

CONTRACTING AND TAX ACCOUNTABILITY ACT OF 2013

APRIL 12, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 882]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 882) to prohibit the awarding of a contract or grant in excess of the simplified acquisition threshold unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that the contractor or grantee has no seriously delinquent tax debts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 882 is designed to ensure federal tax compliance for both government contractors and grantees. The federal government spends more than \$1 trillion in contracts and grants annually (in fiscal year 2012, \$514 billion in contracts and \$536 billion in grants).¹ It is important to ensure that the federal contracts and grants, funded by the taxpayers, are only awarded to responsible businesses and individuals.

This bill requires that the head of any executive agency that issues a solicitation for a contract, or that offers a grant, in an amount greater than the simplified acquisition threshold (currently set at \$150,000) require each person submitting a bid or proposal or grant application to: (1) certify that such person does not have a seriously delinquent tax debt; and (2) authorize the Secretary of the Treasury to disclose information limited to describing whether such person has a seriously delinquent tax debt. Affirmative self-certification of a seriously delinquent tax debt is considered to be definitive proof that the person is not a responsible party or is a high-risk applicant for the pending contract or grant action.

This bill requires contractors and grantees found to have a “seriously delinquent tax debt”—whether they be identified via self-certification or by the Treasury verification—to be proposed for debarment consideration, unless waived by the agency head.

“Seriously delinquent tax debt” is defined in the bill as an outstanding tax debt for which a notice of lien has been filed in public records. Exempted from such definition are: (1) tax debts that are being paid in a timely manner under an approved installment agreement; and (2) debts for which a collection due process hearing has been requested or is pending.

BACKGROUND AND NEED FOR LEGISLATION

The Government Accountability Office (GAO) has reported that thousands of government contractors had substantial amounts of unpaid federal taxes. Specifically, about 27,000 defense contractors, 33,000 civilian agency contractors, and 3,800 General Services Administration contractors owed about \$3 billion, \$3.3 billion, and \$1.4 billion in unpaid taxes, respectively.² Many of the contractors have repeatedly failed to fulfill their tax obligations and have delinquencies that extend over multiple tax periods. GAO also reported that tens of thousands of recipients of federal grant and direct assistance programs collectively owed \$790 million in federal taxes as of September 30, 2006.³ This figure, according to GAO, is likely substantially understated because GAO’s analysis excluded the 80 percent of federal grants that are directly given to state and local governments which, in turn, disburse the grants to the ultimate recipients. Furthermore, in its April 2011 report, GAO found that at least 3,700 Recovery Act contract and grant recipients owed more than \$750 million in known unpaid federal taxes while receiving

¹ Source: USASpending.gov.

² See GAO-07-742T; “TAX COMPLIANCE: Thousands of Federal Contractors Abuse the Federal Tax System”; April 19, 2007.

³ See GAO-08-31; “TAX COMPLIANCE: Federal Grant and Direct Assistance Recipients Who Abuse the Federal Tax System”; November 2007.

over \$24 billion in Recovery Act funds.⁴ This represented nearly 5 percent of the contractors and grant recipients in the Recovery.gov database at the time.

In response to the GAO reports and Congressional attention, in April 2008, the Federal Acquisition Regulation (FAR) was revised requiring, for any contracts over the simplified acquisition threshold; (1) offerors certify tax delinquency status; and (2) where an offeror indicates the existence of “an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds \$3,000” an agency suspension and debarment official is notified.⁵ The Administration, in January 2010, published a memorandum pushing for enhanced tax compliance requirements by tasking the Commissioner of Internal Revenue with conducting a review of self-certifications submitted pursuant to the 2008 FAR amendment.⁶ This bill would codify the FAR changes and provide a means to verify the contractor’s self-certification.

The bill defines “seriously delinquent tax debt” as an outstanding tax debt for which a “notice of lien has been filed in public records.”

The committee believes the bill sufficiently protects honest and responsible small businesses and individuals. Under the Internal Revenue Code, referenced in the bill (26 U.S.C. 6320), a written notice is provided within five business days after the filing of a notice of lien. This official and legally-sufficient notice is either: (1) given in person; (2) left at the dwelling or usual place of business of such person; or (3) sent by certified or registered mail to such person’s last known address. If a small business, for instance, missed this individual notice, they could check public records easily accessible to the general public. Similar notice requirements exist before any levy is made on any property or right to property.⁷

This bill provides broad exceptions for debts being paid in a timely manner, and debts in which a due process hearing has been requested or is pending. An alleged tax delinquent business or individual may request a hearing or appeal at the time of the notice of lien or levy. The committee is also aware that the Internal Revenue Service typically does not file notices of federal tax liens on amounts less than \$10,000.⁸

Under the statute, a “responsible” contractor must possess “a satisfactory record of integrity and business ethics.”⁹ The Committee believes that it is not unreasonable to ask that a responsible business, expecting to be awarded a contract or grant valued at more than \$150,000 (i.e., current simplified acquisition threshold), be aware of its federal tax liability or an official written notice or public record against its property.

