

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 fol-  
2 lowing:

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 agen-  
9 cies in the United States Government regularly  
10 award contracts to firms that are simultaneously

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 debarring 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.