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DHS ACQUISITION REVIEW BOARD
ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 886

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO
ESTABLISH AN ACQUISITION REVIEW BOARD IN THE DEPART-
MENT OF HOMELAND SECURITY, AND FOR OTHER PURPOSES



OCTOBER 16, 2017.—Ordered to be printed

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DHS ACQUISITION REVIEW BOARD ACT OF 2017

OCTOBER 16, 2017.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 886]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 886), to amend the Homeland Security Act of 2002 to establish an Acquisition Review Board in the Department of Homeland Security, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 886, the DHS Acquisition Review Board Act, amends the Homeland Security Act of 2002 to establish an Acquisition Review Board (ARB) within the Department of Homeland Security (DHS or the Department). The bill designates the DHS Under Secretary for Management (USM) as the chair of the ARB. The bill requires the ARB to meet regularly to, among other things, provide accountability and consistent oversight of DHS components' major acquisition programs, which are defined as those with total expenditures

of \$300 million or more. Additionally, the bill assists the Department in its efforts to improve the management of its major acquisition programs by ensuring the uniform application of acquisition review procedures across components.

II. BACKGROUND AND THE NEED FOR LEGISLATION

DHS has been plagued by longstanding challenges in managing its major acquisition programs, resulting in the wasteful spending of untold billions of taxpayer dollars.¹ For example, Customs and Border Protection's (CBP) Secure Border Initiative Network (or SBInet) was cancelled after CBP had already spent over a billion dollars on the project, due in part to cost growth and schedule slip-pages.²

The Government Accountability Office (GAO) continues to identify the management of DHS's acquisition programs as "high risk" in its biennial report on Federal programs vulnerable to fraud, waste, abuse, and mismanagement.³ Specifically, in its 2017 review of high-risk Federal programs, GAO reported that DHS needs to "ensure consistent, effective oversight" of its major acquisition programs and hold programs accountable for maintaining accurate and reliable cost, schedule, and performance data.⁴

The management of major acquisition programs was also cited in the DHS Office of Inspector General's (OIG) November 2016 annual report on management challenges facing DHS.⁵ Specifically, the OIG found that the Department continues to fall short in managing major acquisition programs to ensure programs align with original cost estimates, are delivered on schedule, and provide operators with the capabilities originally intended.⁶ Moreover, the GAO and OIG have reported that although the Department's acquisition management guidance is "generally sound" and includes best practices, inconsistent application of this guidance across component agencies has resulted in a lack of uniformity, and, in some cases, mismanagement of the Department's major acquisition programs.⁷

¹ See U.S. Gov't Accountability Office, GAO-17-346SP, *Homeland Security Acquisitions: Earlier Requirements Definition and Clear Documentation of Key Decisions Could Facilitate Ongoing Progress* 1 (2017), <http://www.gao.gov/assets/690/683977.pdf>; see also Dana Hedgpeth, *Congress Says DHS Oversaw \$15 Billion in Failed Contracts*, *The Washington Post* (Sept. 17, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/16/AR2008091603200.html>.

² *Watchdog Recommendations: A Better Way Ahead to Manage the Department of Homeland Security: Hearing Before the Subcomm. on Oversight and Mgmt. Efficiency of the H. Comm. on Homeland Sec.*, 115th Cong. (2017) (testimony of John Roth, Inspector General, U.S. Dep't of Homeland Sec.), available at <http://docs.house.gov/meetings/HM/HM09/20170216/105541/HHRG-115-HM09-Bio-RothJ-20170216.pdf>.

³ U.S. Gov't Accountability Office, GAO-17-317, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others* 356 (2017), <http://www.gao.gov/assets/690/682765.pdf>.

⁴ *Id.* at 361.

⁵ DHS Office of Inspector General, *OIG-17-08, Major Management and Performance Challenges Facing the Department of Homeland Security* 3-4 (2016), <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-08-Nov16.pdf>.

⁶ *Id.*; see also *DHS Management and Acquisition Reform: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2016) (written testimony of John Roth, Inspector General, U.S. Dep't of Homeland Sec.), available at <https://www.oig.dhs.gov/assets/TM/2016/OIGtm-JR-031616.pdf>.

