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H. R. 3413

[Report No. 116-]

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 HOUSE OF REPRESENTATIVES

JUNE 21, 2019

Mr. CRENSHAW introduced the following bill; which was referred to the Committee on Homeland Security

SEPTEMBER --, 2019

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 21, 2019]

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 Re-*
5 *form Act of 2019”.*

6 **SEC. 2. ACQUISITION AUTHORITIES FOR UNDER SEC-**
7 **RETARY FOR MANAGEMENT OF THE DEPART-**
8 **MENT OF HOMELAND SECURITY.**

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

11 *(1) redesignating subsection (d), the first sub-*
12 *section (e) (relating to the system for award manage-*
13 *ment consultation), and the second subsection (e) (re-*
14 *lating to the definition of interoperable communica-*
15 *tions) as subsections (e), (f), and (g), respectively; and*

16 *(2) inserting after subsection (c) the following*
17 *new subsection:*

18 *“(d) ACQUISITION AND RELATED RESPONSIBIL-*
19 *ITIES.—*

20 *“(1) IN GENERAL.—Notwithstanding section*
21 *1702(a) of title 41, United States Code, the Under*
22 *Secretary for Management is the Chief Acquisition*
23 *Officer of the Department. As Chief Acquisition Offi-*
24 *cer, the Under Secretary shall have the authorities*
25 *and perform the functions specified in such section*

1 1702(b), and perform all other functions and respon-
2 sibilities delegated by the Secretary or described in
3 this subsection.

4 “(2) *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 (as such term
9 is defined in section 711) include 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, or*
13 *performance parameters, to ensure that the De-*
14 *partment achieves its mission through the adop-*
15 *tion of widely accepted program management*
16 *best practices (as such term is defined in section*
17 *711) and standards and, where appropriate, ac-*
18 *quisition innovation best practices.*

19 “(B) *Leading the Department’s acquisition*
20 *oversight body, the Acquisition Review Board.*

21 “(C) *Exercising the acquisition decision au-*
22 *thority (as such term is defined in section 711)*
23 *to approve, pause, modify (including the rescis-*
24 *sion of approvals of program milestones), or can-*
25 *cel major acquisition programs (as such term is*

1 *defined in section 711), unless the Under Sec-*
2 *retary delegates such authority to a Component*
3 *Acquisition Executive (as such term is defined in*
4 *section 711) pursuant to paragraph (3).*

5 “(D) *Establishing policies for acquisition*
6 *that implement an approach that takes into ac-*
7 *count risks of failure to achieve cost, schedule, or*
8 *performance parameters that all components of*
9 *the Department shall comply with, including*
10 *outlining relevant authorities for program man-*
11 *agers to effectively manage acquisition programs*
12 *(as such term is defined in section 711).*

13 “(E) *Ensuring that each major acquisition*
14 *program has a Department-approved acquisition*
15 *program baseline (as such term is defined in sec-*
16 *tion 711), pursuant to the Department’s acquisi-*
17 *tion management policy.*

18 “(F) *Assisting the heads of components and*
19 *Component Acquisition Executives in efforts to*
20 *comply with Federal law, the Federal Acquisi-*
21 *tion Regulation, and Department acquisition*
22 *management directives.*

23 “(G) *Ensuring that grants and financial*
24 *assistance are provided only to individuals and*

1 *organizations that are not suspended or*
2 *debarred.*

3 “(H) *Distributing guidance throughout the*
4 *Department to ensure that contractors involved*
5 *in acquisitions, particularly contractors that ac-*
6 *cess the Department’s information systems and*
7 *technologies, adhere to relevant Department poli-*
8 *cies related to physical and information security*
9 *as identified by the Under Secretary for Manage-*
10 *ment.*

11 “(I) *Overseeing the Component Acquisition*
12 *Executive organizational structure to ensure*
13 *Component Acquisition Executives have suffi-*
14 *cient capabilities and comply with Department*
15 *acquisition policies.*

16 “(3) *DELEGATION OF CERTAIN ACQUISITION DE-*
17 *CISION AUTHORITY.—*

18 “(A) *LEVEL 3 ACQUISITIONS.—The Under*
19 *Secretary for Management may delegate acquisi-*
20 *tion decision authority to the relevant Compo-*
21 *nent Acquisition Executive for an acquisition*
22 *program that has a life cycle cost estimate of less*
23 *than \$300,000,000.*