LEGISLATIVE HISTORY

An identical version of this bill (H.R. 829), including an amendment offered by Rep. Speier, was adopted by the Oversight and

⁴ See GAO–11–485; “RECOVERY ACT: Thousands of Recovery Act Contract and Grant Recipients Owe Hundreds of Millions in Federal Taxes”; April 2011.

⁵ Federal Acquisition Regulation 9.104–5, Certification regarding responsibility matters.

⁶ See generally “Memorandum for the Heads of Executive Departments and Agencies,” January 20, 2010. <http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-1>.

⁷ See generally 26 U.S.C. § 6330.

⁸ See <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Fresh-Start-Notice-of-Federal-Tax-Liens>.

⁹ See generally 41 U.S.C. § 113.

Government Reform Committee during the 112th Congress. Similar measures were introduced in the 110th and 111th Congresses, by then-Senator Barack Obama.¹⁰

SECTION-BY-SECTION

Section 1. Short title

Provides the title “Contracting and Tax Accountability Act of 2013.”

Section 2. Governmental policy

Provides the policy of the United States Government that no government contract or grant should be awarded to an individual or company with seriously delinquent federal tax debts.

Section 3. Disclosure and evaluation of contract offers from delinquent federal debtors

Requires that a solicitation for a contract larger than \$150,000 (i.e., the simplified acquisition threshold) require that each offeror submit: (1) a certification that the offeror does not have a “seriously delinquent tax debt”; and (2) a waiver of privacy to allow verification of such self-certification using the Treasury tax data.

Subsection (b) creates a presumption that the affirmative certification of “seriously delinquent tax debt” be definitive proof that the offeror is not a responsible source to do business with the federal government.

Subsection (c) requires that an offeror with a “seriously delinquent tax debt,” deduced either by self-certification or by Treasury verification, be referred to the agency’s suspension and debarment office for a formal adjudication, unless the head of an agency executes a written waiver. In case of a waiver, the head of the agency is required to notify Congress within 30 days with the relevant information. The term “propose” in this bill has a meaning distinct from what is called “a notice of proposed debarment” in the FAR.¹¹

Section 4. Disclosure and evaluation of grant applications from delinquent federal debtors

Provides reciprocal requirements for grants, except that instead of banning grantees with a seriously delinquent tax debt from receiving a grant, they are instead placed in the “high risk” category, triggering enhanced reporting and oversight.

Section 5. Definitions and special rules

The term “seriously delinquent tax debt” is defined as “an outstanding tax debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records.” Exceptions are provided for debts being paid in a timely manner and debts in which a due process hearing has been requested or is pending. Also exempts a grant entitlement program applicant.

Section 6. Effective date

Applies to contracts and grants awarded on or after the date occurring 270 days after enactment of this Act.

¹⁰S. 2519, “Contracting and Tax Accountability Act of 2007.”

¹¹Federal Acquisition Regulation 9.406–3, Procedures. (c) Notice of proposal to debar.

EXPLANATION OF AMENDMENTS

No amendments were offered to H.R. 882.

COMMITTEE CONSIDERATION

On March 20, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 882, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill ensures federal tax compliance for both government contractors and grantees. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 882 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Section 3(e) requires that the Federal Acquisition Regulation be revised to incorporate the requirements of the bill within 270 days of date of enactment.

Section 4(e) requires that the Director of the Office of Management and Budget revise regulations governing grants to incorporate the requirements of the bill within 270 days of date of enactment.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 882 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 882. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 882 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 11, 2013.

Hon. DARRELL ISSA,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 882, the Contracting and Tax Accountability Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 882—Contracting and Tax Accountability Act of 2013

H.R. 882 would prohibit federal agencies from awarding contracts or grants to persons or companies that have seriously delinquent tax debt. The legislation defines seriously delinquent as outstanding tax debt to the federal government for which a public lien

has been filed. Tax debt that is being paid in a timely manner, or is part of a requested or pending collection-due-process hearing, would not be considered seriously delinquent. Under the bill, certain contractors and grantees that receive federal funds would have to certify that they do not have such tax debt, and the Internal Revenue Service (IRS) would be authorized to confirm or refute those claims on behalf of the federal agencies involved.

Based on information from the Office of Management and Budget, the Internal Revenue Service, and the staff of the Joint Committee on Taxation (JCT), CBO estimates that implementing H.R. 882 would increase administrative costs governmentwide by less than \$500,000 annually, assuming the availability of appropriated funds. The bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates that any net increase in direct spending by such agencies would not be significant. JCT estimates that enacting the bill would have a negligible effect on revenues.

Most of the provisions of the bill would expand current law and practices. The federal government currently collects information on contractors and grant recipients through a variety of databases. In addition, the IRS has a database regarding tax liens and already provides tax-debt information to various Treasury Department programs through which certain federal payments are withheld or reduced in order to collect delinquent tax and nontax debt owed to federal agencies. Consequently, CBO estimates that implementing this bill will not significantly increase administrative costs to federal agencies.

H.R. 882 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.