

113TH CONGRESS
1ST SESSION

S. 1893

To require the Transportation Security Administration to implement best practices and improve transparency with regard to technology acquisition programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2013

Ms. AYOTTE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Transportation Security Administration to implement best practices and improve transparency with regard to technology acquisition programs, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transportation Secu-
5 rity Acquisition Reform Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 “(1) ADMINISTRATION.—The term ‘Administra-
2 tion’ means the Transportation Security Administra-
3 tion.

4 “(2) ADMINISTRATOR.—The term ‘Adminis-
5 trator’ means the Administrator of the Transpor-
6 tation Security Administration.

7 “(3) PLAN.—The term ‘Plan’ means the
8 multiyear technology investment plan developed by
9 the Administrator under section 1611.

10 “(4) SECURITY-RELATED TECHNOLOGY.—The
11 term ‘security-related technology’ means any tech-
12 nology that assists the Administration in the preven-
13 tion of, or defense against, threats to United States
14 transportation systems, including threats to people,
15 property, and information.

16 **“Subtitle B—Transportation Secu-
17 rity Administration Acquisition
18 Improvements**

19 **“SEC. 1611. MULTIYEAR TECHNOLOGY INVESTMENT PLAN.**

20 “(a) IN GENERAL.—The Administrator—

21 “(1) not later than 180 days after the date of
22 the enactment of this subtitle, shall develop and sub-
23 mit to Congress a strategic multiyear technology in-
24 vestment plan, which may include a classified adden-
25 dum to report sensitive transportation security risks,

1 technology vulnerabilities, or other sensitive security
2 information; and

3 “(2) to the extent possible, shall publish the
4 Plan in an unclassified format within the public do-
5 main.

6 “(b) CONSULTATION.—The Administrator shall de-
7 velop the Plan in consultation with—

8 “(1) the Under Secretary for Management;

9 “(2) the Chief Information Officer; and

10 “(3) the Under Secretary for Science and Tech-
11 nology.

12 “(c) APPROVAL.—The Administrator may not publish
13 the Plan under subsection (a)(2) until it has been ap-
14 proved by the Secretary.

15 “(d) CONTENTS OF PLAN.—The Plan shall include—

16 “(1) an analysis of transportation security risks
17 and the associated technology gaps, including con-
18 sideration of the most recent Quadrennial Homeland
19 Security Review under section 707;

20 “(2) a set of transportation security-related
21 technology acquisition needs that—

22 “(A) is prioritized based on risk and gaps
23 identified under paragraph (1); and

1 “(B) includes planned technology programs
2 and projects with defined objectives, goals, and
3 measures;

4 “(3) an analysis of current trends in domestic
5 and international passenger travel;

6 “(4) an identification of currently deployed se-
7 curity-related technologies that are at or near the
8 end of their lifecycle;

9 “(5) an identification of test, evaluation, mod-
10 eling, and simulation capabilities that will be re-
11 quired to support the acquisition of the security-re-
12 lated technologies to meet those needs;

13 “(6) an identification of opportunities for pub-
14 lic-private partnerships, small and disadvantaged
15 company participation, intragovernment collabora-
16 tion, university centers of excellence, and national
17 laboratory technology transfer;

18 “(7) an identification of the Administration’s
19 acquisition workforce needs that will be required for
20 the management of planned security-related tech-
21 nology acquisitions, including consideration of
22 leveraging acquisition expertise of other Federal
23 agencies;

24 “(8) an identification of the security resources,
25 including information security resources, that will be

1 required to protect security-related technology from
2 physical or cyber theft, diversion, sabotage, or at-
3 tack; and

4 “(9) an identification of initiatives to streamline
5 the Administration’s acquisition process and provide
6 greater predictability and clarity to small, medium,
7 and large businesses, including the timeline for test-
8 ing and evaluation.

9 “(e) LEVERAGING THE PRIVATE SECTOR.—To the
10 extent possible, and in a manner that is consistent with
11 fair and equitable practices, the Plan shall—

12 “(1) leverage emerging technology trends and
13 research and development investment trends within
14 the public and private sectors;

15 “(2) incorporate feedback and input received
16 from the private sector through requests for infor-
17 mation, industry days, and other innovative means
18 consistent with the Federal Acquisition Regulation;
19 and

20 “(3) leverage market research conducted by the
21 Under Secretary for Science and Technology to iden-
22 tify technologies that exist or are in development
23 that, with or without adaptation, could be utilized to
24 meet mission needs.

1 “(f) DISCLOSURE.—The Administrator shall include
2 with the Plan a list of any nongovernment persons that
3 contributed to the writing of the Plan.

