

115TH CONGRESS
1ST SESSION

H. R. 4139

To provide incentives for businesses to keep jobs in America.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2017

Mr. POCAN (for himself, Mr. CONYERS, Ms. KAPTUR, Ms. NORTON, Mr. RYAN of Ohio, Mr. SWALWELL of California, Mr. GARAMENDI, Ms. WILSON of Florida, and Ms. LEE) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, Armed Services, and Oversight and Government Reform, 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 incentives for businesses to keep jobs in America.

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 “End Outsourcing Act”.

5 **SEC. 2. OUTSOURCING STATEMENT IN WORKER ADJUST-**
6 **MENT AND RETRAINING NOTICE.**

7 (a) **OUTSOURCING STATEMENT.**—Section 3 of the
8 Worker Adjustment and Retraining Notification Act (29

1 U.S.C. 2102) is amended by adding at the end the fol-
2 lowing:

3 “(e) OUTSOURCING STATEMENT.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (a), the employer shall include an outsourcing state-
6 ment in the notice described in that subsection. The
7 outsourcing statement shall specify whether part or
8 all of the positions held by affected employees cov-
9 ered by subsection (a) will be moved to a country
10 outside the United States, regardless of whether the
11 positions are moved within the business enterprise
12 involved or to another business enterprise. The em-
13 ployer shall make the determination of whether the
14 positions are being so moved in accordance with reg-
15 ulations issued by the Secretary. The employer shall
16 serve the notice as required under subsection (a) and
17 submit the notice to the Secretary of Labor.

18 “(2) LIST.—Not less often than annually, the
19 Secretary shall publish and make available on the
20 website of the Department of Labor, a list including
21 each employer who—

22 “(A) has included an outsourcing state-
23 ment in a notice under paragraph (1); or

24 “(B) has incurred liability under section 5,
25 in part or in whole, because the employer or-

1 dered a plant closing or mass layoff without
2 having served a notice that is required, under
3 this section, to include an outsourcing state-
4 ment.”.

5 (b) IMPLEMENTATION REPORT.—The Worker Ad-
6 justment and Retraining Notification Act is amended by
7 inserting after section 10 (29 U.S.C. 2109) the following:

8 **“SEC. 10A. IMPLEMENTATION STUDY.**

9 “(a) STUDY.—The Comptroller General of the United
10 States shall conduct a study of the implementation of sec-
11 tion 3(e) of the Worker Adjustment and Retraining Notifi-
12 cation Act (29 U.S.C. 2102(e)) by the Department of
13 Labor.

14 “(b) REPORT.—Not later than 3 years after the date
15 of enactment of this Act, the Comptroller General shall
16 submit to the appropriate committees of Congress a report
17 containing the results of the study.”.

18 **SEC. 3. DENIAL OF DEDUCTION FOR OUTSOURCING EX-**
19 **PENSES.**

20 (a) IN GENERAL.—Part IX of subchapter B of chap-
21 ter 1 of the Internal Revenue Code of 1986 is amended
22 by adding at the end the following new section:

1 **“SEC. 280I. OUTSOURCING EXPENSES.**

2 “(a) IN GENERAL.—No deduction otherwise allow-
3 able under this chapter shall be allowed for any specified
4 outsourcing expense.

5 “(b) SPECIFIED OUTSOURCING EXPENSE.—For pur-
6 poses of this section—

7 “(1) IN GENERAL.—The term ‘specified out-
8 sourcing expense’ means—

9 “(A) any eligible expense paid or incurred
10 by the taxpayer in connection with the elimi-
11 nation of any business unit of the taxpayer (or
12 of any member of any expanded affiliated group
13 in which the taxpayer is also a member) located
14 within the United States, and

15 “(B) any eligible expense paid or incurred
16 by the taxpayer in connection with the estab-
17 lishment of any business unit of the taxpayer
18 (or of any member of any expanded affiliated
19 group in which the taxpayer is also a member)
20 located outside the United States,

21 if such establishment constitutes the relocation of
22 the business unit so eliminated. For purposes of the
23 preceding sentence, a relocation shall not be treated
24 as failing to occur merely because such elimination
25 occurs in a different taxable year than such estab-
26 lishment.

1 “(2) ELIGIBLE EXPENSES.—The term ‘eligible
2 expenses’ means—

3 “(A) any amount for which a deduction is
4 allowed to the taxpayer under section 162, and

5 “(B) permit and license fees, lease broker-
6 age fees, equipment installation costs, and, to
7 the extent provided by the Secretary, other
8 similar expenses.

