



## **Procurement Legislative Update**

### *Bill to Strengthen Subcontracting Introduced in House*

On November 19, Representative Wm. Lacy Clay (D-MO) and Representative Yvette Clark (D-NY) introduced the Subcontractor Fairness Act of 2009 (H.R. 4134), which would hold prime contractors accountable for subcontracting proposals that they submit as part of a federal contract bid in the defense or civilian context.

If enacted, H.R. 4134 would:

- require bidders for contracts over \$550,000 (over \$1,000,000 for construction bids) to enter into a subcontracting agreement for each subcontract expected to be awarded by the bidder and to submit copies of such agreements as part of the bid;
- create a valid contract between the prime contractor and the sub-contractor at the time the contract is awarded to the prime; and
- require that the subcontracting agreement include: 1) the identity of the subcontractor; 2) the scope of the work to be performed under the subcontract; and 3) the dollar amount of the subcontract.

Representative Yvette Clarke (D-NY), who co-authored the bill, said, “I was pleased to coordinate with Rep. Clay on this important legislation. It fills a need that has gone unmet in the small business community for too long. Current law requires companies competing for Federal contracts of more than \$550,000 to include ‘acceptable’ sub-contracting plans. Too often, prime contractors begin preliminary discussions and work with smaller subcontractors in order to increase their chances of securing the contract award. These small firms spend significant resources on industry analysis and business strategy in order to be on the initial contract bid teams. Many subcontractors are eliminated from the process once the prime contractor secures the bid. Often, the small firms receive no communication from the prime firms once the contract is awarded, left with no indication of why they are not being called to perform the work. This act aims to close the loophole.”

The bill has been referred to the House Committee on Oversight and Government Reform and the House Committee on Armed Services.

[Click here](#) to view H.R. 4134

November 24, 2009