

115TH CONGRESS
1ST SESSION

S. 234

To provide incentives for businesses to keep jobs in America.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2017

Mr. DONNELLY (for himself, Mrs. GILLIBRAND, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide incentives for businesses to keep jobs in America.

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 “End Outsourcing Act”.

5 **SEC. 2. OUTSOURCING STATEMENT IN WORKER ADJUST-**
6 **MENT AND RETRAINING NOTICE.**

7 (a) OUTSOURCING STATEMENT.—Section 3 of the
8 Worker Adjustment and Retraining Notification Act (29
9 U.S.C. 2102) is amended by adding at the end the fol-
10 lowing:

11 “(e) OUTSOURCING STATEMENT.—

1 “(1) IN GENERAL.—For purposes of subsection
2 (a), the employer shall include an outsourcing state-
3 ment in the notice described in that subsection. The
4 outsourcing statement shall specify whether part or
5 all of the positions held by affected employees cov-
6 ered by subsection (a) will be moved to a country
7 outside the United States, regardless of whether the
8 positions are moved within the business enterprise
9 involved or to another business enterprise. The em-
10 ployer shall make the determination of whether the
11 positions are being so moved in accordance with reg-
12 ulations issued by the Secretary. The employer shall
13 serve the notice as required under subsection (a) and
14 submit the notice to the Secretary of Labor.

15 “(2) LIST.—Not less often than annually, the
16 Secretary shall publish and make available on the
17 website of the Department of Labor, a list including
18 each employer who—

19 “(A) has included an outsourcing state-
20 ment in a notice under paragraph (1); or

21 “(B) has incurred liability under section 5,
22 in part or in whole, because the employer or-
23 dered a plant closing or mass layoff without
24 having served a notice that is required, under

(b) IMPLEMENTATION REPORT.—The Worker Adjustment and Retraining Notification Act is amended by inserting after section 10 (29 U.S.C. 2109) the following:

7 “(a) STUDY.—The Comptroller General of the United
8 States shall conduct a study of the implementation of sec-
9 tion 3(e) of the Worker Adjustment and Retraining Notifi-
10 cation Act (29 U.S.C. 2102(e)) by the Department of
11 Labor.

12 “(b) REPORT.—Not later than 3 years after the date
13 of enactment of this Act, the Comptroller General shall
14 submit to the appropriate committees of Congress a report
15 containing the results of the study.”.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

22 “(a) IN GENERAL.—No deduction otherwise allow-
23 able under this chapter shall be allowed for any specified
24 outsourcing expense.

1 “(b) SPECIFIED OUTSOURCING EXPENSE.—For pur-
2 poses of this section—

3 “(1) IN GENERAL.—The term ‘specified out-
4 sourcing expense’ means—

5 “(A) any eligible expense paid or incurred
6 by the taxpayer in connection with the elimi-
7 nation of any business unit of the taxpayer (or
8 of any member of any expanded affiliated group
9 in which the taxpayer is also a member) located
10 within the United States, and

11 “(B) any eligible expense paid or incurred
12 by the taxpayer in connection with the estab-
13 lishment of any business unit of the taxpayer
14 (or of any member of any expanded affiliated
15 group in which the taxpayer is also a member)
16 located outside the United States,

17 if such establishment constitutes the relocation of
18 the business unit so eliminated. For purposes of the
19 preceding sentence, a relocation shall not be treated
20 as failing to occur merely because such elimination
21 occurs in a different taxable year than such estab-
22 lishment.

23 “(2) ELIGIBLE EXPENSES.—The term ‘eligible
24 expenses’ means—

1 “(A) any amount for which a deduction is
2 allowed to the taxpayer under section 162, and

3 “(B) permit and license fees, lease broker-
4 age fees, equipment installation costs, and, to
5 the extent provided by the Secretary, other
6 similar expenses.

7 Such term does not include any compensation which
8 is paid or incurred in connection with severance
9 from employment and, to the extent provided by the
10 Secretary, any similar amount.

11 “(3) BUSINESS UNIT.—The term ‘business unit’
12 means—

13 “(A) any trade or business, and

14 “(B) any line of business, or functional
15 unit, which is part of any trade or business.

