

Calendar No. 584

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-225 }

DEPARTMENT OF HOMELAND SECURITY
MENTOR-PROTÉGÉ ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 408

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO
ESTABLISH A MENTOR-PROTÉGÉ PROGRAM,
AND FOR OTHER PURPOSES



DECEMBER 5, 2022.—Ordered to be printed

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DEPARTMENT OF HOMELAND SECURITY MENTOR- PROTÉGÉ ACT

DECEMBER 5, 2022.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 408]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 408), to amend the Homeland Security Act of 2002 to establish a mentor-protégé program, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 408, the *Department of Homeland Security Mentor-Protégé Program Act of 2021*, provides statutory authority for the mentor-protégé program of the Department of Homeland Security (DHS), under which a mentor firm enters into an agreement with a protégé firm to assist the latter to compete for prime contracts and subcontracts with DHS. The bill also encourages the participation of Historically Black Colleges and Universities (HBCUs) and minority institutions of higher education in the program, and requires

DHS to report annually to Congress on program data and accomplishments.

II. BACKGROUND AND NEED FOR THE LEGISLATION

DHS has an existing Mentor-Protégé Program with the purpose of encouraging large prime contracting firms to provide developmental assistance to small businesses, in order to improve the performance of DHS contracts and subcontracts, foster the establishment of long-term business relationships, and strengthen subcontracting opportunities and accomplishments.¹ All firms participating must be in good standing in the federal marketplace, with any firms on the Federal List of Debarred or Suspended Contractors excluded from the program. A firm is eligible to be a “Mentor” firm by demonstrating its commitment and capability to assist in the development of small business protégés.² Small businesses, including veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses, are eligible to be “Protégé” firms in the program.³

H.R. 408 would also encourage the inclusion of HBCUs and minority institutions of higher education in the program, by including these entities in the definition of “Protégé” as it pertains to the program, as well as in the participation data to be included in an annual report to Congress. Both the Department of Defense and the National Aeronautics and Space Administration include HBCUs and “minority serving institutions” among the types of entities that may participate as protégés in their mentor-protégé programs.⁴

Based on a legislative change that required agencies with mentor-protégé programs to seek the Small Business Administration’s (SBA) approval for continued use, SBA authorized DHS to continue operation of the DHS Mentor-Protégé Program for five years commencing on February 20, 2018.⁵ This bill would provide permanent statutory authorization of the DHS Mentor-Protégé Program and expand the categories of eligibility, which would ensure continuation of the program and help increase the pool of qualified vendors for fulfilling DHS contracting needs in order to enhance homeland security.

III. LEGISLATIVE HISTORY

H.R. 408 was introduced by Representative A. Donald McEachin (D–VA–4) on January 21, 2021, with Representatives Bennie Thompson (D–MS–2) and Van Taylor (R–TX–3), and was referred to the House Committee on Homeland Security. The bill was considered in the House of Representatives under suspension of the rules and passed the House on April 20, 2021. The bill was re-

¹Department of Homeland Security, Mentor-Protégé Program (www.dhs.gov/mentor-protége-program) (accessed Oct. 15, 2021).

²Id.

³See FAR 2.101 and FAR 19 for definitions of “small business concern,” and information and references relating to various types of small businesses.

⁴Army Office of Small Business Programs, Historically Black Colleges and Universities (HBCU) Minority Servicing Institutions (MSI) Outreach Program (<https://osbp.army.mil/Programs/HBCU-Minority-Institutions>) (accessed Oct. 15, 2021); National Aeronautics and Space Administration, NASA Mentor-Protégé Program, Eligibility (<https://www.nasa.gov/osbp/mentor-protége-program#Eligibility>) (accessed Oct. 15, 2021).

⁵National Defense Authorization Act of 2013, Pub. L. No. 112–239, Sec. 45 (2013).

ceived in the Senate on April 22, 2021 and was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 408 at a business meeting on July 14, 2021, and ordered the bill reported favorably by voice vote *en bloc* (Senator Scott was recorded as a “No”). Senators present for the vote were: Peters, Hassan, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley.

