

116TH CONGRESS
2D SESSION

S. 3185

To prohibit the payment of bonuses to contractors for unsatisfactory performance.

IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2020

Ms. ERNST (for herself, Mr. PETERS, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To prohibit the payment of bonuses to contractors for unsatisfactory performance.

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 “Bogus Bonus Ban Act
5 of 2020”.

6 **SEC. 2. LINKING OF AWARD AND INCENTIVE FEES TO CON-**
7 **TRACT OUTCOMES.**

8 (a) GUIDANCE.—Not later than 180 days after the
9 date of the enactment of this Act, the Director of the Of-
10 fice of Management and Budget, in coordination with the

1 heads of Federal departments and agencies, shall issue
2 guidance, with detailed implementation instructions (in-
3 cluding definitions), on the appropriate use of award and
4 incentive fees in department or agency programs.

5 (b) ELEMENTS.—The guidance under subsection (a)
6 shall—

7 (1) ensure that all new contracts using award
8 fees link such fees to outcomes (which shall be de-
9 fined in terms of program cost, schedule, and per-
10 formance);

11 (2) establish criteria for identifying the appro-
12 priate level of officials authorized to approve the use
13 of award and incentive fees in new contracts;

14 (3) describe the circumstances in which con-
15 tractor performance may be judged to be excellent or
16 superior and the percentage of the available award
17 fee which contractors should be paid for such per-
18 formance;

19 (4) establish criteria for determining the per-
20 centage of the available award fee, if any, which con-
21 tractors should be paid for performance that is
22 judged to be acceptable, average, expected, good, or
23 satisfactory;

24 (5) ensure that no award fee may be paid for
25 contractor performance that is judged to be below

1 satisfactory performance or performance that does
2 not meet the basic requirements of the contract;

3 (6) prohibit roll over award fees that are not
4 earned in one award fee period to a subsequent
5 award fee period or periods;

6 (7) ensure that Departments and agencies, not
7 later than 30 days after completion of the require-
8 ment set forth in subsection (d)—

9 (A) collect relevant data on award and in-
10 centive fees paid to contractors and provide for
11 the inclusion of such information, including a
12 listing of each award and incentive fee so paid,
13 on USAspending.gov, the searchable website of
14 government spending established pursuant to
15 section 2(b) of the Federal Funding Account-
16 ability and Transparency Act of 2006 (Public
17 Law 109–206; 31 U.S.C. 6101 note); and

18 (B) have mechanisms in place to evaluate
19 such data on a regular basis; and

20 (8) provide for the development of performance
21 measures to evaluate the effectiveness of award and
22 incentive fees as a tool for improving contractor per-
23 formance and achieving desired program outcomes.

24 (c) RETURN OF UNEARNED BONUSES.—Any funds
25 intended to be awarded as incentive fees that are not paid

1 due to the inability of a contractor to meet the criteria
2 established by this section shall be deobligated and made
3 available for purposes for which the funds are otherwise
4 allowable.

5 (d) INCLUSION OF AWARD FEE AS AWARD TYPE FIL-
6 TER ON USASPENDING.GOV.—The Secretary of the Treas-
7 ury shall include “award fee” as a filter on
8 USAspending.gov.

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