16 “(4) EXPANDED AFFILIATED GROUP.—The
17 term ‘expanded affiliated group’ means an affiliated
18 group as defined in section 1504(a), determined
19 without regard to section 1504(b)(3) and by sub-
20 stituting ‘more than 50 percent’ for ‘at least 80 per-
21 cent’ each place it appears in section 1504(a). A
22 partnership or any other entity (other than a cor-
23 poration) shall be treated as a member of an ex-
24 panded affiliated group if such entity is controlled
25 (within the meaning of section 954(d)(3)) by mem-

1 bers of such group (including any entity treated as
2 a member of such group by reason of this para-
3 graph).

4 “(5) OPERATING EXPENSES NOT TAKEN INTO
5 ACCOUNT.—Any amount paid or incurred in connec-
6 tion with the ongoing operation of a business unit
7 shall not be treated as an amount paid or incurred
8 in connection with the establishment or elimination
9 of such business unit.

10 “(c) SPECIAL RULES.—

11 “(1) APPLICATION TO DEDUCTIONS FOR DE-
12 PRECIATION AND AMORTIZATION.—In the case of
13 any portion of a specified outsourcing expense which
14 is not deductible in the taxable year in which paid
15 or incurred, such portion shall neither be chargeable
16 to capital account nor amortizable.

17 “(2) POSSESSIONS TREATED AS PART OF THE
18 UNITED STATES.—For purposes of this section, the
19 term ‘United States’ shall be treated as including
20 each possession of the United States (including the
21 Commonwealth of Puerto Rico and the Common-
22 wealth of the Northern Mariana Islands).

23 “(d) REGULATIONS.—The Secretary shall prescribe
24 such regulations or other guidance as may be necessary
25 or appropriate to carry out the purposes of this section,

1 including regulations which provide (or create a rebuttable
 2 presumption) that certain establishments of business units
 3 outside the United States will be treated as relocations
 4 (based on timing or such other factors as the Secretary
 5 may provide) of business units eliminated within the
 6 United States.”.

7 (b) LIMITATION ON SUBPART F INCOME OF CON-
 8 TROLLED FOREIGN CORPORATIONS DETERMINED WITH-
 9 OUT REGARD TO SPECIFIED OUTSOURCING EXPENSES.—
 10 Subsection (c) of section 952 of such Code is amended
 11 by adding at the end the following new paragraph:

12 “(4) EARNINGS AND PROFITS DETERMINED
 13 WITHOUT REGARD TO SPECIFIED OUTSOURCING EX-
 14 PENSES.—For purposes of this subsection, earnings
 15 and profits of any controlled foreign corporation
 16 shall be determined without regard to any specified
 17 outsourcing expense (as defined in section
 18 280I(b)).”.

19 (c) CLERICAL AMENDMENT.—The table of sections
 20 for part IX of subchapter B of chapter 1 of such Code
 21 is amended by adding at the end the following new item:

“Sec. 280I. Outsourcing expenses.”.

22 (d) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to amounts paid or incurred after
 24 the date of the enactment of this Act.

1 **SEC. 4. DENIAL OF CERTAIN DEDUCTIONS AND ACCOUNT-**
 2 **ING METHODS FOR OUTSOURCING EMPLOY-**
 3 **ERS.**

4 (a) IN GENERAL.—Part IX of subchapter B of chap-
 5 ter 1 of the Internal Revenue Code of 1986 is amended
 6 by adding at the end the following new section:

7 **“SEC. 280J. LIMITATIONS FOR OUTSOURCING EMPLOYERS.**

8 “(a) IN GENERAL.—During the disallowance period,
 9 an applicable taxpayer—

10 “(1) shall not be allowed any deduction under
 11 section 199 for any income of the taxpayer,

12 “(2) may not use the method provided in sec-
 13 tion 472(b) in inventorying goods,

14 “(3) may not use the lower of cost or market
 15 method of determining inventories for purposes of
 16 determining income, and

17 “(4) shall not be allowed any deduction under
 18 section 163 for interest paid or accrued on indebted-
 19 ness.

20 “(b) APPLICABLE TAXPAYER.—For purposes of sub-
 21 section (a), the term ‘applicable taxpayer’ means a tax-
 22 payer which—

23 “(1) during the taxable year, has served written
 24 notice under subsection (a) of section 3 of the Work-
 25 er Adjustment and Retraining Notification Act

1 which includes an outsourcing statement described
 2 in subsection (e) of such section, and

3 “(2) the cumulative employment loss (excluding
 4 any part-time employees) for positions at facilities
 5 owned by such taxpayer which will be moved to a
 6 country outside of the United States, as determined
 7 pursuant to any outsourcing statements served by
 8 such taxpayer during such taxable year, exceeds 50
 9 employees.

