

115TH CONGRESS
1ST SESSION

S. 902

To amend the Homeland Security Act of 2002 to provide for certain acquisition authorities for the Under Secretary of Management of the Department of Homeland Security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2017

Mrs. McCASKILL (for herself and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Homeland Security Act of 2002 to provide for certain acquisition authorities for the Under Secretary of Management of the Department of Homeland Security, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “DHS Acquisition Au-
5 thorities Act of 2017”.

1 **SEC. 2. ACQUISITION AUTHORITIES FOR UNDER SEC-**
 2 **RETARY FOR MANAGEMENT OF THE DEPART-**
 3 **MENT OF HOMELAND SECURITY.**

4 Section 701 of the Homeland Security Act of 2002
 5 (6 U.S.C. 341) is amended by—

6 (1) redesignating subsections (d) and (e) as
 7 subsections (e) and (f), respectively; and

8 (2) inserting after subsection (c) the following:

9 “(d) ACQUISITION AND RELATED RESPONSIBIL-
 10 ITIES.—

11 “(1) DEFINITIONS.—In this subsection, the
 12 terms ‘acquisition’, ‘acquisition decision authority’,
 13 ‘acquisition program baseline’, ‘best practices’,
 14 ‘Component Acquisition Executive’, and ‘major ac-
 15 quisition program’ shall have the meanings given
 16 those terms in section 710.

17 “(2) CHIEF ACQUISITION OFFICER.—

18 “(A) IN GENERAL.—Notwithstanding sec-
 19 tion 1702(b) of title 41, United States Code,
 20 the Under Secretary for Management is the
 21 Chief Acquisition Officer of the Department.

22 “(B) AUTHORITIES.—The Under Secretary
 23 for Management shall—

24 “(i) have the authorities and perform
 25 the functions specified in section 1702(b)
 26 of title 41, United States Code; and

1 “(ii) perform all other functions and
2 responsibilities delegated by the Secretary
3 or described in this subsection.

4 “(3) FUNCTIONS AND RESPONSIBILITIES.—In
5 addition to the authorities and functions specified in
6 section 1702(b) of title 41, United States Code, the
7 functions and responsibilities of the Under Secretary
8 for Management related to acquisition shall include
9 the following:

10 “(A) Advising the Secretary regarding ac-
11 quisition management activities, taking into ac-
12 count risks of failure to achieve cost, schedule,
13 or performance parameters, to ensure that the
14 Department achieves the mission of the Depart-
15 ment through the adoption of widely accepted
16 program management best practices and stand-
17 ards and, where appropriate, acquisition innova-
18 tion best practices.

19 “(B) Leading an acquisition review board
20 within the Department and exercising the ac-
21 quisition decision authority to approve, pause,
22 modify (including the rescission of approvals of
23 program milestones), or cancel major acquisi-
24 tion programs, unless the Under Secretary dele-
25 gates such authority to a Component Acquisi-

1 tion Executive in accordance with paragraph
2 (4).

3 “(C) Establishing policies for acquisition
4 that implement an approach that takes into ac-
5 count risks of failure to achieve cost, schedule,
6 or performance parameters that all components
7 of the Department shall comply with, including
8 outlining relevant authorities for program man-
9 agers to effectively manage acquisition pro-
10 grams.

11 “(D) Ensuring that each major acquisition
12 program has a Department-approved acquisi-
13 tion program baseline, pursuant to the acquisi-
14 tion management policy of the Department.

15 “(E) Ensuring that the heads of compo-
16 nents and Component Acquisition Executives
17 comply with Federal law, the Federal Acquisi-
18 tion Regulation, and Department acquisition
19 management directives.

20 “(F) Ensuring that grants and financial
21 assistance are provided only to individuals and
22 organizations that are not suspended or
23 debarred.

24 “(G) Distributing guidance throughout the
25 Department to ensure that contractors involved

1 in acquisitions, particularly contractors that ac-
2 cess the information systems and technologies
3 of the Department, adhere to relevant Depart-
4 ment policies related to physical and informa-
5 tion security as identified by the Under Sec-
6 retary for Management.

7 “(H) Overseeing the Component Acquisi-
8 tion Executive organizational structure to en-
9 sure Component Acquisition Executives have
10 sufficient capabilities and comply with Depart-
11 ment acquisition policies.

