

Union Calendar No. 196

113TH CONGRESS
1ST SESSION

H. R. 2719

[Report No. 113-275]

To require the Transportation Security Administration to implement best practices and improve transparency with regard to technology acquisition programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2013

Mr. HUDSON (for himself, Mr. McCAUL, Mr. THOMPSON of Mississippi, and Mr. RICHMOND) introduced the following bill; which was referred to the Committee on Homeland Security

NOVEMBER 21, 2013

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on July 18, 2013]

A BILL

To require the Transportation Security Administration to implement best practices and improve transparency with regard to technology acquisition programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Transportation Security*
5 *Acquisition Reform Act”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds the following:*

8 (1) *The Transportation Security Administration*
9 *(in this Act referred to as “TSA”) does not consist-*
10 *ently implement Department of Homeland Security*
11 *policies and Government best practices for acquisition*
12 *and procurement.*

13 (2) *TSA has not developed a multiyear tech-*
14 *nology investment plan. As a result, TSA has under-*
15 *utilized innovation opportunities within the private*
16 *sector, including from small businesses.*

17 (3) *Due in part to the deficiencies referred to in*
18 *paragraphs (1) and (2), TSA has faced challenges in*
19 *meeting key performance requirements for several*
20 *major acquisitions and procurements, resulting in re-*
21 *duced security effectiveness and wasted expenditures.*

1 **SEC. 3. TRANSPORTATION SECURITY ADMINISTRATION AC-**
2 **QUISITION REFORM.**

3 (a) *IN GENERAL.*—Title XVI of the Homeland Secu-
4 rity Act of 2002 (116 Stat. 2312) is amended to read as
5 follows:

6 **“TITLE XVI—TRANSPORTATION**
7 **SECURITY**

8 **“Subtitle A—General Provisions**

9 **“SEC. 1601. DEFINITIONS.**

10 *“In this title:*

11 (1) *ADMINISTRATION.*—The term ‘Administra-
12 tion’ means the Transportation Security Administra-
13 tion.

14 (2) *ADMINISTRATOR.*—The term ‘Adminis-
15 trator’ means the Administrator of the Transpor-
16 tation Security Administration.

17 (3) *SECURITY-RELATED TECHNOLOGY.*—The
18 term ‘security-related technology’ means any tech-
19 nology that assists the Administration in the preven-
20 tion of, or defense against, threats to United States
21 transportation systems, including threats to people,
22 property, and information.

1 **“Subtitle B—Transportation Secu-**
2 ****rity Administration Acquisition****
3 ****Improvements****

4 **“SEC. 1611. MULTIYEAR TECHNOLOGY INVESTMENT PLAN.**

5 *“(a) IN GENERAL.—The Administrator—*

6 *“(1) not later than 180 days after the date of en-*
7 *actment of the Transportation Security Acquisition*
8 *Reform Act, shall develop and transmit to Congress a*
9 *strategic multiyear technology investment plan, which*
10 *may include a classified addendum to report sensitive*
11 *transportation security risks, technology*
12 *vulnerabilities, or other sensitive security informa-*
13 *tion; and*

14 *“(2) to the extent possible, shall publish such*
15 *plan in an unclassified format within the public do-*
16 *main.*

17 *“(b) CONSULTATION.—The Administrator shall de-*
18 *velop the multiyear technology investment plan in consulta-*
19 *tion with the Under Secretary for Management, the Chief*
20 *Information Officer, and the Under Secretary for Science*
21 *and Technology.*

22 *“(c) APPROVAL.—The Secretary must have approved*
23 *the multiyear technology investment plan before it is pub-*
24 *lished under subsection (a)(2).*

1 “(d) *CONTENTS OF PLAN.*—*The multiyear technology*
2 *investment plan shall include the following:*

3 “(1) *An analysis of transportation security risks*
4 *and the associated technology gaps, including consid-*
5 *eration of the most recent Quadrennial Homeland Se-*
6 *curity Review under section 707.*

7 “(2) *A set of transportation security-related tech-*
8 *nology acquisition needs that—*

9 “(A) *is prioritized based on risk and gaps*
10 *identified under paragraph (1); and*

11 “(B) *includes planned technology programs*
12 *and projects with defined objectives, goals, and*
13 *measures.*

14 “(3) *An analysis of current trends in domestic*
15 *and international passenger travel.*

16 “(4) *An identification of currently deployed se-*
17 *curity-related technologies that are at or near the end*
18 *of their lifecycle.*

