

111TH CONGRESS
1ST SESSION

H. R. 963

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2009

Mr. PRICE of North Carolina (for himself, Ms. SCHAKOWSKY, Mr. GRIJALVA, Mr. HINCHEY, Mr. MCGOVERN, Mr. MCDERMOTT, Ms. LEE of California, and Mr. MILLER of North Carolina) 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 the 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 2009”.

1 **SEC. 2. PROHIBITION ON THE USE OF PRIVATE CONTRAC-**
2 **TORS FOR ACTIVITIES INVOLVING PERSONS**
3 **UNDER THE CUSTODY OR CONTROL OF THE**
4 **UNITED STATES GOVERNMENT.**

5 (a) PROHIBITION.—Notwithstanding any other provi-
6 sion of law, a covered contract may not be awarded for
7 the performance of any activity described in subsection
8 (b).

9 (b) ACTIVITIES.—Subsection (a) shall apply to any
10 activity relating to the capture, custody, control, or other
11 pertinent interaction with an individual who is a detainee
12 or prisoner in the custody or under the effective control
13 of the United States Government, including, with regard
14 to such an individual—

- 15 (1) arrest;
16 (2) interrogation;
17 (3) detention; or
18 (4) transportation or transfer.

19 (c) SPECIAL RULE RELATING TO LANGUAGE INTER-
20 PRETATION.—Subsection (b) shall not be construed to in-
21 clude the performance of work related to language inter-
22 pretation, so long as the work is strictly limited to lan-
23 guage interpretation and occurs under the direct super-
24 vision of United States Government personnel.

1 (d) DEADLINE FOR COMPLIANCE.—The President
2 shall have six months following the date of the enactment
3 of this Act to ensure compliance with subsection (a).

4 **SEC. 3. ANNUAL SURVEY OF INTELLIGENCE COMMUNITY**
5 **CONTRACTORS.**

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

9 **“SEC. 506B. ANNUAL CONTRACTOR PERSONNEL LEVEL AS-**
10 **SESSMENTS FOR THE INTELLIGENCE COM-**
11 **MUNITY.**

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

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

23 “(c) CONTENTS.—Each assessment required by sub-
24 section (a) submitted during a fiscal year shall contain,

1 at a minimum, the following information for the element
2 of the intelligence community concerned:

3 “(1) The total number and costs of contractors
4 funded by the element during the previous fiscal
5 year.

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

9 “(3) The best estimate of the number and costs
10 of contractors to be funded by the element for the
11 upcoming fiscal year.

12 “(4) The proposed numerical and percentage
13 increase or decrease of such costs of contracts as
14 compared to the best estimate of the costs of con-
15 tracts of the current fiscal year.

16 “(5) The proposed numerical and percentage
17 increase or decrease of such costs of contracts as
18 compared to the cost of contracts, and the number
19 of contracts, during the prior 5 fiscal years.

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

22 “(7) A list of all contractors that have been the
23 subject of an investigation completed by the Inspec-
24 tor General of any element of the intelligence com-
25 munity during the preceding fiscal year, or are or

1 have been the subject of an investigation by such an
2 Inspector General during the current fiscal year, or
3 are currently or have been during the previous fiscal
4 year the subject of a United States or foreign crimi-
5 nal investigation in connection with activities per-
6 formed under a contract awarded by any element of
7 the intelligence community, as well as any charges
8 filed in connection with the investigation and the
9 findings or disposition of the investigation.

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

13 “(A) training resources to support the an-
14 ticipated scope of contractor activity for the up-
15 coming fiscal year; and

16 “(B) resources and infrastructure to sup-
17 port the administration, management, and over-
18 sight of the anticipated scope of contractor ac-
19 tivity for the upcoming fiscal year.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 in the first section of that Act is amended by inserting
22 after the item relating to section 506A the following new
23 item:

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

1 **SEC. 4. TRANSPARENCY AND ACCOUNTABILITY IN INTEL-**
2 **LIGENCE CONTRACTING.**

3 (a) INFORMATION ON ACTIVITIES TO BE PER-
4 FORMED.—Each covered contract shall require the con-
5 tractor to provide to the contracting officer for the con-
6 tract, not later than 5 days after award of the contract,
7 the following information regarding activities performed
8 under the contract:

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

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

14 (3) A description of the process used to hire
15 such persons, including the method by which and the
16 extent to which background checks regarding such
17 persons are conducted.

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

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

22 (b) UPDATES.—The information provided under sub-
23 section (a) shall be updated during contract performance
24 as necessary.

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

1 (1) Upon award of the contract, the contractor
2 shall provide to the contracting officer cost estimates
3 of salary, benefits, insurance, materials, logistics, ad-
4 ministrative costs, and other costs of carrying out
5 activities under the contract.

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

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

17 **SEC. 5. REPORT ON THE USE OF PRIVATE CONTRACTORS**
18 **FOR INTELLIGENCE ACTIVITIES.**

19 (a) REQUIREMENT FOR REPORT.—Not later than
20 120 days following the date of the enactment of this Act,
21 the Director of National Intelligence shall submit to Con-
22 gress a report describing the personal services activities
23 performed by contractors across the intelligence commu-
24 nity, the impact of such contractors on the intelligence
25 community workforce, plans for conversion of contractor

1 employment into Government employment, and the ac-
2 countability mechanisms that govern the performance of
3 such contractors.

4 (b) CONTENT.—

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

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

16 (B) an identification of contracts where the
17 contractor is providing a substantially similar
18 functions to a Government employee;

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

1 (D) an assessment of the appropriateness
2 of using contractors to perform the activities
3 described in paragraph (2);

4 (E) an estimate of the number of con-
5 tracts, and the number of personnel working
6 under such contracts, related to the perform-
7 ance of activities described in paragraph (2);

8 (F) a comparison of the compensation of
9 contract employees and Government employees
10 performing substantially similar functions;

11 (G) an analysis of the attrition of Govern-
12 ment personnel associated with the reliance on
13 contractor positions that provide substantially
14 similar functions;

15 (H) an analysis of accountability mecha-
16 nisms available to each element of the intel-
17 ligence community, including regulations and
18 provisions included within services contracts;

19 (I) an analysis of procedures in use in the
20 intelligence community for conducting oversight
21 of contractors to ensure identification and pros-
22 ecution of criminal violations, financial waste,
23 fraud, or other abuses committed by contractors
24 or contract personnel; and

1 (J) an identification of best practices of
2 accountability mechanisms within services con-
3 tracts.

4 (2) ACTIVITIES.—Activities described in this
5 paragraph are the following:

6 (A) Intelligence collection.

7 (B) Intelligence analysis.

8 (C) Covert actions.

9 (D) Conduct of electronic or physical sur-
10 veillance or monitoring of United States citizens
11 in the United States.

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

15 **SEC. 6. DEFINITIONS.**

16 In this Act:

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

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

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

3 (1) a prime contract—

4 (A) with any agency or office that is part
5 of the intelligence community; or

6 (B) with any Federal department or agen-
7 cy if the work performed under the contract will
8 be performed under the direction or supervision
9 of any agency or office that is part of the intel-
10 ligence community;

11 (2) a subcontract at any tier under any prime
12 contract described in paragraph (1); or

13 (3) a task order issued under a task or delivery
14 order contract entered into by an office or agency
15 referred to in paragraph (1)(A);

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

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