

116TH CONGRESS  
1ST SESSION

# S. 2853

To amend the Small Business Act to provide interim partial payment to small business contractors that request an equitable adjustment due to a change in the terms of a construction contract, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2019

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

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## A BILL

To amend the Small Business Act to provide interim partial payment to small business contractors that request an equitable adjustment due to a change in the terms of a construction contract, 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 Pay-  
5 ment for Performance Act of 2019”.

1 **SEC. 2. EQUITABLE ADJUSTMENTS TO CONSTRUCTION**  
 2 **CONTRACTS.**

3 (a) IN GENERAL.—The Small Business Act (15  
 4 U.S.C. 631 et seq.) is amended by inserting after section  
 5 15 the following:

6 **“SEC. 15A. EQUITABLE ADJUSTMENTS TO CONSTRUCTION**  
 7 **CONTRACTS.**

8 “(a) REQUEST FOR AN EQUITABLE ADJUSTMENT.—

9 “(1) IN GENERAL.—A small business concern  
 10 performing a construction contract that was award-  
 11 ed by an agency may submit a request for an equi-  
 12 table adjustment to the contracting officer of the  
 13 agency if the contracting officer directs a change in  
 14 the terms of the contract performance without the  
 15 agreement of the small business concern.

16 “(2) REQUIREMENTS.—A request submitted  
 17 under paragraph (1) shall—

18 “(A) be timely made pursuant to the terms  
 19 of the contract; and

20 “(B) specify the estimated amount re-  
 21 quired to cover additional costs resulting from  
 22 the change in the terms of the contract per-  
 23 formance.

24 “(b) AMOUNT.—Upon receipt of a request for equi-  
 25 table adjustment under subsection (a), the agency shall  
 26 provide to the small business concern an interim partial

1 payment in an amount that is not less than 50 percent  
2 of the estimated amount under subsection (a)(2)(B).

3 “(c) LIMITATION.—Any interim partial payment  
4 made under this section shall not be deemed to be an ac-  
5 tion to definitize the request for an equitable adjustment.

6 “(d) FLOW-DOWN OF INTERIM PARTIAL PAYMENT  
7 AMOUNTS.—

8 “(1) PAYMENT TO FIRST TIER SUBCONTRACTOR  
9 OR SUPPLIER.—A small business concern that re-  
10 quests an equitable adjustment under this section  
11 shall pay to a first tier subcontractor or supplier the  
12 portion of each interim partial payment received that  
13 is attributable to the increased costs of performance  
14 incurred by the first tier subcontractor or supplier  
15 due to the change in the terms of the contract per-  
16 formance.

17 “(2) PAYMENT TO OTHER SUBCONTRACTOR OR  
18 SUPPLIER.—A first tier subcontractor or supplier  
19 that receives a portion of an interim partial payment  
20 under this section shall pay to a subcontractor or  
21 supplier at any tier the appropriate portion of the  
22 payment.”.

23 (b) IMPLEMENTATION.—The Administrator of the  
24 Small Business Administration shall implement the re-  
25 quirements of this section not later than the earlier of—

1           (1) the first day of the first full fiscal year be-  
2           ginning after the date of enactment of this Act; or

3           (2) October 1, 2021.

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