

115TH CONGRESS
1ST SESSION

S. 906

AN ACT

To amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reducing DHS Acqui-
3 sition Cost Growth Act”.

4 **SEC. 2. CONGRESSIONAL NOTIFICATION FOR MAJOR AC-**
5 **QUISITION PROGRAMS.**

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

9 **“SEC. 836. CONGRESSIONAL NOTIFICATION AND OTHER RE-**
10 **QUIREMENTS FOR MAJOR ACQUISITION PRO-**
11 **GRAM BREACH.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) ACQUISITION.—The term ‘acquisition’ has
14 the meaning given the term in section 131 of title
15 41, United States Code.

16 “(2) ACQUISITION PROGRAM.—The term ‘acqui-
17 sition program’ means the process by which the De-
18 partment acquires, with any appropriated amounts,
19 by contract for purchase or lease, property or serv-
20 ices (including construction) that support the mis-
21 sions and goals of the Department.

22 “(3) ACQUISITION PROGRAM BASELINE.—The
23 term ‘acquisition program baseline’, with respect to
24 an acquisition program, means a summary of the
25 cost, schedule, and performance parameters, ex-
26 pressed in standard, measurable, quantitative terms,

1 which shall be met in order to accomplish the goals
2 of the program.

3 “(4) APPROPRIATE COMMITTEES OF CON-
4 GRESS.—The term ‘appropriate committees of Con-
5 gress’ means—

6 “(A) the Committee on Homeland Security
7 and the Committee on Appropriations of the
8 House of Representatives and the Committee
9 on Homeland Security and Governmental Af-
10 fairs and the Committee on Appropriations of
11 the Senate; and

12 “(B) in the case of notice or a report relat-
13 ing to the Coast Guard or the Transportation
14 Security Administration, the committees de-
15 scribed in subparagraph (A) and the Committee
16 on Transportation and Infrastructure of the
17 House of Representatives and the Committee
18 on Commerce, Science, and Transportation of
19 the Senate.

20 “(5) BEST PRACTICES.—The term ‘best prac-
21 tices’, with respect to acquisition, means a knowl-
22 edge-based approach to capability development that
23 includes—

24 “(A) identifying and validating needs;

1 “(B) assessing alternatives to select the
2 most appropriate solution;

3 “(C) clearly establishing well-defined re-
4 quirements;

5 “(D) developing realistic cost assessments
6 and schedules;

7 “(E) securing stable funding that matches
8 resources to requirements;

9 “(F) demonstrating technology, design,
10 and manufacturing maturity;

11 “(G) using milestones and exit criteria or
12 specific accomplishments that demonstrate
13 progress;

14 “(H) adopting and executing standardized
15 processes with known success across programs;

16 “(I) establishing an adequate workforce
17 that is qualified and sufficient to perform nec-
18 essary functions; and

19 “(J) integrating the capabilities described
20 in subparagraphs (A) through (I) into the mis-
21 sion and business operations of the Depart-
22 ment.

23 “(6) BREACH.—The term ‘breach’, with respect
24 to a major acquisition program, means a failure to
25 meet any cost, schedule, or performance threshold

1 specified in the most recently approved acquisition
2 program baseline.

3 “(7) COMPONENT ACQUISITION EXECUTIVE.—

4 The term ‘Component Acquisition Executive’ means
5 the senior acquisition official within a component
6 who is designated in writing by the Under Secretary
7 for Management, in consultation with the component
8 head, with authority and responsibility for leading a
9 process and staff to provide acquisition and program
10 management oversight, policy, and guidance to en-
11 sure that statutory, regulatory, and higher level pol-
12 icy requirements are fulfilled, including compliance
13 with Federal law, the Federal Acquisition Regula-
14 tion, and Department acquisition management direc-
15 tives established by the Under Secretary for Man-
16 agement.

17 “(8) MAJOR ACQUISITION PROGRAM.—The term
18 ‘major acquisition program’ means an acquisition
19 program of the Department that is estimated by the
20 Secretary to require an eventual total expenditure of
21 at least \$300,000,000 (based on fiscal year 2017
22 constant dollars) over the life cycle cost of the pro-
23 gram.

24 “(b) REQUIREMENTS WITHIN DEPARTMENT IN
25 EVENT OF BREACH.—

1 “(1) NOTIFICATIONS.—

2 “(A) NOTIFICATION OF BREACH.—If a
3 breach occurs in a major acquisition program,
4 the program manager for the program shall no-
5 tify the Component Acquisition Executive for
6 the program, the head of the component con-
7 cerned, the Executive Director of the Program
8 Accountability and Risk Management division,
9 the Under Secretary for Management, and the
10 Deputy Secretary not later than 30 calendar
11 days after the date on which the breach is iden-
12 tified.

