

110TH CONGRESS
1ST SESSION

H. R. 3706

To provide for the study and investigation of wartime contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2007

Mr. TIERNEY (for himself and Mr. ALLEN) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Armed Services and Select Intelligence (Permanent Select), 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 provide for the study and investigation of wartime contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom.

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 “Commission on War-
5 time Contracting Establishment Act”.

1 **SEC. 2. STUDY AND INVESTIGATION OF WARTIME CON-**
2 **TRACTS AND CONTRACTING PROCESSES IN**
3 **OPERATION IRAQI FREEDOM AND OPER-**
4 **ATION ENDURING FREEDOM.**

5 (a) COMMISSION ON WARTIME CONTRACTING.—

6 (1) ESTABLISHMENT.—There is hereby estab-
7 lished a commission to be known as the “Commis-
8 sion on Wartime Contracting” (in this subsection re-
9 ferred to as the “Commission”).

10 (2) MEMBERSHIP MATTERS.—

11 (A) MEMBERSHIP.—The Commission shall
12 be composed of 8 members, as follows:

13 (i) 2 members shall be appointed by
14 the Majority Leader of the Senate, in con-
15 sultation with the Chairmen of the Com-
16 mittee on Armed Services and the Com-
17 mittee on Homeland Security and Govern-
18 mental Affairs of the Senate.

19 (ii) 2 members shall be appointed by
20 the Speaker of the House of Representa-
21 tives, in consultation with the Chairmen of
22 the Committee on Armed Services and the
23 Committee on Oversight and Government
24 Reform of the House of Representatives.

25 (iii) 1 member shall be appointed by
26 the Minority Leader of the Senate, in con-

1 sultation with the Ranking Minority Mem-
2 bers of the Committee on Armed Services
3 and the Committee on Homeland Security
4 and Governmental Affairs of the Senate.

5 (iv) 1 member shall be appointed by
6 the Minority Leader of the House of Rep-
7 resentatives, in consultation with the
8 Ranking Minority Member of the Com-
9 mittee on Armed Services and the Com-
10 mittee on Oversight and Government Re-
11 form of the House of Representatives.

12 (v) 1 member shall be appointed by
13 the Secretary of Defense.

14 (vi) 1 member shall be appointed by
15 the Secretary of State.

16 (B) DEADLINE FOR APPOINTMENTS.—All
17 appointments to the Commission shall be made
18 not later than 90 days after the date of the en-
19 actment of this Act.

20 (C) CHAIRMAN AND VICE CHAIRMAN.—

21 (i) CHAIRMAN.—The chairman of the
22 Commission shall be a member of the
23 Commission selected by the members ap-
24 pointed under clauses (i) and (ii) of sub-
25 paragraph (A), but only if approved by the

1 vote of a majority of the members of the
2 Commission.

3 (ii) VICE CHAIRMAN.—The vice chair-
4 man of the Commission shall be a member
5 of the Commission selected by the mem-
6 bers appointed under clauses (iii) and (iv)
7 of subparagraph (A), but only if approved
8 by the vote of a majority of the members
9 of the Commission.

10 (3) DUTIES.—

11 (A) GENERAL DUTIES.—The Commission
12 shall study and investigate the following mat-
13 ters:

14 (i) Federal agency contracting for the
15 reconstruction of Iraq and Afghanistan.

16 (ii) Federal agency contracting for the
17 logistical support of coalition forces in Op-
18 eration Iraqi Freedom and Operation En-
19 during Freedom.

20 (iii) Federal agency contracting for
21 the performance of security and intel-
22 ligence functions in Operation Iraqi Free-
23 dom and Operation Enduring Freedom.

24 (B) SCOPE OF CONTRACTING COVERED.—
25 The Federal agency contracting covered by this

1 paragraph includes contracts entered into both
2 in the United States and abroad for the per-
3 formance of activities described in subpara-
4 graph (A), whether performed in the United
5 States or abroad.

