



Enact Small Business Payment for Performance Act

Background:

Changes to a contract, commonly known as “change orders,” inevitably occur on construction projects. On federal projects, the government may issue change orders without the contractors’ consent and often do not abide by change order rules, like formalizing change orders in writing. While the FAR Changes Clause allows and recognizes the ability to request an equitable adjustment (“REA”), payment is only allowed once a formal change order/modification is issued or a claim/REA is otherwise resolved, whether through negotiation or litigation, and a change/modification is issued. Many times, where the parties cannot agree on the cost or scope of a change, the Agency will issue a unilateral change in which the Government sets forth the scope and what it sees as the value for a changed condition. This often results in significant financial hardship to contractors, small and large alike, as they and their subcontractors must effectively finance the changed work until the agency agrees to the cost of that unilateral change.

Key Points:

- Allow small businesses to request an equitable adjustment to the contracting officer if the contracting officer places a change order without the agreement of the small business.
- Require the federal government to pay at least 50 percent of costs incurred from the change order upon receipt of the equitable adjustment.

NECA Asks:

Cosponsor the Small Business Payment for Performance Act (H.R 2726) introduced by Congressman Pete Stauber (R-MN).

Cosponsors:

Rep. Brian Fitzpatrick (R-PA)

Rep. Andy Kim (D-NJ)

Rep. Scott Peters (D-CA)

Rep. Adam Schiff (D-CA)

Rep. Marc Veasey (D-TX)