

117TH CONGRESS
2D SESSION

H. R. 8325

To amend title 41, United States Code, to prevent personal conflicts of interest in Federal acquisition, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2022

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on Oversight and Reform

A BILL

To amend title 41, United States Code, to prevent personal conflicts of interest in Federal acquisition, and for other purposes.

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 “Preventing Personal
5 Conflicts of Interest in Federal Acquisition Act”.

6 **SEC. 2. PREVENTING PERSONAL CONFLICTS OF INTEREST**
7 **IN FEDERAL ACQUISITION.**

8 (a) FEDERAL ACQUISITION REGULATION REVI-
9 SIONS.—Not later than 12 months after the date of the

1 enactment of this Act, the Federal Acquisition Regulatory
2 Council shall—

3 (1) expand the scope of rules to prevent per-
4 sonal conflicts of interest beyond the limited types of
5 functions or services that are currently addressed in
6 subpart 3.11 of the Federal Acquisition Regulation,
7 by including coverage for—

8 (A) consulting, analytical, or advisory serv-
9 ices supporting the primary missions, or serv-
10 ices supporting the regulatory, policymaking,
11 and adjudicative functions, of an Executive
12 agency;

13 (B) functions closely associated with inher-
14 ently governmental functions, as defined in the
15 Federal Acquisition Regulation, that give rise to
16 heightened concerns for personal conflicts of in-
17 terest; and

18 (C) other functions or services that give
19 rise to heightened concerns for personal con-
20 flicts of interest, as deemed appropriate; and

21 (2) revise the Federal Acquisition Regulation to
22 address the functions and services identified under
23 paragraph (1), including by providing and updat-
24 ing—

1 (A) the definitions, policies, and proce-
2 dures related to preventing potential personal
3 conflicts of interest;

4 (B) solicitation provisions and contract
5 clauses for Executive agencies to use in solicita-
6 tions and contracts, where appropriate, to pre-
7 vent personal conflicts of interest;

8 (C) the responsibilities of employers to
9 screen their employees for personal conflicts of
10 interest, to inform their employees of their legal
11 duties related to preventing personal conflicts of
12 interest and the appearance of personal con-
13 flicts of interest, and to seek compliance from
14 their employees of such procedures and require-
15 ments;

16 (D) the restrictions on a contractor's em-
17 ployees disclosing, or using for personal gain,
18 confidential information obtained in connection
19 with performing the contract; and

20 (E) the duties and procedures of reporting
21 apparent violations of rules governing personal
22 conflicts of interest, including to the agency's
23 Inspector General, where appropriate.

1 **SEC. 3. ETHICS SAFEGUARDS RELATED TO CONTRACTOR**
2 **CONFLICTS OF INTEREST.**

3 Section 2303 of title 41, United States Code, is
4 amended to read as follows:

5 **“§ 2303. Ethics safeguards related to contractor con-**
6 **flicts of interest**

7 **“(a) POLICY ON PERSONAL CONFLICTS OF INTEREST**
8 **BY CONTRACTOR EMPLOYEES.—**

9 **“(1) DEVELOPMENT AND ISSUANCE OF POL-**
10 **ICY.—**The Administrator shall develop and issue a
11 standard policy to prevent personal conflicts of inter-
12 est by contractor employees performing the following
13 functions for or on behalf of an Executive agency or
14 department:

15 **“(A) Relevant acquisition functions (in-**
16 **cluding the development, award, and adminis-**
17 **tration of Federal Government contracts).**

18 **“(B) Consulting, analytical, and advisory**
19 **services supporting the primary missions, or**
20 **services supporting the regulatory, policy-**
21 **making, and adjudicative functions, of an Exec-**
22 **utive agency.**

23 **“(C) Other functions or services provided**
24 **by contractors that present heightened risks of**
25 **personal conflicts of interest, as determined by**
26 **the Administrator.**

1 “(2) ELEMENTS OF POLICY.—The policy
2 shall—

3 “(A) define ‘personal conflict of interest’
4 as it relates to contractor employees performing
5 covered functions; and

6 “(B) require each contractor whose em-
7 ployees perform relevant acquisition functions
8 to—

9 “(i) identify and prevent personal con-
10 flicts of interest for the employees;

11 “(ii) prohibit contractor employees
12 who have access to non-public government
13 information obtained while performing cov-
14 ered functions from using the information
15 for personal gain;

16 “(iii) report any personal conflict-of-
17 interest violation by an employee to the ap-
18 plicable contracting officer or contracting
19 officer’s representative as soon as it is
20 identified;

21 “(iv) maintain effective oversight to
22 verify compliance with personal conflict-of-
23 interest safeguards;

24 “(v) have procedures in place to
25 screen for potential conflicts of interest for

1 all employees performing covered func-
2 tions; and

3 “(vi) take appropriate disciplinary ac-
4 tion in the case of employees who fail to
5 comply with policies established pursuant
6 to this section.