⁷ *DHS Management and Acquisition Reform: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 15 (2016) (written testimony of Michele Mackin, Director, Acquisition and Sourcing Mgmt., U.S. Gov't Accountability Office), available at <http://www.gao.gov/assets/680/675827.pdf>; *DHS Management and Acquisition Reform: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 1 (2016) (written testimony of John Roth, Inspector General, U.S. Dep't of Homeland Sec.), available at <https://www.oig.dhs.gov/assets/TM/2016/OIGtm-JR-031616.pdf>.

In March 2016, the Committee held a hearing entitled *DHS Management and Acquisition Reform*. During the hearing, DHS Inspector General John Roth testified that among the root causes hindering the performance of DHS's acquisition programs is that component agencies "do not always follow departmental acquisition guidance, which may lead to cost overruns, missed schedules, and mediocre acquisition performance."⁸ Mr. Roth stated that inconsistent application of DHS's acquisition guidance has adversely affected the Department's constrained budgetary resources, the timely delivery of security programs, and the ability to efficiently use its resources.⁹

In April 2015, the Subcommittee on Oversight and Management Efficiency of the House Homeland Security Committee held a hearing entitled *Acquisition Oversight: How Effectively is DHS Safeguarding Taxpayer Dollars?*¹⁰ During the hearing, Michele Mackin, GAO's Director for Acquisition and Sourcing Management, testified that DHS's acquisition portfolio faced significant challenges because the Department did not have a cost oversight plan in place for programs whose acquisition documentation were waived.¹¹ In addition, the acquisition portfolio had cost growth issues exemplified by the \$9.7 billion increase in life-cycle cost estimates across just seven of its programs.¹² Ms. Mackin testified that DHS would be better positioned to make informed decisions regarding its acquisition programs if steps were taken to ensure consistent compliance across components with its acquisition policy.¹³

S. 886 is designed to address concerns of inconsistent oversight of major acquisition programs by codifying the Department's ARB as the mechanism for providing senior-level oversight of all major acquisition programs. Codification of the ARB addresses concerns raised by GAO and the DHS OIG by ensuring that the Department consistently applies a uniform oversight approach across its components' major acquisition programs. Although the ARB process is currently in practice at DHS, the bill strengthens the Department's authority to hold its components accountable for improper acquisition program management and acquisition program failures. The bill specifically delineates the responsibilities of the ARB, to ensure regularity and clarity in the acquisition review process. One of the most important responsibilities of the ARB is reviewing critical documentation for major acquisition programs, such as the acquisition program baseline, which establishes the program requirements for cost, schedule, and performance parameters. The bill designates the USM as the chair of the ARB, ensuring senior DHS management is aware of and integrally involved in the Department's acquisition program.

⁸*DHS Management and Acquisition Reform: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 6 (2016) (written testimony of John Roth, Inspector General, U.S. Dep't of Homeland Sec.), available at <https://www.oig.dhs.gov/assets/TM/2016/OIGtm-JR-031616.pdf>.

⁹*Id.*

¹⁰*Acquisition Oversight: How Effectively is DHS Safeguarding Taxpayer Dollars?: Hearing Before the Subcomm. on Oversight and Mgmt. Efficiency of the House Comm. on Homeland Sec.*, 114th Cong. (2015), available at <https://homeland.house.gov/hearing/acquisition-oversight-how-effectively-dhs-safeguarding-taxpayer-dollars>.

¹¹*Id.* at 11 (written testimony of Michele Mackin, Director of Acquisition and Sourcing Management, U.S. Gov't Accountability Office), available at <http://docs.house.gov/meetings/HM/HM09/20150422/103274/HHRG-114-HM09-Wstate-MackinM-20150422.pdf>.

¹²*Id.* at 6.

¹³*Id.* at 11.

III. LEGISLATIVE HISTORY

Senators Steve Daines (R-MT) and Claire McCaskill (D-MO) introduced S. 886, the DHS Acquisition Review Board Act of 2017, on April 6, 2017. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 886 at a business meeting on July 26, 2017. The Committee reported the bill favorably by voice vote en bloc. Senators present for the vote were Johnson, Portman, Lankford, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short Title

This section names the bill the “DHS Acquisition Review Board Act of 2017.”

