SYNOPSIS:
A bill to require accountability for personnel performing private security functions under Federal contracts, and for other purposes

DATE OF INTRODUCTION: January 10, 2007

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TEXT:
HR 369 IH

110th CONGRESS
1st Session
H. R. 369

To require accountability for personnel performing private security functions under Federal contracts, and for other purposes.
IN THE HOUSE OF REPRESENTATIVES

January 10, 2007

Mr. Price of North Carolina (for himself, Mr. Spratt, Mr. Waxman, Ms. Schakowsky, Mr. Shays, Mr. Conyers, Mr. Snyder, Mr. Cooper, Mr. Wexler, Mr. Burton of Indiana, Mr. Blumenauer, Ms. McCollum of Minnesota, Mr. Etheridge, Mr. Miller of North Carolina, Mr. Farr, Mr. Van Hollen, Mr. DeFazio, Mr. Honda, Ms. Jackson-Lee of Texas, and Mr. Holt) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require accountability for personnel performing private security functions under Federal contracts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title. This Act may be cited as the "Transparency and Accountability in Security Contracting Act of 2007".

(b) Table of Contents. The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Requirements related to personnel performing private security functions under Federal contracts during contingency operations.

Sec. 3. Requirements for improving coordination between the United States Armed Forces and contractors performing private security functions in contingency operations.

Sec. 4. Legal status of contract personnel.

Sec. 5. Federal Bureau of Investigation investigative unit for contingency operations.


Sec. 7. Definitions.

Sec. 8. Effective date.
SEC. 2. REQUIREMENTS RELATED TO PERSONNEL PERFORMING PRIVATE SECURITY FUNCTIONS UNDER FEDERAL CONTRACTS DURING CONTINGENCY OPERATIONS.

(a) Accountability Requirements for Personnel Performing Private Security Functions Under Federal Contracts or Subcontracts During Contingency Operations.

(1) Requirement to provide certain information about personnel performing private security functions. Each covered contract shall require the contractor to provide to the contracting officer for the contract, not later than 5 days after award of the contract, the following information regarding private security functions to be performed under the contract:

(A) The approximate number of persons to be used to perform the private security functions.

(B) A description of the process used to hire such persons, including the method by which and the extent to which background checks regarding such persons are conducted.

(C) A description of how such persons are trained to carry out tasks specified under the contract relating to such functions.

(D) A description of each category of activity relating to such functions required by the contract.

(2) Updates of information. The information provided under paragraph (1) shall be updated by the contractor during contract performance as necessary.

(3) Safeguarding information. The head of each agency awarding a covered contract shall take such actions as are necessary to protect any information provided under paragraph (1) that is a trade secret, or commercial or financial information, from disclosure to persons outside the Government.

(4) Accounting. Each covered contract shall include the following requirements:

(A) Upon award of the contract, the contractor shall provide cost estimates of salary, benefits, insurance, materials, logistics, travel, administrative costs, and other costs of carrying out private security functions under the contract.

(B) Before contract closeout (other than closeout of a firm, fixed price contract), the contractor shall provide a report on the actual costs of carrying out private security functions under the contract, in the same categories as provided under subparagraph (A).

(5) Oversight. Before a covered contract is awarded, the head of the agency awarding the contract shall ensure that sufficient resources are available to enable contracting officers of the agency to perform oversight of the performance of the contract, including oversight inspections of facilities and operations.
(6) Waiver authority.

(A) Waiver. The head of the agency awarding a covered contract may waive a requirement of this section with respect to a contract in an emergency or exceptional situation, as determined by the head of the agency. Any such waiver shall be limited to the requirements that are impossible or impracticable to implement because of the emergency or exceptional situation.

(B) Report. In any case in which the head of an agency waives a requirement under this section with respect to a contract, the agency head shall prepare a report that--

(i) describes the contract, the waiver, and the emergency or exceptional situation that justified the waiver; and

(ii) contains a plan for bringing the contract into compliance with the waived requirements as soon as possible or an explanation of why the waiver needs to be permanent.

