

Calendar No. 579

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-287 }

DEPARTMENT OF HOMELAND SECURITY
MENTOR-PROTÉGÉ PROGRAM ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 4727

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO
ESTABLISH A MENTOR-PROTÉGÉ PROGRAM, AND FOR OTHER
PURPOSES



NOVEMBER 9, 2020.—Ordered to be printed

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DEPARTMENT OF HOMELAND SECURITY MENTOR-PROTÉGÉ

NOVEMBER 9, 2020.—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 H.R. 4727]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the Act (H.R. 4727), to amend the Homeland Security Act of 2002 to establish a mentor-protégé program, and for other purposes, reports favorably thereon with amendments and recommends that the Act, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 4727, the Department of Homeland Security Mentor-Protégé Program Act of 2019, amends the Homeland Security Act to codify a mentor-protégé program within the Department of Homeland Security (DHS). The program is designed to encourage large business prime contractor firms to provide mutually beneficial developmental assistance to small businesses, to improve the performance of contracts and subcontracts, and to strengthen subcontracting opportunities. The Act requires the Secretary to develop eligibility requirements, establish an application and approval process, and

other aspects of the program to include the program’s duration and benefits.

II. BACKGROUND AND THE NEED FOR LEGISLATION

In 2016, the Small Business Administration (SBA) created the All Small Mentor-Protégé Program to increase the pool of small businesses contracting with the Federal Government and to increase small business capabilities.¹ The SBA also allows for other agencies to create their own mentor-protégé program, and DHS took the opportunity to create their own program. The mission of DHS’s mentor-protégé program is “to motivate and encourage large business prime contractors to provide mutually beneficial developmental assistance to small businesses.”² The program also attempts to bolster contracts with veteran-owned businesses, women-owned businesses, minority-owned businesses, service-disabled veteran-owned small businesses, and other businesses that are typically underrepresented in contracts with agencies.³

Mentors and protégés mutually benefit from the mentor-protégé program in numerous ways. Mentors are able to receive credit in criteria areas during the application process for contracts.⁴ Protégés also receive credits for the contract application process as well as technical, financial, and managerial benefits in contracting.⁵ DHS also benefits by expanding the pool of small businesses it does business with and strengthening the performance of the small businesses in contracts.

The SBA works with each agency and establishes goals for each agency.⁶ DHS has a long history of working well with small businesses and meeting or exceeding the goals that the SBA has set for the agency. For more than a decade, DHS has scored top marks on the SBA Annual Small Business procurement scorecard.⁷ For Fiscal Year 2018, DHS awarded 34.5 percent of its contracting dollars to small businesses.⁸ However, the number of small businesses across the Federal Government receiving prime contracts is at the lowest number in a decade—a 27 percent drop from Fiscal Year 2009.⁹ This Act codifies the DHS mentor-protégé program in order to strengthen the program and spell out Congress’ intent for how the program should function effectively.

¹ 13 CFR § 125.9 (2016).

² *Mentor-Protégé Program*, U.S. Dep’t of Homeland Security, <https://www.dhs.gov/mentor-protége-program> (last updated June 22, 2018).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Press Release, U.S. Small Bus. Admin., Federal Government Achieves Small Business Contracting Goal for Sixth Consecutive Year with Record-Breaking \$120 Billion to Small Businesses (June 25, 2019), <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/federal-government-achieves-small-business-contracting-goal-sixth-consecutive-year-record-breaking; Small Business Procurement—FINAL FY2019 Goals – as of 12/14/18>, U.S. Small Bus. Admin., https://www.sba.gov/sites/default/files/2019-05/FY19PrimeSUBFinalGoals_1.pdf (last visited Aug. 3, 2020).

⁷ Press Release, U.S. Dep’t of Homeland Sec., Acquisition Excellence: DHS Receives an “A+” Grade on SBA’s Annual Small Business Procurement Scorecard (June 26, 2019), <https://www.dhs.gov/news/2019/06/26/acquisition-excellence-dhs-receives-grade-sba-s-annual-small-business-procurement#:~:text=Last%20fiscal%20year%2C%20the%20Department,approximately%20%2C800%20were%20small%20businesses.>

⁸ *Id.*

⁹ *Federal Supplier Base Continued to Shrink in Fiscal 2018*, Bloomberg L. (May 23, 2019, 1:41 PM), <https://news.bloomberglaw.com/federal-contracting/federal-supplier-base-continued-to-shrink-in-fiscal-2018>.

III. LEGISLATIVE HISTORY

Representatives Donald McEachin (D–VA–4) and Bennie Thompson (D–MS–2) introduced H.R. 4727 on October, 17, 2019. Representative Donald Payne, Jr. (D–NJ–10) joined as a co-sponsor on May 14, 2019. The House of Representatives considered H.R. 4727 on December 09, 2019, under suspension of the rules and it passed by voice vote. The Act was referred to the Committee on Homeland Security and Governmental Affairs on December 10, 2019.