6 (C) PARTICULAR DUTIES.—In carrying out
7 the study under this paragraph, the Commis-
8 sion shall assess—

9 (i) the extent and impact of the reli-
10 ance of the Federal Government on con-
11 tractors to perform functions (including se-
12 curity, intelligence, and management func-
13 tions) in Operation Iraqi Freedom and Op-
14 eration Enduring Freedom;

15 (ii) the performance of the contracts
16 under review, and the mechanisms used to
17 manage the performance of the contracts
18 under review;

19 (iii) the extent of waste, fraud, abuse,
20 or mismanagement under such contracts;

21 (iv) the extent to which those respon-
22 sible for such waste, fraud, abuse, or mis-
23 management have been held financially or
24 legally accountable; and

(v) the appropriateness of the organizational structure, policies, and practices of the Department of Defense and the Department of State for handling contingency contract management and support.

(4) REPORTS.—

(A) INTERIM REPORT.—Not later than one year after the date of the appointment of all of the members of the Commission under paragraph (2), the Commission shall submit to Congress an interim report on the study carried out under paragraph (3), including the results and findings of the study as of that date.

(B) OTHER REPORTS.—The Commission may from time to time submit to Congress such other reports on the study carried out under paragraph (3) as the Commission considers appropriate.

(C) FINAL REPORT.—Not later than two years after the date of the appointment of all of the members of the Commission under paragraph (2), the Commission shall submit to Congress a report on the study carried out under paragraph (3). The report shall—

1 (i) include the findings of the Com-
2 mission;

3 (ii) identify lessons learned on the
4 contracting covered by the study; and

5 (iii) include specific recommendations
6 for improvements to be made in—

7 (I) the process for developing
8 contract requirements for wartime
9 contracts and contracts for contin-
10 gency operations;

11 (II) the process for awarding
12 contracts and task orders for wartime
13 contracts and contracts for contin-
14 gency operations;

15 (III) the process for managing
16 and providing oversight for the per-
17 formance of wartime contracts and
18 contracts for contingency operations;

19 (IV) the process for holding con-
20 tractors and their employees account-
21 able for waste, fraud, abuse, or mis-
22 management under wartime contracts
23 and contracts for contingency oper-
24 ations;

1 (V) the process for determining
2 which functions are inherently govern-
3 mental and which functions are ap-
4 propriate for performance by contrac-
5 tors in an area of combat operations
6 (including an area of a contingency
7 operation), including a determination
8 whether the use of civilian contractors
9 to provide security in an area of com-
10 bat operations is a function that is in-
11 herently governmental;

12 (VI) the organizational structure,
13 policies and practices of the Depart-
14 ment of Defense and the Department
15 of State handling contract manage-
16 ment and support for wartime con-
17 tracts and contracts for contingency
18 operations; and

19 (VII) the process by which roles
20 and responsibilities with respect to
21 wartime contracts and contracts for
22 contingency operations are distributed
23 among the various departments and
24 agencies of the Federal Government,
25 and interagency coordination and

1 communication mechanisms associated
2 with wartime contracts and contracts
3 for contingency operations.

4 (5) OTHER POWERS AND AUTHORITIES.—

5 (A) HEARINGS AND EVIDENCE.—The
6 Commission or, on the authority of the Com-
7 mission, any subcommittee or member thereof,
8 may, for the purpose of carrying out this sub-
9 section—

10 (i) hold such hearings and sit and act
11 at such times and places, take such testi-
12 mony, receive such evidence, administer
13 such oaths; and

14 (ii) subject to subparagraph (B)(i),
15 require, by subpoena or otherwise, require
16 the attendance and testimony of such wit-
17 nesses and the production of such books,
18 records, correspondence, memoranda, pa-
19 pers, and documents,

20 as the Commission or such designated sub-
21 committee or designated member may deter-
22 mine advisable.

23 (B) SUBPOENAS.—

24 (i) ISSUANCE.—

1 (I) IN GENERAL.—A subpoena
2 may be issued under subparagraph
3 (A) only—

4 (aa) by the agreement of the
5 chairman and the vice chairman;
6 or

7 (bb) by the affirmative vote
8 of 5 members of the Commission.

9 (II) SIGNATURE.—Subject to
10 subclause (I), subpoenas issued under
11 this subparagraph may be issued
12 under the signature of the chairman
13 or any member designated by a ma-
14 jority of the Commission, and may be
15 served by any person designated by
16 the chairman or by a member des-
17 ignated by a majority of the Commis-
18 sion.

