

117TH CONGRESS
2D SESSION

S. 4516

To require the Office of Federal Procurement Policy to develop government-wide procurement policy and guidance to mitigate organizational conflict of interests relating to national security and foreign policy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2022

Ms. ERNST (for herself, Mr. PETERS, and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To require the Office of Federal Procurement Policy to develop governmentwide procurement policy and guidance to mitigate organizational conflict of interests relating to national security and foreign policy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combating Obstructive
5 National Security Underreporting of Legitimate Threats
6 (CONSULT) Act of 2022”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The Federal Government's reliance on con-
4 tractors for mission support services can create po-
5 tential organizational conflicts of interest related to
6 national security due to competing interests as a re-
7 sult of business relationships with foreign adver-
8 sarial nations and entities.

9 (2) It is imperative that contractors providing
10 mission support services to the Federal Government
11 related to the national security are not providing
12 mission support services for foreign adversaries with
13 regards to efforts that are counter to the national
14 security and foreign policy interests of the United
15 States, including for crimes against humanity de-
16 clared by the Secretary of State.

17 (3) Protecting against organizational conflicts
18 of interest related to foreign adversarial nations and
19 entities in Federal mission support services is essen-
20 tial to the national security and economic security of
21 the United States.

22 **SEC. 3. GOVERNMENTWIDE PROCUREMENT POLICY AND**
23 **GUIDANCE TO MITIGATE ORGANIZATIONAL**
24 **CONFLICTS OF INTEREST RELATING TO NA-**
25 **TIONAL SECURITY AND FOREIGN POLICY.**

26 (a) POLICY AND GUIDANCE.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Office of Federal Procurement Policy, in coordination with the heads of relevant agencies, including the Secretary of Defense, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of the Treasury, the Director of National Intelligence, the Attorney General, and the Secretary of State, shall develop governmentwide procurement policy and guidance to mitigate and eliminate organizational conflict of interests relating to contracts involving national security matters or foreign policy interests.

(2) ELEMENTS.—The procurement policy and guidance developed under paragraph (1) shall include the following elements:

(A) Updating guidance relating to organizational conflicts of interest with foreign entities and governments that are contrary to the national security or foreign policy interests of the United States.

(B) Providing a definition of “consulting contract”, considering the definitions of “advisory and assistance services” and “professional and consultant services” provided under sec-

tions 2.101 and 31.205–33, respectively, of the Federal Acquisition Regulation.

(C) Providing executive agencies with solicitation provisions and contract clauses that require offerors and contractors for Federal consulting contracts—

(i) when submitting an offer, to disclose any beneficial ownership, active contracts, contracts held within the last five years, or any other information relevant to potential organizational conflicts of interest with respect to contracts described in paragraph (3); and

(ii) while performing the resulting contract, to disclose information relevant to potential organizational conflicts of interest and to limit future work as necessary to address potential conflicts with respect to contracts described in paragraph (3).

(D) Providing that organizational conflicts of interest found to be contrary to the national security or foreign policy interests of the United States may be grounds for denial of a contract, and failure to disclose such a potential conflict

1 may be grounds for termination for cause, sus-
2 pension, or debarment of a contractor.

3 (3) CONTRACTS DESCRIBED.—Contracts de-
4 scribed in this paragraph are the following:

5 (A) Contracts with any of the following en-
6 tities:

7 (i) The Government of the People's
8 Republic of China.

9 (ii) The Chinese Communist Party.

10 (iii) Any Chinese state-owned entity.

11 (iv) The People's Liberation Army.

12 (v) Any entity on the Non-SDN Chi-
13 nese Military-Industrial Complex Compa-
14 nies List (NS-CMIC-List) maintained by
15 the Office of Foreign Assets Control of the
16 Department of the Treasury.

17 (vi) Any Chinese military company
18 identified by the Secretary of Defense pur-
19 suant to section 1237(b) of the Strom
20 Thurmond National Defense Authorization
21 Act for Fiscal Year 1999 (Public Law
22 105–261; 50 U.S.C. 1701 note).

23 (vii) The Government of the Russian
24 Federation, any Russian state-owned enti-
25 ty, or any entity sanctioned by the Sec-

retary of the Treasury under Executive Order 13662 (“Blocking Property of Additional Persons Contributing to the Situation in Ukraine”).

(viii) The government or any state-owned entity of any country determined by the Secretary of State to be a state sponsor of terrorism under section 1754(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (50 U.S.C. 4813(c)), section 40 of the Arms Export Control Act (22 U.S.C. 2779A), or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(ix) Any entity included on any of the following lists maintained by the Department of Commerce:

(I) The Entity List set forth in Supplement No. 4 to part 744 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations.

(II) The Denied Persons List as described in section 764.3(a)(2) of the Export Administration Regulations.

1 (III) The Unverified List set
2 forth in Supplement No. 6 to part
3 744 of the Export Administration
4 Regulations.

5 (IV) The Military End User List
6 set forth in Supplement No. 7 to part
7 744 of the Export Administration
8 Regulations.

9 (x) An entity determined to pose a
10 risk to the national security or foreign pol-
11 icy interests of the United States, as deter-
12 mined by the Office of Federal Procure-
13 ment Policy in coordination with the heads
14 of relevant agencies listed in subsection
15 (a)(1).

16 (B) Contracts for consulting services relat-
17 ing to any crimes against humanity as deter-
18 mined by the Secretary of State.

19 (b) REVISION OF FEDERAL ACQUISITION REGULA-
20 TION.—Not later than one year after the date of the enact-
21 ment of this Act, the Federal Acquisition Regulatory
22 Council shall revise the Federal Acquisition Regulation to
23 implement the requirements of this section.

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