

**AMENDMENT TO H.R. 5013, AS REPORTED**  
**OFFERED BY MR. KANJORSKI OF PENNSYLVANIA**

At the end of the bill, add the following new title  
(and conform the table of contents accordingly):

1           **TITLE V—CONSTRUCTION**  
2                   **QUALITY ASSURANCE**

3   **SEC. 501. SHORT TITLE.**

4           This title may be cited as the “Construction Quality  
5 Assurance Act of 2010”.

6   **SEC. 502. FINDINGS.**

7           Congress finds the following:

8                   (1) In the construction industry, specialty sub-  
9 contractors now perform the majority of construc-  
10 tion work, in certain cases 100 percent of the work,  
11 under the management of a prime contractor, mak-  
12 ing the subcontractors’ price and performance the  
13 key determinant in the overall cost of construction  
14 projects, including those performed for the Federal  
15 Government.

16                   (2) Detrimental practices known as “bid shop-  
17 ping” and “bid peddling” exist in the construction  
18 industry, including construction projects for the  
19 Federal Government.

1           (3) “Bid shopping” occurs when a contractor,  
2           after award of a contract, contracts with subcontractors  
3           at a price less than the quoted price of the sub-  
4           contractor upon which the contractor’s fixed bid  
5           price was based, in order to increase the contractor’s  
6           profit on the project without any benefit to the enti-  
7           ty for which the contract is being performed.

8           (4) “Bid peddling” occurs when a subcontractor  
9           that is not selected for inclusion in a contractor’s  
10          team seeks to induce the contractor, after award of  
11          the contract, to substitute the subcontractor for an-  
12          other subcontractor whose bid price was reflected in  
13          the successful bid of the contractor by offering to re-  
14          duce its price for performance of the specified work,  
15          suggesting that the previous offer of the subcon-  
16          tractor was padded or incorrect.

17          (5) Bid shopping and bid peddling—

18                (A) threaten the integrity of the competi-  
19                tive bid system for construction that benefits  
20                the Federal Government, the construction in-  
21                dustry, and the economy of the United States  
22                as a whole;

23                (B) compromise national security by pro-  
24                moting uncertainty about which contractors ac-

1 tually perform work on critical infrastructure  
2 projects;

3 (C) deprive taxpayers of the benefits of full  
4 and open competition among prospective con-  
5 tractors and subcontractors for the performance  
6 of Federal construction projects;

7 (D) expose Federal construction projects to  
8 the dangers of substandard performance, sub-  
9 stitution of lower quality materials, and other  
10 detrimental cost-cutting practices by an unscru-  
11 pulous substituted subcontractor; and

12 (E) can be effectively deterred in Federal  
13 construction by modifying the Federal Acquisi-  
14 tion Regulation to require bid listing, which is  
15 the practice of requiring each offeror for a Fed-  
16 eral construction contract to list the sub-  
17 contractors whose performance is reflected in  
18 the bid price, procedures for the substitution of  
19 listed subcontractors for good cause, and other  
20 deterrents to abuse.

21 **SEC. 503. DEFINITIONS.**

22 In this title:

23 (1) **CONTRACT.**—The term “contract” means  
24 any contract with the Federal Government, exceed-  
25 ing \$1,000,000 in amount, for the construction, al-

1        teration, or repair of any public building or public  
2        work of the United States.

3            (2) CONTRACTOR.—The term “contractor”  
4        means an individual or entity that has been awarded  
5        or is seeking to be awarded a construction contract  
6        by the Federal Government.

7            (3) SUBCONTRACTOR.—The term “subcon-  
8        tractor” means an individual or entity that sub-  
9        contracts with a contractor in an amount in excess  
10       of \$100,000 for work on a contract.

