

COAST GUARD ACQUISITION REFORM ACT OF 2009

JULY 20, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 1665]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1665) to structure Coast Guard acquisition processes and policies, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 1665, the “Coast Guard Acquisition Reform Act of 2009”, strengthens Coast Guard acquisition management processes and establishes personnel-related standards and policies for individuals in the Coast Guard’s acquisition workforce.

BACKGROUND AND NEED FOR LEGISLATION

Coast Guard capital expenditures are funded through the appropriations made by Congress to its Acquisition, Construction, and Improvement (AC&I) account, which funds expenses related to “acquisition, construction, renovation, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto; and maintenance, rehabilitation, lease and operation of facilities and equipment.”¹ The total Coast Guard AC&I appropriation for fiscal year 2009 is just under \$1.5 billion.

The largest single acquisition program funded through the AC&I budget is the Deepwater acquisition program. According to the most recent acquisition program baseline (APB) for the Deepwater

¹ Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110–329).

program—APB 1.1, adopted May 15, 2007—the Deepwater acquisitions are projected to cost a total of \$24 billion and to require 25 years to complete.

The Deepwater acquisition program is the largest single acquisition effort the Coast Guard has ever undertaken and is intended to upgrade or modernize nearly all of its air and surface assets. The acquisition program was formulated by the Coast Guard in the early 1990s. At that time, after assessing its mission needs and measuring these against the obsolescence of its existing technology, the service decided that rather than simply buy single new assets to replace its existing assets, it would pursue a system-of-systems acquisition approach, through which it would acquire an integrated suite of assets that together could provide the “functional capabilities” required to fulfill its mission needs.

Given the complexity of the acquisition effort to be undertaken, the Coast Guard decided that it would follow the example of Department of Defense agencies by engaging a private firm to serve as the Lead Systems Integrator (LSI). The Deepwater LSI was to exercise primary responsibility for managing the development of the system-of-systems—including selecting the individual assets to be included in the system and managing their integration around a common operating picture (real-time displays of operational views that could be shared by all assets and stations). The Coast Guard also decided it would manage the Deepwater acquisitions outside the service’s existing acquisition management structure—a decision that ultimately served to limit the oversight the service was prepared to exercise over the program in its early years.

In June 2002, the Integrated Coast Guard Systems (ICGS) team, comprised of Lockheed Martin and Northrop Grumman, was awarded a \$17 billion, Indefinite Delivery/Indefinite Quantity (IDIQ) contract to serve as the LSI and implement the Deepwater acquisitions; this initial contract extended for five years, and included five additional five-year options.

The requirements for the Deepwater acquisitions that were developed to inform the award of the initial IDIQ in June 2002 had been formulated prior to the terror attacks of September 11, 2001. In 2003, the Coast Guard was transferred from the Department of Transportation to the Department of Homeland Security (DHS) and the Coast Guard began to alter the overall mission requirements for assets produced under the Deepwater IDIQ; these alterations were generally made after the IDIQ had already been awarded.

Almost from the signing of the Deepwater contract, the Coast Guard encountered challenges in managing the LSI. These challenges were enumerated in multiple reports issued by the Government Accountability Office (GAO) and the DHS Office of the Inspector General. One of the over-arching problems identified with the management of the Deepwater IDIQ was a failure by the Coast Guard to develop specific metrics to measure contractor performance or hold the ICGS team accountable for compliance with contract requirements. Additionally, because of its reliance on the management services provided by the LSI, the Coast Guard had only a limited role in identifying the specific assets that were to be built under Deepwater or in controlling the production-related decisions made to meet contract requirements (such as determining the

mix of assets or number of specific assets that would be built to meet requirements). Further, because the effectiveness of the Deepwater procurements was to be assessed at the level of the overall system-of-systems, inadequate testing and evaluation was performed on individual assets. Similarly, the decision to manage the Deepwater contract at the system level meant that none but the largest cost overruns would trigger cost ceiling breaches; cost breaches on individual assets might be too small to register as significant breaches of the initial \$17 billion (and later \$24 billion) overall Deepwater cost baseline.

Several of the individual acquisition efforts undertaken in the early years of Deepwater failed or proved too impractical to pursue. Perhaps the most highly publicized failure was the effort to lengthen the Coast Guard's existing 110-foot patrol boats to 123 feet and install new, upgraded information technology suites into the boats. The original task order for this procurement was issued on August 2, 2002; in June 2005, the Coast Guard decided that the conversion process would be suspended at eight boats because "the converted cutters lacked adequate capabilities to meet their expanded post 9/11 operational requirements."² In November 2006, the eight converted boats were removed from service because of concerns about their operational safety; they have subsequently been de-commissioned. Examinations of the vessels conducted just prior to their removal from service found that they had "significant buckling", "displayed deck cracking and hull deformation", and had "developed shaft alignment problems related to other structure issues".³

Other procurement efforts initiated in the early years of the Deepwater contract, including the first effort to procure a vertical unmanned aerial vehicle and the first effort to develop a Fast Response Cutter (FRC), were never built after failing to pass design or prototype testing. These failures wasted in excess of \$100 million.