19 “(5) *An identification of test, evaluation, mod-*
20 *eling, and simulation capabilities that will be re-*
21 *quired to support the acquisition of the security-re-*
22 *lated technologies to meet those needs.*

23 “(6) *An identification of opportunities for pub-*
24 *lic-private partnerships, small and disadvantaged*
25 *company participation, intragovernment collabora-*

1 *tion, university centers of excellence, and national*
2 *laboratory technology transfer.*

3 *“(7) An identification of the Administration’s*
4 *acquisition workforce needs that will be required for*
5 *the management of planned security-related tech-*
6 *nology acquisitions, including consideration of*
7 *leveraging acquisition expertise of other Federal agen-*
8 *cies.*

9 *“(8) An identification of the security resources,*
10 *including information security resources, that will be*
11 *required to protect security-related technology from*
12 *physical or cyber theft, diversion, sabotage, or attack.*

13 *“(9) An identification of initiatives to stream-*
14 *line the Administration’s acquisition process and pro-*
15 *vide greater predictability and clarity to small, me-*
16 *dium, and large businesses, including the timeline for*
17 *testing and evaluation.*

18 *“(e) LEVERAGING THE PRIVATE SECTOR.—To the ex-*
19 *tent possible, and in a manner that is consistent with fair*
20 *and equitable practices, the plan shall—*

21 *“(1) leverage emerging technology trends and re-*
22 *search and development investment trends within the*
23 *public and private sectors;*

24 *“(2) incorporate feedback and input received*
25 *from the private sector through requests for informa-*

1 *tion, industry days, and other innovative means con-*
2 *sistent with the Federal Acquisition Regulation; and*

3 *“(3) leverage market research conducted by the*
4 *Under Secretary for Science and Technology to iden-*
5 *tify technologies that exist or are in development that,*
6 *with or without adaptation, could be utilized to meet*
7 *mission needs.*

8 *“(f) DISCLOSURE.—The Administrator shall include*
9 *with the plan required under this section a list of any non-*
10 *government persons that contributed to the writing of the*
11 *plan.*

12 *“(g) UPDATE AND REPORT.—Once every 2 years after*
13 *the initial strategic plan is transmitted to Congress, the Ad-*
14 *ministrator shall transmit to Congress an update of the*
15 *plan and a report on the extent to which each security-re-*
16 *lated technology acquired by the Administration since the*
17 *last issuance or update of the plan is consistent with the*
18 *planned technology programs and projects identified under*
19 *subsection (d)(2) for that technology.*

20 **“SEC. 1612. ACQUISITION JUSTIFICATION AND REPORTS.**

21 *“(a) ACQUISITION JUSTIFICATION.—Before the Ad-*
22 *ministration implements any security-related technology*
23 *acquisition, the Administrator shall, in accordance with the*
24 *Department’s policies and directives, conduct a comprehen-*
25 *sive analysis to determine whether the acquisition is justi-*

1 *fied. The analysis shall include, but may not be limited to,*
2 *the following:*

3 “(1) *An identification of the type and level of*
4 *risk to transportation security that would be ad-*
5 *dressed by such technology acquisition.*

6 “(2) *An assessment of how the proposed acquisi-*
7 *tion aligns to the multiyear technology investment*
8 *plan developed under section 1611.*

9 “(3) *A comparison of the total expected lifecycle*
10 *cost against the total expected quantitative and quali-*
11 *tative benefits to transportation security.*

12 “(4) *An analysis of alternative security solutions*
13 *to determine if the proposed technology acquisition is*
14 *the most effective and cost-efficient solution based on*
15 *cost-benefit considerations.*

16 “(5) *An evaluation of the privacy and civil lib-*
17 *erties implications of the proposed acquisition, and a*
18 *determination that the proposed acquisition is con-*
19 *sistent with fair information practice principles*
20 *issued by the Privacy Officer of the Department. To*
21 *the extent practicable, the evaluation shall include*
22 *consultation with organizations that advocate for the*
23 *protection of privacy and civil liberties.*

1 “(6) *Confirmation that there are no significant*
2 *risks to human health and safety posed by the pro-*
3 *posed acquisition.*

4 “(b) *REPORTS AND CERTIFICATION TO CONGRESS.—*

5 “(1) *IN GENERAL.—Not later than the end of the*
6 *30-day period preceding the award by the Adminis-*
7 *tration of a contract for any security-related tech-*
8 *nology acquisition exceeding \$30,000,000, the Admin-*
9 *istrator shall submit to the Committee on Homeland*
10 *Security of the House of Representatives and the*
11 *Committee on Commerce, Science, and Transpor-*
12 *tation of the Senate the results of the comprehensive*
13 *acquisition analysis required under this section and*
14 *a certification by the Administrator that the security*
15 *benefits justify the contract cost.*

