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LEGAL UPDATES

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President Biden Signs Infrastructure Package into Law

PRIVATE-SECTOR BUSINESSES NEED TO PREPARE NOW FOR THE IMPACT OF $1.2 TRILLION ACT

Services

Construction & Design

Government Contracts

Labor & Employment

Public-Private Partnerships (P3)

Industry

Real Estate, Development, & Construction

Professionals

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Today, President Joseph Biden signed the $1.2 trillion Infrastructure Investment and Jobs Act, setting in motion historic federal spending appropriations being delivered to the states for disbursement and project deployment. The Act contains over $500 billion in new spending above baseline levels, touching traditional infrastructure such as road and bridges, but going well beyond to water, energy, broadband and weatherization.

Unlike the CARES Act, the Infrastructure Investment and Jobs Act returns to traditional federal funding with traditional federal rules.

While it will take some time for the Infrastructure Investment and Jobs Act funds to work their way to the states, companies who want to participate in the bipartisan funded programs should prepare now to ensure compliance with federal requirements and project optimization. Areas to consider and adopt or expand include:

Federal Procurement and Contracting Requirements. Receiving and spending federal funds also requires compliance with federal procurement, contracting, and auditing requirements. Compliance with the federal Uniform Guidance as well as any state pass-through requirements that may be applicable should be ensured.

Supplier Diversity Programs. Now is the time to ensure that your entity has established any required diversity programs including DBE, HUB, or

MWBE certification programs. A diversity program may take many forms, including outreach, mentor-protégé programs, or numeric goals that could require constitutional analysis for implementation. Adopting policies and being educated early on will ensure legal compliance.

Prevailing Wages and Labor Compliance. Under federal and state law, government owners are required to adopt and utilize a prevailing wage based on either the Davis-Bacon Act or a local wage survey. Owners will likely be using this as an opportunity to review and update wages in preparation for their first procurements. Many will look at utilization of other labor compliance mechanisms such as subcontractor payment monitoring, worksite safety, or drug and alcohol enforcement. Now would be a good time to ensure that your programs align with what will be required/expected from the state and local government entities.

Construction Delivery Methods. Governmental entities should consider utilizing alternative construction delivery methods in addition to traditional bidding. Approaches such as design-build and construction-managers-at-risk may offer a better value for implementing new construction projects. While there will be a major influx of funds to governmental entities, they will likely still have constraints on their labor pool to manage the funds and projects. Consider seeking opportunities for education and assistance on alternative methods and the benefits they can provide.

Public-Private Partnerships (P3). With newly available funds, now is the time for government owners to considers ways to supplement and stretch project funds. Many governmental entities are likely to consider adopting P3 guidelines for a range of infrastructure projects that can be utilized in tandem with federal funds thus stretching their project dollars and impact.

Strain on Construction Materials. The construction industry has been challenged by material availability and price escalation. While there is roughly $130 billion in new funding for transit systems and ports of entry, upgrading the national physical infrastructure will require enormous amounts of copper, aluminum, steel, cement, lumber etc. You should make sure that your contracts properly allocate the schedule and pricing risk for the elevated competition for construction goods.

Contact us

Our Infrastructure Bill team will be actively staying on top of funds disbursement and project development throughout 2022 and beyond. If you have any questions, please contact Sandy Hellums-

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