24 “(B) *LEVEL 2 ACQUISITIONS.—The Under*
25 *Secretary for Management may delegate acquisi-*

1 *tion decision authority in writing to the relevant*
2 *Component Acquisition Executive for a major*
3 *acquisition program that has a life cycle cost es-*
4 *timate of at least \$300,000 but not more than*
5 *\$1,000,000,000 if all of the following require-*
6 *ments are met:*

7 *“(i) The component concerned possesses*
8 *working policies, processes, and procedures*
9 *that are consistent with Department-level*
10 *acquisition policy.*

11 *“(ii) The Component Acquisition Exec-*
12 *utive concerned has adequate, experienced,*
13 *and dedicated professional employees with*
14 *program management training, as applica-*
15 *ble, commensurate with the size of the ac-*
16 *quisition programs and related activities*
17 *delegated to such Component Acquisition*
18 *Executive by the Under Secretary for Man-*
19 *agement.*

20 *“(iii) Each major acquisition program*
21 *concerned has written documentation show-*
22 *ing that it has a Department-approved ac-*
23 *quisition program baseline and it is meet-*
24 *ing agreed-upon cost, schedule, and per-*
25 *formance thresholds.*

1 “(C) *LEVEL 1 ACQUISITIONS.*—*The Under*
2 *Secretary for Management may delegate acquisi-*
3 *tion decision authority in writing to the relevant*
4 *Component Acquisition Executive for a Level 1*
5 *major acquisition program that has a life cycle*
6 *cost estimate of more than \$1,000,000,000 if all*
7 *of the following requirements are met:*

8 “(i) *The Undersecretary for Manage-*
9 *ment conducts a risk assessment of the*
10 *planned acquisition and determines that it*
11 *is appropriate to delegate authority for such*
12 *major acquisition program.*

13 “(ii) *The component concerned pos-*
14 *sesses working policies, processes, and proce-*
15 *dures that are consistent with Department-*
16 *level acquisition policy.*

17 “(iii) *The Component Acquisition Ex-*
18 *ecutive concerned has adequate, experienced,*
19 *and dedicated professional employees with*
20 *program management training, as applica-*
21 *ble, commensurate with the size of the ac-*
22 *quisition programs and related activities*
23 *delegated to such Component Acquisition*
24 *Executive by the Under Secretary for Man-*
25 *agement.*

1 “(iv) *Each Level 1 major acquisition*
2 *program concerned has written documenta-*
3 *tion showing that it has a Department-ap-*
4 *proved acquisition program baseline and it*
5 *is meeting agreed-upon cost, schedule, and*
6 *performance thresholds.*

7 “(v) *The Under Secretary for Manage-*
8 *ment provides written notification to the*
9 *appropriate congressional committees of the*
10 *decision to delegate the authority to the rel-*
11 *evant Component Acquisition Executive.*

12 “(4) *RELATIONSHIP TO UNDER SECRETARY FOR*
13 *SCIENCE AND TECHNOLOGY.—*

14 “(A) *IN GENERAL.—Nothing in this sub-*
15 *section shall diminish the authority granted to*
16 *the Under Secretary for Science and Technology*
17 *under this Act. The Under Secretary for Man-*
18 *agement and the Under Secretary for Science*
19 *and Technology shall cooperate in matters re-*
20 *lated to the coordination of acquisitions across*
21 *the Department so that investments of the Direc-*
22 *torate of Science and Technology are able to sup-*
23 *port current and future requirements of the com-*
24 *ponents of the Department.*

1 “(B) *OPERATIONAL TESTING AND EVALUA-*
2 *TION.—The Under Secretary for Science and*
3 *Technology shall—*

4 “(i) *ensure, in coordination with rel-*
5 *evant component heads, that major acquisi-*
6 *tion programs—*

7 “(I) *complete operational testing*
8 *and evaluation of technologies and sys-*
9 *tems to be acquired or developed by*
10 *major acquisition programs to assess*
11 *operational effectiveness, suitability,*
12 *and cybersecurity;*

13 “(II) *use independent verification*
14 *and validation of operational test and*
15 *evaluation implementation and results,*
16 *as appropriate; and*

17 “(III) *document whether such pro-*
18 *grams meet all performance require-*
19 *ments included in their acquisition*
20 *program baselines;*

21 “(ii) *ensure that such operational test-*
22 *ing and evaluation includes all system com-*
23 *ponents and incorporates operators into the*
24 *testing to ensure that systems perform as*

1 *intended in the appropriate operational set-*
2 *ting; and*

3 “*(iii) determine if testing conducted by*
4 *other Federal departments and agencies and*
5 *private entities is relevant and sufficient in*
6 *determining whether systems perform as in-*
7 *tended in the operational setting.*”.

