

117TH CONGRESS
2D SESSION

S. 4374

To prevent price gouging at the Department of Defense.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2022

Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To prevent price gouging at the Department of Defense.

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 “Stop Price Gouging
5 the Military Act”.

6 **SEC. 2. STRENGTHENING TRUTH IN NEGOTIATIONS ACT**
7 **PROVISIONS.**

8 (a) REQUIRED COST OR PRICING DATA AND CER-
9 TIFICATION.—Section 3702(a)(1) of title 10, United
10 States Code, is amended by striking “only expected to re-
11 ceive one bid shall be required” and replacing with “only
12 expected to have one offeror, or for which award of a cost-

1 reimbursement contract is contemplated regardless of the
2 number of offers received, shall be required”.

3 (b) EXCEPTIONS.—Section 3703(a) of title 10,
4 United States Code, is amended—

5 (1) in paragraph (1)(A), by striking “adequate
6 competition” and all that follows through “bids” and
7 inserting “adequate price competition, except for the
8 award of a cost-reimbursement contract, that results
9 in at least two responsive and viable competing
10 offerors”; and

11 (2) in paragraph (2), by inserting “based on
12 adequate price competition that results in at least
13 two responsive and responsible offers” after “com-
14 mercial service”.

15 (c) CONFORMING AMENDMENT RELATED TO CIVIL-
16 IAN CONTRACTS.—Section 3503(a)(2) of title 41, United
17 States Code is by inserting after “commercial service” the
18 following: “based on adequate price competition that re-
19 sults in at least two responsive and responsible offers”.

1 **SEC. 3. REVISION OF DEFINITION OF TERM “COMMERCIAL**
 2 **ITEM” FOR PURPOSES OF FEDERAL PRO-**
 3 **CUREMENT STATUTES PROVIDING PROCE-**
 4 **DURES FOR PROCUREMENT OF COMMERCIAL**
 5 **ITEMS.**

6 (a) **ELIMINATION OF “OF A TYPE” CRITERION.—**
 7 Section 103 of title 41, United States Code, is amended
 8 by striking “of a type” each place it appears.

9 (b) **ELIMINATION OF ITEMS AND SERVICES MERELY**
 10 **OFFERED FOR SALE, LEASE, OR LICENSE.—**

11 (1) **ITEMS.—**Section 103(1)(B) of title 41,
 12 United States Code, is amended by striking “, or of-
 13 fered for sale, lease, or license,”.

14 (2) **SERVICES.—**Section 103a(2) of title 41,
 15 United States Code, is amended by striking “offered
 16 and”.

17 **SEC. 4. PROGRESS PAYMENT INCENTIVE PILOT.**

18 (a) **PILOT PROGRAM.—**The Secretary of Defense,
 19 acting through the Under Secretary of Defense for Acqui-
 20 sition and Sustainment, shall establish and implement a
 21 pilot program, to be known as the “Progress Payment In-
 22 centive Pilot Program”, to make accelerated progress pay-
 23 ments contingent upon responsiveness to Department of
 24 Defense goals for effectiveness, efficiency, and increasing
 25 small business contract opportunities.

1 (b) PURPOSE.—The purpose of the pilot program is
2 to reward Department of Defense contractors who meet
3 contract delivery dates, respond to Department solicita-
4 tions for required certified cost or pricing data, meet small
5 business contracting goals, and provide subcontracting op-
6 portunities for AbilityOne contracts.

7 (c) PROGRESS PAYMENTS.—

8 (1) LIMITATIONS FOR LARGE CONTRACTORS.—

9 Except as provided under paragraph (2), under the
10 pilot program, the Department of Defense may not
11 award to large business contractors progress pay-
12 ments in excess of 50 percent.

13 (2) EXCEPTIONS.—The Department of Defense
14 may increase the rate of progress payments, up to
15 a total of 95 percent, by the following percentages:

16 (A) 10 percent if the relevant division of
17 the contractor met contract delivery dates for
18 contract end items and contract data require-
19 ment lists or performance milestone schedule,
20 as the case may be, at least 95 percent of the
21 time during the preceding Government fiscal
22 year.

23 (B) 10 percent if the division does not
24 have open level III or IV corrective action re-
25 quests.

1 (C) 7.5 percent if all applicable contractor
 2 business systems are acceptable, without signifi-
 3 cant deficiencies.

4 (D) 10 percent if at least 95 percent of the
 5 time during the preceding Government fiscal
 6 year, when responding to solicitations that re-
 7 quired submission of certified cost or pricing
 8 data, the division met the due date in the re-
 9 quest for proposal.

10 (E) 5 percent if the contractor discloses
 11 first tier subcontractor data, the prime contrac-
 12 tor's beneficial owners, and total compensation
 13 for recipient executives.

14 (F) 5 percent if the contractor has met its
 15 small business subcontracting goals during the
 16 preceding Government fiscal year.

17 (G) 3 percent if the contractor has pro-
 18 vided subcontracting opportunities for the blind
 19 and severely disabled.

