

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 3810

To prohibit conflict of interests among consulting firms that simultaneously contract with the Government of the People's Republic of China and the United States Government, 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 (for himself and Mr. HAWLEY)

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Time to Choose Act
5 of 2024”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The Department of Defense and other agencies in the United States Government regularly
9 award contracts to firms that are simultaneously
10

1 providing consulting services to foreign governments
2 and proxies or affiliates thereof.

3 (2) The provision of such consulting services to
4 covered foreign entities may support efforts by cer-
5 tain foreign governments to generate economic and
6 military power that they can then use to undermine
7 the economic and national security of the American
8 people.

9 (3) It is a conflict of interest for consulting
10 firms to simultaneously aid in the efforts of certain
11 foreign governments to undermine the economic and
12 national security of the United States while they are
13 simultaneously contracting with Federal agencies re-
14 sponsible for protecting and defending the United
15 States from foreign threats.

16 (4) Firms should be prevented from engaging in
17 such a conflict of interest and should instead be re-
18 quired to choose between aiding the efforts of cer-
19 tain foreign governments or helping the United
20 States Government to support and defend its citi-
21 zens.

1 **SEC. 3. PROHIBITION ON FEDERAL CONTRACTING WITH**
2 **ENTITIES THAT ARE SIMULTANEOUSLY AID-**
3 **ING IN THE EFFORTS OF COVERED FOREIGN**
4 **ENTITIES.**

5 (a) IN GENERAL.—In order to end conflicts of inter-
6 est in Federal contracting among consulting firms that si-
7 multaneously contract with the United States Government
8 and covered foreign entities, the Federal Acquisition Reg-
9 ulatory Council shall, not later than 1 year after the date
10 of the enactment of this Act, amend the Federal Acquisi-
11 tion Regulation—

12 (1) to require any entity that makes an offer or
13 quotation to provide consulting services to an execu-
14 tive agency, including services described in the
15 North American Industry Classification System’s In-
16 dustry Group code 5416, prior to entering into a
17 Federal contract, to certify that neither it nor any
18 of its subsidiaries or affiliates hold a consulting con-
19 tract with one or more covered foreign entities; and

20 (2) to prohibit Federal contracts for consulting
21 services from being awarded to an entity that pro-
22 vides consulting services, including services described
23 under the North American Industry Classification
24 System’s Industry Group code 5416 if the entity or
25 any of its subsidiaries or affiliates are determined,
26 based on the self-certification required under para-

1 graph (1), to be a contractor of, or are otherwise
2 providing consulting services to, a covered foreign
3 entity.

4 (b) WAIVER.—

5 (1) IN GENERAL.—Subject to the limitations in
6 paragraph (2), the head of an executive agency may
7 waive the conflict of interest restrictions under this
8 section on a case-by-case basis if—

9 (A) the agency head, in consultation with
10 the Secretary of Defense and the Director of
11 National Intelligence, determines the waiver to
12 be in the national security interests of the
13 United States;

14 (B) the agency head determines that no
15 other entity without a conflict of interest under
16 this section can perform the work for the Fed-
17 eral contract;

18 (C) the head of the executive agency sub-
19 mits to the Director of the Office of Manage-
20 ment and Budget a notification of such waiver
21 at least 5 days prior to issuing the waiver;

22 (D) the head of the executive agency sub-
23 mits to the appropriate congressional commit-
24 tees a notification of such waiver within 30
25 days in unclassified form (accompanied by a

1 classified annex if necessary) and offers a brief-
2 ing to those committees on the information in-
3 cluded in the notification; and

4 (E) the contracting agency publishes in an
5 easily accessible location on the agency's public
6 website a list of the names of the covered for-
7 eign entities to which the entity receiving a
8 waiver provides consulting services, unless the
9 head of the applicable executive agency, with
10 the approval of the Director of the Office of
11 Management and Budget, and in consultation
12 with the Secretary of Defense and Director of
13 National Intelligence, determines that such pub-
14 lic disclosure would directly harm the national
15 security interests of the United States.

16 (2) LIMITATIONS.—

17 (A) DURATION.—A waiver granted under
18 paragraph (1) shall last for a period of not
19 more than 365 days. The head of the applicable
20 executive agency, with the approval of the Di-
21 rector of the Office of Management and Budg-
22 et, and in consultation with the Secretary of
23 Defense and Director of National Intelligence,
24 may extend a waiver granted under such para-
25 graph one time, for a period up to 180 days

1 after the date on which the waiver would other-
2 wise expire, if such an extension is in the na-
3 tional security interests of the United States
4 and the Director submits to the appropriate
5 congressional committees a notification of such
6 waiver and offers a briefing to those committees
7 on the information included in the notification.