8 **SEC. 3. ACQUISITION AUTHORITIES FOR CHIEF FINANCIAL**
9 **OFFICER OF THE DEPARTMENT OF HOME-**
10 **LAND SECURITY.**

11 *Paragraph (2) of section 702(b) of the Homeland Secu-*
12 *rity Act of 2002 (6 U.S.C. 342(b)) is amended by—*

13 *(1) redesignating subparagraph (I) as subpara-*
14 *graph (J); and*

15 *(2) inserting after subparagraph (H) the fol-*
16 *lowing new subparagraph:*

17 “*(I) Oversee the costs of acquisition pro-*
18 *grams (as such term is defined in section 711)*
19 *and related activities to ensure that actual and*
20 *planned costs are in accordance with budget esti-*
21 *mates and are affordable, or can be adequately*
22 *funded, over the life cycle of such programs and*
23 *activities.*”.

1 **SEC. 4. ACQUISITION AUTHORITIES FOR CHIEF INFORMA-**
2 **TION OFFICER OF THE DEPARTMENT OF**
3 **HOMELAND SECURITY.**

4 *Section 703 of the Homeland Security Act of 2002 (6*
5 *U.S.C. 343) is amended—*

6 *(1) by redesignating subsection (b) as subsection*
7 *(c); and*

8 *(2) by inserting after subsection (a) the following*
9 *new subsection:*

10 *“(b) ACQUISITION RESPONSIBILITIES.—In addition to*
11 *the responsibilities specified in section 11315 of title 40,*
12 *United States Code, the acquisition responsibilities of the*
13 *Chief Information Officer, in consultation with the Under*
14 *Secretary for Management, shall include the following:*

15 *“(1) Overseeing the management of the Home-*
16 *land Security Enterprise Architecture and ensuring*
17 *that, before each acquisition decision event (as such*
18 *term is defined in section 711), approved information*
19 *technology acquisitions comply with any depart-*
20 *mental information technology management require-*
21 *ments, security protocols, and the Homeland Security*
22 *Enterprise Architecture, and in any case in which in-*
23 *formation technology acquisitions do not comply with*
24 *the Department’s management directives, making rec-*
25 *ommendations to the Department’s Acquisition Re-*
26 *view Board regarding such noncompliance.*

1 “(2) *Providing recommendations to the Acquisi-*
2 *tion Review Board regarding information technology*
3 *programs, and developing information technology ac-*
4 *quisition strategic guidance.”.*

5 **SEC. 5. ACQUISITION AUTHORITIES FOR UNDER SEC-**
6 **RETARY OF STRATEGY, POLICY, AND PLANS.**

7 *Subsection (c) of section 709 of the Homeland Security*
8 *Act of 2002 (6 U.S.C. 349) is amended by—*

9 (1) *redesignating paragraphs (4) through (7) as*
10 *(5) through (8), respectively; and*

11 (2) *inserting after paragraph (3) the following*
12 *new paragraph:*

13 “(4) *ensure acquisition programs (as such term*
14 *is defined in section 711) support the DHS Quadren-*
15 *ennial Homeland Security Review Report, the DHS*
16 *Strategic Plan, the DHS Strategic Priorities, and*
17 *other appropriate successor documents;”.*

18 **SEC. 6. ACQUISITION AUTHORITIES FOR PROGRAM AC-**
19 **COUNTABILITY AND RISK MANAGEMENT**
20 **(PARM).**

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

1 **“SEC. 711. ACQUISITION AUTHORITIES FOR PROGRAM AC-**
2 **COUNTABILITY AND RISK MANAGEMENT.**

3 *“(a) ESTABLISHMENT OF OFFICE.—Within the Man-*
4 *agement Directorate, there shall be a Program Account-*
5 *ability and Risk Management office to—*

6 *“(1) provide consistent accountability, standard-*
7 *ization, and transparency of major acquisition pro-*
8 *grams of the Department;*

