

CONTRACTORS AND FEDERAL SPENDING
ACCOUNTABILITY ACT OF 2008

APRIL 18, 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. 3033]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 3033) to improve Federal agency awards
and oversight of contracts and assistance and to strengthen ac-
countability of the Government-wide suspension and debarment
system, 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 is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Contractors and Federal Spending Accountability Act of 2008”.

SEC. 2. DATABASE FOR CONTRACTING OFFICERS AND SUSPENSION AND DEBARMENT OFFICIALS.

(a) IN GENERAL.—Subject to the authority, direction, and control of the Director of the Office of Management and Budget, the Administrator of General Services shall establish and maintain a database of information regarding integrity and performance of Federal contracts and grant recipients for use by Federal officials having authority over contracts and grants.

(b) INFORMATION INCLUDED.—The database—

(1) shall consist of information regarding civil, criminal, and administrative proceedings concluded by the Federal Government and State governments against Federal contractors or grant recipients; and

(2) shall include with respect to each person awarded a Federal contract or grant—

(A) information regarding all proceedings referred to in paragraph (1) against that person in at least the most recent 5-year period;

(B) with respect to each proceeding—

(i) a brief description of the proceeding; and

(ii) any amount paid by the person to the Federal Government or a State government;

(C) all Federal contracts and grants awarded to the person that were terminated in such period due to default;

(D) all Federal suspensions and debarments of the person in that period;

(E) all Federal administrative agreements entered into by the person and the Federal Government in that period to resolve a suspension or debarment proceeding and, to the maximum extent practicable, such agreements entered into by the person and a State government in that period; and

(F) all final findings by a Federal official in that period that the person is not a responsible source as defined by section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)).

(c) REQUIREMENTS RELATING TO INFORMATION IN DATABASE.—

(1) DIRECT INPUT AND UPDATE.—The Administrator shall design and maintain the database in a manner that allows the appropriate officials of each Federal agency to directly input and update in the database information relating to actions it has taken with regard to contractors or grant recipients.

(2) TIMELINESS AND ACCURACY.—The Administrator shall develop policies to require the timely and accurate input of information into the database and to allow Federal contractors and grant recipients to append comments to information in the database.

(d) AVAILABILITY.—

(1) AVAILABILITY TO ALL FEDERAL AGENCIES.—The Administrator shall make the database available to all Federal agencies.

(2) AVAILABILITY TO THE PUBLIC.—The Administrator shall make the database available to the public by posting the database on the General Services Administration website.

(3) LIMITATION.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code.

SEC. 3. SUSPENSION AND DEBARMENT PROCEDURE FOR REPEAT VIOLATORS.

Not later than 180 days after the date of the enactment of this Act, Federal suspension and debarment regulations shall be amended to require issuance of a notice of proposed debarment to any contractor or grant recipient against whom is rendered, twice within any 3-year period, a judgment or conviction for the same offense, or similar offenses, if each judgment or conviction constitutes a cause for debarment.

SEC. 4. DISCLOSURE IN APPLICATIONS.

(a) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, Federal regulations shall be amended to require that in applying for any Federal grant or submitting a proposal or bid for any Federal contract a person shall disclose in writing information described in section 2(b).

(b) COVERED CONTRACTS AND GRANTS.—This section shall apply only to contracts and grants in an amount greater than the simplified acquisition threshold, as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 401(11)).

SEC. 5. ROLE OF INTERAGENCY COMMITTEE.

(a) REQUIREMENT.—The Interagency Committee on Debarment and Suspension shall—

- (1) resolve issues regarding which of several Federal agencies is the lead agency having responsibility to initiate suspension or debarment proceedings;
- (2) coordinate actions among interested agencies with respect to such action;
- (3) encourage and assist Federal agencies in entering into cooperative efforts to pool resources and achieve operational efficiencies in the governmentwide suspension and debarment system;
- (4) recommend to the Office of Management and Budget changes to Government suspension and debarment system and its rules, if such recommendations are approved by a majority of the Interagency Committee;
- (5) authorize the Office of Management and Budget to issue guidelines that implement those recommendations;
- (6) authorize the chair of the Committee to establish subcommittees as appropriate to best enable the Interagency Committee to carry out its functions; and
- (7) submit to the Congress an annual report on—
 - (A) the progress and efforts to improve the suspension and debarment system;
 - (B) member agencies' active participation in the committee's work; and
 - (C) a summary of each agency's activities and accomplishments in the governmentwide debarment system.