4 “(g) UPDATE AND REPORT.—Once every 2 years
5 after the initial strategic Plan is submitted to Congress,
6 the Administrator shall submit to Congress—

7 “(1) an update of the Plan; and

8 “(2) a report on the extent to which each secu-
9 rity-related technology acquired by the Administra-
10 tion since the last issuance or update of the Plan is
11 consistent with the planned technology programs
12 and projects identified under subsection (d)(2) for
13 that technology.

14 **“SEC. 1612. ACQUISITION JUSTIFICATION AND REPORTS.**

15 “(a) ACQUISITION JUSTIFICATION.—Before the Ad-
16 ministration implements any security-related technology
17 acquisition, the Administrator, in accordance with the De-
18 partment’s policies and directives, shall determine whether
19 the acquisition is justified by conducting a comprehensive
20 analysis that includes—

21 “(1) an identification of the type and level of
22 risk to transportation security that would be ad-
23 dressed by such technology acquisition;

1 “(2) an assessment of how the proposed acqui-
2 sition aligns to the multiyear technology investment
3 plan developed under section 1611;

4 “(3) a comparison of the total expected lifecycle
5 cost against the total expected quantitative and
6 qualitative benefits to transportation security;

7 “(4) an analysis of alternative security solutions
8 to determine if the proposed technology acquisition
9 is the most effective and cost-efficient solution based
10 on cost-benefit considerations;

11 “(5) an evaluation of the privacy and civil lib-
12 erties implications of the proposed acquisition that
13 includes, to the extent practicable, consultation with
14 organizations that advocate for the protection of pri-
15 vacy and civil liberties, and a determination that the
16 proposed acquisition is consistent with fair informa-
17 tion practice principles issued by the Privacy Officer
18 of the Department; and

19 “(6) confirmation that there are no significant
20 risks to human health and safety posed by the pro-
21 posed acquisition.

22 “(b) REPORTS AND CERTIFICATION TO CONGRESS.—

23 “(1) IN GENERAL.—Not later than the end of
24 the 30-day period preceding the award by the Ad-
25 ministration of a contract for any security-related

1 technology acquisition exceeding \$30,000,000, the
2 Administrator shall submit, to the Committee on
3 Commerce, Science, and Transportation of the Sen-
4 ate and the Committee on Homeland Security of the
5 House of Representatives—

6 “(A) the results of the comprehensive ac-
7 quisition analysis required under this section;
8 and

9 “(B) a certification by the Administrator
10 that the security benefits justify the contract
11 cost.

12 “(2) EXTENSION DUE TO IMMINENT TERRORIST
13 THREAT.—If there is a known or suspected immi-
14 nent threat to transportation security, the Adminis-
15 trator—

16 “(A) may reduce the 30-day period under
17 paragraph (1) to 5 days in order to rapidly re-
18 spond; and

19 “(B) shall provide immediate notice of
20 such imminent threat to the Committee on
21 Commerce, Science, and Transportation of the
22 Senate and the Committee on Homeland Secu-
23 rity of the House of Representatives.

1 **“SEC. 1613. ACQUISITION BASELINE ESTABLISHMENT AND**
2 **REPORTS.**

3 “(a) BASELINE REQUIREMENTS.—

4 “(1) IN GENERAL.—Before the Administration
5 implements any security-related technology acquisi-
6 tion, the appropriate acquisition official of the De-
7 partment shall establish and document a set of for-
8 mal baseline requirements.

9 “(2) CONTENTS.—The baseline requirements
10 under paragraph (1) shall—

11 “(A) include the estimated costs (including
12 lifecycle costs), schedule, and performance mile-
13 stones for the planned duration of the acquisi-
14 tion; and

15 “(B) identify the acquisition risks and a
16 plan for mitigating these risks.

17 “(3) FEASIBILITY.—In establishing the per-
18 formance milestones under paragraph (2)(A), the
19 appropriate acquisition official of the Department, to
20 the extent possible and in consultation with the
21 Under Secretary for Science and Technology, shall
22 ensure that achieving these milestones is techno-
23 logically feasible.

24 “(4) TEST AND EVALUATION PLAN.—The Ad-
25 ministrator, in consultation with the Under Sec-

1 retary for Science and Technology, shall develop a
2 test and evaluation plan that describes—

3 “(A) the activities that will be required to
4 assess acquired technologies against the per-
5 formance milestones established under para-
6 graph (2)(A);

7 “(B) the necessary and cost-effective com-
8 bination of laboratory testing, field testing,
9 modeling, simulation, and supporting analysis
10 to ensure that such technologies meet the Ad-
11 ministration’s mission needs; and

12 “(C) an efficient schedule to ensure that
13 test and evaluation activities are completed
14 without undue delay.

