

February 7, 2023

Dear U.S. Senator/Representative:

The diverse group of construction and business associations undersigned writes in strong support of the Fair and Open Competition Act<sup>1</sup>—to be introduced by Rep. James Comer, R-Ky., and Sen. Todd Young, R-Ind.—and asks you to become an original co-sponsor of this important legislation.

The Fair and Open Competition Act would prevent federal agencies and recipients of federal assistance from requiring or encouraging contractors to sign a controversial project labor agreement as a condition of winning a federal or federally assisted, taxpayer-funded construction contract.

Supporting the Fair and Open Competition Act is critical in light of President Joe Biden's Feb. 4, 2022, Executive Order 14063, which requires PLAs on federal construction projects of \$35 million or more.<sup>2</sup> In addition, the Biden administration is promoting PLAs on federally assisted infrastructure projects procured by state and local governments via more than \$100 billion worth of competitive grant programs administered by federal agencies containing pro-PLA language.<sup>3</sup> Federal projects and federal agency grant programs were authorized and funded through bipartisan legislation—such as the Infrastructure Investments and Jobs Act of 2021—that explicitly do not require or encourage the use of PLAs on taxpayer-funded construction projects.

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.<sup>4</sup>

When mandated by government agencies and lawmakers, PLAs exacerbate the construction industry's estimated skilled labor shortage of more than half a million workers in 2023<sup>5</sup> by unfairly discouraging competition from quality nonunion contractors and their employees, who comprise 88.3% of the private U.S. construction industry workforce.<sup>6</sup>

In addition, government-mandated PLAs can interfere with existing union collective bargaining agreements. 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.<sup>7</sup>

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<sup>1</sup> In the 117th Congress, FOCA ([S. 403/H.R. 1284](#)) was introduced by Sen. Todd Young, R-Ind., and Rep. Ted Budd, R-N.C., and had 20 Senate and 109 House co-sponsors.

<sup>2</sup> Executive Order 14063, [Executive Order on Use of Project Labor Agreements For Federal Construction Projects](#), signed Feb. 4, 2022, is being implemented via FAR Council proposed rule, [Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects](#), Aug. 19, 2022, ([RIN 9000-AO40](#)).

<sup>3</sup> Federal dollars distributed to state and local governments via multiple grant programs administered by the departments of Treasury, Transportation, Agriculture, Interior and other federal agencies with pro-PLA language can be found at [www.abc.org/PLAgrants](#).

<sup>4</sup> 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.

<sup>5</sup> See [www.abc.org/wfshortage](#).

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

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

Our coalition objects to the Biden administration's false assertion<sup>8</sup> that businesses not affiliated with construction trade unions are unable to deliver safe, on-time, on-budget government construction projects while obeying federal labor laws and paying competitive wages to employees.<sup>9</sup> This has been proven incorrect time and time again.

For example, President Barack Obama's Feb. 6, 2009, Executive Order 13502 encourages federal agencies, on a case-by-case basis, to require PLAs on federal construction projects exceeding \$25 million in total value in order to "promote the economy and efficiency in federal procurement."<sup>10</sup> However, federal government data indicate that, of the 2,298 large-scale federal construction contracts valued at \$147 billion procured from FY 2009 to FY 2022 subject to President Obama's pro-PLA policy, at least 55% of the total value of contracts was awarded to prime contractors not signatory to unions.<sup>11</sup> In addition, when given the option, federal agency contracting officers chose to require PLAs on just 12 large-scale federal construction contracts out of 2,298 opportunities.<sup>12</sup> There were no reports of widespread cost overruns, delays, labor unrest or poor-quality construction on \$145.8 billion worth of non-PLA projects during this time period, indicating that PLA mandates are not needed to ensure economy and efficiency in government contracting.<sup>13</sup>

In contrast, government-mandated PLAs on federal and federally assisted projects<sup>14</sup> during this time resulted in reduced competition, increased costs, delays, poor local hiring outcomes and litigation. In addition, multiple studies of hundreds of taxpayer-funded affordable housing<sup>15</sup> and school construction<sup>16</sup> 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 are getting less and paying more when PLAs are encouraged or mandated during the procurement of federal and federally assisted construction projects.