9 Such term does not include any compensation which
10 is paid or incurred in connection with severance
11 from employment and, to the extent provided by the
12 Secretary, any similar amount.

13 “(3) BUSINESS UNIT.—The term ‘business unit’
14 means—

15 “(A) any trade or business, and

16 “(B) any line of business, or functional
17 unit, which is part of any trade or business.

18 “(4) EXPANDED AFFILIATED GROUP.—The
19 term ‘expanded affiliated group’ means an affiliated
20 group as defined in section 1504(a), determined
21 without regard to section 1504(b)(3) and by sub-
22 stituting ‘more than 50 percent’ for ‘at least 80 per-
23 cent’ each place it appears in section 1504(a). A
24 partnership or any other entity (other than a cor-
25 poration) shall be treated as a member of an ex-

1 panded affiliated group if such entity is controlled
2 (within the meaning of section 954(d)(3)) by mem-
3 bers of such group (including any entity treated as
4 a member of such group by reason of this para-
5 graph).

6 “(5) OPERATING EXPENSES NOT TAKEN INTO
7 ACCOUNT.—Any amount paid or incurred in connec-
8 tion with the ongoing operation of a business unit
9 shall not be treated as an amount paid or incurred
10 in connection with the establishment or elimination
11 of such business unit.

12 “(c) SPECIAL RULES.—

13 “(1) APPLICATION TO DEDUCTIONS FOR DE-
14 PRECIATION AND AMORTIZATION.—In the case of
15 any portion of a specified outsourcing expense which
16 is not deductible in the taxable year in which paid
17 or incurred, such portion shall neither be chargeable
18 to capital account nor amortizable.

19 “(2) POSSESSIONS TREATED AS PART OF THE
20 UNITED STATES.—For purposes of this section, the
21 term ‘United States’ shall be treated as including
22 each possession of the United States (including the
23 Commonwealth of Puerto Rico and the Common-
24 wealth of the Northern Mariana Islands).

1 “(d) REGULATIONS.—The Secretary shall prescribe
2 such regulations or other guidance as may be necessary
3 or appropriate to carry out the purposes of this section,
4 including regulations which provide (or create a rebuttable
5 presumption) that certain establishments of business units
6 outside the United States will be treated as relocations
7 (based on timing or such other factors as the Secretary
8 may provide) of business units eliminated within the
9 United States.”.

10 (b) LIMITATION ON SUBPART F INCOME OF CON-
11 TROLLED FOREIGN CORPORATIONS DETERMINED WITH-
12 OUT REGARD TO SPECIFIED OUTSOURCING EXPENSES.—
13 Subsection (c) of section 952 of such Code is amended
14 by adding at the end the following new paragraph:

15 “(4) EARNINGS AND PROFITS DETERMINED
16 WITHOUT REGARD TO SPECIFIED OUTSOURCING EX-
17 PENSES.—For purposes of this subsection, earnings
18 and profits of any controlled foreign corporation
19 shall be determined without regard to any specified
20 outsourcing expense (as defined in section
21 280I(b)).”.

22 (c) CLERICAL AMENDMENT.—The table of sections
23 for part IX of subchapter B of chapter 1 of such Code
24 is amended by adding at the end the following new item:

“Sec. 280I. Outsourcing expenses.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or incurred after
3 the date of the enactment of this Act.

4 **SEC. 4. DENIAL OF CERTAIN DEDUCTIONS AND ACCOUNT-**
5 **ING METHODS FOR OUTSOURCING EMPLOY-**
6 **ERS.**

7 (a) IN GENERAL.—Part IX of subchapter B of chap-
8 ter 1 of the Internal Revenue Code of 1986 is amended
9 by adding at the end the following new section:

10 **“SEC. 280J. LIMITATIONS FOR OUTSOURCING EMPLOYERS.**

11 “(a) IN GENERAL.—During the disallowance period,
12 an applicable taxpayer—

13 “(1) shall not be allowed any deduction under
14 section 199 for any income of the taxpayer,

15 “(2) may not use the method provided in sec-
16 tion 472(b) in inventorying goods,

17 “(3) may not use the lower of cost or market
18 method of determining inventories for purposes of
19 determining income, and

20 “(4) shall not be allowed any deduction under
21 section 163 for interest paid or accrued on indebted-
22 ness.

