



Week Ending 9-13-24

Federal Budget Update for FY 25

With the political conventions in the rearview mirror, Congress returned this week facing the traditional election year quagmire of members wanting to leave Washington as quickly as possible while doing just enough to avoid a government shutdown. Congress has less than three weeks to pass a continuing resolution (CR) by the Oct. 1 start of the new fiscal year to continue funding the federal government.

Many in the Republican Party support a two-to-three-month CR that would allow for negotiation and passage of a Fiscal Year 2025 (FY 25) spending package in the Lame Duck session, arguing that approach would clear the decks for the new Congress and the next administration to focus on some major fiscal deadlines that will arise early next year. The hard-right Freedom Caucus backs a longer CR that extends into March 2025, seeking to avoid a bipartisan Lame Duck omnibus bill that would not incorporate their preferred deep spending cuts.

Senate Democrats are unlikely to seriously entertain some of the policy riders, including noncitizen voting legislation, being added to any stopgap funding measure. House and Senate Appropriators might prefer to address spending issues during the lame-duck session while current members are still in office. This could lead to an omnibus spending package, something House conservatives are trying to avoid.

FCA International Advocates for Apprenticeship Program Tax Credits

FCA International, along with the Construction Employers of America (CEA), [sent a letter expressing their concerns regarding H.R. 1656](#), the USA Workforce Tax Credit Act, which was scheduled for a vote this week in the Ways & Means Committee.

Per our letter, “Skilled labor is vital to the success of our industry, and union contractors invest heavily in joint labor-management registered apprenticeship training programs. These employers and their labor partners operate over 1,100 apprenticeship training centers nationally and invest over \$1.3 billion annually in workforce training and apprenticeship programs. Adhering to the highest standards and providing superior wages and benefits—including health insurance, pensions, and worker safety investments—to the approximately 1.4 million workers they employ, union contractors are committed to providing opportunities for top-quality construction workers to learn and maintain the skills they need to deliver highly productive, quality workmanship.”

As currently drafted, H.R. 1656 excludes Registered Apprenticeship programs and directs funds towards programs that do not meet the gold standard in workforce development. Building trades unions' Registered Apprenticeship programs, governed by Taft-Hartley funds, face significant regulatory challenges that prevent them from benefiting from this bill, even if it were amended to include Registered Apprenticeships. The bill also contains no oversight or program requirements and fails to specify any clear training quality standards.

Registered Apprenticeship Programs/Joint Apprenticeship Training Centers' contributors only receive tax deductions for the hundreds of millions invested each year in certified, first-rate RAPs. The tax deductions contractors receive for investing in Registered Apprenticeship Programs are worth less than the tax credits H.R. 1656 proposes for other programs, which are awarded on a first-come, first-served basis without regard to quality. This exclusion could undermine the effectiveness of workforce development initiatives. It is essential to recognize the value and importance of these programs, as they have consistently demonstrated their ability to provide high-quality training and job placement.

FAR Prohibits Reverse Auctions for Construction Service

The Department of Defense (DOD), the General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA) announced a proposal to amend the Federal Acquisition Regulation (FAR) to

implement a section of the Construction Consensus Improvement Act of 2021 that prohibits the use of reverse auctions for certain construction services, which FCA International championed.

Due to the complexities of federal construction projects, the procurement of construction services using the reverse auction, with sellers competing against one another by cutting prices during the open auction method, fails to consider construction's unique mix of services and systems tailored to individual owner needs and budgets, site requirements and the changing composition of the project team, while products and commodities are manufactured with little or no variability. The reverse auction process is not appropriate for construction because its bids are for a process rather than a manufactured product.

The FAR is requiring a rulemaking to promulgate a definition of "complex, specialized, or substantial design and construction services", which includes site planning and design; architectural and engineering services (as defined in 40 U.S.C. 1102); interior design; performance of substantial construction work for facility, infrastructure, and environmental restoration projects; and construction or substantial alteration of public buildings or public works. The statute prohibits the use of reverse auctions for such services having a value that exceeds the simplified acquisition threshold (SAT), which is \$250,000.00.

The proposed rule implements the prohibition against using reverse auctions for the procurement of complex, specialized, or substantial design and construction services, forcing contracting officers to comply with the statutory prohibition. While the statute does not prohibit the use of reverse auctions for the subject services at or below the SAT, a reverse auction may only be used if market research indicates it is appropriate. The FAR identifies two types of procurements for which reverse auctions may not be used, regardless of dollar value:

1. Procurements for the design and construction of a public building, facility or work using the two-phase design-build selection procedures authorized by 10 U.S.C. 3241 and 41 U.S.C. 3309, as implemented at FAR 36.104, may not be conducted using a reverse auction.

2. Procurements for architectural and engineering services subject to 40 U.S.C. chapter 11, commonly known as the Brooks Architect Engineer Act, may not be awarded using reverse auctions because reverse auctions do not comply with the qualifications-based selection processes required by statute and implemented at FAR subpart 36.6.

Written comments on the formation of this [final rule are due on October 28, 2024](#).