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

SECTION 1. SHORT TITLE.

This Act may be cited as the “DHS Acquisition Re-
form Act of 2019”.

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

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

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

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

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

“(1) IN GENERAL.—Notwithstanding section
1702(a) of title 41, United States Code, the Under
Secretary for Management is the Chief Acquisition
Officer of the Department. As Chief Acquisition Offi-
cer, the Under Secretary shall have the authorities
and perform the functions specified in such section
1702(b), and perform all other functions and responsibilities delegated by the Secretary or described in this subsection.

“(2) FUNCTIONS AND RESPONSIBILITIES.—In addition to the authorities and functions specified in section 1702(b) of title 41, United States Code, the functions and responsibilities of the Under Secretary for Management related to acquisition (as such term is defined in section 711) include the following:

“(A) Advising the Secretary regarding acquisition management activities, taking into account risks of failure to achieve cost, schedule, or performance parameters, to ensure that the Department achieves its mission through the adoption of widely accepted program management best practices (as such term is defined in section 711) and standards and, where appropriate, acquisition innovation best practices.

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

“(C) Exercising the acquisition decision authority (as such term is defined in section 711) to approve, pause, modify (including the rescission of approvals of program milestones), or cancel major acquisition programs (as such term is
defined in section 711), unless the Under Secretary delegates such authority to a Component Acquisition Executive (as such term is defined in section 711) pursuant to paragraph (3).

“(D) Establishing policies for acquisition that implement an approach that takes into account risks of failure to achieve cost, schedule, or performance parameters that all components of the Department shall comply with, including outlining relevant authorities for program managers to effectively manage acquisition programs (as such term is defined in section 711).

“(E) Ensuring that each major acquisition program has a Department-approved acquisition program baseline (as such term is defined in section 711), pursuant to the Department’s acquisition management policy.

“(F) Assisting the heads of components and Component Acquisition Executives in efforts to comply with Federal law, the Federal Acquisition Regulation, and Department acquisition management directives.

“(G) Ensuring that grants and financial assistance are provided only to individuals and
organizations that are not suspended or
debarred.

“(H) Distributing guidance throughout the
Department to ensure that contractors involved
in acquisitions, particularly contractors that ac-
access the Department’s information systems and
technologies, adhere to relevant Department poli-
cies related to physical and information security
as identified by the Under Secretary for Manage-
ment.

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

“(3) DELEGATION OF CERTAIN ACQUISITION DE-
cision Authority.—

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

“(B) LEVEL 2 ACQUISITIONS.—The Under
Secretary for Management may delegate acquisi-
tion decision authority in writing to the relevant Component Acquisition Executive for a major acquisition program that has a life cycle cost estimate of at least $300,000 but not more than $1,000,000,000 if all of the following requirements are met:

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

“(ii) The Component Acquisition Executive concerned has adequate, experienced, and dedicated professional employees with program management training, as applicable, commensurate with the size of the acquisition programs and related activities delegated to such Component Acquisition Executive by the Under Secretary for Management.

“(iii) Each major acquisition program concerned has written documentation showing that it has a Department-approved acquisition program baseline and it is meeting agreed-upon cost, schedule, and performance thresholds.
“(C) LEVEL 1 ACQUISITIONS.—The Under Secretary for Management may delegate acquisition decision authority in writing to the relevant Component Acquisition Executive for a Level 1 major acquisition program that has a life cycle cost estimate of more than $1,000,000,000 if all of the following requirements are met:

“(i) The Undersecretary for Management conducts a risk assessment of the planned acquisition and determines that it is appropriate to delegate authority for such major acquisition program.

“(ii) The component concerned possesses working policies, processes, and procedures that are consistent with Department-level acquisition policy.

“(iii) The Component Acquisition Executive concerned has adequate, experienced, and dedicated professional employees with program management training, as applicable, commensurate with the size of the acquisition programs and related activities delegated to such Component Acquisition Executive by the Under Secretary for Management.
“(iv) Each Level 1 major acquisition program concerned has written documentation showing that it has a Department-approved acquisition program baseline and it is meeting agreed-upon cost, schedule, and performance thresholds.

“(v) The Under Secretary for Management provides written notification to the appropriate congressional committees of the decision to delegate the authority to the relevant Component Acquisition Executive.

“(4) Relationship to Under Secretary for Science and Technology.—

“(A) In general.—Nothing in this subsection shall diminish the authority granted to the Under Secretary for Science and Technology under this Act. The Under Secretary for Management and the Under Secretary for Science and Technology shall cooperate in matters related to the coordination of acquisitions across the Department so that investments of the Directorate of Science and Technology are able to support current and future requirements of the components of the Department.
"(B) Operational Testing and Evaluation.—The Under Secretary for Science and Technology shall—

"(i) ensure, in coordination with relevant component heads, that major acquisition programs—

"(I) complete operational testing and evaluation of technologies and systems to be acquired or developed by major acquisition programs to assess operational effectiveness, suitability, and cybersecurity;

"(II) use independent verification and validation of operational test and evaluation implementation and results, as appropriate; and

"(III) document whether such programs meet all performance requirements included in their acquisition program baselines;

"(ii) ensure that such operational testing and evaluation includes all system components and incorporates operators into the testing to ensure that systems perform as
intended in the appropriate operational setting; and

“(iii) determine if testing conducted by other Federal departments and agencies and private entities is relevant and sufficient in determining whether systems perform as intended in the operational setting.”.

