

HOMELAND PROCUREMENT REFORM ACT

MAY 30, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 2083]

The Committee on Homeland Security, to whom was referred the bill (H.R. 2083) to amend the Homeland Security Act of 2002 regarding the procurement of certain items related to national security interests for Department of Homeland Security frontline operational components, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Homeland Procurement Reform Act” or the “HOPR Act”.

SEC. 2. REQUIREMENTS TO BUY CERTAIN ITEMS RELATED TO NATIONAL SECURITY INTERESTS ACCORDING TO CERTAIN CRITERIA.

(a) **IN GENERAL.**—Subtitle D of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 391 et seq.) is amended by adding at the end the following new section:

“SEC. 836. REQUIREMENTS TO BUY CERTAIN ITEMS RELATED TO NATIONAL SECURITY INTERESTS.

“(a) **REQUIREMENT.**—The Secretary shall ensure that any procurement of covered items for a frontline operational component meets the following criteria:

“(1) To the maximum extent possible, not less than one-third of funds obligated in a specific fiscal year for the procurement of such covered items shall be covered items that are manufactured in part or provided in the United States by entities that qualify as small business concerns (as such term is described under section 3 of the Small Business Act (15 U.S.C. 632)).

“(2) Each prime contractor, with respect to the procurement of such covered items, shall ensure, to the maximum extent practicable, the following:

“(A) Each first-tier subcontractor and end item manufacturer complies with the contractor code of business ethics and conduct under section 3509 of title 41, United States Code, and the Federal Acquisition Regulation.

“(B) Each first-tier subcontractor and end-item manufacturer is in compliance with a standard identified by the Secretary as appropriate for quality, such as ISO 9001:2015 of the International Organization for Standardization.

“(C) The ability of a first-tier subcontractor to fulfill the terms of the contract is verified.

“(3) Each supplier of such a covered item with an insignia (such as any patch, badge, or emblem) and each supplier of such an insignia, if such covered item with such insignia or such insignia, as the case may be, is not produced, applied, or assembled in the United States, shall—

“(A) store such covered item with such insignia or such insignia in a locked area;

“(B) report any pilferage or theft of such covered item with such insignia or such insignia occurring at any stage before delivery of such covered item with such insignia or such insignia; and

“(C) destroy any defective or unusable covered item with insignia or insignia in a manner established by the Secretary, and maintain records, for three years after the creation of such records, of such destruction that include the date of such destruction, a description of the covered item with insignia or insignia destroyed, the quantity of the covered item with insignia or insignia destroyed, and the method of destruction.

“(b) **PRICING.**—The Secretary shall ensure that covered items are purchased at a fair and reasonable price, consistent with the procedures and guidelines specified in the Federal Acquisition Regulation.

“(c) **REPORT.**—Not later than 180 days after the date of the enactment of this section and annually thereafter, the Secretary shall provide to the Committee on Homeland Security, the Committee on Oversight and Reform, and the Committee on Appropriations of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate a report on the following:

“(1) Instances in which vendors have failed to meet deadlines for delivery of covered items and corrective actions taken by the Department in response to such instances.

“(2) The status of efforts to carry out paragraph (1) of subsection (a).

“(3) A description of how the Department ensures the compliance of each prime contractor with the requirements of paragraph (2) of subsection (a) and any instances of non-compliance.

“(d) **DEPARTMENT FRONTLINE OPERATIONAL COMPONENT DESCRIBED.**—In this section, the term ‘Department frontline operational component’ refers to any of the following components of the Department:

“(1) U.S. Customs and Border Protection.

“(2) U.S. Immigration and Customs Enforcement.

“(3) The United States Secret Service.

“(4) The Transportation Security Administration.

“(5) The Cybersecurity and Infrastructure Security Agency.

“(6) The Federal Protective Service.

“(7) The Federal Emergency Management Agency.

“(8) The Federal Law Enforcement Training Centers.

“(e) **DETERMINATION.**—If the Secretary determines that compliance with paragraph (1) of subsection (a) is impractical, the Secretary shall, not later than 15 days after making such determination, submit to the Committee on Homeland Security

of the House of Representatives and Committee on Homeland Security and Governmental Affairs of the Senate an explanation relating to such determination and specifics regarding what percentage of covered items will be procured by small business concerns.

“(f) EXCEPTION.—This section shall not apply to the purchase of covered items by the Department to be used by the Department for training purposes.

“(g) COVERED ITEM DESCRIBED.—In this section, the term ‘covered item’ refers to any of the following with respect to a Department frontline operational component:

“(1) Body armor components intended to provide ballistic protection for an individual, consisting of one or more of the following:

“(A) Soft ballistic panels.

“(B) Hard ballistic plates.

“(C) Concealed armor carriers worn under a uniform.