12 “(4) DELEGATION OF ACQUISITION DECISION
13 AUTHORITY.—

14 “(A) LEVEL 3 ACQUISITIONS.—The Under
15 Secretary for Management may delegate acqui-
16 sition decision authority in writing to the rel-
17 evant Component Acquisition Executive for an
18 acquisition program that has a life cycle cost
19 estimate of less than \$300,000,000.

20 “(B) LEVEL 2 ACQUISITIONS.—The Under
21 Secretary for Management may delegate acqui-
22 sition decision authority in writing to the rel-
23 evant Component Acquisition Executive for a
24 major acquisition program that has a life cycle
25 cost estimate of not less than \$300,000,000 nor

1 more than \$1,000,000,000 if all of the following
2 requirements are met:

3 “(i) The component concerned pos-
4 sesses working policies, processes, and pro-
5 cedures that are consistent with Depart-
6 ment-level acquisition policy.

7 “(ii) The Component Acquisition Ex-
8 ecutive concerned has adequate, experi-
9 enced, and dedicated professional employ-
10 ees with program management training, as
11 applicable, commensurate with the size of
12 the acquisition programs and related ac-
13 tivities delegated to such Component Ac-
14 quisition Executive by the Under Secretary
15 for Management.

16 “(iii) Each major acquisition program
17 concerned has written documentation
18 showing that the major acquisition pro-
19 gram—

20 “(I) has a Department-approved
21 acquisition program baseline; and

22 “(II) is meeting agreed-upon
23 cost, schedule, and performance
24 thresholds.

1 “(5) RELATIONSHIP TO UNDER SECRETARY
2 FOR SCIENCE AND TECHNOLOGY.—

3 “(A) IN GENERAL.—

4 “(i) RULE OF CONSTRUCTION.—Noth-
5 ing in this subsection shall be construed to
6 diminish the authority granted to the
7 Under Secretary for Science and Tech-
8 nology under this Act.

9 “(ii) COOPERATION.—The Under Sec-
10 retary for Management and the Under
11 Secretary for Science and Technology shall
12 cooperate in matters related to the coordi-
13 nation of acquisitions across the Depart-
14 ment so that investments of the Direc-
15 torate of Science and Technology are able
16 to support current and future requirements
17 of the components of the Department.

18 “(B) OPERATIONAL TESTING AND EVALUA-
19 TION.—The Under Secretary for Science and
20 Technology shall—

21 “(i) ensure, in coordination with rel-
22 evant component heads, that major acqui-
23 sition programs—

1 “(I) complete operational testing
2 and evaluation of technologies and
3 systems;

4 “(II) use independent verification
5 and validation of operational test and
6 evaluation implementation and re-
7 sults; and

8 “(III) document whether such
9 programs meet all performance re-
10 quirements included in their acquisi-
11 tion program baselines;

12 “(ii) ensure that the operational test-
13 ing and evaluation required under clause
14 (i)(I) includes all system components and
15 incorporates operators into the testing to
16 ensure that systems perform as intended in
17 the appropriate operational setting; and

18 “(iii) determine if testing conducted
19 by other Federal agencies and private enti-
20 ties is relevant and sufficient in deter-
21 mining whether systems perform as in-
22 tended in the operational setting.”.

1 **SEC. 3. ACQUISITION AUTHORITIES FOR CHIEF FINANCIAL**
2 **OFFICER OF THE DEPARTMENT OF HOME-**
3 **LAND SECURITY.**

4 Section 702(b)(2) of the Homeland Security Act of
5 2002 (6 U.S.C. 342(b)) is amended by adding at the end
6 the following:

7 “(J) Oversee the costs of acquisition pro-
8 grams and related activities to ensure that ac-
9 tual and planned costs are in accordance with
10 budget estimates and are affordable, or can be
11 adequately funded, over the life cycle of such
12 programs and activities.”.

13 **SEC. 4. ACQUISITION AUTHORITIES FOR CHIEF INFORMA-**
14 **TION OFFICER OF THE DEPARTMENT OF**
15 **HOMELAND SECURITY.**

16 Section 703 of the Homeland Security Act of 2002
17 (6 U.S.C. 343) is amended—

18 (1) by redesignating subsection (b) as sub-
19 section (c); and

20 (2) by inserting after subsection (a) the fol-
21 lowing:

22 “(b) ACQUISITION RESPONSIBILITIES.—Notwith-
23 standing section 11315 of title 40, United States Code,
24 the acquisition responsibilities of the Chief Information
25 Officer, in consultation with the Under Secretary for Man-
26 agement, shall include the following:

1 “(1) Oversee the management of the Homeland
 2 Security Enterprise Architecture and ensure that,
 3 before each acquisition decision event (as defined in
 4 section 710), approved information technology acqui-
 5 sitions comply with departmental information tech-
 6 nology management processes, technical require-
 7 ments, and the Homeland Security Enterprise Archi-
 8 tecture, and in any case in which information tech-
 9 nology acquisitions do not comply with the manage-
 10 ment directives of the Department, make rec-
 11 ommendations to an acquisition review board within
 12 the Department regarding such noncompliance.

