

DOD Contractors' Price-Gouging Targeted In Bicameral Bill

By **Nicole Rosenthal**

Law360 (June 10, 2022, 7:58 PM EDT) -- Loopholes that enable price-gouging by military contractors are the target of a bill introduced in the U.S. Senate and House of Representatives requiring stricter price transparency from companies if adequate pricing competition is unavailable.

Introduced by Sen. Elizabeth Warren, D-Mass., and Rep. John Garamendi, D-Calif., on Thursday the "Stop Price Gouging the Military Act" would require military contractors to provide the government with pricing information should it receive less than two responsive and responsible offers. Large defense contractors would also be required to share any changes in the volume of goods or services sold, changes in price averages and gross margins.

In a one-page report, Warren cited excessive prices charged by military contractors, such as \$71 for a pin that should've cost less than a nickel and \$80 for a drain pipe segment valued at \$1.41.

"For far too long, military contractors have been price gouging the Pentagon to make fatter profits, and American taxpayers shouldn't have to foot the bill," Warren said in a statement on Thursday. "The end result is a military budget that is way too large. We need some basic rules on the road to prevent military contractors from price gouging."

The bill — H.R. 8007 in the House and S. 4374 in the Senate — would revise the definition of the term "commercial item" to adopt an Obama-era U.S. Department of Defense proposal to tie commercial item determinations to whether a good or service is sold to other customers.

In addition, a DOD pilot program would be initiated to tie accelerated payments to performance. These payments would be maxed out at 50% for large contractors that received more than \$10 million in annual revenue from DOD contracts or licenses in any of the previous three years. Meanwhile, giving others the chance to receive payments up to 95% if they meet certain criteria such as timely responses to providing cost information, meeting small business subcontracting goals and meeting program schedules.

Penalties, such as reporting to contractor responsibility databases, imprisonment, fines of up to \$200,000 or being temporarily or permanently barred from receiving future contracts, would be imposed on contractors who do not provide disclosures.

"We know that taxpayers and service members are routinely overcharged by defense contractors due to loopholes in current regulations," Rep. Garamendi said in a statement on Thursday. "We cannot allow taxpayer money to be wasted to inflate the bottom lines of giant defense contractors. Our service members need the tools to properly negotiate prices."

The bill follows multiple scandals involving alleged "excess profits" for DOD contractor TransDigm, which was recently asked to return \$20.8 million to the DOD. The ask, penned in April by House Oversight Committee Chairwoman Carolyn Maloney, D-N.Y., and Sen. Chuck Grassley, R-Iowa, was spurred by a report from the DOD's Office of the Inspector General finding that 105 of the 106 types of spare parts it reviewed were not obtained from TransDigm at "fair and reasonable" prices.

House and Senate leaders, as well as the leaders of the Armed Services Committee in the House and Senate, did not immediately respond to a request for comment.

--Editing by JoVona Taylor.

All Content © 2003-2022, Portfolio Media, Inc.