

114TH CONGRESS  
1ST SESSION

# S. 2138

To amend the Small Business Act to improve the review and acceptance of subcontracting plans, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2015

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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## A BILL

To amend the Small Business Act to improve the review and acceptance of subcontracting plans, and for other purposes.

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 “Small Business Sub-  
5 contracting Transparency Act of 2015”.

6 **SEC. 2. TRANSPARENCY IN SUBCONTRACTING GOALS.**

7 Section 8(d)(9) of the Small Business Act (15 U.S.C.  
8 637(d)(9)) is amended—

9 (1) by striking “(9) The failure” and inserting  
10 the following:

1           “(9) MATERIAL BREACH.—The failure”;

2           (2) in subparagraph (A), by striking “sub-  
3           section, or” and inserting “subsection,”;

4           (3) in subparagraph (B), by striking “sub-  
5           contract,” and inserting “subcontract, or”; and

6           (4) by inserting after subparagraph (B) the fol-  
7           lowing:

8                   “(C) assurances provided under paragraph  
9           (6)(E),”.

10 **SEC. 3. AUTHORITY OF THE ADMINISTRATOR OF THE**  
11 **SMALL BUSINESS ADMINISTRATION.**

12           Section 8(d)(11) of the Small Business Act (15  
13 U.S.C. 637(d)(11)) is amended—

14           (1) by striking “(11) In the case of” and insert-  
15           ing the following:

16                   “(11) AUTHORITY OF ADMINISTRATION.—In  
17           the case of”; and

18           (2) in subparagraph (B), by striking “, which  
19           shall be advisory in nature,”.

20 **SEC. 4. IMPROVING SUBCONTRACTING PLANS.**

21           Section 8(d) of the Small Business Act (15 U.S.C.  
22 637(d)) is amended by adding at the end the following:

23                   “(17) REVIEW AND ACCEPTANCE OF SUBCON-  
24           TRACTING PLANS.—

1           “(A) DEFINITION.—In this paragraph, the  
2 term ‘covered small business concerns’ means—  
3           “(i) small business concerns;  
4           “(ii) qualified HUBZone small busi-  
5 ness concerns;  
6           “(iii) small business concerns owned  
7 and controlled by veterans;  
8           “(iv) small business concerns owned  
9 and controlled by service-disabled veterans;  
10           “(v) small business concerns owned  
11 and controlled by socially and economically  
12 disadvantaged individuals, as defined in  
13 paragraph (3)(C); and  
14           “(vi) small business concerns owned  
15 and controlled by women.  
16           “(B) DELAYED ACCEPTANCE OF PLAN.—  
17 Except as provided in subparagraph (E), if a  
18 procurement center representative or commer-  
19 cial market representative determines that a  
20 subcontracting plan required under paragraph  
21 (4) or (5) fails to provide the maximum prac-  
22 ticable opportunity for covered small business  
23 concerns to participate in the performance of  
24 the contract to which the plan applies, the rep-

1           representative may delay acceptance of the plan in  
2           accordance with subparagraph (C).

3           “(C) PROCESS FOR DELAYED ACCEPT-  
4           ANCE.—

5                   “(i) IN GENERAL.—Except as pro-  
6                   vided in clause (ii), a procurement center  
7                   representative or commercial market rep-  
8                   resentative who makes a determination  
9                   under subparagraph (B) with respect to a  
10                  subcontracting plan may delay acceptance  
11                  of the plan for a 30-day period by pro-  
12                  viding written notice of the determination  
13                  to head of the procuring activity of the  
14                  contracting agency that includes rec-  
15                  ommendations for altering the plan to pro-  
16                  vide the maximum practicable opportunity  
17                  described in that subparagraph.

18                   “(ii) EXCEPTION.—In the case of the  
19                  Department of Defense—

20                           “(I) a procurement center rep-  
21                           resentative or commercial market rep-  
22                           resentative who makes a determina-  
23                           tion under subparagraph (B) with re-  
24                           spect to a subcontracting plan may  
25                           delay acceptance of the plan for a 15-

1 day period by providing written notice  
2 of the determination to appropriate  
3 personnel of the Department of De-  
4 fense that includes recommendations  
5 for altering the plan to provide the  
6 maximum practicable opportunity de-  
7 scribed in that subparagraph; and

8 “(II) the authority of a procure-  
9 ment center representative or com-  
10 mercial market representative to delay  
11 acceptance of a subcontracting plan as  
12 provided in subparagraph (B) does  
13 not include the authority to delay the  
14 award or performance of the contract  
15 concerned.

16 “(D) DISAGREEMENTS.—If a procurement  
17 center representative or commercial market rep-  
18 resentative delays the acceptance of a subcon-  
19 tracting plan under subparagraph (C) and does  
20 not reach agreement with the head of the pro-  
21 curing activity of the contracting agency to  
22 alter the plan to provide the maximum prac-  
23 ticable opportunity described in subparagraph  
24 (B) not later than 30 days after the date on  
25 which written notice was provided, the disagree-

1           ment shall be submitted to the head of the con-  
2           tracting agency by the Administrator for a final  
3           determination.

4                   “(E) EXCEPTION.—A procurement center  
5           representative or commercial market represent-  
6           ative may not delay the acceptance of a subcon-  
7           tracting plan if the head of the contracting  
8           agency certifies that the need of the agency for  
9           the supplies or services is of such an unusual  
10          and compelling urgency that the United States  
11          would be seriously injured unless the agency is  
12          permitted to accept the subcontracting plan.”.

13 **SEC. 5. GOOD FAITH COMPLIANCE.**

14          Not later than 270 days after the date of enactment  
15          of this Act, the Administrator of the Small Business Ad-  
16          ministration shall issue regulations providing examples of  
17          activities that would be considered a failure to make a  
18          good faith effort to comply with the requirements imposed  
19          on an entity, other than a small business concern, (as de-  
20          fined in section 3 of the Small Business Act (15 U.S.C.  
21          632)), that is awarded a prime contract containing the  
22          clauses required under paragraphs (4) or (5) of section  
23          8(d) of the Small Business Act (15 U.S.C. 637(d)).

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