

106TH CONGRESS  
1ST SESSION

# H. R. 3116

To promote openness, transparency, and efficiency in international government procurement through capacity building and, where appropriate, third-party procurement monitoring, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1999

Mr. KOLBE (for himself and Mr. MATSUI) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on International Relations, 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 promote openness, transparency, and efficiency in international government procurement through capacity building and, where appropriate, third-party procurement monitoring, 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 “Fair Competition in  
5 Foreign Commerce Act of 1999”.

1 **SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The United States makes substantial con-  
4 tributions and provides significant funding for major  
5 international development projects through inter-  
6 national financial institutions and bilateral non-  
7 humanitarian assistance.

8 (2) These international development projects  
9 are often plagued with fraud, corruption, waste, in-  
10 efficiency, and misuse of funding.

11 (3) Fraud, corruption, waste, inefficiency, mis-  
12 use, and abuse are major impediments to competi-  
13 tion in foreign commerce throughout the world.

14 (4) Identifying these impediments after they  
15 occur is inadequate and meaningless.

16 (5) Detection of impediments before they occur  
17 helps to ensure that valuable United States re-  
18 sources contributed to important international devel-  
19 opment projects are used appropriately.

20 (6) Independent third-party procurement moni-  
21 toring is an important tool for detecting and pre-  
22 venting such impediments.

23 (7) Third-party procurement monitoring in-  
24 cludes evaluations of each stage of the procurement  
25 process and assures the openness and transparency  
26 of the process.

1           (8) Improving transparency and openness in the  
2           procurement process helps to minimize fraud, cor-  
3           ruption, waste, inefficiency, and other misuse of  
4           funding, and promotes competition, thereby  
5           strengthening international trade and foreign com-  
6           merce.

7           (b) PURPOSE.—The purpose of this Act is to build  
8           on the excellent progress associated with the Organization  
9           on Economic Development and Cooperation Agreement on  
10          Bribery and Corruption by promoting the use of inde-  
11          pendent third-party procurement monitoring as part of  
12          United States participation in the international financial  
13          institutions and in the disbursement by the United States  
14          of bilateral nonhumanitarian foreign assistance funds, so  
15          as to ensure open, efficient, and transparent government  
16          procurement practices.

17   **SEC. 3. DEFINITIONS.**

18          In this Act:

19           (1) APPROPRIATE COMMITTEES.—The term  
20           “appropriate committees” means the Committees on  
21           Finance and on Commerce, Science, and Technology  
22           of the Senate and the Committees on Ways and  
23           Means and on Commerce of the House of Represent-  
24           atives.

1           (2) INDEPENDENT THIRD-PARTY PROCURE-  
2           MENT MONITORING.—The term “independent third-  
3           party procurement monitoring” means a program  
4           to—

5                       (A) eliminate bias,

6                       (B) promote transparency and open com-  
7           petition, and

8                       (C) minimize fraud, corruption, waste, in-  
9           efficiency, and other misuse of funds,  
10          in international procurement through independent  
11          evaluation of the technical, financial, economic, and  
12          legal aspects of the procurement process.

13          (3) INDEPENDENT.—The term “independent”  
14          means that monitoring the procurement process does  
15          not pose a conflict of interest for the person doing  
16          so.

17          (4) EACH STAGE OF PROCUREMENT.—The term  
18          “each stage of procurement” means the development  
19          and issuance of technical specifications, bidding doc-  
20          uments, evaluation reports, contract preparation,  
21          and the delivery of goods and services.

22          (5) INTERNATIONAL FINANCIAL INSTITU-  
23          TION.—The term “international financial institu-  
24          tion” has the meaning given in section 1701(c)(2) of  
25          the International Financial Institutions Act.

1 **SEC. 4. REQUIREMENTS FOR FAIR COMPETITION IN FOR-**  
2 **EIGN COMMERCE.**

3 (a) IN GENERAL.—Not later than 180 days after the  
4 date of enactment of this Act, the Secretary of the Treas-  
5 ury shall transmit to the President and to the appropriate  
6 committees a plan for promoting international government  
7 procurement reforms relating to the United States partici-  
8 pation in international financial institutions, including the  
9 use of third party procurement monitoring where appro-  
10 priate.

11 (b) PLAN.—The plan shall include an instruction by  
12 the Secretary of the Treasury to the United States Execu-  
13 tive Director of each international financial institution to  
14 use the voice and vote of the United States to oppose the  
15 use of funds appropriated or made available by the United  
16 States for any non-humanitarian assistance, until—

17 (1) the institution has adopted an  
18 anticorruption plan that requires the use of inde-  
19 pendent third-party procurement monitoring services  
20 in any case in which the country receiving such as-  
21 sistance lacks the necessary organization, resources,  
22 and expertise to ensure openness, efficiency, and  
23 transparency in government procurement; and

24 (2) each country receiving such assistance insti-  
25 tutes specific strategies for minimizing corruption

1       and maximizing transparency in each stage of the  
2       procurement process.

3       (c) ANNUAL REPORTS.—Not later than June 29 of  
4 each year, the Secretary of the Treasury shall report to  
5 the appropriate committees on the progress in imple-  
6 menting procurement reforms made by each international  
7 financial institution and each country that received non-  
8 humanitarian assistance from such an institution during  
9 the preceding year.

10      (d) RESTRICTIONS ON ASSISTANCE.—Notwith-  
11 standing any other provision of law, no funds appropriated  
12 or made available for non-humanitarian foreign assistance  
13 programs, including the activities of the Agency for Inter-  
14 national Development, may be expended for a government  
15 procurement program unless each country eligible to re-  
16 ceive assistance under such programs and each inter-  
17 national financial institution involved has demonstrated  
18 that significant progress is being made toward  
19 institutionalizing—

20           (1) procurement practices which are open,  
21       transparent, and free of corruption, fraud, ineffi-  
22       ciency, and other misuse; and

23           (2) independent third-party monitoring of gov-  
24       ernment procurement, in the case of such countries

1       that lack necessary organization, resources, and ex-  
2       pertise.

3   **SEC. 5. EXCEPTIONS.**

4       (a) NATIONAL SECURITY.—Section 4 shall not apply  
5   with respect to a country if the President determines with  
6   respect to such country that making funds available is in  
7   the national security interests of the United States. Any  
8   such determination shall cease to be effective 6 months  
9   after being made unless the President determines that its  
10  continuation is in the national security interests of the  
11  United States.

12       (b) OTHER EXCEPTIONS.—Section 4 shall not apply  
13  with respect to assistance to—

14           (1) meet urgent humanitarian needs (including  
15       providing food, medicine, disaster, and refugee re-  
16       lief);

17           (2) facilitate democratic political reform and  
18       rule of law activities;

19           (3) create private sector and nongovernmental  
20       organizations that are independent of government  
21       control; or

22           (4) facilitate development of a free market eco-  
23       nomic system.

○