

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

S. 3905

To prevent organizational conflicts of interest in Federal acquisition, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PETERS

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Organiza-
5 tional Conflicts of Interest in Federal Acquisition Act”.

6 **SEC. 2. PREVENTING ORGANIZATIONAL CONFLICTS OF IN-
7 TEREST IN FEDERAL ACQUISITION.**

8 (a) IN GENERAL.—Not later than 18 months after
9 the date of the enactment of this Act, the Federal Acquisi-
10 tion Regulatory Council shall—

11 (1) identify contracting methods, types, and
12 services that raise heightened concerns for potential

1 organizational conflicts of interest, including those
2 not currently addressed in the Federal Acquisition
3 Regulation, such as consulting, analytical, and advi-
4 sory services supporting the primary missions or the
5 regulatory, policymaking, or adjudicative functions
6 of an executive agency; and

7 (2) revise the Federal Acquisition Regulation to
8 address the heightened concerns identified under
9 paragraph (1), including by—

10 (A) providing and updating—

11 (i) definitions related to specific types
12 of organizational conflicts of interest, in-
13 cluding unequal access to information, im-
14 paired objectivity, and biased ground rules;
15 and

16 (ii) definitions, guidance, and illus-
17 trative examples related to the potential
18 organizational conflicts of interest identi-
19 fied under paragraph (1), including exam-
20 ples of relationships of contractors with
21 public, private, domestic, and foreign enti-
22 ties that may cause contract support to be
23 subject to potential organizational conflicts
24 of interest, including undue influence;

1 (B) providing executive agencies with solici-
2 tation provisions and contract clauses described
3 in subsection (b) to avoid, neutralize, and miti-
4 gate organizational conflicts of interest, for
5 agency use as needed;

6 (C) allowing executive agencies to tailor
7 such solicitation provisions and contract clauses
8 as necessary to address risks associated with
9 conflicts of interest and other considerations
10 that may be unique to the executive agency;

11 (D) requiring executive agencies—

12 (i) to establish or update agency con-
13 flict of interest procedures to implement
14 the revisions to the Federal Acquisition
15 Regulation made under this section; and

16 (ii) to periodically assess and update
17 such procedures as needed to address
18 agency-specific conflict of interest issues;

19 (E) establishing processes for contracting
20 officers to document their decisions concerning
21 organizational conflicts of interest, including de-
22 cisions to waive a conflict of interest or approve
23 a contractor's plan to mitigate a conflict of in-
24 terest; and

1 (F) specifying that decisions with respect
2 to waivers described in subparagraph (E)—

3 (i) are required to be reviewed by the
4 head of an executive agency; and

5 (ii) may be delegated, but not below
6 the head of the contracting activity.

7 (b) SOLICITATION PROVISIONS AND CONTRACT
8 CLAUSES DESCRIBED.—The solicitation provisions and
9 contract clauses described in this subsection are, as the
10 Federal Acquisition Regulatory Council determines to be
11 appropriate, solicitation provisions and contract clauses
12 that—

13 (1) require contractors to warrant and disclose
14 sufficient information related to potential and actual
15 conflicts of interest before awarding a contract;

16 (2) identify the scope of the responsibility of
17 contractors for avoiding, neutralizing, mitigating,
18 and disclosing information relevant to the potential
19 and actual conflicts of interest of the contractor and
20 its personnel, consultants, and subcontractors;

21 (3) require contractors to disclose on an ongo-
22 ing basis during the performance of a contract any
23 information related to potential and actual conflicts
24 of interest, including conflicts of interest concerning

1 the contractor's personnel, consultants, and sub-
2 contractors;

3 (4) apprise contractors of the Federal Govern-
4 ment's—

5 (A) rights to disqualify a contractor from
6 consideration for a contract award or to termi-
7 nate a contract to avoid a conflict of interest;
8 and

9 (B) remedies for a contractor's failure to
10 disclose a conflict of interest, including suspen-
11 sion, debarment, and civil or criminal penalties;

12 (5) require contractors to include provisions
13 and clauses similar to those described in this sub-
14 section in their subcontracts;

15 (6) place reasonable limitations on a contrac-
16 tor's opportunities for future contracting with an ex-
17 ecutive agency, as needed, to avoid potential con-
18 flicts of interest;

19 (7) require contractors providing consulting, an-
20 alytical, or advisory services in support of the pri-
21 mary missions or the regulatory, policymaking, or
22 adjudicative functions of an executive agency—

23 (A) to disclose, in sufficient detail, specific
24 work performed in recent years on behalf of any

1 entities regulated by, or having non-routine
2 business before, the executive agency; and

3 (B) during the term of the contract, to re-
4 frain from entering into consulting or other
5 contractual arrangements with any entity to
6 perform specific work that may reasonably cre-
7 ate a conflict of interest, without receiving the
8 written approval of the contracting officer be-
9 fore the execution of the contractual arrange-
10 ment.

11 (c) EXECUTIVE AGENCY DEFINED.—In this section,
12 the term “executive agency” has the meaning given the
13 term in section 133 of title 41, United States Code.