AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

117TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
117–232

DEPARTMENT OF HOMELAND SECURITY BORDER SUPPORT SERVICES CONTRACTS REVIEW ACT

JANUARY 21, 2022.—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. 5683]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5683) to direct the Under Secretary for Management of the Department of Homeland Security to assess contracts for covered services performed by contractor personnel along the borders of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	3
Background and Need for Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
C.B.O. Estimate, New Budget Authority, Entitlement Authority, and Tax Expenditures	4
Federal Mandates Statement	5
Duplicative Federal Programs	5
Statement of General Performance Goals and Objectives	5
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	5
Advisory Committee Statement	5
Applicability to Legislative Branch	5
Section-by-Section Analysis of the Legislation	5

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Homeland Security Border Support Services Contracts Review Act".

SEC. 2. ASSESSMENT OF CONTRACTS FOR COVERED SERVICES BY THE DEPARTMENT OF HOMELAND SECURITY.

(a) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary for Management of the Department of Homeland Security, in consultation with appropriate officials of the Department, shall submit to the appropriate congressional committees a report on active contracts for covered services of the Department awarded on or before September 30, 2021.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

(A) The criteria used by the Department to determine whether contractor personnel were necessary to assist the Department in carrying out its mission along the United States land border with Mexico.

(B) An analysis of the purpose, quantity, and location of contractor personnel to perform covered services of the Department with respect to effectively—

(i) addressing mission needs along such border; and

(ii) enhancing the capability of Department personnel to perform primary mission responsibilities, including the number of Department personnel not removed from their primary mission responsibilities by reason of the performance of covered services by contractor personnel.

(C) An assessment with respect to the benefits of contractor personnel performing covered services, including whether the performance of such services by contractor personnel is more efficient or effective than the performance of such services by Department employees.

(D) An assessment of opportunities to increase the efficiency of the Department with respect to contracting, including whether Department-wide contract vehicles for covered services would be the most cost effective option for the performance of covered services.

(E) A strategy to improve the procurement and delivery of covered services through contracts during the five-year period beginning on the date of the enactment of this Act to achieve the best value for the Department through the use of full and open competition and to ensure no lapse in the performance of such services.

(F) Recommendations based on findings resulting from the analysis and assessments required in subparagraphs (B) through (D).

(G) Any other information relating to contracts for covered services that the Under Secretary determines to be appropriate.

(b) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Under Secretary for Management shall transmit with the report required under subsection (a) a plan to implement the recommendations and strategy contained in such report to enhance coordination, minimize overlap, and increase cost effectiveness among contracts for covered services.

(2) BRIEFING.—Not later than 180 days after the date on which the Under Secretary for Management submits the report required under paragraph (1) of subsection (a) and the plan required under paragraph (1) and every 180 days thereafter until the plan is fully implemented, the Under Secretary, or the designee of the Under Secretary, shall provide a briefing to the appropriate congressional committees with respect to the status of such implementation.

(c) DEFINITIONS.—In this section:

(1) The term "appropriate congressional committees" means—

(A) the Committee on Homeland Security of the House of Representatives; and

(B) the Committee on Homeland Security and Governmental Affairs of the Senate.

(2) The term "contract for covered services" means a contract (with a total contract value of $50,000,000 or more, inclusive of contract options) relating to the procurement of covered services for the Department of Homeland Security.

(3) The term "covered services" means, with respect to the United States land border with Mexico, any service, including related to border security, provided by a contractor to be used by the Department.

Amend the title so as to read:

A bill to direct the Under Secretary for Management of the Department of Homeland Security to assess contracts for covered services performed by contractor personnel along the United States land border with Mexico, and for other purposes.

PURPOSE AND SUMMARY

H.R. 5683, the "Department of Homeland Security Border Support Services Contracts Review Act," directs the Under Secretary for Management (USM) of the Department of Homeland Security (DHS) to assess contracts for covered services performed by contractor personnel along the border of the United States. This bill requires the USM to submit to Congress a report with recommendations on active contracts utilized for border support services, including a strategy to improve the procurement and delivery of services through such contracts. Additionally, H.R. 5683 also requires the USM to provide Congress with an implementation plan for the recommendations and strategy contained in the report. Lastly, this bill requires the USM, or designee, to brief Congress on the status of the implementation plan.

