



AGC
THE CONSTRUCTION
ASSOCIATION

For more information:

Deniz Mustafa

Deniz.mustafa@agc.org

(703) 837-5407

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Protecting Contractors from Unfair Risk & Liability



Contractors need cost-sharing and clear protections in the face of policy uncertainty. Rapid policy shifts and uneven implementation—especially around Buy America, tariffs, and PFAS Superfund liability—are pushing unmanageable costs and legal exposure downstream onto firms that build America’s infrastructure. Congress should ensure transparent, workable rules and require public owners to share risk they control.

- **Reform the Buy America Waiver Process.** Contractors lack confidence in the current Buy America waiver system because it is slow and opaque. This uncertainty results in project delays, contractors increasing their bids, or contractors choosing not to bid on a project at all. Congress should make the waiver system transparent and workable -
 - Allow agency officials at regional offices, who are more familiar with specific projects, to make waiver decisions; and
 - Create transparency by requiring agencies to post the waivers for comment when they are received.
- **Protect Contractors from Uncertainty Around Tariffs.** Fixed-price contracts can’t absorb sudden tariff-driven spikes, forcing contractors to finance government policy. Congress should add transparency and contract relief for price shocks –
 - Require timely, public reporting of tariff decisions and exclusions;
 - Include price-adjustment clauses in federally funded contracts tied to known indices (e.g., PPI); and
 - Allow contract modifications or termination for convenience if prices spike or inputs become unavailable.
- **Shield Contractors From PFAS Liability that is Driving Up Costs.** The U.S. Environmental Protection Agency’s (EPA) designation of PFOA/PFOS “forever chemicals” as Superfund “hazardous substances” creates strict, retroactive liability for non-polluting contractors, with unclear standards driving up disposal and insurance costs. Congress should protect innocent contractors from PFAS liability and share costs fairly –
 - Require public owners to retain liability and share PFAS costs;
 - Mandate pre-construction testing and specify approved disposal options; and
 - Direct EPA to set a national background level and clear handling standards.

ACTION NEEDED

1. **Reform the Buy America waiver process – make it transparent and workable.**
2. **Provide tariff relief – add transparency and fair contract adjustments.**
3. **Protect contractors on PFAS – keep liability with polluters and public owners.**