On May 19, 2006, the Coast Guard awarded an additional award term totaling 43 months to the ICGS team, which extended the contract through January 2011. Unlike the first contract award, however, this contract extension did not guarantee any quantity of assets to be procured from ICGS.

In February 2007, the Defense Acquisition University (DAU) published a "quick look" study on the Deepwater program, which had been requested by the Coast Guard. A summary of the DAU's findings about the Deepwater program is presented below.

- Many design changes were added to the program even after key engineering milestones had been crossed to respond to the Coast Guard's new mission needs after 9/11;
- Funding provided to the Deepwater effort was often below the levels negotiated in the Coast Guard's contract with ICGS;
- The contract structure of the initial Deepwater contract was inappropriate to the changing missions and requirements of the assets to be acquired under Deepwater and to the systems integration tasks required under the program;

²Press Release, Coast Guard, Coast Guard Suspends Converted Patrol Boat Operations (Nov. 30, 2006) (accessed on March 17, 2009 at <https://www.piersystem.com/go/doc/786/138897/>).

³Id.

- ICGS endeavored to keep work within its own team rather than maximize competition throughout U.S. industry and draw on existing Coast Guard infrastructure;
- There were insufficient numbers of Coast Guard acquisition personnel in place and these personnel had insufficient experience with the management of major systems acquisition efforts; and
- The Coast Guard lacked a management model and management processes adequate for the efficient management of acquisition programs as large as the Deepwater program.⁴

In April 2007, the Coast Guard announced a series of major changes in its management of Deepwater—changes that would also affect its management of all its acquisition efforts. Specifically, Admiral Thad Allen, Commandant of the Coast Guard, announced that the service would:

- Assume the role as lead systems integrator for all Deepwater assets and other major acquisitions as appropriate;
- Assume responsibility for life cycle logistics functions for Deepwater assets;
- Expand the role of the American Bureau of Shipping and other third-parties as appropriate to ensure assets meet design and construction standards;
- Work with the ICGS team to resolve outstanding contract issues pertaining to the National Security Cutter;
- Consider procuring assets directly from prime vendors when this was in the best interests of the government; and,
- Convene regular meetings between the Commandant and the ICGS team to adjudicate and resolve Deepwater contracting issues.⁵

At the same time, the Coast Guard began reorganizing its acquisition management processes.

On July 13, 2007, the Coast Guard created a new Acquisition Directorate (known as CG-9). The Acquisition Directorate re-integrated the Coast Guard's acquisition-related functions into a single unit employing standard processes for managing acquisition efforts. The Directorate is managed by the Assistant Commandant for Acquisition. The Directorate is comprised of program management personnel, contracting management personnel, and personnel with expertise in cost estimation, risk assessment, training and certification, and strategic planning. The Deepwater program is now managed directly by the Acquisition Directorate; the Program Executive Officer for the Deepwater acquisition effort, who simultaneously serves as the Director of Acquisition Programs, is located within the Directorate and reports to the Assistant Commandant for Acquisition.

Currently, the Assistant Commandant for Acquisition reports directly to the Chief of Staff who, in turn, reports to the Vice Commandant, who then reports to the Commandant. On January 22, 2009, DHS requested that the Coast Guard nominate a Component Acquisition Executive (CAE). On March 2, the Coast Guard nomi-

⁴Defense Acquisition University, Quick Look Study: United States Coast Guard Deepwater Program (2007).

⁵Press Release, Coast Guard, Statement by ADM Thad Allen on the Converted 123-Foot Patrol Boats and Changes to the Deepwater Acquisition Program (Apr. 17, 2007)(<https://www.piersystem.com/go/doc/786/154307/>).

nated the Vice Commandant to be the CAE; DHS has not yet finalized the appointment. If the appointment is finalized, the Vice Commandant would have authority over Level III acquisitions and Level II acquisitions, as delegated by DHS.

The Coast Guard has proposed reorganizing its top-level military leadership. Under the proposed reorganization, the Vice Commandant position would become a four-star position (it is currently a three-star position); additionally, the Chief of Staff's position as well as the Atlantic Area and Pacific Area Commander positions would be eliminated and four new three-star positions would be created (each of which would report directly to the Vice Commandant). One of the four Deputy Commandant positions to be created is the Deputy Commandant for Mission Support, who is to have four direct reports:

- Assistant Commandant for Acquisition (which currently is and would remain a 2-star position),
- Chief Information Officer,
- Chief Sustainment Officer (essentially overseeing lifecycle maintenance), and
- Chief Human Resource Officer.

