117TH CONGRESS
S.

To prevent price gouging at the Department of Defense.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself and Mr. BRAUN) 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 Pentagon Price
Gouging 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 for other than 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”.

(e) Adjustment of Threshold Relating to Prior Sales.—

(1) Commercial Products.—Section 103(6)(B) of title 41, United States Code, is amended by striking “substantial quantities” and inserting “like quantities”.

(2) Commercial Services.—Section 103a(2) of title 41, United States Code, is amended by striking “substantial quantities” and inserting “like quantities”.
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 requests for cost or pricing information.

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

(c) Progress Payments.—

(1) Limitations for Traditional Contractors.—Under the pilot program, the Department of Defense may not award to traditional business contractors progress payments in excess of 50 percent.

(2) Exceptions.—The Department of Defense may increase the rate of progress payments to 80 percent if the division of the company provides certified cost or pricing information within 30 days of the Department’s request for the information. The progress payment rate may not exceed 95 percent.

(d) Definitions.—In this section:
(1) **TRADITIONAL DEFENSE CONTRACTOR.**—

The term “traditional defense contractor” means a contractor (other than an institute of higher education) that is currently performing or has currently performed for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41, United States Code, and the regulations implementing such section.

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

**SEC. 5. DISCLOSURE BY TRADITIONAL 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 Supplement to the Federal Acquisition Regulation to provide that traditional contractors shall be required to annually report to the Under Secretary of Defense for Acquisition and Defense 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 traditional 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 traditional defense contractor; and

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

(4) The percentage change in the costs of the traditional contractor, which shall be broken down by category and presented in tabular format.
(5) In dollars, the change in the costs of the traditional defense contractor, which shall be presented in tabular format.

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

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

(i) 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 traditional 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 traditional defense contractor increased, the ra-
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 traditional 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) Traditional Contractor Defined.—In this section, the term “traditional contractor” means a contractor (other than an institute of higher education) that is currently performing or has currently performed for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41, United States Code, and the regulations implementing such section.