23 “(b) APPLICABLE TAXPAYER.—For purposes of sub-
24 section (a), the term ‘applicable taxpayer’ means a tax-
25 payer which—

1 “(1) during the taxable year, has served written
2 notice under subsection (a) of section 3 of the Work-
3 er Adjustment and Retraining Notification Act
4 which includes an outsourcing statement described
5 in subsection (e) of such section, and

6 “(2) the cumulative employment loss (excluding
7 any part-time employees) for positions at facilities
8 owned by such taxpayer which will be moved to a
9 country outside of the United States, as determined
10 pursuant to any outsourcing statements served by
11 such taxpayer during such taxable year, exceeds 50
12 employees.

13 “(c) DISALLOWANCE PERIOD.—For purposes of sub-
14 section (a), the disallowance period is the period of 3 tax-
15 able years after the taxable year in which the statements
16 described in subsection (b)(2) are required to be served.

17 “(d) EXPANDED AFFILIATED GROUP TREATED AS
18 SINGLE TAXPAYER.—For purposes of this section, the
19 members of an expanded affiliated group (as defined in
20 section 280I(b)(4)) shall be treated as a single taxpayer.

21 “(e) REGULATIONS.—The Secretary shall prescribe
22 such regulations or other guidance as may be necessary
23 or appropriate to carry out the purposes of this section.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for part IX of subchapter B of chapter 1 of the Internal

1 Revenue Code of 1986 is amended by adding at the end
2 the following new item:

“Sec. 280J. Limitations for outsourcing employers.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 the date of the enactment of this Act.

6 **SEC. 5. RECAPTURE OF CREDITS FOR OUTSOURCING EM-**
7 **LOYERS.**

8 (a) IN GENERAL.—Part IV of subchapter A of chap-
9 ter 1 of the Internal Revenue Code of 1986 is amended
10 by adding at the end the following new subpart:

11 **“Subpart K—Recapture of Credits for Outsourcing**
12 **Employers**

“Sec. 54BB. Recapture of credits for outsourcing employers.

13 **“SEC. 54BB. RECAPTURE OF CREDITS FOR OUTSOURCING**
14 **EMPLOYERS.**

15 “(a) IN GENERAL.—Pursuant to regulations pre-
16 scribed by the Secretary, in the case of a taxpayer which
17 owns a facility for which there is an outsourcing event dur-
18 ing the taxable year, the tax under this chapter for such
19 taxable year shall be increased by the amount equal to
20 the sum of—

21 “(1) any credits allowed under this chapter re-
22 lating to expenses for design, construction, oper-
23 ation, or maintenance of such facility during the 5
24 taxable years preceding such taxable year, and

1 “(2) any grants provided by the Secretary in
2 lieu of credits described in paragraph (1) during the
3 5 taxable years preceding such taxable year.

4 “(b) OUTSOURCING EVENT.—For purposes of sub-
5 section (a), the term ‘outsourcing event’ means a plant
6 closing or mass layoff (as described in section 2(a) of the
7 Worker Adjustment and Retraining Notification Act) in
8 which the employment loss (excluding any part-time em-
9 ployees) for positions which will be moved to a country
10 outside of the United States, as determined pursuant to
11 the outsourcing statement (as described in paragraph (1)
12 of such section 3(e) of such Act) served by the taxpayer
13 during the taxable year, exceeds 50 employees.

14 “(c) EXPANDED AFFILIATED GROUP TREATED AS
15 SINGLE TAXPAYER.—For purposes of this section, the
16 members of an expanded affiliated group (as defined in
17 section 280I(b)(4)) shall be treated as a single taxpayer.”.

18 (b) CLERICAL AMENDMENT.—The table of subparts
19 for part IV of subchapter A of chapter 1 of such Code
20 is amended by adding at the end the following new item:

 “SUBPART K. RECAPTURE OF CREDITS FOR OUTSOURCING EMPLOYERS”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 the date of the enactment of this Act.

1 **SEC. 6. CREDIT FOR INSOURCING EXPENSES.**

2 (a) IN GENERAL.—Subpart D of part IV of sub-
3 chapter A of chapter 1 of the Internal Revenue Code of
4 1986 is amended by adding at the end the following new
5 section:

6 **“SEC. 45S. CREDIT FOR INSOURCING EXPENSES.**

7 “(a) IN GENERAL.—For purposes of section 38, the
8 insourcing expenses credit for any taxable year is an
9 amount equal to 20 percent of the eligible insourcing ex-
10 penses of the taxpayer which are taken into account in
11 such taxable year under subsection (d).

