

October 13, 2022

William F. Clark
Director
Office of Government-Wide Acquisition Policy
General Services Administration
1800 F Street NW
Washington, DC 20405

Re: Docket No. FAR-2022-0003, Notice of Proposed Rulemaking on Federal Acquisition Regulation (FAR); FAR Case 2022-003, Use of Project Labor Agreements for Federal Construction Projects [RIN: 9000-AO40]

Mr. Clark,

The diverse coalition of undersigned associations and organizations representing the interests of tens of thousands of companies and millions of skilled employees in the U.S. construction industry write to express strong opposition to the Federal Acquisition Regulatory Council's proposed rule¹ implementing President Biden's Executive Order 14063 requiring controversial and inflationary project labor agreements on federal construction contracts of \$35 million or more in total value.²

The proposed rule will undermine Executive Order 14063's purported objective to "promote economy and efficiency in federal procurement" of large-scale construction projects because government-mandated PLAs will reduce competition and increase costs, delays, poor local hiring outcomes and litigation on critical federal construction contracts.

Government-mandated PLAs are jobsite-specific collective bargaining agreements unique to the construction industry that needlessly increase costs and unfairly limit competition by some of America's best contractors. Ultimately, PLA mandates exclude almost nine out of 10 of the construction industry's workforce from middle-class jobs and benefits created by government investment in infrastructure, simply because they choose not to affiliate with unions. The proposal will injure competition and increase costs on taxpayer-funded construction contracts included in the Infrastructure Investment and Jobs Act of 2021 and other measures passed by Congress that fund public works contracts without government-mandated PLA requirements or PLA preferences.

¹ Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects, published Aug. 19, 2022, at <https://www.federalregister.gov/documents/2022/08/19/2022-17067/federal-acquisition-regulation-use-of-project-labor-agreements-for-federal-construction-projects>.

² See President Biden's Executive Order 14063, Executive Order on Use of Project Labor Agreements For Federal Construction Projects, signed Feb. 4, 2022, at <https://www.federalregister.gov/documents/2022/02/09/2022-02869/use-of-project-labor-agreements-for-federal-construction-projects>.

Typical terms within PLAs unfairly discourage competition from quality nonunion contractors and their employees, who comprise 87.4% of the private U.S. construction industry workforce.³

For example, a PLA requires companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all construction labor, exclusively hire apprentices from union programs, follow union work rules and pay into union benefit and multiemployer pension plans. This forces employers whose workers have freely made the choice not to join a union to pay “double benefits” into their existing employee benefit plans and union plans and places these qualified firms at a significant competitive disadvantage. In addition, research suggests that the few nonunion employees permitted to work on a PLA jobsite lose 34% of wages and benefits unless they pay union dues and/or join a union and meet benefits plan vesting schedules.⁴ In short, these anti-competitive provisions in PLA mandates promote wage theft, eliminate employee choice for union representation and make it extremely difficult for the vast majority of nonunion and small, minority- or women-owned firms to win public works contracts subject to anti-competitive PLAs.

Additionally, government-mandated PLAs can supersede and interfere with existing collective bargaining agreements contractors have already negotiated with various unions. This may prevent unionized firms from competing for a project because they are prohibited from using labor from signatory unions not included in the jobsite’s PLA, which is why some union organizations and contracting groups oppose government-mandated PLAs.⁵

Proponents of government-mandated PLAs generally argue that a PLA is needed because businesses not affiliated with unions fail to deliver safe, on-time, on-budget government construction projects while obeying federal labor laws and paying high wages to employees. However, these misleading arguments—and the Biden administration’s erroneous justification for a blanket PLA mandate policy⁶ on taxpayer-funded construction projects—are undermined by the facts.

For example, federal government data indicate that, of the approximately 2,075 large-scale federal construction contracts procured from FY 2009 to FY 2021 subject to President Obama’s pro-PLA policy via Executive Order 13502,⁷ at least 50% of contracts were awarded

³ See bls.gov Union Members Summary. Jan. 20, 2022, <https://www.bls.gov/news.release/union2.nr0.htm>.

⁴ McGowan, John R., Ph.D., CPA, [Government-Mandated Project Labor Agreements Result in Lost and Stolen Wages for Employees and Excessive Costs and Liability Exposure for Employers](#), October 2021.

⁵ Union Leaders and Contractors Oppose Government-Mandated Project Labor Agreements Too, March 1, 2021, <https://tinyurl.com/yc727s58>.

⁶ See policy justifications in Section 1 of Executive Order 14063 via <https://www.federalregister.gov/d/2022-02869/p-2>.

⁷ President Obama’s Executive Order 13502 encourages—but does not require—federal agencies, on a case-by-case basis, to mandate PLAs on federal construction projects exceeding \$25 million in total value and permits states and localities to mandate PLAs on federally assisted projects in order to “promote the economy and efficiency in federal procurement.” See FAR Case 2009-005, [Use of Project Labor Agreements for Federal Construction Projects](#), published April 13, 2020, effective May 13, 2010, and [Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects](#), signed Feb. 6, 2009. The Biden proposal will rescind the Obama policy once finalized.

to prime contractors not signatory to unions.⁸ Federal agency contracting officers chose to require PLAs on just 12 large-scale federal construction contracts valued at a total of \$1.25 billion out of 2,075 contracts valued at a total of \$128.7 billion.⁹

In addition, from 2001 to its repeal by the Obama policy, President George W. Bush's Executive Orders 13202 and 13208¹⁰ prohibited government-mandated PLAs on \$147 billion worth of federal construction projects.¹¹ Yet, for more than 20 years there have been no reports of widespread cost overruns, delays, strikes or poor-quality construction on federal projects attributable to the lack of a government-mandated PLA, indicating that PLA mandates are not needed to ensure economy and efficiency in government contracting.¹² Ensuring economy and efficiency in government contracting is best achieved through fair and open competition, encouraging the best contractors and the best construction workers to compete on a level playing field for taxpayer-funded construction contracts.

