

## Union Calendar No. 733

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6367

[Report No. 115-942]

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

SEPTEMBER 12, 2018

Additional sponsors: Mr. KELLY of Pennsylvania, Ms. VELÁZQUEZ, and Miss GONZÁLEZ-COLÓN of Puerto Rico

SEPTEMBER 12, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 13, 2018]

# **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—*

9            *(1) by amending paragraph (16) to read as fol-*  
10 *lows:*

11            *“(16) CREDIT FOR CERTAIN SMALL BUSINESS*  
12 *CONCERN SUBCONTRACTORS.—*

13            *“(A) IN GENERAL.—For purposes of deter-*  
14 *mining whether or not a prime contractor has*  
15 *attained the percentage goals specified in para-*  
16 *graph (6)—*

17            *“(i) if the subcontracting goals pertain*  
18 *only to a single contract with the Federal*  
19 *agency, the prime contractor may elect to*  
20 *receive credit for small business concerns*  
21 *performing as first tier subcontractors or*  
22 *subcontractors at any tier pursuant to the*  
23 *subcontracting plans required under para-*  
24 *graph (6)(D) in an amount equal to the*

1           *dollar value of work awarded to such small*  
2           *business concerns; and*

3           “(ii) if the subcontracting goals per-  
4           tain to more than one contract with one or  
5           more Federal agencies, or to one contract  
6           with more than one Federal agency, the  
7           prime contractor may only count first tier  
8           subcontractors that are small business con-  
9           cerns.

10           “(B) *COLLECTION AND REVIEW OF DATA ON*  
11           *SUBCONTRACTING PLANS.—The head of each con-*  
12           *tracting agency shall ensure that—*

13           “(i) the agency collects and reports  
14           data on the extent to which contractors of  
15           the agency meet the goals and objectives set  
16           forth in subcontracting plans submitted  
17           pursuant to this subsection; and

18           “(ii) the agency periodically reviews  
19           data collected and reported pursuant to sub-  
20           paragraph (A) for the purpose of ensuring  
21           that such contractors comply in good faith  
22           with the requirements of this subsection and  
23           subcontracting plans submitted by the con-  
24           tractors pursuant to this subsection.

1           “(C) *RULE OF CONSTRUCTION.*—*Nothing in*  
2 *this paragraph shall permit lower-tier subcon-*  
3 *tracting goaling requirements of prime contrac-*  
4 *tors that are eligible to receive lower-tier subcon-*  
5 *tracting credit under this paragraph.”; and*  
6 *(2) by adding at the end the following:*

7           “(18) *DISPUTE PROCESS FOR NON-PAYMENT TO*  
8 *SUBCONTRACTORS.*—

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

20           “(B) *AGENCY DETERMINATION.*—

21           “(i) *IN GENERAL.*—*Upon receipt of a*  
22 *notice described under subparagraph (A),*  
23 *the OSDBU shall verify whether such lack*  
24 *of payment has occurred and determine*  
25 *whether such lack of payment is due to an*

1            *undue restriction placed on the prime con-*  
2            *tractor by an action of the Federal agency.*

3            *“(ii) RESPONSE DURING DETERMINA-*  
4            *TION.—During the period in which the*  
5            *OSDBU is making the determination under*  
6            *clause (i), the prime contractor may re-*  
7            *spond to both the subcontractor and the*  
8            *OSDBU with relevant verifying documenta-*  
9            *tion to either prove payment or allowable*  
10           *status of nonpayment.*

11           *“(C) CURE PERIOD.—If the OSDBU*  
12           *verifies the lack of payment under subparagraph*  
13           *(B) and determines that such lack of payment is*  
14           *not due to an action of the Federal agency, the*  
15           *OSDBU shall notify the prime contractor and*  
16           *provide the prime contractor with a 15-day pe-*  
17           *riod in which the prime contractor may make*  
18           *the payment owed to the subcontractor.*

19           *“(D) RESULT OF NONPAYMENT.—If, after*  
20           *notifying the prime contractor under subpara-*  
21           *graph (C), the OSDBU determines that the*  
22           *prime contractor has not fully paid the amount*  
23           *owed within the 15-day cure period described*  
24           *under subparagraph (C), the OSDBU shall en-*  
25           *sure that such failure to pay is reflected in the*

1            *Contractor Performance Assessment Reporting*  
2            *system.”.*

3    **SEC. 3. MAINTENANCE OF RECORDS WITH RESPECT TO**  
4            **CREDIT UNDER A SUBCONTRACTING PLAN.**

5            *Section 8(d)(6) of the Small Business Act (15 U.S.C.*  
6    *637(d)(6)) is amended—*

7            *(1) by redesignating subparagraphs (G) and (H)*  
8            *as subparagraphs (H) and (I), respectively; and*

9            *(2) by inserting after subparagraph (F) the fol-*  
10          *lowing:*

11            *“(G) a recitation of the types of records the suc-*  
12          *cessful offeror or bidder will maintain to demonstrate*  
13          *that procedures have been adopted to substantiate the*  
14          *credit the successful offeror or bidder will elect to re-*  
15          *ceive under paragraph (16)(A)(i);”.*

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