12 “(b) ELIGIBLE INSOURCING EXPENSES.—For pur-
13 poses of this section—

14 “(1) IN GENERAL.—The term ‘eligible
15 insourcing expenses’ means—

16 “(A) eligible expenses paid or incurred by
17 the taxpayer in connection with the elimination
18 of any business unit of the taxpayer (or of any
19 member of any expanded affiliated group in
20 which the taxpayer is also a member) located
21 outside the United States, and

22 “(B) eligible expenses paid or incurred by
23 the taxpayer in connection with the establish-
24 ment of any business unit of the taxpayer (or
25 of any member of any expanded affiliated group

1 in which the taxpayer is also a member) located
2 within—

3 “(i) a HUBZone (as defined in sec-
4 tion 3(p)(2) of the Small Business Act (15
5 U.S.C. 632(p)(2))), or

6 “(ii) a low-income community (as de-
7 scribed in section 45D(e)),

8 if such establishment constitutes the relocation of
9 the business unit so eliminated. For purposes of the
10 preceding sentence, a relocation shall not be treated
11 as failing to occur merely because such elimination
12 occurs in a different taxable year than such estab-
13 lishment.

14 “(2) ELIGIBLE EXPENSES.—The term ‘eligible
15 expenses’ means—

16 “(A) any amount for which a deduction is
17 allowed to the taxpayer under section 162, and

18 “(B) permit and license fees, lease broker-
19 age fees, equipment installation costs, and, to
20 the extent provided by the Secretary, other
21 similar expenses.

22 Such term does not include any compensation which
23 is paid or incurred in connection with severance
24 from employment and, to the extent provided by the
25 Secretary, any similar amount.

1 “(3) BUSINESS UNIT.—The term ‘business unit’
2 means—

3 “(A) any trade or business, and

4 “(B) any line of business, or functional
5 unit, which is part of any trade or business.

6 “(4) EXPANDED AFFILIATED GROUP.—The
7 term ‘expanded affiliated group’ means an affiliated
8 group as defined in section 1504(a), determined
9 without regard to section 1504(b)(3) and by sub-
10 stituting ‘more than 50 percent’ for ‘at least 80 per-
11 cent’ each place it appears in section 1504(a). A
12 partnership or any other entity (other than a cor-
13 poration) shall be treated as a member of an ex-
14 panded affiliated group if such entity is controlled
15 (within the meaning of section 954(d)(3)) by mem-
16 bers of such group (including any entity treated as
17 a member of such group by reason of this para-
18 graph).

19 “(5) EXPENSES MUST BE PURSUANT TO
20 INSOURCING PLAN.—Amounts shall be taken into ac-
21 count under paragraph (1) only to the extent that
22 such amounts are paid or incurred pursuant to a
23 written plan to carry out the relocation described in
24 paragraph (1).

1 “(6) OPERATING EXPENSES NOT TAKEN INTO
2 ACCOUNT.—Any amount paid or incurred in connec-
3 tion with the on-going operation of a business unit
4 shall not be treated as an amount paid or incurred
5 in connection with the establishment or elimination
6 of such business unit.

7 “(c) INCREASED DOMESTIC EMPLOYMENT REQUIRE-
8 MENT.—No credit shall be allowed under this section un-
9 less the number of full-time equivalent employees of the
10 taxpayer for the taxable year for which the credit is
11 claimed exceeds the number of full-time equivalent em-
12 ployees of the taxpayer for the last taxable year ending
13 before the first taxable year in which such eligible
14 insourcing expenses were paid or incurred. For purposes
15 of this subsection, full-time equivalent employees has the
16 meaning given such term under section 45R(d) (and the
17 applicable rules of section 45R(e)). All employers treated
18 as a single employer under subsection (b), (c), (m), or (o)
19 of section 414 shall be treated as a single employer for
20 purposes of this subsection.

21 “(d) CREDIT ALLOWED UPON COMPLETION OF
22 INSOURCING PLAN.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), eligible insourcing expenses shall be taken
25 into account under subsection (a) in the taxable year

1 during which the plan described in subsection (b)(5)
2 has been completed and all eligible insourcing ex-
3 penses pursuant to such plan have been paid or in-
4 curred.