BACKGROUND AND NEED FOR LEGISLATION

In recent years, the volume of migrant encounters along the U.S.-Mexico border has been heavy, necessitating DHS to secure goods and services from contractors to care for migrants taken into custody by U.S. Customs and Border Protection (CBP).[1] Unfortunately, DHS has had issues with respect to awarding such contracts. For example, the DHS Office of Inspector General (OIG) found that DHS' response to the 2019 surge in migrant encounters on the Southwest border required "forethought, multi-component planning, and a coordinated response, which ultimately did not occur."[2] The OIG found that the surge stretched CBP operations and strained the resources of DHS partners; as a result, there was severe overcrowding and prolonged migrant detention at CBP holding facilities. Despite receiving supplemental funding from Congress to address its operational needs for the surge, by the time CBP contracted for additional facilities to house migrants, the bulk of the surge had passed.

Further, in September 2020, the DHS OIG issued a management alert "to advise the Department of Homeland Security and U.S. Customs and Border Protection (CBP) of the urgency and short timeframe to award a new medical services contract to support operations on the Southwest border."[3] At that time, CBP had less than 30 days before its contract for medical services was set to expire. The OIG stated, "A lapse in this contract could jeopardize the health and safety of migrants in CBP custody, as well as that of U.S. Border Patrol agents, CBP officers, and staff, especially during the current pandemic."[4] Due to planning delays, CBP issued a bridge contract—a noncompetitive contract with the incumbent

[1] John Gramlich and Alissa Scheller, "What's happening at the U.S.-Mexico border in 7 charts," Pew Research Center, (Nov. 9, 2021), available at https://www.pewresearch.org/fact-tank/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/.

[2] "DHS' Fragmented Approach to Immigration Enforcement and Poor Planning Resulted in Extended Migrant Detention during the 2019 Surge (OIG-21-29)," DHS Office of Inspector General, (Mar. 18, 2021), available at https://www.oig.dhs.gov/sites/default/files/assets/2021-03/OIG-21-29-Mar21.pdf.

[3] "Management Alert—CBP Needs to Award A Medical Services Contract Quickly to Ensure No Gap in Services (OIG-20-70)," DHS Office of Inspector General, (Sept. 3, 2020), available at https://www.oig.dhs.gov/sites/default/files/assets/Mga/2020/oig-20-70-sep20-mgmtalert.pdf, at p. 3.

[4] *Id.*

contractor—preventing the government from receiving the benefits of full and open competition.

Having better oversight and knowledge of contract utilization and support needs will help ensure that DHS has the appropriate resources in place to care for migrants and minimize the need to remove DHS personnel from their area of responsibility.

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. 5683:

- On March 17, 2021, the Committee on Homeland Security held a hearing entitled, "The Way Forward on Homeland Security." The Committee received testimony from the Hon. Alejandro Mayorkas, Secretary of Homeland Security.
- On June 10, 2021, the Homeland Security Committee's Border Security, Facilitation, and Operations Subcommittee held a hearing entitled, "Unaccompanied Children at the Border: Federal Response and the Way Forward." The Subcommittee received testimony from Mr. David Shahoulian, Assistant Secretary, Border Security and Immigration, DHS; Mr. Benjamine Huffman, Executive Assistant Commissioner, Enterprise Services, CBP, DHS; Ms. Katherine D. Dueholm, Acting Deputy Assistant Secretary for Western Hemisphere Affairs, Department of State; and Mr. Patrick J. Lechleitner, Acting Executive Associate Director, Homeland Security Investigations, U.S. Immigration and Customs Enforcement, DHS.

COMMITTEE CONSIDERATION

The Committee met on October 26, 2021, a quorum being present, to consider H.R. 5683 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. 5683.

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 con-

tains 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. 5683 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. 5683 is to enhance coordination, minimize overlap, and to increase cost effectiveness among those contracts for covered services performed by contractor personnel along the border of the United States.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

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.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 5683 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 "Department of Homeland Security Border Support Services Contracts Review Act".

Sec. 2. Assessment of Contracts for Covered Services by the Department of Homeland Security.

This section requires that not later than 180 days after the date of the enactment of this Act, the USM for DHS shall submit to the House Committee on Homeland Security and Senate Committee on Homeland Security and Governmental Affairs a report on active contracts with a value of $50 million or more for services related to the United States land border with Mexico awarded on or before September 30, 2021. The required report shall include an analysis of the effectiveness of contracts in meeting mission needs, assess-

ments of the benefits of using contracts and opportunities to increase efficiency, a strategy to improve the procurement and delivery of services through contracts, and recommendations based on findings resulting from the analysis and assessments.

This section also requires that the USM transmit an implementation plan with the required report that includes a plan to implement the recommendations and strategy contained in the report to enhance coordination, minimize overlap, and increase cost effectiveness among contracts.

Further, this section requires that the USM brief the House Committee on Homeland Security and Senate Committee on Homeland Security and Governmental Affairs not later than 180 days after submission of the required report and implementation plan, and every 180 days thereafter until the plan is fully implemented.

○