

110TH CONGRESS
2D SESSION

H. R. 5973

To enhance transparency and accountability within the intelligence community for activities performed under Federal contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2008

Mr. PRICE of North Carolina (for himself and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Select Committee on Intelligence (Permanent Select), and in addition to the Committees on Armed Services and Judiciary, 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 enhance transparency and accountability within the intelligence community for activities performed under Federal contracts, 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 “Transparency and Ac-
5 countability in Intelligence Contracting Act of 2008”.

1 **SEC. 2. ANNUAL SURVEY OF INTELLIGENCE COMMUNITY**
2 **CONTRACTORS.**

3 (a) IN GENERAL.—Title V of the National Security
4 Act of 1947 (50 U.S.C. 413 et seq.) is amended by insert-
5 ing after section 506A the following new section:

6 **“SEC. 506B. ANNUAL CONTRACTOR PERSONNEL LEVEL AS-**
7 **SESSMENTS FOR THE INTELLIGENCE COM-**
8 **MUNITY.**

9 “(a) REQUIREMENT TO PROVIDE.—The Director of
10 National Intelligence shall, in consultation with the head
11 of the element of the intelligence community concerned,
12 prepare an annual assessment for such element of the in-
13 telligence community that assesses such element’s use of
14 private contractors and private contractor personnel.

15 “(b) SCHEDULE.—Each assessment required by sub-
16 section (a) shall be submitted to the congressional intel-
17 ligence committees each year along with the budget sub-
18 mitted by the President under section 1105 of title 31,
19 United States Code.

20 “(c) CONTENTS.—Each assessment required by sub-
21 section (a) submitted during a fiscal year shall contain,
22 at a minimum, the following information for the element
23 of the intelligence community concerned:

24 “(1) The total number and costs of contractors
25 funded by the element during the previous fiscal
26 year.

1 “(2) The best estimate of the total number of
2 personnel working on the contracts funded by the
3 element during the previous fiscal year.

4 “(3) The best estimate of the number and costs
5 of contractors to be funded by the element for the
6 upcoming fiscal year.

7 “(4) The proposed numerical and percentage
8 increase or decrease of such costs of contracts as
9 compared to the best estimate of the costs of con-
10 tracts of the current fiscal year.

11 “(5) The proposed numerical and percentage
12 increase or decrease of such costs of contracts as
13 compared to the cost of contracts, and the number
14 of contracts, during the prior 5 fiscal years.

15 “(6) A written description of the types of activi-
16 ties being performed by contractors.

17 “(7) A list of all contractors that have been the
18 subject of an investigation completed by the Inspec-
19 tor General of any element of the intelligence com-
20 munity during the preceding fiscal year, or are or
21 have been the subject of an investigation by such an
22 Inspector General during the current fiscal year, or
23 are currently or have been during the previous fiscal
24 year the subject of a United States or foreign crimi-
25 nal investigation in connection with activities per-

1 formed under a contract awarded by any element of
 2 the intelligence community, as well as any charges
 3 filed in connection with the investigation and the
 4 findings or disposition of the investigation.

5 “(8) A statement by the Director of National
 6 Intelligence that, based on current and projected
 7 funding, the element concerned will have sufficient—

8 “(A) training resources to support the an-
 9 ticipated scope of contractor activity for the up-
 10 coming fiscal year; and

11 “(B) resources and infrastructure to sup-
 12 port the administration, management, and over-
 13 sight of the anticipated scope of contractor ac-
 14 tivity for the upcoming fiscal year.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
 16 in the first section of that Act is amended by inserting
 17 after the item relating to section 506A the following new
 18 item:

“Sec. 506B. Annual contractor personnel level assessment for the intelligence
 community.”.

19 **SEC. 3. TRANSPARENCY AND ACCOUNTABILITY IN INTEL-**
 20 **LIGENCE CONTRACTING.**

21 (a) INFORMATION ON ACTIVITIES TO BE PER-
 22 FORMED.—Each covered contract shall require the con-
 23 tractor to provide to the contracting officer for the con-
 24 tract, not later than 5 days after award of the contract,

1 the following information regarding activities performed
2 under the contract:

3 (1) The best estimate of the number of persons
4 to be used to perform such activities.

5 (2) A description of how such persons are
6 trained to carry out tasks specified under the con-
7 tract relating to such activities.

8 (3) A description of the process used to hire
9 such persons, including the method by which and the
10 extent to which background checks regarding such
11 persons are conducted.

12 (4) A description of each category of activity re-
13 lating to such functions required by the contract.

14 (5) The best estimate of the number of foreign
15 nationals to be employed under the contract.

16 (b) UPDATES.—The information provided under sub-
17 section (a) shall be updated during contract performance
18 as necessary.

19 (c) INFORMATION ON COSTS.—Each covered contract
20 shall include the following requirements:

21 (1) Upon award of the contract, the contractor
22 shall provide to the contracting officer cost estimates
23 of salary, benefits, insurance, materials, logistics, ad-
24 ministrative costs, and other costs of carrying out
25 activities under the contract.

1 (2) Before contract closeout (other than close-
2 out of a firm, fixed price contract), the contractor
3 shall provide to the contracting officer a report on
4 the actual costs of carrying out activities under the
5 contract, in the same categories as provided under
6 paragraph (1).