5 “(2) ELECTION TO APPLY EMPLOYMENT TEST
6 AND CLAIM CREDIT IN FIRST FULL TAXABLE YEAR
7 AFTER COMPLETION OF PLAN.—If the taxpayer
8 elects the application of this paragraph, eligible
9 insourcing expenses shall be taken into account
10 under subsection (a) in the first taxable year after
11 the taxable year described in paragraph (1).

12 “(e) POSSESSIONS TREATED AS PART OF THE
13 UNITED STATES.—For purposes of this section, the term
14 ‘United States’ shall be treated as including each posses-
15 sion of the United States (including the Commonwealth
16 of Puerto Rico and the Commonwealth of the Northern
17 Mariana Islands).

18 “(f) REGULATIONS.—The Secretary shall prescribe
19 such regulations or other guidance as may be necessary
20 or appropriate to carry out the purposes of this section.”.

21 (b) CREDIT TO BE PART OF GENERAL BUSINESS
22 CREDIT.—Subsection (b) of section 38 of such Code is
23 amended by striking “plus” at the end of paragraph (35),
24 by striking the period at the end of paragraph (36) and

1 inserting “, plus”, and by adding at the end the following
2 new paragraph:

3 “(37) the insourcing expenses credit determined
4 under section 45S(a).”.

5 (c) CLERICAL AMENDMENT.—The table of sections
6 for subpart D of part IV of subchapter A of chapter 1
7 of such Code is amended by adding at the end the fol-
8 lowing new item:

“Sec. 45S. Credit for insourcing expenses.”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to amounts paid or incurred after
11 the date of the enactment of this Act.

12 (e) APPLICATION TO UNITED STATES POSSES-
13 SIONS.—

14 (1) PAYMENTS TO POSSESSIONS.—

15 (A) MIRROR CODE POSSESSIONS.—The
16 Secretary of the Treasury shall make periodic
17 payments to each possession of the United
18 States with a mirror code tax system in an
19 amount equal to the loss to that possession by
20 reason of section 45S of the Internal Revenue
21 Code of 1986. Such amount shall be determined
22 by the Secretary of the Treasury based on in-
23 formation provided by the government of the re-
24 spective possession.

1 (B) OTHER POSSESSIONS.—The Secretary
2 of the Treasury shall make annual payments to
3 each possession of the United States which does
4 not have a mirror code tax system in an
5 amount estimated by the Secretary of the
6 Treasury as being equal to the aggregate bene-
7 fits that would have been provided to residents
8 of such possession by reason of section 45S of
9 such Code if a mirror code tax system had been
10 in effect in such possession. The preceding sen-
11 tence shall not apply with respect to any posses-
12 sion of the United States unless such possession
13 has a plan, which has been approved by the
14 Secretary of the Treasury, under which such
15 possession will promptly distribute such pay-
16 ment to the residents of such possession.

17 (2) COORDINATION WITH CREDIT ALLOWED
18 AGAINST UNITED STATES INCOME TAXES.—No cred-
19 it shall be allowed against United States income
20 taxes under section 45S of such Code to any per-
21 son—

22 (A) to whom a credit is allowed against
23 taxes imposed by the possession by reason of
24 such section, or

1 (B) who is eligible for a payment under a
2 plan described in paragraph (1)(B).

3 (3) DEFINITIONS AND SPECIAL RULES.—

4 (A) POSSESSIONS OF THE UNITED
5 STATES.—For purposes of this section, the
6 term “possession of the United States” includes
7 the Commonwealth of Puerto Rico and the
8 Commonwealth of the Northern Mariana Is-
9 lands.

10 (B) MIRROR CODE TAX SYSTEM.—For pur-
11 poses of this section, the term “mirror code tax
12 system” means, with respect to any possession
13 of the United States, the income tax system of
14 such possession if the income tax liability of the
15 residents of such possession under such system
16 is determined by reference to the income tax
17 laws of the United States as if such possession
18 were the United States.

19 (C) TREATMENT OF PAYMENTS.—For pur-
20 poses of section 1324(b)(2) of title 31, United
21 States Code, the payments under this section
22 shall be treated in the same manner as a refund
23 due from sections referred to in such section
24 1324(b)(2).