Sec. 2. Acquisition Review Board

Section 2 adds a new section 836 to Subtitle D of title VIII of the Homeland Security Act of 2002.

New subsection (a) of Section 836 defines the terms “acquisition,” “acquisition decision authority,” “acquisition decision event,” “acquisition decision memorandum,” “acquisition program,” “acquisition program baseline,” “best practices,” “Board,” and “major acquisition program.”

New subsection (b) of Section 836 establishes the ARB. This subsection outlines the mission of the ARB, namely to provide uniformity within the Department’s acquisition review process, review major acquisition programs, and review the use of best practices.

New subsection (c) of Section 836 details the composition of the ARB, including that the ARB will be chaired by the USM.

New subsection (d) outlines the regular meeting requirements of the ARB and establishes that the ARB is required to meet any time that a major acquisition program requires authorization to proceed through the life cycle process or is in breach of its approved requirements. Additionally, this paragraph requires the ARB to meet when the USM determines that a non-major acquisition program needs review.

New subsection (e) details the responsibilities of the ARB, including reviewing acquisition documentation for each major acquisition program, such as the acquisition program baseline, which sets forth cost, schedule, and performance requirements for each such program.

New subsection (f) requires the USM to submit a report to the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs that explains the rationale behind a decision that permits a major acquisition program to proceed to the planning phase of the life cycle process without first receiving a Department-approved acquisition program baseline. This report shall include a plan of action to ensure that any such program receives an acquisition program baseline.

New subsection (g) provides that, within one year of enactment of this bill, the USM is to provide Congress with a report on the activities of the ARB, including acquisition decision memoranda for each meeting, results of the systematic reviews, results of the ac-

quisition document reviews, and information on activities to ensure that best practices are adopted and implemented throughout the Department.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 9, 2017.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 886, the DHS Acquisition Review Board Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jacob Fabian.

Sincerely,

KEITH HALL.

Enclosure

S. 886—DHS Acquisition Review Board Act of 2017

S. 886 would direct the Department of Homeland Security (DHS) to establish an Acquisition Review Board to review major acquisition programs and enhance accountability and uniformity in the review process for DHS acquisitions. Because the bill's requirements are largely consistent with existing DHS procurement policies, CBO estimates that implementing S. 886 would cost less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

Enacting S. 886 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 886 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 886 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On March 22, 2017, CBO transmitted a cost estimate for H.R. 1282, the DHS Acquisition Review Board Act of 2017, as ordered by the House Committee on Homeland Security on March 8, 2017. The two pieces of legislation are similar and CBO's estimates of their costs are the same.

The CBO staff contact for this estimate is Jacob Fabian. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, 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

* * * * *

SEC. 836. ACQUISITION REVIEW BOARD.

(a) *DEFINITIONS.—In this section:*

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

(2) *ACQUISITION DECISION AUTHORITY.—The term “acquisition decision authority” means the authority, held by the Secretary acting through the Deputy Secretary or Under Secretary for Management to—*

(A) ensure compliance with Federal law, the Federal Acquisition Regulation, and Department acquisition management directives;

(B) review (including approving, pausing, modifying, or cancelling) an acquisition program through the life cycle of the program;

(C) ensure that acquisition program managers have the resources necessary to successfully execute an approved acquisition program;

(D) ensure good acquisition program management of cost, schedule, risk, and system performance of the acquisition program at issue, including assessing acquisition program baseline breaches and directing any corrective action for such breaches; and

(E) ensure that acquisition program managers, on an ongoing basis, monitor cost, schedule, and performance against established baselines and use tools to assess risks to an acquisition program at all phases of the life cycle of such program to avoid and mitigate acquisition program baseline breaches.

(3) *ACQUISITION DECISION EVENT.—The term “acquisition decision event”, with respect to an acquisition program, means a predetermined point within each of the acquisition phases at which the acquisition decision authority determines whether the acquisition program shall proceed to the next acquisition phase.*

(4) *ACQUISITION DECISION MEMORANDUM.*—The term “acquisition decision memorandum”, with respect to an acquisition, means the official acquisition decision event record that includes a documented record of decisions, exit criteria, and assigned actions for the acquisition, as determined by the person exercising acquisition decision authority for the acquisition.

