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2011 QCA Contractor Issues Overview “Ask Your Legislator to...”

1) Misclassification of employees as independent contractors – *Tighten laws to stop willful misclassification of employees as independent contractors and close loopholes for tax avoidance/payroll fraud.*

Three groups lose under current law: lawful employers, exploited workers, and federal, state and local governments due to loss of significant revenue. Misclassification of workers as independent contractors is a huge and well-documented problem in the construction industry. It is a growing problem and exacerbated by employers taking advantage of an illegal workforce. Employers who misclassify or engage in payroll fraud gain unfair competitive marketplace advantages saving as much as 30% on labor costs. Loss of revenue to federal, state and local governments due to misclassification is enormous because of the loss of Social Security & Medicare taxes, Unemployment Insurance taxes, & income taxes, plus worker’s compensation premiums. The practice siphons off money for vital government services and feeds more people into those government services. Workers lose out on important workplace protections.

Educate Your Legislator: 1) Watch for a bill soon to be introduced with bipartisan support. 2) Must eliminate the use of “common industry practice” and other loopholes as an IRS safe harbor, to allow IRS to curtail the practice prospectively even if it was allowed previously. 2) **Cosponsor S. 770**, the Employee Misclassification Prevention Act to create civil penalties for willful misclassification; to allow IRS and the Labor Department to communicate, and to allow individuals and third parties to challenge classification status.

2) Energy Efficiency Commercial Building Tax Deduction (Section 179D) – **Create meaningful, measurable tax incentives to save energy, save money and create jobs.** Buildings consume 39% of the energy and 74% of the electricity in the United States, half of which is consumed by the commercial building sector. That’s more than \$170 billion in energy bills per year for the commercial sector alone. Increasing the energy efficiency of America’s commercial buildings will put money into the pockets of business owners, spur job growth in both construction and manufacturing sectors, and lower energy demand and expense for all Americans. Section 179D, created in 2005, needs to be updated to provide a tax incentive provision that is specifically targeted toward encouraging existing building upgrades. It should provide for measuring energy savings based on the building’s energy use before and after the upgrade; incentives beginning when a 20% improvement over the building’s prior performance is achieved; tax incentives useable for a broad range of building efficiency stakeholders.

Educate Your Legislator: 1) Watch for a bipartisan bill to be introduced soon which will offer a tax deduction under Section 179D of the Energy Policy Act of 2005 (EPACT).



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3) **3% Withholding** – *Repeal the law enacted to require federal, state and local governments to withhold 3% from payments for goods and services due to tax evasion by some federal contractors. (Section 511 of P.L. 109-22, Tax Increase Prevention and Reconciliation Act).*

Government should aggressively close the tax gap increased by non-tax compliant government contractors but laws should not restrict the cash-flow of already tax-compliant contractors. Construction pre-tax profit margins rarely exceed 3% and the 3% withholding bears no relationship to taxable income. Studies show that administrative costs to governments are more than the law will secure in revenue. The estimated tax revenue estimate by the federal CBO is being re-calculated and is likely to be far less than the \$6 billion originally estimated. \$1B is expected from improved tax compliance from 2012 through 2015. Even though the law applies only to prime contractors, they are very likely to “flow-down” the withholding to subcontractors who have no way to get their money back since IRS regulations will apply only to prime contractors.

Ask Your Legislator to: Cosponsor H.R. 674 or S. 89 to repeal 3% withholding on federal, state, and local government contracts.

4) **Bid Listing** – *Even general contractors agree on paper that Bid Shopping is an abhorrent practice but it happens all the time on public and private work. The practice of bid shopping should be curtailed at the federal government level by requiring prime contractors to list their subcontractors when submitting their bid proposals.*

A construction general contractor presents a federal government bid proposal after getting bids from subcontractors. Too often after winning the bid, the general goes back to subs and tries to get a lower price. If the subcontractor doesn't agree to a lower bid the general will “shop” the bid to other subs to get a lower price. The federal government doesn't save any money and gets inferior work or inferior materials. The federal government should require prime contractors to list the subcontractors on their submitted bids and be prohibited from changing them except for cause.

Ask Your Legislator to: Cosponsor the Construction Quality Assurance Act of 2011, when introduced, that would require prime contract bidders on direct federal construction projects of \$1 million or more to list in their bids subcontractors that would perform work of \$100,000 or more.



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5) Project Labor Agreements - *The current executive order, E.O. 13502 simply permits agencies and contracting officers to use Project Labor Agreements when they deem it appropriate as a tool in acquisition planning. It does not mandate, in any way, the use of PLAs on public projects. PLAs are most predominant in the private sector where owners value them because they facilitate project completion and create efficiencies in the construction process that get good project results. Republican and Democratic governors alike have endorsed the use of PLAs.*

Opponents of PLAs have mistakenly said that the Executive Order mandates PLAs and that it locks out nonunion firms and small disadvantaged businesses. Neither is true. The E.O. permits and encourages agencies to use PLAs on projects above \$25 million. Union and nonunion firms may bid on a PLA project once the bidding parameters are set. While the workers are screened by the local Building Council, any employer has the right to refuse a worker and any firm is generally allowed to bring a certain percentage of its core workers. PLAs address concerns by prime contractors over availability of skilled labor. The local Building Trades Council agrees to provide labor from other areas, under the same agreement, if there is a skilled worker shortage. PLAs create better security for federal projects because of workforce screening and background credentialing. PLAs do not limit the pool of bidders nor do they raise construction costs. Market factors and business cycles are shown to have more impact on bidding than the implementation of PLAs. PLAs are frequently constructed to require reach-out to small businesses and to women and minority owned firms.

Ask Your Legislator to: Oppose S. 119 and H.R. 735, The Government Neutrality in Contracting Act, and any amendments offered to individual bills that would effectively prevent the implementation of PLAs on federal government construction projects.

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