

DHS MULTIYEAR ACQUISITION STRATEGY ACT OF 2017

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. 1249]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1249) to amend the Homeland Security Act of 2002 to require a multiyear acquisition strategy of the Department of Homeland Security, 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. 1249 is to amend the Homeland Security Act of 2002 (Pub. L. 107-296) to require a multi-year acquisition strategy for the Department of Homeland Security (DHS) and for other purposes.

H.R. 1249 requires DHS to develop a multi-year acquisition strategy as part of each Future Years Homeland Security Program to guide the overall direction of DHS acquisitions, while also allowing flexibility to deal with ever-changing threats and risks. Specifically, the strategy shall include, among other things, a prioritized list of acquisition investments based on mission, a plan to develop a reliable DHS-wide inventory of investments, and an identification of capabilities required to leverage emerging technology. This will help industry better understand, plan, and align resources to meet the future acquisition needs of the Department.

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 two years, 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 struggles to ensure that major acquisition programs cost what they were originally estimated, are delivered on schedule, and provide the capabilities originally intended. As a result, industry is not always informed of what capabilities and technologies the Department needs to address a particular threat. H.R. 1249 requires DHS to develop a multi-year acquisition strategy to guide future acquisitions so that industry is able to provide the solutions necessary to address the Department’s needs.

HEARINGS

No hearings were specifically held on H.R.1249. 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 Jus-

tice, 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. 1249, 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. 1249.

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. 1249, the DHS Multiyear Acquisition Strategy Act of 2017, 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. 1249 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The purpose of H.R. 1249, the DHS Multiyear Acquisition Strategy 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. 1249 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. 1249 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 1249 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 “DHS Multiyear Acquisition Strategy Act of 2017”.

Sec. 2. Multiyear Acquisition Strategy.

Section 2 amends Subtitle D of title VIII of the Homeland Security Act. This section requires that, within 1 year of enactment, the Secretary must submit to the House and Senate Committees on Homeland Security and the Comptroller General of the United States a multi-year acquisition strategy to guide the overall direction of DHS acquisitions. Every year thereafter, the Secretary must update and include that strategy in each Future Years Homeland Security Program report already required by section 874 of the Homeland Security Act of 2002.

Section 2 also requires the Secretary to consult with headquarters, components, employees in the field, industry, and the academic community when developing the strategy. The strategy must allow flexibility to deal with ever-changing threats and risks and to help industry better understand, plan, and align resources to meet the future acquisition needs of DHS.

Section 2 requires the Secretary to include the following elements in the strategy:

1. A prioritized list of acquisition investments;
2. A plan to develop a reliable DHS-wide inventory of investments and real property assets;
3. A plan to address known funding gaps between requirements and resources for acquisitions;
4. An identification of capabilities required to support acquisition and to leverage emerging technology and R&D trends;
5. A focus on flexible solutions to allow the necessary incentives and protections for appropriate risk-taking to meet acquisition needs with resiliency, agility, and responsiveness;
6. A focus on incentives for program managers to achieve cost savings;
7. An assessment of ways to improve the acquisition process to reduce cost overruns;
8. A focus on ways to increase outreach to key stakeholders that includes methods to engage small and disadvantaged businesses and guidance for interaction by program managers with key stakeholders to prevent misinterpretation of acquisition regulations;

9. A plan to ensure competition or the option of competition for major acquisition programs; and
10. plan to that identifies the acquisition workforce needs of each component and develops options for filling those needs. This plan shall also address ways to improve recruitment, hiring, training, and retention of acquisition workforce personnel to retain highly qualified personnel, among other things

The Committee believes that for this strategy to be actionable, it must be informed by the acquisition plans and priorities of the components. As such, the Secretary is encouraged to establish a robust process for collaboration between and among components to develop the Department's prioritized list of acquisition investments.

Sec. 3. Government Accountability Office Review of Multiyear Acquisition Strategy.

Section 3 requires GAO to review the Department's multi-year acquisition strategy within 6 months of the Secretary submitting the first strategy. The review shall assess, among other things, the Department's: (1) compliance with the requirements in section 2; (2) establishment of clear connections between DHS objectives and acquisition priorities; and (3) demonstration that acquisition policy reflects acquisition best practices.