10 “(c) DISALLOWANCE PERIOD.—For purposes of sub-
 11 section (a), the disallowance period is the period of 3 tax-
 12 able years after the taxable year in which the statements
 13 described in subsection (b)(2) are required to be served.

14 “(d) EXPANDED AFFILIATED GROUP TREATED AS
 15 SINGLE TAXPAYER.—For purposes of this section, the
 16 members of an expanded affiliated group (as defined in
 17 section 280I(b)(4)) shall be treated as a single taxpayer.

18 “(e) REGULATIONS.—The Secretary shall prescribe
 19 such regulations or other guidance as may be necessary
 20 or appropriate to carry out the purposes of this section.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
 22 for part IX of subchapter B of chapter 1 of the Internal
 23 Revenue Code of 1986 is amended by adding at the end
 24 the following new item:

“Sec. 280J. Limitations for outsourcing employers.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 the date of the enactment of this Act.

4 **SEC. 5. RECAPTURE OF CREDITS FOR OUTSOURCING EM-**
 5 **LOYERS.**

6 (a) IN GENERAL.—Part IV of subchapter A of chap-
 7 ter 1 of the Internal Revenue Code of 1986 is amended
 8 by adding at the end the following new subpart:

9 **“Subpart K—Recapture of Credits for Outsourcing**
 10 **Employers**

“Sec. 54BB. Recapture of credits for outsourcing employers.

11 **“SEC. 54BB. RECAPTURE OF CREDITS FOR OUTSOURCING**
 12 **EMPLOYERS.**

13 “(a) IN GENERAL.—Pursuant to regulations pre-
 14 scribed by the Secretary, in the case of a taxpayer which
 15 owns a facility for which there is an outsourcing event dur-
 16 ing the taxable year, the tax under this chapter for such
 17 taxable year shall be increased by the amount equal to
 18 the sum of—

19 “(1) any credits allowed under this chapter re-
 20 lating to expenses for design, construction, oper-
 21 ation, or maintenance of such facility during the 5
 22 taxable years preceding such taxable year, and

1 “(2) any grants provided by the Secretary in
 2 lieu of credits described in paragraph (1) during the
 3 5 taxable years preceding such taxable year.

4 “(b) OUTSOURCING EVENT.—For purposes of sub-
 5 section (a), the term ‘outsourcing event’ means a plant
 6 closing or mass layoff (as described in section 2(a) of the
 7 Worker Adjustment and Retraining Notification Act) in
 8 which the employment loss (excluding any part-time em-
 9 ployees) for positions which will be moved to a country
 10 outside of the United States, as determined pursuant to
 11 the outsourcing statement (as described in paragraph (1)
 12 of such section 3(e) of such Act) served by the taxpayer
 13 during the taxable year, exceeds 50 employees.

14 “(c) EXPANDED AFFILIATED GROUP TREATED AS
 15 SINGLE TAXPAYER.—For purposes of this section, the
 16 members of an expanded affiliated group (as defined in
 17 section 280I(b)(4)) shall be treated as a single taxpayer.”.

18 (b) CLERICAL AMENDMENT.—The table of subparts
 19 for part IV of subchapter A of chapter 1 of such Code
 20 is amended by adding at the end the following new item:

“SUBPART K. RECAPTURE OF CREDITS FOR OUTSOURCING EMPLOYERS”.

21 (c) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to taxable years beginning after
 23 the date of the enactment of this Act.

1 **SEC. 6. CREDIT FOR INSOURCING EXPENSES.**

2 (a) IN GENERAL.—Subpart D of part IV of sub-
 3 chapter A of chapter 1 of the Internal Revenue Code of
 4 1986 is amended by adding at the end the following new
 5 section:

6 **“SEC. 45S. CREDIT FOR INSOURCING EXPENSES.**

7 “(a) IN GENERAL.—For purposes of section 38, the
 8 insourcing expenses credit for any taxable year is an
 9 amount equal to 20 percent of the eligible insourcing ex-
 10 penses of the taxpayer which are taken into account in
 11 such taxable year under subsection (d).

