnel performing private security functions in an area of combat operations; and

(G) a process by which a commander of a combatant command may request an action described in subsection (b)(3).

(b) Contract Clause on Contractors Performing Private Security Functions-

(1) REQUIREMENT UNDER FAR- Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation issued in accordance with section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) shall be revised to require the insertion into each covered contract and covered subcontract of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract or subcontract.

(2) CLAUSE REQUIREMENT- The contract clause required by paragraph (1) shall require, at a minimum, that the contractor or subcontractor concerned shall--

(A) comply with Department of Defense procedures for--

(i) registering, processing, and accounting for personnel performing private security functions in an area of combat operations;

(ii) authorizing and accounting of weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations; and

(iii) the reporting of incidents in which--

(I) a weapon is discharged by personnel performing private security functions in an area of combat operations; or

(II) personnel performing private security functions in an area of combat operations are killed or injured;

(B) ensure that all personnel performing private security functions under such contract or subcontract comply with--

(i) qualification, training, screening, and security requirements established by the Secretary of Defense for personnel performing private security functions in an area of combat operations;

(ii) applicable laws and regulations of the United States and the host country, and applicable treaties and international agreements, regarding the performance of the functions of the contractor or subcontractor;

(iii) orders, directives, and instructions issued by the applicable commander of a combatant command relating to force protection, security, health, safety, or relations and interaction with locals; and

(iv) rules of engagement issued by the applicable commander of a

combatant command for personnel performing private security functions in an area of combat operations; and

(C) cooperate with any investigation conducted by the Department of Defense pursuant to subsection (a)(2)(D) by providing access to employees of the contractor or subcontractor, as the case may be, and relevant information in the possession of the contractor or subcontractor, as the case may be, regarding the incident concerned.

(3) NONCOMPLIANCE OF PERSONNEL WITH CLAUSE- The contracting officer for a covered contract or subcontract may direct the contractor or subcontractor, at its own expense, to remove or replace any personnel performing private security functions in an area of combat operations who violate or fail to comply with applicable requirements of the clause required by this subsection.