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Contact Information:

Associated Builders and Contractors

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Dear Mr. Petty:

Thank you for soliciting information in your request for information at 87 Fed. Reg. 20828 on implementation of Section 40541 of the Infrastructure Investment and Jobs Act, which provides \$500 million for grants for energy efficiency, renewable energy and alternative-fueled vehicle improvements at public school facilities. Associated Builders and Contractors submits the following information to assist the Department of Energy in crafting grant requirements that will ensure efficient distribution of federal funding in alignment with the intent of Congress.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and includes companies that contract directly with federal, state and local governments to build construction projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal government small business contracting goals. For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021, and ABC members have delivered for government clients hundreds of billions of dollars' worth of state and local projects funded in part by federal assistance. For this new program to succeed, ABC members will need to play a critical role in delivering energy improvements through heating, ventilation and air conditioning replacement and retuning; lighting system upgrades; installation of renewable energy systems; and more.

Response to the Request for Information

ABC’s response focuses on Category 4—Workforce, Question 5, “Are there school retrofit programs or policies (e.g., project labor agreements, etc.) that have led to optimal workforce outcomes, and if so, please describe.”

ABC is concerned to see that the DOE is specifically requesting information on using government-mandated PLAs as part of the grant program in this RFI. ABC opposes government-mandated project labor agreements because these agreements typically restrict competition, increase costs, create delays, discriminate against nonunion employees and place nonunion general contractors and subcontractors at a significant competitive disadvantage. Typical government-mandated PLAs are nothing more than anti-competitive schemes that end open and fair bidding on taxpayer-funded projects. Fair and open competition is a necessity for optimal workforce outcomes on school retrofit programs.

Government-Mandated PLAs Have Increased Costs and Caused Delays for School Construction Projects

A significant body of evidence demonstrates that government-mandated PLAs have increased costs and caused delays for school construction projects similar to those that would be funded under this grant program.

For example, a 2020 study by the Beacon Hill Institute for Public Policy Research determined that PLAs inflated construction costs by 19.84%.¹ The study estimates that, between 2001 and 2019, school projects would have been a total of \$503.463 million less expensive if PLAs had not been used.

Another study by the Beacon Hill Institute in 2019 found that PLAs increased the final construction costs of schools by 16.25%.² Depending on the size of a project, the study estimates taxpayers would have saved between \$5.78 million for a 100,000-square-foot structure and \$17.35 million for a 300,000-square-foot structure if PLAs were not used.

Similarly, according to a 2017 study by the Beacon Hill Institute, government-mandated PLAs increase the costs of school construction in Ohio by 13.12%.³ On average, schools with a PLA mandate cost taxpayers an extra \$2 million per project. Project costs increased similarly for mid-size projects, small projects and entire schools when the projects were subject to PLAs.

In addition, a 2011 National University System Institute for Policy Research study showed similar cost increases for California schools.⁴ California school construction

¹ William F. Burke, BSBA, David G. Tuerck, Ph.D., “[The Effects of Project Labor Agreements on Public School Construction in Connecticut](#),” The Beacon Hill Institute for Public Policy Research, January 2020.

² William F. Burke, BSBA, David G. Tuerck, Ph.D., “[The Effects of Project Labor Agreements on Public School Construction in New Jersey](#),” The Beacon Hill Institute for Public Policy Research, August 2019.

³ Paul Bachman, MSIE, David G. Tuerck, Ph.D., “[Project Labor Agreements and the Cost of School Construction in Ohio](#),” The Beacon Hill Institute for Public Policy Research, May 2017.

⁴ Vince Vasquez., Dale Glaser, & W. Erik Bruvold, “[Measuring the Cost of Project Labor Agreements on School Construction in California](#),” National University System institute for Policy Research, 2011.

projects built using mandated PLAs experienced increased costs 13% to 15%, or \$28.90 to \$32.49 per square foot, compared to projects that did not use a PLA.