13 “(B) NOTIFICATION TO SECRETARY.—If a
14 breach occurs in a major acquisition program
15 and the breach results in a cost overrun greater
16 than 15 percent, a schedule delay greater than
17 180 days, or a failure to meet any of the per-
18 formance thresholds from the cost, schedule, or
19 performance parameters specified in the most
20 recently approved acquisition program baseline
21 for the program, the Component Acquisition
22 Executive for the program shall notify the Sec-
23 retary and the Inspector General of the Depart-
24 ment not later than 5 business days after the
25 date on which the Component Acquisition Exec-

1 utive for the program, the head of the compo-
2 nent concerned, the Executive Director of the
3 Program Accountability and Risk Management
4 Division, the Under Secretary for Management,
5 and the Deputy Secretary are notified of the
6 breach under subparagraph (A).

7 “(2) REMEDIATION PLAN AND ROOT CAUSE
8 ANALYSIS.—

9 “(A) IN GENERAL.—If a breach occurs in
10 a major acquisition program, the program man-
11 ager for the program shall submit in writing to
12 the head of the component concerned, the Exec-
13 utive Director of the Program Accountability
14 and Risk Management division, and the Under
15 Secretary for Management, at a date estab-
16 lished by the Under Secretary for Management,
17 a remediation plan and root cause analysis re-
18 lating to the breach and program.

19 “(B) REMEDIATION PLAN.—The remedi-
20 ation plan required under subparagraph (A)
21 shall—

22 “(i) explain the circumstances of the
23 breach at issue;

24 “(ii) provide prior cost estimating in-
25 formation;

1 “(iii) include a root cause analysis
2 that determines the underlying cause or
3 causes of shortcomings in cost, schedule,
4 or performance of the major acquisition
5 program with respect to which the breach
6 has occurred, including the role, if any,
7 of—

8 “(I) unrealistic performance ex-
9 pectations;

10 “(II) unrealistic baseline esti-
11 mates for cost or schedule or changes
12 in program requirements;

13 “(III) immature technologies or
14 excessive manufacturing or integra-
15 tion risk;

16 “(IV) unanticipated design, engi-
17 neering, manufacturing, or technology
18 integration issues arising during pro-
19 gram performance;

20 “(V) changes to the scope of the
21 program;

22 “(VI) inadequate program fund-
23 ing or changes in planned out-year
24 funding from one 5-year funding plan
25 to the next 5-year funding plan as

1 outlined in the Future Years Home-
2 land Security Program required under
3 section 874;

4 “(VII) legislative, legal, or regu-
5 latory changes; or

6 “(VIII) inadequate program
7 management personnel, including lack
8 of sufficient number of staff, training,
9 credentials, certifications, or use of
10 best practices;

11 “(iv) propose corrective action to ad-
12 dress cost growth, schedule delays, or per-
13 formance issues;

14 “(v) explain the rationale for why a
15 proposed corrective action is recommended;
16 and

17 “(vi) in coordination with the Compo-
18 nent Acquisition Executive for the pro-
19 gram, discuss all options considered, in-
20 cluding—

21 “(I) the estimated impact on
22 cost, schedule, or performance of the
23 program if no changes are made to
24 current requirements;

1 “(II) the estimated cost of the
2 program if requirements are modified;
3 and

4 “(III) the extent to which fund-
5 ing from other programs will need to
6 be reduced to cover the cost growth of
7 the program.

8 “(3) REVIEW OF CORRECTIVE ACTIONS.—

9 “(A) IN GENERAL.—The Under Secretary
10 for Management—

11 “(i) shall review each remediation
12 plan required under paragraph (2); and

13 “(ii) not later than 30 days after sub-
14 mission of a remediation plan under para-
15 graph (2), may approve the plan or provide
16 an alternative proposed corrective action.

17 “(B) SUBMISSION TO CONGRESS.—Not
18 later than 30 days after the date on which the
19 Under Secretary for Management completes a
20 review of a remediation plan under subpara-
21 graph (A), the Under Secretary for Manage-
22 ment shall submit to the appropriate commit-
23 tees of Congress—

24 “(i) a copy of the remediation plan;
25 and

1 “(ii) a statement describing the cor-
2 rective action or actions that have occurred
3 pursuant to paragraph (2)(B)(iv) for the
4 major acquisition program at issue, with a
5 justification for each action.

6 “(c) REQUIREMENTS RELATING TO CONGRESSIONAL
7 NOTIFICATION IF BREACH OCCURS.—

8 “(1) NOTIFICATION TO CONGRESS.—If a notifi-
9 cation to the Secretary is made under subsection
10 (b)(1)(B) relating to a breach in a major acquisition
11 program, the Under Secretary for Management shall
12 notify the appropriate committees of Congress of the
13 breach in the next quarterly Comprehensive Acquisi-
14 tion Status Report, as required in the matter under
15 the heading ‘OFFICE OF THE UNDER SECRETARY
16 FOR MANAGEMENT’ in title I of division F of the
17 Consolidated Appropriations Act of 2016 (Public
18 Law 114–113; 129 Stat. 2493), after receipt by the
19 Under Secretary for Management of notification
20 under that subsection.