The Coast Guard believes that its projected organization of the Acquisition Directorate—and its placement under the Deputy Commandant for Mission Support—would enable the service to better manage the entire life cycle of an acquired asset.

The Coast Guard issued a “Blueprint for Acquisition Reform” (Blueprint) to guide the implementation of the new policies and procedures it is implementing to strengthen the management of Coast Guard acquisition initiatives and to guide the organization of the Acquisition Directorate. The Blueprint was first issued on July 9, 2007, with the most recent version issued in July 2008. The Blueprint is to be updated in July of each year. The Blueprint sets forth the Coast Guard's plans for organizational alignment and leadership, the development of new policies and procedures, human capital management and development, and information management and stewardship.

The release of the Blueprint and the creation of the Acquisition Directorate are intended to: standardize acquisition procedures within the Coast Guard; ensure that the service is equipped to control procurement-related costs and that acquisition efforts adhere to set schedules; and empower program managers to effectively manage acquisition efforts (previously, program managers were at best “partners” to LSI personnel).

As of December 2008, the Coast Guard indicated that it had assigned a Level III-certified program manager (Level III certification is the highest certification available to a program manager) to each of its 14 Level I acquisitions (under DHS Acquisition Directive 102-01, acquisition efforts are classed as Level I, II, or III depending on their total life-cycle costs—with Level I acquisitions having life-cycle costs at or above \$1 billion). Seven of the Level III-certified program managers assigned to Level I acquisitions were military officers and five were members of the civil service (two program managers were each managing two separate Level I acquisitions). As of February 2009, the Coast Guard had 27 military officers who had achieved a Level III program manager certification,

including three Admirals, 12 Captains, 11 Commanders, and four Lieutenant Commanders.

In 2008, the Coast Guard assigned the Admiral currently serving as the Assistant Commandant for Acquisition (who is a Level III-certified program manager) to be the commander of District 13 (headquartered in Seattle); this assignment was made as part of the Coast Guard's regular process for rotating its personnel. The Program Executive Officer for the Deepwater acquisition effort, also a Level-III certified program manager, was assigned to be the Assistant Commandant for Acquisition. A Captain recently selected for promotion to Rear Admiral who lacked a Level III program manager certification at the time of his selection was named to be the Program Executive Officer for Deepwater. These assignments are to take effect on or about July 1, 2009.

While the Coast Guard has made significant improvements in strengthening its acquisition workforce and implementing policies and procedures that should enable it to more effectively manage acquisition efforts, challenges remain. In a June 2008 report on the Deepwater procurements, the GAO found that the changes in the Deepwater management and the creation of the Acquisition Directorate have "increased accountability" because "Coast Guard project managers and technical experts now hold the greater balance of management responsibility and accountability for program outcomes."⁶ Nonetheless, the GAO found that the Coast Guard still "faces challenges in building a capable government workforce to manage this large acquisition."⁷

Specifically, in the June 2008 report, the GAO indicates that as the Coast Guard assumes responsibility for individual assets, there are some system-level aspects of the program that the service is "not fully positioned to manage."⁸ Additionally, the GAO noted that the Coast Guard confronts an on-going shortage of civilian acquisition staff members (which is a problem throughout the Federal Government), the service lacks an acquisition career path for military personnel, and it continues to rely on contractors for specific types of technical and programmatic expertise.⁹

In the 110th Congress, the Subcommittee held three hearings on the Coast Guard's Deepwater acquisition program. On January 30, 2007, the Subcommittee met to receive a status update on the Deepwater acquisitions. On March 8, 2007, the Subcommittee met to consider the Bush Administration's fiscal year 2008 budget request for the U.S. Coast Guard, and also received testimony from the Coast Guard, the DHS Inspector General and the GAO on the Deepwater acquisition program. On June 12, 2007, the Subcommittee met to receive an initial update from the Coast Guard Commandant on the service's implementation of the changes the Commandant had announced to the management of the Deepwater contract.

On April 18, 2007, the Committee on Transportation and Infrastructure convened a hearing to review the results of an investigation of the Deepwater program conducted by Committee investiga-

⁶GAO, Coast Guard: Change in Course Improves Deepwater Management and Oversight, but Outcome Still Uncertain 3 (2008).

⁷Id.

⁸Id. at 4.

⁹Id. at 13-14.

tive staff. This investigation closely examined the multiple factors that contributed to the failure of the effort to lengthen the 110-foot patrol boats to 123 feet, including limited oversight exercised by Coast Guard acquisition management officials, rigid adherence to schedule, and contractor self-certification.

