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

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

Subtitle F—Contractor Responsibility and Accountability

SEC. 851. SHORT TITLE.

This subtitle may be cited as the “Contractor Responsibility and Accountability Act of 2011”.

SEC. 852. PROHIBITION ON CONTRACTING WITH CERTAIN ADVERSE ENTITIES AND REQUIREMENT TO TERMINATE CONTRACTS WITH SUCH ENTITIES.

(a) Prohibition on Contracting With Adverse Entities.—No department or agency of the Federal Government may award to an adverse entity any contract in support of a contingency operation.

(b) Adverse Entity.—For purposes of subsection (a), an adverse entity is any entity or individual that the Secretary of Defense, acting through a combatant commander, or the Secretary of State, acting through the Chief of Mission, determines, based upon intelligence reports or other credible evidence, is supporting an insur-
gency or otherwise opposing United States or coalition forces in a contingency operation.

(c) Procedures Upon Determination.—

(1) Notification of Head of Contracting Activity.—Upon a determination by a combatant commander that an individual or entity is an adverse entity, the commander shall notify in writing the head of the contracting activity responsible for the contracts in support of any contingency operation that is in the area of responsibility of the commander.

(2) Review of Contracts.—Upon receipt of a notification under paragraph (1), the head of the contracting activity shall—

(A) review all contracts, and subcontracts under such contracts, within the contracting activity, to determine whether the adverse entity is currently performing under such a contract or subcontract; and

(B) notify the commander of any contracts or subcontracts that the head determines under subparagraph (A) are being performed by the adverse entity, within 30 days after making the determination.
(d) **Termination of Contract Performed by Adverse Entity.**—In the case of any contract or subcontract being performed by an adverse entity, as determined under subsection (c)(2)(A), the head of the contracting activity may—

1. terminate the contract and cease all payments under the contract; or
2. direct the prime contractor to terminate any subcontract under the contract and cease all payments under the subcontract.

(e) **No Right of Appeal.**—Notwithstanding any other provision of law, a contractor or subcontractor of a contract or subcontract terminated pursuant to subsection (d) may not appeal the termination.

(f) **Report.**—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Secretary of Defense and the Secretary of State shall each submit to the appropriate congressional committees, including the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate, a report on the number and nature of contracts that are terminated pursuant to this section during the 6-month period covered by the report.

(g) **Definitions.**—In this section:
(1) Contract in support of a contingency operation.—The term “contract in support of a contingency operation” means a contract awarded by a department or agency of the Federal Government—

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

(B) for property or services to be used in support of a contingency operation in the geographic area of a contingency operation.

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

SEC. 853. ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS FOR CONTRACTS WITH FOREIGN ENTITY IN SUPPORT OF CONTINGENCY OPERATIONS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS.

(a) Access to records.—A department or agency of the Federal Government may not award a covered contract to a foreign entity unless the entity agrees, as a condition of the contract—

(1) to provide the head of the department or agency (or an authorized representative) access to records of the entity relating to the contract;
(2) to require any subcontractor under the contract to also provide such access to the subcontractor’s records relating to the subcontract; and

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

(b) DEFINITIONS.—In this section:

(1) COVERED CONTRACT.—The term “covered contract” means a contract in support of a contingency operation in the theater of operations of the United States Central Command.

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

(3) FOREIGN ENTITY.—The term “foreign entity” means any of the following:

(A) A foreign government.

(B) A corporation, limited liability company, or partnership organized under the laws of a foreign country.