9 *“(2) serve as the central oversight function for*
10 *all Department major acquisition programs; and*

11 *“(3) provide review and analysis of Department*
12 *acquisition programs, as appropriate.*

13 *“(b) RESPONSIBILITIES OF EXECUTIVE DIRECTOR.—*
14 *The Program Accountability and Risk Management office*
15 *shall be led by an Executive Director to oversee the require-*
16 *ments specified in subsection (a). The Executive Director*
17 *shall report directly to the Under Secretary for Manage-*
18 *ment, and shall carry out the following responsibilities:*

19 *“(1) Monitor regularly the performance of De-*
20 *partment major acquisition programs between acqui-*
21 *sition decision events to identify problems with cost,*
22 *performance, or schedule that components may need*
23 *to address to prevent cost overruns, performance*
24 *issues, or schedule delays.*

1 “(2) Assist the Under Secretary for Management
2 in managing the Department’s acquisition programs
3 and related activities.

4 “(3) Conduct oversight of individual acquisition
5 programs to implement Department acquisition pro-
6 gram policy, procedures, and guidance with a pri-
7 ority on ensuring the data the office collects and
8 maintains from Department components is accurate
9 and reliable.

10 “(4) Serve as the focal point and coordinator for
11 the acquisition life cycle review process and as the ex-
12 ecutive secretariat for the Department’s Acquisition
13 Review Board.

14 “(5) Advise the persons having acquisition deci-
15 sion authority in making acquisition decisions con-
16 sistent with all applicable laws and in establishing
17 clear lines of authority, accountability, and responsi-
18 bility for acquisition decisionmaking within the De-
19 partment.

20 “(6) Assist the Chief Procurement Officer of the
21 Department, as appropriate, in developing strategies
22 and specific plans for hiring, training, and profes-
23 sional development to address any deficiency within
24 the Department’s acquisition workforce.

1 “(7) *Develop standardized certification stand-*
2 *ards in consultation with the Component Acquisition*
3 *Executives for all acquisition program managers.*

4 “(8) *Assess the results of major acquisition pro-*
5 *grams’ post-implementation reviews and identify op-*
6 *portunities to improve performance throughout the*
7 *acquisition process.*

8 “(9) *Provide technical support and assistance to*
9 *Department acquisition programs and acquisition*
10 *personnel and coordinate with the Chief Procurement*
11 *Officer regarding workforce training and development*
12 *activities.*

13 “(10) *Assist, as appropriate, with the prepara-*
14 *tion of the Future Years Homeland Security Pro-*
15 *gram, and make such information available to the*
16 *congressional homeland security committees.*

17 “(c) *RESPONSIBILITIES OF COMPONENTS.—Each head*
18 *of a component shall comply with Federal law, the Federal*
19 *Acquisition Regulation, and Department acquisition man-*
20 *agement directives established by the Under Secretary for*
21 *Management. For each major acquisition program, each*
22 *head of a component shall—*

23 “(1) *define baseline requirements and document*
24 *changes to such requirements, as appropriate;*

1 “(2) *establish a complete life cycle cost estimate*
2 *with supporting documentation that is consistent*
3 *with cost estimating best practices as identified by the*
4 *Comptroller General of the United States;*

5 “(3) *verify each life cycle cost estimate against*
6 *independent cost estimates or assessments, as appro-*
7 *priate, and reconcile any differences;*

8 “(4) *complete a cost-benefit analysis with sup-*
9 *porting documentation;*

10 “(5) *develop and maintain a schedule that is*
11 *consistent with scheduling best practices as identified*
12 *by the Comptroller General of the United States, in-*
13 *cluding, in appropriate cases, an integrated master*
14 *schedule; and*

15 “(6) *ensure that all acquisition program infor-*
16 *mation provided by the component is complete, accu-*
17 *rate, timely, and valid.*

18 “(d) *DEFINITIONS.—In this section:*

19 “(1) *ACQUISITION.—The term ‘acquisition’ has*
20 *the meaning given such term in section 131 of title*
21 *41, United States Code.*

22 “(2) *ACQUISITION DECISION AUTHORITY.—The*
23 *term ‘acquisition decision authority’ means the au-*
24 *thority, held by the Secretary acting through the Dep-*

1 *uty Secretary or Under Secretary for Management*
2 *to—*

3 *“(A) ensure compliance with Federal law,*
4 *the Federal Acquisition Regulation, and Depart-*
5 *ment acquisition management directives;*