(b) DEFINITION.—The term "Interagency Committee on Debarment and Suspension" means such committee constituted under sections 4 and 5 and of Executive Order 12549.

SEC. 6. AUTHORIZATION OF INDEPENDENT AGENCIES.

Any agency, commission, or organization of the Federal Government to which Executive Order 12549 does not apply is authorized to participate in the governmentwide suspension and debarment system and may recognize the suspension or debarment issued by an executive branch agency in its own procurement or assistance activities.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator of General Services such funds as may be necessary to establish the database described in section 2.

SEC. 8. REPORT TO CONGRESS.

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Administrator of General Services shall submit to Congress a report.

(b) CONTENTS OF REPORT.—The report shall contain the following:

- (1) A list of all databases that include information about Federal contracting and Federal grants.
- (2) Recommendations for further legislation or administrative action that the Administrator considers appropriate to create a centralized, comprehensive Federal contracting and Federal grant database.

PURPOSE AND SUMMARY

H.R. 3033, the Contractors and Federal Spending Accountability Act of 2007, was introduced by Rep. Carolyn Maloney on July 12, 2007. The bill requires creation of a database including information on government proceedings relating to government contractors and grant recipients for use in assessing contractor responsibility. The bill also requires that contractors and grant recipients must present evidence to establish their present responsibility if they have two convictions or judgments for the same or similar offenses in a three-year period, if each conviction or judgment is a cause for suspension or debarment.

BACKGROUND AND NEED FOR LEGISLATION

Government contracting officers may award contracts only to responsible contractors. A responsible contractor is one that possesses the technical capability and financial capacity to fully perform the requirements of the contract, as well as the business integrity to justify the award of public tax dollars.

There is no accurate, centralized, comprehensive listing of criminal, civil, and administrative proceedings concluded by the federal and state governments relating to contractors. Prospective federal contractors are not required to disclose all relevant criminal, civil, or administrative rulings or resolutions during the federal procurement process. Without such a database or disclosure, federal contracting officers and suspension and debarment officials lack important information relevant to present responsibility.

This legislation seeks to strengthen the government's capability to more comprehensively review a contractor's record of performance and integrity, so that the government can better assess responsibility and risk in the contract award process.

LEGISLATIVE HISTORY

H.R. 3033, the Contractors and Federal Spending Accountability Act of 2007, was introduced by Rep. Carolyn Maloney on July 12, 2007, and referred to the Committee on Oversight and Government Reform.

The Subcommittee on Government Management, Organization, and Procurement held a hearing on H.R. 3033 on July 18, 2007. The witnesses were William Woods, Director, Acquisition and Sourcing Management, Government Accountability Office; William Desmond, Associate Administrator, National Nuclear Security Administration, Department of Energy, accompanied by Tyler Przybylek, Senior Adviser to the Administrator, National Nuclear Security Administration, Department of Energy; Gregory Friedman, Inspector General, U.S. Department of Energy; Elaine Duke, Chief Procurement Officer, Department of Homeland Security; Richard Skinner, Inspector General, Department of Homeland Security; Robin Smith, former Wackenhut security supervisor at DHS headquarters; Lawrence Brede, Senior Vice President, DOE Operations, Wackenhut Services Inc.; and Scott Amey, General Counsel, Project on Government Oversight.

The Subcommittee on Government Management, Organization, and Procurement held an additional hearing on H.R. 3033 on March 11, 2007. The witnesses were Paul A. Denett, Administrator for Federal Procurement Policy, Office of Management and Budget; John Hutton, Director of Acquisition and Sourcing Management, U.S. Government Accountability Office; Marcia Madsen, Chair of the Acquisition Advisory Panel; Scott Amey, General Counsel, Project on Government Oversight (POGO); and Alan Chvotkin, Senior Vice President and Counsel, Professional Services Council.

The Subcommittee held a markup to consider H.R. 3033 on March 11, 2007, and ordered the bill to be favorably reported, as amended, by voice vote.

The Committee held a markup to consider H.R. 3033 on March 13, 2007, and ordered the bill to be favorably reported, as amended, by voice vote.

SECTION-BY-SECTION

Section 1: Short title

The short title of the bill is the Contractors and Federal Spending Accountability Act of 2008.

Section 2: Database for contracting officers and suspension and debarment officials

This section requires the Director of OMB and Administrator of General Services to establish a database regarding integrity and performance of federal contractors and grant recipients.