12 “(b) ELIGIBLE INSOURCING EXPENSES.—For pur-
 13 poses of this section—

14 “(1) IN GENERAL.—The term ‘eligible
 15 insourcing expenses’ means—

16 “(A) eligible expenses paid or incurred by
 17 the taxpayer in connection with the elimination
 18 of any business unit of the taxpayer (or of any
 19 member of any expanded affiliated group in
 20 which the taxpayer is also a member) located
 21 outside the United States, and

22 “(B) eligible expenses paid or incurred by
 23 the taxpayer in connection with the establish-
 24 ment of any business unit of the taxpayer (or
 25 of any member of any expanded affiliated group

1 in which the taxpayer is also a member) located
 2 within—

3 “(i) a HUBZone (as defined in sec-
 4 tion 3(p)(2) of the Small Business Act (15
 5 U.S.C. 632(p)(2))), or

6 “(ii) a low-income community (as de-
 7 scribed in section 45D(e)),

8 if such establishment constitutes the relocation of
 9 the business unit so eliminated. For purposes of the
 10 preceding sentence, a relocation shall not be treated
 11 as failing to occur merely because such elimination
 12 occurs in a different taxable year than such estab-
 13 lishment.

14 “(2) ELIGIBLE EXPENSES.—The term ‘eligible
 15 expenses’ means—

16 “(A) any amount for which a deduction is
 17 allowed to the taxpayer under section 162, and

18 “(B) permit and license fees, lease broker-
 19 age fees, equipment installation costs, and, to
 20 the extent provided by the Secretary, other
 21 similar expenses.

22 Such term does not include any compensation which
 23 is paid or incurred in connection with severance
 24 from employment and, to the extent provided by the
 25 Secretary, any similar amount.

1 “(3) BUSINESS UNIT.—The term ‘business unit’
2 means—

3 “(A) any trade or business, and

4 “(B) any line of business, or functional
5 unit, which is part of any trade or business.

6 “(4) EXPANDED AFFILIATED GROUP.—The
7 term ‘expanded affiliated group’ means an affiliated
8 group as defined in section 1504(a), determined
9 without regard to section 1504(b)(3) and by sub-
10 stituting ‘more than 50 percent’ for ‘at least 80 per-
11 cent’ each place it appears in section 1504(a). A
12 partnership or any other entity (other than a cor-
13 poration) shall be treated as a member of an ex-
14 panded affiliated group if such entity is controlled
15 (within the meaning of section 954(d)(3)) by mem-
16 bers of such group (including any entity treated as
17 a member of such group by reason of this para-
18 graph).

19 “(5) EXPENSES MUST BE PURSUANT TO
20 INSOURCING PLAN.—Amounts shall be taken into ac-
21 count under paragraph (1) only to the extent that
22 such amounts are paid or incurred pursuant to a
23 written plan to carry out the relocation described in
24 paragraph (1).

1 “(6) OPERATING EXPENSES NOT TAKEN INTO
 2 ACCOUNT.—Any amount paid or incurred in connec-
 3 tion with the on-going operation of a business unit
 4 shall not be treated as an amount paid or incurred
 5 in connection with the establishment or elimination
 6 of such business unit.

7 “(c) INCREASED DOMESTIC EMPLOYMENT REQUIRE-
 8 MENT.—No credit shall be allowed under this section un-
 9 less the number of full-time equivalent employees of the
 10 taxpayer for the taxable year for which the credit is
 11 claimed exceeds the number of full-time equivalent em-
 12 ployees of the taxpayer for the last taxable year ending
 13 before the first taxable year in which such eligible
 14 insourcing expenses were paid or incurred. For purposes
 15 of this subsection, full-time equivalent employees has the
 16 meaning given such term under section 45R(d) (and the
 17 applicable rules of section 45R(e)). All employers treated
 18 as a single employer under subsection (b), (c), (m), or (o)
 19 of section 414 shall be treated as a single employer for
 20 purposes of this subsection.

21 “(d) CREDIT ALLOWED UPON COMPLETION OF
 22 INSOURCING PLAN.—

23 “(1) IN GENERAL.—Except as provided in para-
 24 graph (2), eligible insourcing expenses shall be taken
 25 into account under subsection (a) in the taxable year

1 during which the plan described in subsection (b)(5)
 2 has been completed and all eligible insourcing ex-
 3 penses pursuant to such plan have been paid or in-
 4 curred.

