

115TH CONGRESS
2D SESSION

H. R. 6367

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

JULY 13, 2018

Mr. LAWSON of Florida 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 dollar value of work awarded to such
18 small business concerns; and

19 “(ii) credit is not permitted for sub-
20 contracts at any tier that are to be re-
21 ported under a commercial plan or a De-
22 partment of Defense comprehensive sub-
23 contracting plan.

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

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

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

17 “(C) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph shall permit lower-tier sub-
19 contracting goaling requirements to prime con-
20 tractors that are eligible to receive lower-tier
21 subcontracting credit under this paragraph.

22 “(D) DEFINITIONS.—For purposes of this
23 paragraph:

24 “(i) COMMERCIAL PLAN.—The term
25 ‘commercial plan’ has the meaning give

1 that term under section 19.701 of the Fed-
2 eral Acquisition Regulation.

3 “(ii) COMPREHENSIVE SUBCON-
4 TRACTING PLAN.—The term ‘comprehen-
5 sive subcontracting plan’ has the meaning
6 given that term under section 252.219-
7 7004 of the Defense Federal Acquisition
8 Regulation Supplement.”; and

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

10 “(18) DISPUTE PROCESS FOR NON-PAYMENT TO
11 SUBCONTRACTORS.—

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

23 “(B) AGENCY DETERMINATION.—Upon re-
24 ceipt of a notice described under clause (i), the
25 OSDBU shall verify whether such lack of pay-

1 ment has occurred and determine whether such
2 lack of payment is due to an undue restriction
3 placed on the prime contractor by an action of
4 the Federal agency.

5 “(C) CURE PERIOD.—If the OSDBU
6 verifies the lack of payment under clause (ii)
7 and determines that such lack of payment is
8 not due to an action of the Federal agency, the
9 OSDBU shall notify the prime contractor and
10 provide the prime contractor with a 15-day pe-
11 riod in which the prime contractor may make
12 the payment owed to the subcontractor.

13 “(D) RESULT OF NONPAYMENT.—If, after
14 notifying the prime contractor under clause
15 (iii), the OSDBU determines that the prime
16 contractor has not fully paid the amount owed
17 within the 15-day cure period described under
18 clause (iii), the OSDBU shall ensure that such
19 failure to pay is reflected in the Contractor Per-
20 formance Assessment Reporting system.”.

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