

110TH CONGRESS
1ST SESSION

S. 924

To strengthen the United States Coast Guard's Integrated Deepwater Program.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2007

Ms. CANTWELL (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To strengthen the United States Coast Guard's Integrated Deepwater Program.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Integrated Deepwater Program Reform Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Procurement structure.
- Sec. 3. Analysis of alternatives.
- Sec. 4. Certification.
- Sec. 5. Contract requirements.
- Sec. 6. Improvements in Coast Guard management.

Sec. 7. Procurement and report requirements.

Sec. 8. GAO review and recommendations.

Sec. 9. Definitions.

1 **SEC. 2. PROCUREMENT STRUCTURE.**

2 (a) IN GENERAL.—

3 (1) USE OF LEAD SYSTEMS INTEGRATOR.—Ex-
4 cept as provided in subsection (b), the United States
5 Coast Guard may not use a private sector entity as
6 a lead systems integrator for procurements under, or
7 in support of, the Integrated Deepwater Program
8 after the date of enactment of this Act.

9 (2) FULL AND OPEN COMPETITION.—The
10 United States Coast Guard shall utilize full and
11 open competition for any other procurement for
12 which an outside contractor is used under, or in sup-
13 port of, the Integrated Deepwater Program after the
14 date of enactment of this Act.

15 (b) EXCEPTIONS.—

16 (1) COMPLETION OF PROCUREMENT BY LEAD
17 SYSTEMS INTEGRATOR.—Notwithstanding subsection
18 (a), the Coast Guard may use a private sector entity
19 as a lead systems integrator—

20 (A) to complete, without modification, any
21 delivery order or task order that was issued to
22 the lead systems integrator on or before the
23 date of enactment of this Act;

24 (B) for procurements of—

1 (i) the HC-130J and the C41SR, and
2 (ii) National Security Cutters or Mar-
3 itime Patrol Aircraft under contract or
4 order for construction as of the date of en-
5 actment of this Act,

6 if the requirements of subsection (c) are met
7 with respect to such procurements; and

8 (C) for the procurement of additional Na-
9 tional Security Cutters or Maritime Patrol Air-
10 craft if the Commandant determines, after con-
11 ducting the analysis of alternatives required by
12 section 3, that—

13 (i) the justifications of FAR 6.3 are
14 met;

15 (ii) the procurement and the use of a
16 private sector entity as a lead systems inte-
17 grator for the procurement is in the best
18 interest of the Federal Government; and

19 (iii) the requirements of subsection (c)
20 are met with respect to such procurement.

21 (2) REPORT ON DECISION-MAKING PROCESS.—

22 If the Coast Guard determines under paragraph (1)
23 that it will use a private sector lead systems inte-
24 grator for a procurement, the Commandant shall
25 transmit a report to the Senate Committee on Com-

1 merce, Science, and Transportation and the House
2 of Representatives Committee on Transportation
3 and Infrastructure notifying the Committees of its
4 determination and explaining the rationale for the
5 determination.

6 (c) LIMITATION ON LEAD SYSTEMS INTEGRATORS.—

7 Neither an entity performing lead systems integrator func-
8 tions for a procurement under, or in support of, the Inte-
9 grated Deepwater Program, nor a Tier 1 subcontractor,
10 for any procurement described in subparagraph (B) or (C)
11 of subsection (b)(1) may have a financial interest below
12 the tier 1 subcontractor level unless—

13 (1) the entity was selected by the Coast Guard
14 through full and open competition for such procure-
15 ment;

16 (2) the procurement was awarded by the lead
17 systems integrator or a subcontractor through full
18 and open competition; or

19 (3) the procurement was awarded by a subcon-
20 tractor through a process over which the lead sys-
21 tems integrator or a Tier 1 subcontractor exercised
22 no control.

23 **SEC. 3. ANALYSIS OF ALTERNATIVES.**

24 (a) IN GENERAL.—Except with respect to a procure-
25 ment described in subparagraph (A) or (B) of section

1 2(b)(1) of this Act, no procurement may be awarded under
2 the Integrated Deepwater Program until an analysis of al-
3 ternatives has been conducted under this section.