6 *“(B) review (including approving, pausing,*
7 *modifying, or canceling) an acquisition program*
8 *through the life cycle of such program;*

9 *“(C) ensure that acquisition program man-*
10 *agers have the resources necessary to successfully*
11 *execute an approved acquisition program;*

12 *“(D) ensure good acquisition program man-*
13 *agement of cost, schedule, risk, and system per-*
14 *formance of the acquisition program at issue, in-*
15 *cluding assessing acquisition program baseline*
16 *breaches and directing any corrective action for*
17 *such breaches; and*

18 *“(E) ensure that acquisition program man-*
19 *agers, on an ongoing basis, monitor cost, sched-*
20 *ule, and performance against established base-*
21 *lines and use tools to assess risks to an acquisi-*
22 *tion program at all phases of the life cycle of*
23 *such program to avoid and mitigate acquisition*
24 *program baseline breaches.*

1 “(3) *ACQUISITION DECISION EVENT.*—*The term*
2 *‘acquisition decision event’, with respect to an acqui-*
3 *sition program, means a predetermined point within*
4 *each of the acquisition phases at which the acquisi-*
5 *tion decision authority determines whether such ac-*
6 *quisition program shall proceed to the next acquisi-*
7 *tion phase.*

8 “(4) *ACQUISITION PROGRAM.*—*The term ‘acquisi-*
9 *tion program’ means the process by which the Depart-*
10 *ment acquires, with any appropriated amounts or fee*
11 *funding, by contract for purchase or lease, property*
12 *or services (including construction) that support the*
13 *missions and goals of the Department.*

14 “(5) *ACQUISITION PROGRAM BASELINE.*—*The*
15 *term ‘acquisition program baseline’, with respect to*
16 *an acquisition program, means a summary of the*
17 *cost, schedule, and performance parameters, expressed*
18 *in standard, measurable, quantitative terms, which*
19 *must be met in order to accomplish the goals of such*
20 *program.*

21 “(6) *BEST PRACTICES.*—*The term ‘best prac-*
22 *tices’, with respect to acquisition, means a knowledge-*
23 *based approach to capability development that in-*
24 *cludes the following:*

25 “(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, and*
10 *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.*

19 “(J) *Integrating the capabilities described*
20 *in subparagraphs (A) through (I) into the De-*
21 *partment’s mission and business operations.*

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

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

3 “(8) *CONGRESSIONAL HOMELAND SECURITY COM-*
4 *MITTEES.—The term ‘congressional homeland security*
5 *committees’ means—*

6 “(A) *the Committee on Homeland Security*
7 *of the House of Representatives and the Com-*
8 *mittee on Homeland Security and Governmental*
9 *Affairs of the Senate; and*

10 “(B) *the Committee on Appropriations of*
11 *the House of Representatives and the Committee*
12 *on Appropriations of the Senate.*

13 “(9) *COMPONENT ACQUISITION EXECUTIVE.—The*
14 *term ‘Component Acquisition Executive’ means the*
15 *senior acquisition official within a component who is*
16 *designated in writing by the Under Secretary for*
17 *Management, in consultation with the component*
18 *head, with authority and responsibility for leading a*
19 *process and staff to provide acquisition and program*
20 *management oversight, policy, and guidance to ensure*
21 *that statutory, regulatory, and higher level policy re-*
22 *quirements are fulfilled, including compliance with*
23 *Federal law, the Federal Acquisition Regulation, and*
24 *Department acquisition management directives estab-*
25 *lished by the Under Secretary for Management.*

1 “(10) *MAJOR ACQUISITION PROGRAM.*—*The term*
2 ‘*major acquisition program*’ *means a Department ac-*
3 *quisition program that is estimated by the Secretary*
4 *to require an eventual total expenditure of at least*
5 *\$300,000,000 (based on fiscal year 2019 constant dol-*
6 *lars) over its life cycle cost or a program identified*
7 *by the Chief Acquisition Officer as a program of spe-*
8 *cial interest.”.*

9 (b) *CLERICAL AMENDMENT.*—*The table of contents in*
10 *section 1(b) of the Homeland Security Act of 2002 is*
11 *amended by inserting after the item relating to section 710*
12 *the following new item:*

 “*Sec. 711. Acquisition authorities for Program Accountability and Risk Manage-*
 ment.”.