



CONSTRUCTION
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Infrastructure Construction in the Biden Administration: What will the Build Back Better Plan Mean for the Construction Industry?

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Outline of Presentation

- Introduction of Moderator and Panel
- Overview of Biden Infrastructure Plan
- Impact on Construction Industry
- The Public Owner's Perspective
- The Contractor's Perspective
- Pitfalls to Avoid in Government Contracting
- Q&A and Closing Remarks

I. Biden Infrastructure Plan - Status of Legislation

- Senate Passed \$1 Trillion Bipartisan Infrastructure Investment and Jobs Act in August 2020
 - 19 Republicans voted in favor
- 550 billion in new federal spending over 5 year
 - Roads, bridges, major projects: \$110 billion
 - Passenger and freight rail: \$66 billion
 - Public transit: \$39 billion
 - Airports: \$25 billion
 - Port infrastructure: \$17 billion
 - Transportation safety programs: \$11 billion
 - Electric vehicles: \$7.5 billion
 - Zero and low-emission buses and ferries: \$7.5 billion
 - Revitalization of communities: \$1 billion
 - Broadband: \$65 billion
 - Power infrastructure: \$73 billion
 - Clean drinking water: \$55 billion

I. Biden Infrastructure Plan - Status of Legislation (cont.)

- **Roads and Bridges** – The White House has stated that 20% of highway roads and 45,000 bridges are in poor condition and need repaired. Touted as largest dedicated bridge investment since construction of Interstate Highway System in 1950s.
- **Railroads** – upgrades and maintenance; Northeast Corridor route from D.C. to Boston; nothing specific on high-speed rail investment
- **Power Grid** – updates to older power lines and cables; preventing hacks; support the development and adaption to clean energy technology
- **Broadband** – expansion in rural areas and low-income communities; estimate that 30 million Americans still do not have reliable Internet access.
- **Water** - lead pipe replacement; clean-up drinking water
- **Airports** – major airport upgrades/expansions and air traffic control towers and systems
- **Ports** – Army Corps of Engineers, Coast Guard, and ferry terminals

I. Biden Infrastructure Plan - Status of Legislation (cont.)

- The package would be financed through a combination of funds, including unspent emergency relief funds from the COVID-19 pandemic, tighter tax enforcement for cryptocurrencies, and delaying a drug rebate rule.
- Congressional Budget Office predicted it would add about \$256 billion to projected deficits over 10 years.
- Infrastructure Act does not include investments in “human infrastructure” such as childcare and tax credits for families as originally proposed.
- Democrats are looking to address that separately in spending package, which progressive House Democrats are trying to pass at the same time as the Infrastructure Act.

I. Biden Infrastructure Plan - Status of Legislation (cont.)

Status in the House (as of October 22, 2021)

- House Democrats are holding off on passing the bipartisan infrastructure bill, while they seek agreement on a second, larger \$3.5 trillion reconciliation bill.
- A vote on the Infrastructure Act has been delayed several times.
- President Biden trying to get progressive and moderate Democrats to compromise on spending bill differences.
- The Infrastructure bill will go to the President's desk once the House passes the legislation.

II. Biden Infrastructure Plan – Impact on Construction Industry

- New Projects
- Increased Funding for Current Project
- New Jobs
- Labor shortages?
- Supply Chain Issues
- Pricing and Inflation Concerns

III. The Public Owner's Perspective

- Impact on Current and Future Projects
 - Funding status for projects has improved
 - Projects that may have been shelved/cut are now moving forward
- Funding from COVID-related stimulus helped to get projects going and gave preview of impact of Infrastructure Act
 - Renewed momentum for planned or stalled projects
 - Already discussing future projects
- Assessing changes to general contract conditions ahead of future influx of projects

III. The Public Owner's Perspective (cont.)

Contract Review

- Change Order provisions
- Alternative dispute resolution
 - Executive Meetings/Mediation
 - Partnering
 - DRB
 - Arbitration v. Litigation
- Force Majeure – COVID impact?
- Streamlining processes for smaller jobs/contractors

III. The Public Owner's Perspective (cont.)

Alternative delivery methods

- Design-Bid-Build is Standard
- Evaluating alternative on project basis
- Each State is different in what they allow for public projects
 - Design-Build?
 - Construction Manager “At Risk”?
- Federal Project Alternatives

III. The Public Owner's Perspective (cont.)

Potential Issues/Concerns

- Supply Chain Disruptions
 - Claims
 - Higher Bid Prices
- Diversifying Bidder Pool
- Providing Opportunities for Small Businesses

IV. The Contractor's Perspective

Prospective Projects

- How do you identify what to bid and where to focus/allocate resources?
 - Type of project (road, bridge, power plant, waster water treatment, etc.)
 - Location and size
 - Priority and timing – what projects will go first?
- Will the scope of projects be unique and/or overlap industries?

IV. The Contractor's Perspective (cont.)

Potential Issues/Concerns

- Labor Capacity
 - New FAR Regulation for fully vaccinated workers by 12/8/21
 - Applies broadly to several classes of employees/workers
 - Enough qualified workers/subcontractors fully vaccinated?
 - Increased costs for skilled, vaccinated trades?
 - Delay impacts?
 - Trade limitations – aging workforce, retirements, unemployment

IV. The Contractor's Perspective (cont.)

Potential Issues/Concerns (cont.)

- Influx of contractors into the infrastructure arena
 - Impact on bidding prices?
 - New competitors in the market?
 - Decrease in margins?
 - Increase in defaults?

IV. The Contractor's Perspective (cont.)

Potential Issues/Concerns (cont.)

- How is the government going to manage projects?
 - Increase in contracting officers/managers?
 - Different delivery methods (Design-Build, P3)
- Is design capacity available for all of the work?
- Will there be an impact on insurance capacity and/or premiums with an influx of projects?

V. Pitfalls to Avoid in Government Contracting

- Submission of Cost and Pricing (C&P) Data – Both Certified and Not
- Defective Pricing Arising from Submitted C&P Data
- False Claims Act Actions by the Government – Treble Damages/penalties
 - Similar State False Claims statutes
- Defense Contract Audit Agency (DCAA) Audits of Cost and Bid Information
- Negotiated Procurements and the Sharing C&P Information
- FAR Part 31 Unallowable Costs and Other Guidance (COE Equipment Rates)
- Cost Accounting Standards – Allocations Peculiar to Federal Arena

V. Pitfalls to Avoid in Government Contracting (cont.)

Other Legal Issues to Consider

- Contract Clauses (payment, delays, damages, etc.)
- Termination for Convenience
 - History of the clause
 - Key considerations for owners and contractors
 - Grounds for termination
 - Recoverable damages
- Termination for Default

VI. Questions?





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