8 (B) NUMBER.—Not more than one total
9 waiver across all executive agencies may be
10 granted under paragraph (1) to a single entity
11 at a given time.

12 (C) NOTIFICATION REQUIREMENTS.—The
13 notification required under subparagraphs (C)
14 and (D) of paragraph (1) shall include the fol-
15 lowing information:

16 (i) Information on the contractor, in-
17 cluding—

18 (I) the name, address, and cor-
19 porate structure of the contractor;

20 (II) the name, address, and cor-
21 porate structure of any subsidiaries or
22 subcontractors involved;

23 (III) all foreign ownership of the
24 contractor;

1 (IV) all foreign real estate owned
2 by the contractor; and

3 (V) an employee designated as
4 responsible for managing any conflict
5 of interests that may arise as part of
6 the contract.

7 (ii) Information on the covered foreign
8 entities involved to the extent known by
9 the contractor, including—

10 (I) the name and address of the
11 covered foreign entity;

12 (II) the name and address of any
13 subsidiaries or subcontractors in-
14 volved;

15 (III) a complete history of any
16 contracts between the covered foreign
17 entity and the contractor;

18 (IV) all ownership of the covered
19 foreign entity; and

20 (V) any legal authorities pro-
21 viding a foreign government with ac-
22 cess or control over the covered for-
23 eign entity.

1 (iii) Information on the nature of the
2 work performed for the covered foreign en-
3 tities, including—

4 (I) the projected and actual dol-
5 lar value of the contract;

6 (II) the projected and actual du-
7 ration of the contract;

8 (III) the projected and actual
9 number of employees to work on the
10 contract;

11 (IV) the projected and actual
12 number of employees who are United
13 States citizens who work on the con-
14 tract;

15 (V) the projected and actual
16 number of employees who currently or
17 formerly held security clearances with
18 the United States Government who
19 work on the contract;

20 (VI) the subject matter of the
21 contract;

22 (VII) any materials provided to
23 the covered foreign entity in order to
24 secure the contract;

1 (VIII) any tracking number used
2 by the covered foreign entity to iden-
3 tify the contract;

4 (IX) any tracking number or in-
5 formation used by the contractor to
6 identify the contract; and

7 (X) any military or intelligence
8 applications that could benefit from
9 the contract.

10 (iv) Justification of the executive
11 agency's need for providing the waiver.

12 (v) An acceptable management over-
13 sight plan to ensure that the work per-
14 formed for the covered foreign entities does
15 not compromise the work being performed
16 for the Federal Government or harm the
17 national security of the United States, to
18 be approved at not lower than the Deputy
19 Secretary level at the contracting agency.

20 (3) CONTRACTOR REPORTING.—The executive
21 agency granting a waiver under this subsection shall
22 require the contractor, in the event the contractor
23 identifies any of the following during the perform-
24 ance of the contract, to report the following informa-
25 tion to the executive agency:

1 (A) Any human rights violations that are
2 known to the contractor through information
3 provided to the contractor in the course of the
4 contract.

5 (B) Any religious liberty violations that are
6 known to the contractor through information
7 provided to the contractor in the course of the
8 contract.

9 (C) Any risks to United States economic or
10 national security identified by the contractor in
11 the course of the contract.

12 **SEC. 4. PENALTIES FOR FALSE INFORMATION.**

13 (a) TERMINATION, SUSPENSION, AND DEBAR-
14 MENT.—If the head of an executive agency determines
15 that a consulting firm described in section 3(a)(1) has
16 knowingly submitted a false certification or information
17 on or after the date on which the Federal Acquisition Reg-
18 ulatory Council amends the Federal Acquisition Regula-
19 tion pursuant to such section, the head of the executive
20 agency shall terminate the contract with the consulting
21 firm and consider suspending or debaring the firm from
22 eligibility for future Federal contracts in accordance with
23 subpart 9.4 of the Federal Acquisition Regulation.

24 (b) FALSE CLAIMS ACT.—A consulting firm de-
25 scribed in section 3(a)(1) that, for the purposes of the

1 False Claims Act, knowingly hides or misrepresents one
2 or more contracts with covered foreign entities, or other-
3 wise violates the False Claims Act, shall be subject to the
4 penalties and corrective actions described in the False
5 Claims Act, including liability for three times the amount
6 of damages which the United States Government sustains.