4 (b) INDEPENDENT ANALYSIS.—Within 30 days after
5 the date of enactment of this Act, the Commandant shall
6 execute a contract for an analysis of alternatives with a
7 Federally Funded Research and Development Center, an
8 appropriate entity of the Department of Defense, or a
9 similar independent third party entity that has appro-
10 priate acquisition expertise for independent analysis of all
11 of the proposed procurements under, or in support of, the
12 Integrated Deepwater Program, including procurements
13 described in section 2(b)(1)(B), and for any future major
14 changes of such procurements. The Commandant may not
15 contract under this subsection for such an analysis with
16 any entity that has a substantial financial interest in any
17 part of the Integrated Deepwater Program as of the date
18 of enactment of this Act or in any alternative being consid-
19 ered.

20 (c) ANALYSIS.—The analysis of alternatives provided
21 pursuant to the contract under subsection (b) shall in-
22 clude—

23 (1) a discussion of capability, interoperability,
24 and other advantages and disadvantages of the pro-
25 posed procurements;

1 (2) an examination of feasible alternatives;

2 (3) a discussion of key assumptions and vari-
3 ables, and sensitivity to changes in such assumptions
4 and variables;

5 (4) an assessment of technology risk and matu-
6 rity; and

7 (5) a calculation of costs, including life-cycle
8 costs.

9 (d) **REPORT TO CONGRESS.**—As soon as possible
10 after an analysis of alternatives has been completed, the
11 Commandant shall develop a plan for the procurements
12 addressed in the analysis and shall transmit a report de-
13 scribing the plan to the Senate Committee on Commerce,
14 Science, and Transportation and the House of Represent-
15 atives Committee on Transportation and Infrastructure.

16 **SEC. 4. CERTIFICATION.**

17 (a) **IN GENERAL.**—A contract, delivery order, or task
18 order for procurement under, or in support of, the Coast
19 Guard’s Integrated Deepwater Program may not be exe-
20 cuted by the Coast Guard until the Commandant certifies
21 that—

22 (1) appropriate market research has been con-
23 ducted prior to technology development to reduce
24 duplication of existing technology and products;

1 (2) the technology has been demonstrated in a
2 relevant environment;

3 (3) the technology demonstrates a high likeli-
4 hood of accomplishing its intended mission;

5 (4) the technology is affordable when consid-
6 ering the per unit cost and the total procurement
7 cost in the context of the total resources available
8 during the period covered by the Integrated Deep-
9 water Program;

10 (5) the technology is affordable when consid-
11 ering the ability of the Coast Guard to accomplish
12 its missions using alternatives, based on dem-
13 onstrated technology, design, and knowledge;

14 (6) reasonable cost and schedule estimates have
15 been developed to execute the product development
16 and production plan for the technology;

17 (7) funding is available to execute the product
18 development and production plan for the technology;
19 and

20 (8) the technology complies with all relevant
21 policies, regulations, and directives of the Coast
22 Guard.

23 (b) REPORT TO CONGRESS.—The Commandant shall
24 transmit a copy of each certification required under sub-
25 section (a) to the Senate Committee on Commerce,

1 Science, and Transportation and the House of Represent-
2 atives Committee on Transportation and Infrastructure
3 within 30 days after the completion of the certification.

