

115TH CONGRESS  
1ST SESSION

# **S. 906**

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## **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 acquisi-  
tion program breach.”.

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

23 (a) DEFINITIONS.—In this section—

5 (2) the term “Department” means the Department  
6 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—

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;

(C) a comparison of the number of bid 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

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

3 (i) contracts valued at more than  
4 \$300,000,000;

5 (ii) contracts valued at not less than  
6 \$50,000,000 and not more than  
7 \$300,000,000;

11 (iv) contracts valued at less than  
12 \$10,000,000;

13 (E) an assessment of the cost and schedule  
14 impact of successful and unsuccessful bid pro-  
15 tests, as well as delineation of litigation costs,  
16 filed on major acquisitions with more than  
17 \$100,000,000 in annual expenditures or  
18 \$300,000,000 in lifecycle costs;

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

22 (G) a summary of the results of bid pro-  
23 tests in which the Department took unilateral  
24 corrective action, including the average time for  
25 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;

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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