

**AMENDMENT TO H.R. 1540, AS REPORTED
OFFERED BY MR. TIERNEY OF MASSACHUSETTS**

At the end of title VIII, add the following new subtitle:

**1 Subtitle F—Contractor
2 Responsibility and Accountability**

3 SEC. 851. SHORT TITLE.

4 This subtitle may be cited as the “Contractor Re-
5 sponsibility and Accountability Act of 2011”.

**6 SEC. 852. PROHIBITION ON CONTRACTING WITH CERTAIN
7 ADVERSE ENTITIES AND REQUIREMENT TO
8 TERMINATE CONTRACTS WITH SUCH ENTI-
9 TIES.**

10 (a) PROHIBITION ON CONTRACTING WITH ADVERSE
11 ENTITIES.—No department or agency of the Federal Gov-
12 ernment may award to an adverse entity any contract in
13 support of a contingency operation.

14 (b) ADVERSE ENTITY.—For purposes of subsection
15 (a), an adverse entity is any entity or individual that the
16 Secretary of Defense, acting through a combatant com-
17 mander, or the Secretary of State, acting through the
18 Chief of Mission, determines, based upon intelligence re-
19 ports or other credible evidence, is supporting an insur-

1 gency or otherwise opposing United States or coalition
2 forces in a contingency operation.

3 (c) PROCEDURES UPON DETERMINATION.—

4 (1) NOTIFICATION OF HEAD OF CONTRACTING
5 ACTIVITY.—Upon a determination by a combatant
6 commander that an individual or entity is an adverse
7 entity, the commander shall notify in writing the
8 head of the contracting activity responsible for the
9 contracts in support of any contingency operation
10 that is in the area of responsibility of the com-
11 mander.

12 (2) REVIEW OF CONTRACTS.—Upon receipt of a
13 notification under paragraph (1), the head of the
14 contracting activity shall—

15 (A) review all contracts, and subcontracts
16 under such contracts, within the contracting ac-
17 tivity, to determine whether the adverse entity
18 is currently performing under such a contract
19 or subcontract; and

20 (B) notify the commander of any contracts
21 or subcontracts that the head determines under
22 subparagraph (A) are being performed by the
23 adverse entity, within 30 days after making the
24 determination.

1 (d) TERMINATION OF CONTRACT PERFORMED BY
2 ADVERSE ENTITY.—In the case of any contract or sub-
3 contract being performed by an adverse entity, as deter-
4 mined under subsection (c)(2)(A), the head of the con-
5 tracting activity may—

6 (1) terminate the contract and cease all pay-
7 ments under the contract; or

8 (2) direct the prime contractor to terminate any
9 subcontract under the contract and cease all pay-
10 ments under the subcontract.

11 (e) NO RIGHT OF APPEAL.—Notwithstanding any
12 other provision of law, a contractor or subcontractor of
13 a contract or subcontract terminated pursuant to sub-
14 section (d) may not appeal the termination.

15 (f) REPORT.—Not later than 6 months after the date
16 of the enactment of this Act, and every 6 months there-
17 after, the Secretary of Defense and the Secretary of State
18 shall each submit to the appropriate congressional com-
19 mittees, including the Committee on Oversight and Gov-
20 ernment Reform of the House of Representatives and the
21 Committee on Homeland Security and Governmental Af-
22 fairs of the Senate, a report on the number and nature
23 of contracts that are terminated pursuant to this section
24 during the 6-month period covered by the report.

25 (g) DEFINITIONS.—In this section:

1 (1) CONTRACT IN SUPPORT OF A CONTINGENCY
2 OPERATION.—The term “contract in support of a
3 contingency operation” means a contract awarded by
4 a department or agency of the Federal Govern-
5 ment—

6 (A) in an amount greater than \$1,000,000;

7 and

8 (B) for property or services to be used in
9 support of a contingency operation in the geo-
10 graphic area of a contingency operation.

11 (2) CONTINGENCY OPERATION.—The term
12 “contingency operation” has the meaning provided
13 in section 101 of title 10, United States Code.

14 **SEC. 853. ACCESS TO CONTRACTOR AND SUBCONTRACTOR**
15 **RECORDS FOR CONTRACTS WITH FOREIGN**
16 **ENTITY IN SUPPORT OF CONTINGENCY OPER-**
17 **ATIONS IN THE UNITED STATES CENTRAL**
18 **COMMAND THEATER OF OPERATIONS.**

19 (a) ACCESS TO RECORDS.—A department or agency
20 of the Federal Government may not award a covered con-
21 tract to a foreign entity unless the entity agrees, as a con-
22 dition of the contract—

23 (1) to provide the head of the department or
24 agency (or an authorized representative) access to
25 records of the entity relating to the contract;

1 (2) to require any subcontractor under the con-
2 tract to also provide such access to the subcontrac-
3 tor's records relating to the subcontract; and

4 (3) to establish a domestic agent for purposes
5 of service of process.

6 (b) DEFINITIONS.—In this section:

7 (1) COVERED CONTRACT.—The term “covered
8 contract” means a contract in support of a contin-
9 gency operation in the theater of operations of the
10 United States Central Command.

11 (2) CONTINGENCY OPERATION.—The term
12 “contingency operation” has the meaning provided
13 in section 101 of title 10, United States Code.

14 (3) FOREIGN ENTITY.—The term “foreign enti-
15 ty” means any of the following:

16 (A) A foreign government.

17 (B) A corporation, limited liability com-
18 pany, or partnership organized under the laws
19 of a foreign country.

