

107TH CONGRESS
2^D SESSION

H. R. 5292

To improve Federal agency oversight of contracts and assistance and to strengthen accountability of the governmentwide debarment and suspension system.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mrs. MALONEY of New York (for herself, Mr. HORN, and Mr. TURNER) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To improve Federal agency oversight of contracts and assistance and to strengthen accountability of the governmentwide debarment and suspension system.

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 “Contractors Account-
5 ability Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) NEED FOR DATABASE.—(A) By spending
9 over \$215,000,000,000 a year on procurement and

1 nonprocurement awards for goods and services, the
2 Federal Government is the largest consumer in the
3 world.

4 (B) It is in the best interest of the Federal
5 Government and its taxpayers to award contract and
6 assistance to entities that are responsible and have
7 a suitable record of integrity and business ethics.

8 (C) There is no centralized, comprehensive
9 database on judicial actions, consent decrees, admin-
10 istrative agreements, terminations, or settlements
11 with respect to potential Federal contractors or as-
12 sistance participants.

13 (D) Federal officials do not have the resources
14 necessary to assemble such information for each
15 Federal procurement award.

16 (E) The lack of this information compromises
17 the Federal Government's ability to safeguard the
18 integrity of the Federal procurement and assistance
19 activities.

20 (F) It is in the best business interests of the
21 Federal Government to have all information possible
22 regarding potential contractors' and assistance par-
23 ticipants' performance and integrity records to as-
24 sure that persons with which the Government does
25 business are presently responsible.

1 (2) REALITY OF DEBARMENTS AND SUSPEN-
2 SIONS OF TOP 43 FEDERAL CONTRACTORS.—Since
3 1990—

4 (A) of the top 43 Federal contractors
5 based on total contract dollars received—

6 (i) 16 have a total of 28 criminal con-
7 victions; and

8 (ii) 4 of the top ten have at least 2
9 criminal convictions;

10 (B) such 43 contractors have paid a total
11 of \$3,400,000,000 in fines, penalties, restitu-
12 tion, settlements, and clean-up costs under the
13 Superfund program; and

14 (C) despite such fines and criminal convic-
15 tions, only one of the 43 contractors has been
16 debarred or suspended from contracting with
17 the Federal Government, for only 5 days.

18 (3) NEED FOR DATABASE NOT FULFILLED.—

19 (A) There is no centralized listing of crimi-
20 nal or civil indictments, convictions, fines, pen-
21 alties, restitution, and settlement assessments
22 relating to contractors or assistance partici-
23 pants.

24 (B) Potential Federal contractors or assist-
25 ance participants are not required to disclose all

1 relevant criminal, civil, or administrative rulings
2 or resolutions during the Federal procurement
3 award process.

4 (C) Without such a database or disclosure,
5 Federal award officials and debarment officials
6 lack important information relevant to present
7 responsibility.

8 **SEC. 3. DATABASE FOR FEDERAL DEBARMENT OFFICIALS**
9 **AND CONTRACTING OFFICERS.**

10 (a) IN GENERAL.—The Administrator of General
11 Services shall establish and maintain a database of infor-
12 mation regarding integrity and performance of Federal
13 contracts and assistance recipients for use by Federal pro-
14 curement award officials and Federal officials having au-
15 thority to debar or suspend persons from Federal con-
16 tracts or assistance.

17 (b) INFORMATION INCLUDED.—The database—

18 (1) shall consist of information regarding judi-
19 cial and administrative proceedings initiated or con-
20 cluded by the Federal Government and State govern-
21 ments against Federal contractors or assistance re-
22 cipients; and

23 (2) shall include with respect to each entity
24 awarded a Federal contract or assistance—

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

4 (B) with respect to each proceeding—

5 (i) a brief description of the pro-
6 ceeding; and

7 (ii) any amount paid by the person to
8 the Federal Government or a State govern-
9 ment;

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

13 (D) all Federal debarments and suspen-
14 sions of the person in that period; and

15 (E) all Federal suspension and debarment
16 or administrative agreements signed with such
17 person in that period.

18 (c) INPUT OF DATA.—The Administrator shall design
19 and maintain the database in a manner that allows the
20 appropriate officials of each Federal agency to directly
21 input and update in the database information relating to
22 actions it has taken with regard to contractors or assist-
23 ance recipients.

24 (d) AVAILABILITY.—The Administrator shall make
25 the database available to all Federal agencies and to the

1 public in accordance with section 552 of title 5, United
2 States Code, popularly known as the Freedom of Informa-
3 tion Act.

4 **SEC. 4. SUSPENSION AND DEBARMENT PRESUMPTION FOR**
5 **REPEAT VIOLATORS AND POOR PER-**
6 **FORMERS.**

7 (a) **IN GENERAL.**—Federal agency suspension and
8 debarment regulations shall be amended by no later than
9 180 days after the date of the enactment of this Act to
10 provide that an entity shall be presumed nonresponsible
11 with respect to award of a Federal contract or assistance
12 if the entity has rendered against it twice within any 3-
13 year period a judgment or conviction for the same offense,
14 or similar offenses, if each conviction constitutes a cause
15 for debarment under the Governmentwide debarment sys-
16 tem.