7 “(3) CONTRACT CLAUSE.—

8 “(A) CONTENTS.—The Administrator shall
9 develop a personal conflicts-of-interest clause or
10 a set of clauses for inclusion in solicitations and
11 contracts (and task or delivery orders) for the
12 performance of covered functions that sets
13 forth—

14 “(i) the personal conflicts-of-interest
15 policy developed under this subsection; and

16 “(ii) the contractor’s responsibilities
17 under the policy.

18 “(B) EFFECTIVE DATE.—Updates to the
19 clause or clauses identified in subparagraph (A)
20 shall take effect one year after enactment, and
21 shall apply to—

22 “(i) contracts entered into on or after
23 that effective date; and

24 “(ii) task or delivery orders awarded
25 on or after that effective date, regardless

1 of whether the contracts pursuant to which
 2 the task or delivery orders are awarded are
 3 entered before, on, or after the effective
 4 date.

5 “(4) PARTIAL APPLICABILITY.— If only a por-
 6 tion of a contract is for the performance of covered
 7 functions, then this subsection applies only to that
 8 portion of the contract.

9 “(b) BEST PRACTICES.—The Administrator shall, in
 10 consultation with the Director of the Office of Government
 11 Ethics, develop and maintain a repository of best practices
 12 relating to the prevention and mitigation of organizational
 13 and personal conflicts of interest in Federal contracting.

14 “(c) DEFINITIONS.—In this section:

15 “(1) COVERED FUNCTION.—The term ‘covered
 16 function’ means a function described under sub-
 17 section (a)(1).

18 “(2) RELEVANT ACQUISITION FUNCTION.—The
 19 term ‘relevant acquisition function’ means an acqui-
 20 sition function closely associated with inherently gov-
 21 ernmental functions.”.

22 **SEC. 4. PROHIBITION AGAINST CERTAIN CONFLICTS OF IN-**
 23 **TEREST.**

24 Chapter 23 of title 41, United States Code, is amend-
 25 ed by adding at the end the following:

1 **“§ 2314. Prohibition against certain conflicts of inter-**
2 **est**

3 “(a) PROHIBITION AGAINST CERTAIN CONFLICTS OF
4 INTEREST.—

5 “(1) PROHIBITION.—Contractors, contractor
6 employees, and subcontractors and their employees
7 shall not provide services supporting the regulatory,
8 policymaking, or adjudicative functions of an Execu-
9 tive agency at the same time that the contractor,
10 employees, or subcontractor provides services to an
11 entity regulated by, or having non-routine business
12 before, the agency.

13 “(2) EXCEPTION.—

14 “(A) IN GENERAL.—The head of the execu-
15 tive agency may issue an exception to the re-
16 quirement under paragraph (1) with respect to
17 a contractor, employee, or subcontractor only if
18 the head of the agency determines in writing
19 there is a compelling reason to award a con-
20 tract, or continue performance of a contract,
21 with such exception.

22 “(B) DETERMINATION.—In determining
23 whether there is a compelling reason under sub-
24 paragraph (A), the head of an Executive agency
25 shall consider—

1 “(i) the nature and extent of the risks
2 associated with the conflict;

3 “(ii) the essential need of the govern-
4 ment to receive the services, notwith-
5 standing such a conflict, and direct harm
6 to the government of not receiving the
7 services from the entity or person; and

8 “(iii) the ability of the contractor, em-
9 ployee, or subcontractor to mitigate the
10 conflict.

11 “(C) NON-DELEGATION OF AUTHORITY.—
12 The head of the Executive agency shall not del-
13 egate the authority to issue an exception under
14 this subparagraph below the level of the head of
15 a contracting activity.

16 “(3) PUBLIC NOTICE OF ISSUE OF EXCEP-
17 TION.—

18 “(A) PUBLIC AVAILABILITY.—A notice of
19 an exception issued pursuant to paragraph (2)
20 shall be made publicly available in electronic
21 format through the Government-wide point of
22 entry, as defined in the Federal Acquisition
23 Regulation, at the time of contract award, or at
24 the time that an Executive agency decides to

1 proceed with contract performance, if arising
2 after award.

