

111TH CONGRESS
2^D SESSION

S. 3023

To phase out the use of private military contractors.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2010

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To phase out the use of private military contractors.

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 “Stop Outsourcing Se-
5 curity Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States Government is increas-
9 ingly relying on armed private security contractors
10 to perform mission-critical and emergency essential
11 functions that historically have been performed by
12 United States military or Government personnel.

1 (2) In August 2008, the Congressional Budget
2 Office estimated that there were approximately
3 190,000 contractors operating in Iraq, and between
4 25,000 and 30,000 of these were private security
5 contractors.

6 (3) As of September 2009, the Department of
7 Defense had approximately 218,000 contract em-
8 ployees operating in Iraq and Afghanistan, as com-
9 pared to 195,000 members of the United States
10 Armed Forces operating in these two theaters of
11 war.

12 (4) As of June 2009, the Department of De-
13 fense had deployed over 13,000 armed private secu-
14 rity contractors in Iraq and over 5,000 in Afghani-
15 stan, an increase from 10,743 and 4,111, respec-
16 tively, in March 2009.

17 (5) As of February 28, 2009, the Department
18 of State used 3,321 armed private security contrac-
19 tors in Iraq and 689 in Afghanistan.

20 (6) In September 2009, photos surfaced show-
21 ing individuals hired by ArmorGroup North Amer-
22 ica, which was awarded a contract by the Depart-
23 ment of State to provide security at the United
24 States embassy in Kabul, engaging in lewd and
25 drunken sexual conduct and hazing.

1 (7) There is evidence that ArmorGroup North
2 America, and its parent company Wackenhut Serv-
3 ices, had previously ignored repeated reports of mis-
4 conduct by its employees in Kabul.

5 (8) The Department of State issued numerous
6 formal notices to ArmorGroup North America re-
7 garding performance deficiencies, and in March
8 2009 wrote to the company expressing “grave con-
9 cern” about the short-staffing of guard posts.

10 (9) In May 2009, four men employed as mili-
11 tary trainers for Paravant LLC, a Blackwater affil-
12 iate, fired on a civilian vehicle in Kabul, killing one
13 Afghan and wounding two others.

14 (10) On September 16, 2007, individuals hired
15 by the company then known as Blackwater USA
16 opened fire on Baghdad’s Nisour Square, killing 17
17 Iraqis and wounding at least 20 others.

18 (11) A Federal judge dismissed criminal
19 charges against the Blackwater contractors involved
20 in the Nisour Square shooting after finding that
21 Federal prosecutors misused evidence, a decision
22 that has been appealed by the Department of Jus-
23 tice.

24 (12) On October 18, 2007, Secretary of De-
25 fense Robert Gates stated that the work of many

1 contractors in Iraq is “at cross-purposes to our larg-
2 er mission in Iraq,” and that “right now those mis-
3 sions are in conflict”.

4 (13) On Christmas Eve 2006, Blackwater con-
5 tractor Andrew Moonen, while drunk, shot and killed
6 a guard to Iraqi Vice President Adil Abd-al-Mahdi
7 in the Green Zone, and though Mr. Moonen lost his
8 job with Blackwater as a result of this incident, he
9 was promptly hired by Combat Support Associates,
10 another Department of Defense contractor, and sent
11 to work in Kuwait.

12 (14) In the wake of the 2004 killing of four
13 Blackwater contractors in Fallujah, the families of
14 the men killed filed a civil suit against the company,
15 alleging that Blackwater failed to properly equip and
16 man its armored vehicles.

17 (15) Xe Services, LLC, the company formerly
18 known as Blackwater, has also faced allegations of
19 weapons smuggling and improperly licensing fire-
20 arms.

21 (16) In 2007, the Committee on Oversight and
22 Government Reform of the House of Representatives
23 investigated Blackwater’s employment practices and
24 found that the company’s classification of its secu-
25 rity guards may have allowed the firm to avoid pay-

1 ing Social Security, Medicare, and Federal income
2 and employment taxes.

3 (17) In response to a request from the Com-
4 mittee on Oversight and Government Reform of the
5 House of Representatives, the Inspector General of
6 the Small Business Administration investigated
7 Blackwater in 2008 and found that the company
8 may have misrepresented its small business status,
9 enabling it to qualify for \$110,000,000 in Govern-
10 ment contracts set aside specifically for small busi-
11 nesses.