15 “(5) VERIFICATION AND VALIDATION.—The ap-
16 propriate acquisition official of the Department—

17 “(A) subject to subparagraph (B), shall
18 utilize independent reviewers to verify and vali-
19 date the performance milestones and cost esti-
20 mates developed under paragraph (2) for a se-
21 curity-related technology that pursuant to sec-
22 tion 1611(d)(2) has been identified as a high
23 priority need in the most recent multiyear tech-
24 nology investment plan; and

1 “(B) shall ensure that the utilization of
2 independent reviewers does not unduly delay
3 the schedule of any acquisition.

4 “(6) STREAMLINING ACCESS FOR INTERESTED
5 VENDORS.—The Administrator shall establish a
6 streamlined process for an interested vendor of a se-
7 curity-related technology to request and receive ap-
8 propriate access to the baseline requirements and
9 test and evaluation plans that are necessary for the
10 vendor to participate in the acquisitions process for
11 such technology.

12 “(b) REVIEW OF BASELINE REQUIREMENTS AND
13 DEVIATION; REPORT TO CONGRESS.—

14 “(1) REVIEW.—

15 “(A) IN GENERAL.—The appropriate ac-
16 quisition official of the Department shall review
17 and assess each implemented acquisition to de-
18 termine if the acquisition is meeting the base-
19 line requirements established under subsection
20 (a).

21 “(B) TEST AND EVALUATION ASSESS-
22 MENT.—The review shall include an assessment
23 of whether—

24 “(i) the planned testing and evalua-
25 tion activities have been completed; and

1 “(ii) the results of such testing and
2 evaluation demonstrate that the perform-
3 ance milestones are technologically feasible.

4 “(2) REPORT.—Not later than 30 days after
5 making a finding described in clause (i), (ii), or (iii)
6 of subparagraph (A), the Administrator shall submit
7 a report to the Committee on Commerce, Science,
8 and Transportation of the Senate and the Com-
9 mittee on Homeland Security of the House of Rep-
10 resentatives that includes—

11 “(A) the results of any assessment that
12 finds that—

13 “(i) the actual or planned costs exceed
14 the baseline costs by more than 10 per-
15 cent;

16 “(ii) the actual or planned schedule
17 for delivery has been delayed by more than
18 180 days; or

19 “(iii) there is a failure to meet any
20 performance milestone that directly im-
21 pacts security effectiveness;

22 “(B) the cause for such excessive costs,
23 delay, or failure; and

24 “(C) a plan for corrective action.

1 **“SEC. 1614. INVENTORY UTILIZATION.**

2 “(a) IN GENERAL.—Before the procurement of addi-
3 tional quantities of equipment to fulfill a mission need,
4 the Administrator, to the extent practicable, shall utilize
5 any existing units in the Administration’s inventory to
6 meet that need.

7 “(b) TRACKING OF INVENTORY.—

8 “(1) IN GENERAL.—The Administrator shall es-
9 tablish a process for tracking—

10 “(A) the location of security-related equip-
11 ment in such inventory;

12 “(B) the utilization status of security-re-
13 lated technology in such inventory; and

14 “(C) the quantity of security-related equip-
15 ment in such inventory.

16 “(2) INTERNAL CONTROLS.—The Administrator
17 shall implement internal controls to ensure accurate
18 data on security-related technology utilization.

19 “(c) LOGISTICS MANAGEMENT.—

20 “(1) IN GENERAL.—The Administrator shall es-
21 tablish logistics principles for managing inventory in
22 an effective and efficient manner.

23 “(2) LIMITATION ON JUST-IN-TIME LOGIS-
24 TICS.—The Administrator may not use just-in-time
25 logistics if doing so would—

1 “(A) inhibit necessary planning for large-
2 scale delivery of equipment to airports or other
3 facilities; or

4 “(B) unduly diminish surge capacity for
5 response to a terrorist threat.

6 **“SEC. 1615. SMALL BUSINESS CONTRACTING GOALS.**

7 “Not later than 90 days after the date of enactment
8 of this subtitle, and annually thereafter, the Administrator
9 shall submit a report to the Committee on Commerce,
10 Science, and Transportation of the Senate and the Com-
11 mittee on Homeland Security of the House of Representa-
12 tives that includes—

13 “(1) a restatement of the Administration’s pub-
14 lished goals for contracting with small businesses,
15 including small and disadvantaged businesses;

16 “(2) the Administration’s performance record
17 with respect to meeting the goals referred to in
18 paragraph (1) during the preceding fiscal year;

19 “(3) if the goals referred to in paragraph (1)
20 were not met or the Administration’s performance
21 was below the published goals of the Department—

22 “(A) an itemized list of challenges, includ-
23 ing deviations from the Administration’s sub-
24 contracting plans, that contributed to the level

1 of performance during the preceding fiscal year;
2 and

3 “(B) the extent to which contract bundling
4 was a contributing factor to such level of per-
5 formance;

6 “(4) an action plan, with benchmarks, for ad-
7 dressing each of the challenges identified in para-
8 graph (3)(A), which—

9 “(A) was prepared after consultation with
10 the Secretary of Defense and the heads of Fed-
11 eral departments and agencies that achieved
12 their published goals for prime contracting with
13 small and minority owned businesses, including
14 small and disadvantaged businesses, in prior
15 fiscal years; and

16 “(B) identifies policies and procedures that
17 could be incorporated by the Administration in
18 furtherance of achieving the Administration’s
19 published goal for such contracting; and

20 “(5) a status report on the implementation of
21 the action plan that was developed in the preceding
22 fiscal year in accordance with paragraph (4).

