

## Rebuilding America: What the Biden American Jobs Plan Means for Construction Contractors

Litigation Alert

**04.12.2021**

On March 31, 2021, the Biden administration unveiled the [American Jobs Plan](#) (the Plan), a \$2 trillion spending proposal targeting U.S. infrastructure, energy, and manufacturing. The Plan would make a dramatic, long-overdue investment in the country's infrastructure and create construction contracting opportunities in a variety of areas, including transportation infrastructure, electric grids, water infrastructure, educational facilities, research laboratories, and federal buildings. This alert describes how the government plans to spend these significant sums and highlights other key elements and takeaways of the Plan for construction contractors looking to grow their business.

### **The Plan's Main Areas of Investment: Planes, Trains, and Automobiles (and Lots of Other Stuff)**

**Transportation Infrastructure:** Citing poor road conditions, traffic fatalities, and the current transportation system's negative impact on climate, the Plan allocates \$621 billion for infrastructure and transportation improvements, with \$115 billion set aside for the construction of more sustainable and resilient bridges and streets. Substantial bridge, highway, road, and street reconstructions and repairs are central to the Plan's goal of improving both the quality of American infrastructure and using the improvements as a means of aiding underserved communities and fortifying American infrastructure systems against climate-related threats. The plan would also invest \$25 billion in airports and \$17 billion for inland waterways, coastal ports, land ports of entry, and ferries.

While the Plan proposes national reinvestment in infrastructure and transportation, much of the improvement will happen at the state and local level. For example, the Plan contemplates the repair of 10,000 smaller bridges, including bridges that reach rural and tribal areas, and the modernization of 20,000 miles of roads across the country. The administration also intends to funnel \$85 billion towards reinvestment in public transportation, with potential contracts for track, signal, and power system upgrades and replacement or repair of buses and rail cars.

**Water Infrastructure, Broadband, and Electric Grid:** The Plan would invest \$111 billion to rebuild clean drinking water infrastructure—\$45 billion of which would go to eliminating all lead pipes and services lines in the United States. The Plan also aims to reach 100 percent high-speed broadband coverage by prioritizing building "future proof" broadband infrastructure in unserved and underserved areas.

Another focus of the Plan is to reenergize the country's power infrastructure by, among other things, building a more resilient electric transmission system. The Plan targets cheaper, cleaner electricity and proposes the creation of a "targeted investment tax-credit that incentivizes the buildout of a least 20 gigawatts of high-voltage capacity power lines and mobilizes tens of billions in private capital off the sidelines."

**Homes, Schools, VA Hospitals, Federal Buildings, and Research Laboratories:** The Plan also would invest significant sums in infrastructure, housing, and facility construction to address systemic social issues, such as racial inequity, economic disparities, climate change, and lagging public education. Funds are specifically set aside for construction-based policy initiatives, including the creation or revitalization of childcare facilities (\$25 billion), VA hospitals (\$18 billion), federal buildings (\$10 billion), research laboratories (\$40 billion), and public housing (\$40 billion). The Plan also designates \$100 billion in direct grants and bonds to upgrade and build new public schools across the country, with an additional \$12 billion accessible to states to address physical and technological infrastructure needs at community colleges.

### **The Plan's Main Policy Goals: Sustainable, Resilient Infrastructure (On-Time and On-Budget)**

**Focus on Climate Change and Clean Energy :** A common thread throughout the Plan is a focus on climate change, clean energy, and environmental justice. This focus takes many forms, including (1) transportation modernization funding specifically targeted at improving air quality, limiting greenhouse gas emissions, and reducing congestion; (2) investment in the remediation and redevelopment of Brownfield and Superfund sites; (3) funding to support "cutting-edge, energy efficient and electrified, resilient, and innovative school buildings"; and (4) investment in an electric grid that can move "cheaper, cleaner" electricity.

**Focus on Resilient Infrastructure:** The Plan highlights the unprecedented number of severe natural disasters impacting the United States in recent years and aims to make the country's infrastructure more resilient to better withstand and recover from natural disasters in the future. According to the Plan, this will include targeting "investments to support infrastructure in those communities vulnerable physically and financially to climate-driven disasters and to build back above existing codes and standards." The Plan targets investment in vulnerable communities through the Federal Emergency Management Agency (FEMA)'s Building Resilient Infrastructure and Communities program (BRIC), the Department of Housing and Urban Development (HUD)'s Community Development Block Grant program (CDBG), new initiatives at the Department of Transportation (DOT), and a tax-credit to provide incentives to low- and middle-income families and small business to invest in disaster resilience.

**Focus on Efficient and Effective Use of Funds :** According to the Plan, the United States lags its peers in delivering on-time and on-budget infrastructure improvements and is falling behind countries like China on overall investment. The administration proposes to combat this issue by adopting lessons learned from the Recovery and Reinvestment Act of 2009 and providing training, technical assistance, and procurement best practices to the state, local, and tribal governments delivering the projects to ensure the best outcomes on cost and performance. The administration also intends to use "smart, coordinated infrastructure permitting to expedite federal decisions while prioritizing stakeholder engagement, community consultation, and maximizing equity, health, and environmental benefits."

## Key Takeaways

The Biden administration's infrastructure Plan brings welcomed news for construction contractors, as it promises to significantly increase federally funded local and state construction projects in the coming years. In particular, construction contractors should expect a sizable increase in state and local projects for the improvement of roads, bridges, and public transportation. There also will be more contracting opportunities for improvements to the electric grid, schools, federal buildings, and VA hospitals and environmental remediation projects at legacy industrial and energy sites. Contractors should keep a close eye on procurement postings to ensure that they don't miss out on these opportunities. Specifically, contractors should monitor the [System for Award Management \(SAM\)](#) for procurement opportunities and, if they have not already done so, register in SAM. Registration in SAM requires contractors to make numerous regulatory certifications requiring careful consideration. Contractors also should be aware that it may take several weeks before a registration becomes active.

Further, to best position themselves for contracting opportunities created by the Plan, construction contractors should consider investing in and focusing on building techniques and materials that create more modern and resilient infrastructure, homes, and buildings—especially in those areas impacted by severe weather events. Adopting "green" building techniques and focusing on energy efficiency also will help contractors improve their competitive standing for Plan-funded contracts that prioritize climate-friendly alternatives and green infrastructure.

Finally, given the Plan's emphasis on "accountability and transparency" measures, contractors must be aware that they could be subject to considerable oversight by federal, state, and local contracting authorities who are tasked with ensuring that project funds are used efficiently and effectively. As a result, contractors should consider developing, adopting, and implementing procurement policies and procedures that will help them comply with the many regulatory requirements they surely will encounter.

For example, contractors must implement the code of conduct and training programs required by FAR 52.203-13, Contractor Code of Business Ethics and Conduct, shortly after being awarded a contract valued at more than \$6 million with a performance period of 120 days or more. Additionally, contractors may become subject to Equal Employment Opportunity (EEO) and

Affirmative Action Program (AAP) requirements enforced by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), as well as the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. Finally, contractors will also want to confirm that their cost accounting and other business systems are adequate to perform federal work and that they have an established practice for managing regulatory flowdown clauses from both the prime contractor and subcontractor perspective.

If you have any questions about the American Jobs Plan or how it will impact your company, please contact the Miller & Chevalier attorneys listed below.

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