7 (d) INFORMATION TO BE PROVIDED TO CONGRESS
8 UPON REQUEST.—The head of each element of the intel-
9 ligence community shall make available to Congress any
10 information provided under this section upon request by
11 a Member or committee of Congress.

12 **SEC. 4. PROHIBITION ON THE USE OF PRIVATE CONTRAC-**
13 **TORS FOR ACTIVITIES INVOLVING PERSONS**
14 **UNDER THE CUSTODY OR CONTROL OF THE**
15 **UNITED STATES GOVERNMENT.**

16 (a) Notwithstanding any other provision of law, no
17 executive department or agency shall award a contract for
18 performance related to activities described in subsection
19 (b).

20 (b) Subsection (a) shall apply to any activity relating
21 to the capture, custody, control, or other pertinent inter-
22 action with an individual who is a detainee or prisoner
23 in the custody or under the effective control of the United
24 States Government, including, with regard to such an indi-
25 vidual—

- 1 (1) arrest;
- 2 (2) interrogation;
- 3 (3) detention; or
- 4 (4) transportation or transfer.

5 (c) Subsection (b) shall not be construed to include
6 the performance of work is related to language interpreta-
7 tion, so long as the work is strictly limited to language
8 interpretation and occurs under the direct supervision of
9 a United States Government personnel.

10 (d) The President shall have six months following the
11 date of the enactment of this Act to ensure compliance
12 with subsection (a).

13 **SEC. 5. REPORT ON THE USE OF PRIVATE CONTRACTORS**
14 **FOR INTELLIGENCE ACTIVITIES.**

15 (a) **REQUIREMENT FOR REPORT.**—Not later than
16 120 days following the date of the enactment of this Act,
17 the Director of National Intelligence shall submit to Con-
18 gress a report describing the personal services activities
19 performed by contractors across the intelligence commu-
20 nity, the impact of such contractors on the intelligence
21 community workforce, plans for conversion of contractor
22 employment into Government employment, and the ac-
23 countability mechanisms that govern the performance of
24 such contractors.

25 (b) **CONTENT.**—

1 (1) IN GENERAL.—The report submitted under
2 subsection (a) shall include—

3 (A) a description of any relevant regula-
4 tions or guidance issued by the Director of Na-
5 tional Intelligence or the head of an element of
6 the intelligence community relating to minimum
7 standards required regarding the hiring, train-
8 ing, security clearance, and assignment of con-
9 tract personnel and how those standards may
10 differ from those for Government employees
11 performing substantially similar functions;

12 (B) an identification of contracts where the
13 contractor is providing a substantially similar
14 functions to a Government employee;

15 (C) an assessment of costs incurred or sav-
16 ings achieved by awarding contracts for the per-
17 formance of such functions referred to in sub-
18 paragraph (B) instead of using full-time em-
19 ployees of the elements of the intelligence com-
20 munity to perform such functions;

21 (D) an assessment of the appropriateness
22 of using contractors to perform the activities
23 described in paragraph (2);

24 (E) an estimate of the number of con-
25 tracts, and the number of personnel working

1 under such contracts, related to the perform-
2 ance of activities described in paragraph (2);

3 (F) a comparison of the compensation of
4 contract employees and Government employees
5 performing substantially similar functions;

6 (G) an analysis of the attrition of Govern-
7 ment personnel associated with the reliance on
8 contractor positions that provide substantially
9 similar functions;

10 (H) an analysis of accountability mecha-
11 nisms available to each element of the intel-
12 ligence community, including regulations and
13 provisions included within services contracts;

14 (I) an analysis of procedures in use in the
15 intelligence community for conducting oversight
16 of contractors to ensure identification and pros-
17 ecution of criminal violations, financial waste,
18 fraud, or other abuses committed by contractors
19 or contract personnel; and

20 (J) an identification of best practices of
21 accountability mechanisms within services con-
22 tracts.

23 (2) ACTIVITIES.—Activities described in this
24 paragraph are the following:

25 (A) Intelligence collection.

1 (B) Intelligence analysis.

2 (C) Covert actions.

3 (D) Conduct of electronic or physical sur-
4 veillance or monitoring of United States citizens
5 in the United States.

6 (3) FORM.—The report required under para-
7 graph (1) shall be submitted in unclassified form,
8 but may include a classified annex.

9 **SEC. 6. DEFINITIONS.**

10 In this Act:

11 (a) INTELLIGENCE COMMUNITY.—The term “intel-
12 ligence community” has the meaning given the term in
13 section 3(4) of the National Security Act of 1947 (50
14 U.S.C. 401a(4)).

15 (b) ELEMENT OF THE INTELLIGENCE COMMU-
16 NITY.—The term “element of the intelligence community”
17 means an element of the intelligence community listed in
18 or designated under section 3(4) of the National Security
19 Act of 1947 (50 U.S.C. 401a(4)).

20 (c) COVERED CONTRACT.—The term “covered con-
21 tract” means—

22 (1) a prime contract with any agency or office
23 that is part of the intelligence community;

1 (2) a subcontract at any tier under any prime
2 contract with an office or agency referred to in para-
3 graph (1); or

4 (3) a task order issued under a task or delivery
5 order contract entered into by an office or agency
6 referred to in paragraph (1);

7 if the contract, subcontract, or task order is valued at
8 more than \$1,000,000 and includes personal services ac-
9 tivities to be performed either within or outside the United
10 States.

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