

Momentum for the federal government to invest in nationwide infrastructure has resulted in an unprecedented amount of United States federal funds being sought by the Biden Administration for various infrastructure initiatives. This provides significant opportunities for companies that have already performed under government contracts and for those looking to expand their business into the federal market. Working for the government, however, has inherent risks that accompany the obvious rewards.

President Biden introduced the American Jobs Plan (“the Plan”) on March 31, 2021. The Plan is a \$2 trillion spending proposal targeting a wide range of areas for investment that includes traditional infrastructure, such as transportation, utilities, and structures, but also includes areas of investment for the future economy, including research and development, aged care and childcare, and green energy. The purpose of the American Jobs Plan is, in part, to preserve and create jobs and promote economic recovery by investing in various infrastructure improvements that provide long-term economic benefits.

Sector	Amount (In Billions)	Percent of Plan
Buildings, Schools, and Aged Care	\$768	33%
Transportation	\$621	27%
Jobs, Manufacturing, and Innovation	\$593	26%
Utilities	\$311	14%

Ultimately, the goal is to accomplish all of this while keeping a focus on climate change, clean energy, and the efficient/effective use of funds. Therefore, while there is plenty of opportunity for contractors, there is a bigger need for oversight on the everchanging regulatory requirements. As such, the Plan includes ideas to streamline the processes to direct funding to approved projects. This would include, for example, using existing rights-of-way along roads and railway lines to accelerate the installation of new transmission lines. Of course, it is yet to be seen how these ideas would be implemented and, given the involvement of state and local governments, how effective they would be in practice.

Regulatory Consideration

Similar to other federal contracts utilizing taxpayer funded dollars, federal procurement regulations require contractors engaged by federal agencies to adhere to strict contractual requirements. Contractual obligations should be carefully evaluated to ensure appropriate policies, procedures, and controls are established to mitigate the associated risk. In order to enter into a federal contract that is funded directly by the American Jobs Plan appropriations, a company must comply with the Federal Acquisition Regulation (“FAR”) requirements. The FAR is a complex set of regulations that poses substantial business and compliance risks to government contractors. In order to be awarded a contract, a government contractor must either be compliant, or demonstrate that it will be compliant, at the time of the award with all FAR provisions specified by the contracting agency. For example, this may include such requirements as possessing a code of conduct, following subcontracting procedures, adhering to record retention requirements, or maintaining compliant cost accounting and billing processes.

In addition to FAR compliance, contractors may also be required to comply with the Cost Accounting Standards (“CAS”). Based on the current thresholds for CAS applicability, a contractor may be required to be either “full” or “modified” CAS compliant.

The American Jobs Plan also includes other important requirements and considerations including, but not limited, 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.

Due to the increased focus on accountability and transparency, contractors should be prepared for increased oversight from federal, state, and local contracting agencies to ensure that funds are used efficiently and effectively. Therefore, it is imperative that contractors adopt policies and procedures that enable the organization to meet the regulatory requirements. While compliance may be difficult for some organizations, it will be impossible for those who do not

assess their risk prior to entering a federal contract under the Plan.

Knowing that the important work required cannot be done without capable private companies, the federal government has resources to assist small companies and new entrants to the federal market. The System for Award Management (“SAM”) is a helpful resource for contractors to monitor procurement opportunities. All contractors performing work for the federal government must register with SAM, and companies must be aware that registration requires numerous regulatory certifications which should be carefully considered. Contractors should note that it may take several weeks before a registration becomes active.

Government oversight for all contractor activities, including accounting, marketing, purchasing and inventory management, is stringent. Government auditors and other representatives are aggressively searching for improper billings, defective pricing, and other violations of the procurement laws and regulations. All too often, honest errors and omissions give rise to allegations of fraud. For companies looking to expand their services into the federal marketplace, consultation with professionals who are familiar with navigating the contracting challenges is advised.

Chess Consulting Differentiators

Chess Consulting assists our clients and their outside counsel to develop practical and sustainable solutions to address accounting and regulatory compliance issues. Among our specialties is helping government contractors manage their critical business and compliance risks associated with selling to the U.S. Government. Our key differentiators include:

Deep industry knowledge and technical expertise which helps each client deal effectively with the complexities of the processes and issues facing its business.

Profitability focus concentrating on actions and solutions that create a competitive business advantage while fully complying with regulatory requirements.

Practical and creative solutions that effectively address difficult compliance and business issues.

Supportable positions that have been proven to withstand scrutiny from regulatory agencies such as the SEC, DCAA, DOJ, and GAO.

Ready access to skilled resources to support a range of business functions.