

DHS ACQUISITION REVIEW BOARD ACT OF 2019

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. 2609]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 2609) to amend the Homeland Security Act of 2002 to establish the Acquisition Review Board in 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

H.R. 2609, the “DHS Acquisition Review Board Act of 2019” authorizes the Department of Homeland Security’s (Department or DHS) Acquisition Review Board (ARB) to ensure greater account-

ability and uniformity within the components' major acquisition programs—those with cost estimates greater than \$300 million. The ARB reviews the Department's major acquisition programs for proper management, oversight, accountability, and alignment with the Department's strategic functions before authorizing advancement at key milestone events.

BACKGROUND AND NEED FOR LEGISLATION

The Government Accountability Office (GAO) and the DHS Office of Inspector General (OIG) have reported on the longstanding challenges DHS faces in managing its major acquisition programs, which cost the Department over \$6 billion each year. Since 2003, GAO has identified DHS' transformation of 22 agencies into one Department, and the Department's subsequent challenges with its management functions, as "high risk." In GAO's 2019 high risk update, GAO reported that DHS continues to face challenges in funding its acquisition portfolio. Specifically, only 10 of 24 major acquisition programs with approved schedule and cost goals were on track to meet those goals.

Additionally, in November 2018, the OIG reported that acquisition program management continues to be one of the Department's significant challenge areas. The OIG found that DHS components have an ongoing tendency to acquire systems before adequately defining requirements or developing performance measures.

HEARINGS

The Committee did not hold a hearing on H.R. 2609 in the 116th Congress. However, the Committee held four hearings on the Department's acquisition management during the 114th and 115th Congresses.

114th Congress

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 De-

fense Business Counsel; Mr. Harry Totonis, Board Director, Business Executives for National Security; and Ms. Elaine Duke, Principal, Elaine Duke & Associates, LLC.

115th Congress

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 May 15, 2019, with a quorum being present, to consider H.R. 2609 and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by unanimous consent.

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. 2609.

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 adopts as its own the estimate of the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 22, 2019.

Hon. BENNIE G. THOMPSON,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for Department of Homeland Security Legislation.

If you wish further details on these estimates, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL,
Director.

Enclosure.

Department of Homeland Security Legislation			
As ordered reported by the House Committee on Homeland Security on May 15, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	n.e.
Pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
n.e. = not estimated; * = between zero and \$500,000; the table above applies to each bill described below.			

On May 15, the House Committee on Homeland Security ordered reported the following bills:

- H.R. 542, the Supporting Research and Development for First Responders Act, which would codify laboratory programs that currently exist at the Department of Homeland Security (DHS);
- H.R. 2589, the Unifying DHS Intelligence Enterprise Act, which would direct DHS to manage and provide guidance for the use of intelligence throughout the department;
- H.R. 2590, the DHS Overseas Personnel Enhancement Act of 2019, which would require DHS to devise a plan to improve the effectiveness of department personnel who are stationed at foreign locations;
- H.R. 2609, the DHS Acquisition Review Board Act of 2019, which would direct the department to establish a board to review major acquisition programs and enhance accountability and uniformity in the review process for DHS acquisitions; and
- H.R. 2621, the Homeland Security Assessment of Terrorists Use of Ghost Guns Act, which would require DHS to evaluate the threat posed by firearms without unique serial numbers.

DHS is currently carrying out activities similar to those required by the bills listed above, and any new activities required under the legislation would not require substantial action by the department. Thus, CBO estimates that implementing each bill would not significantly affect spending by DHS.

The CBO staff contact for these estimates is Mark Grabowicz. The estimates were reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 2609 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. 2609 would codify in law certain acquisition management oversight mechanisms in 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 “DHS Acquisition Review Board Act of 2019”.

Sec. 2. Acquisition Review Board

This section amends subtitle D of title VIII of the Homeland Security Act of 2002 to codify the Acquisition Review Board (ARB) and requires the ARB, chaired by the Under Secretary for Management (USM), to meet regularly to review major acquisition programs.

Section 2 establishes responsibilities for the ARB which, among other things, includes determining whether an acquisition program has met requirements to proceed to the next key phase of the acquisition life cycle. It also requires the ARB to review key documents of each major acquisition, such as the Acquisition Program Baseline (APB) that contains cost, schedule, and performance requirements. This section also requires the ARB to ensure practices are adopted to consider trade-offs among cost, schedule, and performance objectives as part of the process for developing program requirements.

Section 2 also contains reporting requirement. If the ARB allows a major acquisition program to proceed without an APB, the USM shall create a report on the approval and the Secretary shall notify the House and Senate Committees on Homeland Security and provide a justification for the decision. Further, this section requires the USM to provide acquisition oversight documentation to the House and Senate Committees on Homeland Security to enhance congressional oversight of major acquisition programs. For example, the USM must provide acquisition decision memorandums for each ARB meeting held, which provide key information on meeting participants, outcomes, and the status of the program.

This section 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 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:

Sec. 1. Short title; table of contents.

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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. 835. Prohibition on contracts with corporate expatriates.

Sec. 836. *Acquisition Review Board.*

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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. ACQUISITION REVIEW BOARD.

(a) *IN GENERAL.*—The Secretary shall establish an Acquisition Review Board (in this section referred to as the “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.

(b) *COMPOSITION.*—

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

(2) *PARTICIPATION.*—The Secretary shall ensure participation by other relevant Department officials with responsibilities related to acquisitions as permanent members of the Board.

(3) *OVERSIGHT.*—The Under Secretary for Management shall designate a full time employee of the Department to oversee the operations of the Board.

(c) *MEETINGS.*—The Board shall meet regularly for purposes of ensuring all acquisitions processes proceed in a timely fashion to achieve mission readiness. The Board shall convene at the Secretary’s discretion and at any time—

(1) a major acquisition program—

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

(B) is in breach of its approved requirements; or

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

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

(d) *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 a proposed acquisition’s business strategy, resources, management, and accountability 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 such acquisition at key acquisition decision events.

(4) Conduct systematic reviews of acquisitions to ensure that such 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.

(e) **ACQUISITION PROGRAM BASELINE REPORT REQUIREMENT.**—If the person exercising acquisition decision authority over a major acquisition program approves such program to proceed into the planning phase before such program has a Department-approved acquisition program baseline, the Under Secretary for Management shall create and approve an acquisition program baseline report regarding such approval, and the Secretary shall—

(1) within 7 days after an 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 such decision; and

(2) within 60 days after the acquisition decision memorandum is signed, submit to such committees a written explanation of the rationale for such decision and a plan of action to address acquisition program baseline requirements for such program.

(f) **REPORT.**—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 an annual basis through fiscal year 2024 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 pursuant to paragraph (4) of subsection (d).

(3) Results of acquisition document reviews required pursuant to paragraph (5) of subsection (d).

(4) Activities to ensure that practices are adopted and implemented throughout the Department pursuant to paragraph (6) of subsection (d).

(g) **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 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 such 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 such 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 such acquisition, as determined by the person exercising acquisition decision authority for such 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 Department's mission and business operations.

(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 expenditure of at least \$300,000,000 (based on fiscal year 2019 constant dollars) over its life cycle cost.

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