State government agencies have drawn similar conclusions from their studies of the usage of government-mandated PLAs on school projects. In 2010, the New Jersey Department of Labor & Workforce Development issued a report that found PLAs on school construction projects in the state were 30.5% higher than for all non-PLA projects⁵. The same report found PLA projects tended to have a longer duration than non-PLA projects.” For FY 2008, the average duration of PLA projects was 100 weeks compared to 78 weeks for non-PLA projects.

The evidence clearly shows that PLAs for school construction reduce the value of taxpayer dollars, potentially meaning less facilities will receive the funding needed to address the concerns the DOE has outlined in this RFI, such as dilapidated school facilities and indoor air quality problems.⁶

Government-Mandated PLAs Compound Existing Labor Shortages

The DOE has stated its intent for this program is to “improve job access, foster safe, healthy, and inclusive workplaces and communities, and develop a diverse and inclusive workforce pipeline.”⁷ Encouraging or requiring PLAs would seriously impair the DOE’s ability to achieve this goal at a time when the construction industry is facing unprecedented workforce development needs.

A strong demand for construction services and the ongoing economic impact of the COVID-19 pandemic have created and accelerated numerous challenges currently facing the construction industry and school construction contracting community, including a skilled workforce shortage, rising materials costs, supply chain disruptions, jobsite shutdowns, additional health and safety protocols and new government regulations.

A PLA mandate may worsen shortages of skilled labor by discouraging and discriminating against the area’s existing nonunion construction workforce. It would also undermine ongoing workforce development efforts by industry to attract workers into careers in construction through workforce development pipelines not affiliated with union apprenticeship programs given preference via typical PLAs.

Government-Mandated PLAs Reduce Competition, Increase Costs and Create Inefficiencies

⁵ “[Annual Report to the Governor and Legislature. Use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008](#),” New Jersey Department of Labor & Workforce Development, October 2010.

⁶ See RFI page 3, “Dilapidated school facilities can also negatively affect student learning and health. Indoor air quality problems can aggravate respiratory illnesses, reduce student and teacher attendance and performance, and increase risk of transmission of respiratory infections like COVID-19,” <https://eere-exchange.energy.gov/FileContent.aspx?FileID=96d2243d-d4cc-412b-9413-d937db3697af>.

⁷ Ibid, page 11.

If the DOE requires PLAs for grant awardees or favorably scores applicants utilizing PLAs, it will reduce competition, increase costs and create inefficiencies for contractors and procurement officials that could jeopardize the project for numerous reasons.⁸

First, labor costs increase under typical PLAs due to inefficient union work rules and requirements of double payment into union and existing nonunion pension and benefit plans.⁹

Second, a PLA mandate makes submitting a bid more expensive, as contractors unfamiliar with operating under these union contracts are faced with increased legal and administrative costs if they are forced to negotiate a PLA with multiple unions and/or comply with a PLA.

Third, because PLAs discourage competition from qualified contractors, overall bid prices tend to increase when there is less competition from a smaller pool of qualified competitors.

A number of studies have demonstrated that PLAs increase costs—typically by 12% to 20% when compared to similar non-PLA projects.¹⁰

Finally, the U.S. Bureau of Labor Statistics' most recent report indicates 87.4% of the U.S. private construction industry workforce does not belong to a union.¹¹

Based on the above studies and reports, it is difficult to make a convincing case that government-mandated PLAs are needed on any energy efficiency improvement project for a variety of compelling reasons.

In the interest of understanding ABC's perspective on the controversial PLA issue and putting our comments in the appropriate context, the DOE should know that it is difficult to predict precisely how a PLA will impact this project without reviewing the exact content of a PLA. A PLA is a contract, so the various terms and conditions contained within will significantly increase or decrease its anti-competitive and discriminatory effect.

⁸ See www.TheTruthAboutPLAs.com, "[Survey: ABC Members Strongly Oppose Government-Mandated Project Labor Agreements](#)," Jan. 30, 2019. Survey results available [here](#).

