

March 7, 2023

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Dear Secretary Raimondo:

The diverse group of construction and business associations undersigned urge the U.S. Department of Commerce to ensure public investments in the semiconductor industry are not needlessly constrained by anti-competitive and inflationary policies imposed through unlawful regulatory action.

The Creating Helpful Incentives to Produce Semiconductors and Science Act provides \$39 billion in federal grants, loans and loan guarantees to rebuild America's semiconductor manufacturing capacities and allows companies a 25% advanced manufacturing investment tax credit.

We are concerned with the Department of Commerce National Institute of Standards and Technology's promotion of policy¹ that seem to give priority consideration to private-sector stakeholder applications for the CHIPS Incentives Program's Commercial Fabrication Facilities Notice of Funding Opportunity,² which pledge to require its construction contractors to execute a project labor agreement³ with various construction trade unions while building a semiconductor manufacturing facility.

A PLA preference policy in the Department of Commerce's grant program could undermine congressional authority, as the bipartisan CHIPS and Science Act contained no such language and jeopardizes public investment in semiconductor manufacturing facilities. Its inclusion will further exacerbate a shortage of construction industry skilled labor; discourage competition from quality large, small and disadvantaged construction businesses; and needlessly increase construction costs for applicants at the expense of taxpayers and national trade and security objectives.

A PLA is a jobsite-specific collective bargaining agreement unique to the construction industry that typically 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 that nonunion employees could not access. This forces employers to pay "double benefits" into their existing plans and union plans, puts them at a significant competitive disadvantage and exposes them to unfunded multiemployer pension plan liabilities. In addition, PLAs typically require construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project. If they do not satisfy these stipulations, nonunion workers lose an estimated 34% of their wages and benefits to union coffers and benefits plans—making them the victims of wage theft.⁴

When mandated as a result of government policy, PLAs exacerbate the construction industry's estimated skilled labor shortage of more than half a million workers in 2023⁵ by unfairly discouraging

¹ See page 21 of the Commerce Department's National Institute of Standards and Technology's CHIPS Incentives Program— Commercial Fabrication Facilities—Notice of Funding Opportunity 2023-NIST-CHIPS-CFF-01, released Feb. 28, 2023: https://www.nist.gov/system/files/documents/2023/02/28/CHIPS-Commercial_Fabrication_Facilities_NOFO_0.pdf.

² See <https://www.nist.gov/chips/notice-funding-opportunity-commercial-fabrication-facilities>.

³ Learn more about controversial project labor agreements at BuildAmericaLocal.com/learn-more/.

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 See www.abc.org/wfshortage.

competition from quality nonunion contractors and their employees, who comprise 88.3% of the private U.S. construction industry.⁶

In addition, PLAs can interfere with existing union collective bargaining agreements. This may prevent some 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.⁷

Finally, multiple studies of hundreds of taxpayer-funded affordable housing⁸ and school construction⁹ projects found that government PLA mandates increase the cost of construction by 12% to 20% compared to similar non-PLA projects already subjected to prevailing wage regulations.

Simply put, hardworking taxpayers could get less and pay more as a result of pro-PLA policies. In contrast, taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate and fostering fair and open competition among the best contractors and skilled workers in America.

The undersigned organizations support fair and open competition and oppose restrictive PLA policies on federally assisted semiconductor construction projects like those supported by the CHIPS for America program funding because no such requirement or encouragement was included in the bipartisan law. In addition, hardworking taxpayers deserve more efficient and effective policies that will encourage all qualified contractors and their skilled workforces to compete to build long-lasting, quality projects at the best price.

While we outright oppose the NOFO's PLA preference policy, we appreciate the NOFO's inclusion of an alternative in the form of workforce continuity plans.¹⁰ We urge Commerce to clarify whether developers who utilize this PLA requirement alternative would be penalized in their application process and if preference would be given to those applications with PLAs included.

We urge you to create a level playing field in the private sector's procurement of semiconductor facility construction contracts, increase competition, help small businesses grow, decrease construction costs and spread the job-creating benefits of federally funded projects throughout the entire construction industry.

Sincerely,

American Concrete Pumping Association
American Pipeline Contractors Association
Associated Builders and Contractors
Construction Industry Round Table
Electronic Security Association

⁶ See bls.gov Union Members Summary, Jan. 19, 2023, <https://www.bls.gov/news.release/union2.t03.htm>.

⁷ Union Leaders and Contractors Oppose Government-Mandated Project Labor Agreements Too, March 1, 2021, <https://tinyurl.com/yc727s58>.

⁸ Ward, Jason M., The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH. Santa Monica, California. RAND Corp., 2021. https://www.rand.org/pubs/research_reports/RR1362-1.html.

⁹ See five studies, available at <https://buildamericaincalifornia.com/learn-more/#gmpla-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>).

¹⁰ See page 53 and 54 of the NOFO under part b. Construction Workforce Plan: https://www.nist.gov/system/files/documents/2023/02/28/CHIPS-Commercial_Fabrication_Facilities_NOFO_0.pdf

HR Policy Association
Independent Electrical Contractors
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 Association
Small Business and Entrepreneurship Council
U.S. Chamber of Commerce