



Reform Procurement Policy to Improve Delivery of Construction Services

Background:

- Small businesses are the foundation of our economy; in fact, the typical electrical contracting firm is often classified as small business, with 80 percent having less than ten employees.
- NECA supports legislation that would help increase opportunities for small businesses, prevent government waste and fraud, and provide a framework for growth in the construction industry by promoting efficient federal government procurement through simple, no-cost solutions.

Key Points:

- *Establish a Statute of Repose for Federal Construction Projects.* NECA supports establishing a reasonable (six year) federal statute of repose for latent defect claims. Construction contractors face a substantial degree of liability exposure from their alleged negligence in the construction of improvements to real property that has long since been completed. Without this statute of repose, contractors are held responsible for failures outside their realm of control. Statutes of repose bar actions against contractors following the completion of services after a reasonable period of time.
- *Reform the Administration of Change Orders.* Slow processing of change order requests by public project owners, coupled with slow payment for extra and changed work, are major problems threatening project success and contractor viability.
- *Bid Listing Will Ensure Transparency in Federal Construction.* Bid shopping and bid peddling are unethical business practices that threaten the integrity of the competitive bidding system. These practices work to undermine the presentation and fair consideration of accurate information to owners. Requiring bidders to list the subcontractors to be used in their bids (bid listing) would significantly reduce the practice of bid shopping and bid peddling on federal construction jobs.
- *Prohibit Utilization of Reverse Auctions for the Procurement of Federal Construction Contracts.* Reverse auctions rely solely on driving the price of a good or service to an absolute minimum and awarding the contract to the lowest bidder, undoing years of progress in "best value" contracting. Relying solely on price requires cutting costs in the materials and/or labor, ignores the importance of quality construction and consideration of life-cycle costs, and creates a race to the bottom.
- *Ensure Payment Protections for Construction Subcontractors and Suppliers Performing under Public-Private Partnerships (P3) on Federal Construction Projects.* Unlike traditional methods of procurement, under a P3, the public entity signs a contract with a private partner, which in turn chooses and pays the construction contractor. The

public entity commits funds to repay the private partner, plus a profit, over a period of time ranging from 30 to 99 years. Even though procurement methods have evolved—including the use of P3s—construction remains a risky business, making the protections that surety bonds provide for taxpayers' investments and payment guarantees for subcontractors and suppliers just as crucial in P3s. Bonding is sound public policy that assures the successful completion of construction projects and protects businesses.

- *Eliminate Future Indexing of Federal Miller Act.* The indexing requirement undermines the original, protective purposes of the statutory bonding requirements. Performance bonds provide assurance of performance of the construction contract to the contracting agency, thereby protecting precious taxpayer dollars. In turn, payment bonds provide an invaluable compensator to the many subcontractors and suppliers that furnish labor and materials on these public projects in the event that the prime contractor fails to pay or becomes insolvent. By subjecting bonding thresholds to regular indexing every two years, they will undoubtedly continue to rise thereby ensuring that Federal, state and local public construction projects will be undertaken without the benefit of payment bond protection for those businesses on the jobsite.
- *Limit Single-Phase or "One-Step" Design-Build Selection Procedures.* The two-phase selection procedure puts the focus first on the qualifications of proposing design-builders. Then, based on those qualifications, the field of proposers is narrowed to five or fewer contractors who then put together formal proposals. This is preferable for two primary reasons: 1) Federal agencies save considerable time and resources by reviewing detailed proposals from only the most qualified design-builders, and 2) Since the cost of bidding is so low in the first round, more qualified design-build teams are encouraged to participate. Those that are selected for the second-round can then afford to put considerable resources into a detailed, innovative proposal. However, when the single-phase or one-step process is used or an agency decides to have more than five finalists in the two-phase procedure, highly qualified design-builders are less likely to participate, small businesses are crowded out, innovation is discouraged, and quality is driven down.

NECA Asks:

- Support these common-sense reforms to improve the Federal procurement system.