



Federal Legal Requirements

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Construction Funding Sources



- **U.S. Gov't**
 - MILCON appropriations for Marine facilities and other projects
- **Gov't of Japan Contribution**
 - Direct funding to be accepted and expended on effort by U.S. Gov't per 10 USC 2350k
 - Financing of Special Purpose Entities through loans & investments (housing & utilities)

Jones Act



- **Requires U.S. Flag vessels to be built in the U.S., owned by U.S. citizens, and documented under the laws of the U.S.**
 - **All officers and 75% of the crew must be U.S. citizens**
- **Requires that merchandise being transported by water between two U.S. points must travel in U.S.-built and U.S.-citizen owned vessels documented by U.S. Coast Guard for such carriage.**
- **U.S. Customs Service is responsible for enforcing the Act.**
 - **Statutorily limited to granting waivers only in interest of national defense and for vessels in distress**
 - **In the wake of Hurricane Katrina, Homeland Security temporarily waived the Act for 19 days upon instruction of the President**

Cargo Preference Act



- **10 U.S.C. § 2631 requires that items procured for the military be carried on U.S. Flag vessels**
 - Specific requirements for compliance found in DFARS § 247.5
- **DoD contractors required to utilize U.S. Flag vessels unless:**
 - Those vessels are not available,
 - The proposed charges to the Government are higher than charges to private persons for the transportation of like goods, or
 - The proposed freight charges are excessive or unreasonable.
- **Administrative process for authorizing use of non-U.S. Flag vessels**

Trade Agreements Act



- **The Trade Agreements Act and other trade legislation waive the Buy American Act for construction contracts >\$8.5 million**
- **This requires non-discriminatory treatment for construction materials and firms from eligible countries and prohibits the use of construction materials from non-eligible countries (e.g., China, Indonesia, Philippines and Malaysia.) DFARS 52.225-7021**

U.S. Contractor 20% Bid Preference



- **Annual MILCON Appropriations Acts provision provides 20% price preference for U.S. Firms**
 - DFARS 236.273 requires solicitation provision
- **Applies to U.S. MILCON appropriations**
 - Not Government of Japan direct contribution

Labor



- **Davis Bacon Act**

- Does not apply on Guam
- Construction projects subject to the related acts (i.e., DOT, FAA) do require Davis-Bacon wages

- **Fair Labor Standards Act**

- Federal minimum wage, overtime and child labor law applies, regardless of the nationality of the employer or the employee

Nonimmigrant Labor



- **The prohibition on the use of nonimmigrant labor on military construction projects on Guam has been repealed.**
- **Employment of nonimmigrant labor under section h(ii)b of the INA will be subject to the usual regulatory requirements**
 - Prevailing wage requirements attach to the visa process