

115TH CONGRESS
2D SESSION

H. R. 6367

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2018

Received; read twice and referred to the Committee on Small Business and
Entrepreneurship

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

7 (1) by amending paragraph (16) to read as fol-
8 lows:

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

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

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

25 “(ii) if the subcontracting goals per-
26 tain to more than one contract with one or

1 more Federal agencies, or to one contract
2 with more than one Federal agency, the
3 prime contractor may only count first tier
4 subcontractors that are small business con-
5 cerns.

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

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

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

22 “(C) RULE OF CONSTRUCTION.—Nothing
23 in this paragraph shall permit lower-tier sub-
24 contracting goaling requirements of prime con-
25 tractors that are 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 work performed within 90 days of the
11 completion of such work, notify the Office of
12 Small and Disadvantaged Business Utilization
13 (‘OSDBU’) of the Federal agency and the
14 prime contractor of such lack of payment, if
15 such notice is provided to the agency within the
16 15-day period following the end of such 90
17 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.”.

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

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

Passed the House of Representatives September 25,
2018.

Attest:

KAREN L. HAAS,

Clerk.