A&E Quarterly Regulatory Round Up

Q4 2021

Legislative Update: Where the Infrastructure Investment, the Jobs Act and the Build Back Better Act Stand Today

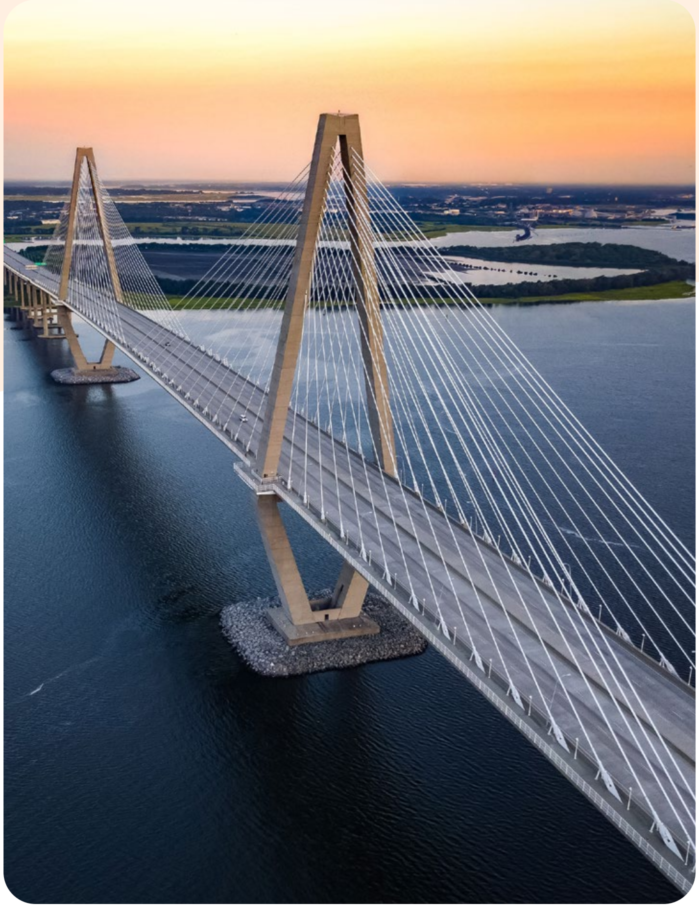
By: Ronald G. Wainwright, Jr., Strategic Tax Advisory Partner

Late on Friday November 5, 2021, the House of Representatives passed the $ 1.2 trillion Infrastructure Investment bill, leaving a vote on President Biden's larger social and climate package or Build Back Better Plan until centrists in the Democratic Party receive estimates on its full cost. The Infrastructure Investment and Jobs Act was signed on Monday, November 15th by the President while the larger Build Back Better legislation, which contains many of the Tax Increases and Renewable Energy Provisions being considered, is in significant question until the Congressional Budget Office estimate the Revenue Cost – likely greater than the $ 1.75 Trillion reported.

The Build Back Better (BBB) Act has cost estimates of $1.75 to $2 trillion. However, a group of five centrists in the Democratic Party released a statement late Friday night that they would vote for the bill once the Congressional Budget Office confirmed the cost figures are in line with White House estimates. "We commit to voting for the Build Back Better Act, in its current form other than technical changes, as expeditiously as we receive fiscal information from the Congressional Budget Office – but in no event later than the week of November 15, 2021," said the statement.

The House plans to take the next step in passing the social spending plan. The chamber will try to approve the bill during that week once it returns from a weeklong recess. However, with no Republican support expected, Democrats can lose no more than three votes for the package.

It would then go to the Senate. To pass the bill under special budget rules, all 50 members of the Democratic caucus will have to support it.



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Senator Schumer will have to win over conservative Democratic Sen. Joe Manchin of West Virginia, who has not yet blessed a framework agreement on the legislation. The House could also send the Senate a bill that includes four weeks of paid leave for most American workers — a provision Manchin has opposed. Once the Senate irons out any objections from Manchin or other Democrats, in addition to any constraints budget reconciliation rules put on the bill, it could approve a different version of the plan than the House does. The House would then need to vote on the Senate plan or go to a conference committee with the upper chamber to hash out disparities.

In an overview, Democrats will have to navigate a series of obstacles to get the bill to Biden's desk in the coming weeks. Pulling it off will require cooperation and trust between centrists and progressives who have disparate views about how large of a role the government should play in boosting households and combating climate change.