“(D) External armor carriers worn over a uniform.

“(2) Helmets that provide ballistic protection and other head protection and components.

“(3) Protective eyewear.

“(4) Rain gear, cold weather gear, other environmental and flame-resistant clothing.

“(5) Footwear.

“(6) Uniforms.

“(7) Bags and packs.

“(8) Holsters and tactical pouches.

“(9) Patches, insignia, and embellishments.

“(10) Respiratory protective masks.

“(11) Chemical, biological, radiological, and nuclear protective gear.

“(12) Hearing protection equipment.

“(13) Any other critical safety item as determined appropriate by the Secretary.

“(h) EFFECTIVE DATE.—This section applies with respect to a contract entered into by the Department or any of its frontline operational components on or after October 1, 2020.

“(i) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should endeavor to ensure that the majority of covered items for a frontline operational component procured by the Department are manufactured in the United States by entities that qualify as small business concerns.”.

(b) STUDY.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall 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 study of the adequacy of allowances provided to employees of Department of Homeland Security frontline operational components (as such term is described in section 836 of the Homeland Security Act of 2002, as added by subsection (a)). Such study shall be informed by a Department-wide survey of employees from across the Department who receive uniform allowances that seeks to ascertain what, if any, improvements could be made to the current uniform allowances and what, if any, impacts current allowances have had on employee morale and retention. Such study shall also consider increasing by 25 percent, at minimum, the uniform allowance for first year employees and by 50 percent, at minimum, the annual allowance for all other employees.

(c) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 835 the following new item:

“Sec. 836. Requirements to buy certain items related to national security interests.”.

PURPOSE AND SUMMARY

H.R. 2083, the “Homeland Procurement Reform Act,” was introduced by Representatives Lou Correa (D-CA) and Brian Mast (R-FL), to reform the way the Department of Homeland Security (DHS or Department) procures uniform and protective equipment for its components. The bill seeks to ensure that quality uniforms and equipment are issued to Department frontline personnel and encourage the procurement of domestically sourced uniform items. Under the Act, the Secretary of Homeland Security (Secretary) is required to ensure, to the maximum extent possible, that at least one-third of the funds obligated for the procurement of uniforms

and protective equipment be used to purchase goods manufactured or provided by entities that qualify as a U.S. small business. Moreover, the bill aims to ensure that uniforms and protective equipment are purchased at fair and reasonable prices, and that uniform allowances provided to Department frontline personnel are adequate to protect employees from undue burden. Lastly, the bill strengthens supply chain security by mandating locked storage, reports of stolen goods, and the destruction of defective or unusable items for any covered item bearing official DHS insignia not manufactured in the United States.

BACKGROUND AND NEED FOR LEGISLATION

Supporting the needs of the frontline components of the Department is a priority of this Committee. It is imperative that they are equipped with quality uniform and protective equipment at a reasonable price. In 2017, the Government Accountability Office found that less than half of the Department's uniforms were manufactured in the United States with 58% of the funds allocated for the current DHS uniform contract being spent on imported items. While DHS has incorporated in its procurement policies and practices restrictions pursuant to the Kissell Amendment (6 U.S.C. 453b)—which intended to restrict Federal agencies to procuring uniforms and other textiles from U.S. manufactures—exceptions pursuant to trade agreements have caused this provision to have little effect. H.R. 2083 seeks to enable DHS to acquire quality, American-made products for DHS frontline personnel.

Additionally, the Committee learned of concerns from uniformed DHS personnel regarding the delivery of uniform items and the adequacy of uniform allowances. On the delivery issue, the Committee has been told that basic items such as duty shirts, belts, and socks are not always delivered in a timely fashion, forcing personnel to go without. On the uniform allowance piece, the National Border Patrol Union and the Department have shared with the Committee that about 94% of U.S. Customs and Border Protection Agents exhaust their annual uniform allowance as their members' uniforms are often subject to intense and tear in the field.

Among other things, the "Homeland Procurement Reform Act" seeks to ensure that at least 33% of uniforms and protective equipment is provided by American small businesses and places new controls around uniforms and equipment with DHS insignia. It also gives attention to questions about the adequacy of uniform allowances and delivery issues by directing the Secretary to take the following action: (1) report to Congress on instances in which vendors have failed to meet deadlines for delivery of DHS uniform items and corrective actions taken by the Department in response to such instances, and (2) study the adequacy of uniform allowances provided to Department frontline personnel to determine what improvements can be made to current stipends to limit what law enforcement personnel spend out-of-pocket.

The bill is endorsed by the Warrior Protection and Readiness Coalition and the National Border Patrol Council. A Senate companion of this measure was introduced by Senator Jean Shaheen (D-NH) in April 2019.