1 **SEC. 7. AUTHORITY FOR FEDERAL CONTRACTING OFFI-**
2 **CERS TO TAKE THE OUTSOURCING OF JOBS**
3 **FROM THE UNITED STATES INTO ACCOUNT**
4 **IN AWARDING CONTRACTS.**

5 (a) DEPARTMENT OF DEFENSE AND RELATED
6 AGENCY CONTRACTS.—

7 (1) CONSIDERATION OF OUTSOURCING.—

8 (A) IN GENERAL.—Chapter 137 of title
9 10, United States Code, is amended by insert-
10 ing after section 2327 the following new sec-
11 tion:

12 **“§ 2327a. Contracts: consideration of outsourcing of**
13 **jobs**

14 **“(a) DISCLOSURE OF OUTSOURCING OF JOBS.—**

15 **“(1) IN GENERAL.—**The head of an agency
16 shall require a contractor that submits a bid or pro-
17 posal in response to a solicitation issued by the
18 agency to disclose in that bid or proposal if the con-
19 tractor, or a subsidiary of the contractor, owns a fa-
20 cility for which there is an outsourcing event during
21 the three-year period ending on the date of the sub-
22 mittal of the bid or proposal.

23 **“(2) OUTSOURCING EVENT.—**For purposes of
24 paragraph (1), the term ‘outsourcing event’ means a
25 plant closing or mass layoff (as described in section
26 2(a) of the Worker Adjustment and Retraining Noti-

1 fication Act) in which the employment loss (exclud-
2 ing any part-time employees) for positions which will
3 be moved to a country outside of the United States,
4 as determined pursuant to the outsourcing state-
5 ment (as described in paragraph (1) of such section
6 3(e) of such Act) served by the taxpayer during the
7 taxable year, exceeds 50 employees.

8 “(b) CONSIDERATION AUTHORIZED.—(1) Agency
9 contracting officers considering bids or proposals in re-
10 sponse to a solicitation issued by the agency may take into
11 account any disclosure made pursuant to subsection (a)
12 in such bids and proposals.

13 “(2) The head of an agency may establish a negative
14 preference of up to 10 percent of the cost of a contract
15 for purposes of evaluating a bid or proposal of a contractor
16 that makes a disclosure pursuant to subsection (a).

17 “(c) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that agency contracting officers should, using sec-
19 tion 2304(b)(3) of this title, exclude contractors making
20 a disclosure pursuant to subsection (a) in response to so-
21 licitations issued by the agency from the bidding process
22 in connection with such solicitations on the grounds that
23 the actions described in the disclosures are against the
24 public interests of the United States.

1 “(d) ANNUAL REPORT.—The head of each agency
2 shall submit to Congress each year a report on the fol-
3 lowing:

4 “(1) The number of solicitations made by the
5 agency during the preceding year for which disclo-
6 sures were made pursuant to subsection (a) in re-
7 sponsive bids or proposals.

8 “(2) The number of contracts awarded by the
9 agency during the preceding year in which such dis-
10 closures were taken into account in the contract
11 award.”.

12 (B) CLERICAL AMENDMENT.—The table of
13 sections at the beginning of chapter 137 of such
14 title is amended by inserting after the item re-
15 lating to section 2327 the following new item:

“2327a. Contracts: consideration of outsourcing of jobs.”.

16 (2) EXCLUSION OF FIRMS FROM SOURCES.—
17 Section 2304(b) of such title is amended—

18 (A) by redesignating paragraphs (3) and
19 (4) as paragraphs (4) and (5), respectively;

20 (B) by inserting after paragraph (2) the
21 following new paragraph:

22 “(3) The head of an agency may provide for the pro-
23 curement of property and services covered by this chapter
24 using competitive procedures but excluding a source mak-
25 ing a disclosure pursuant to section 2327a(a) of this title

1 in the bid or proposal in response to the solicitation issued
2 by the agency if the head of the agency determines that
3 the actions described by disclosure are against the public
4 interests of the United States and the source is to be ex-
5 cluded on those grounds. Any such determination shall
6 take into account the sense of Congress set forth in section
7 2327a(c) of this title.”; and

8 (C) in paragraph (3), as so redesignated,
9 by striking “paragraphs (1) and (2)” and in-
10 serting “paragraphs (1), (2), and (3)”.

