

GOVERNMENT CONTRACTOR ACCOUNTABILITY ACT OF
2007

APRIL 17, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3928]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 3928) to require certain large govern-
ment contractors that receive more than 80 percent of their annual
gross revenue from Federal contracts to disclose the names and sal-
aries of their most highly compensated officers, and for other pur-
poses, having considered the same, report favorably thereon with
an amendment and recommend that the bill as amended do pass.

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The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 3, line 22, strike “\$5,000,000” and insert “\$25,000,000”.

PURPOSE AND SUMMARY

H.R. 3928, the Government Contractor Accountability Act of 2007, was introduced by Rep. Christopher Murphy on October 23, 2007. The measure would increase accountability and transparency in federal contracting by requiring companies that receive more than 80 percent of annual gross revenue from federal contracts to disclose the names and salaries of their most highly compensated officers.

BACKGROUND AND NEED FOR LEGISLATION

Each year the federal government spends billions of dollars to procure goods and services, making federal contracts one of the fastest growing components of the federal budget. In fiscal year 2006, the federal government spent over \$400 billion on contracts with private companies.

Although the government spends billions of dollars on private contractors, the American taxpayer and Congress know very little about the management practices, financial statements, and employment policies of these firms. Of these contractors, Blackwater USA has received particular attention and scrutiny. At a hearing before the House Committee on Oversight and Government Reform, Blackwater CEO Erik Prince refused to provide Congress with details of Blackwater’s profits or his personal compensation.

Blackwater has grown to become one of the world’s largest providers of private military services. Prior to the war in Iraq, the company primarily offered training services for law enforcement and military personnel. But during the past six years, the company has expanded and diversified to include overseas security contracting.

Blackwater’s government contracts have grown exponentially, particularly since the start of the war in Iraq. Blackwater went from having government contracts worth less than a million dollars in 2001 to contracts worth more than half a billion dollars in 2006. In fiscal year 2001, Blackwater had \$736,906 in federal contracts. By 2006, Blackwater had over \$593 million in government contracts, an increase of more than 80,000 percent. In total, Blackwater has received over a billion dollars under its federal government contracts during fiscal years 2001 to 2006.

H.R. 3928 would create disclosure requirements for privately held government contractors similar to existing requirements for publicly traded companies and nonprofit organizations. Publicly traded companies are required to disclose similar information on executive compensation to the Securities and Exchange Commission, and nonprofit organizations are required to disclose such information to the Internal Revenue Service on Form 990. These disclosures are publicly available. The rationale behind the requirements is to mandate transparency for entities that receive govern-

ment benefits and public investment. Publicly traded companies receive access to government-regulated capital markets. Nonprofit organizations are tax-exempt and donations to non-profits are tax-deductible for the donor.

Companies that derive the vast majority of their revenues from government contracts receive the benefit of a revenue stream generated by taxpayer dollars. Taxpayers should be able to review how their money is being spent.

LEGISLATIVE HISTORY

H.R. 3928, the Government Contractor Accountability Act of 2007, was introduced by Rep. Murphy on October 23, 2007, and was referred to the Committee on Oversight and Government Reform.

The Subcommittee on Government Management, Organization, and Procurement held a hearing on H.R. 3928 on February 27, 2008. The witnesses were Paul Denett, Administrator, Office of Federal Procurement Policy, Office of Management and Budget; John Hutton, Director, Acquisition and Sourcing Management, U.S. Government Accountability Office; Marcia Madsen, Partner, Mayer Brown and Chair, Acquisition Advisory Panel; Scott Amey, General Counsel, Project on Government Oversight; and Alan Chvotkin, Senior Vice President and Counsel, Professional Services Council.

The Subcommittee held a markup to consider H.R. 3928 on March 11, 2008, and ordered the bill to be favorably reported by voice vote.

The Committee held a markup to consider H.R. 3928 on March 13, 2008, and ordered the bill, as amended, to be favorably reported by voice vote.