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

Section 1. Short title

This section provides that the Act may be cited as the “Department of Homeland Security Mentor-Protégé Act of 2021.”

Section 2. Department of Homeland Security mentor-protégé program

Section 2 amends the Homeland Security Act of 2002 (6 U.S.C. 451 et seq.) to add a section establishing a mentor-protégé program within DHS, under which a mentor firm enters into an agreement with a protégé firm to compete for prime contracts and sub-contracts of the Department. The section requires DHS to establish eligibility criteria for the program, as well as application procedures that include the submittal of a description of assistance to be provided by the mentor firm, a schedule with milestones for achieving this assistance, an estimate of the costs to be incurred by the mentor firm, and certain attestations. The section requires the DHS Office of Small and Disadvantaged Business Utilization to notify an applicant to the program of the results of the application within 60 days. The section also requires a minimum duration for a mentor-protégé agreement of 36 months, and allows for certain program benefits for participants.

The section requires DHS to submit an annual report to relevant congressional committees that provides program data as well as an assessment of program results.

The section provides definitions for the terms “historically Black college or university,” “mentor firm,” “minority institution of higher education,” “protégé firm,” and references several Small Business Act definitions.

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 (CBO) 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, September 7, 2021.

Hon. GARY C. PETERS,
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 H.R. 408, the Department of Homeland Security Mentor-Protégé Program Act of 2021.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 408, Department of Homeland Security Mentor-Protégé Program Act of 2021			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 14, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 408 would direct the Department of Homeland Security (DHS) to establish a program for mentor firms to enter into agreements with protégé firms to help them compete for direct contracts and subcontracts with DHS. Large businesses that contract with DHS could apply to be mentor firms, while small businesses, historically black college or universities, or minority institutions of higher education could apply to be protégé firms.

DHS is currently carrying out activities similar to those required by this act, and any new activities required under the legislation would not necessitate substantial action by the department. Thus, CBO estimates that implementing H.R. 408 would not have a significant cost; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002**SEC. 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * *

Sec. 890A. * * *

Sec. 890B. Mentor-protégé program.

* * * * *

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

* * * * *

Subtitle H—Miscellaneous Provisions

* * * * *

SEC. 890A. CYBER CRIMES CENTER, CHILD EXPLOITATION INVESTIGATIONS UNIT, COMPUTER FORENSICS UNIT, AND CYBER CRIMES UNIT.

* * * * *

SEC. 890B. MENTOR-PROTÉGÉ PROGRAM.

(a) *ESTABLISHMENT.*—There is established in the Department a mentor-protégé program (in this section referred to as the ‘Program’) under which a mentor firm enters into an agreement with a protégé firm for the purpose of assisting the protégé firm to compete for prime contracts and subcontracts of the Department.

(b) *ELIGIBILITY.*—The Secretary shall establish criteria for mentor firms and protégé firms to be eligible to participate in the Program, including a requirement that a firm is not included on any list maintained by the Federal Government of contractors that have been suspended or debarred.

(c) *PROGRAM APPLICATION AND APPROVAL.*—

(1) *APPLICATION.*—The Secretary, acting through the Office of Small and Disadvantaged Business Utilization of the Department, shall establish a process for submission of an application jointly by a mentor firm and the protégé firm selected by the

mentor firm. The application shall include each of the following:

(A) A description of the assistance to be provided by the mentor firm, including, to the extent available, the number and a brief description of each anticipated subcontract to be awarded to the protégé firm.

(B) A schedule with milestones for achieving the assistance to be provided over the period of participation in the Program.

(C) An estimate of the costs to be incurred by the mentor firm for providing assistance under the Program.

(D) Attestations that Program participants will submit to the Secretary reports at times specified by the Secretary to assist the Secretary in evaluating the protégé firm's developmental progress.

(E) Attestations that Program participants will inform the Secretary in the event of a change in eligibility or voluntary withdrawal from the Program.

(2) APPROVAL.—Not later than 60 days after receipt of an application pursuant to paragraph (1), the head of the Office of Small and Disadvantaged Business Utilization shall notify applicants of approval or, in the case of disapproval, the process for resubmitting an application for reconsideration.

