

WASHINGTON BUSINESS JOURNAL

Bill Would Address Small Business Contracting Fraud, Force Agency Rationale for Insourcing

By Jill R. Aitoro Thursday, February 2, 2012

A new House bill introduced Thursday would address a slew of issues associated with small business contracting rules, including cracking down on loopholes that enable small business dollars to filter to larger companies and offering small businesses an opportunity to challenge agency decisions to bring contract work in house.

First, the 2012 Subcontracting Transparency and Reliability Act, introduced by Rep. Mick Mulvaney, R-S.C., would change existing subcontracting provisions to ensure that small businesses who get contracts are doing the bulk of the work, rather than passing functions (and associated revenue) on to larger partners.

Specifically, small business would not be allowed to subcontract out to a larger business more than 50 percent of the amount paid under a service or supplies contract, or 85 percent of the amount paid for general construction, not including the cost for materials. In the case of a contract for construction by a special trade contractor, the small business could not subcontract out more 75 percent of the amount paid, minus the cost of materials.

This is a change to current rules, which define subcontract limitations by the cost of performance, rather than the amount paid by government to the small business. This change — by tracking the actual government payments — would in theory make it more difficult for companies to rationalize large chunks of contract revenue flowing to larger subcontractors.

The bill also strengthens punishments for large businesses that fail to file mandatory reports on the use of small business subcontractors.

To ensure government doesn't unfairly bring in house work performed by small businesses, the bill would also require all insourcing processes and rationalization to be made public, which in turn would provide small business contractors standing to challenge the decisions in court.

“Small business contracting and subcontracting is a great way to support local businesses who are more than capable of providing a great product or service for the federal

government in an efficient manner,” said Mulvaney, who is also the chairman of the House Small Business Subcommittee on Contracting and Workforce. "But there are many unfair roadblocks that exist for many small businesses who perform federal contracting work. ... The STAR Act will help provide an even playing field for many small contractors who otherwise would not have the resources to fight deceitful subcontracting and unjustified insourcing within the federal procurement system.”

This is the latest bill to tackle what some perceive to be shortcomings in the government's program to ensure contracting opportunities to small businesses. Others focused on agencies' failure to meet small business contracting goals.

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