5 “(2) ELECTION TO APPLY EMPLOYMENT TEST
 6 AND CLAIM CREDIT IN FIRST FULL TAXABLE YEAR
 7 AFTER COMPLETION OF PLAN.—If the taxpayer
 8 elects the application of this paragraph, eligible
 9 insourcing expenses shall be taken into account
 10 under subsection (a) in the first taxable year after
 11 the taxable year described in paragraph (1).

12 “(e) POSSESSIONS TREATED AS PART OF THE
 13 UNITED STATES.—For purposes of this section, the term
 14 ‘United States’ shall be treated as including each posses-
 15 sion of the United States (including the Commonwealth
 16 of Puerto Rico and the Commonwealth of the Northern
 17 Mariana Islands).

18 “(f) REGULATIONS.—The Secretary shall prescribe
 19 such regulations or other guidance as may be necessary
 20 or appropriate to carry out the purposes of this section.”.

21 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 22 CREDIT.—Subsection (b) of section 38 of such Code is
 23 amended by striking “plus” at the end of paragraph (35),
 24 by striking the period at the end of paragraph (36) and

1 inserting “, plus”, and by adding at the end the following
 2 new paragraph:

3 “(37) the insourcing expenses credit determined
 4 under section 45S(a).”.

5 (c) CLERICAL AMENDMENT.—The table of sections
 6 for subpart D of part IV of subchapter A of chapter 1
 7 of such Code is amended by adding at the end the fol-
 8 lowing new item:

“Sec. 45S. Credit for insourcing expenses.”.

9 (d) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to amounts paid or incurred after
 11 the date of the enactment of this Act.

12 (e) APPLICATION TO UNITED STATES POSSES-
 13 SIONS.—

14 (1) PAYMENTS TO POSSESSIONS.—

15 (A) MIRROR CODE POSSESSIONS.—The
 16 Secretary of the Treasury shall make periodic
 17 payments to each possession of the United
 18 States with a mirror code tax system in an
 19 amount equal to the loss to that possession by
 20 reason of section 45S of the Internal Revenue
 21 Code of 1986. Such amount shall be determined
 22 by the Secretary of the Treasury based on in-
 23 formation provided by the government of the re-
 24 spective possession.

1 (B) OTHER POSSESSIONS.—The Secretary
 2 of the Treasury shall make annual payments to
 3 each possession of the United States which does
 4 not have a mirror code tax system in an
 5 amount estimated by the Secretary of the
 6 Treasury as being equal to the aggregate bene-
 7 fits that would have been provided to residents
 8 of such possession by reason of section 45S of
 9 such Code if a mirror code tax system had been
 10 in effect in such possession. The preceding sen-
 11 tence shall not apply with respect to any posses-
 12 sion of the United States unless such possession
 13 has a plan, which has been approved by the
 14 Secretary of the Treasury, under which such
 15 possession will promptly distribute such pay-
 16 ment to the residents of such possession.

17 (2) COORDINATION WITH CREDIT ALLOWED
 18 AGAINST UNITED STATES INCOME TAXES.—No cred-
 19 it shall be allowed against United States income
 20 taxes under section 45S of such Code to any per-
 21 son—

22 (A) to whom a credit is allowed against
 23 taxes imposed by the possession by reason of
 24 such section, or

1 (B) who is eligible for a payment under a
2 plan described in paragraph (1)(B).

3 (3) DEFINITIONS AND SPECIAL RULES.—

4 (A) POSSESSIONS OF THE UNITED
5 STATES.—For purposes of this section, the
6 term “possession of the United States” includes
7 the Commonwealth of Puerto Rico and the
8 Commonwealth of the Northern Mariana Is-
9 lands.

10 (B) MIRROR CODE TAX SYSTEM.—For pur-
11 poses of this section, the term “mirror code tax
12 system” means, with respect to any possession
13 of the United States, the income tax system of
14 such possession if the income tax liability of the
15 residents of such possession under such system
16 is determined by reference to the income tax
17 laws of the United States as if such possession
18 were the United States.

19 (C) TREATMENT OF PAYMENTS.—For pur-
20 poses of section 1324(b)(2) of title 31, United
21 States Code, the payments under this section
22 shall be treated in the same manner as a refund
23 due from sections referred to in such section
24 1324(b)(2).

