

This is a commonsense initiative that would allow the Federal Government to track fraudulent contractors and grantees and stop them from moving from agency to agency if they are debarred.

The bill was introduced by Representative MALONEY, and it is modeled on legislation that she passed for the city of New York when she was a city council member. That law has been very effective for the city.

The ranking member of the Oversight Committee, Representative TOM DAVIS, raised a number of concerns with the bill as originally drafted, and we worked with Representative DAVIS and his staff to try to address these concerns, and I thank him for his willingness to work with us on this matter.

We have also made changes reflected in the bill before us today to address concerns raised by other committees with certain provisions in the bill. As I understand it, some letters have been sent out in opposition to the bill without knowing that those changes have been made to address the concerns that were raised. The result that we have before us today is a measure that enjoys bipartisan support. I urge Members to support H.R. 3033, as amended.

Mr. DAVIS of Virginia. Let me just say again to Chairman WAXMAN and to the gentlelady from New York, we appreciate you working with us. We have a bill now that enhances the system, and we have met the objections of some of the groups like the U.S. Chamber and that had been raised on our side of the aisle. I appreciate it, and urge its adoption.

Mr. THOMPSON of Mississippi. Mr. Speaker, I rise today in support of H.R. 3033, the "Contractors and Federal Spending Accountability Act of 2008." H.R. 3033 mandates the establishment of a database that includes detailed information on civil, criminal, and administrative proceedings concluded against contractors and grant recipients by State and Federal governments; a listing, by contractor or grant recipient, of all contracts or grants that were terminated; any suspensions or debarments, or any agreement to resolve a suspension or debarment; any findings that the contractor or recipient is not a "responsible" source for Federal contracts.

As the great justice Louis Brandeis famously wrote, "sunlight is said to be the best of disinfectants." H.R. 3033 will shed some sunlight on the contracting world.

This database will have myriad uses. Governments at all levels can turn to it when considering whether to award a contract or grant. Citizens can look to see how their tax dollars are being spent—and what steps are being taken to prevent waste, fraud, and abuse. Job seekers can look up prospective employers to find out what kind of company they might work for. Companies can do a little due diligence about prospective customers or vendors. In this information age, there is simply no reason information such as this should not be available to all of us.

My committee oversees the Department of Homeland Security. It is still young, as are many of its contracting professionals. But even the "old pros" of the Department are new to

homeland security contracting—because homeland security contracting itself is new. A database like this—that allows these officials to quickly examine the history of prospective contractors—might have helped the Department avoid some of the contracting fiascos that have plagued it to date. I am hopeful it will help the Department pick the best contractors in the future.

I encourage all of my colleagues to support this important legislation.

Mr. DAVIS of Virginia. Mr. Speaker, I yield back the balance of my time.

Mr. TOWNS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SERRANO). The question is on the motion offered by the gentleman from New York (Mr. TOWNS) that the House suspend the rules and pass the bill, H.R. 3033, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CLOSE THE CONTRACTOR FRAUD LOOPHOLE ACT

Mr. TOWNS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5712) to require disclosure by Federal contractors of certain violations relating to the award or performance of Federal contracts, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5712

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Close the Contractor Fraud Loophole Act".

SEC. 2. REVISION OF THE FEDERAL ACQUISITION REGULATION.

The Federal Acquisition Regulation shall be amended within 180 days after the date of the enactment of this Act pursuant to FAR Case 2007-006 (as published at 72 Fed Reg. 64019, November 14, 2007) or any follow-on FAR case to include provisions that require timely notification by Federal contractors of violations of Federal criminal law or overpayments in connection with the award or performance of covered contracts or subcontracts, including those performed outside the United States and those for commercial items.

SEC. 3. DEFINITION.

In this Act, the term "covered contract" means any contract in an amount greater than \$5,000,000 and more than 120 days in duration.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. TOWNS) and the gentleman from Virginia (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from New York.

GENERAL LEAVE

Mr. TOWNS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. TOWNS. Mr. Speaker, I yield myself such time as I may consume.

H.R. 5712, the Close the Contractor Fraud Loophole Act, is a commonsense solution to a problem that we never should have had in the first place. When the administration wrote a new rule requiring Federal contractors to report fraud and over billing on government contracts, for some reason contracts performed overseas and commercial item contracts were exempted from that requirement.

That didn't make sense to my colleague on the Subcommittee on Government Management, Congressman WELCH, because so much contract fraud and waste has been seen on contracts in Iraq and Afghanistan. He introduced this bill which will close these loopholes, and I salute him for that.

The Justice Department believes the new rule is necessary because few government contractors voluntarily disclose suspected instances of fraud. But the exemptions in the rule as written would leave out contractors like those in Iraq and Afghanistan, where we have spent billions on reconstruction contracts over the past 5 years. Over that period, the Justice Department has uncovered at least \$14 million in contract bribes in those two countries alone. Contractors must be held to the same standards no matter where they perform their work.