The Fair and Open Competition Act seeks to counteract special-interest favoritism by prohibiting federal agencies and recipients of federal assistance from mandating PLAs and implementing PLA preferences. However, this legislation would allow federal agencies to award contracts to businesses that voluntarily utilize PLAs before or after a fair and open competitive bidding process—a common industry practice permitted by the National Labor Relations Act.

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<sup>8</sup> See [White House Fact Sheet: President Biden Signs Executive Order to Boost Quality of Federal Construction Projects](#), Feb. 3, 2022, and [Remarks by President Biden at Signing of an Executive Order on Project Labor Agreements](#), Feb. 4, 2022.

<sup>9</sup> With or without a PLA, all federal and federally assisted projects are subject to federal Davis-Bacon prevailing wage regulations, which typically require union-scale wages for building, heavy and highway projects where PLAs are typically considered.

<sup>10</sup> 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, (<https://www.govinfo.gov/content/pkg/FR-2009-02-11/pdf/E9-3113.pdf>).

<sup>11</sup> Federal contract award data downloaded from [usaspending.gov](https://usaspending.gov) compared to list of nonunion prime contractors, December 2022. Results available at <https://tinyurl.com/yc32kky2>. The share of federal contracts won by nonunion federal contractors is likely to be even greater via total value and number of contracts but cannot be confirmed due to data limitations.

<sup>12</sup> See <https://tinyurl.com/4mmezfyw>

<sup>13</sup> In addition, from 2001 to their repeal by the Obama policy in 2009, President George W. Bush's Executive Orders [13202](#) and [13208](#) prohibited government-mandated PLAs on [\\$147 billion worth of federal construction projects](#) and there were also no reports of problems attributable to the lack of government-mandated PLAs.

<sup>14</sup> See [Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects](#), March 10, 2021.

<sup>15</sup> 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/RRA1362-1.html](https://www.rand.org/pubs/research_reports/RRA1362-1.html).

<sup>16</sup> See five studies, available at <https://buildamericalocal.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](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>).

Likewise, state and local government construction projects in 24 states<sup>17</sup> benefit from laws similar to the Fair and Open Competition Act, which curb waste and favoritism in the procurement of construction projects and ensure taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate.

The undersigned organizations support fair and open competition and oppose government-mandated PLAs on federal and federally assisted projects, because hardworking taxpayers deserve more efficient and effective policies that will encourage all qualified contractors and their skilled workforce to compete to build long-lasting, quality projects at the best price.

Promote fairness, efficiency and transparency in government contracting by contacting Nancy Martinez ([nancy\\_martinez@young.senate.gov](mailto:nancy_martinez@young.senate.gov)) in Sen. Todd Young's office or Sarah Coffman ([sarah.coffman@mail.house.gov](mailto:sarah.coffman@mail.house.gov)) in Rep. James Comer's office and ask to be an original co-sponsor of the Fair and Open Competition Act in the 118th Congress. Get the facts about PLA mandates on our coalition website at [BuildAmericaLocal.com](http://BuildAmericaLocal.com).

Your opposition to President Biden's pro-PLA EO and any legislative or regulatory language promoting controversial government-mandated PLAs on spending bills, coupled with your support of the Fair and Open Competition Act, will create a level playing field in the procurement of government construction contracts, increase competition, help small businesses grow, decrease construction costs and spread the job-creating benefits of federal and federally funded contracts throughout the construction industry.

Sincerely,

American Concrete Pumping Association  
American Fire Sprinkler Association  
American Pipeline Contractors Association  
American Road and Transportation Builders Association  
Associated Builders and Contractors  
Business Coalition for Fair Competition  
Construction Industry Round Table  
Electronic Security Association  
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 Association  
Small Business and Entrepreneurship Council  
U.S. Chamber of Commerce

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<sup>17</sup> In 2022, almost [20 governors](#) joined [59 U.S. House members](#), [43 U.S. Senators](#), and dozens of construction industry, employer and taxpayer advocacy groups opposing the Biden administration's pro-PLA policies. Letters available at <https://buildamericalocal.com/learn-more/#letters>.