In contrast, government-mandated PLAs on federal and federally assisted projects during this time period have resulted in reduced competition, increased costs, delays, poor local hiring outcomes and litigation.¹³ In addition, multiple studies of hundreds of taxpayer-funded affordable housing¹⁴ and school construction¹⁵ projects found that government-mandated

⁸ Federal contract award data downloaded from [usaspending.gov](https://www.usaspending.gov) compared to list of nonunion general contractors with membership in Associated Builders and Contractors, December 2021, available at: <https://tinyurl.com/3ahjye7e>. This data does not count non-ABC member general contractors who are not signatory to a union but are members of other undersigned organizations. This data does not include work performed by subcontractors because the federal government does not track this data.

⁹ The FAR Council's proposed rule confirms this fact at <https://www.federalregister.gov/d/2022-17067/p-29>. See chart at: <https://tinyurl.com/2y87dvy3>.

¹⁰ [Executive Order 13202: Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects](#), Feb. 17, 2001, and Executive Order 13208: Amendment to Executive Order 13202, [Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects](#), April 6, 2001, also prohibited government-mandated PLAs on federally assisted construction projects procured by state and local governments.

¹¹ See research in [Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem](#), The Beacon Hill Institute, August 2009. "... one would expect there to be dozens of tales about labor strife, slowdowns and significant cost overruns that characterized this PLA-free world. Yet, we found no record of such tales."

¹² With or without a PLA, all federal projects are subject to federal labor and employment laws, including federal Davis-Bacon prevailing wage regulations, which require government-determined wages for building, heavy and highway projects that are typically union-scale wages where PLAs are most likely to be mandated. In addition, some of the alleged benefits of PLAs, including a prohibition on strikes, targeted local hire, safety and workforce development strategies can be achieved without anti-competitive PLAs.

¹³ Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects, March 10, 2021, <https://tinyurl.com/3fefedna>.

¹⁴ Ward, Jason M., The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH. Santa Monica, Calif.: RAND Corporation, 2021. https://www.rand.org/pubs/research_reports/RRA1362-1.html.

¹⁵ See five studies measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut (2020), Massachusetts (2006), New Jersey (2019), New York (2006) and Ohio (2017) by the Beacon Hill Institute (<http://beaconhill.org/labor-economics/>); an October 2010 report by the New Jersey Department of Labor and Workforce Development, Annual Report to the Governor and Legislature: Use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008 (https://www.nj.gov/labor/forms_pdfs/legal/2010/PLAReportOct2010.pdf); and a 2011 study by the National University System Institute for Policy Research, Measuring the Cost of Project Labor Agreements on School Construction in California (<http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf>).

PLAs increase the cost of construction by 12% to 20% compared to similar non-PLA projects already subjected to prevailing wage regulations.

In short, hardworking taxpayers are getting less and paying more when PLAs are mandated by the government on federal construction projects. In addition, PLA requirements will exacerbate the construction industry's 2022 projected skilled labor shortage of nearly 650,000 workers,¹⁶ reduce competition from experienced contractors and undermine the federal government's mission-critical infrastructure needs by preventing strong participation from businesses and construction workers directly harmed by anti-competitive and costly pro-PLA policies.

Because the proposal cannot be salvaged, our coalition asks the FAR Council to scrap the proposal in its entirety. In addition, we call on the Biden administration to abandon its inflationary policies independent of the proposed rule which use infrastructure grant programs administered by federal agencies to push PLA mandates and preferences on federally assisted construction projects procured by state and local governments.¹⁷ In place of these controversial and inflationary policies, we call on the Biden administration to promote inclusive, win-win policies that welcome all of America's construction industry to compete to rebuild our nation's infrastructure, increase accountability and reduce waste and favoritism in the procurement of federal and federally assisted construction projects.¹⁸

Ensuring fair and open competition on taxpayer-funded construction projects will ultimately result in savings to taxpayers, more jobs, more opportunities for all qualified small, minority- and women-owned businesses in the construction industry and the completion of more infrastructure projects built by quality contractors and construction workers safely, on time and on budget.

Sincerely,

American Concrete Pumping Association
American Fire Sprinkler Association
American Pipeline Contractors Association
American Road & Transportation Builders Association
Associated Builders and Contractors
Business Coalition for Fair Competition
Construction Industry Round Table

¹⁶ Biden's Project Labor Agreement Schemes Exacerbate Construction Industry's Skilled Labor Shortage, June 29, 2022, <https://tinyurl.com/53n9x6b6>.

¹⁷ Federal agency infrastructure grant programs with pro-PLA language can be viewed at www.abc.org/PLAgrants.

¹⁸ The coalition supports the Fair and Open Competition Act (S. 403/H.R. 1284), sponsored by Sen. Todd Young, R-Ind. and Rep. Ted Budd, R-N.C., which would prevent federal agencies and recipients of federal assistance from requiring or encouraging contractors to sign a controversial PLA as a condition of winning a federal or federally assisted, taxpayer-funded construction contract.

HR Policy Association
Independent Electrical Contractors
National Association of Home Builders
National Black Chamber of Commerce
National Federation of Independent Business
National Precast Concrete Association
National Ready Mixed Concrete Association
National Stone, Sand & Gravel Association
National Utility Contractors Association
Plastics Pipe Institute
Power and Communication Contractors Association
Precast/Prestressed Concrete Institute
Security Industry Association
Small Business and Entrepreneurship Council
U.S. Chamber of Commerce