

DHS CONTRACT REPORTING ACT OF 2021

SEPTEMBER 14, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 4363]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4363) to establish a daily public reporting requirement for covered contract awards of the Department of Homeland Security, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “DHS Contract Reporting Act of 2021”.

**SEC. 2. DAILY PUBLIC REPORT OF COVERED CONTRACT AWARDS.**

(a) DAILY REPORT.—

- (1) **IN GENERAL.**—The Secretary shall post, maintain, and update in accordance with paragraph (2), on a publicly available website of the Department, a daily report of all covered contract awards. Each reported covered contract award shall include information relating to—
- (A) the contract number, modification number, or delivery order number;
  - (B) the contract type;
  - (C) the amount obligated for such award;
  - (D) the total contract value for such award, including all options;
  - (E) the description of the purpose for such award;
  - (F) the number of proposals or bids received;
  - (G) the name and address of the vendor, and whether such vendor is considered a small business;
  - (H) the period and each place of performance for such award;
  - (I) whether such award is multiyear;
  - (J) whether such award requires a small business subcontracting plan; and
  - (K) the contracting office and the point of contact for such office.
- (2) **UPDATE.**—Updates referred to in paragraph (1) shall occur not later than two business days after the date on which the covered contract is authorized or modified.
- (3) **SUBSCRIBING TO ALERTS.**—The website referred to in paragraph (1) shall provide the option to subscribe to an automatic notification of the publication of each report required under such paragraph.
- (4) **EFFECTIVE DATE.**—Paragraph (1) shall take effect on the date that is 180 days after the date of the enactment of this section.
- (b) **UNDEFINITIZED CONTRACT ACTION OR DEFINITIZED AMOUNT.**—If a covered contract award reported pursuant to subsection (a) includes an undefinitized contract action, the Secretary shall—
- (1) report the estimated total contract value for such award and the amount obligated upon award; and
  - (2) once such award is definitized, update the total contract value and amount obligated.
- (c) **EXEMPTION.**—Each report required under subsection (a) shall not include covered contract awards relating to classified products, programs, or services.
- (d) **DEFINITIONS.**—In this section:
- (1) **COVERED CONTRACT AWARD.**—The term “covered contract award”—
    - (A) means a contract action of the Department with the total authorized dollar amount of \$4,000,000 or greater, including unexercised options; and
    - (B) includes—
      - (i) contract awards governed by the Federal Acquisition Regulation;
      - (ii) modifications to a contract award that increase the total value, expand the scope of work, or extend the period of performance;
      - (iii) orders placed on a multiple award or multiple-agency contract that includes delivery or quantity terms that are indefinite;
      - (iv) other transaction authority agreements; and
      - (v) contract awards made with other than full and open competition.
  - (2) **DEFINITIZED AMOUNT.**—The term “definitized amount” means the final amount of a covered contract award after agreement between the Department and the contractor at issue.
  - (3) **DEPARTMENT.**—The term “Department” means the Department of Homeland Security.
  - (4) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.
  - (5) **SMALL BUSINESS.**—The term “small business” means an entity that qualifies as a small business concern, as such term is described under section 3 of the Small Business Act (15 U.S.C. 632).
  - (6) **TOTAL CONTRACT VALUE.**—The term “total contract value” means the total amount of funds expected to be provided to the contractor at issue under the terms of the contract through the full period of performance.
  - (7) **UNDEFINITIZED CONTRACT ACTION.**—The term “undefinitized contract action” means any contract action for which the contract terms, specifications, or price is not established prior to the start of the performance of a covered contract award.

#### PURPOSE AND SUMMARY

H.R. 4363, the “DHS Contract Reporting Act of 2021,” seeks to enhance transparency and oversight of the Department of Homeland Security’s (DHS) procurements by requiring the Department

to provide a daily report of contracts awarded by its headquarters or components on a public website. For contract awards of \$4 million or more, the bill would require DHS to report key information, such as contract type, the purpose of the contract, the number of proposals or bids received, and the name of the company that received the award. In addition, the bill requires that DHS's website allow interested parties to subscribe to automatic notifications to ensure timely access to the information.

#### BACKGROUND AND NEED FOR LEGISLATION

Each year, DHS spends billions of dollars to procure the goods and services needed to fulfill the Department's many missions. While the Department publicly announces some contract awards on official U.S. Government websites in accordance with Federal regulations, DHS offices and components are given discretion on when to issue press releases about contract awards. In addition, the official U.S. Government websites can be difficult to search and must be monitored continuously to keep pace with the Department's spending.

