

116TH CONGRESS
1ST SESSION

H. R. 227

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2019

Ms. VELÁZQUEZ (for herself and Mr. KELLY of Mississippi) introduced the following bill; which was referred to the Committee on Small Business

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 subcontract-
14 ors or subcontractors at any tier pursuant
15 to the subcontracting plans required under
16 paragraph (6)(D) in an amount equal to
17 the total dollar value of any subcontracts
18 awarded to such small business concerns;
19 and

20 “(ii) if the subcontracting goals per-
21 tain to more than one contract with one or
22 more Federal agencies, or to one contract
23 with more than one Federal agency, the
24 prime contractor may only receive credit

1 for first tier subcontractors that are small
2 business concerns.

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

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

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

19 “(C) RULE OF CONSTRUCTION.—Nothing
20 in this paragraph shall be construed to allow a
21 Federal agency to establish a goaling require-
22 ment for lower-tier subcontractors of a prime
23 contractor that is eligible to receive lower-tier
24 subcontracting credit under this paragraph”;
25 and

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

2 “(18) DISPUTE PROCESS FOR NON-PAYMENT TO
3 SUBCONTRACTORS.—

4 “(A) NOTICE TO AGENCY.—With respect
5 to a contract with a Federal agency, a subcon-
6 tractor of a prime contractor on such contract
7 may, if the subcontractor has not received pay-
8 ment for performance on such contract within
9 30 days of the completion of such performance,
10 notify the Office of Small and Disadvantaged
11 Business Utilization (‘OSDBU’) of the Federal
12 agency and the prime contractor of such lack of
13 payment, if such notice is provided to the agen-
14 cy within the 15-day period following the end of
15 such 30 days.

16 “(B) AGENCY DETERMINATION.—

17 “(i) IN GENERAL.—Upon receipt of a
18 notice described under subparagraph (A),
19 the OSDBU shall verify whether such lack
20 of payment has occurred and determine
21 whether such lack of payment is due to an
22 undue restriction placed on the prime con-
23 tractor by an action of the Federal agency.

24 “(ii) RESPONSE DURING DETERMINA-
25 TION.—During the period in which the

1 OSDBU is making the determination
2 under clause (i), the prime contractor may
3 respond to both the subcontractor and the
4 OSDBU with relevant verifying docu-
5 mentation to either prove payment or al-
6 lowable status of nonpayment.

7 “(C) CURE PERIOD.—If the OSDBU
8 verifies the lack of payment under subpara-
9 graph (B) and determines that such lack of
10 payment is not due to an action of the Federal
11 agency, the OSDBU shall notify the prime con-
12 tractor and provide the prime contractor with a
13 15-day period in which the prime contractor
14 may make the payment owed to the subcon-
15 tractor.

16 “(D) RESULT OF NONPAYMENT.—If, after
17 notifying the prime contractor under subpara-
18 graph (C), the OSDBU determines that the
19 prime contractor has not fully paid the amount
20 owed within the 15-day cure period described
21 under subparagraph (C), the OSDBU shall en-
22 sure that such failure to pay is reflected in the
23 Contractor Performance Assessment Reporting
24 system (or any successor system).”.

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

3 Section 8(d)(6) of the Small Business Act (15 U.S.C.
4 637(d)(6)) is amended—

5 (1) by redesignating subparagraphs (G) and
6 (H) as subparagraphs (H) and (I), respectively (and
7 conforming the margins accordingly); and

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

10 “(G) a recitation of the types of records the
11 successful offeror or bidder will maintain to dem-
12 onstrate that procedures have been adopted to sub-
13 stantiate the credit the successful offeror or bidder
14 will elect to receive under paragraph (16)(A)(i);”.

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