4 **SEC. 5. CONTRACT REQUIREMENTS.**

5 The Commandant shall ensure that any contract, de-
6 livery order, or task order for procurement under, or in
7 support of, the Integrated Deepwater Program executed
8 by the Coast Guard—

9 (1) incorporates provisions that address the rec-
10 ommendations related to award fee determination
11 and award term evaluation made by the Government
12 Accountability Office in its March, 2004, report en-
13 titled Coast Guard’s Deepwater Program Needs In-
14 creased Attention to Management and Contractor
15 Oversight, GAO–04–380, and any subsequent Gov-
16 ernment Accountability Office recommendations rel-
17 evant to the contract terms issued before the date of
18 enactment of this Act, including that any award or
19 incentive fee is tied to program outcomes;

20 (2) provides that certification of any Integrated
21 Deepwater Program procurement for performance,
22 safety, and any other relevant factor will be con-
23 ducted by an independent third party;

24 (3) does not include—

1 (A) for any contract extending the existing
2 Integrated Deepwater Program contract term,
3 minimum requirements for the purchase of a
4 given or determinable number of specific assets;

5 (B) provisions that commit the Coast
6 Guard without express written approval by the
7 Coast Guard;

8 (C) any provision allowing for equitable ad-
9 justment that differs from the Federal Acquisi-
10 tion Regulations; and

11 (4) for any contract extending the existing Inte-
12 grated Deepwater Program contract term, is re-
13 viewed by, and addresses recommendations made by,
14 the Under Secretary of Defense for Acquisition,
15 Technology, and Logistics through the Defense Ac-
16 quisition University.

17 **SEC. 6. IMPROVEMENTS IN COAST GUARD MANAGEMENT.**

18 (a) IN GENERAL.—As soon as practicable after the
19 date of enactment of this Act, the Commandant shall take
20 action to ensure that—

21 (1) the measures contained in the Coast
22 Guard’s report entitled Coast Guard: Blue Print for
23 Acquisition Reform are implemented fully;

24 (2) any additional measures for improved man-
25 agement recommended by the Defense Acquisition

1 University in its Quick Look Study of the United
2 States Coast Guard Deepwater Program, dated Feb-
3 ruary 5, 2007, are implemented;

4 (3) integrated product teams, and all higher-
5 level teams that oversee integrated product teams,
6 are chaired by Coast Guard personnel; and

7 (4) the Assistant Commandant for Engineering
8 and Logistics is designated as the Technical Author-
9 ity for all design, engineering, and technical deci-
10 sions for the Integrated Deepwater Program.

11 (b) TRANSFER.—

12 (1) IN GENERAL.—Section 93(a) of title 14,
13 United States Code, is amended—

14 (A) by striking “and” after the semicolon
15 in paragraph (23);

16 (B) by striking “appropriate.” in para-
17 graph (24) and inserting “appropriate; and”;
18 and

19 (C) by adding at the end thereof the fol-
20 lowing:

21 “(25) notwithstanding any other provision of
22 law, in any fiscal year transfer funds made available
23 for personnel, compensation, and benefits from the
24 appropriation account ‘Acquisition, Construction,
25 and Improvement’ to the appropriation account ‘Op-

1 erating Expenses’ for personnel compensation and
2 benefits and related costs necessary to execute new
3 or existing procurements of the Coast Guard.”.

4 (2) NOTIFICATION.—Within 30 days after mak-
5 ing a transfer under section 93(a)(25) of title 14,
6 United States Code, the Commandant shall notify
7 the Senate Committee on Commerce, Science,
8 Transportation and Infrastructure, the Senate Com-
9 mittee on Appropriations, the House Committee on
10 Transportation and Infrastructure, and the House
11 Committee on Appropriations.

12 **SEC. 7. PROCUREMENT AND REPORT REQUIREMENTS.**

13 (a) SELECTED ACQUISITION REPORTS.—The Com-
14 mandant shall submit to the Senate Committee on Com-
15 merce, Science, and Transportation and the House of Rep-
16 resentatives Committee on Transportation and Infrastruc-
17 ture reports on the Integrated Deepwater Program that
18 contain the same type of information with respect to that
19 Program, to the greatest extent practicable, as the Sec-
20 retary of Defense is required to provide to the Congress
21 under section 2432 of title 10, United States Code, with
22 respect to major defense procurement programs.

