

Calendar No. 383

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-232 }

BRIDGE CONTRACT TRANSPARENCY AND
ACCOUNTABILITY ACT OF 2018

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2413

TO PROVIDE FOR THE APPROPRIATE USE OF BRIDGE CONTRACTS
IN FEDERAL PROCUREMENT, AND FOR OTHER PURPOSES



APRIL 18, 2018.—Ordered to be printed

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**BRIDGE CONTRACT TRANSPARENCY AND
ACCOUNTABILITY ACT OF 2018**

APRIL 18, 2018.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2413]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2413) to provide for the appropriate use of bridge contracts in Federal procurement, and for other purposes, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2413, the Bridge Contract Transparency and Accountability Act of 2018, increases oversight of the use of bridge contracts by requiring the Administrator of the Office of Federal Procurement Policy (OFPP) to submit a series of reports to Congress on the policies, practices, and uses of bridge contracts across the Federal Government. Additionally, the bill directs the Federal Acquisition Regulatory Council (FARC) to amend the Federal Acquisition Regulation (FAR) to include a common definition for “bridge contracts,”

and directs agencies to develop policies and procedures to minimize the need for bridge contracts.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Bridge contracts are executed to prevent gaps in service when an existing contract is near expiration but there is still a need for the goods or services being rendered and the follow-on contract is not ready to be awarded.¹ Despite their usefulness in some situations, bridge contracts are not defined in the FAR.

Bridge contracts have come under increasing scrutiny in recent years. The National Defense Authorization Act for Fiscal Year 2018 (NDAA FY2018) included provisions to encourage agencies to avoid the use of bridge contracts and to increase oversight when situations arise requiring their use.²

In 2015, Committee Chairman Ron Johnson and now-Ranking Member Claire McCaskill asked the Government Accountability Office (GAO) to study the use of bridge contracts by Federal agencies.³ The resulting report found that, when used too frequently, bridge contracts reduce competition and can result in the Government paying more than it should for needed services and supplies.⁴

Because no formal definition for “bridge contracts” exists in the FAR, GAO defined bridge contracts as “an extension to an existing contract beyond the period of performance (including option years), or a new, short-term contract awarded on a sole-source basis to an incumbent contractor to avoid a lapse in service caused by a delay in awarding a follow-on contract.”⁵ This definition is similar to the one subsequently adopted in the NDAA FY18.⁶

The GAO report also found the lack of a formal definition and guidance for bridge contracts in the FAR contributed to agencies having limited or no insight into their use of bridge contracts.⁷ GAO noted that, “without a definition for bridge contracts, and strategies for tracking and managing their use, agencies are not able to fully identify and monitor the risks related to these contracts, and therefore may be missing opportunities to increase competition.”⁸ GAO also found the lack of a formal definition may be a contributing factor to explain why some of the bridge contracts they reviewed varied greatly in duration.⁹ For example, despite bridge contracts being intended as “short-term” fixes, 6 of the 29 bridge contracts GAO studied in-depth were three years or more in duration.¹⁰

When a contract is awarded outside of the competitive process, such as when an incumbent contractor is granted a sole-source con-

¹ U.S. Gov’t Accountability Office, GAO-16-15, Sole Source Contracting: Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use (Oct. 2015), <https://www.gao.gov/assets/680/673110.pdf> [hereinafter GAO-16-15].

² See NDAA FY2018, Pub. L. No. 115-91, §851, Improvement of Planning for Acquisition of Services [hereinafter NDAA FY2018].

³ Letter from Senators Johnson & McCaskill to the Hon. Gene L. Dodaro, Comptroller General, U.S. Gov’t Accountability (Apr. 14, 2015) (on file with Committee staff).

⁴ GAO-16-15, *supra* note 1, at 27-8.

⁵ *Id.* at 4.

⁶ NDAA FY2018 defines “bridge contract” as “(A) an extension to an existing contract beyond the period of performance to avoid a lapse in service caused by a delay in awarding a subsequent contract; or (B) a new short-term contract awarded on a sole source basis to avoid a lapse in service caused by a delay in awarding a subsequent contract.”

⁷ GAO-16-15, *supra* note 1, at 6.

⁸ *Id.* at 10.

⁹ *Id.* at Highlights; pp. 10-16.

¹⁰ *Id.*

tract, heightened oversight is necessary to ensure the Government is getting the best value. This bill will implement GAO's recommendation that the OFPP amend the FAR to provide for a standardized definition of "bridge contracts." The bill also increases oversight of the bridge contract award process by requiring the heads of executive agencies to report to the OFPP annually until 2025 on their agencies' use of bridge contracts, and provide public notice within 30 days of entering into a bridge contract to increase transparency on the frequency and use of bridge contracts. The OFPP is required to summarize the executive agency reports into a singular report on the Government-wide use of bridge contracts, which is to be submitted annually to Congress until 2025. Finally, the bill directs executive agencies to implement policies that will minimize the use of bridge contracts.

III. LEGISLATIVE HISTORY

Ranking Member Claire McCaskill (D–MO) introduced S. 2413, the Bridge Contract Transparency and Accountability Act of 2018, on February 8, 2018. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Chairman Ron Johnson (R–WI) joined as a cosponsor on February 13, 2018.