1 **“SEC. 1616. CONSISTENCY WITH THE FEDERAL ACQUISITION**
 2 **REGULATION AND DEPARTMENTAL**
 3 **POLICIES AND DIRECTIVES.**

4 “The Administrator shall execute the responsibilities
 5 set forth in this subtitle in a manner consistent with, and
 6 not duplicative of, the Federal Acquisition Regulation and
 7 the Department’s policies and directives.”.

8 (b) **CLERICAL AMENDMENT.**—The table of contents
 9 in section 1(b) of the Homeland Security Act of 2002 is
 10 amended by striking the items relating to title XVI and
 11 inserting the following:

“TITLE XVI—TRANSPORTATION SECURITY

“Subtitle A—General Provisions

“Sec. 1601. Definitions.

“Subtitle B—Transportation Security Administration Acquisition
 Improvements

“Sec. 1611. Multiyear technology investment plan.

“Sec. 1612. Acquisition justification and reports.

“Sec. 1613. Acquisition baseline establishment and reports.

“Sec. 1614. Inventory utilization.

“Sec. 1615. Small business contracting goals.

“Sec. 1616. Consistency with the Federal acquisition regulation and departmental policies and directives.”.

12 (c) **PRIOR AMENDMENTS NOT AFFECTED.**—Nothing
 13 in this section may be construed to affect any amendment
 14 made by title XVI of the Homeland Security Act of 2002
 15 as in effect before the date of the enactment of this Act.

16 **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE REPORTS.**

17 (a) **IMPLEMENTATION OF PREVIOUS RECOMMENDATIONS.**—Not later than 1 year after the date of the enact-
 18

1 ment of this Act, the Comptroller General of the United
2 States shall submit a report to Congress that contains an
3 assessment of the Transportation Security Administra-
4 tion's implementation of recommendations regarding the
5 acquisition of technology that were made by the Govern-
6 ment Accountability Office before the date of the enact-
7 ment of this Act.

8 (b) IMPLEMENTATION OF SUBTITLE B OF TITLE
9 XVI.—Not later than 1 year after the date of the enact-
10 ment of this Act and 3 years thereafter, the Comptroller
11 General of the United States shall submit a report to Con-
12 gress that contains an evaluation of the Transportation
13 Security Administration's progress in implementing sub-
14 title B of title XVI of the Homeland Security Act of 2002
15 (116 Stat. 2312), including any efficiencies, cost savings,
16 or delays that have resulted from such implementation.

17 **SEC. 5. REPORT ON FEASIBILITY OF INVENTORY TRACK-**
18 **ING.**

19 Not later than 90 days after the date of the enact-
20 ment of this Act, the Administrator of the Transportation
21 Security Administration shall submit a report to Congress
22 on the feasibility of tracking transportation security-re-
23 lated technology of the Administration through automated
24 information and data capture technologies.

1 **SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW**
2 **OF TSA'S TEST AND EVALUATION PROCESS.**

3 Not later than 1 year after the date of the enactment
4 of this Act, the Comptroller General of the United States
5 shall submit a report to Congress that includes—

6 (1) an evaluation of the Transportation Secu-
7 rity Administration's testing and evaluation activi-
8 ties related to security-related technologies;

9 (2) information on the extent to which—

10 (A) the execution of such testing and eval-
11 uation activities is aligned, temporally and oth-
12 erwise, with the Administration's acquisition
13 needs, planned procurements, and acquisitions
14 for technology programs and projects; and

15 (B) security-related technologies that have
16 been tested, evaluated, and certified for use by
17 the Administration are not procured by the Ad-
18 ministration, including the reasons for such
19 failure to procure; and

20 (3) recommendations—

21 (A) to improve the efficiency and efficacy
22 of such testing and evaluation activities; and

23 (B) to better align such testing and evalua-
24 tion with the acquisitions process.

1 **SEC. 7. NO ADDITIONAL AUTHORIZATION OF APPROPRIA-**
2 **TIONS.**

3 This Act and the amendments made by this Act shall
4 be carried out using amounts otherwise available for such
5 purpose. No additional funds are authorized to be appro-
6 priated to carry out this Act or such amendments.

○