(C) Submission of report. The report required by subparagraph (B) shall be submitted, within 30 days after the date of the waiver, to--

(i) the Committees on Appropriations, Armed Services, Oversight and Government Reform, and Foreign Affairs of the House of Representatives; and

(ii) the Committees on Appropriations, Armed Services, Homeland Security and Governmental Affairs, and Foreign Relations of the Senate.

(c) Report Required.

(1) In general. During a contingency operation, the head of each agency with any covered contracts in effect shall submit to Congress reports on the contracts in accordance with this subsection.

(2) Matters covered. The report required by paragraph (1) shall include the following information:

(A) Total number of covered contracts awarded by the agency with respect to the contingency operation.

(B) The total number of contracting officers overseeing the covered contracts reported in subparagraph (A).

(C) Number of covered contracts awarded since the last report.

(D) Total number of contract personnel working on the covered contracts reported in subparagraph (C).

(E) Total amount of awards for covered contracts reported in subparagraph (C).

(F) Catalogue of activities performed under covered contracts reported in subparagraph (C).
(3) Deadlines. The head of an agency shall submit an initial report as required by paragraph (1) within 90 days after first awarding a covered contract, and shall issue additional reports every 90 days.

(4) Committees. The report required by paragraph (1) shall be submitted to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate.

(5) Format. The report required by paragraph (1) shall be submitted in unclassified format, but may include a classified annex as necessary.

SEC. 3. REQUIREMENTS FOR IMPROVING COORDINATION BETWEEN THE UNITED STATES ARMED FORCES AND CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN CONTINGENCY OPERATIONS.

(a) Rules of Engagement.

(1) Requirement to issue. Not later than 15 days after the date when a contingency operation is initiated, the Chairman of the Joint Chiefs of Staff shall issue rules of engagement regarding the circumstances under which force may be used by contract personnel performing private security functions within the area covered by the contingency operation and the types of force authorized. Each covered contract shall require contract personnel to adhere to the rules of engagement issued under this subsection.

(2) Notification. The commander of the combatant command whose area of responsibility includes the contingency operation shall communicate the rules of engagement to contract personnel in accordance with subsection (c).

(3) Exceptions and special rules. As appropriate, the Chairman of the Joint Chiefs of Staff may provide exceptions or special rules in the rules of engagement for specific contractors.

(b) Hiring, Training, and Equipment Standards Relating to Private Security Contractors.

(1) Regulations. Not later than 30 days after the initiation of a contingency operation, the head of each agency awarding a covered contract shall prescribe in regulations minimum standards (appropriate for the agency) for contract personnel, including minimum training and certification standards. The standards may vary based on the duties of personnel, but must address criminal records, security clearance requirements, and other issues that the head of the agency determines may lead to security or performance concerns.

(2) Guidance for equipment. The head of each agency awarding a covered contract shall issue guidance (appropriate for the agency) on equipment used for private security functions under covered
contracts with the agency, including appropriate uniforms and levels of body armor and equipment armor, and a recommended list of re-armorer's and weapons and armor manufacturers for complying with such guidelines.

(3) Consultation with secretary of defense. The head of each agency shall consult with the Secretary of Defense in developing regulations and guidance under this subsection.

(c) Improved Coordination and Communication Between U.S. Armed Forces and Contractors Performing Private Security Functions.

(1) Establishment of a theater security contract coordinating officer. For each contingency operation in which contract personnel are active, the Chairman of the Joint Chiefs of Staff shall designate a Theater Security Contract Coordinating Officer.

(2) Responsibilities of theater security contract coordinating officer. The Theater Security Contract Coordinating Officer shall--

(A) establish regulations providing for reliable lines of communications between contract personnel and U.S. Armed Forces;

(B) maintain a current database of the number of contract personnel and the nature of their activities;

(C) communicate the rules of engagement, established under subsection (a), to contractors and contract personnel;

(D) communicate other critical information, including guidance on Department of Defense responsibilities for force protection of contract personnel and guidance on equipment, to contractors and contract personnel; and

(E) as appropriate, communicate up-to-date information about the security environment that may be relevant to contract personnel.

