

REDUCING DHS ACQUISITION COST GROWTH ACT

MARCH 20, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 1294]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1294) to amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 1294, the Reducing DHS Acquisition Cost Growth Act of 2017, is to amend the Homeland Security Act of

2002 to provide for congressional notification regarding major acquisition program breaches and for other purposes.

H.R. 1294 requires that DHS's major acquisition programs (those worth \$300 million or more) be subject to greater Departmental and congressional oversight when they fail to meet (i.e. "breach") key cost, schedule, or performance requirements.

BACKGROUND AND NEED FOR LEGISLATION

The Government Accountability Office (GAO) and the DHS Office of Inspector General (OIG) have consistently reported on the long-standing challenges DHS faces in managing its major acquisition programs, which cost the Department over \$7 billion each year. Every 2 years, the GAO identifies areas in the Federal Government that are "high risk" due to their vulnerabilities to fraud, waste, abuse, and mismanagement. Since 2003, GAO has identified DHS's transformation of 22 agencies into one department, and the Department's subsequent challenges with its management functions, as high risk. In GAO's 2017 high risk update, GAO noted that DHS has made progress in addressing its management challenges, but has not yet completed all the necessary actions to fully address acquisition management. Additionally, the OIG reports annually on major management challenges facing the Department. In November 2016, the OIG identified challenges in DHS's management of acquisition programs. Although DHS has taken steps to improve acquisition management, DHS continues to struggle to ensure that major acquisition programs cost what was originally estimated, are delivered on schedule, and provide the capabilities originally intended. H.R. 1294 is intended to provide greater accountability to major acquisition programs and provides Congress with greater oversight of failing acquisition programs to prevent the waste of taxpayer dollars.

HEARINGS

No hearings were specifically held on H.R. 1294. However, the Committee held oversight hearings on acquisition management, as listed below.

On February 26, 2015, the Subcommittee on Oversight and Management Efficiency held a hearing entitled "Assessing DHS's Performance: Watchdog Recommendations to Improve Homeland Security." The Subcommittee received testimony from The Honorable John Roth, Inspector General, U.S. Department of Homeland Security; Ms. Rebecca Gambler, Director, Homeland Security and Justice, U.S. Government Accountability Office; and Dr. Daniel M. Gerstein, Senior Policy Researcher, The RAND Corporation.

On April 22, 2015, the Subcommittee on Oversight and Management Efficiency held a hearing entitled "Acquisition Oversight: How Effectively is DHS Safeguarding Taxpayer Dollars?" The Subcommittee received testimony from Ms. Michele Mackin, Director, Acquisition and Sourcing Management, U.S. Government Accountability Office; The Honorable Chip Fulghum, Acting Deputy Undersecretary for Management and Chief Financial Officer, U.S. Department of Homeland Security; and Dr. Cedric Sims, Partner, Evermay Consulting Group.

On September 18, 2015, the Subcommittee on Oversight and Management Efficiency held a hearing entitled “Making DHS More Efficient: Industry Recommendations to Improve Homeland Security.” The Subcommittee received testimony from Mr. Marc Pearl, President and Chief Executive Officer, Homeland Security and Defense Business Council; Mr. Harry Totonis, Board Director, Business Executives for National Security; and Ms. Elaine Duke, Principal, Elaine Duke & Associates, LLC.

On February 16, 2017, the Subcommittee on Oversight and Management Efficiency held a hearing entitled “Watchdog Recommendations: A Better Way Ahead to Manage the Department of Homeland Security.” The Subcommittee received testimony from The Honorable John Roth, Inspector General, U.S. Department of Homeland Security, and Ms. Rebecca Gambler, Director, Homeland Security and Justice, U.S. Government Accountability Office.

COMMITTEE CONSIDERATION

The Committee met on March 8, 2017, to consider H.R. 1294, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 1294.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1294, the Reducing DHS Acquisition Cost Growth Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1294 contains the following general per-

formance goals and objectives, including outcome related goals and objectives authorized.

The purpose of H.R. 1294, the Reducing DHS Cost Growth Act of 2017, is to provide guidance to the Department of Homeland Security regarding acquisition management.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 1294 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1294 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 1294 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that this bill may be cited as the “Reducing DHS Acquisition Cost Growth Act”.

Sec. 2. Congressional Notification for Major Acquisition Programs.

Section 2 amends subtitle D of the title VIII of the Homeland Security Act of 2002 (Pub. L. 107-296) and requires that DHS’s major acquisition programs (those worth \$300 million or more) be subject to greater Departmental and congressional oversight when they fail to meet (i.e. “breach”) key cost, schedule, or performance requirements. Specifically, when a major acquisition program breaches any of those key requirements, section 2 requires program managers to notify the officials responsible for overseeing those programs not later than thirty days after the breach has been identified.

