

Stop Price Gouging the Military Act
Senator Elizabeth Warren

Numerous Inspector General reports have found defense contractors regularly charge the military excessive prices, including \$71 for a pin that should have cost less than a nickel and \$80 for a drain pipe segment that should have cost \$1.41.¹ Loopholes in current acquisition laws make it nearly impossible for the Department of Defense to obtain the data necessary to prevent price gouging. The Stop Price Gouging the Military Act would close those loopholes, tie financial incentives for contractors to performance, and provide the Department of Defense the information necessary to prevent future rip-offs.

Section 1 – Title: Stop Price Gouging the Military Act

Section 2 – Strengthen Truth In Negotiations Act Provisions

- Closes a loophole in the law to require contractors to provide the federal government cost or pricing information if there isn't adequate price competition that results in at least two responsive and responsible offers.

Section 3 – Revision of Definition of Term “Commercial Item” for Purposes of Federal Procurement Statutes

- Restores market dynamics to the commercial item definition by adopting an Obama administration proposal to tie to whether a good or service is actually sold to other customers.

Section 4 – Progress Payments Incentive Pilot

- Initiates a Department of Defense pilot first proposed by the Trump administration to tie payments to performance by lowering advanced payments for companies to 50% while providing contractors the opportunity to receive payments up to 95% if they meet certain conditions. Specifically, contractors would be rewarded for:
 - Meeting program schedules and milestones 95% of the time;
 - Not having major outstanding corrective action requests;
 - Having required business systems;
 - Timely responses to requests to provide certified cost or pricing information;
 - Disclosing first tier subcontractor data, beneficial owners, and total executive compensation;
 - Meeting small business subcontracting goals; and
 - Providing subcontracting opportunities for the blind and severely disabled.

Section 5 – Disclosure by Large Defense Contractors

- Mirroring disclosures already required by publicly traded companies, requires large defense contractors to annually share with the Under Secretary of Defense for Acquisition and Sustainment changes in the volume of goods or services sold, changes in the average price, and gross margins.

¹ Nick Schwellenbach, “Leaked Audit: Boeing Overcharged Army Up to 177,000 Percent on Helicopter Spare Parts,” *Project On Government Oversight*, June 28, 2011, <https://www.pogo.org/investigation/2011/06/leaked-audit-boeing-overcharged-army-up-to-177000-percent-on-helicopter-spare-parts/>; Special Inspector General for Iraq Reconstruction, *Quarterly Report and Semiannual Report to the United States Congress*, July 30, 2011. https://cybercemetery.unt.edu/archive/sigir/20131001094140/http://www.sigir.mil/files/quarterlyreports/July2011/Report_-_July_2011.pdf#view=fit

- Requires reports to be publicly posted a year later to enhance public oversight while protecting proprietary information that could undercut competition.
- Creates penalties, including being reported to contractor responsibility databases' contracting officers' review when awarding contracts, imprisonment, civil fines up to \$200,000, liability, or being temporarily or permanently suspended from receiving future contracts for contractors who fail to provide these disclosures.