

118TH CONGRESS  
2D SESSION

# S. 4750

To ensure efficiency and fairness in Federal subcontracting, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JULY 23, 2024

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

---

## A BILL

To ensure efficiency and fairness in Federal subcontracting, 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 “Ensuring Efficiency  
5 and Fairness in Federal Subcontracting Act of 2024”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) APPROPRIATE CONGRESSIONAL COMMIT-  
9 TEES.—The term “appropriate congressional com-  
10 mittees” means—

1 (A) the Committee on Homeland Security  
2 and Governmental Affairs of the Senate; and

3 (B) the Committee on Oversight and Ac-  
4 countability of the House of Representatives.

5 (2) EXECUTIVE AGENCY.—The term “executive  
6 agency” has the meaning given the term in section  
7 133 of title 41, United States Code.

8 **SEC. 3. COMPTROLLER GENERAL REPORT ON SMALL BUSI-**  
9 **NESS UTILIZATION IN FEDERAL CON-**  
10 **TRACTING.**

11 Not later than 180 days after the date of the enact-  
12 ment of this Act, the Comptroller General of the United  
13 States shall submit to the appropriate congressional com-  
14 mittees the results of a study on how small business utili-  
15 zation by prime contractors can be better monitored on  
16 the largest and longest Federal contracts, including In-  
17 definite Delivery, Indefinite Quantity (IDIQ) contracts  
18 and Government-wide Acquisition Contracts (GWACs),  
19 with any further relevant contract types to be determined  
20 by the Comptroller General.

21 **SEC. 4. REQUIREMENT TO NOTIFY SUBCONTRACTORS OF**  
22 **CONTRACT STATUS.**

23 Not later than 18 months after the date of the enact-  
24 ment of this Act, the Federal Acquisition Regulatory  
25 Council shall revise the Federal Acquisition Regulation—

1           (1) to require prime contractors on Federal  
2           contracts to provide to a subcontractor named in a  
3           subcontracting plan of the prime contractor, within  
4           30 days of a request from such subcontractor, notifi-  
5           cation of the status of the contract, including infor-  
6           mation such as whether the prime contractor has re-  
7           ceived any task orders or executed other work under  
8           the contract;

9           (2) to provide a means by which a subcon-  
10          tractor who has made a request described in para-  
11          graph (1) and not received a response within 30  
12          days to report the request and delayed response to  
13          the contracting officer;

14          (3) to require a contracting officer receiving a  
15          notification described in paragraph (2) to document  
16          the incident and consider the information in the  
17          small business subcontracting factor of the perform-  
18          ance assessment for the prime contractor; and

19          (4) to require offerors for a task or delivery  
20          order on a contract for which a subcontracting plan  
21          is required to provide information in the proposal  
22          about how the offeror's proposed small business uti-  
23          lization for the task or delivery order aligns with the  
24          overall contract's small business subcontracting plan.

1 **SEC. 5. STUDY ON STRENGTHENING ENFORCEMENT PROVI-**  
 2 **SIONS DESIGNED TO PROTECT SUBCONTRAC-**  
 3 **TORS.**

4 The Attorney General, in consultation with the Ad-  
 5 ministrator of General Services, the Administrator of the  
 6 Small Business Administration, and the Administrator for  
 7 Federal Procurement Policy, shall conduct a study on  
 8 ways to strengthen enforcement mechanisms for compli-  
 9 ance with subcontracting plans in accordance with section  
 10 19.705–7 of title 48, Code of Federal Regulations, includ-  
 11 ing exploring the need for an alternative complaint route  
 12 for subcontractors that have experienced serious issues as  
 13 a result of the prime contractor or a subcontractor at any  
 14 tier under the contract failing to make a good faith effort,  
 15 as outlined in such section and section 125.3 of title 13,  
 16 Code of Federal Regulations.

17 **SEC. 6. COMPTROLLER GENERAL STUDY ON UTILIZATION**  
 18 **OF CONTRACTOR PERFORMANCE ASSESS-**  
 19 **MENT REPORTING SYSTEM (CPARS) DATA TO**  
 20 **ASSESS RELATIONSHIPS BETWEEN PRIME**  
 21 **AND SUBCONTRACTORS.**

22 (a) IN GENERAL.—Not later than 180 days after the  
 23 date of the enactment of this Act, the Comptroller General  
 24 of the United States shall submit to the appropriate con-  
 25 gressional committees the results of a study on how

1 CPARS could be utilized as a means of gauging relation-  
2 ships between prime and subcontractors.

3 (b) ELEMENTS.—The study required under sub-  
4 section (a) shall focus on the following matters:

5 (1) An examination of how adverse experiences  
6 of subcontractors are or are not translated into  
7 lower CPARS scores.