1 **SEC. 7. AUTHORITY FOR FEDERAL CONTRACTING OFFI-**
 2 **CERS TO TAKE THE OUTSOURCING OF JOBS**
 3 **FROM THE UNITED STATES INTO ACCOUNT**
 4 **IN AWARDING CONTRACTS.**

5 (a) DEPARTMENT OF DEFENSE AND RELATED
 6 AGENCY CONTRACTS.—

7 (1) CONSIDERATION OF OUTSOURCING.—

8 (A) IN GENERAL.—Chapter 137 of title
 9 10, United States Code, is amended by insert-
 10 ing after section 2327 the following new sec-
 11 tion:

12 **“§ 2327a. Contracts: consideration of outsourcing of**
 13 **jobs**

14 **“(a) DISCLOSURE OF OUTSOURCING OF JOBS.—**

15 **“(1) IN GENERAL.—**The head of an agency
 16 shall require a contractor that submits a bid or pro-
 17 posal in response to a solicitation issued by the
 18 agency to disclose in that bid or proposal if the con-
 19 tractor, or a subsidiary of the contractor, owns a fa-
 20 cility for which there is an outsourcing event during
 21 the three-year period ending on the date of the sub-
 22 mittal of the bid or proposal.

23 **“(2) OUTSOURCING EVENT.—**For purposes of
 24 paragraph (1), the term ‘outsourcing event’ means a
 25 plant closing or mass layoff (as described in section
 26 2(a) of the Worker Adjustment and Retraining Noti-

1 fication Act) in which the employment loss (exclud-
2 ing any part-time employees) for positions which will
3 be moved to a country outside of the United States,
4 as determined pursuant to the outsourcing state-
5 ment (as described in paragraph (1) of such section
6 3(e) of such Act) served by the taxpayer during the
7 taxable year, exceeds 50 employees.

8 “(b) CONSIDERATION AUTHORIZED.—(1) Agency
9 contracting officers considering bids or proposals in re-
10 sponse to a solicitation issued by the agency may take into
11 account any disclosure made pursuant to subsection (a)
12 in such bids and proposals.

13 “(2) The head of an agency may establish a negative
14 preference of up to 10 percent of the cost of a contract
15 for purposes of evaluating a bid or proposal of a contractor
16 that makes a disclosure pursuant to subsection (a).

17 “(c) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that agency contracting officers should, using sec-
19 tion 2304(b)(3) of this title, exclude contractors making
20 a disclosure pursuant to subsection (a) in response to so-
21 licitations issued by the agency from the bidding process
22 in connection with such solicitations on the grounds that
23 the actions described in the disclosures are against the
24 public interests of the United States.

1 “(d) ANNUAL REPORT.—The head of each agency
2 shall submit to Congress each year a report on the fol-
3 lowing:

4 “(1) The number of solicitations made by the
5 agency during the preceding year for which disclo-
6 sures were made pursuant to subsection (a) in re-
7 sponsive bids or proposals.

8 “(2) The number of contracts awarded by the
9 agency during the preceding year in which such dis-
10 closures were taken into account in the contract
11 award.”.

12 (B) CLERICAL AMENDMENT.—The table of
13 sections at the beginning of chapter 137 of such
14 title is amended by inserting after the item re-
15 lating to section 2327 the following new item:

“2327a. Contracts: consideration of outsourcing of jobs.”.

16 (2) EXCLUSION OF FIRMS FROM SOURCES.—
17 Section 2304(b) of such title is amended—

18 (A) by redesignating paragraphs (3) and
19 (4) as paragraphs (4) and (5), respectively;

20 (B) by inserting after paragraph (2) the
21 following new paragraph:

22 “(3) The head of an agency may provide for the pro-
23 curement of property and services covered by this chapter
24 using competitive procedures but excluding a source mak-
25 ing a disclosure pursuant to section 2327a(a) of this title

1 in the bid or proposal in response to the solicitation issued
 2 by the agency if the head of the agency determines that
 3 the actions described by disclosure are against the public
 4 interests of the United States and the source is to be ex-
 5 cluded on those grounds. Any such determination shall
 6 take into account the sense of Congress set forth in section
 7 2327a(c) of this title.”; and

8 (C) in paragraph (3), as so redesignated,
 9 by striking “paragraphs (1) and (2)” and in-
 10 serting “paragraphs (1), (2), and (3)”.