13 “(2) Be responsible for providing recommenda-
 14 tions to an acquisition review board within the De-
 15 partment regarding information technology pro-
 16 grams, and be responsible for developing information
 17 technology acquisition strategic guidance.”.

18 **SEC. 5. ACQUISITION AUTHORITIES FOR PROGRAM AC-**
 19 **COUNTABILITY AND RISK MANAGEMENT**
 20 **(PARM).**

21 (a) IN GENERAL.—Title VII of the Homeland Secu-
 22 rity Act of 2002 (6 U.S.C. 341 et seq.) is amended by
 23 adding at the end the following:

1 **“SEC. 710. ACQUISITION AUTHORITIES FOR PROGRAM AC-**
2 **COUNTABILITY AND RISK MANAGEMENT.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) ACQUISITION.—The term ‘acquisition’ has
5 the meaning given the term in section 131 of title
6 41, United States Code.

7 “(2) ACQUISITION DECISION AUTHORITY.—The
8 term ‘acquisition decision authority’ means the au-
9 thority, held by the Secretary acting through the
10 Deputy Secretary or Under Secretary for Manage-
11 ment to—

12 “(A) ensure compliance with Federal law,
13 the Federal Acquisition Regulation, and De-
14 partment acquisition management directives;

15 “(B) review (including approving, pausing,
16 modifying, or canceling) an acquisition program
17 through the life cycle of the program;

18 “(C) ensure that acquisition program man-
19 agers have the resources necessary to success-
20 fully execute an approved acquisition program;

21 “(D) ensure good acquisition program
22 management of cost, schedule, risk, and system
23 performance of the acquisition program at
24 issue, including assessing acquisition program
25 baseline breaches and directing any corrective
26 action for such breaches; and

1 “(E) ensure that acquisition program man-
 2 agers, on an ongoing basis, monitor cost, sched-
 3 ule, and performance against established base-
 4 lines and use tools to assess risks to an acquisi-
 5 tion program at all phases of the life cycle of
 6 such program to avoid and mitigate acquisition
 7 program baseline breaches.

8 “(3) ACQUISITION DECISION EVENT.—The term
 9 ‘acquisition decision event’, with respect to an acqui-
 10 sition program, means a predetermined point within
 11 each of the acquisition phases at which the acquisi-
 12 tion decision authority determines whether the ac-
 13 quisition program shall proceed to the next acquisi-
 14 tion phase.

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

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

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

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

7 “(A) identifying and validating needs;

8 “(B) assessing alternatives to select the
9 most appropriate solution;

10 “(C) clearly establishing well-defined re-
11 quirements;

12 “(D) developing realistic cost assessments
13 and schedules;

14 “(E) securing stable funding that matches
15 resources to requirements;

16 “(F) demonstrating technology, design,
17 and manufacturing maturity;

18 “(G) using milestones and exit criteria or
19 specific accomplishments that demonstrate
20 progress;

21 “(H) adopting and executing standardized
22 processes with known success across programs;

23 “(I) establishing an adequate workforce
24 that is qualified and sufficient to perform nec-
25 essary functions; and

1 “(J) integrating the capabilities described
2 in subparagraphs (A) through (I) into the mis-
3 sion and business operations of the Depart-
4 ment.

5 “(7) BREACH.—The term ‘breach’, with respect
6 to a major acquisition program, means a failure to
7 meet any cost, schedule, or performance threshold
8 specified in the most recently approved acquisition
9 program baseline.

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

24 “(9) MAJOR ACQUISITION PROGRAM.—The term
25 ‘major acquisition program’ means a Department

1 acquisition program that is estimated by the Sec-
2 retary to require an eventual total expenditure of not
3 less than \$300,000,000 (based on fiscal year 2017
4 constant dollars) over the life cycle cost of the acqui-
5 sition program.