8 (2) An assessment of whether lower CPARS  
9 scores impact the ability of prime contractors to se-  
10 cure Federal contracts and options in source selec-  
11 tion, including an examination of the weighting of  
12 the subcontracting score relative to other compo-  
13 nents of the CPARS.

14 (3) An assessment of whether the timing of  
15 scoring within contracts is such that it incentivizes  
16 the best possible small business utilization and inter-  
17 action between prime and subcontractors.

18 **SEC. 7. PENALTIES FOR FAILURE TO MEET SMALL BUSI-**  
19 **NESS UTILIZATION GOALS.**

20 Not later than 18 months after the date of the enact-  
21 ment of this Act, the Federal Acquisition Regulatory  
22 Council shall revise the Federal Acquisition Regulation to  
23 allow agencies to incorporate into their incentive contracts  
24 with prime contractors a condition that—

1           (1) if the rate of small business utilization for  
2           the contract is less than 50 percent of the utilization  
3           level prescribed in the subcontracting plan, the  
4           prime contractor shall not be eligible to receive a  
5           performance-based incentive fee with respect to the  
6           contract; and

7           (2) if the rate of small business utilization at  
8           any stage of an incentive contract is less than 75  
9           percent of the utilization level prescribed for such  
10          stage in the subcontracting plan, the prime con-  
11          tractor may receive a warning letter from the con-  
12          tracting officer for the contract noting the shortfall  
13          and potential loss of incentive fees.

14 **SEC. 8. OUTREACH TO SMALL BUSINESS CONTRACTORS.**

15          Not later than 180 days after the date of the enact-  
16          ment of this Act, the Director of the Office of Manage-  
17          ment and Budget shall issue guidance to the heads of ex-  
18          ecutive agencies on measures they should take to improve  
19          small business outreach and improve awareness of subcon-  
20          tracting opportunities, including webinars, online engage-  
21          ments, and other innovative methods of outreach, and  
22          hosting at least two general outreach sessions per year for  
23          potential small business contractors and one outreach ses-  
24          sion per year for each of the following groups:

1           (1) Small business concerns owned and con-  
 2           trolled by veterans and small business concerns  
 3           owned and controlled by service-disabled veterans  
 4           (as those terms are defined in section 3(q) of the  
 5           Small Business Act (15 U.S.C. 632(q))).

6           (2) Qualified HUBZone small business concerns  
 7           (as defined in section 3(p) of such Act (15 U.S.C.  
 8           632(p))).

9           (3) Socially and economically disadvantaged  
 10          small business concerns (as defined in section  
 11          8(a)(4)(A) of such Act (15 U.S.C. 637(a)(4)(A))).

12          (4) Small business concerns owned and con-  
 13          trolled by women (as defined in section 3(n) of such  
 14          Act (15 U.S.C. 632(n))).

15 **SEC. 9. IMPROVEMENTS TO THE ELECTRONIC SUBCON-**  
 16 **TRACTING REPORTING SYSTEM.**

17          (a) IN GENERAL.—Not later than one year after the  
 18          date of the enactment of this Act, the Administrator of  
 19          General Services shall develop and include as part of the  
 20          General Services Administration’s strategic information  
 21          resources management plan required under section  
 22          3506(b)(2) of title 44, United States Code, a plan to mod-  
 23          ernize the Electronic Subcontracting Reporting System  
 24          (eSRS).

1       (b) ELEMENTS.—The modernization plan required  
2 under subsection (a) shall include—

3           (1) steps that the General Services Administra-  
4 tion intends to make toward updating and modern-  
5 izing eSRS;

6           (2) an assessment of the capacity of the agency  
7 to operate and maintain an updated system;

8           (3) the estimated cost and sources of funding  
9 required to execute this plan; and

10          (4) a description of the additional resources and  
11 staffing that is necessary to carrying out the plan.

12       (c) SUBMISSION TO CONGRESS.—Not later than 30  
13 days after the date on which the General Services Admin-  
14 istration’s strategic information resources management  
15 plan is updated pursuant to subsection (a), the Adminis-  
16 trator of General Services shall submit the plan to mod-  
17 ernize eSRS described in such subsection.

○