

116TH CONGRESS
1ST SESSION

H. R. 227

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2019

Received; read twice and referred to the Committee on Small Business and
Entrepreneurship

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Incentivizing Fairness
3 in Subcontracting Act”.

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

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

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

9 “(16) CREDIT FOR CERTAIN SMALL BUSINESS
10 CONCERN SUBCONTRACTORS.—

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

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

1 “(ii) if the subcontracting goals per-
2 tain to more than one contract with one or
3 more Federal agencies, or to one contract
4 with more than one Federal agency, the
5 prime contractor may only receive credit
6 for first tier subcontractors that are small
7 business concerns.

8 “(B) COLLECTION AND REVIEW OF DATA
9 ON SUBCONTRACTING PLANS.—The head of
10 each contracting agency shall ensure that—

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

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

24 “(C) RULE OF CONSTRUCTION.—Nothing
25 in this paragraph shall be construed to allow a

1 Federal agency to establish a goaling require-
2 ment for lower-tier subcontractors of a prime
3 contractor that is eligible to receive lower-tier
4 subcontracting credit under this paragraph”;
5 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
10 to 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 performance on such contract within
14 30 days of the completion of such performance,
15 notify the Office of Small and Disadvantaged
16 Business Utilization (‘OSDBU’) of the Federal
17 agency and the prime contractor of such lack of
18 payment, if such notice is provided to the agen-
19 cy within the 15-day period following the end of
20 such 30 days.

21 “(B) AGENCY DETERMINATION.—

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

1 whether such lack of payment is due to an
2 undue restriction placed on the prime con-
3 tractor by an action of the Federal agency.

4 “(ii) RESPONSE DURING DETERMINA-
5 TION.—During the period in which the
6 OSDBU is making the determination
7 under clause (i), the prime contractor may
8 respond to both the subcontractor and the
9 OSDBU with relevant verifying docu-
10 mentation to either prove payment or al-
11 lowable status of nonpayment.

12 “(C) CURE PERIOD.—If the OSDBU
13 verifies the lack of payment under subpara-
14 graph (B) and determines that such lack of
15 payment is not due to an action of the Federal
16 agency, the OSDBU shall notify the prime con-
17 tractor and provide the prime contractor with a
18 15-day period in which the prime contractor
19 may make the payment owed to the subcon-
20 tractor.

21 “(D) RESULT OF NONPAYMENT.—If, after
22 notifying the prime contractor under subpara-
23 graph (C), the OSDBU determines that the
24 prime contractor has not fully paid the amount
25 owed within the 15-day cure period described

1 under subparagraph (C), the OSDBU shall en-
 2 sure that such failure to pay is reflected in the
 3 Contractor Performance Assessment Reporting
 4 system (or any successor system).”.

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

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

9 (1) by redesignating subparagraphs (G) and
 10 (H) as subparagraphs (H) and (I), respectively (and
 11 conforming the margins accordingly); and

12 (2) by inserting after subparagraph (F) the fol-
 13 lowing:

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

Passed the House of Representatives January 8,
 2019.

Attest:

KAREN L. HAAS,

Clerk.