(5) *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.

(6) *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.

(7) *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 mission and business operations of the Department.

(8) *BOARD.*—The term “Board” means the Acquisition Review Board required to be established under subsection (b).

(9) *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 not less than \$300,000,000 (based on fiscal year 2017 constant dollars) over the life cycle cost of the acquisition program.

(b) *ESTABLISHMENT OF BOARD.*—The Secretary shall establish an Acquisition Review Board to—

- (1) strengthen accountability and uniformity within the Department acquisition review process;
- (2) review major acquisition programs; and
- (3) review the use of best practices.

(c) *COMPOSITION.*—

(1) *CHAIRPERSON.*—The Under Secretary for Management shall serve as chairperson of the Board.

(2) *OTHER MEMBERS.*—*The Secretary shall ensure participation by other relevant Department officials, including not fewer than 2 component heads or their designees, as permanent members of the Board.*

(d) *MEETINGS.*—

(1) *REGULAR MEETINGS.*—*The Board shall meet regularly for purposes of ensuring all acquisitions processes proceed in a timely fashion to achieve mission readiness.*

(2) *OTHER MEETINGS.*—*The Board shall convene—*

(A) *at the discretion of the Secretary; and*

(B) *at any time—*

(i) *a major acquisition program—*

(I) *requires authorization to proceed from one acquisition decision event to another throughout the acquisition life cycle;*

(II) *is in breach of the approved requirements of the major acquisition program; or*

(III) *requires additional review, as determined by the Under Secretary for Management; or*

(ii) *a non-major acquisition program requires review, as determined by the Under Secretary for Management.*

(e) *RESPONSIBILITIES.*—*The responsibilities of the Board are as follows:*

(1) *Determine whether a proposed acquisition has met the requirements of key phases of the acquisition life cycle framework and is able to proceed to the next phase and eventual full production and deployment.*

(2) *Oversee whether the business strategy, resources, management, and accountability of a proposed acquisition is executable and is aligned to strategic initiatives.*

(3) *Support the person with acquisition decision authority for an acquisition in determining the appropriate direction for the acquisition at key acquisition decision events.*

(4) *Conduct systematic reviews of acquisitions to ensure that the acquisitions are progressing in compliance with the approved documents for their current acquisition phases.*

(5) *Review the acquisition documents of each major acquisition program, including the acquisition program baseline and documentation reflecting consideration of tradeoffs among cost, schedule, and performance objectives, to ensure the reliability of underlying data.*

(6) *Ensure that practices are adopted and implemented to require consideration of trade-offs among cost, schedule, and performance objectives as part of the process for developing requirements for major acquisition programs prior to the initiation of the second acquisition decision event, including, at a minimum, the following practices:*

(A) *Department officials responsible for acquisition, budget, and cost estimating functions are provided with the appropriate opportunity to develop estimates and raise cost and schedule matters before performance objectives are established for capabilities when feasible.*

(B) *Full consideration is given to possible trade-offs among cost, schedule, and performance objectives for each alternative.*

(f) *ACQUISITION PROGRAM BASELINE REPORT REQUIREMENT.*—If the person exercising acquisition decision authority over a major acquisition program approves the major acquisition program to proceed into the planning phase before the major acquisition program has a Department-approved acquisition program baseline—

(1) the Under Secretary for Management shall create and approve an acquisition program baseline report regarding such approval; and

(2) the Secretary shall—

(A) not later than 7 days after the date on which the acquisition decision memorandum is signed, notify in writing the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate of the decision; and

(B) not later than 60 days after the date on which the acquisition decision memorandum is signed, submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report stating the rationale for such decision and a plan of action to require an acquisition program baseline for such program.

(g) *REPORT.*—Not later than 1 year after the date of enactment of this section and every year thereafter through fiscal year 2022, the Under Secretary for Management shall provide information to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the activities of the Board for the prior fiscal year that includes information relating to the following:

(1) For each meeting of the Board, any acquisition decision memoranda.

(2) Results of the systematic reviews conducted under subsection (e)(4).

(3) Results of acquisition document reviews required under subsection (e)(5).

(4) Activities to ensure that practices are adopted and implemented throughout the Department under subsection (e)(6).

* * * * *