

**AMENDMENT TO H.R. 5122**  
**OFFERED BY MS. MCKINNEY OF GEORGIA**

At the appropriate place in the bill, insert the following new section:

1 **SEC. \_\_\_\_.** **COMPTROLLER GENERAL REPORT ON CON-**  
2 **TRACTOR PERFORMANCE OF SECURITY-**  
3 **GUARD FUNCTIONS.**

4 (a) **REPORT REQUIRED.**—Not later than 180 days  
5 after the date of the enactment of this Act, the Com-  
6 ptroller General shall submit to the Committee on Armed  
7 Services of the Senate and the Committee on Armed Serv-  
8 ices of the House of Representatives a report on con-  
9 tractor performance of security guard functions under sec-  
10 tion 332 of the Bob Stump National Defense Authoriza-  
11 tion Act for Fiscal Year 2003 (Public Law 107–314) dur-  
12 ing the period for which such section has been in effect.

13 (b) **CONTENTS OF REPORT.**—The report required  
14 under subsection (a) shall include each of the following:

15 (1) An assessment of whether the security-  
16 guard functions performed under a contract under  
17 that section were performed under clear, legal, and  
18 transparent constitutional and operational restric-  
19 tion, supervision, and oversight by the Secretary of

1 Defense, the Secretaries of the military departments,  
2 and Congress.

3 (2) An assessment of whether oversight of all  
4 contracted activity and function has included direct  
5 observation and experience, transparency, and  
6 monthly financial and activity reports by the Depart-  
7 ment of Defense to Congress or other federal over-  
8 sight agencies.

9 (3) An assessment of whether contracts entered  
10 into under that section were awarded using competi-  
11 tive procedures.

12 (4) An assessment of whether each contract en-  
13 tered into under that section ensured that the proc-  
14 ess of hiring personnel to perform security-guard  
15 functions—

16 (A) was awarded using competitive proce-  
17 dures and affirmative action hiring for local in-  
18 dividuals and individuals displaced by reason of  
19 emergencies;

20 (B) did not discriminate in hiring on the  
21 basis of gender, race, religion, or ethnicity; and

22 (C) provided for the availability of ade-  
23 quate background information on all employees  
24 hired under the contract to assess any security  
25 risk presented by any such employee.

1           (5) An assessment of whether the Secretary of  
2     Defense and the Secretaries of the military depart-  
3     ments ensured that awarding such contracts using  
4     competitive procedures did not disadvantage contrac-  
5     tors owned or operated primarily by minorities or  
6     women.

7           (6) An assessment of whether all contracts en-  
8     tered into under that section ensured that recruiting  
9     and training standards for contractors performing  
10    security-guard functions at an installation or facility  
11    were comparable to the recruiting and training  
12    standards for the personnel of the Department of  
13    Defense and members of the armed forces who per-  
14    form security-guard functions at that military instal-  
15    lation or facilities.

16          (7) An assessment of whether activities and ac-  
17    tions by contractors performing security-guard func-  
18    tions under a contract entered into under that sec-  
19    tion were limited by the legal restrictions and re-  
20    straints that comparably apply to both police and  
21    military forces in the United States and abroad.

22          (8) A description of any action by a contractor  
23    performing security-guard functions under that sec-  
24    tion that—

1 (A) resulted in a negative perception or re-  
2 action from the residents of a country or State  
3 to which the contractor was assigned; or

4 (B) unduly or negligently endangered  
5 members of the armed forces or members of al-  
6 lied or foreign military forces assigned to the  
7 base or unit where the contractor performed se-  
8 curity-guard functions.

9 (9) A description of the lines of authority and  
10 command within the Department of Defense to carry  
11 out security-guard functions and an assessment of  
12 whether such a description was established and fol-  
13 lowed as part of all contracts entered into under  
14 that section.

15 (10) An assessment of whether all such con-  
16 tracts established, distributed, and provided ade-  
17 quate training on rules governing the use of force,  
18 use of lethal weapons, and rules of engagement, that  
19 are the same as the rules established, distributed,  
20 and provided to members of the armed forces per-  
21 forming security-guard functions.

22 (11) An assessment of whether all such con-  
23 tracts restricted any actions by contractors per-  
24 forming security-guard functions not compatible  
25 with international laws of war and conduct, the Con-

1       stitution, the Geneva Accords, and human rights  
2       principles established by the United Nations.

3           (12) An assessment of whether all such con-  
4       tracts provided for a procedure to bring complaints  
5       and hold contractors performing security-guard  
6       functions responsible for any violations, including  
7       fines, reduction in pay, reassignment or termination  
8       of employment or prosecution by United States or  
9       international courts, depending on the circumstances  
10      and nature of the violation.

11          (13) An assessment of whether all such con-  
12      tracts were required to compare the costs of using  
13      contractors to perform security-guard functions to  
14      the costs of using of members of the armed forces  
15      to perform such functions, including bonus combat  
16      pay, and a justification of any excessive gap in pay  
17      differentials between a contractor and a member of  
18      the armed forces performing a similar function.

19          (14) An assessment of whether all contracts  
20      performed in the United States compared—

21            (A) the costs of performing the same func-  
22            tion using local individuals or individuals dis-  
23            placed by reason of a natural disaster; and

24            (B) the immediate and long term risks in-  
25            volved to the environment and human health

1 from the toxicity levels of the environment as  
2 well as those caused by the use of weapons or  
3 human activity.

4 (15) For any such contracts that replaced the  
5 performance of security-guard functions by civilian  
6 police with performance of such functions by a con-  
7 tractor, an evaluation of the cost of each type of per-  
8 formance in terms of comparable training, length  
9 and type of service.

10 (16) An assessment of whether all contracts re-  
11 affirmed and applied the principle of Posse Com-  
12 itatus, which maintains a clear dividing line between  
13 the training, function, use of lethal force and rules  
14 of engagement of those performing civilian police or  
15 military security functions in the United States or  
16 abroad.

17 (17) Whether or not the Comptroller General  
18 recommends—

19 (A) that a contract entered into under  
20 such section should be terminated—

21 (i) upon a finding of a violation in fi-  
22 nancial reporting or abuse, a violation of  
23 international law or the rules of engage-  
24 ment, or other misconduct by the con-

1 contractor related to any Federal contract en-  
2 tered into by the contractor; or

3 (ii) upon a finding of repeated viola-  
4 tions of any international or Constitutional  
5 legal restrictions or repeated endangerment  
6 of regular forces or police by the con-  
7 tractor; or

8 (B) that future contract bidding should not  
9 be allowed for a period of 5 years by any cor-  
10 poration or contractor who is found to have vio-  
11 late a rule applicable to such a contract.