



Memorandum

May 12, 2008

TO: Honorable Carolyn B. Maloney

FROM: L. Elaine Halchin
Analyst in American National Government
Government and Finance Division

SUBJECT: Comparisons of Different Versions of H.R. 3033 and Comparison of H.R. 3033 and S. 2904, Bills on Contractor Databases and Related Matters

This memorandum responds to your request for sequential comparisons of three versions of H.R. 3033 (as introduced (IH), reported (RH), and engrossed (EH)),¹ Contractors and Federal Spending Accountability Act of 2008, and S. 2904, Contractors and Federal Spending Accountability Act of 2008.²

H.R. 3033, as introduced, is the baseline document for this memorandum. Hence, the next section is a summary of H.R. 3033 IH. Subsequent sections include a comparison between H.R. 3033 IH and H.R. 3033 RH; a comparison between H.R. 3033 RH and H.R. 3033 EH; and a comparison between the bill that was referred to the Senate Committee on Homeland Security and Governmental Affairs after being received from the House (H.R. 3033 RFS) and S. 2904. Each comparison notes only the differences between the two documents. The comparisons do not include bill provisions that are the same or similar. The memorandum does not include minor changes, such as the addition of sponsors or the reorganization of contents, since the focus of this request is the substantive contents of the bills. See the applicable version of H.R. 3033, or S. 2904, for complete, detailed information because, for the purpose of this memorandum, the bills' provisions have been summarized.

There are no substantive differences between H.R. 3033 EH and H.R. 3033 RFS. Hence, there is no comparison between these versions.

Generally, H.R. 3033 and S. 2904 would require the head of the General Services Administration (GSA) to establish a database containing information regarding the integrity and performance of persons who are awarded contracts or who receive grants (or, in H.R.

¹ This memorandum uses the same abbreviations that the legislative information system (LIS) for the U.S. Congress (available at [<http://www.lis.gov>]) uses to identify different versions of a bill.

² Copies of the different versions of H.R. 3033, and S. 2904, accompany this memorandum.

3033 IH, other forms of assistance as well); establish guidelines for dealing with persons who are considered repeat violators (according to the criteria included in H.R. 3033 or S. 2904); require persons who apply for grants or are competing for government contracts to disclose certain information in their applications, or bids or proposals; provide direction on certain matters to the Interagency Committee on Debarment and Suspension; authorize that funds needed to establish the database be appropriated to the head of GSA; authorize any federal government agency, commission, or organization to participate in the government's suspension and debarment system; and require GSA to prepare and submit an annual report to Congress that includes a list of all databases that include information about federal contracts and grants, and includes recommendations for legislation or administrative action relating to the creation of a centralized, comprehensive contract and grant database.

Summary of H.R. 3033 IH

Representative Carolyn B. Maloney introduced H.R. 3033 on July 12, 2007. On the same day, the bill was referred to the House Committee on Oversight and Government Reform, which referred the bill to the Subcommittee on Government Management, Organization, and Procurement on July 17.

- Section 1. is the short title of the bill.
- Section 2. includes findings concerning the need for a database and suspension and debarment.
- Section 3. would require the head of the GSA to establish and maintain a database. The database would include information “regarding civil, criminal, and administrative proceedings initiated or concluded by the Federal Government and State governments against Federal contractors or assistance recipients.”³ GSA would design the database so that federal agencies could input and update information.⁴ The database would be posted on GSA’s website.⁵
- Section 4. would require amending federal regulations no later than 180 days after the date of enactment “to provide that a person shall be presumed nonresponsible with respect to award of a Federal contract or assistance if the person has rendered against the person twice within any 3-year period a judgment or conviction for the same offense, or similar offenses, if each conviction constitutes a cause for debarment under the Government-wide debarment system.”⁶ An agency would be able to use evidence of repeat violations as a sufficient reason to find that immediate action to suspend a

³ Sec. 3.(b)(1) of H.R. 3033 IH. “Assistance” refers to “Federal grants, cooperative agreements, loans, loan guarantees, and other benefits included as covered transactions under the governmentwide nonprocurement suspension and debarment rules.” (Sec. 10(2) of H.R. 3033 IH.) “Contract” refers to “those direct procurement transactions covered by subpart 9.4 of the Federal Acquisition Regulation.” (Sec. 10(3) of H.R. 3033 IH.)