(3) Requirements for contractors relating to the theater security contract coordinating officer. Contractors shall be required to--

(A) register with the designated Theater Security Contract Coordinating Officer for the theater in which the covered contract is performed, and to report to the Officer the number of personnel assigned to perform the covered contract;

(B) report any incidents in which contract personnel use force or are attacked by hostile forces;

(C) report to the Theater Security Contract Coordinating Officer any casualties suffered by covered contract personnel;
(D) communicate to the Theater Security Contract Coordinating Officer, in accordance with the regulations issued under paragraph (2)(A), tactical information, such as information on the movement of contractor personnel into and out of a battle space; and

(E) communicate to the Theater Security Contract Coordinating Officer relevant information, including intelligence, reports of hostile activity, or information relevant to military planning.

SEC. 4. LEGAL STATUS OF CONTRACT PERSONNEL.

(a) Clarification of the Military Extraterritorial Jurisdiction Act.

(1) Inclusion of contractors. Subsection (a) of section 3261 of title 18, United States Code, is amended--

(A) by striking "or" at the end of paragraph (1);

(B) by striking the comma at the end of paragraph (2) and inserting "; or"; and

(C) by inserting after paragraph (2) the following:

"(3) while employed under a contract (or subcontract at any tier) awarded by any department or agency of the United States Government, where the work under such contract is carried out in a region outside the United States in which the Armed Forces are conducting a contingency operation.".

(2) Definition. Section 3267 of title 18, United States Code, is amended by adding at the end the following:

"(5) The term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10.".

(b) Sense of Congress Regarding Investigation and Prosecution of Abuses by Private Security Contractors. It is the sense of Congress that--

(1) if there is probable cause to believe that an individual assigned to perform work under a covered contract has violated section 3261(a) of title 18, except in situations in which the individual is prosecuted under the Uniform Code of Military Justice or under other law, the Department of Defense should use the authority provided in section 3262 of title 18, United States Code, to arrest and detain that individual and transfer that individual to civilian authorities for prosecution; and

(2) the Secretary of Defense should issue guidance, as soon as possible after the date of the enactment of this Act, on how the amendment made by section 552 of the John Warner National Defense Authorization Act of 2007 (Public Law 109-364; 120 Stat. 2217) to section 802(a)(10) of title 10, United States Code (article 2(a)(10) of the Uniform Code of Military Justice), will be implemented.
(c) Department of Justice Inspector General Report.

(1) Report required. Not later than 30 days after the date of
the enactment of this Act, the Inspector General of the Department of
Justice shall submit to Congress a report.

(2) Content of report. The report shall include--

(A) a description of the status of Department of Justice investigations of abuses alleged to have
been committed by contract personnel, which shall include--

(i) the number of complaints received by the Department of Justice;

(ii) the number of investigations into complaints opened by the
Department of Justice;

(iii) the number of criminal cases opened by the Department of Justice; and

(iv) the number and result of criminal cases closed by the Department of
Justice; and

(B) findings and recommendations about the capacity and effectiveness of the Department of
Justice in prosecuting misconduct by contract personnel.

(3) Format of report. The report shall be submitted in
unclassified format, but may contain a classified annex as
appropriate.

SEC. 5. FEDERAL BUREAU OF INVESTIGATION INVESTIGATIVE UNIT FOR
CONTINGENCY OPERATIONS.

(a) Establishment of Theater Investigative Unit. For each theater of operations established in
connection with a contingency operation in which contract personnel are carrying out work under
a covered contract, the Federal Bureau of Investigation shall establish a Theater Investigative
Unit, which shall be responsible for investigating allegations of criminal misconduct under
section 3261 of title 18, United States Code, by contract personnel.

(b) Responsibilities of Theater Investigative Unit. The Theater
Investigative Unit established for a theater of operations shall--

(1) investigate reports that raise reasonable suspicion of
criminal misconduct by contract personnel;

(2) investigate reports of fatalities resulting from the use
of force by contract personnel; and

(3) upon conclusion of an investigation of alleged criminal
misconduct, refer the case to the Attorney General of the United
States for further action, as appropriate in the discretion of the
Attorney General.

