



## **Construction Industry Round Table**

# **REGULATORY STREAMLINING A MATTER OF SOUND GOVERNANCE**

**THE CONSTRUCTION INDUSTRY ROUND  
TABLE (CIRT)  
WHITE PAPER**

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## **FOREWARD**

*It is instructive to note in times of emergency (hurricanes, other natural disasters), severe need or economic stress (high gasoline prices), human tragedy (I-35W bridge collapse), military necessity (post 9/11 recovery), and even political expediency (close national election); that the **federal/state/and local governments are not only able but desirous that regulations be streamlined, suspended, or even waived.***

*Such actions are implicit and unmistakable evidence that many rules, regulations, and overlapping jurisdictional procedures are redundant, restrictive, inefficient, costly, and often unnecessary to achieve their true goals. In sum, those who impose the requirements are often the first to admit they “get in the way” or are unwieldy when the time comes to achieve rapid, efficient, timely results for the public.*

*In short, sound governance is a bipartisan goal that can be achieved with smart, specific, and thoughtful regulatory streamlining that allows for the general intent of the rules to be gained without the wasteful “red tape,” cost, and cumulative drag on the economy and creation of jobs.*

## **Introduction**

The design and construction industry is a highly labor intensive endeavor that provides good paying jobs in communities across the country. Given the work is highly decentralized the firms tend to be small and/or operate in a locale even if they are part of a larger organization. As such, the industry provides vital job opportunities in many locations and participates as a critical member of its community. Just as important as the *direct* employment opportunities created – the design/construction community also plays a vital role in supporting the nation’s ability with respect to global competitiveness, economic activities, and national security, as well as impacting the extraordinary quality of life enjoyed by all Americans.

So, when the design/construction industry is burdened with unnecessary or ineffective mandates that often take valuable time they also cost jobs<sup>1</sup> . . . thus, regulatory delays, redundancies, inefficiencies, and red tape collectively have a direct impact on costs and therefore the vitality and ability of our industry to remain profitable and hire more people.

## **Bipartisan Agreement**

In the summer of 2012, the White House, Senate, and House of Representatives came together to pass the long delayed highway transportation bill. It clearly took a bipartisan effort to do so given the different political parties and interests involved with the bill and its passage through Congress and signature by the President.<sup>2</sup>

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<sup>1</sup> *Unemployment in the construction industry remains one of the highest, averaging 16.4% in 2011, and 14.04% (as of 10/2012). [Source: analysis of Table A-14, BLS].*

<sup>2</sup> *The “MAP-21” bill garnered large bipartisan votes of 373-52 in the House of Representatives and 74-19 in the Senate. The President signed the bill into law in July 2012.*

One of the most important and possibly most significant elements in the new law is the section on regulatory streamlining. While the provisions are focused on transportation infrastructure related projects and activities, the law's provisions could serve as a blueprint for further regulatory improvements across the government in many areas and endeavors.

### **Streamlining Regulatory Requirements**

The transportation bill, known as: *Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21)*<sup>3</sup> contained key regulatory streamlining provisions in its final version.

#### **Key Provisions:**

The new law contains significant reforms in the environmental review and planning process designed to reduce project delivery time and costs, (which the federal agencies [esp. USDOT] need to implement). The law:

- Expands the number and types of projects that can be excluded from the federal environmental review process.
- Encourages early coordination between relevant agencies to avoid delays later in the review process and directs DOT to develop specific review deadlines.
- Designates U.S. DOT as the lead agency for the review and approval of transportation projects. DOT to encourage deadlines for actions by other federal agencies.
- Allows for programmatic decisions instead of project by project decisions.
- Limits federal National Environmental Policy Act review requirements for projects that are less than \$5 million or where federal funds are less than 15 percent of the project costing more than \$30 million.
- Expands the category of projects that are automatically excluded from the federal environmental review process, including emergency projects, many maintenance projects and reconstruction projects.

