117TH CONGRESS 2D SESSION

H. R. ______

To prevent price gouging at the Department of Defense.

IN THE HOUSE OF REPRESENTATIVES

Mr. GARAMENDI introduced the following bill; which was referred to the Committee on

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 Gouging Our
5 Military Act”.

6 SEC. 2. STRENGTHENING TRUTH IN NEGOTIATIONS ACT

PROVISIONS.

8 (a) REQUIRED COST OR PRICING DATA AND CERT-
9IFICATION.—Section 3702(a)(1) of title 10, United
10 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.

(c) 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.