11 (b) OTHER FEDERAL CONTRACTS.—

12 (1) CONSIDERATION OF OUTSOURCING.—Chap-
13 ter 35 of title 41, United States Code, is amended
14 by inserting after section 3303 the following new
15 section:

16 **“§ 3303a. Bidders outsourcing jobs: disclosure of out-**
17 **sourcing; consideration of outsourcing in**
18 **award; exclusion from sources**

19 “(a) DISCLOSURE OF OUTSOURCING OF JOBS.—

20 “(1) IN GENERAL.—The head of an executive
21 agency shall require a contractor that submits a bid
22 or proposal in response to a solicitation issued by
23 the executive agency to disclose in that bid or pro-
24 posal if the contractor, or a subsidiary of the con-
25 tractor, owns a facility for which there is an out-

1 sourcing event during the three-year period ending
2 on the date of the submittal of the bid or proposal.

3 “(2) OUTSOURCING EVENT.—For purposes of
4 paragraph (1), the term ‘outsourcing event’ means a
5 plant closing or mass layoff (as described in section
6 2(a) of the Worker Adjustment and Retraining Noti-
7 fication Act) in which the employment loss (exclud-
8 ing any part-time employees) for positions which will
9 be moved to a country outside of the United States,
10 as determined pursuant to the outsourcing state-
11 ment (as described in paragraph (1) of such section
12 3(e) of such Act) served by the taxpayer during the
13 taxable year, exceeds 50 employees.

14 “(b) CONSIDERATION AUTHORIZED.—(1) Con-
15 tracting officers of an executive agency considering bids
16 or proposals in response to a solicitation issued by the ex-
17 ecutive agency may take into account any disclosure made
18 pursuant to subsection (a) in such bids and proposals.

19 “(2) The head of an executive agency may establish
20 a negative preference of up to 10 percent of the cost of
21 a contract for purposes of evaluating a bid or proposal
22 of a contractor that makes a disclosure pursuant to sub-
23 section (a).

24 “(c) EXCLUSION FROM SOURCES.—

1 “(1) IN GENERAL.—The head of an executive
2 agency may provide for the procurement of property
3 and services using competitive procedures but ex-
4 cluding a source making a disclosure under sub-
5 section (a) in the bid or proposal in response to the
6 solicitation issued by the executive agency if the
7 head of the executive agency determines that the ac-
8 tions described by disclosure are against the public
9 interests of the United States and the source is to
10 be excluded on those grounds. Any such determina-
11 tion shall take into account the sense of Congress
12 set forth in paragraph (2).

13 “(2) SENSE OF CONGRESS.—It is the sense of
14 Congress that contracting officers of executive agen-
15 cies may use paragraph (1) to exclude contractors
16 making a disclosure pursuant to subsection (a) in re-
17 sponse to a solicitation issued by the executive agen-
18 cy from the bidding process in connection with the
19 solicitation on the grounds that the actions described
20 by the disclosure are against the public interests of
21 the United States.

22 “(d) ANNUAL REPORT.—The head of each executive
23 agency shall submit to Congress each year a report on the
24 following:

1 “(1) The number of solicitations made by the
2 executive agency during the preceding year for which
3 disclosures were made pursuant to subsection (a) in
4 responsive bids or proposals.

5 “(2) The number of contracts awarded to con-
6 tractors that disclosed having outsourced more than
7 50 jobs during the preceding three years.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 35 of such title is
10 amended by inserting after the item relating to sec-
11 tion 3303 the following new item:

“3303a. Bidders outsourcing jobs: disclosure of outsourcing; consideration of
outsourcing in award; exclusion from sources.”.

12 (3) CONFORMING AMENDMENT.—Section
13 3301(a) of such title is amended by inserting
14 “3303a(c),” after “3303,”.

15 (c) REGULATIONS.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of the enactment of this Act, the Fed-
18 eral Acquisition Regulatory Council, in consultation
19 with the heads of relevant agencies, shall amend the
20 Federal Acquisition Regulation and the Defense
21 Federal Acquisition Regulation Supplement to carry
22 out the requirements of section 3303a of title 41,
23 United States Code, and section 2327a of title 10,
24 United States Code, as added by this section.

1 (2) DEFINITION OF OUTSOURCING.—For pur-
2 poses of defining outsourcing pursuant to paragraph
3 (1), the Federal Acquisition Regulatory Council may
4 utilize regulations prescribed by the Secretary of
5 Labor.

6 (d) RULE OF CONSTRUCTION.—This section, and the
7 amendments made by this section, shall be applied in a
8 manner consistent with United States obligations under
9 international agreements.

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