HEARINGS

The Committee did not hold a legislative hearing on H.R. 2083. However, the Committee held a hearing on November 8, 2017 where the uniform allowance for Transportation Security Officers was discussed.

COMMITTEE CONSIDERATION

The Committee met on May 15, 2019, with a quorum being present, to consider H.R. 2083 and ordered the measure to be reported to the House with a favorable recommendation, with amendment, by unanimous consent.

The following Amendments were offered and accepted by unanimous consent:

An amendment in the Nature of a Substitute offered by Mr. Correa (#1);

An amendment offered by Mr. Rogers (#1): Page 1, line 18, insert “in part or provided” after “manufactured”

An amendment offered by Mr. Rogers (#2): Page 2, strike lines 7 through 12 and insert the following: “(A) Each first-tier subcontractor and end item manufacturer complies with the contractor code of business ethics and conduct under section 3509 of title 41, United States Code, and the Federal Acquisition Regulation.”

An Amendment offered by Mr. Payne: Page 4, line 6, strike “on instances” and insert the following: “on the following: “(1) Instances “(2) The status of efforts to carry out paragraph (1) of subsection (a). “(3) A description of how the Department ensures the compliance of each prime contractor with the requirements of paragraph (2) of subsection (a), any instances of non-compliance

An Amendment offered by Ms. Jackson Lee: Page 6, line 22, strike the closing quotes and second period. Page 6, beginning line 23, insert the following: “(i) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should endeavor to ensure that the majority of covered items for a frontline operational component procured by the Department are manufactured in the United States by entities that qualify as small business concerns”

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. 2083.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE NEW BUDGET
AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

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.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 2083 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2083 would establish requirements for the procurement of uniforms and protective equipment by the Department of Homeland Security.

ADVISORY ON EARMARKS

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(d), 9(e), or 9(f) of the rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Homeland Procurement Reform Act”.

Sec. 2. Requirements to buy certain items related to national security interests according to certain criteria

This section amends subtitle D of title VIII of the Homeland Security Act of 2002 to add a new section that requires the Secretary to ensure that any procurement of covered items for a frontline operational component meet the following criteria: (1) to the max-

imum extent possible, that at least one-third of the funds obligated for the procurement of uniforms and protective equipment be used to purchase goods manufactured or provided by entities that qualify as a U.S. small business; (2) each prime contractor, with respect to the procurement of covered items, shall ensure, to the maximum extent practicable, that each first-tier subcontractor and end item manufacturer can fulfill the terms of the contract, abide by the contractor code of business ethics and conduct, and the Federal Acquisition Regulation, and comply with quality control standards deemed appropriate by the Secretary; and (3) each supplier of covered items bearing DHS insignia that are not produced, applied, or assembled within the U.S. maintains such items in locked storage, reports any theft of such items, and ensures the destruction of defective or unusable items in a manner established by the Secretary.

This section also requires the Secretary to ensure that uniform items and protective equipment are purchased at fair and reasonable prices. Additionally, the Secretary is required to submit, no later than 180 days after enactment of the section, and annually thereafter, a report to Congress on: (1) instances in which vendors have failed to meet deadlines for delivery of DHS uniform items and corrective actions taken by the Department in response to such instances; (2) the status of efforts to carry out the obligation that one-third of the funds allocated for the procurement of uniform items be used to purchase goods manufactured by entities that qualify as a U.S. small business; and (3) how DHS ensures that each prime contractor verifies, to the maximum extent practicable, that each first-tier subcontractor and end item manufacturer comply with the criteria listed under paragraph (2) of section (a) of the Act.

Additionally, this section clarifies that should a determination be made that compliance with the requirements under the section is impractical, the Secretary is authorized to submit an explanation to Congress regarding the determination and percentage of covered items that will be procured by small business concerns. It further clarifies that the requirements under this section shall not apply to the purchase of covered items by the Department to be used for training purposes. These requirements apply to contracts entered into by the Department or any of its frontline operational components on or after October 1, 2020.

This section describes the terms ‘Department frontline operational component,’ and ‘covered items,’ and states that it is the sense of Congress that the Secretary should endeavor to ensure that most covered items for a frontline operational component procured by the Department are manufactured in the U.S. by entities that qualify as small business concerns. Finally, the Secretary is directed to conduct a study of the adequacy of allowances provided to Department frontline personnel to determine what improvements can be made to current uniform allowances, including the possibility of increasing allowances.

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 italic

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

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Subtitle D—Acquisitions

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Sec. 831. Research and development projects.

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Sec. 836. *Requirements to buy certain items related to national security interests.*

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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. REQUIREMENTS TO BUY CERTAIN ITEMS RELATED TO NATIONAL SECURITY INTERESTS.