This is concerning to the Committee because the Government Accountability Office (GAO) and DHS Office of Inspector General (OIG) have consistently reported on challenges DHS faces with contract management. For example, in June 2020, GAO determined that U.S. Customs and Border Protection misspent funding Congress appropriated for medical care and other supplies in response to a surge of migrants at the southern border.<sup>1</sup> The OIG also found that the Federal Emergency Management Agency (FEMA) inappropriately awarded contracts to a vendor that was unable to deliver critical supplies following three major hurricanes and the California wildfires that occurred in 2017.<sup>2</sup>

H.R. 4363 promotes transparency into DHS's spending by creating an online clearinghouse the public can access to view contracts awarded Department-wide. The daily reports required under the bill would include contract awards with a total authorized value of \$4 million or greater. In addition to contracts awarded in accordance with Federal Acquisition Regulation procedures and Other Transaction Authority agreements, the Committee expects the Department to report orders on multiple-award or multiple-agency contract vehicles as well as modifications to existing contracts that were not otherwise negotiated or included in the original contract. Providing timely access to the information required in H.R. 4363 will enable better oversight of DHS's spending and insight for those companies interested in working with the Department.

#### HEARINGS

For the purposes of clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the following hearings were used to develop H.R. 4363:

<sup>1</sup> U.S. Government Accountability Office, *U.S. Customs and Border Protection—Obligations of Amounts Appropriated in the 2019 Emergency Supplemental*, (June 11, 2020), available at <https://www.gao.gov/products/b-331888>.

<sup>2</sup> Department of Homeland Security Office of Inspector General, *FEMA Should Not have Awarded Two Contracts to Bronze Star LLC*, (May 7, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-38-May19.pdf>.

The Committee did not hold a legislative hearing on H.R. 4363 in the 117th Congress. However, the legislation was informed by hearings held in the 116th Congress. On July 15, 2020, the Committee held a hearing entitled “Children in CBP Custody: Examining Deaths, Medical Care Procedures, and Improper Spending.” The Committee received testimony from Dr. Fiona S. Danaher, M.D., M.P.H., Pediatrician, Chelsea Pediatrics, Child Protection Team, Massachusetts General Hospital, Instructor in Pediatrics at Harvard Medical School; Dr. Roger A. Mitchell, Jr., M.D., Chief Medical Examiner, Office of the Chief Medical Examiner, Washington DC, Clinical Professor of Pathology at the George Washington University, Associate Professor of Surgery at Howard University; The Honorable Joseph V. Cuffari, Inspector General, DHS OIG; and Ms. Rebecca Gambler, Director, Homeland Security and Justice Team, GAO.

On May 9, 2019, the Subcommittees on Emergency Preparedness, Response, and Recovery and Oversight, Management, and Accountability held a hearing entitled, “FEMA Contracting: Reviewing Lessons Learned from Past Disasters to Improve Preparedness.” The Subcommittees received testimony from Mr. Brian Kamoie, Associate Administrator for Mission Support, FEMA; Ms. Marie Mak, Director, GAO; Ms. Katherine Trimble, Deputy Assistant Inspector General for Audits, DHS OIG.

#### COMMITTEE CONSIDERATION

The Committee met on July 28, 2021, a quorum being present, to consider H.R. 4363 and ordered the measure to be favorably reported to the House, as amended, by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 4363.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and with respect to the requirements of clause 3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

## FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

## DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 4363 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the objective of H.R. 4363 is to enhance transparency and oversight of DHS procurements by requiring the Department to provide a daily report of contracts awarded by its headquarters and components on a public website.

## CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS ADVISORY COMMITTEE STATEMENT

In compliance with rule XXI, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 4363 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short Title.*

This section states that the Act may be cited as the “DHS Contract Reporting Act of 2021”.

*Sec. 2. Daily Public Report of Covered Contract Awards.*

Subsection 2(a) directs the Secretary of Homeland Security to provide a daily report of all covered contract awards on a public website and outlines the information to be included in each report. The daily reports are to include the contract number; the contract type; the purpose of the contract; the number of proposals or bids received; the name and address of the vendor, and whether the vendor is considered a small business; the period and each place of performance; and whether the contract is required to have a small business subcontracting plan. The subsection also directs that covered contract awards be included in the daily report not later than two business days after they are authorized or modified. Additionally, the website is to provide the option to subscribe to receive an automatic notification when each daily report is published. Lastly, this subsection establishes an effective date of 180 days after the enactment of the section.

Subsection 2(b) identifies how the Secretary is required to report undefinitized contract actions in the daily reports. Specifically, the Secretary must report the estimated total contract value and the amount obligated upon award. Once the award is definitized, the Secretary must report the updated total contract value and amount obligated.

Subsection 2(c) exempts covered contract awards relating to classified products, programs, or services from being included in the daily report.

Subsection 2(d) defines key terms for the purpose of the bill, including “covered contract award,” “definitized amount,” “total contract value,” and “undefinitized contract action.”