Subsection (b) requires that the database include a description of civil, criminal, and administrative proceedings concluded by the federal and state governments against federal contractors or grant recipients; all terminations for default of federal contracts and grants; all federal suspensions and debarments; all federal administrative agreements to resolve a suspension or debarment proceeding and, to the maximum extent practicable, such agreements with states; and all final findings by a federal official that the person is not a responsible source as defined in federal procurement law. The database includes such information for the most recent five years.

Subsection (c) requires federal agency officials to directly input and update information in the database; requires procedures to ensure the accuracy and timeliness of the information; and permits contractors and grant recipients to append comments to information in the database.

Subsection (d) requires that the database be publicly available through the General Services Administration (GSA) website, with the exception of information that is exempt from public disclosure under the Freedom of Information Act.

Section 3: Suspension and debarment procedure for repeat violators

This section requires that suspension and debarment regulations be revised so that contractors and grant recipients are issued a notice of proposed debarment which would require presentation of evidence to establish their present responsibility if they have two convictions or judgments for the same or similar offenses in a three-year period, if each conviction or judgment is a cause for suspension or debarment.

Section 4: Disclosure in applications

This section requires revision of regulations so that offers for contracts and applications for grants in an amount exceeding the simplified acquisition threshold must provide the information required to be included in the database.

Section 5: Role of Interagency Committee

This section requires the Interagency Committee on Debarment and Suspension, as established in Executive Order 12549, with respect to the government-wide system of suspension and debarment to resolve issues regarding which federal agency is the lead agency having responsibility to initiate proceedings; coordinate actions among interested agencies; encourage pooled resources to achieve operational efficiencies; recommend rules changes to OMB (if such

recommendations are approved by a majority of the Interagency Committee); authorize OMB to issue guidelines that implement those recommendations; authorize the chair of the Committee to establish subcommittees as appropriate; and submit to the Congress an annual report on progress and efforts to improve the system, member agencies' active participation in the committee's work, and a summary of each agency's activities and accomplishments in the system.

Section 6: Authorization of independent agencies

This section authorizes any federal entity not covered by Executive Order 12549 to participate in the government-wide suspension and debarment system.

Section 7: Authorization of appropriations

This section authorizes appropriations to GSA for the establishment of the database.

Section 8: Report to Congress

This section requires a report to Congress describing all federal contracting and grant databases and recommending legislative or administrative action to create a comprehensive, streamlines database.

EXPLANATION OF AMENDMENTS

At the Subcommittee markup on March 11, 2008, Mr. Towns offered an amendment in the nature of a substitute, which passed by voice vote. This amendment (1) struck factual findings; (2) provided that the Director of the Office of Management and Budget oversee the database; (3) provided that only civil, criminal, and administrative proceedings that have been concluded be included in the database; (4) removed suspension and debarment show cause orders as information required to be included in the database; (5) added final findings that a person is not a responsible source to the information required to be included in the database; (6) required the Administrator for General Services to develop policies to ensure the timeliness and accuracy of information in the database; (7) permitted contractors and grantees to append comments to information in the database; (8) excluded information exempt from disclosure under the Freedom of Information Act from the public database; (9) eliminated the presumption of nonresponsibility for repeat violators and replaced it with a requirement that repeat violators be issued a notice of proposed debarment and show cause why they are presently responsible; (10) conformed the section on disclosures required in applications to the information required to be included in the database; and (11) struck surplus definitions.

At the Committee markup on March 13, 2008, Mr. Waxman offered an amendment in the nature of a substitute that defined administrative agreements as agreements between a person and the federal government to resolve a suspension or debarment proceeding and similar agreements with state governments.

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.

ROLLCALL VOTES

No rollcall 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. 3033. 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. 3033 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. 3033. 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. 3033 from the Director of the Congressional Budget Office:

APRIL 11, 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. 3033, the Contractors and Federal Spending Accountability Act of 2008.

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. 3033—Contractors and Federal Spending Accountability Act of
2008*

Summary: H.R. 3033 would require the Administrator of the General Services Administration (GSA) to establish and maintain a comprehensive and publicly accessible list of certain criminal, civil, and administrative proceedings against federal contractors and grant recipients. The bill also would require new regulations for federal contractors, impose new responsibilities on the Interagency Committee on Debarment and Suspension (ISDC), and require a report to the Congress on federal contracting and grants.

