



Campaign for Quality Construction



February 11, 2011

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

On behalf of the Campaign for Quality Construction (CQC), an employer-based construction coalition representing approximately 27,000 employers, we wish to congratulate you on both your re-election and your appointment to serve as Chairman of the House Committee on Oversight and Government Reform. The CQC is comprised of the leading specialty contracting firms in the nation and includes the National Electrical Contractors Association (NECA), the Finishing Contractors Association (FCA), the International Council of Employers of Bricklayers and Allied Craftworkers (ICE), the Mechanical Contractors Association of America (MCAA), the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), and The Association of Union Constructors (TAUC). These groups represent more than 25% of the total building construction industry volume in this country and employ approximately 500,000 skilled workers. Specialty contractors hold a market share of more than 60% of non-residential building construction. Our members employ highly trained and highly skilled workers who are well compensated in wages, health and pension benefits – core components of a strong and sustainable workforce.

We offer you the following thoughts regarding regulations your Committee may wish to consider reviewing as well as some additional perspective on regulations supported by our employer members. We welcome the opportunity to visit with you in person to discuss these important issues.

Repeal Unnecessary, Duplicative Laws and Regulations

Three Percent Withholding: Enacted in Section 511 of the 2005 Tax Increase Prevention and Reconciliation Act is a mandate that will place a 3% withholding 'tax' on all entities performing services for federal, state, or local governments. The law was designed to help address the "tax gap," that is, the difference between revenue due to the Treasury and revenue actually paid into the Treasury in the form of tax receipts. At a time when the construction industry is dealing with one of the worst economic declines in history, with unemployment levels exceeding 20% of the

workforce, a requirement that withholds 3% of payment rightfully due to those performing services is unfair and would be especially devastating to construction industry employers. Compliance would deplete operating cash flow and would lower the already low profit margin of construction contractors on government projects. Ultimately, the cost of government contracting will go up as contractors reduce their hardship by increasing bid prices or by dropping out of government contracting altogether which will result in less competition and higher prices for the government. Three percent withholding regulations are in the process of being finalized by the U.S. Treasury but CQC seeks congressional intervention by repealing the law to prevent the promulgation of any regulations implementing the withholding tax. We want to emphasize that while we understand some government contractors do not pay owed taxes, we believe the government should strengthen the procurement **process** to ensure that the government conducts business only with lawful contractors.

1099 Corporate to Corporate Reporting on Goods: Congress appears to be on the brink of repealing the Form 1099 corporate-to-corporate reporting burdens that were included as ‘pay-fors’ in the comprehensive health care legislation. While studies show that IRS reporting does increase tax compliance, the requirement for reporting on the purchase of goods would in certain cases be redundant and unnecessary. Further, at a time when lawful construction companies are struggling to stay in business, a mandate which creates additional overhead expense for bookkeeping activities does not seem logical. The CQC is in support of the repealing the reporting provisions that will put undue burdens on our small business contractors as a result of increased paperwork on an already much-depleted workforce.

OSHA: OSHA has recently issued several proposals of concern to our industries. Interestingly, within the past couple of weeks, a couple key proposals have been withdrawn. These withdrawn regulations included a proposed ergonomics regulation requiring recording of such injuries on company injury and illness logs, and a proposed change in the interpretation of the term “feasible administrative or engineering controls” in occupational noise standards possibly resulting in significant workplace renovations.

However, there are still several proposals on the regulatory agenda that are troublesome. Foremost is a proposed rule to require employers to implement an Injury and Illness Prevention Program. In stakeholder meetings, discussions have indicated that OSHA may favor a management system approach using examples from existing voluntary standards and “international initiatives.” Although these complicated programs are familiar to large corporations, they would be a significant burden to small businesses who are successfully implementing manageable, common-sense safety programs, with assistance from associations like ours, as evidenced by the results of our safety survey programs.

Another proposed standard on the regulatory agenda that deserves attention is the general industry standard for Walking Working Surfaces and Personal Fall Protection. One specific requirement for “designated areas” as a fall prevention tool while working on flat roofs would be a burden to many employers, not just our organizations. The proposed requirement would require ALL employers to set up physical barriers from the point of entry (internal hatchway, exterior ladder, etc.) to and around the work area as a way to remind employees not to walk to the edge of the roof. This would require workers accessing a roof for any reason to put

themselves in further jeopardy by carrying heavy equipment up a ladder or steps (possibly needing to lean over the edge of the roof).

Finally, a proposed OSHA regulation in the final rule stage is Confined Spaces in Construction. This rule could be very complicated for construction companies if OSHA pursues a discussed path of expanding the existing general industry standard for confined spaces by adding various classifications of confined spaces that would need to be assessed by employers. We would encourage OSHA to shape the proposed construction rule to match the existing general industry requirements.