(a) **REQUIREMENT.**—*The Secretary shall ensure that any procurement of covered items for a frontline operational component meets the following criteria:*

(1) *To the maximum extent possible, not less than one-third of funds obligated in a specific fiscal year for the procurement of such covered items shall be covered items that are manufactured in part or provided in the United States by entities that qualify as small business concerns (as such term is described under section 3 of the Small Business Act (15 U.S.C. 632)).*

(2) *Each prime contractor, with respect to the procurement of such covered items, shall ensure, to the maximum extent practicable, the following:*

(A) *Each first-tier subcontractor and end item manufacturer complies with the contractor code of business ethics*

and conduct under section 3509 of title 41, United States Code, and the Federal Acquisition Regulation.

(B) Each first-tier subcontractor and end-item manufacturer is in compliance with a standard identified by the Secretary as appropriate for quality, such as ISO 9001:2015 of the International Organization for Standardization.

(C) The ability of a first-tier subcontractor to fulfill the terms of the contract is verified.

(3) Each supplier of such a covered item with an insignia (such as any patch, badge, or emblem) and each supplier of such an insignia, if such covered item with such insignia or such insignia, as the case may be, is not produced, applied, or assembled in the United States, shall—

(A) store such covered item with such insignia or such insignia in a locked area;

(B) report any pilferage or theft of such covered item with such insignia or such insignia occurring at any stage before delivery of such covered item with such insignia or such insignia; and

(C) destroy any defective or unusable covered item with insignia or insignia in a manner established by the Secretary, and maintain records, for three years after the creation of such records, of such destruction that include the date of such destruction, a description of the covered item with insignia or insignia destroyed, the quantity of the covered item with insignia or insignia destroyed, and the method of destruction.

(b) **PRICING.**—The Secretary shall ensure that covered items are purchased at a fair and reasonable price, consistent with the procedures and guidelines specified in the Federal Acquisition Regulation.

(c) **REPORT.**—Not later than 180 days after the date of the enactment of this section and annually thereafter, the Secretary shall provide to the Committee on Homeland Security, the Committee on Oversight and Reform, and the Committee on Appropriations of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate a report on the following:

(1) Instances in which vendors have failed to meet deadlines for delivery of covered items and corrective actions taken by the Department in response to such instances.

(2) The status of efforts to carry out paragraph (1) of subsection (a).

(3) A description of how the Department ensures the compliance of each prime contractor with the requirements of paragraph (2) of subsection (a) and any instances of non-compliance.

(d) **DEPARTMENT FRONTLINE OPERATIONAL COMPONENT DESCRIBED.**—In this section, the term “Department frontline operational component” refers to any of the following components of the Department:

(1) U.S. Customs and Border Protection.

(2) U.S. Immigration and Customs Enforcement.

(3) The United States Secret Service.

(4) The Transportation Security Administration.

- (5) *The Cybersecurity and Infrastructure Security Agency.*
- (6) *The Federal Protective Service.*
- (7) *The Federal Emergency Management Agency.*
- (8) *The Federal Law Enforcement Training Centers.*

(e) *DETERMINATION.—If the Secretary determines that compliance with paragraph (1) of subsection (a) is impractical, the Secretary shall, not later than 15 days after making such determination, submit to the Committee on Homeland Security of the House of Representatives and Committee on Homeland Security and Governmental Affairs of the Senate an explanation relating to such determination and specifics regarding what percentage of covered items will be procured by small business concerns.*

(f) *EXCEPTION.—This section shall not apply to the purchase of covered items by the Department to be used by the Department for training purposes.*

(g) *COVERED ITEM DESCRIBED.—In this section, the term “covered item” refers to any of the following with respect to a Department frontline operational component:*

(1) *Body armor components intended to provide ballistic protection for an individual, consisting of one or more of the following:*

- (A) *Soft ballistic panels.*
- (B) *Hard ballistic plates.*
- (C) *Concealed armor carriers worn under a uniform.*
- (D) *External armor carriers worn over a uniform.*

(2) *Helmets that provide ballistic protection and other head protection and components.*

(3) *Protective eyewear.*

(4) *Rain gear, cold weather gear, other environmental and flame-resistant clothing.*

(5) *Footwear.*

(6) *Uniforms.*

(7) *Bags and packs.*

(8) *Holsters and tactical pouches.*

(9) *Patches, insignia, and embellishments.*

(10) *Respiratory protective masks.*

(11) *Chemical, biological, radiological, and nuclear protective gear.*

(12) *Hearing protection equipment.*

(13) *Any other critical safety item as determined appropriate by the Secretary.*

(h) *EFFECTIVE DATE.—This section applies with respect to a contract entered into by the Department or any of its frontline operational components on or after October 1, 2020.*

(i) *SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should endeavor to ensure that the majority of covered items for a frontline operational component procured by the Department are manufactured in the United States by entities that qualify as small business concerns.*

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