

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 (1) IN GENERAL.—Not later than one year
2 after the date of the enactment of this Act, the Of-
3 fice of Federal Procurement Policy, in coordination
4 with the heads of relevant agencies, including the
5 Secretary of Defense, the Secretary of Commerce,
6 the Secretary of Homeland Security, the Secretary
7 of the Treasury, the Director of National Intel-
8 ligence, the Attorney General, and the Secretary of
9 State, shall develop governmentwide procurement
10 policy and guidance to mitigate and eliminate orga-
11 nizational conflict of interests relating to contracts
12 involving national security matters or foreign policy
13 interests.

14 (2) ELEMENTS.—The procurement policy and
15 guidance developed under paragraph (1) shall in-
16 clude the following elements:

17 (A) Updating guidance relating to organi-
18 zational conflicts of interest with foreign enti-
19 ties and governments that are contrary to the
20 national security or foreign policy interests of
21 the United States.

22 (B) Providing a definition of “consulting
23 contract”, considering the definitions of “advi-
24 sory and assistance services” and “professional
25 and consultant services” provided under sec-

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

3 (C) Providing executive agencies with solici-
4 tation provisions and contract clauses that re-
5 quire offerors and contractors for Federal con-
6 sulting contracts—

7 (i) when submitting an offer, to dis-
8 close any beneficial ownership, active con-
9 tracts, contracts held within the last five
10 years, or any other information relevant to
11 potential organizational conflicts of interest
12 with respect to contracts described in para-
13 graph (3); and

14 (ii) while performing the resulting
15 contract, to disclose information relevant
16 to potential organizational conflicts of in-
17 terest and to limit future work as nec-
18 essary to address potential conflicts with
19 respect to contracts described in paragraph
20 (3).

21 (D) Providing that organizational conflicts
22 of interest found to be contrary to the national
23 security or foreign policy interests of the United
24 States may be grounds for denial of a contract,
25 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-

1 retary of the Treasury under Executive
2 Order 13662 (“Blocking Property of Addi-
3 tional Persons Contributing to the Situa-
4 tion in Ukraine”).

5 (viii) The government or any state-
6 owned entity of any country determined by
7 the Secretary of State to be a state spon-
8 sor of terrorism under section 1754(c) of
9 the John S. McCain National Defense Au-
10 thorization Act for Fiscal Year 2019 (50
11 U.S.C. 4813(e)), section 40 of the Arms
12 Export Control Act (22 U.S.C. 2779A), or
13 section 620A of the Foreign Assistance Act
14 of 1961 (22 U.S.C. 2371).

15 (ix) Any entity included on any of the
16 following lists maintained by the Depart-
17 ment of Commerce:

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

23 (II) The Denied Persons List as
24 described in section 764.3(a)(2) of the
25 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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