11 **SEC. 504. REQUIREMENTS REGARDING SUBCONTRACTORS**  
12                            **FOR FEDERAL CONTRACTORS ON CONSTRUC-**  
13                            **TION PROJECTS.**

14        (a) REQUIREMENT TO LIST SUBCONTRACTORS.—

15            (1) IN GENERAL.—Each solicitation by an exec-  
16        utive agency for the procurement of construction in  
17        an amount in excess of \$1,000,000 shall require  
18        each bidder to submit as part of its bid the name,  
19        location of the place of business, and nature of the  
20        work of each subcontractor with whom the bidder, if  
21        awarded the contract, will subcontract for work in  
22        an amount in excess of \$100,000 on the contract.

23            (2) REQUIREMENTS FOR SPECIFIC CAT-  
24        EGORIES.—

1 (A) Except as provided in subparagraphs  
2 (B) and (C), the bidder shall list only one sub-  
3 contractor for each category of work as defined  
4 by the bidder in its bid or proposal.

5 (B) A bidder may list multiple subcontractors  
6 for a category of work if each such subcontractor  
7 is listed to perform a discrete portion of  
8 the work within a category.

9 (C) A bidder may list itself for any portion  
10 of work under the contract, which shall be  
11 deemed a representation by the bidder that it is  
12 fully qualified to perform that portion of the  
13 work itself and that the bidder will perform  
14 that portion itself.

15 (3) RESULT OF FAILURE TO LIST SUBCONTRACTORS.—An executive agency shall consider any bidder  
16 that fails to list subcontractors in accordance  
17 with this title and the regulations promulgated pursuant  
18 to section 507 to be non-responsive and bids  
19 by such bidders shall not be considered.

21 (b) PROCEDURES FOR SUBSTITUTION OF A LISTED  
22 SUBCONTRACTOR.—

23 (1) CONSENT AND GOOD CAUSE REQUIRED.—  
24 No contractor shall substitute a subcontractor in  
25 place of the subcontractor listed in the original bid

1 or proposal, except with the consent of the con-  
2 tracting officer for good cause.

3 (2) EXAMPLES OF GOOD CAUSE.—Good cause  
4 under paragraph (1) shall include the following:

5 (A) Failure of the subcontractor to execute  
6 a written contract after a reasonable period if  
7 such written contract, based upon the terms,  
8 conditions, plans, and specifications of the con-  
9 tract and the terms of the subcontractor's bid  
10 or proposal, is presented to the subcontractor  
11 by the contractor.

12 (B) Bankruptcy of the subcontractor.

13 (C) The death or physical disability of the  
14 subcontractor, if the subcontractor is an indi-  
15 vidual.

16 (D) Dissolution of the subcontractor, if the  
17 subcontractor is a corporation or partnership.

18 (E) Failure of a subcontractor to meet the  
19 surety bond requirements specified by the bid-  
20 der as a condition of the subcontractor to per-  
21 form on the contract, if awarded to the bidder.

22 (F) The subcontractor is ineligible to per-  
23 form on the subcontract because the subcon-  
24 tractor is suspended, debarred, or otherwise in-  
25 eligible to perform.

1 (G) A series of failures by the subcon-  
2 tractor to perform in accordance with the speci-  
3 fication, terms, and conditions of its sub-  
4 contract resulting in the withholding of  
5 amounts requested by the subcontractor in ac-  
6 cordance with section 3905 of title 31, United  
7 States Code, and the regulations implementing  
8 such section.

9 (H) Failure of the subcontractor to comply  
10 with a requirement of law applicable to the sub-  
11 contractor.

12 (I) Failure or refusal of the subcontractor  
13 to perform the subcontract.

14 (3) REQUESTS FOR SUBSTITUTION.—A request  
15 of a contractor for a substitution of a listed subcon-  
16 tractor shall be submitted in writing to the con-  
17 tracting officer and shall include the reasons for the  
18 request. The contractor shall provide a copy of its  
19 request for substitution to the listed subcontractor  
20 by any means that provides written third-party  
21 verification of delivery to the last known address of  
22 the subcontractor. A subcontractor who has been so  
23 notified shall have five working days within which to  
24 submit written objections to the substitution to the  
25 contracting officer. Failure to file such written ob-

1       jections shall constitute the consent of the listed  
2       subcontractor to the substitution.

