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.

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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

SEPTEMBER --, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 13, 2018]
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.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. SMALL BUSINESS LOWER-TIER SUBCONTRACTING.

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

(1) by amending paragraph (16) to read as follows:

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

“(A) IN GENERAL. — For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

“(i) if the subcontracting goals pertain only to a single contract with the Federal agency, the prime contractor may elect to receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (6)(D) in an amount equal to the
dollar value of work awarded to such small business concerns; and 

“(ii) if the subcontracting goals pertain to more than one contract with one or more Federal agencies, or to one contract with more than one Federal agency, the prime contractor may only count first tier subcontractors that are small business concerns.

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

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

“(ii) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.
“(C) Rule of Construction.—Nothing in this paragraph shall permit lower-tier subcontracting goaling requirements of prime contractors that are eligible to receive lower-tier subcontracting credit under this paragraph.”; and

(2) by adding at the end the following:

“(18) Dispute process for non-payment to subcontractors.—

“(A) Notice to agency.—With respect to a contract with a Federal agency, a subcontractor of a prime contractor on such contract may, if the subcontractor has not received payment for work performed within 90 days of the completion of such work, notify the Office of Small and Disadvantaged Business Utilization (‘OSDBU’) of the Federal agency and the prime contractor of such lack of payment, if such notice is provided to the agency within the 15-day period following the end of such 90 days.

“(B) Agency determination.—

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

“(ii) **Response during determination.**—During the period in which the
**OSDBU** is making the determination under
clause (i), the prime contractor may re-
spond to both the subcontractor and the
**OSDBU** with relevant verifying documenta-
tion to either prove payment or allowable
status of nonpayment.

“(C) **Cure period.**—If the **OSDBU**
verifies the lack of payment under subparagraph
(B) and determines that such lack of payment is
not due to an action of the Federal agency, the
**OSDBU** shall notify the prime contractor and
provide the prime contractor with a 15-day pe-
riod in which the prime contractor may make
the payment owed to the subcontractor.

“(D) **Result of nonpayment.**—If, after
notifying the prime contractor under subpara-
graph (C), the **OSDBU** determines that the
prime contractor has not fully paid the amount
owed within the 15-day cure period described
under subparagraph (C), the **OSDBU** shall en-
sure that such failure to pay is reflected in the
SEC. 3. MAINTENANCE OF RECORDS WITH RESPECT TO CREDIT UNDER A SUBCONTRACTING PLAN.

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

(1) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(2) by inserting after subparagraph (F) the following:

“(G) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate that procedures have been adopted to substantiate the credit the successful offeror or bidder will elect to receive under paragraph (16)(A)(i);”.