19 (ii) ENFORCEMENT.—

20 (I) IN GENERAL.—In the case of
21 contumacy or failure to obey a sub-
22 poena issued under clause (i), the
23 United States district court for the ju-
24 dicial district in which the subpoenaed
25 person resides, is served, or may be

1 found, or where the subpoena is re-
2 turnable, may issue an order requiring
3 such person to appear at any des-
4 ignated place to testify or to produce
5 documentary or other evidence. Any
6 failure to obey the order of the court
7 may be punished by the court as a
8 contempt of that court.

9 (II) ADDITIONAL ENFORCE-

10 MENT.—In the case of any failure of
11 any witness to comply with any sub-
12 poena or to testify when summoned
13 under authority of subclause (I) or
14 this subclause, the Commission may,
15 by majority vote, certify a statement
16 of fact constituting such failure to the
17 appropriate United States attorney,
18 who may bring the matter before the
19 grand jury for its action, under the
20 same statutory authority and proce-
21 dures as if the United States attorney
22 had received a certification under sec-
23 tions 102 through 104 of the Revised
24 Statutes of the United States (2
25 U.S.C. 192 through 194).

1 (C) ACCESS TO INFORMATION.—The Com-
2 mission may secure directly from the Depart-
3 ment of Defense and any other department or
4 agency of the Federal Government any informa-
5 tion or assistance that the Commission con-
6 siders necessary to enable the Commission to
7 carry out the requirements of this subsection.
8 Upon request of the Commission, the head of
9 such department or agency shall furnish such
10 information expeditiously to the Commission.
11 Whenever information or assistance requested
12 by the Commission is unreasonably refused or
13 not provided, the Commission shall report the
14 circumstances to Congress without delay.

15 (D) PERSONNEL.—The Commission shall
16 have the authorities provided in section 3161 of
17 title 5, United States Code, and shall be subject
18 to the conditions set forth in such section, ex-
19 cept to the extent that such conditions would be
20 inconsistent with the requirements of this sub-
21 section.

22 (E) DETAILEES.—Any employee of the
23 Federal Government employee may be detailed
24 to the Commission without reimbursement from
25 the Commission, and such detailee shall retain

1 the rights, status, and privileges of his or her
2 regular employment without interruption.

3 (F) SECURITY CLEARANCES.—The appro-
4 priate departments or agencies of the Federal
5 Government shall cooperate with the Commis-
6 sion in expeditiously providing to the Commis-
7 sion members and staff appropriate security
8 clearances to the extent possible pursuant to ex-
9 isting procedures and requirements, except that
10 no person shall be provided with access to clas-
11 sified information under this section without
12 the appropriate security clearances.

13 (G) VIOLATIONS OF LAW.—

14 (i) REFERRAL TO ATTORNEY GEN-
15 ERAL.—The Commission may refer to the
16 Attorney General any violation or potential
17 violation of law identified by the Commis-
18 sion in carrying out its duties under this
19 subsection.

20 (ii) REPORTS ON RESULTS OF REFER-
21 RAL.—The Attorney General shall submit
22 to Congress a report on each prosecution
23 and conviction that results from a referral
24 made under this subparagraph.

1 (6) TERMINATION.—The Commission shall ter-
2 minate on the date that is 60 days after the date of
3 the submittal of its final report under paragraph
4 (4)(C).

5 (7) CONTINGENCY OPERATION DEFINED.—In
6 this subsection, the term “contingency operation”
7 has the meaning given that term in section 101 of
8 title 10, United States Code.