⁴ Sec. 3.(c) of H.R. 3033 IH.

⁵ Sec. 3.(d) of H.R. 3033 IH.

⁶ Sec. 4.(a) of H.R. 3033 IH.

person is necessary until the person demonstrates he is responsible and has corrected the conditions that gave rise to the violations.⁷ A person may rebut the presumption of nonresponsibility if the person demonstrates that he is “presently responsible and has corrected the conditions that gave rise to the violations.”⁸

- Section 5. would require that federal regulations be amended within 180 days of the date of enactment to require that applicants for assistance or federal contracts disclose the following information for either five years preceding, or within five years after, the date of the application: “all federal or state suspensions or debarments”; “all suspension and debarment show cause orders”; “all civil, criminal and administrative proceedings brought against the person by the federal government or any state government”; “all administrative, civil, and criminal settlements, agreements, consent decrees, enforcement actions, corrective actions, compelling reason waivers, and other like judgments, orders, decisions, and final dispositions with respect to Federal contracts or assistance ...” and “all Federal contracts and assistance awarded to the person that were terminated due to default...”⁹
- Section 6. would mandate that the Interagency Committee on Debarment and Suspension oversee certain agency activities involving suspension and debarment; recommend changes to the suspension and debarment system to the Office of Management and Budget (OMB) and authorize OMB to issue guidelines to effect the recommendations; and submit an annual report to Congress on the suspension and debarment system.¹⁰ Additionally, Section 6 would authorize the chair of the committee to establish subcommittees.¹¹
- Section 7. would permit any federal government agency, commission, or organization to participate in the government’s suspension and debarment system.¹²
- Section 8. would authorize the appropriations of funds to GSA for the purpose of establishing a database.
- Section 9. would require the Administrator of General Services to submit a report to Congress within 180 days after enactment of the bill. The report would include a list of all databases that include information about federal contracting and assistance, and recommendations for legislation or

⁷ Sec. 4.(c) of H.R. 3033 IH.

⁸ Sec. 4.(b) of H.R. 3033 IH.

⁹ Sec. 5.(4) of H.R. 3033 IH.

¹⁰ Sec. 6.(1)-(5) of H.R. 3033 IH.

¹¹ Sec. 6. of H.R. 3033 IH.

¹² Sec. 7. of H.R. 3033 IH.

administrative action regarding the creation of a centralized federal contracting and assistance database.¹³

- Section 10. identifies the Interagency Committee on Debarment and Suspension and provides definitions for “assistance” and “contract.”

Comparison of H.R. 3033 IH and H.R. 3033 RH

H.R. 3033 was reported with an amendment by the House Committee on Oversight and Government Reform on April 18, 2008.

- HR 3033 IH would apply to contracts and assistance, while H.R. 3033 RH would apply to contracts and grants. As noted in footnote 3, the term “assistance” in H.R. 3033 IH includes, among other things, grants, cooperative agreements, loans, and loan guarantees.
- Similar to the IH version, the RH version would require the Administrator of General Services to establish and maintain a database of information regarding the integrity and performance of contractors and grant recipients. However, H.R. 3033 RH notes that GSA would be “subject to the authority, direction and control” of the OMB Director.¹⁴
- The list of information to be included in the database appears to differ in the two versions of H.R. 3033, although it is unclear whether the differences in language between the two versions would result in different outcomes. According to Section 3.(b)(2)(E) and (F) of H.R. 3033 IH, the database would include “(E) all Federal suspension and debarment show cause orders received by the person in that period; and (F) all administrative agreements signed with such person in that period.” In H.R. 3033 RH, the comparable provisions mention administrative agreements entered into by the person and the federal government or a state government and “all final findings by a Federal official ... that the person is not a responsible source as defined by Section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)).”¹⁵
- H.R. 3033 RH would direct the head of GSA to develop policies requiring that information submitted to the database be accurate and be inputted in a timely manner and allowing federal contractors and grant recipients to append comments to information in the database.¹⁶ H.R. 3033 IH does not include the same or a similar provision.