6 “(b) ESTABLISHMENT OF OFFICE.—There shall be a
7 Program Accountability and Risk Management Office
8 within the Management Directorate of the Department
9 to—

10 “(1) provide consistent accountability, stand-
11 ardization, and transparency of major acquisition
12 programs of the Department; and

13 “(2) serve as the central oversight function for
14 all Department acquisition programs.

15 “(c) RESPONSIBILITIES OF EXECUTIVE DIRECTOR.—

16 “(1) IN GENERAL.—The Program Account-
17 ability and Risk Management Office shall be led by
18 an Executive Director to oversee the requirements
19 under subsection (b).

20 “(2) RESPONSIBILITIES.—The Executive Direc-
21 tor shall report directly to the Under Secretary for
22 Management and carry out the following responsibil-
23 ities:

24 “(A) Monitor regularly the performance of
25 Department acquisition programs between ac-

1 quisition decision events to identify problems
2 with cost, performance, or schedule that compo-
3 nents may need to address to prevent cost over-
4 runs, performance issues, or schedule delays.

5 “(B) Assist the Under Secretary for Man-
6 agement in managing the acquisition programs
7 and related activities of the Department.

8 “(C) Conduct oversight of individual acqui-
9 sition programs to implement Department ac-
10 quisition program policy, procedures, and guid-
11 ance with a priority on ensuring the data the
12 office collects and maintains from Department
13 components is accurate and reliable.

14 “(D) Serve as the focal point and coordi-
15 nator for the acquisition life cycle review proc-
16 ess and as the executive secretariat for an ac-
17 quisition review board within the Department.

18 “(E) Advise the persons having acquisition
19 decision authority in making acquisition deci-
20 sions consistent with all applicable laws and in
21 establishing clear lines of authority, account-
22 ability, and responsibility for acquisition deci-
23 sion making within the Department.

24 “(F) Engage in the strategic planning and
25 performance evaluation process required under

1 section 306 of title 5, United States Code, and
2 sections 1105(a)(28), 1115, 1116, and 9703 of
3 title 31, United States Code, by supporting the
4 Chief Procurement Officer in developing strate-
5 gies and specific plans for hiring, training, and
6 professional development in order to rectify any
7 deficiency within the Department's acquisition
8 workforce.

9 “(G) Develop standardized certification
10 standards in consultation with the Component
11 Acquisition Executives for all acquisition pro-
12 gram managers.

13 “(H) In the event that an acquisition pro-
14 gram manager's certification or actions need re-
15 view for purposes of promotion or removal, pro-
16 vide input, in consultation with the relevant
17 Component Acquisition Executive, into the rel-
18 evant acquisition program manager's perform-
19 ance evaluation, and report positive or negative
20 experiences to the relevant certifying authority.

21 “(I) Provide technical support and assist-
22 ance to Department acquisitions and acquisition
23 personnel in conjunction with the Chief Pro-
24 curement Officer.

1 “(J) Prepare the Comprehensive Acquisi-
2 tion Status Report of the Department, as re-
3 quired by division F of the Consolidated Appro-
4 priations Act, 2016 (Public Law 114–113), and
5 make such report available to the appropriate
6 committees of Congress (as defined in section
7 226 of this Act).

8 “(d) RESPONSIBILITIES OF COMPONENTS.—

9 “(1) IN GENERAL.—Each head of a component
10 shall comply with Federal law, the Federal Acquisi-
11 tion Regulation, and acquisition management direc-
12 tives of the Department established by the Under
13 Secretary for Management.

14 “(2) REQUIREMENTS.—For each major acquisi-
15 tion program, each head of a component shall—

16 “(A) define baseline requirements and doc-
17 ument changes to such requirements, as appro-
18 priate;

19 “(B) establish a complete life cycle cost es-
20 timate with supporting documentation, includ-
21 ing an acquisition program baseline;

22 “(C) verify each life cycle cost estimate
23 against independent cost estimates, and rec-
24 oncile any differences;

1 “(D) complete a cost-benefit analysis with
2 supporting documentation;

3 “(E) develop and maintain a schedule that
4 is consistent with scheduling best practices as
5 identified by the Comptroller General of the
6 United States, including, in appropriate cases,
7 an integrated master schedule; and

8 “(F) ensure that all acquisition program
9 information provided by the component is com-
10 plete, accurate, timely, and valid.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 in section 1(b) of the Homeland Security Act of 2002 (6
13 U.S.C. 101 et seq.) is amended by inserting after the item
14 relating to section 709 the following:

 “Sec. 710. Acquisition authorities for Program Accountability and Risk Man-
 agement.”.

○