

116TH CONGRESS
1ST SESSION

S. 2853

To amend the Small Business Act to provide interim partial payment to small business contractors that request an equitable adjustment due to a change in the terms of a construction contract, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2019

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

A BILL

To amend the Small Business Act to provide interim partial payment to small business contractors that request an equitable adjustment due to a change in the terms of a construction contract, 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 Pay-
5 ment for Performance Act of 2019”.

1 **SEC. 2. EQUITABLE ADJUSTMENTS TO CONSTRUCTION**
2 **CONTRACTS.**

3 (a) IN GENERAL.—The Small Business Act (15
4 U.S.C. 631 et seq.) is amended by inserting after section
5 15 the following:

6 **“SEC. 15A. EQUITABLE ADJUSTMENTS TO CONSTRUCTION**
7 **CONTRACTS.**

8 “(a) REQUEST FOR AN EQUITABLE ADJUSTMENT.—

9 “(1) IN GENERAL.—A small business concern
10 performing a construction contract that was award-
11 ed by an agency may submit a request for an equi-
12 table adjustment to the contracting officer of the
13 agency if the contracting officer directs a change in
14 the terms of the contract performance without the
15 agreement of the small business concern.

16 “(2) REQUIREMENTS.—A request submitted
17 under paragraph (1) shall—

18 “(A) be timely made pursuant to the terms
19 of the contract; and

20 “(B) specify the estimated amount re-
21 quired to cover additional costs resulting from
22 the change in the terms of the contract per-
23 formance.

24 “(b) AMOUNT.—Upon receipt of a request for equi-
25 table adjustment under subsection (a), the agency shall
26 provide to the small business concern an interim partial

1 payment in an amount that is not less than 50 percent
2 of the estimated amount under subsection (a)(2)(B).

3 “(c) LIMITATION.—Any interim partial payment
4 made under this section shall not be deemed to be an ac-
5 tion to definitize the request for an equitable adjustment.

6 “(d) FLOW-DOWN OF INTERIM PARTIAL PAYMENT
7 AMOUNTS.—

8 “(1) PAYMENT TO FIRST TIER SUBCONTRACTOR
9 OR SUPPLIER.—A small business concern that re-
10 quests an equitable adjustment under this section
11 shall pay to a first tier subcontractor or supplier the
12 portion of each interim partial payment received that
13 is attributable to the increased costs of performance
14 incurred by the first tier subcontractor or supplier
15 due to the change in the terms of the contract per-
16 formance.

17 “(2) PAYMENT TO OTHER SUBCONTRACTOR OR
18 SUPPLIER.—A first tier subcontractor or supplier
19 that receives a portion of an interim partial payment
20 under this section shall pay to a subcontractor or
21 supplier at any tier the appropriate portion of the
22 payment.”.

23 (b) IMPLEMENTATION.—The Administrator of the
24 Small Business Administration shall implement the re-
25 quirements of this section not later than the earlier of—

1 (1) the first day of the first full fiscal year be-
2 ginning after the date of enactment of this Act; or

3 (2) October 1, 2021.

○