¹³ Sec. 9. of H.R. 3033 IH.

¹⁴ Sec. 2.(a) of H.R. 3033 RH.

¹⁵ Sec. 2.(b)(2)(E) and (F) of H.R. 3033 RH.

¹⁶ Sec. 2.(c)(2) of H.R. 3033 RH.

- H.R. 3033 RH does not require information exempt from public disclosure under 5 U.S.C. §552(b) to be included in the database.¹⁷ H.R. 3033 IH does not include the same or a similar provision.
- The suspension and debarment procedure varies in the two versions. H.R. 3033 IH states that “a person shall be presumed nonresponsible” if certain conditions apply,¹⁸ while H.R. 3033 RH does not provide for a presumption of nonresponsibility. H.R. 3033 IH includes provisions for rebuttals and repeat violations;¹⁹ H.R. 3033 RH does not.
- H.R. 3033 RH would require a person applying for a federal grant or submitting a proposal or bid for a federal contract to disclose, in the application, proposal, or bid, the information required for the database under Section 2.(b).²⁰ The disclosure requirements in Section 5 of H.R. 3033 IH are different (see the summary of Section 5 in “Summary of H.R. 3033 IH”).
- The disclosure requirements in H.R. 3033 RH would apply only to contracts and grants that exceed the simplified acquisition threshold (SAT).²¹ H.R. 3033 IH does not include the same or a similar provision.
- H.R. 3033 IH includes a section with findings; H.R. 3033 RH does not.

Comparison of H.R. 3033 EH and H.R. 3033 RH

H.R. 3033, as amended, was passed by voice vote in the House of Representatives on April 23, 2008.

- Unlike the database provision in H.R. 3033 RH, the comparable provision in H.R. 3033 EH includes a subsection that identifies “persons covered” for the purpose of the bill. Section 2.(b) of H.R. 3033 EH states: “The database shall cover any person awarded a Federal contract or grant if any information described in subsection (c) [which is the information to be included in the database] exists with respect to such person.”

¹⁷ 5 U.S.C. §552 is the Freedom of Information Act (FOIA).

¹⁸ Sec. 4.(a) of H.R. 3033 IH.

¹⁹ Sec. 4.(b) and (c) of H.R. 3033 IH.

²⁰ Sec. 4.(a) of H.R. 3033 RH.

²¹ Sec. 4.(b) of H.R. 3033 RH. The bill refers the reader to 41 U.S.C. §401(11) for the definition of “simplified acquisition threshold.” However, Sec. 4305 of P.L. 104-106 repealed 41 U.S.C. §401. According to the *Federal Acquisition Regulation*, the simplified acquisition threshold (SAT) is \$100,000, unless the purchase of supplies or services is for a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. Under any of these circumstances, and for purchases to be made or contracts to be performed inside the United States, the SAT is \$250,000. Under any of these circumstances, and for purchases to be made or contracts to be performed outside the United States, the SAT is \$1 million. (FAR 2.101.) “FAR” refers to the *Federal Acquisition Regulation*, which is available at [<http://www.acquisition.gov/far/current/pdf/FAR.pdf>].