In the 111th Congress, on March 23, 2009, Chairman Cummings introduced H.R. 1665, the “Coast Guard Acquisition Reform Act of 2009”. On March 24, 2009, the Subcommittee on Coast Guard and Maritime Transportation held a hearing, “Overview of Coast Guard Acquisition Policies and Programs,” to review the changes the service had implemented in its acquisition management processes since 2007, and to examine H.R. 1665.

During that hearing, Rear Admiral Gary Blore, the Assistant Commandant for Acquisition, announced that under an agreement signed the morning of the hearing, all options for extending the Deepwater contract with the ICGS team beyond the date of expiration of the current award, January 24, 2011, had been eliminated.

Admiral Blore also indicated that the current APB for the Deepwater program would not be updated again. Instead, in keeping with the service’s decision to manage Deepwater on an asset-by-asset basis, Admiral Blore explained that the Coast Guard is now working to develop individual APBs for each class of assets to be acquired under Deepwater. Importantly, however, Admiral Blore acknowledged that when the individual APBs that had been approved at the time of the hearing were added to the original cost estimates for those assets that did not yet have individual APBs, the cost of the Deepwater program was projected to exceed \$26 billion. This suggests that cost overruns may continue to plague Coast Guard acquisition efforts.

Admiral Blore also spoke about the importance of providing to the Coast Guard the kinds of authorities to hire trained acquisition professionals and to provide incentives to new hires that other agencies, particularly the Department of Defense, currently have. Further, Admiral Blore indicated that the Coast Guard is moving to create a “quasi career path” in the acquisition field—and he indicated that the service will work to inform younger officers of the kinds of tours and certifications that are available in the acquisition field and to identify the qualifications and professional experiences necessary to prepare an officer for assignment to the senior levels of the Coast Guard’s acquisition management workforce.

Admiral Blore also discussed the requirement changes that led, in part, to the significant cost overruns with the Rescue 21 system, the largest non-Deepwater acquisition effort being conducted by the Coast Guard. Rescue 21 is intended to replace the Coast Guard’s National Distress Response System, which was activated in the 1970s, with an upgraded Very High Frequency-Frequency Modulated (VHF-FM) communications system that will improve the service’s ability to locate mariners in distress, coordinate with Federal, State and local first responders, and reduce communication coverage gaps in coastal areas. The original acquisition baseline for the Rescue 21 project was adopted on April 16, 1999; at that time, the system was projected to cost \$250 million and the acquisition was projected to be completed in fiscal year 2006. The baseline for this project was revised five times between 1999 and 2008. The acquisition baseline now stands at nearly \$1.1 billion and the pro-

jected completion date is fiscal year 2017; this most recent acquisition program baseline was adopted on May 27, 2008.

Mr. John P. Hutton, Director of the GAO's Acquisition and Sourcing Management unit, also testified at the March 24, 2009, Subcommittee hearing. Mr. Hutton commended the Coast Guard's move toward an asset-by-asset management approach, stating it would allow program performance to be measured in more detail and would enable cost and schedule breaches to be identified at a much lower level than was possible when the Deepwater acquisitions were managed at the system-of-systems level. Further, he indicated that the Coast Guard's reorganization of its acquisition directorate and its move away from the use of private sector LSI was putting a more structured and disciplined acquisition approach in place for the Deepwater program.

Mr. Hutton indicated that because of the lack of civilian staff in the acquisition field, the Coast Guard is still relying on contractors in some key positions, such as cost estimation and program management support. Mr. Hutton indicated that over-reliance on contractors in such positions can lead to the performance by these contractors of what are inherently governmental functions. Over-reliance on contractors can also lead to cost increases if government personnel cannot ensure effective management in the government's best interest.

Mr. Hutton also indicated that a key factor in controlling costs is ensuring the effective definition of requirements before an asset acquisition is initiated to ensure that the acquiring agency understands what it is buying and that the requirement can be maintained with limited alteration throughout the acquisition effort, thereby reducing the risk to the government that arises from the modification of requirements during an acquisition effort. He also mentioned that one of the key steps remaining in the development of the Coast Guard's acquisition management capacity is the creation and maintenance of a qualified acquisition workforce.

H.R. 1665 responds directly to the issues that the Committee on Transportation and Infrastructure and the Subcommittee on Coast Guard and Maritime Transportation have examined in five hearings conducted during the 110th and 111th Congresses. It also requires the implementation of acquisition-related policies and procedures and personnel standards that will build on the acquisition reform efforts the service has already undertaken.

