

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.

○