3 “(B) CONTENTS OF NOTIFICATION.—The
4 notice shall include, at a minimum—

5 “(i) the contractor, employee, or sub-
6 contractor receiving the exception, al-
7 though reasonable redactions should be
8 made to the public version of the notice to
9 protect the privacy of individual employees
10 of a contractor or subcontractor;

11 “(ii) identification of the contract;

12 “(iii) a description of the nature of
13 the conflict;

14 “(iv) the rationale for applying the ex-
15 ception; and

16 “(v) the measures that will be taken
17 to mitigate or avoid the conflict.

18 “(b) DISCLOSURES AND LIMITATIONS FOR CONSULT-
19 ANTS.—Contractors providing consulting, analytical, or
20 advisory services in support of the primary missions, or
21 the regulatory, policymaking, or adjudicative functions, of
22 an Executive agency shall—

23 “(1) disclose, in sufficient detail, specific work
24 performed in the last five years on behalf of any en-

1 tities regulated by, or having non-routine business
2 before, the Executive agency; and

3 “(2) during the term of the contract, refrain
4 from entering into consulting or other contractual
5 arrangements with any entity to perform specific
6 work that may reasonably create a conflict of inter-
7 est, without receiving the written approval of the
8 contracting officer before the execution of the con-
9 tractual arrangement.

10 “(c) CIVIL PENALTIES.—

11 “(1) CIVIL ACTION.—The Attorney General
12 may bring a civil action in an appropriate district
13 court of the United States against a person who
14 knowingly violates the prohibitions under subsection
15 (a) or fails to comply with the requirements of sub-
16 section (b).

17 “(2) PENALTY.—On proof of that conduct by a
18 preponderance of the evidence—

19 “(A) an individual shall be liable to the
20 Federal Government for a civil penalty of not
21 more than \$50,000 for each violation plus the
22 amount of compensation that the individual re-
23 ceived under the corresponding Government
24 contract; and

1 “(B) an organization shall be liable to the
2 Federal Government for a civil penalty of not
3 more than \$500,000 for each violation plus the
4 amount of compensation that the organization
5 received under the corresponding Government
6 contract.

7 “(3) STATUTE OF LIMITATION.—A civil action
8 under paragraph (1) shall be brought within 6 years
9 after the later of the date on which—

10 “(A) the prohibited conduct establishing
11 the cause of action occurred; or

12 “(B) the Federal Government first knew or
13 should reasonably have known that the prohib-
14 ited conduct had occurred.

15 “(4) RULES OF CONSTRUCTION.—The civil pen-
16 alties set forth in this subsection are not exclusive
17 and do not limit the potential for a person that vio-
18 lates the prohibitions under subsection (a) or fails to
19 comply with the requirements of subsection (b), to
20 be found liable under the False Claims Act, section
21 3729 through section 3733 of title 31, or other ap-
22 plicable civil or criminal penalties, as prescribed by
23 law.

24 “(d) ADMINISTRATIVE ACTIONS.—

1 “(1) TYPES OF ACTION THAT AN EXECUTIVE
2 AGENCY MAY TAKE.—An Executive agency that re-
3 ceives information that a contractor or a person has
4 failed to comply with a legal requirement to disclose
5 an organizational conflict of interest or a personal
6 conflict of interest, as defined in the Federal Acqui-
7 sition Regulation, or has violated the prohibitions
8 under subsection (a) or fails to comply with the re-
9 quirements of subsection (b), shall consider taking
10 one or more of the following actions, as appropriate:

11 “(A) Canceling the Executive agency pro-
12 curement or disqualify a contractor from con-
13 sideration, if a contract has not yet been award-
14 ed.

15 “(B) Terminating a contract with respect
16 to which—

17 “(i) the contractor or someone acting
18 for the contractor has been held liable for
19 an offense punishable under subsection (a);
20 or

21 “(ii) the contracting officer deter-
22 mines that a person or contractor failed to
23 disclose a material organizational or per-
24 sonal conflict of interest.

1 “(C) Initiating a suspension or debarment
2 proceeding for the protection of the Federal
3 Government in accordance with procedures in
4 the Federal Acquisition Regulation.

5 “(2) AMOUNT GOVERNMENT ENTITLED TO RE-
6 COVER.—When a Federal agency terminates a con-
7 tract pursuant to paragraph (1)(B), the Federal
8 Government is entitled to recover, in addition to any
9 penalty prescribed by law, the amount expended
10 under the contract.

11 “(3) PRESENT RESPONSIBILITY AFFECTED BY
12 CONDUCT.—For purposes of a suspension or debar-
13 ment proceeding initiated pursuant to paragraph
14 (1)(C), engaging in conduct constituting an offense
15 under this section affects the present responsibility
16 of a Federal Government contractor or subcon-
17 tractor.”.

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