The Committee considered S. 2413 at a business meeting on February 14, 2018. During the business meeting, an amendment was offered by Ranking Member McCaskill and Chairman Johnson to modify elements of the annual reporting requirement on the use of bridge contracts. The amendment modifies the reporting requirement to consider only the number of bridge contracts entered into in the previous fiscal year and clarifies that the annual reporting requirement should provide a description of the number of bridge contracts that were entered into as a result of a bid protest. Both the amendment and the legislation, as amended, were ordered reported favorably by voice vote en bloc with Senators Johnson, Portman, Paul, Lankford, Enzi, Hoeven, Daines, McCaskill, Heitkamp, Peters, Hassan, Harris, and Jones being present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides that the bill may be cited as the "Bridge Contract Transparency and Accountability Act of 2018."

Sec. 2. Revisions to Federal procurement regulations

Subsection (a) requires the OFPP Administrator to submit a report, no later than 180 days after enactment, to Congress on the current Government-wide policies, practices, and uses of bridge contracts.

Subsection (b) directs the FARC to amend the FAR to add a common definition of "bridge contracts." Subsection (b) also directs the OFPP Administrator to issue guidance on the use of bridge contracts to agencies.

Sec. 3. Agency transparency and reports

Subsection (a) directs the OFPP Administrator to issue guidance, which includes an interim definition of bridge contracts to use until

the FAR is amended, to executive agencies to use in their collection of information on their use of bridge contracts.

Subsection (b) details the report that each executive agency is required to submit annually until 2025 on their use of bridge contracts to the OFPP Administrator. These reports are required to provide information such as, but not limited to, the common definition for bridge contracts used by that executive agency, how many bridge contracts were entered into during the previous fiscal year, an explanation as to why each bridge contract was entered into, the cost of each bridge contract, and the number of bridge contracts entered into because of a bid protest. Each executive agency must make this report publicly available on their website. On a quarterly basis, each executive agency will submit a list of bridge contracts issued during the prior quarter to the OFPP, which the Administrator will compile into a single report and send to Congress.

Subsection (c) directs the OFPP Administrator to submit an annual report to Congress until 2025 on the use of bridge contracts by executive agencies, including any legislative recommendations to enhance oversight of bridge contracts.

Subsection (d) requires executive agencies to provide public notice within 30 days of entering into a bridge contract.

Sec. 4. Agency policies

Subsection (a) directs executive agencies to adopt policies designed to minimize the use of bridge contracts.

Subsection (b) outlines elements that executive agencies must include in their bridge contract policies, including that the Chief Acquisition Officer must approve any bridge contract that lasts longer than six months, and the head of the executive agency must approve any bridge contract that lasts longer than one year. Subsection (b) also carves out exceptions to said policies for service contracts necessary for contingency operations, humanitarian assistance, disaster relief, national security emergencies, and pursuant to international agreements.

Sec. 5. Definitions

This section defines “appropriate congressional committees” and “executive agency.” “Appropriate congressional committees” are the Senate Homeland Security and Governmental Affairs Committee, the Senate Appropriations Committee, the House Oversight and Government Reform Committee, and the House Appropriations Committee. “Executive agency” has the same definition as found in 41 U.S.C. § 133.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 5, 2018.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2413, the Bridge Contract Transparency and Accountability Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 2413—Bridge Contract Transparency and Accountability Act of 2018

S. 2413 would require federal agencies to report annually to the Congress on their use of bridge contracts to acquire goods and services. Bridge contracts are generally considered noncompetitive extensions between the end contract of a contract and the competitive award of a follow-on agreement. Specifically, the bill would direct the Office of Federal Procurement Policy (OFPP) to report on governmentwide policies, and practices for the use of bridge contracts. In addition, the bill would require the Federal Acquisition Regulatory Council to provide guidance to agencies on when to use bridge contracts.

CBO is unaware of a standard definition of bridge contracts or any comprehensive information on the use of such contracts. In fiscal year 2017, the government acquired almost \$400 billion in services and supplies through contracts, including bridge contracts. The Government Accountability Office (GAO) has reported that using noncompetitive contracts for extended periods could result in greater costs to the government.

Considering the cost of similar governmentwide reporting requirements and recent GAO reports on such contracts, CBO estimates that implementing the bill would cost \$7 million over the 2018–2022 period to collect information and prepare reports on the contracts. In general, CBO expects costs at each of the 26 major agencies would total about \$65,000 per year for two years or approximately \$2 million annually in total. In subsequent years costs would decline as the reporting process became standardized.

Enacting S. 2413 could affect direct spending by some agencies because they are authorized to use receipts from the sale of goods, fees, and other collections to cover operating costs. Therefore, pay-as-you-go procedures apply. Because most of those agencies can make adjustments to the amounts collected as operating costs change, CBO estimates that any net changes in direct spending by those agencies would be negligible. Enacting S. 2413 would not affect revenues.

CBO estimates that enacting S. 2413 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 2413 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