7 **SEC. 5. DEFINITIONS.**

8 In this Act:

9 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
10 **TEES.**—The term “appropriate congressional com-
11 mittees” means the Committee on Homeland Secu-
12 rity and Governmental Affairs of the Senate and the
13 Committee on Oversight and Accountability of the
14 House of Representatives.

15 (2) **CONSULTING SERVICES.**—The term “con-
16 sulting services” means advisory or assistance serv-
17 ices similar to those defined in Federal Acquisition
18 Regulation 2.101, but for the purposes of this Act
19 includes services provided to covered foreign entities,
20 except that the term does not include the provision
21 of products or services related to—

22 (A) compliance with legal, audit, account-
23 ing, tax, reporting, or other requirements of the
24 laws and standards of countries; or

1 (B) participation in a judicial, legal, or eq-
2 uitable dispute resolution proceeding.

3 (3) COVERED FOREIGN ENTITY.—The term
4 “covered foreign entity” means any of the following:

5 (A) The Government of the People’s Re-
6 public of China, the Chinese Communist Party,
7 the People’s Liberation Army, the Ministry of
8 State Security, or other security service or in-
9 telligence agency of the People’s Republic of
10 China.

11 (B) The Government of the Russian Fed-
12 eration or any entity sanctioned by the Sec-
13 retary of the Treasury under Executive Order
14 13662 titled “Blocking Property of Additional
15 Persons Contributing to the Situation in
16 Ukraine” (79 Fed. Reg. 16169).

17 (C) The government of any country if the
18 Secretary of State determines that such govern-
19 ment has repeatedly provided support for acts
20 of international terrorism pursuant to any of
21 the following:

22 (i) Section 1754(c)(1)(A) of the Ex-
23 port Control Reform Act of 2018 (50
24 U.S.C. 4318(c)(1)(A)).

1 (ii) Section 620A of the Foreign As-
2 sistance Act of 1961 (22 U.S.C. 2371).

3 (iii) Section 40 of the Arms Export
4 Control Act (22 U.S.C. 2780).

5 (iv) Any other provision of law.

6 (D) Any entity included on any of the fol-
7 lowing lists maintained by the Department of
8 Commerce:

9 (i) The Entity List set forth in Sup-
10 plement No. 4 to part 744 of the Export
11 Administration Regulations.

12 (ii) The Denied Persons List as de-
13 scribed in section 764.3(a)(2) of the Ex-
14 port Administration Regulations.

15 (iii) The Unverified List set forth in
16 Supplement No. 6 to part 744 of the Ex-
17 port Administration Regulations.

18 (iv) The Military End User List set
19 forth in Supplement No. 7 to part 744 of
20 the Export Administration Regulations.

21 (E) Any entity identified by the Secretary
22 of Defense pursuant to section 1237(b) of the
23 Strom Thurmond National Defense Authoriza-
24 tion Act for Fiscal Year 1999 (Public Law 105-
25 261; 50 U.S.C. 1701 note).

1 (F) Any entity on the Non-SDN Chinese
2 Military-Industrial Complex Companies List
3 (NS-CMIC List) maintained by the Office of
4 Foreign Assets Control of the Department of
5 the Treasury under Executive Order 14032 (86
6 Fed. Reg. 30145; relating to addressing the
7 threat from securities investments that finance
8 certain companies of the People’s Republic of
9 China), or any successor order.

10 (4) EXECUTIVE AGENCY.—The term “executive
11 agency” has the meaning given the term in section
12 133 of title 41, United States Code.

13 (5) FALSE CLAIMS ACT.—The term “False
14 Claims Act” means sections 3729 through 3733 of
15 title 31, United States Code.

16 (6) NORTH AMERICAN INDUSTRY CLASSIFICA-
17 TION SYSTEM’S INDUSTRY GROUP CODE 5416.—The
18 term “North American Industry Classification Sys-
19 tem’s Industry Group code 5416” refers to the
20 North American Industry Classification System cat-
21 egory that covers Management, Scientific, and Tech-
22 nical Consulting Services as Industry Group code
23 5416, including industry codes 54151, 541611,
24 541612, 541613, 541614, 541618, 54162, 541620,
25 54169, and 541690.

1 SEC. 6. NO ADDITIONAL FUNDING.

2 No additional funds are authorized to be appro-
3 priated for the purpose of carrying out this Act.