The Committee considered H.R. 4727 at a business meeting on July 22, 2020. Chairman Johnson and Ranking Member Peters offered an amendment adding a rule of construction to ensure that DHS is able to carry out their mentor-protégé program without conflict. The amendment and the Act as amended were reported favorably by voice vote en bloc with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present. Senators Paul and Scott asked to be recorded as having voted “No” for the record.

Pursuant to Committee Rules, the Act is reported with a technical amendment at the agreement of the Chairman and Ranking Member.

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

Sec 1. Short title

This section names the Act as the “Department of Homeland Security Mentor-Protégé Program Act of 2019”.

Sec. 2. Department of Homeland Security Mentor-Protégé Program

Subsection (a) adds a new section to the Homeland Security Act of 2002 codifying the mentor-protégé program within DHS titled “Sec. 890B. Mentor-Protégé Program.”

New section 890B, subsection (a) establishes the program. New section 890B, subsection (b) requires the Secretary of Homeland Security to establish eligibility requirements for the program, including a requirement that no firm already suspended or debarred can be eligible for the program.

New section 890B, subsection (c) requires the Secretary, through the Office of Small and Disadvantaged Business Utilization within DHS, to establish an application process that includes a description of assistance that will be provided by the mentor, milestones, costs to the mentor, a list of reports required to DHS, and a notification requirement if there are any changes in eligibility or if the mentor withdraws from the program. This subsection also requires DHS to notify applicants within 60 days of approval or denial into the program. It also allows DHS to rescind approval should it be necessary. Subsection (d) stipulates that the mentor and protégé firm must agree to participate in the program for at least 36 months.

New section 890B, subsection (e) describes the benefits that the mentor and protégé firm may receive through the program, including evaluation credits for mentor firms.

New section 890B, subsection (f) requires the head of the Office of Small and Disadvantaged Business Utilization to submit a report to Congress after a year after enactment and every year afterwards that identifies the number of agreements, the types of assistance being provided, and contracts awarded under this program.

Subsection (g) of the new section stipulates that nothing in this Act should limit DHS's ability to participate in a mentor-protégé program carried out by or requiring approval from the Small Business Administration. However, should any provision of this section conflict with another provision of law, regulation or policy, this section shall control.

New section 890B, subsection (h) provides definitions for terms in this Act including "Historically black college or university;" "Mentor firm;" "Minority institution of higher education;" "Protégé firm;" and other small business definitions.

Subsection (b) of the Act provides a technical amendment to the table of contents within Homeland Security Act of 2002 to reflect the additional section.

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 Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the Act 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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 29, 2020.

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 H.R. 4727, the Department of Homeland Security Mentor-Protégé Program.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 4727, Department of Homeland Security Mentor-Protégé Program			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 22, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between zero and \$500,000.

H.R. 4727 would direct the Department of Homeland Security (DHS) to establish a program for mentor firms to enter into agreements with protégé firms to help them compete for prime contracts and subcontracts.

DHS is currently carrying out activities similar to those required by this act, and any new activities required under the legislation would not require substantial action by the department. Thus, CBO estimates that implementing H.R. 4727 would not have a significant cost; any spending would be subject to the availability of appropriated funds.

On December 20, 2019, CBO transmitted a cost estimate for H.R. 4727, the Department of Homeland Security Mentor-Protégé Program Act of 2019, as passed by the House of Representatives on December 9, 2019. The two acts are similar and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, 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

* * * * *

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * *

Sec. 890B. Mentor-protégé program.

* * * * *

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

* * * * *

Subtitle H—Miscellaneous Provisions

* * * * *

SEC. 890B. MENTOR PROTÉGÉ PROGRAM.

(a) *ESTABLISHMENT.*—*There is established in the Department a mentor-protégé program (in this section referred to as the “Program”) under which a mentor firm enters into an agreement with a protégé firm for the purpose of assisting the protégé firm to compete for prime contracts and subcontracts of the Department.*

(b) *ELIGIBILITY.*—*The Secretary shall establish criteria for mentor firms and protégé firms to be eligible to participate in the Program, including a requirement that a firm is not included on any list maintained by the Federal Government of contractors that have been suspended or debarred.*

(c) *PROGRAM APPLICATION AND APPROVAL.*—

(1) *APPLICATION.*—*The Secretary, acting through the Office of Small and Disadvantaged Business Utilization of the Department, shall establish a process for submission of an application jointly by a mentor firm and the protégé firm selected by the mentor firm. The application shall include each of the following:*