SECTION-BY-SECTION

Section 1: Short title

The short title of the bill is the Government Contractor Accountability Act of 2007.

Section 2: Certification and other financial disclosure requirements for certain government contractors

This section directs federal government contracting officers to require “covered contractors” to submit for each contract entered into either (1) a certification that the contractor received 80 percent or less of its annual gross revenues from other federal contracts during the fiscal year preceding the fiscal year in which the contract is awarded; or (2) a statement disclosing the names and salaries of the contractor’s principal executive officer, principal financial officer, three most highly compensated other executive officers or individuals, and directors. Such certifications and any annual updates that are required to be submitted are to be made publicly available in searchable form through the Federal Procurement Data System. The term “covered contractor” means an entity that (1) received more than \$25 million in annual gross revenues from federal contracts in the preceding fiscal year and (2) is not a publicly traded company required to file periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934. The Administrator of

the General Services is required to issue regulations to implement these provisions.

EXPLANATION OF AMENDMENTS

Mr. Murphy offered an amendment, passed by voice vote, striking a provision that defined a “covered contractor” as an entity that received more than \$5 million in annual gross revenues from federal contracts, and replacing it with a provision that defined a “covered contractor” as an entity that received more than \$25 million in annual gross revenues from federal contracts.

COMMITTEE CONSIDERATION

On Thursday, March 13, 2008, the Committee met in open session and favorably ordered H.R. 3928 to be reported, as amended, to the House by a voice vote.

ROLL CALL VOTES

No roll call votes were held.

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 terms and conditions of employment or access to public services and accommodations. The 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, including improving the efficiency and transparency of federal procurement.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 3928. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

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 MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report 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. 3928 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) 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. 3928. 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. 3928 from the Director of the Congressional Budget Office:

APRIL 8, 2008.

Hon. HENRY A. WAXMAN,
*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. 3928, the Government Contractor Accountability Act of 2007.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3928—Government Contractor Accountability Act of 2007

H.R. 3928 would require certain privately owned companies that received more than 80 percent of their annual gross revenue from federal contracts to annually report the names and salaries of their highest-ranking company officials. The bill would apply to firms with more than \$25 million in annual gross revenue. The legislation would require the General Services Administration (GSA) to

promulgate new regulations and make the information publicly available through the Federal Procurement Data System.

Based on information from GSA, CBO estimates that implementing H.R. 3928 would cost \$2 million in 2009 and about \$5 million over the 2009–2013 period, assuming the availability of appropriated funds. GSA would incur those costs to amend the Federal Procurement Data System and train employees to use it.

H.R. 3928 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 Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

No changes to existing law are made by H.R. 3928, as reported.

ADDITIONAL VIEWS OF RANKING MEMBER TOM DAVIS

H.R. 3928 would require any non-public company receiving more than \$5 million from federal contracts and earning 80 percent of its revenue from federal contracts to disclose: the names and salaries of the contractor's principal executive officer, principal financial officer, three other most highly compensated officers, as well as firm's directors—information which currently is available to government acquisition officials.

Therefore, H.R. 3928 serves only one purpose: to embarrass Blackwater USA because the Chief Executive Officer of that privately held company performing under fixed-price government contracts refused to disclose his salary during a hearing on security contracting.

Information regarding salaries of top company officials could be useful under certain cost-type contracts where the government reimburses a firm for its reasonable and allowable costs plus a fee. Under current acquisition regulations governing such contracts, such information is available to government contracting officials. In fact, procurement regulations place a ceiling on executive compensation costs which can be reimbursed under cost-type contracts.

Moreover, this information is also available to acquisition officials (to the extent it is relevant) during the negotiations leading up to the award of a fixed-priced contract. Thus, H.R. 3928 has no acquisition purpose. The only purpose of this bill is to "punish" and embarrass privately held firms. It will accomplish nothing other than to discourage the participation of privately held firms in the government market—which will decrease competition and, ultimately, increase government costs.

TOM DAVIS.