SUMMARY OF THE LEGISLATION

TITLE I—RESTRICTION ON USE OF LEAD SYSTEMS INTEGRATORS

Sec. 101. Procurement structure

This section prohibits the use of a LSI beginning 180 days after the date of enactment of the Act. However, the Coast Guard is permitted to continue to use a LSI for the completion of National Security Cutters 2 and 3, the National Distress and Response System Modernization Program (known as Rescue 21), and other on-going acquisitions.

However, all exemptions for the use of a LSI except for National Security Cutters 2 and 3 and the Rescue 21 program expire on September 30, 2011; after that date, no private-sector LSI can be used. The prohibition on the use of a private-sector LSI could take effect

earlier if the Commandant certifies that the Coast Guard has available the personnel and expertise within the service or through the use of contracts with private sector entities or agreements with other Federal agencies to enable it to perform the LSI function itself.

This section also requires full and open competition for contracts issued by the Coast Guard and any LSI employed by the Coast Guard.

TITLE II—COAST GUARD ACQUISITION POLICY

Sec. 201. Operational requirements

This section requires the Coast Guard to establish specific operational requirements for a new acquisition before awarding a production contract for the acquisition. The Coast Guard must also enable a full assessment of the trade-offs among performance, cost, and schedule to be made.

Sec. 202. Required contract terms

This section requires the Commandant to put certain terms in all contracts for acquisitions with costs equal to or exceeding \$10,000,000. The required terms include:

- All certifications regarding contractor performance shall be made by the Coast Guard or an independent third-party; self-certification of compliance with performance requirements is not allowed.
- All contracts must designate the Coast Guard as the final technical authority for all requirements.
- All contracts shall measure the performance of contractors and subcontractors on the status of actual work performed, including the extent to which the work met cost and schedule requirements.
- TEMPEST standards for an asset shall be those in use by the Navy for the type of asset for which the TEMPEST test is required. TEMPEST (not an acronym—it is a formerly classified DOD code word from the 1950s) is the short name referring to investigation, study, and control of compromising emanations from telecommunications and Automated Information Systems equipment. TEMPEST testing is comprised of visual and instrumented inspections to ensure compliance with emission security requirements.
- For contracts for an Offshore Patrol Cutter (a large cutter—but slightly smaller than the National Security Cutters), the contracts shall specify the service life, hull fatigue life, and days underway under specific sea conditions the ship will be built to meet.

Sec. 203. Life-Cycle cost estimates

This section requires the Coast Guard to develop life-cycle cost estimates for projects expected to cost more than \$10 million and to result in the development of assets with service lives of 10 years. In addition, the Coast Guard is required to develop independent life-cycle cost estimates for acquisitions that have total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000. These life-cycle costs estimates must be updated as the acquisition prepares to cross each acquisition milestone.

Sec. 204. Test and evaluation

This section requires the Coast Guard to develop and approve a formal Test and Evaluation Master Plan (TEMP), which will guide all developmental and operational testing on acquisitions with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000.

As part of the TEMP, the service is required to identify and resolve any safety concerns with new assets. A safety concern is defined as any hazard that is likely to cause serious bodily injury or death to a Coast Guard member or that could cause major damage to the asset. If such problems are found before a contract for the production of an asset is issued, they must be resolved before a contract is issued, or, if a contract for any level of production is issued before they are resolved, the safety concerns must be reported to Congress along with an explanation of why the service is proceeding with a contract for any level of production of the asset before the issue is resolved together with an explanation of how it will be resolved. If a safety concern is found in an asset already in some level of production, the service must communicate the concern to Congress and explain how it will be resolved.

Sec. 205. Capability standards

This section imposes requirements on specific asset types, including requiring that: all new vessels other than the National Security Cutter (which is already under construction) be classed by the American Bureau of Shipping; TEMPEST testing be performed by an authorized independent third party; before a contract is signed to resolve the hull fatigue issues with National Security Cutters 1 and 2, the Coast Guard must provide Congress a description of the measures that will be performed and conduct a cost-benefit analysis of the measures; and aircraft be assessed by a third party for airworthiness.

Sec. 206. Acquisition program reports

This section requires the Coast Guard to report to Congress for any acquisition with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000, the key performance parameters the asset will be built to achieve, the systems with which the asset will be interoperable, the anticipated unit cost for the asset, and a detailed schedule for the asset's acquisition process showing when the asset will be completed and when it will be fully deployed.

Sec. 207. Undefinitized contractual actions

This section prohibits the Coast Guard from entering an undefinitized contractual action unless it is approved by the Head of Contracting Activity. Undefinitized contractual actions are procurements for which the contractual terms, specifications, or price are not agreed upon before the performance of the contract is begun.

If an undefinitized contractual action is approved, this section sets specific conditions on such actions, including how much money can be paid to a contractor before the contract is definitized.