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

Paragraph (2) of section 702(b) of the Homeland Security Act of 2002 (6 U.S.C. 342(b)) is amended by—

(1) redesignating subparagraph (I) as subparagraph (J); and

(2) inserting after subparagraph (H) the following new subparagraph:

“(I) Oversee the costs of acquisition programs (as such term is defined in section 711) and related activities to ensure that actual and planned costs are in accordance with budget estimates and are affordable, or can be adequately funded, over the life cycle of such programs and activities.”.
SEC. 4. ACQUISITION AUTHORITIES FOR CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

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

(1) by redesignating subsection (b) as subsection (c); and

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

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

“(1) Overseeing the management of the Homeland Security Enterprise Architecture and ensuring that, before each acquisition decision event (as such term is defined in section 711), approved information technology acquisitions comply with any departmental information technology management requirements, security protocols, and the Homeland Security Enterprise Architecture, and in any case in which information technology acquisitions do not comply with the Department’s management directives, making recommendations to the Department’s Acquisition Review Board regarding such noncompliance.
“(2) Providing recommendations to the Acquisition Review Board regarding information technology programs, and developing information technology acquisition strategic guidance.”.

SEC. 5. ACQUISITION AUTHORITIES FOR UNDER SECRETARY OF STRATEGY, POLICY, AND PLANS.

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

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

(2) inserting after paragraph (3) the following new paragraph:

“(4) ensure acquisition programs (as such term is defined in section 711) support the DHS Quadrennial Homeland Security Review Report, the DHS Strategic Plan, the DHS Strategic Priorities, and other appropriate successor documents;”.

SEC. 6. ACQUISITION AUTHORITIES FOR PROGRAM ACCOUNTABILITY AND RISK MANAGEMENT (PARM).

(a) IN GENERAL.—Title VII of the Homeland Security Act of 2002 (6 U.S.C. 341 et seq.) is amended by adding at the end the following new section:
“SEC. 711. ACQUISITION AUTHORITIES FOR PROGRAM ACCOUNTABILITY AND RISK MANAGEMENT.

“(a) Establishment of Office.—Within the Management Directorate, there shall be a Program Accountability and Risk Management office to—

“(1) provide consistent accountability, standardization, and transparency of major acquisition programs of the Department;

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

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

“(b) Responsibilities of Executive Director.—

The Program Accountability and Risk Management office shall be led by an Executive Director to oversee the requirements specified in subsection (a). The Executive Director shall report directly to the Under Secretary for Management, and shall carry out the following responsibilities:

“(1) Monitor regularly the performance of Department major acquisition programs between acquisition decision events to identify problems with cost, performance, or schedule that components may need to address to prevent cost overruns, performance issues, or schedule delays.
“(2) Assist the Under Secretary for Management in managing the Department’s acquisition programs and related activities.

“(3) Conduct oversight of individual acquisition programs to implement Department acquisition program policy, procedures, and guidance with a priority on ensuring the data the office collects and maintains from Department components is accurate and reliable.

“(4) Serve as the focal point and coordinator for the acquisition life cycle review process and as the executive secretariat for the Department’s Acquisition Review Board.

“(5) Advise the persons having acquisition decision authority in making acquisition decisions consistent with all applicable laws and in establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the Department.

“(6) Assist the Chief Procurement Officer of the Department, as appropriate, in developing strategies and specific plans for hiring, training, and professional development to address any deficiency within the Department’s acquisition workforce.
“(7) Develop standardized certification standards in consultation with the Component Acquisition Executives for all acquisition program managers.

“(8) Assess the results of major acquisition programs’ post-implementation reviews and identify opportunities to improve performance throughout the acquisition process.

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

“(10) Assist, as appropriate, with the preparation of the Future Years Homeland Security Program, and make such information available to the congressional homeland security committees.

“(c) Responsibilities of Components.—Each head of a component shall comply with Federal law, the Federal Acquisition Regulation, and Department acquisition management directives established by the Under Secretary for Management. For each major acquisition program, each head of a component shall—

“(1) define baseline requirements and document changes to such requirements, as appropriate;
“(2) establish a complete life cycle cost estimate with supporting documentation that is consistent with cost estimating best practices as identified by the Comptroller General of the United States;

“(3) verify each life cycle cost estimate against independent cost estimates or assessments, as appropriate, and reconcile any differences;

“(4) complete a cost-benefit analysis with supporting documentation;

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

“(6) ensure that all acquisition program information provided by the component is complete, accurate, timely, and valid.

“(d) 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 Dep-
uty 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 canceling) 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 PROGRAM.—The term ‘acquisition program’ means the process by which the Department acquires, with any appropriated amounts or fee funding, by contract for purchase or lease, property or services (including construction) that support the missions and goals of the Department.

“(5) 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.

“(6) BEST PRACTICES.—The term ‘best practices’, with respect to acquisition, means a knowledge-based approach to capability development that includes the following:

“(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.

“(J) Integrating the capabilities described in subparagraphs (A) through (I) into the Department’s mission and business operations.

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

“(8) CONGRESSIONAL HOMELAND SECURITY COMMITTEES.—The term ‘congressional homeland security committees’ means—

“(A) the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(B) the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate.

“(9) COMPONENT ACQUISITION EXECUTIVE.—The term ‘Component Acquisition Executive’ means the senior acquisition official within a component who is designated in writing by the Under Secretary for Management, in consultation with the component head, with authority and responsibility for leading a process and staff to provide acquisition and program management oversight, policy, and guidance to ensure that statutory, regulatory, and higher level policy requirements are fulfilled, including compliance with Federal law, the Federal Acquisition Regulation, and Department acquisition management directives established by the Under Secretary for Management.
“(10) 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 or a program identified by the Chief Acquisition Officer as a program of special interest.”.

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

“Sec. 711. Acquisition authorities for Program Accountability and Risk Management.”.