Since Congressman WELCH brought attention to this loophole, introduced this bill, and called for the hearing our subcommittee held last week, the administration has said it is leaning toward including overseas and commercial item contracts in the final fraud reporting rule. I am happy to hear that, but we cannot get them to guarantee that these loopholes would be closed. That is why Mr. WELCH's bill is necessary, to make sure that loopholes are closed for good. Another way to put it, this legislation will help them deal with a problem that should not have occurred.

I want to thank Congressman WELCH for bringing this problem to the attention of the subcommittee. I would also like to thank the chairman of our full committee, Congressman WAXMAN, and also thank the ranking member of the full committee, Congressman DAVIS. And I would like to thank the ranking member of the subcommittee, Congressman BILBRAY, for helping us bring this bill to the floor.

Mr. Speaker, at a time when our national security is of paramount concern, criminals who cheat the government must be identified, stopped and punished. H.R. 5712 will help make sure that taxpayer dollars are used for their intended purpose, and not to line the pockets of corrupt individuals or companies. So I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Virginia. Mr. Speaker, I reserve the balance of my time.

Mr. TOWNS. Mr. Speaker, I yield 5 minutes to the Honorable HENRY WAXMAN, the chairman of the full committee.

Mr. WAXMAN. Mr. Speaker, I rise in strong support of H.R. 5712, the Close the Contractor Fraud Loophole Act. This bill would create a mandatory requirement for Federal contractors to disclose violations of Federal criminal law or significant overcharges discovered with relationship to a Federal contract. It would replace our current system of voluntary disclosure.

Moving to mandatory disclosure has been recommended by the Justice Department for good reason, the voluntary disclosure system is simply not working. In fiscal year 2007, only three contractors participated in the Defense Department's voluntary disclosure program.

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Congressman WELCH introduced this bill after the administration exempted contracts performed in Iraq and Afghanistan from a proposal to make fraud reporting mandatory. This exemption made no sense. As this committee's oversight has shown, fraud and over-billing are widespread in Iraq.

The administration testified at a hearing before the Government Management Subcommittee that these exemptions were included inadvertently, and they said they made a mistake. This is a mistake that needs to be corrected, and that's why I commend Congressman WELCH for pressing this issue and introducing this legislation. If we pass this bill, the real winners will be the Federal taxpayers.

Prior to our committee markup on the bill, we worked with Ranking Member DAVIS to address certain concerns he raised with the way the bill was originally drafted. And I want to thank Mr. DAVIS for working with us in a constructive manner to ensure passage of this bill.

The bill before us, H.R. 5712, as amended, would preserve Representative WELCH's original intent while at the same time preserving the legitimate role of the regulatory process. The bill requires that the Federal Acquisition Regulation be amended within 180 days to require disclosure of fraud for both domestic and overseas contracts, and for commercial item contracts.

I urge Members to support H.R. 5712, as amended. It has been approved by a bipartisan vote in our committee, and it ought to be overwhelmingly approved in the House as well.

Mr. DAVIS of Virginia. I yield myself such time as I may consume.

(Mr. DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Virginia. Mr. Speaker, I had serious concerns about this legislation when it was originally introduced. The original version would have required a Federal contractor to self-report to the agency's IG if the con-

tractor had reasonable grounds to suspect a violation of criminal law or if a significant overpayment occurred on a contract held by the contractor. A knowing failure to make such a report would have been a cause for debarment or a suspension for all firms, including those holding contracts performed overseas and contracts for commercial items.

This original version, in my judgment, was an ill-considered attempt to strengthen an ethics compliance program that's currently being developed by the administration.

The concept of mandatory self-reporting by contractors of possible criminal violations, based on reasonable grounds, would have been unprecedented and obviously controversial. The rule proposed in the Federal Register was the subject of more than 70 comments. As expected, many of the firms subject to the rule expressed serious legitimate concerns about the proposal.

In actuality, the bill as introduced didn't make as significant change as intended to the substance of the proposed revisions. The problem was the bill leapfrogged the statutorily designated process for writing acquisition regulations, and would have encased in statute draft language establishing a new reporting scheme yet to be thoroughly vetted.

The subcommittee received testimony that the so-called loophole which was alleged to have been snuck in at the 11th hour, was really an inadvertent administrative error made by an overworked acquisition policy staff.

None of the agencies providing testimony to the subcommittee, including the Department of Justice, nor the contractor community, supported this bill as it was introduced.

But I will say this to the author of the legislation and the subcommittee chairman, we ended up working together, and the language before us today was offered in his amendment at mark-up by Chairman WAXMAN and myself. This will ensure that the Federal acquisition regulation is revised to include a requirement that Federal contractors notify the government of violations of Federal, criminal law or overpayments in connection with the award or performance of contracts or subcontracts.

