

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4171

To require modification of the Federal Acquisition Regulation to provide for timely payment of subcontractors and suppliers performing on contracts awarded by the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 1994

Mr. MACHTLEY (for himself and Mrs. MEYERS of Kansas) introduced the following bill; which was referred to the Committee on Government Operations

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## A BILL

To require modification of the Federal Acquisition Regulation to provide for timely payment of subcontractors and suppliers performing on contracts awarded by the United States, 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 “Subcontractor Pay-  
5        ment Protection Act”.

6        **SEC. 2. PAYMENT PROTECTIONS FOR SUBCONTRACTORS.**

7        (a) MODIFICATIONS TO FAR.—The Federal Acquisi-  
8        tion Regulation issued under section 25(c)(1) of the Office

1 of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))  
2 shall be modified to address the matters described in sub-  
3 section (b).

4 (b) MATTERS TO BE ADDRESSED.—The modifica-  
5 tions required by subsection (a) shall, with respect to con-  
6 tracts entered into with the United States, require—

7 (1) a prime contractor (other than a construc-  
8 tion contractor subject to the provisions of sections  
9 3903(b) and 3905 of title 31, United States Code)  
10 to include in the contractor’s contractual agreement  
11 with each of the contractor’s subcontractors (includ-  
12 ing suppliers) a payment provision which—

13 (A) specifies a payment term pursuant to  
14 which the subcontractor may calculate a pay-  
15 ment due date;

16 (B) requires the prime contractor to give  
17 written notice to the subcontractor within 7  
18 days of any event which will delay payment to  
19 the subcontractor in accordance with the sub-  
20 contract payment term established pursuant to  
21 subparagraph (A);

22 (C) requires the prime contractor to pay a  
23 subcontractor an interest penalty on the  
24 amounts due in the case of each payment not

1 made in accordance with the payment term es-  
2 tablished pursuant to subparagraph (A)—

3 (i) for the period beginning on the day  
4 after the required payment date and end-  
5 ing on the date on which payment of the  
6 amount due is made; and

7 (ii) computed at the rate specified by  
8 section 3902(a) of title 31, United States  
9 Code;

10 (2) a prime contractor (other than a construc-  
11 tion contractor subject to the provisions of sections  
12 3903(b) and 3905 of title 31, United States Code)  
13 to submit, along with a request to the United States  
14 for payment—

15 (A) in the case of a contractor which is a  
16 small business concern, a certification that, to  
17 the best of the contractor's knowledge and be-  
18 lief, payments will be made to each subcontrac-  
19 tor in accordance with the subcontract agree-  
20 ment from the proceeds of the payment covered  
21 by the certification and payments to sub-  
22 contractors have been made from previous pay-  
23 ments received from the United States; and

24 (B) in the case of a contractor which is not  
25 a small business concern, a certification that, to

1 the best of the contractor's knowledge and be-  
2 lief, payments have been made to each sub-  
3 contractor in accordance with the subcontract  
4 agreement prior to the submission of the con-  
5 tractor's payment request to the United States  
6 which includes an amount for such subcontrac-  
7 tor;

8 (3) information to be furnished to a subcontrac-  
9 tor, upon a written or oral request of the sub-  
10 contractor, regarding payments made to the prime  
11 contractor by the United States, subject to the limi-  
12 tation of section 552(b)(1) of title 5, United States  
13 Code;

14 (4) a contracting officer, upon receipt of a cred-  
15 ible allegation, to make inquiries—

16 (A) with respect to a construction contract,  
17 regarding whether the contractor has made pay-  
18 ments to the subcontractor in conformity with  
19 chapter 39 of title 31, United States Code;

20 (B) with respect to a contract other than  
21 a construction contract, regarding whether the  
22 contractor has made payments to the sub-  
23 contractor in compliance with the terms of their  
24 subcontract; and

1 (C) regarding the validity of the required  
2 certification regarding subcontractor payment  
3 accompanying the contractor's payment request  
4 to the United States;

5 (5) the contracting officer, upon determining  
6 that the prime contractor is not in compliance with  
7 a requirement referred to in subparagraph (A) or  
8 (B) of paragraph (4), to take action to—

9 (A) encourage the contractor to make  
10 timely payment to the subcontractor;

11 (B) provide for the disbursement of  
12 amounts which the contractor has certified as  
13 being due to such subcontractor directly to the  
14 United States or through a federally insured  
15 bank acting as an escrow agent;

16 (C) reduce or suspend progress payments  
17 with respect to amounts due the prime contrac-  
18 tor; or

19 (D) any combination of the measures de-  
20 scribed in subparagraphs (A), (B), and (C), and  
21 such other remedial measures as the contract-  
22 ing officer deems appropriate to encourage the  
23 contractor to comply with the contractor's obli-  
24 gations regarding timely payment of sub-  
25 contractors; and

1           (6) the contracting officer, upon determining  
2           that the contractor is not in compliance with certifi-  
3           cation requirement referred to in paragraph (2), to  
4           initiate appropriate administrative remedial action  
5           (including suspension procedures pursuant to section  
6           9.4 of the Federal Acquisition Regulation).

7           (c) DEADLINE.—Proposed regulations containing the  
8           modifications to the Federal Acquisition Regulation re-  
9           quired under this Act shall be issued not later than 180  
10          days after the date of the enactment of this Act. Final  
11          regulations containing the modifications to the Federal  
12          Acquisition Regulation required under this Act shall be is-  
13          sued not later than 270 days after the date of the enact-  
14          ment of this Act.

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