EPA Lead Paint Rule: CQC recommends consideration before your Committee of EPA's Remodeling and Renovation Lead Paint rule. Such a rule mandates the use of lead-safe work practices in pre-1978 residences and child-occupied facilities such as daycares, schools and other building frequented by children. CQC supports the spirit of the rule and the use of lead-safe practices thereby reducing children's exposure to lead. However, we believe the rule, which requires all renovation activity to be performed by a certified firm under the supervision of a certified renovator, to be unnecessary and burdensome, especially on our small business contractors.

Maintain and Strengthen Federal Construction Industry Workforce Standards

Prevailing Wage and Project Labor Agreements: CQC is in support of maintaining Davis-Bacon and prevailing wage policies and administrative procedures and the proprietary use of Federal construction program discretion to use project labor agreements where it is beneficial for the agency's program and mission. CQC is opposed to its repeal in whole or in part.

The U.S. government enacted the Davis-Bacon Act to establish local labor rates within construction projects contracted by the federal government. This act requires public-works contractors to pay trades no less than the wages that prevail on similar projects within the same region. Similar prevailing wage rate legislation was ultimately adopted by most states for bidding on state and local government projects.

Prevailing wage laws encourage contractors to compete for government work based on skill, safety, and efficiency rather than by cutting wages. Such laws allow good contractors to pay fair wages and hire well-qualified workers. Prevailing wage standards promote the use of the local labor force and help keep labor costs low by employing skilled labor to avoid cost overruns and safety problems. Prevailing wage regulations improve working conditions for all workers.

CQC has advocated for high workforce standards in the industry as sound proprietary policy for the Federal government as purchaser of construction services. Prevailing wage policy serves very well under current market conditions, just as it continues to respect industry standards in the procurement process.

Despite the long-standing controversy over these issues in political debates, the CQC efforts and analysis have sought policy support that backs the government's interest in these workforce standards from a practical business perspective. In that vein, we have long supported various prevailing wage statutory and regulatory improvements that shore up this vital policy. Similarly,

we would suggest that the Administration's project labor agreement policy could be improved with more uniform administrative implementation and policy guidance to procurement agencies.

Federal Construction Procurement Reforms: CQC has long been in favor of a broad range of direct Federal construction project procurement reforms that would improve the process for top-quality firms to compete in the Federal market, and bring down costs and claims and administrative overhead by improving the quality of firms that deliver projects to Federal agencies. Our CQC member firms and most sophisticated government agencies have long since gone to the private sector procurement model, recognizing that first costs are just that, and best value purchasing is an investment in better returns on procurement resources.

In order to salvage the last remaining vestiges of the low-bid contractor selections system, which still has merit for a class of projects that can be best purchased on low-cost evaluations only, CQC has long supported major subcontractor bid listing as a way to improve the low-bid system and preserve its use for agencies that might otherwise turn to negotiated contractor selection as a way to escape the traps laid in low-bid selection as currently practiced. We have supported a statutory change to the Federal Property and Administrative Services Act as a way to spur regulatory changes at the Federal Acquisition Regulatory Council to change the FAR regulations accordingly. However a FAR administrative case directive aimed at the same changes could build the basis for the reform just as easily.

Moreover, CQC has advocated for the contractor legal compliance database that was enacted into law several years ago that is just now gaining full regulatory implementation. CQC would urge the committee to reject the claims of reflexive opponents of these measures who claim that they may, or in fact do, unfairly exclude firms from competing for projects. The contractor responsibility database informs contracting officers' existing discretion in contractor responsibility determinations to make sure the prospective contractor is a good business risk for the project. That's sound contracting policy, and again a perfect mirror of best practices in the private sector.

Develop and Strengthen

The construction industry is rampant with employers who 'game the system' by misclassifying employees as independent contractors. Employers who misclassify do not withhold income taxes, pay the employer's share of Social Security and Medicare taxes, or pay unemployment insurance; such behavior amounts to payroll fraud. Payroll fraud hurts abused workers forced to work as independent contractors, it increases the "tax gap," and it hurts the honest employer.

Currently, Section 530 of the Internal Revenue Code provides a "safe harbor" for employers who misclassify. The CQC believes this safe harbor has outlived its useful life. The safe harbor was initially enacted in the late 70's to provide a time-out from IRS enforcement and to give Congress time to consider the employer-employee relationship. Unfortunately, the safe harbor was made permanent allowing employers to continue to misclassify workers illegitimately.

It is time for this regulation to be strengthened through elimination of the Section 530 safe harbor thereby allowing for proper enforcement from authorities for those who engage in payroll fraud.

We appreciate your consideration of our collective thoughts on regulations that warrant consideration for repeal and those regulations that are supported by employers in the construction industry. We welcome the opportunity to address these issues with you at your convenience.

Sincerely,

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The CQC is comprised of the:

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Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) www.smacna.org
The Association of Union Constructors (TAUC) www.tauc.org*

Our organizations represent the high-skill, leading edge sector of the specialty contracting industry, providing the top-tier training, wages, health and welfare and pension benefits necessary for a strong workforce skill base. According to 2002 U.S. Census Bureau Construction Statistics, specialty subcontracting comprises 61% of industry employment and slightly higher in more recent figures published by the U.S. Department of Labor's Bureau of Labor Statistics.

