

115TH CONGRESS  
2D SESSION

# H. R. 6367

To amend the Small Business Act to specify what credit is given for certain subcontractors and to provide a dispute process for non-payment to subcontractors, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2018

Mr. LAWSON of Florida introduced the following bill; which was referred to the Committee on Small Business

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## A BILL

To amend the Small Business Act to specify what credit is given for certain subcontractors and to provide a dispute process for non-payment to subcontractors, 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 “Incentivizing Fairness  
5 in Subcontracting Act”.

6 **SEC. 2. SMALL BUSINESS LOWER-TIER SUBCONTRACTING.**

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

1           (1) by amending paragraph (16) to read as fol-  
2           lows:

3           “(16) CREDIT FOR CERTAIN SMALL BUSINESS  
4           CONCERN SUBCONTRACTORS.—

5           “(A) IN GENERAL.—For purposes of deter-  
6           mining whether or not a prime contractor has  
7           attained the percentage goals specified in para-  
8           graph (6)—

9           “(i) if the subcontracting goals per-  
10          tain only to a single contract with the Fed-  
11          eral agency, the prime contractor may elect  
12          to receive credit for small business con-  
13          cerns performing as first tier subcontrac-  
14          tors or subcontractors at any tier pursuant  
15          to the subcontracting plans required under  
16          paragraph (6)(D) in an amount equal to  
17          the dollar value of work awarded to such  
18          small business concerns; and

19          “(ii) credit is not permitted for sub-  
20          contracts at any tier that are to be re-  
21          ported under a commercial plan or a De-  
22          partment of Defense comprehensive sub-  
23          contracting plan.

1           “(B) COLLECTION AND REVIEW OF DATA  
2 ON SUBCONTRACTING PLANS.—The head of  
3 each contracting agency shall ensure that—

4           “(i) the agency collects and reports  
5 data on the extent to which contractors of  
6 the agency meet the goals and objectives  
7 set forth in subcontracting plans submitted  
8 pursuant to this subsection; and

9           “(ii) the agency periodically reviews  
10 data collected and reported pursuant to  
11 subparagraph (A) for the purpose of en-  
12 suring that such contractors comply in  
13 good faith with the requirements of this  
14 subsection and subcontracting plans sub-  
15 mitted by the contractors pursuant to this  
16 subsection.

17           “(C) RULE OF CONSTRUCTION.—Nothing  
18 in this paragraph shall permit lower-tier sub-  
19 contracting goaling requirements to prime con-  
20 tractors that are eligible to receive lower-tier  
21 subcontracting credit under this paragraph.

22           “(D) DEFINITIONS.—For purposes of this  
23 paragraph:

24           “(i) COMMERCIAL PLAN.—The term  
25 ‘commercial plan’ has the meaning give

1           that term under section 19.701 of the Fed-  
2           eral Acquisition Regulation.

3           “(ii)    COMPREHENSIVE    SUBCON-  
4           TRACTING PLAN.—The term ‘comprehen-  
5           sive subcontracting plan’ has the meaning  
6           given that term under section 252.219–  
7           7004 of the Defense Federal Acquisition  
8           Regulation Supplement.”; and

9           (2) by adding at the end the following:

10          “(18) DISPUTE PROCESS FOR NON-PAYMENT TO  
11          SUBCONTRACTORS.—

12               “(A) NOTICE TO AGENCY.—With respect  
13               to a contract with a Federal agency, a subcon-  
14               tractor of a prime contractor on such contract  
15               may, if the subcontractor has not received pay-  
16               ment for work performed within 90 days of the  
17               completion of such work, notify the Office of  
18               Small and Disadvantaged Business Utilization  
19               (‘OSDBU’) of the Federal agency of such lack  
20               of payment, if such notice is provided to the  
21               agency within the 15-day period following the  
22               end of such 90 days.

23               “(B) AGENCY DETERMINATION.—Upon re-  
24               ceipt of a notice described under clause (i), the  
25               OSDBU shall verify whether such lack of pay-

1           ment has occurred and determine whether such  
2           lack of payment is due to an undue restriction  
3           placed on the prime contractor by an action of  
4           the Federal agency.

5           “(C) CURE PERIOD.—If the OSDBU  
6           verifies the lack of payment under clause (ii)  
7           and determines that such lack of payment is  
8           not due to an action of the Federal agency, the  
9           OSDBU shall notify the prime contractor and  
10          provide the prime contractor with a 15-day pe-  
11          riod in which the prime contractor may make  
12          the payment owed to the subcontractor.

13          “(D) RESULT OF NONPAYMENT.—If, after  
14          notifying the prime contractor under clause  
15          (iii), the OSDBU determines that the prime  
16          contractor has not fully paid the amount owed  
17          within the 15-day cure period described under  
18          clause (iii), the OSDBU shall ensure that such  
19          failure to pay is reflected in the Contractor Per-  
20          formance Assessment Reporting system.”.

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