12 (18) Signed affidavits have been filed in a civil
13 lawsuit against Blackwater that company founder
14 Erik Prince views himself “as a Christian crusader
15 tasked with eliminating Muslims and the Islamic
16 faith from the globe”, that he knowingly deployed
17 “demonstrably unfit men” to Iraq, and that he used
18 illegal ammunition, including a bullet designed to ex-
19 plode after entering the human body, among other
20 charges.

21 (19) In November 2007, a contractor employed
22 by DynCorp International, LLC, reportedly shot and
23 killed an unarmed taxi driver who, according to wit-
24 nesses, posed no threat to the DynCorp convoy.

1 (20) A January 2007 report by the Special In-
2 specter General for Iraq Reconstruction stated that
3 DynCorp billed the United States for millions of dol-
4 lars of work that was never authorized.

5 (21) In October 2007, an audit report issued by
6 the Special Inspector General for Iraq Reconstruc-
7 tion stated that the Department of State “does not
8 know specifically what it received for most of the
9 \$1,200,000,000 in expenditures under its DynCorp
10 Contract for the Iraqi Police Training Program”.

11 (22) Congress does not have complete access to
12 information about all security contracts, the number
13 of armed private security contractors working in
14 Iraq, Afghanistan, and other combat zones, the
15 number of contractors who have died, and any dis-
16 ciplinary actions taken against contract personnel or
17 companies.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) MISSION CRITICAL OR EMERGENCY ESSEN-
21 TIAL FUNCTIONS.—The term “mission critical or
22 emergency essential functions”—

23 (A) means—

24 (i) activities for which continued per-
25 formance is considered essential to support

1 combat systems and operational activities;

2 or

3 (ii) activities whose delay, absence, or
4 failure of performance would significantly
5 affect the broader success or failure of a
6 military operation; and

7 (B) includes—

8 (i) the provision of protective services;

9 (ii) the provision of security advice
10 and planning;

11 (iii) military and police training;

12 (iv) repair and maintenance for weap-
13 ons systems;

14 (v) prison administration;

15 (vi) interrogation; and

16 (vii) intelligence.

17 (2) SPECIFIED CONGRESSIONAL COMMIT-
18 TEES.—The term “specified congressional commit-
19 tees” means the following committees:

20 (A) The Committee on Armed Services, the
21 Committee on Oversight and Government Re-
22 form, the Committee on Appropriations, the
23 Committee on Foreign Affairs, and the Perma-
24 nent Select Committee on Intelligence of the
25 House of Representatives.

1 (B) The Committees on Armed Services,
2 the Committee on Homeland Security and Gov-
3 ernmental Affairs, the Committee on Appro-
4 priations, the Committee on Foreign Relations,
5 and the Select Committee on Intelligence of the
6 Senate.

7 **SEC. 4. REQUIREMENT FOR GOVERNMENT PERSONNEL TO**
8 **PERFORM DIPLOMATIC SECURITY IN IRAQ**
9 **AND AFGHANISTAN.**

10 Not later than 180 days after the date of the enact-
11 ment of this Act, the Secretary of State shall ensure that
12 all personnel at any United States diplomatic or consular
13 mission in Iraq or Afghanistan are provided security serv-
14 ices only by United States Government personnel.

15 **SEC. 5. REQUIREMENTS RELATING TO CONTRACTORS PER-**
16 **FORMING MISSION CRITICAL OR EMERGENCY**
17 **ESSENTIAL FUNCTIONS IN ALL CONFLICT**
18 **ZONES IN WHICH CONGRESS HAS AUTHOR-**
19 **IZED THE USE OF FORCE.**

20 (a) REPORT BY PRESIDENT.—

21 (1) REQUIREMENT.—Not later than June 1,
22 2010, the President shall submit to the specified
23 congressional committees a report on the status of
24 planning for the transition away from the use of pri-
25 vate contractors for mission critical or emergency es-

1 sential functions by January 1, 2011, in all conflict
2 zones in which Congress has authorized the use of
3 force.

4 (2) ADDITIONAL MATTERS COVERED.—If the
5 report submitted under paragraph (1) states that
6 the relevant agencies will not be able to transition to
7 Government and military personnel for such func-
8 tions by January 1, 2011, the President shall in-
9 clude in the report the following:

10 (A) A statement of the reasons why the
11 relevant agencies are unable to do so, the date
12 by which they will be able to do so, and the
13 plan to ensure that they will be able to do so
14 by that date.