16 “(2) *EXTENSION DUE TO IMMINENT TERRORIST*
17 *THREAT.—If there is a known or suspected imminent*
18 *threat to transportation security, the Administrator*
19 *may reduce the 30-day period under paragraph (1) to*
20 *5 days in order to rapidly respond.*

21 “(3) *NOTICE TO CONGRESS.—The Administrator*
22 *shall provide immediate notice of such imminent*
23 *threat to the Committee on Homeland Security of the*
24 *House of Representatives and the Committee on Com-*
25 *merce, Science, and Transportation of the Senate.*

1 **“SEC. 1613. ACQUISITION BASELINE ESTABLISHMENT AND**
2 **REPORTS.**

3 “(a) *BASELINE REQUIREMENTS.*—

4 “(1) *IN GENERAL.*—*Before the Administration*
5 *implements any security-related technology acquisi-*
6 *tion, the appropriate acquisition official of the De-*
7 *partment shall establish and document a set of formal*
8 *baseline requirements.*

9 “(2) *CONTENTS.*—*The baseline requirements*
10 *shall—*

11 “(A) *include the estimated costs (including*
12 *lifecycle costs), schedule, and performance mile-*
13 *stones for the planned duration of the acquisi-*
14 *tion; and*

15 “(B) *identify the acquisition risks and a*
16 *plan for mitigating these risks.*

17 “(3) *FEASIBILITY.*—*In establishing the perform-*
18 *ance milestones under paragraph (2), the appropriate*
19 *acquisition official of the Department shall, to the ex-*
20 *tent possible and in consultation with the Under Sec-*
21 *retary for Science and Technology, ensure that*
22 *achieving these milestones is technologically feasible.*

23 “(4) *TEST AND EVALUATION PLAN.*—*The Admin-*
24 *istrator, in consultation with the Under Secretary for*
25 *Science and Technology, shall develop a test and eval-*
26 *uation plan that, at a minimum, describes—*

1 “(A) the activities that will be required to
2 assess acquired technologies against the perform-
3 ance milestones established under paragraph (2);

4 “(B) the necessary and cost-effective com-
5 bination of laboratory testing, field testing, mod-
6 eling, simulation, and supporting analysis to en-
7 sure that such technologies meet the Administra-
8 tion’s mission needs; and

9 “(C) an efficient schedule to ensure that test
10 and evaluation activities are completed without
11 undue delay.

12 “(5) VERIFICATION AND VALIDATION.—The ap-
13 propriate acquisition official of the Department—

14 “(A) subject to subparagraph (B), shall uti-
15 lize independent reviewers to verify and validate
16 the performance milestones and cost estimates de-
17 veloped under paragraph (2) for a security-re-
18 lated technology that pursuant to section
19 1611(d)(2) has been identified as a high priority
20 need in the most recent multiyear technology in-
21 vestment plan; and

22 “(B) shall ensure that the utilization of
23 independent reviewers does not unduly delay the
24 schedule of any acquisition.

1 “(6) *STREAMLINING ACCESS FOR INTERESTED*
2 *VENDORS.—The Administrator shall establish a*
3 *streamlined process for an interested vendor of a secu-*
4 *rity-related technology to request and receive appro-*
5 *priate access to the baseline requirements and test*
6 *and evaluation plans that are necessary for the ven-*
7 *дор to participate in the acquisitions process for such*
8 *technology.*

9 “(b) *REVIEW OF BASELINE REQUIREMENTS AND DEVI-*
10 *ATION; REPORT TO CONGRESS.—*

11 “(1) *REVIEW.—*

12 “(A) *IN GENERAL.—The appropriate acqui-*
13 *sition official of the Department shall review and*
14 *assess each implemented acquisition to determine*
15 *if the acquisition is meeting the baseline require-*
16 *ments established under subsection (a).*

17 “(B) *TEST AND EVALUATION ASSESS-*
18 *MENT.—The review shall include an assessment*
19 *of whether the planned testing and evaluation*
20 *activities have been completed and the results of*
21 *such testing and evaluation demonstrate that the*
22 *performance milestones are technologically fea-*
23 *sible.*

