

## Direct Federal Construction Project Procurement Reforms

### Construction Employers of America's (CEA) Position:

CEA advocates for:

- Common sense procurement reforms that benefit the government, taxpayers, and small businesses;
- Protecting and strengthening prevailing wage laws; and
- Use of Project Labor Agreements (PLAs) on Federal construction projects.

### The Issue:

The U.S. federal government is the largest procurer of goods and services in the world. Federal procurement dollars are spent in every U.S. state. The Federal project market is a key market and business opportunity for all CEA member disciplines, and it is equally important as a key benchmark/marker for similar private market policy improvements in both contractor and subcontractor selection procedures, and for key prime contract and subcontract administrative reforms.

On the regulatory front, there are two very important Biden Administration regulatory initiatives affecting the federal procurement of construction projects that CEA strongly supports and that we actively defend against non-union challenges:

- The Biden Administration is promulgating very positive prevailing wage policy changes that will restore the proper weight that the Federal policy must and should accord to the established high standards pay and benefits rates achieved in the collective bargaining sector of the construction industry. The rates will be more fully reflective of industry standards, rates will be updated more frequently, and the wage survey process and wage determination procedures will be streamlined. Taken together, these reforms will ensure that Federal agencies get better project performance, sustain high-standards, and respect private industry standards and protect them from any impairment due to any potential adverse Federal market purchasing effects, as the established prevailing wage policy has long intended and that now is being restored under the revised regulations.
- The Biden Administration's project labor agreement policy fully reflects parity with sound private owner purchasing policy – providing Federal project acquisition planning and purchasing officials with the right and, indeed the obligation, to consider the full range on project workforce options in the project and planning acquisition process. This prudent project planning perspective is necessary to ensure that the agency has a full complement of highly skilled and productive workers to complete the project on time and within budget. All construction project purchasers should and do conduct due diligence on project workforce forecasts in planning the project, just like they do with material cost and equipment supply and other market conditions bearing on their jobs over the course of the duration of project performance.

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In addition to supporting these regulatory initiatives, CEA members strongly support The Payment for Performance Act (H.R. 2726), legislation that would make essential reforms advocated by small business and most every federal contractor to resolve change order payment disputes more quickly. This vitally important legislation would allow contractors to submit a request for equitable adjustment (REA) or project contract fee adjustment to an agency that had approved a performed change order to a project's original design or scope. The contractor may then bill the agency for any actual change order work completed while the REA is pending. Once the agency receives the REA, it must pay 50% of the billed change order work amount in a timely manner to offset extra costs. With a quickly expanding list of federal infrastructure projects now in the bidding process, it is more important than ever for Congress to pass this legislation.

### **CEA Supports:**

- Protecting and Strengthening Prevailing Wage Laws:
  - We oppose H.R. 720, the “Davis-Bacon Repeal Act” or similar legislation to repeal or weaken the Davis-Bacon Act;
- Requiring fair and equitable claims administration and coverage and payment of change orders:
  - We support H.R. 2726, the “The Payment for Performance Act;”
- Biden Administration Project Labor Agreement policies;
- Broader use of best value selection procedures, for direct Federal prime contracts and subcontracts;
- Broader application of routine and in-depth responsibility determination criteria/reviews applied to all prime and major subcontractors on Federal projects, as well as parallel post-contract performance reviews;
- Bans on reverse auction contractor and subcontractor selection procedures;
- Enacting major first-tier subcontractor bid listing, and protections against bid shopping and bid peddling on both low-bid, and low-price/technically acceptable selection procedures;
- Ensuring broader surety bond coverage on all Federally financed projects, either with direct appropriations, dedicated leased facility financing, or on public-private project (P3) contract financing;
- Ensuring prompt payment of prime contractors and subcontractors, at all tiers and irrespective of business size standards; and
- Improved force majeure claims coverage and recovery to include entitlement to both time extensions and impact costs for pandemic related project impacts.

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