

117TH CONGRESS  
2D SESSION

# S. 2049

To prevent price gouging at the Department of Defense.

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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

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## 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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