To prevent price gouging at the Department of Defense.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To prevent price gouging at the Department of Defense.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stop Price Gouging the Military Act”.

SEC. 2. STRENGTHENING TRUTH IN NEGOTIATIONS ACT PROVISIONS.

(a) REQUIRED COST OR PRICING DATA AND CERT-
IFICATION.—Section 3702(a)(1) of title 10, United States Code, is amended by striking “only expected to re-
ceive one bid shall be required” and replacing with “only expected to have one offeror, or for which award of a cost-
reimbursement contract is contemplated regardless of the number of offers received, shall be required”.

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

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

(2) in paragraph (2), by inserting “based on adequate price competition that results in at least two responsive and responsible offers” after “commercial service”.

(c) CONFORMING AMENDMENT RELATED TO CIVILIAN CONTRACTS.—Section 3503(a)(2) of title 41, United States Code is by inserting after “commercial service” the following: “based on adequate price competition that results in at least two responsive and responsible offers”.
SEC. 3. REVISION OF DEFINITION OF TERM “COMMERCIAL ITEM” FOR PURPOSES OF FEDERAL PROCUREMENT STATUTES PROVIDING PROCEDURES FOR PROCUREMENT OF COMMERCIAL ITEMS.

(a) Elimination of “of a Type” Criterion.—Section 103 of title 41, United States Code, is amended by striking “of a type” each place it appears.

(b) Elimination of Items and Services Merely Offered for Sale, Lease, or License.—

   (1) Items.—Section 103(1)(B) of title 41, United States Code, is amended by striking “, or offered for sale, lease, or license,”.

   (2) Services.—Section 103a(2) of title 41, United States Code, is amended by striking “offered and”.

SEC. 4. PROGRESS PAYMENT INCENTIVE PILOT.

(a) Pilot Program.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish and implement a pilot program, to be known as the “Progress Payment Incentive Pilot Program”, to make accelerated progress payments contingent upon responsiveness to Department of Defense goals for effectiveness, efficiency, and increasing small business contract opportunities.
(b) PURPOSE.—The purpose of the pilot program is to reward Department of Defense contractors who meet contract delivery dates, respond to Department solicitations for required certified cost or pricing data, meet small business contracting goals, and provide subcontracting opportunities for AbilityOne contracts.

(e) PROGRESS PAYMENTS.—

(1) LIMITATIONS FOR LARGE CONTRACTORS.—Except as provided under paragraph (2), under the pilot program, the Department of Defense may not award to large business contractors progress payments in excess of 50 percent.

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

(A) 10 percent if the relevant division of the contractor met contract delivery dates for contract end items and contract data requirement lists or performance milestone schedule, as the case may be, at least 95 percent of the time during the preceding Government fiscal year.

(B) 10 percent if the division does not have open level III or IV corrective action requests.
(C) 7.5 percent if all applicable contractor business systems are acceptable, without significant deficiencies.

(D) 10 percent if at least 95 percent of the time during the preceding Government fiscal year, when responding to solicitations that required submission of certified cost or pricing data, the division met the due date in the request for proposal.

(E) 5 percent if the contractor discloses first tier subcontractor data, the prime contractor’s beneficial owners, and total compensation for recipient executives.

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

(G) 3 percent if the contractor has provided subcontracting opportunities for the blind and severely disabled.

(d) DEFINITIONS.—In this section:

(1) BENEFICIAL OWNERS.—The term “beneficial owner” has the meaning given the term in section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1505; 10 U.S.C. 2509 note).
(2) Compensation for recipient executives.—The term “compensation for recipient executives” refers to the names and total compensation of the five most highly compensated officers of the entity pursuant to section 2(b)(1) of the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282; 31 U.S.C. 6101 note).

(3) First tier subcontractor.—The term “first tier subcontractor” means a subcontractor who has a subcontract directly with the prime contractor.

(4) Large defense contractor.—The term “large defense contractor” means a contractor (other than an institute of higher education or a federally funded research and development center) that received more than $10,000,000 in annual revenue from the Department of Defense contracts or licenses in any of the previous three years.

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

SEC. 5. DISCLOSURE BY LARGE DEFENSE CONTRACTORS.

(a) Annual reporting.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall amend the Department of Defense Sup-
plement to the Federal Acquisition Regulation to provide that large defense contractors shall be required to annually report to the Under Secretary of Defense for Acquisition and Sustainment the following information with regard to the covered year, as compared with the year preceding that covered year:

(1) The percentage change in the volume of goods or services sold and the percentage change in the average sales price of those goods or services, which shall be broken down by material product categories, when relevant, and presented in a tabular format.

(2) The gross margins of the large defense contractor, which shall be broken down by material product categories, when relevant, and presented in a tabular format.

(3) Presented in tabular format, the share of the increase in revenue of the large defense contractor that is attributable to—

(A) a change in the cost of goods or services sold by the large defense contractor; and

(B) a change in the volume of goods or services sold by the large defense contractor.
(4) The percentage change in the costs of the large defense contractor, which shall be broken down by category and presented in tabular format.

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

(6) A detailed narrative disclosure of the pricing strategy of the large defense contractor, which shall include—

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

(2i) all material causes for such an increase;

(ii) an explanation of how each such material cause affected such an increase;

and

(iii) a description of the relative importance of each such material cause with respect to such an increase.

(B) An explanation for the decisions made by the large defense contractor with respect to the prices of goods and services sold by the large defense contractor.
(C) If the large defense contractor increased prices at a rate that was greater than the rate at which the costs incurred by the large defense contractor increased, the rationale and objectives for increasing prices in such a manner.

(D) A description of conditions under which the large defense contractor plans to modify pricing after the date on which the large defense contractor submits the report.

(b) Publication.—The Under Secretary of Defense for Acquisition and Sustainment shall annually publish on a publicly available internet website the previous year’s reports received under subsection (a).

(c) Penalties.—A knowing failure to disclose or update information in accordance with subsection (a) may result in—

(1) entry of the violation in the database for Federal agency contract and grant officers and suspension and debarment officials defined in section 2313 of title 41, United States Code;

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

(3) a civil fine of not more than $200,000, depending on the extent and gravity of the violation;
(4) liability pursuant to section 3729 of title 31, United States Code; or

(5) suspension or debarment.

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

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

(2) earned more than 20 percent of its total annual revenue from Department of Defense contracts or licenses in any of the previous three fiscal years.