



VIA ELECTRONIC SUBMISSION

August 23, 2022

William F. Clark  
Director  
Office of Governmentwide 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 Agreement for Federal Construction Projects [RIN: 9000-AO40]**

Dear Mr. Clark:

Associated Builders and Contractors hereby submits the following request for an extension of the public comment period by 60 days to the Federal Acquisition Regulations Council, in response to the above-referenced proposed rule published in the Federal Register on Aug. 19, 2022, at 87 Federal Register 51044.

### **About Associated Builders and Contractors**

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 68 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 is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for private and government customers. Moreover, the vast majority of ABC's contractor members are classified as small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)<sup>1</sup> and industry workforce employment (more than 82% of the construction industry is employed by small businesses).<sup>2</sup> In fact, construction companies that employ

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<sup>1</sup> U.S. Census Bureau 2019 County Business Patterns: <https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.2019.html>.

<sup>2</sup> 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), p. 3, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic->

fewer than 100 construction professionals compose almost 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.<sup>3</sup>

In addition to small businesses that build private and public works projects, ABC also has large member companies that contract directly with federal, state and local governments to successfully build projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal, state and local 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 to 2021.<sup>4</sup>

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

### **Request for Extension of Comment Period**

The FAR Council's proposed changes to the FAR would mandate project labor agreements for all construction contracts of \$35 million or more in value, affecting a significant percentage of federal contracts—estimated at roughly 120 federal contracts totaling \$10 billion per year—and discouraging competition from the majority of experienced and qualified large and small federal contractors and subcontractors and the 87% of the construction industry workforce who freely choose not to belong to a union and will be harmed by PLA mandates.

The proposed rule also establishes a new process for exceptions to this mandate. ABC will need to work closely with our chapters, member companies, nonunion construction workers, industry stakeholders and federal agency procurement officials to fully understand the potential impacts of the proposal and provide meaningful comments to the FAR and federal agencies attempting to assess the ramifications of this anti-competitive and costly rulemaking that is likely to discourage competition from some of the best federal contractors in the marketplace at great expense to their employees and taxpayers.

For ABC to best accommodate the agencies' request for comments from the regulated

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[Profile-US.pdf](#).

<sup>3</sup> U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, available at <https://thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx>.

<sup>4</sup> Data source: [USASpending.gov](#) filtered data of FY2009 to FY2021 prime NAICS 23 contracts greater than or equal to \$25 million performed in the United States (accessed Feb. 22, 2022), and cross-referenced with ABC membership database annual report (accessed Dec. 20, 2021).

community, additional time will be needed to review the substantial proposed rule, reach out to ABC members and receive feedback, analyze responses and data received from these members, and finally, draft comprehensive and well-considered regulatory comments. Unfortunately, the current 60-day comment period does not provide sufficient time for ABC to effectively communicate with its members before providing these comments, especially during a very busy construction season. Additionally, the current deadline of Oct. 18 does not provide enough time for ABC members interested in providing their own comments to the FAR Council.

For the reasons outlined above, a 60-day extension from the current deadline of the comment period will be vital to ensure that the agencies can receive thorough input from all stakeholders affected by this proposed rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is written in a cursive, flowing style.

Ben Brubeck  
Vice President of Regulatory, Labor and State Affairs