Exceptions are provided for contracting actions relating to contingency operations, operations in response to emergency situations,

and operations in response to disasters designated by the President under the Stafford Act.

Sec. 208. Guidance on excess pass-through charges

This section requires the Commandant to issue guidance to ensure that excessive pass-through charges are not paid by the Coast Guard to an LSI for work performed by subcontractors. Excessive pass-through charges are defined as charges to the Federal Government by a contractor or subcontractor that are overhead or profit on work performed by a lower-tier subcontractor other than reasonable charges for the direct costs of managing the lower-tier subcontractors.

Sec. 209. Acquisition of major capabilities: Alternatives analysis

This section requires that before the Coast Guard acquires an asset that is experimental or technically immature or that has total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000, the service must commission from a third party an alternatives analysis of the asset to be acquired. The alternatives analysis must include: an assessment of the technical maturity of the asset; whether different quantities or combinations of assets could meet the service's mission needs; the safety record of the asset; and the full life-cycle costs of the asset.

Sec. 210. Cost overruns and delays

This section specifies that for any acquisition with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000, the Coast Guard must report to Congress when a cost overrun of greater than 10 percent is likely to occur, a delay of more than 180 days is likely to occur, or a failure for a new asset or class of assets is anticipated. The report must include a description of the cause of the reportable event and a plan for fixing the issue.

If an acquisition with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000 is likely to experience a cost breach of more than 20 percent or a delay of more than 12 months, the Coast Guard must certify that the asset is essential to the service, that there are no alternatives to the asset, that new cost or schedule estimates are reasonable, and that the management structure for the asset is adequate.

Sec. 211. Report on former Coast Guard officials employed by contractors to the agency

This section requires the Comptroller General to report annually on those Flag-level officers and Members of the Senior Executive Service who have left the Coast Guard within the past 5 years and are now receiving compensation for employment with a Coast Guard contractor.

A Coast Guard contractor is defined as any person receiving at least \$10,000,000 in contractor awards from the Coast Guard.

Sec. 212. Department of Defense consultation

This section requires the Commandant to make arrangements as appropriate for assistance in contracting and acquisition programming with the Secretary of Defense.

TITLE III—COAST GUARD PERSONNEL

Sec. 301. Chief Acquisition Officer

This section establishes the Chief Acquisition Officer position within the Coast Guard. The section requires that the person appointed to the position be either a Rear Admiral or a civilian member of the Senior Executive Service. It requires that the person appointed to the position have a Level III Program Management certification and 10 years of acquisition experience, of which at least four shall have been spent managing a program with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000. Further, this section requires that all Flag-level officers serving in the Acquisition Directorate meet these same standards. The section lists those types of positions (such as program executive officer, program manager, and deputy program manager) that constitute qualifying experience. These requirements become effective beginning October 1, 2011 (which is the same date when the use of the LSI is fully prohibited).

This section also requires that design and related acquisition issues elevated to the Chief Acquisition Officer for resolution be reported to Congress within 45 days of the elevation.

Sec. 302. Improvements in Coast Guard acquisition management

This section makes a number of changes in the Coast Guard's management of its acquisition personnel and policies, including requiring: that anyone assigned to be the program manager of a program with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000 be a Level III certified program manager; the Commandant to maintain all technical authorities for projects with total acquisition costs exceeding \$100,000,000 or total life-cycle costs exceeding \$300,000,000 and to designate positions in the acquisition workforce and ensure that individuals assigned to these positions have the expertise to carry them out; and further requires the Coast Guard to report annually on the adequacy of its acquisition workforce to meet anticipated acquisition workloads in the coming year. In addition, this section states that no preference for military personnel shall be shown in appointments to the acquisition workforce—and this section requires the Commandant to ensure that appropriate career paths are available for military and civilian personnel in the acquisition workforce. The Coast Guard is required to take into account the need to maintain a balanced workforce in the acquisition field in which women and members of racial and ethnic minorities are appropriately represented.

Finally, the Coast Guard is required to issue guidance for major systems acquisition programs on the qualifications, responsibilities, tenure, and accountability of program managers and to develop a comprehensive strategy to enhance the role of program managers.

Sec. 303. Recognition of Coast Guard personnel for excellence in the acquisition of products and services

This section requires the Commandant to implement a program to recognize excellent performance by individuals and teams that have contributed to the long-term success of a Coast Guard acquisition effort.

Sec. 304. Enhanced status quo officer promotion system

This section provides the Coast Guard the authority to retain and promote officers that have specialized skills to meet the needs of the service. The current Coast Guard promotion system provides the Coast Guard with generalists and does not readily allow for officer specialties.