Further, on Sunday, November 7, 2021, House Speaker Nancy Pelosi expressed confidence that the centrists will honor their side of the deal. "As has been agreed, when the House comes back into session the week of November 15th, we will act with a message that is clear and unified to produce results," she wrote to House Democrats. The nonpartisan CBO could take weeks to release a cost estimate for the sprawling plan. However, the centrist holdouts in a Friday statement committed to voting for the legislation "in no event later than the week of November 15, 2021."

If Democrats can push the bill through Congress in November, they will still have another big lift on their hands before the end of the year. Lawmakers need to raise or suspend the debt ceiling sometime in December — or risk the first-ever default on U.S. debt.

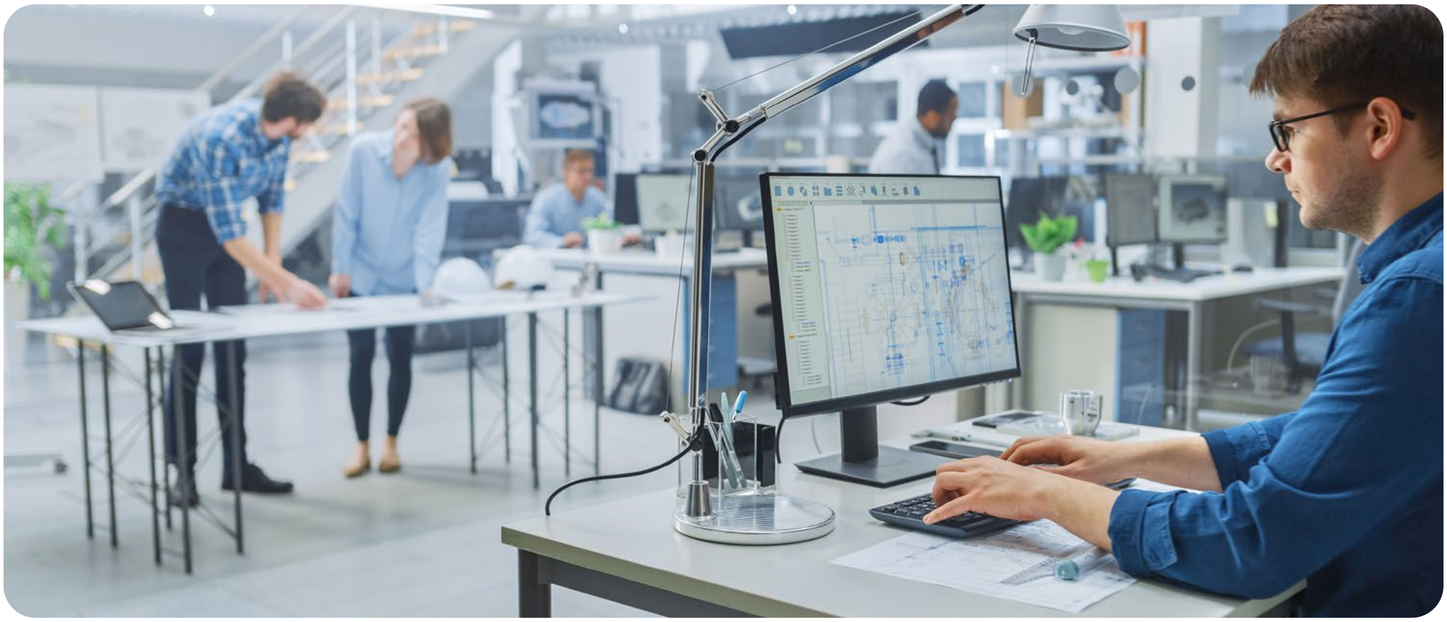
Evaluating the Impact of Biden's Executive Order to Raise the Federal Contractor Minimum Wage on Your Current & Future Contracts

By: Eric Poppe, Senior Manager, Government Contracting & Professional Services Industry practices and George Faux, Senior Associate, Government Contracting Industry practice

On January 30, 2022, the new federal contractor minimum wage will go into effect. The change in wage determination was one of President Biden's executive orders on April 27, 2021. The executive order (EO) mandates the following:

