

Calendar No. 287

114TH CONGRESS
1ST SESSION**S. 2138**

To amend the Small Business Act to improve the review and acceptance of subcontracting plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2015

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

NOVEMBER 3, 2015

Reported by Mr. VITTER, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend the Small Business Act to improve the review and acceptance of subcontracting plans, 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 “Small Business Sub-
5 contracting Transparency Act of 2015”.

1 **SEC. 2. TRANSPARENCY IN SUBCONTRACTING GOALS.**

2 Section 8(d)(9) of the Small Business Act (15 U.S.C.
3 637(d)(9)) is amended—

4 (1) by striking “(9) The failure” and inserting
5 the following:

6 “(9) MATERIAL BREACH.—The failure”;

7 (2) in subparagraph (A), by striking “sub-
8 section, or” and inserting “subsection,”;

9 (3) in subparagraph (B), by striking “sub-
10 contract,” and inserting “subcontract, or”; ~~and~~

11 (4) *by moving subparagraphs (A) and (B) 2 ems*
12 *to the right; and*

13 (45) by inserting after subparagraph (B) the
14 following:

15 “(C) assurances provided under paragraph
16 (6)(E),”.

17 **SEC. 3. AUTHORITY OF THE ADMINISTRATOR OF THE**
18 **SMALL BUSINESS ADMINISTRATION.**

19 Section 8(d)(11) of the Small Business Act (15
20 U.S.C. 637(d)(11)) is amended—

21 (1) by striking “(11) In the case of” and insert-
22 ing the following:

23 “(11) AUTHORITY OF ADMINISTRATION.—In
24 the case of”; ~~and~~

25 (2) in subparagraph (B), by striking “, which
26 shall be advisory in nature,”; *and*

1 (3) *by moving subparagraphs (A), (B), and (C)*
 2 *2 ems to the right.*

3 **SEC. 4. IMPROVING SUBCONTRACTING PLANS.**

4 Section 8(d) of the Small Business Act (15 U.S.C.
 5 637(d)) is amended by adding at the end the following:

6 “(17) REVIEW AND ACCEPTANCE OF SUBCON-
 7 TRACTING PLANS.—

8 “(A) DEFINITION.—In this paragraph, the
 9 term ‘covered small business concerns’ means—

10 “(i) small business concerns;

11 “(ii) qualified HUBZone small busi-
 12 ness concerns;

13 “(iii) small business concerns owned
 14 and controlled by veterans;

15 “(iv) small business concerns owned
 16 and controlled by service-disabled veterans;

17 “(v) small business concerns owned
 18 and controlled by socially and economically
 19 disadvantaged individuals, as defined in
 20 paragraph (3)(C); and

21 “(vi) small business concerns owned
 22 and controlled by women.

23 “(B) DELAYED ACCEPTANCE OF PLAN.—

24 Except as provided in subparagraph (E), if a
 25 procurement center representative or commer-

1 cial market representative determines that a
2 subcontracting plan required under paragraph
3 (4) or (5) fails to provide the maximum prac-
4 ticable opportunity for covered small business
5 concerns to participate in the performance of
6 the contract to which the plan applies, the rep-
7 resentative may delay acceptance of the plan in
8 accordance with subparagraph (C).

9 “(C) PROCESS FOR DELAYED ACCEPT-
10 ANCE.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in clause (ii), a procurement center
13 representative or commercial market rep-
14 resentative who makes a determination
15 under subparagraph (B) with respect to a
16 subcontracting plan may delay acceptance
17 of the plan for a 30-day period by pro-
18 viding written notice of the determination
19 to head of the procuring activity of the
20 contracting agency that includes rec-
21 ommendations for altering the plan to pro-
22 vide the maximum practicable opportunity
23 described in that subparagraph.

24 “(ii) EXCEPTION.—In the case of the
25 Department of Defense—

1 “(I) a procurement center rep-
2 resentative or commercial market rep-
3 resentative who makes a determina-
4 tion under subparagraph (B) with re-
5 spect to a subcontracting plan may
6 delay acceptance of the plan for a 15-
7 day period by providing written notice
8 of the determination to appropriate
9 personnel of the Department of De-
10 fense that includes recommendations
11 for altering the plan to provide the
12 maximum practicable opportunity de-
13 scribed in that subparagraph; and

14 “(II) the authority of a procure-
15 ment center representative or com-
16 mercial market representative to delay
17 acceptance of a subcontracting plan as
18 provided in subparagraph (B) does
19 not include the authority to delay the
20 award or performance of the contract
21 concerned.

22 “(D) DISAGREEMENTS.—If a procurement
23 center representative or commercial market rep-
24 resentative delays the acceptance of a subcon-
25 tracting plan under subparagraph (C) and does

1 not reach agreement with the head of the pro-
2 curing activity of the contracting agency to
3 alter the plan to provide the maximum prac-
4 ticable opportunity described in subparagraph
5 (B) not later than 30 days after the date on
6 which written notice was provided, the disagree-
7 ment shall be submitted to the head of the con-
8 tracting agency by the Administrator for a final
9 determination.

10 “(E) EXCEPTION.—A procurement center
11 representative or commercial market represent-
12 ative may not delay the acceptance of a subcon-
13 tracting plan if the head of the contracting
14 agency certifies that the need of the agency for
15 the supplies or services is of such an unusual
16 and compelling urgency that the United States
17 would be seriously injured unless the agency is
18 permitted to accept the subcontracting plan.”.

19 **SEC. 5. GOOD FAITH COMPLIANCE.**

20 Not later than 270 days after the date of enactment
21 of this Act, the Administrator of the Small Business Ad-
22 ministration shall issue regulations providing examples of
23 activities that would be considered a failure to make a
24 good faith effort to comply with the requirements imposed
25 on an entity, other than a small business concern; (as de-

1 fined in section 3 of the Small Business Act (15 U.S.C.
2 632)), that is awarded a prime contract containing the
3 clauses required under ~~paragraphs~~ *paragraph* (4) or (5)
4 of section 8(d) of the Small Business Act (15 U.S.C.
5 637(d)).

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