

# CLEAN CONTRACTING ACT (H.R. 6069)

## 109<sup>th</sup> Congress

(Sponsored by Rep. Henry Waxman, with cosponsors Rep. Dennis Cardoza, Rep. Eleanor Holmes Norton, Rep. David Obey and Rep. John Tierney)

### **TITLE I--PROMOTING COMPETITION IN THE AWARD OF CONTRACTS**

#### SEC. 101. LIMITATION ON LENGTH OF NONCOMPETITIVE CONTRACTS.

- Requires FAR revision to restrict contract period to minimum necessary to meet urgent and compelling work and enter into another contract through competitive procedures
- Contract cannot exceed 240 days

#### SEC. 102. COMPETITION IN MULTIPLE AWARD CONTRACTS.

- Requires FAR revision to require competition for each /delivery order over \$100,000.
- Requires fair notice to all contractors under multiple award contracts
- Bars purchases where contractors receive less than three bids is contradictory to market practices.
- *See also Section 703 of HR 4682 and Section 803 of FY2002 Defense bill*

#### SEC. 103. MINIMIZING SOLE-SOURCE CONTRACTS.

- Requires each head of agency to develop a plan to minimize use of other than competitive procedures
- Plan must be submitted to Congress
- Requires GAO review

#### SEC. 104. PUBLIC DISCLOSURE OF JUSTIFICATION AND APPROVAL DOCUMENTS AND OTHER DETERMINATIONS FOR NONCOMPETITIVE CONTRACTS.

- Requires head of agency to make publicly available (within 14 days after award) copies of justification and approval process and other determinations
- Documents must be posted on agency website and through FPDS

### **TITLE II--LIMITING THE USE OF ABUSE-PRONE CONTRACTS**

#### SEC. 201. PROHIBITION ON AWARD OF MONOPOLY CONTRACTS.

- Creates a new class of contract, labeled a “monopoly contract,” defined as a contract exceeding \$10,000,000 (including all options) awarded to a single contractor
- Exceptions include “best interest of Government” and work that only one contractor can perform
- *See also Section 702 or HR 4682 and Section 211 of HR 3838 (limited to Katrina)*

#### SEC. 202. LIMITATIONS ON TIERING OF SUBCONTRACTORS.

- Requires FAR revision to limit excessive use of subcontractors
- Prime contractor must perform 65% of work
- Lower tier subcontractors must perform 65% of cost of subcontract

#### SEC. 203. MINIMIZING COST-REIMBURSEMENT TYPE CONTRACTS.

- Requires head of each agency to develop and implement a plan to minimize use of cost-reimbursement contracts
- Plan must be submitted to Congress
- Requires GAO review

### **TITLE III--PREVENTING THE ABUSE OF CONTRACT FLEXIBILITIES**

#### SEC. 301. PREVENTING ABUSE OF COMMERCIAL ITEM AUTHORITY.

- Amends commercial item definition – removes “of a type”
- Amends commercial item definition – removes “minor modifications”

#### SEC. 302. PREVENTING ABUSE OF OTHER TRANSACTION AUTHORITY.

- Revises other transactions authority to restrict prototype projects unless no non-traditional defense contractor can participate
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#### SEC. 303. PREVENTING ABUSE OF INTERAGENCY CONTRACTS.

- Requires OMB to submit a report outlining procedures on proper use of interagency contracts
- Requires FAR revisions to require written agreements between requesting and servicing agency; determination that contract is best alternative and sufficient documentation for audits
- *See also Section 817 of FY2007 Defense bill*

#### SEC. 304. PREVENTING ABUSE OF GOVERNMENT CREDIT CARDS.

- Requires revision to OMB Circular 123 on use of purchase cards
- Requires report to Congress

#### SEC. 305. REPEAL OF ALASKA NATIVE CORPORATION LOOPHOLE.

- Repeals 8(a) sole source authority for ANCs

### **TITLE IV--INCREASING CONTRACT OVERSIGHT**

#### SEC. 401. FUNDING CONTRACT OVERSIGHT.

- Requires an additional 1% fee for hiring/training, contract planning, contract administration/oversight and audits/enforcement

#### SEC. 402. PROHIBITION ON CONTRACTOR CONFLICTS OF INTEREST.

- Adds to current law to limit contractor conflict of interest.
- Bars any activity “relating” to contract oversight, including services “in support of” acquisition planning.
- Defines conflict as involving any situation relating to oversight of “any related entity” with a “separate business relationship” or “some other relationship” “that could reasonably appear to bias judgment.”
- *See also Section 706 of HR 4682 and Section 213 of HR 3838*

#### SEC. 403. DISCLOSURE OF GOVERNMENT CONTRACTOR OVERCHARGES.

- Requires quarterly report on alleged contractor overcharges.
- *See also Section 707 of HR 4682 and Section 202 of HR 3838*

SEC. 404. PUBLIC AVAILABILITY OF FEDERAL CONTRACT AWARDS.

- Requires agency to post in a searchable database contract award (within 14 days) information to include contract type, number of offers, and stated unit prices.
- *See also Section 701 of HR 4682 and Section 201 of HR 3838*
- *See also Federal Funding Accountability and Transparency Act” (P.L. 109-282)*

SEC. 405. PROVISION OF INFORMATION TO CONGRESS.

- Requires agency head to provide unredacted copies of any procurement documents to congressional oversight committees
- See also Section 203 of HR 3838

SEC. 406. OVERSIGHT BY THE GOVERNMENT REFORM COMMITTEE.

- Amends House Rules to allow House Government Reform Committee to hold hearings on waste, fraud and abuse in Government contracting.
- Includes oversight of allegations by IG, GAO or DCAA

SEC. 407. NONPARTISAN CHIEF ACQUISITION OFFICERS.

- Requires agency Chief Acquisition Officer to be a career employee

SEC. 408. IMPROVING THE FEDERAL PROCUREMENT DATA SYSTEM.

- Requires FPDS data to be in a single user friendly, easily searchable internet website
- Requires inclusion of a classified annex
- Requires GAO report
- Requires annual report to congress

SEC. 409. ENFORCEMENT THROUGH BID PROTEST.

- Allows any aggrieved party to protest lack of compliance with section 101, 102, 201, 202 and 602 of Clean Contracting Act

**TITLE V--PREVENTING UNJUSTIFIED AWARD FEES**

SEC. 501. ENCOURAGING EXCELLENT CONTRACT PERFORMANCE.

- Restricts use of award or incentive fees on cost-based contracts
- *See also 814 of FY2007 Defense bill*

**TITLE VI--DETERRING CORRUPTION IN CONTRACTING**

SEC. 601. CLOSING THE REVOLVING DOOR.

- Amends definition of lobbyist
- Requires disclosure of job offers
- Increases to two years the lobbying restrictions
- *See also Section 241 of HR 3838 and Section 3 of HR 5112*

SEC. 602. REQUIRING CONTRACTOR INTEGRITY AND BUSINESS ETHICS.

- Bars award to contractors with a pattern of over-charging
- Bars award to contractors with a “pattern” of violations of certain laws (including tax, labor and employment, environment, antitrust and consumer protection)

- *See also Section 704 of HR 4682 and Blacklisting Regulations (Clinton Admin.)*

SEC. 603. ENHANCEMENT OF WHISTLEBLOWER PROTECTIONS.

- Requires agency head review of whether complainant has been subjected to reprisals
- Allows complainant to seek compensatory damages or other relief in appropriate district court
- *See also Section 8 of HR 5112*