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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R.

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

Ms. VELÁZQUEZ introduced the following bill; which was referred to the Committee on _____

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”.

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

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

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

6 “(16) CREDIT FOR CERTAIN SMALL BUSINESS
7 CONCERN SUBCONTRACTORS.—

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

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

23 “(ii) if the subcontracting goals per-
24 tain to more than one contract with one or
25 more Federal agencies, or to one contract
26 with more than one Federal agency, the

1 prime contractor may only receive credit
2 for first tier subcontractors that are small
3 business concerns.

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

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

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

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

1 subcontracting credit under this paragraph”;
2 and
3 (2) by adding at the end the following:

4 “(18) DISPUTE PROCESS FOR NON-PAYMENT TO
5 SUBCONTRACTORS.—

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

18 “(B) AGENCY DETERMINATION.—

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

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

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

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

1 Contractor Performance Assessment Reporting
2 system (or any successor 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
8 (H) as subparagraphs (H) and (I), respectively (and
9 conforming the margins accordingly); and

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

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