15 (B) A certification that—

16 (i) all contract employees have under-
17 gone background checks to ensure that
18 they do not have criminal records and have
19 not been accused of human rights abuses;

20 (ii) no contract employees are subject
21 to pending criminal charges;

22 (iii) all contract employees are under
23 the jurisdiction of section 3261 of title 18,
24 United States Code (relating to military
25 extraterritorial jurisdiction);

1 (iv) contract employees, if accused of
2 crimes by the host country, must remain in
3 United States custody; and

4 (v) contracts include whistleblower
5 protections for employees to provide good
6 faith information to management, Govern-
7 ment agencies, and Congress of any con-
8 tract violations, human rights abuses, or
9 criminal actions.

10 (3) FORM OF REPORT.—The report required by
11 this subsection shall be submitted in unclassified
12 form, to the maximum extent possible, but may con-
13 tain a classified annex, if necessary.

14 (b) EXAMINATION OF CONTRACTOR ACCOUNTING
15 PRACTICES.—Any individual or entity under contract with
16 the Federal Government to provide mission critical or
17 emergency essential functions after January 1, 2011, shall
18 allow the specified congressional committees to examine
19 their accounting practices with respect to any such con-
20 tract quarterly and upon request.

21 (c) REQUIREMENTS RELATING TO CONTRACT RE-
22 NEWALS.—Any contract with the Federal Government re-
23 quiring personnel to perform mission critical or emergency
24 essential functions that is proposed to be renewed after

1 the date of the enactment of this Act may be renewed only
2 if—

3 (1) the President reports to the specified con-
4 gressional committees that the relevant agency does
5 not have adequate personnel to perform the duties
6 stipulated in the contract; and

7 (2) the President certifies that—

8 (A) all contract employees have undergone
9 background checks to ensure that they do not
10 have criminal records and have not been ac-
11 cused of human rights abuses;

12 (B) no contract employees are subject to
13 pending criminal charges;

14 (C) all contract employees are under the
15 jurisdiction of section 3261 of title 18, United
16 States Code (relating to military extraterritorial
17 jurisdiction);

18 (D) contract employees, if accused of
19 crimes by the host country, must remain in the
20 custody of the United States; and

21 (E) the contract includes whistleblower
22 protections for employees to provide good faith
23 information to management, Government agen-
24 cies, and Congress of any contract violations,
25 human rights abuses, or criminal actions.

1 **SEC. 6. CONGRESSIONAL ACCESS TO CONTRACTS.**

2 (a) REQUIREMENT TO ALLOW CONGRESS ACCESS TO
3 COPIES AND DESCRIPTIONS OF CONTRACTS AND TASK
4 ORDERS IN EXCESS OF \$5,000,000 FOR WORK TO BE
5 PERFORMED IN IRAQ AND AFGHANISTAN.—

6 (1) REQUIREMENT REGARDING CONTRACTS
7 AND TASK ORDERS BEFORE ENACTMENT.—The Sec-
8 retary of Defense, the Secretary of State, the Sec-
9 retary of the Interior, and the Administrator of the
10 United States Agency for International Development
11 shall allow the chairman and the ranking minority
12 member of each specified congressional committee
13 access to a copy of, and a description of the work
14 performed or to be performed under, each contract,
15 and each task order issued under an existing con-
16 tract, in an amount greater than \$5,000,000 entered
17 into by the Department of Defense, the Department
18 of State, the Department of the Interior, and the
19 Agency for International Development, respectively,
20 during the period beginning on October 1, 2001, and
21 ending on the last day of the month during which
22 this Act is enacted for work to be performed in Iraq
23 and Afghanistan.

24 (2) FORM OF SUBMISSIONS.—The copies and
25 descriptions required by paragraph (1) shall be sub-
26 mitted in unclassified form, to the maximum extent

1 possible, but may contain a classified annex, if nec-
2 essary.

3 (b) REPORTS ON IRAQ AND AFGHANISTAN CON-
4 TRACTS.—The Secretary of Defense, the Secretary of
5 State, the Secretary of the Interior, and the Administrator
6 of the United States Agency for International Develop-
7 ment shall each submit to each specified congressional
8 committee a report not later than 60 days after the date
9 of the enactment of this Act that contains the following
10 information:

11 (1) The number of persons performing work in
12 Iraq and Afghanistan under contracts (and sub-
13 contracts at any tier) entered into by Department of
14 Defense, the Department of State, the Department
15 of the Interior, and the United States Agency for
16 International Development, respectively.

17 (2) The total cost of such contracts.

18 (3) The total number of persons who have been
19 wounded or killed in performing work under such
20 contracts.

21 (4) A description of the disciplinary actions
22 that have been taken against persons performing
23 work under such contracts by the contractor, the

- 1 United States Government, or the Government of
- 2 Iraq or Afghanistan.

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