(A) *A description of the assistance to be provided by the mentor firm, including to the extent available, the number and brief description of each anticipated subcontract to be awarded to the protégé firm.*

(B) *A schedule with milestones for achieving the assistance to be provided over the period of participation in the Program.*

(C) *An estimate of the costs to be incurred by the mentor firm for providing assistance under the Program.*

(D) *Attestations that Program participants will submit to the Secretary reports at times specified by the Secretary to assist the Secretary in evaluating the protégé firm’s developmental progress.*

(E) *Attestations that Program participants will inform the Secretary in the event of a change in eligibility or voluntary withdrawal from the Program.*

(2) *APPROVAL.*—*Not later than 60 days after receipt of an application pursuant to paragraph (1), the head of the Office of Small and Disadvantaged Business Utilization shall notify applicants of approval or, in the case of disapproval, the process for resubmitting an application for reconsideration.*

(3) *RESCISSION.*—*The head of the Office of Small and Disadvantaged Business Utilization may rescind the approval of an application under this subsection if it determines that such action is in the best interest of the Department.*

(d) *PROGRAM DURATION.*—A mentor firm and protégé firm approved under subsection (c) shall enter into an agreement to participate in the Program for a period not less than 36 months.

(e) *PROGRAM BENEFITS.*—A mentor firm and protégé firm that enter into an agreement under subsection (d) may receive the following Program benefits:

(1) With respect to an award of a contract that requires a subcontracting plan, a mentor firm may receive evaluation credit for participating in the Program.

(2) With respect to an award of a contract that requires a subcontracting plan, a mentor firm may receive credit for a protégé firm performing as a first tier subcontractor or a subcontractor at any tier in an amount equal to the total dollar value of any subcontracts awarded to such a protégé firm.

(3) A protégé firm may receive technical, managerial, financial, or any other mutually agreed upon benefit from a mentor firm, including a subcontract award.

(4) Any other benefits identified by the Secretary.

(f) *REPORTING.*—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the head of the Office of Small and Disadvantaged Business Utilization shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate and the Committees on Homeland Security and Small Business of the House of Representatives a report that—

(1) identifies each agreement between a mentor firm and a protégé firm entered into under this section, including the number of protégé firm participants that are—

(A) small business concerns;

(B) small business concerns owned and controlled by veterans;

(C) small business concerns owned and controlled by service-disabled veterans;

(D) qualified HUBZone small business concerns;

(E) small business concerns owned and controlled by socially and economically disadvantaged individuals;

(F) women-owned small business concerns;

(G) historically Black colleges and universities; and

(H) minority institutions of higher education;

(2) describes the type of assistance provided by mentor firms to protégé firms;

(3) identifies contracts within the Department in which a mentor firm serving as the prime contractor provided subcontracts to a protégé firm under the Program; and

(4) assesses the degree to which there has been—

(A) an increase in the technical capabilities of protégé firms; and

(B) an increase in the quantity and estimated value of prime contract and subcontract awards to protégé firms for the period covered by the report.

(g) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to limit, diminish, impair, or otherwise affect the authority of the Department to participate in any program carried out by or requiring approval of the Small Business Administration or adopt or follow any regulation or policy that the Administrator of

the Small Business Administration may promulgate, except that, to the extent that any provision of this section (including subsection (h)) conflicts with any other provision of law, regulation, or policy, this section shall control.

(h) **DEFINITIONS.**—*In this section:*

(1) **HISTORICALLY BLACK COLLEGE OR UNIVERSITY.**—*The term “historically Black college or university” means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code, as in effect on March 1, 2018.*

(2) **MENTOR FIRM.**—*The term “mentor firm” means a for-profit business concern that is not a small business concern that—*

(A) *has the ability to assist and commits to assisting a protégé to compete for Federal prime contracts and subcontracts; and*

(B) *satisfies any other requirements imposed by the Secretary.*

(3) **MINORITY INSTITUTION OF HIGHER EDUCATION.**—*The term “minority institution of higher education” means an institution of higher education with a student body that reflects the composition specified in section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1508(b)).*

(4) **PROTÉGÉ FIRM.**—*The term “protégé firm” means a small business concern, a historically Black college or university, or a minority institution of higher education—*

(A) *is eligible to enter into a prime contract or subcontract with the Department; and*

(B) *satisfies any other requirements imposed by the Secretary.*

(5) **SMALL BUSINESS ACT DEFINITIONS.**—*The terms “small business concern”, “small business concern owned and controlled by veterans”, “small business concern owned and controlled by service-disabled veterans”, “qualified HUBZone small business concern”, and “small business concern owned and controlled by women” have the meanings given such terms, respectively, under section 3 of the Small Business Act (15 U.S.C. 632). The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given such term in section 8(d)(3)(c) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).*