20 (d) DEFINITIONS.—In this section:

21 (1) BENEFICIAL OWNERS.—The term “bene-
 22 ficial owner” has the meaning given the term in sec-
 23 tion 847 of the National Defense Authorization Act
 24 for Fiscal Year 2020 (Public Law 116–92; 133 Stat.
 25 1505; 10 U.S.C. 2509 note).

1 (2) COMPENSATION FOR RECIPIENT EXECU-
 2 TIVES.—The term “compensation for recipient ex-
 3 ecutives” refers to the names and total compensa-
 4 tion of the five most highly compensated officers of
 5 the entity pursuant to section 2(b)(1) of the Federal
 6 Funding Accountability and Transparency Act of
 7 2006 (Public Law 109–282; 31 U.S.C. 6101 note).

8 (3) FIRST TIER SUBCONTRACTOR.—The term
 9 “first tier subcontractor” means a subcontractor
 10 who has a subcontract directly with the prime con-
 11 tractor.

12 (4) LARGE DEFENSE CONTRACTOR.—The term
 13 “large defense contractor” means a contractor
 14 (other than an institute of higher education or a fed-
 15 erally funded research and development center) that
 16 received more than \$10,000,000 in annual revenue
 17 from the Department of Defense contracts or li-
 18 censes in any of the previous three years.

19 (5) PROGRESS PAYMENTS.—The term
 20 “progress payments” means payments provided for
 21 under section 3804 of title 10, United States Code.

22 **SEC. 5. DISCLOSURE BY LARGE DEFENSE CONTRACTORS.**

23 (a) ANNUAL REPORTING.—Not later than 60 days
 24 after the date of the enactment of this Act, the Secretary
 25 of Defense shall amend the Department of Defense Sup-

1 plement to the Federal Acquisition Regulation to provide
2 that large defense contractors shall be required to annu-
3 ally report to the Under Secretary of Defense for Acquisi-
4 tion and Sustainment the following information with re-
5 gard to the covered year, as compared with the year pre-
6 ceding that covered year:

7 (1) The percentage change in the volume of
8 goods or services sold and the percentage change in
9 the average sales price of those goods or services,
10 which shall be broken down by material product cat-
11 egories, when relevant, and presented in a tabular
12 format.

13 (2) The gross margins of the large defense con-
14 tractor, which shall be broken down by material
15 product categories, when relevant, and presented in
16 a tabular format.

17 (3) Presented in tabular format, the share of
18 the increase in revenue of the large defense con-
19 tractor that is attributable to—

20 (A) a change in the cost of goods or serv-
21 ices sold by the large defense contractor; and

22 (B) a change in the volume of goods or
23 services sold by the large defense contractor.

1 (4) The percentage change in the costs of the
2 large defense contractor, which shall be broken down
3 by category and presented in tabular format.

4 (5) In dollars, the change in the costs of the
5 large defense contractor, which shall be presented in
6 tabular format.

7 (6) A detailed narrative disclosure of the pric-
8 ing strategy of the large defense contractor, which
9 shall include—

10 (A) an explanation for any increase in the
11 gross margins of material product categories,
12 including—

13 (i) all material causes for such an in-
14 crease;

15 (ii) an explanation of how each such
16 material cause affected such an increase;
17 and

18 (iii) a description of the relative im-
19 portance of each such material cause with
20 respect to such an increase;

21 (B) an explanation for the decisions made
22 by the large defense contractor with respect to
23 the prices of goods and services sold by the
24 large defense contractor;

1 (C) if the large defense contractor in-
2 creased prices at a rate that was greater than
3 the rate at which the costs incurred by the
4 large defense contractor increased, the rationale
5 and objectives for increasing prices in such a
6 manner; and

7 (D) a description of conditions under
8 which the large defense contractor plans to
9 modify pricing after the date on which the large
10 defense contractor submits the report.

11 (b) PUBLICATION.—The Under Secretary of Defense
12 for Acquisition and Sustainment shall annually publish on
13 a publicly available internet website the previous year's re-
14 ports received under subsection (a).

15 (c) PENALTIES.—A knowing failure to disclose or up-
16 date information in accordance with subsection (a) may
17 result in—

18 (1) entry of the violation in the database for
19 Federal agency contract and grant officers and sus-
20 pension and debarment officials defined in section
21 2313 of title 41, United States Code;

22 (2) imprisonment for not more than 5 years or
23 a fine under title 18, United States Code, or both;

24 (3) a civil fine of not more than \$200,000, de-
25 pending on the extent and gravity of the violation;

1 (4) liability pursuant to section 3729 of title
2 31, United States Code; or

3 (5) suspension or debarment.

4 (d) LARGE DEFENSE CONTRACTOR DEFINED.—In
5 this section, the term “large defense contractor” means
6 a contractor (other than an institute of higher education
7 or a federally funded research and development center)
8 that—

9 (1) received more than \$10,000,000 in annual
10 revenue from the Department of Defense contracts
11 or licenses in any of the previous three years; and

12 (2) earned more than 20 percent of its total an-
13 nual revenue from Department of Defense contracts
14 or licenses in any of the previous three fiscal years.

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