

117TH CONGRESS
2D SESSION

H. R. 8007

To prevent price gouging at the Department of Defense.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2022

Mr. GARAMENDI introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Oversight and Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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-

1 ceive one bid shall be required” and replacing with “only
2 expected to have one offeror, or for which award of a cost-
3 reimbursement contract is contemplated regardless of the
4 number of offers received, shall be required”.

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

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

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

17 (c) CONFORMING AMENDMENT RELATED TO CIVIL-
18 IAN CONTRACTS.—Section 3503(a)(2) of title 41, United
19 States Code is by inserting after “commercial service” the
20 following: “based on adequate price competition that re-
21 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.

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