21 “(2) SIGNIFICANT VARIANCES IN COSTS OR
22 SCHEDULE.—If a likely cost overrun is greater than
23 20 percent or a likely delay is greater than 12
24 months from the costs and schedule specified in the
25 acquisition program baseline for a major acquisition

1 program, the Under Secretary for Management shall
 2 include in the notification required in paragraph (1)
 3 a written certification, with supporting explanation,
 4 that—

5 “(A) the program is essential to the ac-
 6 complishment of the mission of the Depart-
 7 ment;

8 “(B) there are no alternatives to the capa-
 9 bility or asset provided by the program that will
 10 provide equal or greater capability in a more
 11 cost-effective and timely manner;

12 “(C) the new acquisition schedule and esti-
 13 mates for total acquisition cost are reasonable;
 14 and

15 “(D) the management structure for the
 16 program is adequate to manage and control
 17 cost, schedule, and performance.”.

18 (b) CLERICAL AMENDMENT.—The table of contents
 19 in section 1(b) of the Homeland Security Act of 2002
 20 (Public Law 107–296; 116 Stat. 2135) is amended by in-
 21 serting after the item relating to section 835 the following:

“Sec. 836. Congressional notification and other requirements for major acqui-
 sition program breach.”.

22 **SEC. 3. REPORT ON BID PROTESTS.**

23 (a) DEFINITIONS.—In this section—

1 (1) the term “appropriate committees of Con-
2 gress” has the meaning given the term in section
3 836(a) of the Homeland Security Act of 2002, as
4 added by section 2(a); and

5 (2) the term “Department” means the Depart-
6 ment of Homeland Security.

7 (b) STUDY AND REPORT.—Not later than 1 year
8 after the date of enactment of this Act, the Inspector Gen-
9 eral of the Department shall conduct a study, in consulta-
10 tion with the Government Accountability Office when nec-
11 essary, and submit to the appropriate committees of Con-
12 gress a report on the prevalence and impact of bid protests
13 on the acquisition process of the Department, in particular
14 bid protests filed with the Government Accountability Of-
15 fice and the United States Court of Federal Claims.

16 (c) CONTENTS.—The report required under sub-
17 section (b) shall include—

18 (1) with respect to contracts with the Depart-
19 ment—

20 (A) trends in the number of bid protests
21 filed with Federal agencies, the Government Ac-
22 countability Office, and Federal courts and the
23 rate of those bid protests compared to contract
24 obligations and the number of contracts;

1 (B) an analysis of bid protests filed by in-
2 cumbent contractors, including the rate at
3 which those contractors are awarded bridge
4 contracts or contract extensions over the period
5 during which the bid protest remains unre-
6 solved;

7 (C) a comparison of the number of bid
8 protests and the outcome of bid protests for—

9 (i) awards of contracts compared to
10 awards of task or delivery orders;

11 (ii) contracts or orders primarily for
12 products compared to contracts or orders
13 primarily for services;

14 (iii) protests filed pre-award to chal-
15 lenge the solicitation compared to those
16 filed post-award;

17 (iv) contracts or awards with single
18 protestors compared to multiple protestors;
19 and

20 (v) contracts with single awards com-
21 pared to multiple award contracts;

22 (D) a description of trends in the number
23 of bid protests filed as a percentage of con-
24 tracts and as a percentage of task or delivery

orders by the value of the contract or order
with respect to—

(i) contracts valued at more than
\$300,000,000;

(ii) contracts valued at not less than
\$50,000,000 and not more than
\$300,000,000;

(iii) contracts valued at not less than
\$10,000,000 and not more than
\$50,000,000; and

(iv) contracts valued at less than
\$10,000,000;

(E) an assessment of the cost and schedule
impact of successful and unsuccessful bid pro-
tests, as well as delineation of litigation costs,
filed on major acquisitions with more than
\$100,000,000 in annual expenditures or
\$300,000,000 in lifecycle costs;

(F) an analysis of how often bid protestors
are awarded the contract that was the subject
of the bid protest;

(G) a summary of the results of bid pro-
tests in which the Department took unilateral
corrective action, including the average time for
remedial action to be completed;

1 (H) the time it takes the Department to
2 implement corrective actions after a ruling or
3 decision with respect to a bid protest, and the
4 percentage of those corrective actions that are
5 subsequently protested, including the outcome
6 of any subsequent bid protest;

7 (I) an analysis of those contracts with re-
8 spect to which a company files a bid protest
9 and later files a subsequent bid protest; and

10 (J) an assessment of the overall time spent
11 on preventing and responding to bid protests as
12 it relates to the procurement process; and

13 (2) any recommendations by the Inspector Gen-
14 eral of the Department relating to the study con-
15 ducted under this section.

Passed the Senate November 9, 2017.

Attest:

Secretary.

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