24 “(2) *REPORT.—*

1 “(A) *IN GENERAL.*—*The Administrator*
2 *shall report to the Committee on Homeland Se-*
3 *curity of the House of Representatives and the*
4 *Committee on Commerce, Science, and Transpor-*
5 *tation of the Senate the results of any assessment*
6 *that finds that—*

7 “(i) *the actual or planned costs exceed*
8 *the baseline costs by more than 10 percent;*

9 “(ii) *the actual or planned schedule for*
10 *delivery has been delayed by more than 180*
11 *days; or*

12 “(iii) *there is a failure to meet any*
13 *performance milestone that directly impacts*
14 *security effectiveness.*

15 “(B) *CAUSE.*—*The report shall include the*
16 *cause for such excessive costs, delay, or failure,*
17 *and a plan for corrective action.*

18 “(C) *TIMELINESS.*—*The report required*
19 *under this section shall be provided to the Com-*
20 *mittee on Homeland Security of the House of*
21 *Representatives and the Committee on Com-*
22 *merce, Science, and Transportation of the Senate*
23 *no later than 30 days after identifying such ex-*
24 *cessive costs, delay, or failure.*

1 **“SEC. 1614. INVENTORY UTILIZATION.**

2 “(a) *IN GENERAL.*—*Before the procurement of addi-*
3 *tional quantities of equipment to fulfill a mission need, the*
4 *Administrator shall, to the extent practicable, utilize any*
5 *existing units in the Administration’s inventory to meet*
6 *that need.*

7 “(b) *TRACKING OF INVENTORY.*—

8 “(1) *LOCATION.*—*The Administrator shall estab-*
9 *lish a process for tracking the location of security-re-*
10 *lated equipment in such inventory.*

11 “(2) *UTILIZATION.*—*The Administrator shall—*

12 “(A) *establish a process for tracking the uti-*
13 *lization status of security-related technology in*
14 *such inventory; and*

15 “(B) *implement internal controls to ensure*
16 *accurate data on security-related technology uti-*
17 *lization.*

18 “(3) *QUANTITY.*—*The Administrator shall estab-*
19 *lish a process for tracking the quantity of security-re-*
20 *lated equipment in such inventory.*

21 “(c) *LOGISTICS MANAGEMENT.*—

22 “(1) *IN GENERAL.*—*The Administrator shall es-*
23 *tablish logistics principles for managing inventory in*
24 *an effective and efficient manner.*

1 “(2) *LIMITATION ON JUST-IN-TIME LOGISTICS.*—
2 *The Administrator may not use just-in-time logistics*
3 *if doing so would—*

4 “(A) *inhibit necessary planning for large-*
5 *scale delivery of equipment to airports or other*
6 *facilities; or*

7 “(B) *unduly diminish surge capacity for re-*
8 *sponse to a terrorist threat.*

9 **“SEC. 1615. SMALL BUSINESS CONTRACTING GOALS.**

10 *“Not later than 90 days after the date of enactment*
11 *of the Transportation Security Acquisition Reform Act, and*
12 *annually thereafter, the Administrator shall submit to the*
13 *Committee on Homeland Security of the House of Rep-*
14 *resentatives and the Committee on Commerce, Science, and*
15 *Transportation of the Senate a report that includes the fol-*
16 *lowing:*

17 “(1) *A restatement of the Administration’s pub-*
18 *lished goals for contracting with small businesses, in-*
19 *cluding small and disadvantaged businesses, and the*
20 *Administration’s performance record with respect to*
21 *meeting those goals during the preceding fiscal year.*

22 “(2) *If such goals were not met, or the Adminis-*
23 *tration’s performance was below the published goals of*
24 *the Department, an itemized list of challenges, includ-*
25 *ing deviations from the Administration’s subcon-*

1 *tracting plans and the extent to which contract bun-*
2 *dling was a factor, that contributed to the level of per-*
3 *formance during the preceding fiscal year.*

4 *“(3) An action plan, with benchmarks, for ad-*
5 *dressing each of the challenges identified in para-*
6 *graph (2), prepared after consultation with the Sec-*
7 *retary of Defense and the heads of Federal depart-*
8 *ments and agencies that achieved their published*
9 *goals for prime contracting with small and minority*
10 *owned businesses, including small and disadvantaged*
11 *businesses, in prior fiscal years, to identify policies*
12 *and procedures that could be incorporated at the Ad-*
13 *ministration in furtherance of achieving the Adminis-*
14 *tration’s published goal for such contracting.*