9 (b) INVESTIGATION OF WASTE, FRAUD, ABUSE, AND
10 MISMANAGEMENT.—

11 (1) IN GENERAL.—The Special Inspector Gen-
12 eral for Iraq Reconstruction shall, in collaboration
13 with the Inspector General of the Department of De-
14 fense, the Inspector General of the Department of
15 State, the Inspector General of the United States
16 Agency for International Development, the Inspector
17 General of the Central Intelligence Agency, the In-
18 spector General of the Defense Intelligence Agency,
19 and the Inspector General of the Office of the Direc-
20 tor of National Intelligence and in consultation with
21 the Commission on Wartime Contracting established
22 by subsection (a), conduct a series of audits to iden-
23 tify potential waste, fraud, abuse, or mismanage-
24 ment in the performance of—

1 (A) Department of Defense contracts and
2 subcontracts for the logistical support of coali-
3 tion forces in Operation Iraqi Freedom and Op-
4 eration Enduring Freedom; and

5 (B) Federal agency contracts and sub-
6 contracts for the performance of security, intel-
7 ligence, and reconstruction functions in Oper-
8 ation Iraqi Freedom and Operation Enduring
9 Freedom.

10 (2) SCOPE OF AUDITS OF CONTRACTS.—Each
11 audit conducted pursuant to paragraph (1)(A) shall
12 focus on a specific contract, task order, or site of
13 performance under a contract or task order and
14 shall examine, at a minimum, one or more of the fol-
15 lowing issues:

16 (A) The manner in which requirements
17 were developed.

18 (B) The procedures under which the con-
19 tract or task order was awarded.

20 (C) The terms and conditions of the con-
21 tract or task order.

22 (D) The contractor's staffing and method
23 of performance, including cost controls.

24 (E) The efficacy of Department of Defense
25 management and oversight, Department of

1 State management and oversight, and United
2 States Agency for International Development
3 management and oversight, including the ade-
4 quacy of staffing and training of officials re-
5 sponsible for such management and oversight.

6 (F) The flow of information from the con-
7 tractor to officials responsible for contract man-
8 agement and oversight.

9 (3) SCOPE OF AUDITS OF OTHER CON-
10 TRACTS.—Each audit conducted pursuant to para-
11 graph (1)(B) shall focus on a specific contract, task
12 order, or site of performance under a contract or
13 task order and shall examine, at a minimum, one or
14 more of the following issues:

15 (A) The manner in which the requirements
16 were developed and the contract or task order
17 was awarded.

18 (B) The manner in which the Federal
19 agency exercised control over the contractor's
20 performance.

21 (C) The extent to which operational field
22 commanders are able to coordinate or direct the
23 contractor's performance in an area of combat
24 operations.

1 (D) The extent to which the functions per-
2 formed were appropriate for performance by a
3 contractor.

4 (E) The degree to which contractor em-
5 ployees were properly screened, selected,
6 trained, and equipped for the functions to be
7 performed.

8 (F) The nature and extent of any incidents
9 of misconduct or unlawful activity by contractor
10 employees.

11 (G) The extent to which any incidents of
12 misconduct or unlawful activity were reported,
13 documented, investigated, and (where appro-
14 priate) prosecuted.

15 (4) CONTINUATION OF SPECIAL INSPECTOR
16 GENERAL.—

17 (A) IN GENERAL.—Notwithstanding sec-
18 tion 3001(o) of the Emergency Supplemental
19 Appropriations Act for Defense and for the Re-
20 construction of Iraq and Afghanistan, 2004
21 (Public Law 108–106; 5 U.S.C. App. 8G note),
22 the Office of the Special Inspector General for
23 Iraq Reconstruction shall not terminate until
24 the date that is 60 days after the date of the
25 submittal under paragraph (4)(C) of subsection

1 (a) of the final report of the Commission on
2 Wartime Contracting established by subsection
3 (a).

4 (B) REAFFIRMATION OF CERTAIN DUTIES
5 AND RESPONSIBILITIES.—Congress reaffirms
6 that the Special Inspector General for Iraq Re-
7 construction retains the duties and responsibil-
8 ities in sections 4 of the Inspector General Act
9 of 1978 (5 U.S.C. App. 4; relating to reports
10 of criminal violations to the Attorney General)
11 and section 5 of the Inspector General Act of
12 1978 (5 U.S.C. App. 5; relating to reports to
13 Congress) as expressly provided in subsections
14 (f)(3) and (i)(3), respectively, of section 3001
15 of the Emergency Supplemental Appropriations
16 Act for Defense and for the Reconstruction of
17 Iraq and Afghanistan, 2004.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated such sums as may be re-
20 quired to carry out the provisions of this section.

○