Section 2 also establishes requirements for egregious instances of major acquisition programs in breach of key requirements. In extreme cases (when a major acquisition program exceeds its cost requirements by more than 15 percent, delays its schedule by more than 180 days, or fails to meet any performance requirement), the Secretary and the DHS Office of Inspector General (OIG) must be notified. If this happens, section 2 requires the Secretary to notify the House and Senate Committees on Homeland Security of the breach in the next quarterly Comprehensive Acquisition Status Report (CASR). The Secretary must include a justification of a major acquisition program if it exceeds (1) costs by 20 percent more or (2) planned schedule dates by 12 months or more.

Further, section 2 requires program managers to develop a plan when a breach occurs on how the breach will be remediated, which must, among other things, propose corrective actions for addressing the breach, as well as an analysis identifying potential root causes behind the breach. This plan must be submitted to the head of the relevant component, the Department’s Program Accountability and Risk Management (PARM) division, which is responsible for overseeing major acquisition programs, and the Under Secretary for Management (USM).

Section 2 requires the USM to review the corrective actions and either approve the plan or provide alternative corrective actions for addressing the breach. The USM must submit to the House and Senate Committees on Homeland Security a copy of the remediation plan, root cause analysis, and a description of actions taken to address the breach.

This section should provide greater accountability to major acquisition programs and provide Congress with greater oversight of failing acquisition programs to prevent the waste of taxpayer dollars. Section 2 also includes relevant definitions related to acquisition management.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics)

and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

*	*	*	*	*	*	*
TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS						
*	*	*	*	*	*	*
Subtitle D—Acquisitions						
Sec. 831. Research and development projects.						
*	*	*	*	*	*	*
Sec. 836. <i>Congressional notification and other requirements for major acquisition program breach.</i>						
*	*	*	*	*	*	*

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

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Subtitle D—Acquisitions

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SEC. 836. CONGRESSIONAL NOTIFICATION AND OTHER REQUIREMENTS FOR MAJOR ACQUISITION PROGRAM BREACH.

(a) **REQUIREMENTS WITHIN DEPARTMENT IN EVENT OF BREACH.**—
(1) **NOTIFICATIONS.**—

(A) **NOTIFICATION OF BREACH.**—*If a breach occurs in a major acquisition program, the program manager for such program shall notify the Component Acquisition Executive for such program, the head of the component concerned, the Executive Director of the Program Accountability and Risk Management division, the Under Secretary for Management, and the Deputy Secretary not later than 30 calendar days after such breach is identified.*

(B) **NOTIFICATION TO SECRETARY.**—*If a breach occurs in a major acquisition program and such breach results in a cost overrun greater than 15 percent, a schedule delay greater than 180 days, or a failure to meet any of the performance thresholds from the cost, schedule, or performance parameters specified in the most recently approved acquisi-*

tion program baseline for such program, the Component Acquisition Executive for such program shall notify the Secretary and the Inspector General of the Department not later than five business days after the Component Acquisition Executive for such program, the head of the component concerned, the Executive Director of the Program Accountability and Risk Management Division, the Under Secretary for Management, and the Deputy Secretary are notified of the breach pursuant to subparagraph (A).

(2) REMEDIATION PLAN AND ROOT CAUSE ANALYSIS.—

(A) IN GENERAL.—If a breach occurs in a major acquisition program, the program manager for such program shall submit to the head of the component concerned, the Executive Director of the Program Accountability and Risk Management division, and the Under Secretary for Management in writing a remediation plan and root cause analysis relating to such breach and program. Such plan and analysis shall be submitted at a date established at the discretion of the Under Secretary for Management.

(B) REMEDIATION PLAN.—The remediation plan required under this subparagraph (A) shall—

- (i) explain the circumstances of the breach at issue;
- (ii) provide prior cost estimating information;
- (iii) include a root cause analysis that determines the underlying cause or causes of shortcomings in cost, schedule, or performance of the major acquisition program with respect to which such breach has occurred, including the role, if any, of—
 - (I) unrealistic performance expectations;
 - (II) unrealistic baseline estimates for cost or schedule or changes in program requirements;
 - (III) immature technologies or excessive manufacturing or integration risk;
 - (IV) unanticipated design, engineering, manufacturing, or technology integration issues arising during program performance;
 - (V) changes to the scope of such program;
 - (VI) inadequate program funding or changes in planned out-year funding from one 5-year funding plan to the next 5-year funding plan as outlined in the Future Years Homeland Security Program required under section 874;
 - (VII) legislative, legal, or regulatory changes; or
 - (VIII) inadequate program management personnel, including lack of sufficient number of staff, training, credentials, certifications, or use of best practices;
- (iv) propose corrective action to address cost growth, schedule delays, or performance issues;
- (v) explain the rationale for why a proposed corrective action is recommended; and
- (vi) in coordination with the Component Acquisition Executive for such program, discuss all options considered, including the estimated impact on cost, schedule, or performance of such program if no changes are

made to current requirements, the estimated cost of such program if requirements are modified, and the extent to which funding from other programs will need to be reduced to cover the cost growth of such program.