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

* * * * *

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

* * * * *

Subtitle D—Acquisitions

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SEC. 836. MULTIYEAR ACQUISITION STRATEGY.

(a) *MULTIYEAR ACQUISITION STRATEGY REQUIRED.*—

(1) *IN GENERAL.*—*Not later than one year after the date of the enactment of this section, the Secretary shall submit to the appropriate congressional committees and the Comptroller General of the United States a multiyear acquisition strategy to*

guide the overall direction of the acquisitions of the Department while allowing flexibility to deal with ever-changing threats and risks, and to help industry better understand, plan, and align resources to meet the future acquisition needs of the Department. Such strategy shall be updated and included in each Future Years Homeland Security Program required under section 874.

(2) FORM.—The strategy required under paragraph (1) shall be submitted in unclassified form but may include a classified annex for any sensitive or classified information if necessary. The Secretary shall publish such strategy in an unclassified format that is publicly available.

(b) CONSULTATION.—In developing the strategy required under subsection (a), the Secretary shall, as the Secretary determines appropriate, consult with headquarters, components, employees in the field, and individuals from industry and the academic community.

(c) CONTENTS OF STRATEGY.—The strategy shall include the following:

(1) PRIORITIZED LIST.—A systematic and integrated prioritized list developed by the Under Secretary for Management in coordination with all of the Component Acquisition Executives of Department major acquisition programs that Department and component acquisition investments seek to address, including the expected security and economic benefit of the program or system that is the subject of acquisition and an analysis of how the security and economic benefit derived from such program or system will be measured.

(2) INVENTORY.—A plan to develop a reliable Department-wide inventory of investments and real property assets to help the Department—

(A) plan, budget, schedule, and acquire upgrades of its systems and equipment; and

(B) plan for the acquisition and management of future systems and equipment.

(3) FUNDING GAPS.—A plan to address funding gaps between funding requirements for major acquisition programs and known available resources, including, to the maximum extent practicable, ways of leveraging best practices to identify and eliminate overpayment for items to—

(A) prevent wasteful purchasing;

(B) achieve the greatest level of efficiency and cost savings by rationalizing purchases;

(C) align pricing for similar items; and

(D) utilize purchase timing and economies of scale.

(4) IDENTIFICATION OF CAPABILITIES.—An identification of test, evaluation, modeling, and simulation capabilities that will be required to—

(A) support the acquisition of technologies to meet the needs of such strategy;

(B) leverage to the greatest extent possible emerging technological trends and research and development trends within the public and private sectors; and

(C) identify ways to ensure that appropriate technology is acquired and integrated into the Department's operating doctrine to improve mission performance.

(5) *FOCUS ON FLEXIBLE SOLUTIONS.*—An assessment of ways the Department can improve its ability to test and acquire innovative solutions to allow needed incentives and protections for appropriate risk-taking in order to meet its acquisition needs with resiliency, agility, and responsiveness to assure homeland security and facilitate trade.

(6) *FOCUS ON INCENTIVES TO SAVE TAXPAYER DOLLARS.*—An assessment of ways the Department can develop incentives for program managers and senior Department acquisition officials to—

- (A) prevent cost overruns;
- (B) avoid schedule delays; and
- (C) achieve cost savings in major acquisition programs.

(7) *FOCUS ON ADDRESSING DELAYS AND BID PROTESTS.*—An assessment of ways the Department can improve the acquisition process to minimize cost overruns in—

- (A) requirements development;
- (B) procurement announcements;
- (C) requests for proposals;
- (D) evaluation of proposals;
- (E) protests of decisions and awards; and
- (F) the use of best practices.