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<sup>3</sup> *MAP-21 provides funding certainty through fiscal year (FY) 2014 (Sept. 30, 2014) by retaining current funding levels, plus inflation. The obligation limit for the federal-aid highway program is \$39.7 in FY 2013 and \$40.25 billion in FY 2014. Federal transit programs are provided \$10.6 billion in FY2013 and \$10.7 billion in FY 2014.*

*MAP-21 eliminates the equity bonus program and, instead, distributes highway formula funds to states based on each state's share of total highway funds distributed in FY 2012. Every state is guaranteed a minimum return of 95 percent of its payments into the highway trust fund.*

- Provides expedited procedures for approval of projects with minimal environmental impact.
- Allows for the purchase of right-of-way and for design to begin prior to final environmental clearance; AND
- For states with PM 2.5 non-attainment areas, requires that 25 percent of state's Construction Mitigation & Air Quality Improvement funds be used for projects in those areas that reduce PM. Projects can include diesel retrofit programs for on- and off-road diesel equipment operating on a highway construction project in the non-attainment area.

In sum, MAP-21 begins the process of implementing regulations with a goal of streamlining, clarifying the responsible public agency (DOT), clear deadlines, and improved application of the rules to projects that may warrant such requirements.

### **Other Areas Needing Regulatory Reform**

In addition to projects and activities related to MAP-21, other areas that the design and construction community are involved also require similar regulatory reform; such as:

- Abolish Insourcing Rules. The federal government should rely on the private sector for services readily available (the "Yellow-Pages Test") – eliminating elaborate requirements, insourcing, cross-agency services, and competition with firms.
- Restrict Abusive Litigation to Force Rulemakings. Constrain the abusive use of litigation by certain groups to force federal agencies into settlements in order to achieve their goals. [CIRT supported passage of H.R. 3862, the "*Sunshine for Regulatory Decrees and Settlements Act of 2012*" to address this matter].
- Prevent Politicization of Federal Procurement Decisions. There is no *sound* policy argument to require all firms to include in their bids or proposals a listing of contributions to political organizations. There is no reason a Federal government contracting officer needs this information. To do so will only result in undesirable and inappropriate political pressure on contracting officers to use such information in making contract award decisions.
- Eliminate Mandatory Project Labor Agreements (PLA). Allow the marketplace to effectively determine how the work should be performed – regardless of whether one is a union or non-union contractor. A PLA negotiated by the *owner* provides no benefit to the design/construction industry.
- Allow lower tier (Subcontract) Disadvantage Business Enterprise (DBE) to count towards the scores established for the project. Establish realistic minority and DBE goals on a project by project basis. In many cases, the current minority and DBE goals are unrealistic and create havoc within the industry because the scope

of work is incompatible with the capacity of the minority contractors available in the local marketplace.

- Simplify the Buy America Act.  
Create one “Buy America Act” for all federal agencies to reflect what can be *reasonably* procured in the United States.
- Create a consistent policy among federal agencies for LEED certification levels. Some agencies are concerned about first cost and operational savings and other agencies are still interested in a LEED rating but it may have little to do with savings or measurable value.

### **Conclusion**

***The recommended and necessary reforms are not about regulatory abandonment -- but rather, about spending both government and private sector dollars wisely.***

Short of outright repeal and/or elimination of excessive regulations and rules, streamlining them whereby actions are done concurrently and shared among and between jurisdictions/agencies so that a project may move forward in a timely manner devoid of unnecessary delays would greatly improve the ability of design/construction firms to complete work and gainfully employ more Americans.

The Construction Industry Round Table stands ready and willing to assist in whatever capacity available to achieve this end.



## **Construction Industry Round Table**

### **About CIRT**

*The Construction Industry Round Table (CIRT) strives to create one voice to meet the interest and needs of the design and construction community. CIRT supports its members by actively representing the industry on public policy issues, by improving the image and presence of its leading members, and by providing a forum for enhancing and/or developing strong management approaches in an ever changing environment through networking and peer interaction.*

*The Round Table is composed of approximately 110 CEOs from the leading architectural, engineering, and construction firms in the United States. Together these firms deliver on billions of dollars of public and private sector infrastructure projects that enhance the quality of life of all Americans while directly employing nearly half-million Americans.*

For more information go to: [www.cirt.org](http://www.cirt.org); or call 202/466-6777