(3) REVIEW OF CORRECTIVE ACTIONS.—

(A) IN GENERAL.—The Under Secretary for Management shall review the remediation plan required under paragraph (2). The Under Secretary may approve such plan or provide an alternative proposed corrective action within 30 days of the submission of such plan under such paragraph.

(B) SUBMISSION TO CONGRESS.—Not later than 30 days after the review required under subparagraph (A) is completed, the Under Secretary for Management shall submit to the congressional homeland security committees the following:

(i) A copy of the remediation plan and the root cause analysis required under paragraph (2).

(ii) A statement describing the corrective action or actions that have occurred pursuant to paragraph (2)(b)(iv) for the major acquisition program at issue, with a justification for such action or actions.

(b) REQUIREMENTS RELATING TO CONGRESSIONAL NOTIFICATION IF BREACH OCCURS.—

(1) NOTIFICATION TO CONGRESS.—If a notification to the Secretary is made under subsection (a)(1)(B) relating to a breach in a major acquisition program, the Under Secretary for Management shall notify the congressional homeland security committees of such breach in the next quarterly Comprehensive Acquisition Status Report, as required by title I of division D of the Consolidated Appropriations Act, 2016, (Public Law 114–113) following receipt by the Under Secretary of notification under such subsection.

(2) SIGNIFICANT VARIANCES IN COSTS OR SCHEDULE.—If a likely cost overrun is greater than 20 percent or a likely delay is greater than 12 months from the costs and schedule specified in the acquisition program baseline for a major acquisition program, the Under Secretary for Management shall include in the notification required in paragraph (1) a written certification, with supporting explanation, that—

(A) such program is essential to the accomplishment of the Department’s mission;

(B) there are no alternatives to the capability or asset provided by such program that will provide equal or greater capability in both a more cost-effective and timely manner;

(C) the new acquisition schedule and estimates for total acquisition cost are reasonable; and

(D) the management structure for such program is adequate to manage and control cost, schedule, and performance.

(c) DEFINITIONS.—In this section:

(1) ACQUISITION.—The term “acquisition” has the meaning given such term in section 131 of title 41, United States Code.

(2) ACQUISITION PROGRAM.—The term “acquisition program” means the process by which the Department acquires, with any

appropriated amounts, by contract for purchase or lease, property or services (including construction) that support the missions and goals of the Department.

(3) *ACQUISITION PROGRAM BASELINE.*—The term “acquisition program baseline”, with respect to an acquisition program, means a summary of the cost, schedule, and performance parameters, expressed in standard, measurable, quantitative terms, which must be met in order to accomplish the goals of such program.

(4) *BEST PRACTICES.*—The term “best practices”, with respect to acquisition, means a knowledge-based approach to capability development that includes—

(A) identifying and validating needs;

(B) assessing alternatives to select the most appropriate solution;

(C) clearly establishing well-defined requirements;

(D) developing realistic cost assessments and schedules;

(E) securing stable funding that matches resources to requirements;

(F) demonstrating technology, design, and manufacturing maturity;

(G) using milestones and exit criteria or specific accomplishments that demonstrate progress;

(H) adopting and executing standardized processes with known success across programs;

(I) establishing an adequate workforce that is qualified and sufficient to perform necessary functions; and

(J) integrating the capabilities described in subparagraphs (A) through (I) into the Department’s mission and business operations.

(5) *BREACH.*—The term “breach”, with respect to a major acquisition program, means a failure to meet any cost, schedule, or performance threshold specified in the most recently approved acquisition program baseline.

(6) *CONGRESSIONAL HOMELAND SECURITY COMMITTEES.*—The term “congressional homeland security committees” means—

(A) the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Appropriations of the House of Representatives and of the Senate.

(7) *COMPONENT ACQUISITION EXECUTIVE.*—The term “Component Acquisition Executive” means the senior acquisition official within a component who is designated in writing by the Under Secretary for Management, in consultation with the component head, with authority and responsibility for leading a process and staff to provide acquisition and program management oversight, policy, and guidance to ensure that statutory, regulatory, and higher level policy requirements are fulfilled, including compliance with Federal law, the Federal Acquisition Regulation, and Department acquisition management directives established by the Under Secretary for Management.

(8) *MAJOR ACQUISITION PROGRAM.*—The term “major acquisition program” means a Department acquisition program that is estimated by the Secretary to require an eventual total expendi-

ture of at least \$300,000,000 (based on fiscal year 2017 constant dollars) over its life cycle cost.

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