(8) *FOCUS ON IMPROVING OUTREACH.*—An identification and assessment of ways to increase opportunities for communication and collaboration with industry, small and disadvantaged businesses, intra-government entities, university centers of excellence, accredited certification and standards development organizations, and national laboratories to ensure that the Department understands the market for technologies, products, and innovation that is available to meet its mission needs and to inform the Department's requirements-setting process before engaging in an acquisition, including—

(A) methods designed especially to engage small and disadvantaged businesses, a cost-benefit analysis of the trade-offs that small and disadvantaged businesses provide, information relating to barriers to entry for small and disadvantaged businesses, and information relating to unique requirements for small and disadvantaged businesses; and

(B) within the Department Vendor Communication Plan and Market Research Guide, instructions for interaction by acquisition program managers with such entities to—

- (i) prevent misinterpretation of acquisition regulations; and
- (ii) permit, within legal and ethical boundaries, interacting with such entities with transparency.

(9) *COMPETITION.*—A plan regarding competition under subsection (d).

(10) *ACQUISITION WORKFORCE.*—A plan regarding the Department acquisition workforce under subsection (e).

(d) *COMPETITION PLAN.*—The strategy required under subsection (a) shall also include a plan to address actions to ensure competition, or the option of competition, for major acquisition programs. Such plan may include assessments of the following measures in appropriate cases if such measures are cost effective:

- (1) Competitive prototyping.

- (2) *Dual-sourcing.*
- (3) *Unbundling of contracts.*
- (4) *Funding of next-generation prototype systems or subsystems.*
- (5) *Use of modular, open architectures to enable competition for upgrades.*
- (6) *Acquisition of complete technical data packages.*
- (7) *Periodic competitions for subsystem upgrades.*
- (8) *Licensing of additional suppliers, including small businesses.*
- (9) *Periodic system or program reviews to address long-term competitive effects of program decisions.*

(e) *ACQUISITION WORKFORCE PLAN.—*

(1) *ACQUISITION WORKFORCE.—The strategy required under subsection (a) shall also include a plan to address Department acquisition workforce accountability and talent management that identifies the acquisition workforce needs of each component performing acquisition functions and develops options for filling such needs with qualified individuals, including a cost-benefit analysis of contracting for acquisition assistance.*

(2) *ADDITIONAL MATTERS COVERED.—The acquisition workforce plan under this subsection shall address ways to—*

(A) *improve the recruitment, hiring, training, and retention of Department acquisition workforce personnel, including contracting officer's representatives, in order to retain highly qualified individuals who have experience in the acquisition life cycle, complex procurements, and management of large programs;*

(B) *empower program managers to have the authority to manage their programs in an accountable and transparent manner as such managers work with the acquisition workforce;*

(C) *prevent duplication within Department acquisition workforce training and certification requirements through leveraging already-existing training within the Federal Government, academic community, or private industry;*

(D) *achieve integration and consistency with Government-wide training and accreditation standards, acquisition training tools, and training facilities;*

(E) *designate the acquisition positions that will be necessary to support the Department acquisition requirements, including in the fields of—*

(i) *program management;*

(ii) *systems engineering;*

(iii) *procurement, including contracting;*

(iv) *test and evaluation;*

(v) *life cycle logistics;*

(vi) *cost estimating and program financial management; and*

(vii) *additional disciplines appropriate to Department mission needs;*

(F) *strengthen the performance of contracting officers' representatives (as defined in subpart 1.602-2 and subpart 2.101 of the Federal Acquisition Regulation), including by—*

(i) assessing the extent to which such representatives are certified and receive training that is appropriate;

(ii) assessing what training is most effective with respect to the type and complexity of assignment; and

(iii) implementing actions to improve training based on such assessments; and

(G) identify ways to increase training for relevant investigators and auditors of the Department to examine fraud in major acquisition programs, including identifying opportunities to leverage existing Government and private sector resources in coordination with the Inspector General of the Department.

(f) **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) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional 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 the Committee on Appropriations of the Senate.

(3) **BEST PRACTICES.**—The term “best practices”, with respect to acquisition, means—

(A) a knowledge-based approach to capability development that includes 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 into the mission and business operations of the Department of Homeland Security the capabilities described in subparagraphs (A) through (I).

(4) **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.

(5) MAJOR ACQUISITION PROGRAM.—The term “major acquisition program” means a Department acquisition program that is estimated by the Secretary to require an eventual total expenditure of at least \$300,000,000 (based on fiscal year 2017 constant dollars) over its life cycle cost.

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