

Calendar No. 659

118TH CONGRESS }
2d Session }

SENATE

{ REPORT
118-258 }

**SAFE AND SMART FEDERAL
PURCHASING ACT**

R E P O R T

OF THE

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

TO ACCOMPANY

H.R. 5528

TO REQUIRE THE DIRECTOR OF THE OFFICE OF
MANAGEMENT AND BUDGET CONDUCT A REVIEW TO
DETERMINE THE IMPACT OF THE LOWEST PRICE
TECHNICALLY ACCEPTABLE SOURCE SELECTION PROCESS
ON NATIONAL SECURITY, AND FOR OTHER PURPOSES



DECEMBER 2, 2024.—Ordered to be printed

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SAFE AND SMART FEDERAL PURCHASING ACT

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

R E P O R T

[To accompany H.R. 5528]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 5528) to require the Director of the Office of Management and Budget conduct a review to determine the impact of the lowest price technically acceptable source selection process on national 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

H.R. 5528, the *Safe and Smart Federal Purchasing Act*, would require the Director of the Office of Management and Budget (OMB) to review the Lowest Price Technically Acceptable (LPTA) provisions in the Federal Acquisition Regulation (FAR) and the procurement management practices of federal agencies to determine whether the LPTA purchasing process creates any national secu-

rity risks.¹ The bill requires a report with the results of this review to be submitted to Congress within 180 days of enactment.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The LPTA procurement process is one in which a federal contract is awarded to the contractor that meets minimum government requirements and has the lowest cost.² The LPTA process differs from the “trade-off” process, in which an agency can assess the value of better technical characteristics or other features in a contractor proposal based on its evaluation criteria, and may make trade-offs and pay more for a better technical proposal provided it still presents the best value to the government.³ The Government Accountability Office reviewed federal agency use of the LPTA process in 2019, and found that use of the process may not be appropriate for more complex agency mission needs such as for information technology services.⁴ Recent legislation has prohibited or restricted the use of LPTA by federal agencies for specific types of supplies and services, such as personal protective equipment and certain software development programs.⁵ The bill would require a study and report to Congress that provides insight into how agencies are using LPTA and whether its use is associated with any adverse impacts for national security.

III. LEGISLATIVE HISTORY

Representative Byron Donalds (R–FL–19) introduced H.R. 5528, the *Safe and Smart Federal Purchasing Act*, on September 18, 2023, with original cosponsor Representative Lauren Boebert (R–CO–3). The bill was referred to the House Committee on Oversight and Accountability. The Committee considered H.R. 5528 at a business meeting on September 20, 2023 and reported the bill with an amendment, by roll call vote of 43 yeas to 0 nays. The House of Representatives considered H.R. 5528 on January 29, 2024, under suspension of the rules, and passed the bill by roll call vote of 397 yeas to 0 nays.

The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The committee considered H.R. 5528 at a business meeting on May 15, 2024. The bill was ordered reported favorably by roll call vote of 10 yeas to 0 nays, with Senators Peters, Carper, Hassan, Rosen, Blumenthal, Lankford, Romney, Scott, Hawley, and Marshall voting in the affirmative and with Senator Paul recorded as Present. Senators Sinema, Ossoff, Butler, and Johnson voted yea by proxy, for the record only.

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

Section 1. Short title

This section establishes the short title of the bill as the “Safe and Smart Federal Purchasing Act.”

¹ See Federal Acquisition Regulation 15.101–2, “Lowest price technically acceptable source selection process.”

² Federal Acquisition Regulation 15.101–2.

³ Federal Acquisition Regulation 15.101–1.

⁴ Government Accountability Office, *Federal Contracting: Information on Agencies’ Use of the Lowest Price Technically Acceptable Process* (GAO–19–691) (Sep. 26, 2019).

⁵ Congressional Research Service, *Defense Primer: Lowest Price Technically Acceptable Contracts* (IF10968) (Updated Aug. 15, 2024).

Section 2. Review to determine the impact of the lowest price technically acceptable source selection process on national security

Subsection (a) requires the Director of OMB to review the procurement management practices of defense and civilian agencies to determine whether the provisions of Federal Acquisition Regulation section 15.101-2 have created any national security risk.

Subsection (b) requires the Director of OMB to submit a report with the results of the review under subsection (a) to the House Committee on Oversight and Accountability and the Senate Committee on Homeland Security and Governmental Affairs.

Subsection (c) provides definitions of “Defense and Civilian agency” and “Director.”

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 (CBO) 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

H.R. 5528, Safe and Smart Federal Purchasing Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 15, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 5528 would require the Office of Management and Budget (OMB) to evaluate whether using the lowest price technically acceptable (LPTA) process for federal procurement poses a national security risk. LPTA is a competitive procurement process that allows agencies to select the lowest evaluated price that meets minimum performance requirements. The bill also would require OMB to report its findings to the Congress within 180 days of enactment.

Based on the cost of preparing similar studies, CBO estimates that implementing the bill would cost less than \$500,000 over the

2024–2029 period. Any spending would be subject to the availability of appropriated funds.

On October 23, 2023, CBO transmitted a cost estimated for H.R. 5528, the Safe and Smart Federal Purchasing Act, as ordered reported by the House Committee on Oversight and Accountability on September 30, 2023. The two bills are similar, as are CBO’s estimates of the budgetary effects.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by Chad Chirico, Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.