⁹ See www.TheTruthAboutPLAs.com, "[Nonunion Workers Suffer Up to 34% in Wage Theft Under Government-Mandated Project Labor Agreements](#)," Oct. 22, 2021.

¹⁰ Ward, Jason M. "The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH." Santa Monica, California: RAND Corporation, 2021. https://www.rand.org/pubs/research_reports/RRA1362-1.html. See multiple studies measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut, Massachusetts, New Jersey, New York and Ohio by the Beacon Hill Institute (<http://beaconhill.org/labor-economics/>); an October 2010 report by the New Jersey Department of Labor & 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/PLARepOct2010.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>).

¹¹ See Bureau of Labor Statistics, "[Union Members Summary](#)," Jan. 22, 2022.

Without knowing the exact timing, process and content of PLAs that may be used by grant awardees, our response assumes many PLAs would likely contain the following mandatory provisions that are particularly objectionable to nonunion companies and their employees:

1. Nonunion companies must obtain most or all of their employees from union hiring halls. Often, PLAs prevent contractors from using their existing nonunion workforce. This provision is problematic because firms cannot use most of their trained, productive employees. In some PLAs, a nonunion contractor is permitted to use a small number of its existing nonunion workforce, but they must send these employees to the union hiring hall and hope the union dispatches the same workers back to the PLA jobsite, and/or the PLA requires existing nonunion employees to join a union within eight days of employment on the project.¹²
2. Nonunion employees must pay nonrefundable union dues and/or fees and/or join a union to work on a PLA project, even though they have decided to work for a nonunion employer.¹³ PLAs require unions to be the exclusive bargaining representative for workers during the life of the project. When agreeing to participate in a PLA project, the decision to agree to union representation is made by the employer rather than the employees.¹⁴ Construction employees often argue that forced unionization and/or representation—even for one project—is an infringement of their workplace rights and runs contrary to their intentional decision not to join a union.
3. PLAs require contractors to follow union work rules, which change the way they otherwise would assign employees to specific job tasks—requiring contractors to abandon an efficient labor utilization practice called “multiskilling” and instead assign work based on inefficient and archaic union craft jurisdictional boundaries that increase labor costs. Open shop contractors achieve significant labor cost savings through multiskilling, in which workers possess a range of skills that are appropriate for more than one work process and are used flexibly across multiple trades on a project or within an organization. This practice has tremendous labor productivity advantages for contractors, but it is forbidden by typical union work rules and, by extension, PLAs.¹⁵
4. PLAs require nonunion companies to pay their workers’ health and welfare benefits to union trust funds, even though these companies have their own benefits plans.

¹² See www.TheTruthAboutPLAs.com, “[Understanding Core Workforce Provisions in Project Labor Agreements](#),” April 7, 2014, and “[Project Labor Agreement Basics: What is a PLA?](#)” April 24, 2009.

¹³ The legality of clauses in typical PLAs that require compulsory union membership and payment of union dues and fees to unions by workers in order to work on a PLA project depend on the state’s right-to-work law status. See www.TheTruthAboutPLAs.com, “[Understanding PLAs in Right to Work States](#),” July 20, 2009.

¹⁴ In the construction industry, workers can freely join a union through various union hiring halls at any time and be dispatched to unionized contractors if unions accept their membership application. In addition, while employed for a nonunion company, workers normally are permitted to choose union representation through a card check process or a federally supervised private ballot election. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The [National Labor Relations Act](#) generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the opportunity for construction workers to choose a federally supervised private ballot election or a card check process when deciding whether union representation is right for them.

¹⁵ See www.TheTruthAboutPLAs.com, “[Understanding the Merit Shop Contractor Cost Advantage](#),” May 17, 2010.