Sec. 305. Acquisition workforce expedited hiring

This section allows the Commandant to designate acquisition positions as “shortage category positions” and to use the authorities in 5 U.S.C. 3304, 5333, and 5753 to recruit and appoint highly qualified people directly to these positions. This provision sunsets on September 30, 2012.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

H.R. 1665 is based, in part, on legislation considered in the 110th Congress. On June 14, 2007, Representative Cummings introduced H.R. 2722, the “Integrated Deepwater Program Reform Act”. On June 26, 2007, the Subcommittee on Coast Guard and Maritime Transportation met in open session and ordered the bill, as amended, reported favorably to the Committee on Transportation and Infrastructure by voice vote with a quorum present. On June 28, 2007, the Committee on Transportation and Infrastructure met in open session and ordered the bill, as amended, reported favorably to the House by voice vote with a quorum present. On July 30, 2007, the Committee reported the bill, as amended, favorably to the House. H. Rept. 110–270. On July 31, 2007, the House passed H.R. 2722 by a vote of 426–0.

On September 23, 2008, Chairman Cummings introduced H.R. 6999, the “Integrated Deepwater Program Reform Act of 2008”. On September 27, 2008, the House passed H.R. 6999 by voice vote with a quorum present. The Senate did not complete action on the legislation.

In the 111th Congress, Chairman Cummings introduced H.R. 1665 on March 23, 2009. On April 2, 2009, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 1665 or ordering the bill reported. A motion to order H.R. 1665 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to strengthen the management of Coast Guard acquisition processes.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 1665 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 15, 2009.

Hon. JAMES L. OBERSTAR,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1665, the Coast Guard Acquisition Reform Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1665—Coast Guard Acquisition Reform Act of 2009

H.R. 1665 addresses the contracting practices used by the U.S. Coast Guard (USCG) to acquire capital assets such as vessels and aircraft. The legislation would restrict the Coast Guard's reliance on private entities to manage such contracts and would require the agency to revise other procurement practices to rectify problems identified by the Department of Defense, the Department of Homeland Security, and the Government Accountability Office. It also would require that many future acquisitions be open to competition and be subject to specified testing, analysis, and certification re-

quirements. Finally, the bill would require the Coast Guard to hire additional contracting and management personnel and to produce various reports on its acquisition activities.

Assuming appropriation of the necessary amounts, CBO estimates that the USCG would spend less than \$5 million over the next two or three years, mostly to develop life-cycle cost estimates for capital assets. We estimate that other administrative costs for additional required testing and certification would not significantly affect the agency's annual budget. Enactment of the bill would not affect direct spending or revenues.

The contracting reforms required by H.R. 1665 could result in lower procurement expenditures in the future. Much of the long-term savings, however, might occur even in the absence of the legislation because the Coast Guard is already implementing many of the required reforms, including hiring additional contracting personnel. CBO cannot estimate the likely size of cost savings from improving procurement practices or clearly identify what proportion of such savings would be attributable to the legislation and what share would result from changes that the Coast Guard is already implementing under current law.

Any annual costs or savings realized by the Coast Guard as a result of the legislation would depend on future changes in the level of discretionary appropriations for capital acquisitions. Annual funding for Coast Guard acquisition has risen rapidly in recent years—from about \$640 million in fiscal year 2002 to nearly \$1.6 billion to date for 2009. (The 2009 figure includes nearly \$100 million provided by the American Recovery and Reinvestment Act of 2009.) Most of the increase over this period stems from new funding for the Integrated Deepwater Initiative, which will be used to replace many of the agency's vessels, aircraft, and other assets and is expected to cost between \$25 billion to \$30 billion over the next 25 years.

H.R. 1665 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1665 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursu-

ant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 1665 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation 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 (P.L. 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 14, UNITED STATES CODE

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CHAPTER 3—COMPOSITION AND ORGANIZATION

Sec.

41. Grades and ratings.

* * * * *

55. *Chief Acquisition Officer.*

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§55. Chief Acquisition Officer

(a) *ESTABLISHMENT OF CHIEF ACQUISITION OFFICER.*—*There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved) and who meets the qualifications set forth under subsection (b). The Chief Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual's primary duty.*

(b) *QUALIFICATIONS.*—

(1) *The Chief Acquisition Officer and any Flag Officer serving in the Acquisitions Directorate shall be an acquisition professional with a program manager level III certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent in one of the following qualifying positions:*

(A) *Program executive officer.*

(B) *Program manager of a Level 1 or Level 2 acquisition.*

(C) *Deputy program manager of a Level 1 or Level 2 acquisition.*

(D) *Project manager for a Level 1 or Level 2 acquisition.*

(E) *Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.*

(2) *The Commandant shall periodically publish a list of the positions designated under this subsection.*