- Starting January 30, 2022, the federal contractor minimum wage will be raised to $15 per hour for prime contractors and subcontractors.
- January 1, 2024, tipped worker federal contractor minimum wage will be eliminated.
- Federal contractor minimum wage will apply to new contracts issued on or after January 30, 2022, and any existing contracts extended or renewed or an option exercised after January 30, 2022.
- Contracts that meet the definition covered under the EO and by the Fair labor Standards Act, the Service Contract Act, or the Davis-Bacon Act will be affected, and contracts under the latter two will have a new $15 per hour wage floor that will likely rise each year.
- The new $15 minimum wage does not apply to grants or any contracts, contract-like instruments or agreements with American Indian Tribes, or other contracts or contract-like instruments expressly excluded by subsequent regulations.
- The secretary of labor will increase the federal contractor minimum wage each January, by increments of 5 cents, based on the annual increase in the consumer price index.

The new directive will undoubtedly impact federal contractors in the A&E space; however, each contractor's impact will vary and depend mainly on the build-up of their workforce based



on the proportion of un-specialized service labor, laborers, and mechanics as these labor categories are typically on the lower end of the pay scale and are typically covered by the Service Contract Act (SCA) and Davis-Bacon Act (DBA). As stated in Executive Order 14026, the mandate will impact contracts that meet the definition covered under the EO and by the Fair labor Standards Act, the SCA, or the DBA. Consider these factors when evaluating how the wage increase will impact your current and future contracts with a few months left to the start date.

1. **Impact on *current* contracts:** The effect of the wage increase may range from minimal to maximal, depending on the nature of your workforce. Contractors with a substantial number of employees and subcontractors that are considered non-exempt or fall under SCA or DBA, will potentially experience increases in labor and possibly overhead costs, due to reporting and record-keeping requirements. Typical A&E workforces comprise specialized labor employees whose compensation is commensurate with their skill level and are generally competitive and surpasses any minimum wage requirements. Contractors with predominantly skilled labor employees may not be as impacted as their counterparts. However, this does not preclude all contractors, regardless of the composition of their workforce, from understanding the executive order requirements partly because the provisions apply to subcontractors who perform on federal contracts. Ensuring subcontractor compliance with the requirements may fall under your responsibility as the prime depending on your agreement.

As noted above, the new wage minimum may rise each year, meaning contractors will need to review the wages paid to their employees each year on federal contracts to ensure appropriate wage payment. Therefore, it is advisable to evaluate the process for price adjustments under the Federal Acquisition Regulation (FAR) 52.222-43 and seeking other reasonable contract price adjustments when the new federal minimum wage is applied to contract extensions or renewals, or when options become exercised.

2. **Impact on *future* contracts:** To mitigate any risks associated with the wage increase, contractors should start planning to price all new federal 2022 work using the $15 minimum per hour wage rate. The new $15 per hour wage minimum will likely rise each year; therefore, contractors should consider this when pricing future work in addition to considering the contract type. Considerations must include the impact this would have on proposed direct labor and subcontract costs. Reliance on pricing for future work based solely on the current minimum wage determinations or historical costs may not be sufficient to estimate accurate and reasonable labor and subcontract costs for future work. Contractors should conduct a thorough analysis to evaluate the future potential increases to ensure proposals are realistic. Consider developing an internal review process and methodology to ensure that the wages for lower-wage workers will be adjusted and reflect accurate wage rates and applicable basis of estimates.

PPP Forgiveness Impact on Overhead Rates for A&E – Where It Stands Today

By: Scott Duda, Assurance Partners, Professional Services Industry Practice Leader

As you know, we've continued to keep our eye on the Paycheck Protection Program (PPP) forgiveness impact on overhead rates for A&E firms. In September, the U.S. House Rules Committee attached the Brown-Katko Amendment to the National Defense Authorization Act (NDAA). This amendment was grouped with several bipartisan amendments and that group of amendments passed in the House of Representatives. The amendment was co-sponsored by three Republicans and two Democrats, illustrating the bipartisan support for addressing the challenge facing firms that work with State and local DOT's.

The Brown amendment states that "no cost reduction or cash refund shall be due to the Department of Transportation or to a State transportation department, transit agency, or other recipient of assistance" related to forgiveness of payroll costs under a covered PPP loan.

Senate leaders have drafted their own version of the NDAA and are now discussing differences in the versions to reach consensus on an agreement that can pass both chambers.

We will continue to monitor the situation and provide updates as applicable.

We Can Guide You Forward

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