- In H.R. 3033 EH, the reference to information submitted regarding any civil, criminal, or administrative proceeding includes a qualifying statement that is not included in H.R. 3033 RH. Section 2.(c)(1) of H.R. 3033 EH states that the database is to include information regarding “any civil or criminal proceeding, or any administrative proceeding *to the extent that such proceeding results in both a finding of fault on the part of the person and the payment of restitution to a government of \$5,000 or more, concluded by the Federal Government or any State government against the person,* and any amount paid by the person to the Federal Government or a State government.”²²
- Section 2.(c)(5) of H.R. 3033 EH notes that the database is to include all final findings by a federal official in which a person “*has been determined not to be a responsible source under either subparagraph (C) or (D) of section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)).*”²³ The relevant section in H.R. 3033 RH states that the database is to include all final findings by a federal official “that the person *is not* a responsible source as *defined by section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)).*”²⁴
- Regarding the timeliness and accuracy requirement for information submitted to the database, H.R. 3033 EH includes the requirement that any covered person (see above) be notified when information about such person is added to the database.²⁵ This version of the bill also specifies that any covered person is to be afforded the opportunity to append comments to information “about such person” that appear in the database.²⁶ H.R. 3033 RH does not require notification and does not specify that a person may have the opportunity to append comments only about such person.
- Section 3.(a) of H.R. 3033 EH requires a federal official responsible for awarding a contract or grant to review the database. H.R. 3033 RH does not include the same or a similar provision.
- The two versions of the bill differ regarding the treatment of a repeat violator. H.R. 3033 RH would require that suspension and debarment regulations be amended to require that a notice of proposed debarment be issued to any contractor or grant recipient who has been convicted or has had a judgment rendered against him twice within any three-year period for the same offense or similar offenses.²⁷ Section 3.(b) of H.R. 3033 EH has a different approach: an official responsible for awarding a contract or grant

²² Italics added to identify the new text.

²³ Italics added to identify language that differs from language in H.R. 3033 RH.

²⁴ Section 2.(b)(2)(F). (Italics added to identify language that differs from the language in H.R. 3033 EH.)

²⁵ Sec. 2.(d)(2)(B) of H.R. 3033 EH.

²⁶ Sec. 2.(d)(2)(C) of H.R. 3033 EH.

²⁷ Sec. 3. of H.R. 3033 RH.

“shall document why a prospective awardee” who has been convicted or has had a judgment rendered against him more than once within any three-year period for the same offense or similar offenses “is considered presently responsible.”²⁸

Comparison of H.R. 3033 RFS and S. 2904²⁹

On April 24, 2008, H.R. 3033 was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs. Senator Claire McCaskill introduced S. 2904 on the same day, and it, too, was referred to the Committee on Homeland Security and Governmental Affairs. The only differences between these two bills involve the descriptions of information to be included in the database.

- Both bills require that information regarding a civil, criminal, or administrative proceeding which meets certain conditions be submitted to the database. While the conditions in Section 2.(c)(1) of H.R. 3033 RFS are “a finding of fault on the part of the person and the payment of restitution to a government of \$5,000 or more,” the companion provision in S. 2904 elaborates on the conditions. The relevant text in S. 2904 is as follows:

*Each civil or criminal proceeding, or any administrative proceeding, with respect to the person during the period to the extent that such proceeding results in the following dispositions and the payment of a monetary fine, penalty, reimbursement, restitution, damages, or settlement to a government of \$5,000 or more, concluded by the Federal Government or any State government against the person: (A) In a criminal proceeding, a conviction. (B) In a civil or administrative proceeding, a finding of liability. (C) In a civil or administrative proceeding, a disposition of the matter by consent or compromise if the proceeding could have led to either of the outcomes specified in subparagraph (A) or (B).*³⁰

- Regarding the submission of information to the database related to a federal administrative agreement, H.R. 3033 RFS focuses exclusively on agreements involving the resolution of a suspension or debarment proceeding at the federal or state level.³¹ In S. 2904, administrative agreements with a state government are not mentioned. Additionally, information regarding a federal administrative agreement is to be submitted to the database if the proceeding could have led to a conviction (criminal proceeding) or a finding of liability (civil or administrative proceeding).³²

I trust that this information will be of assistance. Please call me at 707-0646 if you have any questions.

²⁸ Sec. 3.(b) of H.R. 3033 EH.

²⁹ The texts of H.R. 3033 RFS and H.R. 3033 EH are the same.

³⁰ Sec. 2.(c)(1) of S. 2904. (Italics added to identify language that differs from language in H.R. 3033 RFS.)

³¹ Sec. 2.(c)(4) of H.R. 3033 RFS.

³² Sec. 2.(c)(4) of S. 2904.