11 (b) OTHER FEDERAL CONTRACTS.—

12 (1) CONSIDERATION OF OUTSOURCING.—Chap-
 13 ter 35 of title 41, United States Code, is amended
 14 by inserting after section 3303 the following new
 15 section:

16 **“§ 3303a. Bidders outsourcing jobs: disclosure of out-**
 17 **sourcing; consideration of outsourcing in**
 18 **award; exclusion from sources**

19 **“(a) DISCLOSURE OF OUTSOURCING OF JOBS.—**

20 **“(1) IN GENERAL.—**The head of an executive
 21 agency shall require a contractor that submits a bid
 22 or proposal in response to a solicitation issued by
 23 the executive agency to disclose in that bid or pro-
 24 posal if the contractor, or a subsidiary of the con-
 25 tractor, owns a facility for which there is an out-

1 sourcing event during the three-year period ending
 2 on the date of the submittal of the bid or proposal.

3 “(2) OUTSOURCING EVENT.—For purposes of
 4 paragraph (1), the term ‘outsourcing event’ means a
 5 plant closing or mass layoff (as described in section
 6 2(a) of the Worker Adjustment and Retraining Noti-
 7 fication Act) in which the employment loss (exclud-
 8 ing any part-time employees) for positions which will
 9 be moved to a country outside of the United States,
 10 as determined pursuant to the outsourcing state-
 11 ment (as described in paragraph (1) of such section
 12 3(e) of such Act) served by the taxpayer during the
 13 taxable year, exceeds 50 employees.

14 “(b) CONSIDERATION AUTHORIZED.—(1) Con-
 15 tracting officers of an executive agency considering bids
 16 or proposals in response to a solicitation issued by the ex-
 17 ecutive agency may take into account any disclosure made
 18 pursuant to subsection (a) in such bids and proposals.

19 “(2) The head of an executive agency may establish
 20 a negative preference of up to 10 percent of the cost of
 21 a contract for purposes of evaluating a bid or proposal
 22 of a contractor that makes a disclosure pursuant to sub-
 23 section (a).

24 “(c) EXCLUSION FROM SOURCES.—

1 “(1) IN GENERAL.—The head of an executive
2 agency may provide for the procurement of property
3 and services using competitive procedures but ex-
4 cluding a source making a disclosure under sub-
5 section (a) in the bid or proposal in response to the
6 solicitation issued by the executive agency if the
7 head of the executive agency determines that the ac-
8 tions described by disclosure are against the public
9 interests of the United States and the source is to
10 be excluded on those grounds. Any such determina-
11 tion shall take into account the sense of Congress
12 set forth in paragraph (2).

13 “(2) SENSE OF CONGRESS.—It is the sense of
14 Congress that contracting officers of executive agen-
15 cies may use paragraph (1) to exclude contractors
16 making a disclosure pursuant to subsection (a) in re-
17 sponse to a solicitation issued by the executive agen-
18 cy from the bidding process in connection with the
19 solicitation on the grounds that the actions described
20 by the disclosure are against the public interests of
21 the United States.

22 “(d) ANNUAL REPORT.—The head of each executive
23 agency shall submit to Congress each year a report on the
24 following:

1 “(1) The number of solicitations made by the
2 executive agency during the preceding year for which
3 disclosures were made pursuant to subsection (a) in
4 responsive bids or proposals.

5 “(2) The number of contracts awarded to con-
6 tractors that disclosed having outsourced more than
7 50 jobs during the preceding three years.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 35 of such title is
10 amended by inserting after the item relating to sec-
11 tion 3303 the following new item:

“3303a. Bidders outsourcing jobs: disclosure of outsourcing; consideration of
outsourcing in award; exclusion from sources.”.

12 (3) CONFORMING AMENDMENT.—Section
13 3301(a) of such title is amended by inserting
14 “3303a(c),” after “3303,”.

15 (c) REGULATIONS.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of the enactment of this Act, the Fed-
18 eral Acquisition Regulatory Council, in consultation
19 with the heads of relevant agencies, shall amend the
20 Federal Acquisition Regulation and the Defense
21 Federal Acquisition Regulation Supplement to carry
22 out the requirements of section 3303a of title 41,
23 United States Code, and section 2327a of title 10,
24 United States Code, as added by this section.

1 (2) DEFINITION OF OUTSOURCING.—For pur-
2 poses of defining outsourcing pursuant to paragraph
3 (1), the Federal Acquisition Regulatory Council may
4 utilize regulations prescribed by the Secretary of
5 Labor.

6 (d) RULE OF CONSTRUCTION.—This section, and the
7 amendments made by this section, shall be applied in a
8 manner consistent with United States obligations under
9 international agreements.

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