17 (b) **REBUTTAL.**—The presumption under subsection
18 (a) shall be rebutted only if the entity demonstrates, by
19 clear and convincing evidence, that the entity is presently
20 responsible and has corrected the conditions that gave rise
21 to the violations.

22 (c) **REPEAT VIOLATIONS.**—An agency suspending of-
23 ficial may deem evidence of repeat violations under sub-
24 section (a) as sufficient reason to find that immediate ac-
25 tion is necessary to suspend an entity under the regula-

1 tions until the entity fulfills the requirements of subsection
2 (b).

3 **SEC. 5. DISCLOSURE IN APPLICATIONS.**

4 Federal regulations shall be amended by no later than
5 180 days after the date of the enactment of this Act to
6 require that in applying for any Federal contract or assist-
7 ance, whether by submission of a proposal, any solicita-
8 tion, bid, or other offer, an entity shall disclose in
9 writing—

10 (1) all Federal or State debarments or suspen-
11 sions of the entity from contracts or assistance in
12 the 5-year period preceding the date of submission
13 of the application;

14 (2) all judicial and administrative proceedings
15 against the entity by the Federal Government or any
16 State that occurred in the 5-year period preceding
17 the date of the application; and

18 (3) all administrative agreements with respect
19 to Federal contracts or assistance that the entity is
20 implementing to avoid suspension or debarment
21 within 5 years of the date of the submission of the
22 application.

23 **SEC. 6. ROLE OF INTERAGENCY COMMITTEE.**

24 The Interagency Committee on Debarment and Sus-
25 pension shall—

1 (1) resolve issues regarding which of several
2 Federal agencies is the lead agency having responsi-
3 bility to initiate suspension or debarment pro-
4 ceedings;

5 (2) coordinate actions among interested agen-
6 cies with respect to such action;

7 (3) encourage and assist Federal agencies in
8 entering into cooperative efforts to pool resources
9 and achieve operational efficiencies in the Govern-
10 mentwide suspension and debarment system;

11 (4) recommend to the Office of Management
12 and Budget changes to Government debarment and
13 suspension system and its rules, if such rec-
14 ommendations are approved by a majority of the
15 Interagency Committee;

16 (5) authorize the Office of Management and
17 Budget to issue guidelines that implement those rec-
18 ommendations;

19 (6) authorize the chair of the Committee to es-
20 tablish subcommittees as appropriate to best enable
21 the Interagency Committee to carry out its func-
22 tions; and

23 (7) submit to the Congress an annual report
24 on—

1 (A) the progress and efforts to improve the
2 suspension and debarment system;

3 (B) member agencies' active participation
4 in the committee's work; and

5 (C) a summary of each agency's activities
6 and accomplishments in the Governmentwide
7 debarment system.

8 **SEC. 7. AUTHORIZATION OF INDEPENDENT AGENCIES.**

9 Any agency, commission, or organization of the Fed-
10 eral Government to which Executive Order 12549 does not
11 apply is authorized to participate in the Governmentwide
12 suspension and debarment system and may recognize the
13 suspension or debarment issued by an executive branch
14 agency in its own procurement or assistance activities.

15 **SEC. 8. USE OF PAYMENTS UNDER ADMINISTRATIVE**
16 **AGREEMENTS.**

17 (a) IN GENERAL.—A Federal agency may—

18 (1) retain amounts described in subsection (b);

19 and

20 (2) use those amounts solely—

21 (A) to administer, review, or oversee com-
22 pliance with suspension or debarment adminis-
23 trative agreements; and

24 (B) for costs associated with establishing
25 and maintaining the database under section 3,

1 including for input and update of information
2 in the database.

3 (b) AMOUNTS DESCRIBED.—The amounts referred to
4 in subsection (a) are amounts received by the agency as
5 payment made by any Federal contractor or assistance
6 participant pursuant to an administrative agreement with
7 respect to a Federal contract or assistance activity.

8 (c) RESTRICTION.—Amounts retained under sub-
9 section (a)(1) may not be used for agency administration
10 or expenses not described in subsection (a)(2).

11 **SEC. 9. DEFINITIONS.**

12 In this Act:

13 (1) INTERAGENCY COMMITTEE.—The term
14 “Interagency Committee on Debarment and Suspen-
15 sion” means such committee constituted under sec-
16 tions 4 and 5 and of Executive Order 12549.

17 (2) ASSISTANCE.—The term “assistance”
18 means Federal grants, cooperative agreements,
19 loans, loan guarantees, and other benefits included
20 as covered transactions under the Governmentwide
21 nonprocurement suspension and debarment rules.

22 (3) CONTRACT.—The term “contract” means
23 those direct procurement transactions covered by
24 subpart 9.4 of the Federal Acquisition Regulation.

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