CBO estimates that implementing H.R. 3033 would cost \$5 million in 2009 and about \$20 million over the 2009–2013 period, assuming appropriation of the necessary amounts. Enacting the legislation would not affect direct spending or revenues. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3033 is shown in the following table. The cost of this legislation falls within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	5	5	4	3	3
Estimated Outlays	5	5	4	3	3

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2009, that the necessary funds will be provided for each year, and that spending will follow historical patterns for similar programs.

Under current law, the Federal Acquisition Regulation requires all federal agencies to procure goods and services only from contractors determined to be “responsible.” To assess a contractor’s responsibility, a contracting officer may use a variety of databases, such as the Web-based Excluded Parties List System, which provides information about whether or not a contractor is debarred or suspended from government contracting, or the Past Performance Information Retrieval System, which contains information on the past performance of contractors doing work for the government. In addition, contractors provide certifications in which they verify whether they have been involved in civil and criminal proceedings during the previous three years.

H.R. 3033 would establish a single comprehensive database of federal spending that would be available through a public Web site. That database would list all entities receiving federal funds and information on the integrity and performance of federal contracts and grant recipients. In addition, the legislation would require agencies to initiate debarment proceedings against any federal contractor that has faced two adverse rulings within a three-year period. H.R. 3033 also would provide new authorities for the ISDC, and require GSA to provide to the Congress a list of all databases concerning federal contractors and grants and to recommend procedures to centralize that information.

According to OMB, GSA, and private firms, the government currently collects much of the information necessary to create a comprehensive database on the integrity and performance of federal contractors and grantees. CBO estimates that updating and expanding those efforts and adding a search engine through a Web site to create a single comprehensive database would cost about \$10 million over the 2009–2010 period. Those amounts include the costs of new regulations, additional government-wide training, and the annual report to the Congress. CBO also estimates that it would cost between \$3 million and \$4 million in subsequent years to maintain the database and for ISDC to undertake its additional responsibilities.

Intergovernmental and private-sector impact: H.R. 3033 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would require state, local, and tribal governments to provide OMB with information on how they spend money received from the federal government. Such requirements could be costly to intergovernmental entities, but any costs would result from complying with conditions for federal assistance.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director
for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes made to existing law made by the bill, as
reported.

ADDITIONAL VIEWS OF RANKING MEMBER TOM DAVIS

H.R. 3033 has been improved since the bill was introduced. The original version would have created a draconian enforcement measure, establishing a “blacklist” which would defame and degrade firms merely accused of wrongdoing—not necessarily convicted, simply accused. It is unclear what beneficial purpose would be served by the collection of this information. Fortunately, the Chairman and the sponsor were open to my suggestion to revise the bill to include those civil, criminal and administrative proceedings “concluded” as opposed to merely “initiated.” This makes H.R. 3033 a much better bill, but it still is not a good bill.

It is difficult to argue against contracting officers having available to them information concerning “concluded” state and federal civil, criminal and administrative proceedings and federal suspensions, debarments and default terminations. However, much of this information likely will have no meaning or be irrelevant to the required determination that a firm is a responsible prospective contractor.

Further, the publication of information contained in administrative agreements made in connection with a proposed debarment or suspension raises concerns. When these agreements are executed, the debarment proceeding is not concluded—there is no decision to debar. The inclusion of information regarding agreements to resolve state debarment proceedings raises even more concerns as we simply do not know how various state proceedings are conducted and what type of information might be subject to disclosure. While much of this information to be included in the database would have a clear purpose for acquisition officials, the value of placing information on a public website is not clear. The only purpose would be to “punish” or intimidate firms based on allegations.

The most problematic section of H.R. 3033, however, is section 3—the “two strikes and you’re out” provision. This section would mandate the automatic initiation of debarment proceedings against firms convicted of two offenses which otherwise would be a cause for debarment. It is appropriate to use the debarment process to prevent “bad actors” from getting federal contracts. But there is no need to limit the discretion of the government’s debarment officials in bringing these actions at the appropriate time. Again, this smacks of “punishment.”

Moreover, the consequences of the provision have not been thought out carefully. It is possible firms could come within the terms of the provision and be banned from the federal market. This would have disastrous consequences for the government and the firm. Acquisition officials should be allowed to exercise discretion in determining whether debarment is appropriate under the circumstances. And to use the debarment process as it was intended—to protect the government, not punish businesses.

I fail to see how this bill will improve our acquisition system. I fail to see how it will improve our ability to get the best value goods and services we need at fair and reasonable prices. Furthermore, I believe this bill will raise yet another significant barrier to entry for companies that may be considering entering the federal market.

For these reasons, I do not support H.R. 3033 in its current form.

TOM DAVIS.