23 (b) UNIT COST REPORTS.—Each Coast Guard pro-
24 gram manager under the Coast Guard’s Integrated Deep-
25 water Program shall provide to the Commandant, or the

1 Commandant's designee, reports on the unit cost of assets
2 acquired or modified that are under the management or
3 control of the Coast Guard program manager on the same
4 basis and containing the same information, to the greatest
5 extent practicable, as is required to be included in the re-
6 ports a program manager is required to provide to the
7 service procurement executive designated by the Secretary
8 of Defense under section 2433 of title 10, United States
9 Code, with respect to a major defense procurement pro-
10 gram.

11 (c) REPORTING ON COST OVERRUNS AND DELAYS.—
12 Within 30 days after the Commandant becomes aware of
13 a likely cost overrun or scheduled delay, the Commandant
14 shall transmit a report to the Senate Committee on Com-
15 merce, Science, and Transportation and the House of Rep-
16 resentatives Committee on Transportation and Infrastruc-
17 ture that includes—

18 (1) a description of the known or anticipated
19 cost overrun;

20 (2) a detailed explanation for such overruns;

21 (3) a detailed description of the Coast Guard's
22 plans for responding to such overrun and preventing
23 additional overruns; and

24 (4) a description of any significant delays in
25 procurement schedules.

1 **SEC. 8. GAO REVIEW AND RECOMMENDATIONS.**

2 (a) **AWARD FEE AND AWARD TERM CRITERIA.**—The
3 Coast Guard may not execute a new contract, delivery
4 order, or task order, nor agree to extend the term of an
5 existing contract, with a prime contractor for procurement
6 under, or in support of, the Integrated Deepwater Pro-
7 gram until the Commandant has consulted with the Comp-
8 troller General to ensure that the Government Account-
9 ability Office’s recommendations, in its March, 2004, re-
10 port entitled Coast Guard’s Deepwater Program Needs In-
11 creased Attention to Management and Contractor Over-
12 sight, GAO–04–380, and any subsequent Government Ac-
13 countability Office recommendations issued before the
14 date of enactment of this Act, with respect to award fee
15 and award term criteria have been fully addressed.

16 (b) **OTHER RECOMMENDATIONS.**—The Commandant
17 shall ensure that all other recommendations in that report,
18 and any subsequent recommendations issued before the
19 date of enactment of this Act, are implemented to the
20 maximum extent practicable by the Coast Guard within
21 1 year after the date of enactment of this Act. The Com-
22 mandant shall report to the Senate Committee on Com-
23 merce, Science, and Transportation and the House of Rep-
24 resentatives Committee on Transportation and Infrastruc-
25 ture on the Coast Guard’s progress in implementing such
26 recommendations.

1 (c) GAO REPORTS ON IMPLEMENTATION.—Begin-
2 ning 6 months after the date of enactment of this Act,
3 the Comptroller General shall submit an annual report to
4 the Senate Committee on Commerce, Science, and Trans-
5 portation and the House of Representatives Committee on
6 Transportation and Infrastructure on the Coast Guard’s
7 progress in implementing the Government Accountability
8 Office’s recommendations, in its March, 2004, report enti-
9 tled Coast Guard’s Deepwater Program Needs Increased
10 Attention to Management and Contractor Oversight,
11 GAO–04–380, and any subsequent Government Account-
12 ability Office recommendations issued before the date of
13 enactment of this Act, in carrying out this Act.

14 **SEC. 9. DEFINITIONS.**

15 In this Act:

16 (1) COMMANDANT.—The term “Commandant”
17 means the Commandant of the United States Coast
18 Guard.

19 (2) INTEGRATED DEEPWATER PROGRAM.—The
20 term “Integrated Deepwater Program” means the
21 Integrated Deepwater Systems Program described
22 by the Coast Guard in its Report to Congress on Re-
23 vised Deepwater Implementation Plan, dated March
24 25, 2005, including any subsequent modifications,
25 revisions, or restatements of the Program.

1 (3) PROCUREMENT.—The term “procurement”
2 includes development, production, sustainment,
3 modification, conversion, and missionization.

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