(3) RESCISSION.—The head of the Office of Small and Disadvantaged Business Utilization may rescind the approval of an application under this subsection if it determines that such action is in the best interest of the Department.

(d) PROGRAM DURATION.—A mentor firm and protégé firm approved under subsection (c) shall enter into an agreement to participate in the Program for a period of not less than 36 months.

(e) PROGRAM BENEFITS.—A mentor firm and protégé firm that enter into an agreement under subsection (d) may receive the following Program benefits:

(1) With respect to an award of a contract that requires a subcontracting plan, a mentor firm may receive evaluation credit for participating in the Program.

(2) With respect to an award of a contract that requires a subcontracting plan, a mentor firm may receive credit for a protégé firm performing as a first tier subcontractor or a subcontractor at any tier in an amount equal to the total dollar value of any subcontracts awarded to such protégé firm.

(3) A protégé firm may receive technical, managerial, financial, or any other mutually agreed upon benefit from a mentor firm, including a subcontract award.

(f) REPORTING.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the head of the Office of Small and Disadvantaged Business Utilization shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Homeland Security and the Committee on Small Business of the House of Representatives a report that—

(1) identifies each agreement between a mentor firm and a protégé firm entered into under this section, including the number of protégé firm participants that are—

- (A) *small business concerns;*
- (B) *small business concerns owned and controlled by veterans;*
- (C) *small business concerns owned and controlled by service-disabled veterans;*
- (D) *qualified HUBZone small business concerns;*
- (E) *small business concerns owned and controlled by socially and economically disadvantaged individuals;*
- (F) *small business concerns owned and controlled by women;*
- (G) *historically Black colleges and universities; and*
- (H) *minority institutions of higher education;*
- (2) *describes the type of assistance provided by mentor firms to protégé firms;*
- (3) *identifies contracts within the Department in which a mentor firm serving as the prime contractor provided subcontracts to a protégé firm under the Program; and*
- (4) *assesses the degree to which there has been—*
 - (A) *an increase in the technical capabilities of protégé firms; and*
 - (B) *an increase in the quantity and estimated value of prime contract and subcontract awards to protégé firms for the period covered by the report.*

(g) **RULE OF CONSTRUCTION.**—*Nothing in this section may be construed to limit, diminish, impair, or otherwise affect the authority of the Department to participate in any program carried out by or requiring approval of the Small Business Administration or adopt or follow any regulation or policy that the Administrator of the Small Business Administration may promulgate, except that, to the extent that any provision of this section (including subsection (h)) conflicts with any other provision of law, regulation, or policy, this section shall control.*

(h) **DEFINITIONS.**—*In this section:*

- (1) **HISTORICALLY BLACK COLLEGE OR UNIVERSITY.**—*The term ‘historically Black college or university’ means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code, as in effect on March 1, 2018.*
- (2) **MENTOR FIRM.**—*The term ‘mentor firm’ means a for-profit business concern that is not a small business concern that—*
 - (A) *has the ability to assist and commits to assisting a protégé to compete for Federal prime contracts and subcontracts; and*
 - (B) *satisfies any other requirements imposed by the Secretary.*
- (3) **MINORITY INSTITUTION OF HIGHER EDUCATION.**—*The term ‘minority institution of higher education’ means an institution of higher education with a student body that reflects the composition specified in section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)).*
- (4) **PROTÉGÉ FIRM.**—*The term ‘protégé firm’ means a small business concern, a historically Black college or university, or a minority institution of higher education that—*
 - (A) *is eligible to enter into a prime contract or subcontract with the Department; and*

(B) satisfies any other requirements imposed by the Secretary.

(5) SMALL BUSINESS ACT DEFINITIONS.—The terms ‘small business concern’, ‘small business concern owned and controlled by veterans’, ‘small business concern owned and controlled by service-disabled veterans’, ‘qualified HUBZone small business concern’, and ‘small business concern owned and controlled by women’ have the meanings given such terms, respectively, under section 3 of the Small Business Act (15 U.S.C. 632). The term ‘small business concern owned and controlled by socially and economically disadvantaged individuals’ has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

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