

118TH CONGRESS
1ST SESSION

S. 2049

To prevent price gouging at the Department of Defense.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2023

Ms. WARREN (for herself and Mr. BRAUN) 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 Pentagon Price
5 Gouging 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 for other than
8 the award of a cost-reimbursement contract that re-
9 sults 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 (c) **ADJUSTMENT OF THRESHOLD RELATING TO**
 18 **PRIOR SALES.—**

19 (1) **COMMERCIAL PRODUCTS.—**Section
 20 103(6)(B) of title 41, United States Code, is amend-
 21 ed by striking “substantial quantities” and inserting
 22 “like quantities”.

23 (2) **COMMERCIAL SERVICES.—**Section 103a(2)
 24 of title 41, United States Code, is amended by strik-
 25 ing “substantial quantities” and inserting “like
 26 quantities”.

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

2 (a) PILOT PROGRAM.—The Secretary of Defense,
3 acting through the Under Secretary of Defense for Acqui-
4 sition and Sustainment, shall establish and implement a
5 pilot program, to be known as the “Progress Payment In-
6 centive Pilot Program”, to make accelerated progress pay-
7 ments contingent upon responsiveness to Department of
8 Defense requests for cost or pricing information.

9 (b) PURPOSE.—The purpose of the pilot program is
10 to reward Department of Defense contractors who work
11 with the Department in the pre-award process to prevent
12 excessive costs and establish guardrails against excessive
13 prices.

14 (c) PROGRESS PAYMENTS.—

15 (1) LIMITATIONS FOR TRADITIONAL CONTRAC-
16 TORS.—Under the pilot program, the Department of
17 Defense may not award to traditional business con-
18 tractors progress payments in excess of 50 percent.

19 (2) EXCEPTIONS.—The Department of Defense
20 may increase the rate of progress payments to 80
21 percent if the division of the company provides cer-
22 tified cost or pricing information within 30 days of
23 the Department’s request for the information. The
24 progress payment rate may not exceed 95 percent.

25 (d) DEFINITIONS.—In this section:

1 (1) TRADITIONAL DEFENSE CONTRACTOR.—

2 The term “traditional defense contractor” means a
3 contractor (other than an institute of higher edu-
4 cation) that is currently performing or has currently
5 performed for at least the one-year period preceding
6 the solicitation of sources by the Department of De-
7 fense for the procurement or transaction, any con-
8 tract or subcontract for the Department of Defense
9 that is subject to full coverage under the cost ac-
10 counting standards prescribed pursuant to section
11 1502 of title 41, United States Code, and the regu-
12 lations implementing such section.

13 (2) PROGRESS PAYMENTS.—The term
14 “progress payments” means payments provided for
15 under section 3804 of title 10, United States Code.

16 **SEC. 5. DISCLOSURE BY TRADITIONAL DEFENSE CONTRAC-**
17 **TORS.**

18 (a) ANNUAL REPORTING.—Not later than 60 days
19 after the date of the enactment of this Act, the Secretary
20 of Defense shall amend the Department of Defense Sup-
21 plement to the Federal Acquisition Regulation to provide
22 that traditional contractors shall be required to annually
23 report to the Under Secretary of Defense for Acquisition
24 and Sustainment the following information with regard to

1 the covered year, as compared with the year preceding
2 that covered year:

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

9 (2) The gross margins of the traditional con-
10 tractor, which shall be broken down by material
11 product categories, when relevant, and presented in
12 a tabular format.

13 (3) Presented in tabular format, the share of
14 the increase in revenue of the large defense con-
15 tractor that is attributable to—

16 (A) a change in the cost of goods or serv-
17 ices sold by the traditional defense contractor;
18 and

19 (B) a change in the volume of goods or
20 services sold by the covered issuer.

21 (4) The percentage change in the costs of the
22 traditional contractor, which shall be broken down
23 by category and presented in tabular format.

1 (5) In dollars, the change in the costs of the
2 traditional defense contractor, which shall be pre-
3 sented in tabular format.

4 (6) A detailed narrative disclosure of the pric-
5 ing strategy of the traditional defense contractor,
6 which shall include—

7 (A) an explanation for any increase in the
8 gross margins of material product categories,
9 including—

10 (i) all material causes for such an in-
11 crease;

12 (ii) an explanation of how each such
13 material cause affected such an increase;
14 and

15 (iii) a description of the relative im-
16 portance of each such material cause with
17 respect to such an increase.

18 (B) An explanation for the decisions made
19 by the traditional defense contractor with re-
20 spect to the prices of goods and services sold by
21 the large defense contractor.

22 (C) If the large defense contractor in-
23 creased prices at a rate that was greater than
24 the rate at which the costs incurred by the tra-
25 ditional defense contractor increased, the ra-

1 tionale and objectives for increasing prices in
2 such a manner.

3 (D) A description of conditions under
4 which the large defense contractor plans to
5 modify pricing after the date on which the tra-
6 ditional defense contractor submits the report.

7 (b) PUBLICATION.—The Under Secretary of Defense
8 for Acquisition and Sustainment shall annually publish on
9 a publicly available internet website the previous year’s re-
10 ports received under subsection (a).

11 (c) TRADITIONAL CONTRACTOR DEFINED.—In this
12 section, the term “traditional contractor” means a con-
13 tractor (other than an institute of higher education) that
14 is currently performing or has currently performed for at
15 least the one-year period preceding the solicitation of
16 sources by the Department of Defense for the procure-
17 ment or transaction of any contract or subcontract for the
18 Department of Defense that is subject to full coverage
19 under the cost accounting standards prescribed pursuant
20 to section 1502 of title 41, United States Code, and the
21 regulations implementing such section.

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