3       (c) LIMITATION ON ASSIGNMENT, TRANSFER, OR  
4       SUBSTITUTION.—

5               (1) LIMITATION ON ASSIGNMENT OR TRANS-  
6       FER.—No contractor shall permit any subcontract to  
7       be voluntarily assigned or transferred or to be per-  
8       formed by any entity other than the subcontractor  
9       listed in the bid or proposal without the consent of  
10      the contracting officer. Consent of the contracting  
11      officer to a contractor for a substitution shall—

- 12                   (A) be promptly made in writing; and
- 13                   (B) be included in the contract file.

14               (2) LIMITATION ON SUBSTITUTION.—No con-  
15      tractor that listed itself for a portion of the work  
16      under the contract shall subcontract any portion of  
17      the work for which it listed itself, unless authorized  
18      by the contracting officer to substitute one or more  
19      subcontractors to perform such work.

20   **SEC. 505. PENALTIES.**

21       (a) IN GENERAL.—

22               (1) A contractor shall be subject to penalties if,  
23      without obtaining the approval of the contracting of-  
24      ficer, the contractor—



1 (A) replaces a listed subcontractor for a  
2 contract with an executive agency; or

3 (B) awards a subcontract to a subcon-  
4 tractor to perform work which the contractor  
5 had identified as work to be performed directly  
6 by the contractor.

7 (2) A subcontractor shall also be subject to pen-  
8 alties if the subcontractor is determined to have  
9 knowingly participated in the failure of the con-  
10 tractor to comply with the regulatory provisions re-  
11 lating to the substitution of a listed subcontractor.

12 (b) AMOUNT OF PENALTIES TO BE IMPOSED.—The  
13 amount of penalties imposed under this section shall be  
14 equal to the greater of—

15 (1) 10 percent of the amount of the bid by the  
16 listed subcontractor;

17 (2) the difference between the amount of the  
18 bid by the listed subcontractor and the amount of  
19 the bid by the substituted subcontractor; or

20 (3) the difference between the amount of the  
21 bid by a substituted subcontractor and the dollar  
22 value specified by the contractor for the work which  
23 the contractor had listed for its own performance.

24 (c) SOURCE OF FUNDS FOR PENALTIES.—Penalties  
25 assessed pursuant to this section shall be deducted from

1 the remaining unpaid contract balance and deposited into  
2 the fund from which the contract was awarded.

3 **SEC. 506. GROUNDS FOR SUSPENSION OR DEBARMENT.**

4 The imposition of penalties on a contractor or sub-  
5 contractor for failure to comply with the procedures for  
6 the substitution of subcontractors on 2 contracts within  
7 a 3-year period shall be deemed to be adequate evidence  
8 of the commission of an offense indicating a lack of busi-  
9 ness integrity or business honesty that seriously and di-  
10 rectly affects the present responsibility of a Government  
11 contractor within the meaning of part 9.4 of the Federal  
12 Acquisition Regulation (Debarment, Suspension, and Eli-  
13 gibility) (48 CFR 9.4).

14 **SEC. 507. IMPLEMENTATION THROUGH THE FEDERAL AC-**  
15 **QUISITION REGULATION.**

16 (a) **PROPOSED REVISIONS.**—Proposed revisions to  
17 the Government-wide Federal Acquisition Regulation to  
18 implement the provisions in this title shall be published  
19 not later than 120 days after the date of the enactment  
20 of this Act and provide not less than 60 days for public  
21 comment.

22 (b) **FINAL REGULATIONS.**—Final regulations shall be  
23 published not less than 180 days after the date of the en-

- 1 actment of this Act and shall be effective on the date that
- 2 is 30 days after the date of publication.

