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.

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 total dollar value of any subcontracts 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 receive credit
for 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 en-
suring that such contractors comply in
good faith with the requirements of this
subsection and subcontracting plans sub-
mitted by the contractors pursuant to this
subsection.

“(C) RULE OF CONSTRUCTION.—Nothing
in this paragraph shall be construed to allow a
Federal agency to establish a goaling require-
ment for lower-tier subcontractors of a prime
contractor that is 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 subcon-
tractor of a prime contractor on such contract
may, if the subcontractor has not received pay-
ment for performance on such contract within
30 days of the completion of such performance,
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 agen-
cy within the 15-day period following the end of
such 30 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 respond to both the subcontractor and the OSDBU with relevant verifying documentation 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 period in which the prime contractor may make the payment owed to the subcontractor.

“(D) Result of nonpayment.—If, after notifying the prime contractor under subparagraph (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 ensure that such failure to pay is reflected in the
Contractor Performance Assessment Reporting system (or any successor system).”.

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 conforming the margins accordingly); 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);”.