In doing so, it will ensure the regulation is applicable to all contracts, including those performed overseas and those for commercial items.

The stated purpose was ultimately accomplished by this language but accomplished through a more appropriate statutory acquisition rulemaking process.

Again, as with the other contractor bills we're considering today, I think that we would be better served if we would address some of the underlying problems in the acquisition system, and that is getting in good acquisition officials; whether they're contract managers, contracting officers, con-

tracting officers technical representatives, trying to get more into government, educating them, training them and making sure they have the tools appropriate to get the best value for the tax dollars. That's where the real waste of government lies with having good acquisition officials.

I think this version of the bill today is an adequate solution. I want to thank again Chairman WAXMAN and Mr. WELCH for working with us to revise the language. I urge its adoption.

Mr. Speaker, today we rise to take up H.R. 5712, the Close the Contractor Fraud Loophole Act. This legislation would revise an administration-proposed contractor ethics and reporting program.

I had serious concerns about this legislation as it was originally introduced. The original version of the bill would have required a Federal contractor to self-report to the agency's Inspector General if the contractor had "reasonable grounds" to suspect a violation of criminal law or if a significant overpayment occurred on a contract held by the contractor. A knowing failure to make such a report would have been a cause for debarment or suspension for all firms, including those holding contracts performed overseas and contracts for commercial items.

This original version of the legislation was an ill-considered attempt to "strengthen" an ethics compliance program currently under development by the administration.

The concept of mandatory self-reporting by contractors of possible criminal violations based on "reasonable grounds" is unprecedented and controversial. The rule proposed in the Federal Register was the subject of more than 70 comments. As expected, many of the firms subject to the rule expressed serious and legitimate concerns about the proposal.

In actuality, the bill as introduced did not make as significant a change as intended to the substance of the proposed revisions to the acquisition regulations. The problem was the bill leapfrogged the statutorily designated process for writing acquisition regulations and would have encased in statute draft language establishing a new reporting scheme yet to be thoroughly vetted.

The Subcommittee on Government Management, Organization and Procurement received testimony that the so-called "loophole"—which was alleged to have been "snuck in at the eleventh hour"—was really an inadvertent administrative error made by an overworked acquisition policy workforce.

None of the agencies providing testimony to the Subcommittee, including the Department of Justice, nor the contractor community, supported H.R. 5712 as introduced. Instead, the stakeholders suggested the well-established regulatory drafting process should be allowed to continue to completion. They favored this rulemaking approach because it would allow all interested parties the opportunity to submit comments and have those comments considered in the deliberative process.

Nevertheless, the Committee moved forward with the legislation. Fortunately, Chairman WAXMAN, the bill's sponsor and I were able to work out language which addressed some of the concerns raised at the one hearing on the bill.

The language before us today, offered as an amendment at markup by Chairman WAXMAN and me, would ensure the Federal Acquisition Regulation is revised to include a requirement that Federal contractors notify the Government of violations of Federal criminal law or overpayments in connection with the award or performance of contracts or subcontracts. In doing so, it would ensure the regulation is applicable to all contracts, including those performed overseas and those for commercial items.

The stated purposes of the introduced version of H.R. 5712 are ultimately accomplished by this language, but accomplished through the more appropriate statutory acquisition rulemaking process.

Again, as with the other so-called “contractor bills” we are considering today, I continue to believe all would be better served if we had spent our time trying to improve the operation of our acquisition system—in order to better acquire the best value goods and services our Government so desperately needs.

And in this case, I am certain we would have been better off had we allowed the regulatory process to go forward without any interference at all from us.

Nonetheless, under the circumstances, I believe this version of the bill we are considering today is an adequate solution, and I thank Chairman WAXMAN and Mr. WELCH for working with me on the revised language.

Mr. TOWNS. Mr. Speaker, I would like to yield 5 minutes to the author of this legislation, a person that has worked real hard and has done a magnificent job, the gentleman from Vermont, Congressman WELCH.

Mr. WELCH of Vermont. Mr. Speaker, one of the fundamental responsibilities that this Congress has is to protect taxpayer dollars. That has become an enormous challenge, as many of the taxpayer dollars that are appropriated are paid to private contractors.

The growth in contracting in the past 6 or 7 years has exploded. Procurement spending in 2000 was \$213 billion. Procurement spending is when we enter into a contract with a private company to deliver goods or services. That amount exploded last year to \$412 billion. Much of that is going to Iraq and Afghanistan. Much of this is being subject to waste, fraud and abuse.

The Oversight Committee under Mr. WAXMAN and Mr. DAVIS has done vigorous oversight and identified in 2006 that there were 118 contracts valued at \$745 billion that were found by government auditors to include a significant component of fraud, abuse and mismanagement. And, in fact, it got worse.