(c) **AUTHORITY AND FUNCTIONS OF THE CHIEF ACQUISITION OFFICER.**—*The functions of the Chief Acquisition Officer shall include—*

(1) *monitoring the performance of programs and projects on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;*

(2) *maximizing the use of full and open competition at the prime contract and subcontract levels in the acquisition of property, capabilities, assets, and services by the Coast Guard by establishing policies, procedures, and practices that ensure that the Coast Guard receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements, including performance and delivery schedules, at the lowest cost or best value considering the nature of the property, capability, asset, or service procured;*

(3) *making acquisition decisions in concurrence with the technical authority of the Coast Guard, as designated by the Commandant, and consistent with all other applicable laws and decisions establishing procedures within the Coast Guard;*

(4) *ensuring the use of detailed performance specifications in instances in which performance based contracting is used;*

(5) *managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;*

(6) *developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;*

(7) *assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources and management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;*

(8) *developing strategies and specific plans for hiring, training, and professional development; and*

(9) *reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.*

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CHAPTER 11—PERSONNEL

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§ 253. Selection boards; notice of convening; communication with board

(a) Before a board is convened under section 251 of this title, notice of the convening date, the promotion zone to be considered, *and* the officers eligible for consideration[, and the number of officers the board may recommend for promotion] shall be given to the service at large.

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§ 258. Selection boards; information to be furnished boards

(a) *IN GENERAL.*—The Secretary shall furnish the appropriate selection board convened under section 251 of this title with[.]—

(1) * * *

* * * * *

(b) *PROVISION OF DIRECTION AND GUIDANCE.*—

(1) *In addition to the information provided pursuant to subsection (a), the Commandant may furnish the selection board—*

(A) *specific direction relating to the needs of the Coast Guard for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and*

(B) *any other guidance that the Commandant believes may be necessary to enable the board to properly perform its functions.*

(2) *Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title.*

§ 259. Officers to be recommended for promotion

(a) A selection board convened to recommend officers for promotion shall recommend those eligible officers whom the board, *giving due consideration to the needs of the Coast Guard for officers with particular skills so noted in specific direction furnished to the board by the Commandant under section 258 of this title*, considers best qualified of the officers under consideration for promotion. No officer may be recommended for promotion unless he receives the recommendation of at least a majority of the members of a board composed of five members, or at least two-thirds of the members of a board composed of more than five members.

* * * * *

§ 260. Selection boards; reports

(a) * * *

(b) A board convened under section 251 of this title shall certify that, in the opinion of at least a majority of the members if the board has five members, or in the opinion of at least two-thirds of the members if the board has more than five members, the officers recommended for promotion are the best qualified for promotion to

meet the needs of the service (as noted in specific direction furnished the board by the Commandant under section 258 of this title) of those officers whose names have been furnished to the board.

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COMMITTEE CORRESPONDENCE



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

John L. Mica
Ranking Republican Member

David Heynsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

James W. Cron II, Republican Chief of Staff

July 10, 2009

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
176 Ford House Office Building
Washington, D.C. 20515

Dear Chairman Thompson:


I write to you regarding H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009".

I agree that provisions in H.R. 1665 are of jurisdictional interest to the Committee on Homeland Security. I acknowledge that by forgoing a sequential referral, your Committee is not relinquishing its jurisdiction and I will fully support your request to be represented in a House-Senate conference on those provisions over which the Committee on Homeland Security has jurisdiction in H.R. 1665.

This exchange of letters will be inserted in the Committee Report on H.R. 1665 and in the *Congressional Record* as part of the consideration of this legislation in the House.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,


James L. Oberstar, M.C.
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable John L. Mica, Ranking Member
The Honorable Peter T. King, Ranking Member, Committee on Homeland Security
The Honorable John Sullivan, Parliamentarian

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN



PETER T. KING, NEW YORK
RANKING MEMBER

One Hundred Eleventh Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

July 10, 2009

The Honorable James L. Oberstar
Chairman
Committee on Transportation and
Infrastructure
2165 Rayburn Bldg.
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Oberstar:

I write to you regarding H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009."

H.R. 1665 contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, agreeing to waive consideration of this bill should not be construed as the Committee on Homeland Security waiving, altering, or otherwise affecting its jurisdiction over subject matters contained in the bill which fall within its Rule X jurisdiction.

Further, I request your support for the appointment of an appropriate number of Members of the Committee on Homeland Security to be named as conferees during any House-Senate conference convened on H.R. 1665 or similar legislation. I also ask that a copy of this letter and your response be included in the legislative report on H.R. 1665 and in the *Congressional Record* during floor consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

Bennie G. Thompson
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Peter T. King, Ranking Member
The Honorable John Sullivan, Parliamentarian