Workers cannot access any of their union benefits accrued during the life of the PLA project unless they decide to leave their nonunion employer, join a union and remain with the union until vested. Research suggests this loss in wages and benefits costs nonunion employees 34% of their paychecks on PLA projects.¹⁶ Because few nonunion employees choose to join a union after working on a PLA project, companies end up paying benefits twice: once to the union plans and once to the existing company plans to ensure employees have direct access to retirement and benefits plans. Nonunion contractors have to factor this double benefit cost into their bid, which needlessly increases costs and puts them at a competitive disadvantage against union contractors that are not saddled with these unnecessary costs. In addition, paying into underfunded and mismanaged union-affiliated multiemployer pension plans may expose merit shop contractors to massive pension withdrawal liabilities. Depending on the health of a union-managed multiemployer pension plan, signing a PLA could bankrupt a contractor or prevent it from qualifying for construction bonds needed to build future projects.¹⁷

5. PLAs require nonunion companies to obtain apprentices exclusively from union apprenticeship programs. A 2015 report issued by construction unions¹⁸ claims that, “among [government registered program] construction apprentices, 74% are trained in the unionized construction sector known as the joint apprenticeship training committee system.¹⁹ This means that roughly a quarter of all registered apprentices are enrolled in nonunion government-registered apprenticeship programs and a union apprenticeship program requirement in a PLA would disproportionately favor unionized firms and participants in union programs. Participants in federal and state-approved nonunion apprenticeship programs and community or employer training programs cannot work on a job covered by a PLA. Therefore, future construction industry workers enrolled in qualified apprenticeship programs could be excluded from working in their own community if these training programs are not run by unions.²⁰ In contrast, data demonstrates the government-registered apprenticeship system is not meeting the industry’s demand for skilled labor and cannot do it alone.

According to data from the DOL,²¹ in FY 2021, the construction industry’s federal government-registered apprenticeship system produced 24,822 completers of its

¹⁶ An October 2021 report by Dr. John R. McGowan finds that employees of nonunion contractors that are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 34%. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of 35% in benefit costs above and beyond existing prevailing wage laws as a result of “double payment” of benefit costs. See www.TheTruthAboutPLAs.com, “[Nonunion Workers Suffer Up to 34% in Wage Theft Under Government-Mandated Project Labor Agreements](#),” Oct. 22, 2021.

¹⁷ See www.TheTruthAboutPLAs.com, “[Taxpayer Bailout of Multiemployer Pension Plans and Government-mandated Project Labor Agreements](#),” March 17, 2021.

¹⁸ See page 6 of Construction Apprenticeship, The “Other Four-Year Degree,” by the North American Building Trades Unions available at https://partners.aflcio.org/system/files/2_bctd-appren-four-yr-degree-2015.pdf.

¹⁹ Department of Labor, Employment and Training Administration data from 2014).

²⁰ See www.TheTruthAboutPLAs.com, “[Government-Mandated Project Labor Agreements Exacerbate Construction Industry’s Skilled Labor Shortage](#),” March 30, 2021.

²¹ According to the DOL Office of Apprenticeship, in FY 2020 the construction industry’s 4,793 federal government-registered apprenticeship programs had 188,452 active apprentices and produced just 20,749 completers. See Federal Data: Apprenticeship Statistics by Industry for Fiscal Year 2020*: <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

four-to-five-year apprenticeship programs. In addition, construction industry apprenticeship programs registered with state governments produced an estimated 15,000 to 20,000 completers in FY 2021.²² At current rates of completion, it would take 14 years for all government-registered construction industry apprenticeship program completers to fill the 650,000 construction jobs needed just in 2022.

Conclusion

ABC appreciates the opportunity to share its perspective on a PLA mandate or preference in the Section 40541 grant program. We encourage the DOE to proceed with grant criteria that does not include any mandate or preference for applicants using PLAs, in the spirit of fair and open competition. Doing so will help the DOE provide state and local governments, school districts and taxpayers with the best possible construction product at the best possible price to ensure energy-efficient, high-quality facilities for all students and staff. We welcome further discussion about our analysis and comments at your convenience.

Respectfully submitted,



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²² Ibid.