In 2008, that report identified 187 contracts valued at \$1.1 trillion, where they were plagued by waste, fraud and abuse.

The bottom line is, will we, as a Congress, Republicans and Democrats, be vigilant in protecting taxpayer dollars? We have to do that, especially when there is documented evidence of rip-offs, wicked rip-offs that have occurred with taxpayer dollars in Afghanistan and in Iraq.

There’s two goals that we have. The first that we widely share is that every taxpayer dollar will be accounted for, and that the taxpayers who were working hard to support this government and our troops will see that their money is spent on proper things that are in the contract. We have to protect the taxpayer.

The second is we’ve got to protect the troops. If we are spending money in Iraq and Afghanistan for the intended purpose of bringing our troops home and improving our national security, any dollar that’s wasted that results in any additional injury, or one day prolonged in the conflicts, is a dollar that is improperly wasted. We cannot do that.

So I believe that this loophole, however it got there, by mistake or by sleight of hand, however it got there, it’s got to be closed. Obviously, if you have a regulation, as it was written, that says we will report fraud when it is a rip-off on a domestic contract, but we won’t when it’s on a foreign contract, we’re sending a very unambiguous message. There’s a green light to rip off taxpayers if the money is being spent abroad. That’s not a defensible position. And that’s why we’re closing this loophole to make it absolutely clear that’s unacceptable.

Now I think it does make sense. What Congressman DAVIS proposed as a new way of proceeding is fine with me. And here’s why. The bottom line is protecting the taxpayers and protecting our troops. And if we can accomplish that better by finding a way that has bipartisan support, we can all have more confidence that we’ll be successful.

So I’m glad to work with Chairman DAVIS in order to have this get done in a bipartisan way. I want to thank very much Chairman WAXMAN and the great work of my chairman of the subcommittee, Mr. TOWNS, for bringing this forward so quickly and so effectively.

Mr. DAVIS of Virginia. Well, let me thank my friend for calling me Chairman DAVIS. It’s with nostalgia that I use the terminology, but I guess once a chairman, always a chairman. But I now recognize Mr. WAXMAN as my chairman and a counterpart in a number of these issues.

I again enjoyed working with you on this legislation to bring it. I would urge its adoption.

I yield back the balance of my time.

Mr. TOWNS. Mr. Speaker, I want to thank Chairman WAXMAN; I want to thank Ranking Member DAVIS; and, of course, Ranking Member BILBRAY for his work; and, of course, Congressman WELCH. This legislation is really needed, and I was happy that we were able to move it to the floor very quickly, because any time we can save money, and I think that this is what this does, it saves the taxpayers money, and I just think we need to salute Congressman WELCH for his insight in being able to do just that.

Mr. THOMPSON of Mississippi. Mr. Speaker, I rise today in support of H.R. 5712, the “Close the Contractor Fraud Loophole Act.”

The name of this bill really says it all. Today, as I speak, there is a loophole in Government procurement regulations that allows some contractors to avoid reporting violations of Federal law or overpayments.

The privilege—and, yes, it’s a privilege—of earning Federal dollars carries with it certain responsibilities. One of those responsibilities is to do your utmost to avoid fraud, violations of law, and overpayments. Now, I understand that many large contractors have thousands of employees, and sometimes there can be a bad apple. But when a contractor learns of such a bad apple, it is its responsibility to report what it learns to the Government, and to make the Government whole for any loss.

Today, most contractors working in the United States are required by regulation to do just this. But contractors working overseas, and a few here in the U.S., fall outside this simple, commonsense reporting requirement.

This is not right—contractors accepting Federal dollars should be treated the same, whether they are performing the work in the United States or overseas, and regardless of whether they are selling “commercial items.”

I want to commend Mr. WELCH and Chairman WAXMAN for recognizing this problem, and for doing something about it. Now that they have acted, the administration says that this loophole was a “bureaucratic mistake” and should be closed. Yet, before Congress moved, the administration was curiously slow to do anything to address this “mistake.”

My committee has devoted a lot of time and energy to examining the Department of Homeland Security’s contracting practices. What we have found is not always pretty. The Department is young, and has made some poor contracting decisions. But poor decisionmaking and the occasional inexperienced contracting officer is not a license for abuse, and it is incumbent on any contractor who discovers such abuse to report it.

I hope the administration makes good on its word and closes this loophole, but I’m mindful that it took congressional oversight and action to stir them into action. This is oversight at it best, and make no mistake, our oversight—of both the Government and the contractors themselves—will continue. I encourage all of my colleagues to support this legislation.

Mr. TOWNS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. TOWNS) that the House suspend the rules and pass the bill, H.R. 5712, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GOVERNMENT FUNDING TRANSPARENCY ACT OF 2008

Mr. TOWNS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3928) to require certain large government contractors that receive more than 80 percent of their annual gross