

Government-Mandated Project Labor Agreements (PLAs)

OVERVIEW

Government-mandated project labor agreements (PLAs) end open, fair and competitive bidding on public works projects, denying the vast majority of qualified contractors the opportunity to fairly compete and bid on federal and federally assisted construction contracts. PLAs needlessly increase construction costs, discourage competition from merit shop contractors and stifle job creation for employees in the construction industry, which has suffered from an unemployment rate hovering around 20 percent during the last 12 months.

On Feb. 6, 2009, President Obama issued Executive Order 13502, which strongly encourages federal agencies to require anti-competitive and costly PLAs on a case-by-case basis on federal construction projects exceeding \$25 million in total cost. On April 13, 2010, the Federal Acquisition Regulatory (FAR) Council issued a final rule implementing Executive Order 13502 into federal procurement regulations, effective May 12, 2010.

The Obama order repealed President George W. Bush's Executive Orders 13202 and 13208, which maintained government neutrality in federal contracting and prohibited the government from requiring contractors to adhere to a government-mandated PLA as a condition of winning federal or federally funded construction contracts. Between 2001 and 2008, this executive order protected \$147.1 billion worth of federal construction and hundreds of billions of dollars worth of federally assisted construction spending from government-mandated PLAs.

Although President Obama's pro-PLA executive order does not mandate PLAs on all federal construction contracts exceeding \$25 million in total cost – as a blanket PLA policy likely would be struck down by the courts immediately – the order exposes federal procurement officials to intense political pressure from special interest groups, politicians and federal agency political appointees to mandate PLAs.

During the 112th Congress, ABC will continue to meet with members of Congress, the Obama administration and federal agencies procuring construction services to adamantly oppose any effort to require PLA mandates on federal and federally funded construction projects.

WHAT IS A PLA?

Anti-competitive PLAs are special interest kickback schemes that end open, fair and competitive bidding on construction projects.

Typically, a PLA is a contract awarded only to contractors and subcontractors that agree to recognize unions as the representatives of their employees on that job; use the union hiring hall to obtain workers; obtain apprentices exclusively through union apprenticeship programs; pay fringe benefits into union-managed benefit and pension programs; and obey the unions' restrictive and inefficient work rules and job classifications.

Contracts subject to PLAs are special interest set-asides designed to funnel work to unionized contractors and their unionized workforces, which represent just 13.1 percent of the U.S. private construction workforce, according to 2011 Bureau of Labor Statistics data. Qualified merit shop contractors, their skilled employees and many communities strongly oppose PLAs because they discourage fair and open competition.

Merit shop contractors and employees argue that PLAs are unfair to their skilled employees because PLAs limit or completely prohibit a contractor from employing its existing tradespeople on a PLA jobsite. In the unlikely event a limited number of nonunion employees are permitted to work on a PLA project, they are required to pay union dues even though they are not union members. Employers also are required to contribute to union benefit and retirement plans on behalf of their nonunion employees for the life of the PLA project. The nonunion employees will not benefit from their employer's contribution unless they join the union and/or become vested in the union benefit and retirement plans. It is a financial windfall for these union plans.

An October 2009 report by Dr. John R. McGowan found that employees of nonunion contractors forced to perform under government-mandated PLAs suffer a reduction in take-home pay that is conservatively estimated at 20 percent.

The McGowan report also found that had President Obama's pro-PLA Executive Order 13502 applied to applicable federal contracts in 2008, additional costs incurred by employers

related to wasteful PLA pension requirements likely would have ranged from \$230 million to \$767 million per year. Lost wages for nonunion construction workers would have ranged from \$184 million to more than \$613 million, depending on the assumptions made for companies executing contracts via PLAs. In total, the move to PLAs would have cost nonunion employees and their employers \$414 million to more than \$1.38 billion annually.

According to a September 2009 study by The Beacon Hill Institute (BHI), PLAs significantly increase construction costs on federal projects without providing corresponding benefits to taxpayers or construction owners. The study found that if President Obama's Executive Order 13502 was in effect in 2008, federal construction costs would have increased an additional \$1.6 billion to \$2.6 billion.

BHI used the results of three previous studies measuring the effect PLAs have on school construction projects in Massachusetts, Connecticut and New York—which determined PLAs add 12 percent to 18 percent to construction costs—to estimate the effect Obama's executive order would have had on federal construction projects initiated in 2008.

ABC SUPPORTS

- The Government Neutrality in Contracting Act (S. 119/H.R. 735), introduced by Sen. David Vitter (R-La.) and Rep. John Sullivan (R-Okla), which would codify into law language from Executive Order 13202.
- Legislative or executive measures to preserve full and open competition on public construction contracts in the spirit of Executive Order 13202.
- Federal construction contracts awarded based on sound, credible criteria, such as quality of work, experience and cost—not a company's affiliation with unions and willingness to sign a PLA.

ABC OPPOSES

- Government-mandated PLAs on federal and federally assisted construction projects. These agreements discourage merit shop contractors from bidding on projects paid for by their own tax dollars and drive up federal construction costs, which results in fewer infrastructure improvements and less construction industry job creation. These special interest agreements deny taxpayers from receiving the best possible construction product at the best possible price.