(c) Responsibilities of Federal Bureau of Investigation.

(1) Resources. The Federal Bureau of Investigation shall ensure that each Theater Investigative Unit has adequate resources and personnel to carry out its responsibilities.

(2) Notification. The Federal Bureau of Investigation shall notify Congress whenever a Theater Investigative Unit is established or terminated in accordance with this section.

(d) Responsibilities of Other Federal Agencies. An agency operating in a theater of operations in which a Theater Investigative Unit is established shall cooperate with and support the activities of the Theater Investigative Unit. Any investigation carried out by the Inspector General of an agency shall be coordinated with the activities of the unit as appropriate.

SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE ANALYSIS OF COST EFFECTIVENESS OF PRIVATE SECURITY CONTRACTING.

(a) Study Required. The Comptroller General shall conduct a study of the total costs to the Federal Government related to procuring security services through private security contractors, including costs relating to compensation, administration (including insurance and health care), and equipment, in comparison to providing such security services using employees of the Federal Government and members of the Armed Forces.

(b) Submission of Results. The Comptroller General shall submit to Congress a report detailing the findings of the study required by subsection (a) and such recommendations as the Comptroller General considers appropriate within 270 days after the date of the enactment of this Act.

SEC. 7. DEFINITIONS.

In this Act:

(1) Covered contract. The term "covered contract" means--

(A) a prime contract awarded by an agency, if the work to be performed under the contract includes private security functions;

(B) a subcontract at any tier under any prime contract awarded by an agency, if the work to be performed under the subcontract includes private security functions; or

(C) a task order issued under a task or delivery order contract entered into by an agency, if the work to be performed under the task order includes private security functions.

(2) Private security functions. The term "private security functions", with respect to activities carried out under a covered contract in a theater in which the United States is engaged in a contingency operation, means--

(A) any activities for which personnel are allowed to carry weapons in the performance of the
contract;

(B) the performance of--

(i) military logistics and maintenance;

(ii) interrogation of prisoners;

(iii) convoy security;

(iv) guarding vital facilities and personnel;

(v) tactical security work; or

(vi) local force training; or

(C) any other activity in support of the contingency operation, as determined by the Theater Security Contract Coordinating Officer.

(3) Agency. The term "agency" has the meaning given the term "Executive agency" in section 105 of title 5, United States Code.

(4) Contingency operation. The term "contingency operation" has the meaning given the term section 101(13) of title 10, United States Code.

(5) Contractor. The term "contractor" means an entity performing a covered contract.

(6) Contract personnel. The term "contract personnel" means persons assigned by a contractor (including subcontractors at any tier) to perform work under a covered contract.

SEC. 8. EFFECTIVE DATE.

(a) Applicability. The provisions of this Act shall apply to the following:

(1) All covered contracts and all covered contract personnel in which the work under the contract is carried out in a theater in which the United States is currently conducting contingency operations.

(2) In the event that the United States begins new contingency operations, all covered contracts and all covered contract personnel in which the work under the contract is carried out in a theater in which the United States is conducting such contingency operations.

(b) Immediate Effectiveness. The provisions of this Act shall enter into effect immediately upon the enactment of this Act.
(c) Implementation. With respect to covered contracts and covered contract personnel discussed in subsection (a)(1), the United States Government shall have 90 days following the enactment of this Act to ensure compliance with the provisions of this Act.

SUBJECT: US FEDERAL GOVERNMENT (90%); CONTRACTS & BIDS (89%); PUBLIC CONTRACTING (89%); CONTRACT AWARDS (79%); DEFENSE DEPARTMENTS (59%); LAW ENFORCEMENT (59%);

ARMED FORCES (59%); GOVERNMENT CONTROLLERS & AUDITORS (59%); JUSTICE DEPARTMENTS (59%); INVESTIGATIONS (59%); MISCONDUCT (59%); SPECIAL INVESTIGATIVE FORCES (59%);

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