15 *“(4) The status of implementing such action*
16 *plan that was developed in the preceding fiscal year*
17 *in accordance with paragraph (3).*

18 **“SEC. 1616. CONSISTENCY WITH THE FEDERAL ACQUI-**
19 **SION REGULATION AND DEPARTMENTAL**
20 **POLICIES AND DIRECTIVES.**

21 *“The Administrator shall execute responsibilities set*
22 *forth in this subtitle in a manner consistent with, and not*
23 *duplicative of, the Federal Acquisition Regulation and the*
24 *Department’s policies and directives.”.*

1 (b) *CLERICAL AMENDMENT.*—*The table of contents in*
 2 *section 1(b) of such Act is amended by striking the items*
 3 *relating to title XVI and inserting the following:*

“*TITLE XVI—TRANSPORTATION SECURITY*

“*Subtitle A—General Provisions*

“*Sec. 1601. Definitions.*

“*Subtitle B—Transportation Security Administration Acquisition Improvements*

“*Sec. 1611. Multiyear technology investment plan.*

“*Sec. 1612. Acquisition justification and reports.*

“*Sec. 1613. Acquisition baseline establishment and reports.*

“*Sec. 1614. Inventory utilization.*

“*Sec. 1615. Small business contracting goals.*

“*Sec. 1616. Consistency with the Federal Acquisition Regulation and departmental policies and directives.*”.

4 (c) *PRIOR AMENDMENTS NOT AFFECTED.*—*This sec-*
 5 *tion shall not be construed to affect any amendment made*
 6 *by title XVI of such Act as in effect before the date of enact-*
 7 *ment of this Act.*

8 **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE REPORTS.**

9 (a) *IMPLEMENTATION OF PREVIOUS RECOMMENDA-*
 10 *TIONS.*—*Not later than 1 year after the date of enactment*
 11 *of this Act, the Comptroller General of the United States*
 12 *shall assess and report to Congress on implementation by*
 13 *the Transportation Security Administration of rec-*
 14 *ommendations regarding the acquisition of technology that*
 15 *were made by the Government Accountability Office before*
 16 *the date of enactment of this Act.*

17 (b) *IMPLEMENTATION OF SUBTITLE B OF TITLE*
 18 *XVI.*—*Not later than 1 year after the date of enactment*
 19 *of this Act and 3 years thereafter, the Comptroller General*

1 *of the United States shall evaluate and report to Congress*
2 *the Transportation Security Administration’s progress in*
3 *implementing subtitle B of title XVI of the Homeland Secu-*
4 *rity Act of 2002 (116 Stat. 2312), as amended by this Act*
5 *(including provisions added to such subtitle after the date*
6 *of enactment of this Act), including any efficiencies, cost*
7 *savings, or delays that have resulted from such implementa-*
8 *tion.*

9 **SEC. 5. REPORT ON FEASIBILITY OF INVENTORY TRACKING.**

10 *Not later than 90 days after the date of enactment of*
11 *this Act, the Administrator of the Transportation Security*
12 *Administration shall report to Congress on the feasibility*
13 *of tracking transportation security-related technology of the*
14 *Administration through automated information and data*
15 *capture technologies.*

16 **SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW OF**
17 **TSA’S TEST AND EVALUATION PROCESS.**

18 *Not later than 1 year after the date of the enactment*
19 *of this Act, the Comptroller General of the United States*
20 *shall evaluate and report to Congress on the Transportation*
21 *Security Administration’s testing and evaluation activities*
22 *related to security-related technologies. The report shall in-*
23 *clude—*

24 *(1) information on the extent to which —*

1 (A) the execution of such testing and eval-
2 uation activities is aligned, temporally and oth-
3 erwise, with the Administration's acquisition
4 needs, planned procurements, and acquisitions for
5 technology programs and projects; and

6 (B) the extent to which security-related tech-
7 nologies that have been tested, evaluated, and
8 certified for use by the Administration are not
9 procured by the Administration, including infor-
10 mation about why that occurs; and

11 (2) recommendations to—

12 (A) improve the efficiency and efficacy of
13 such testing and evaluation activities; and

14 (B) better align such testing and evaluation
15 with the acquisitions process.

16 **SEC. 7. NO ADDITIONAL AUTHORIZATION OF APPROPRIA-**
17 **TIONS.**

18 No additional funds are authorized to be appropriated
19 to carry out this Act and the amendments made by this
20 Act, and this Act and such amendments shall be carried
21 out using amounts otherwise available for such purpose.

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[Report No. 113-275]

A BILL

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