

# Government-Mandated Project Labor Agreements

## OVERVIEW

Government-mandated project labor agreements (PLAs) end open competition on public works projects, denying the vast majority of qualified contractors the opportunity to fairly bid on federal and federally assisted construction contracts. Government-mandated PLAs needlessly increase construction costs, discourage competition from qualified merit shop contractors and stifle job creation for their skilled employees in the construction industry, which suffered from an unemployment rate averaging 13.5 percent in 2012.

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 Council issued a final rule, effective May 12, 2010, implementing Executive Order 13502 into federal procurement regulations.

The Obama administration repealed President George W. Bush's Executive Orders 13202 and 13208, which maintained government neutrality in federal contracting by prohibiting the government from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, President Bush's executive orders protected \$147.1 billion worth of federal construction projects and hundreds of billions of dollars in federally assisted construction spending from government-mandated PLAs.

Despite congressional hearings and inquiries, the Office of Management and Budget has failed to release detailed data about the frequency or scope of the use of government-mandated PLAs and discriminatory PLA preferences on federal projects during President Obama's first term. However, ABC estimates billions of dollars' worth of federal and federally assisted projects have been needlessly subjected to 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 mandate policy likely would be struck down by the courts—the order exposes federal procurement officials to intense political pressure to mandate PLAs from special interest groups, politicians and federal agency political appointees.

During President Obama's second term, there is concern the White House may enact Section 7 of Executive Order 13502. Lowering the current \$25 million threshold, or expanding the order to apply to federally assisted projects via Section 7, would expose a much larger portion of the construction industry to government-mandated PLA threats.

In 2011 and 2012, 10 states responded to the threat of costly federal mandates and preferences by passing measures restricting government-mandated PLAs on state and state-assisted projects likely to receive federal assistance. A total of 14 states have enacted similar measures.

During the 113th 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 mandate PLAs or discriminatory PLA preferences on federal and federally funded construction projects.

## WHAT IS A PLA?

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

A PLA is a project-specific collective bargaining agreement with multiple unions unique to the construction industry. When a PLA is *mandated* by a government agency, project construction contracts can be awarded only to contractors and subcontractors that agree to the terms and conditions of the PLA. Typically, PLAs force contractors to recognize unions as the representatives of their employees on a job; use the union hiring hall to obtain workers; hire apprentices exclusively through union apprenticeship programs; pay fringe benefits into union-managed benefit and multi-employer pension programs; and obey the unions' restrictive and inefficient work rules and job classifications.

Contracts subject to government-mandated PLAs are special interest carve-outs designed to funnel work to favored unionized contractors and their unionized workforces, which represent just 13.2 percent of the U.S. private construction workforce, according to 2013 Bureau of Labor Statistics data. Qualified merit shop contractors, their skilled employees and many communities strongly oppose government-mandated PLAs because they discourage fair and open competition.

Merit shop contractors contend that government-mandated PLAs are unfair to their skilled employees because these agreements 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 can be required to join a union or pay union dues even though they are not union members. Employers typically 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. This scheme is a financial windfall for these union plans and harms nonunion employees.

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 to be 20 percent.

In a September 2009 study, the Beacon Hill Institute (BHI) predicted government-mandated PLAs would add 12 percent to 18 percent to construction costs on federal projects without providing corresponding benefits to taxpayers or construction owners. To determine this cost increase, BHI used the results of three previous studies measuring the effect government-mandated PLAs had on school construction projects subject to prevailing wage laws in Massachusetts, Connecticut and New York.

Recent government-mandated PLAs on federal projects have led to increased costs and delays. In 2010, the U.S. General Services Administration (GSA) awarded a \$52.3 million contract to a general contractor to build the federal Lafayette building in Washington, D.C. After the award, the GSA forced the contractor to sign a change order and build it with a union-favoring PLA, which increased the cost by \$3.3 million. Another GSA project in Washington, D.C., at 1800 F St., suffered costly delays as a result of failed PLA negotiations with various construction trade unions.

## ABC SUPPORTS

- The Government Neutrality in Contracting Act (S. 109/H.R. 436), introduced by Sen. David Vitter (R-La.) and Rep. Andy Harris (R-Md.) in the 113th Congress, which would codify into law language from President Bush's Executive Orders 13202 and 13208.
- Legislative or executive measures to preserve full and open competition on public construction contracts in the spirit of Executive Orders 13202 and 13208.
- Federal construction contracts awarded based on sound and credible criteria, such as quality of work, experience and cost—not a company's union affiliation and willingness to sign a PLA.

## ABC OPPOSES

- Claims by PLA proponents that government mandates and preferences for PLAs will improve the economy and efficiency in federal contracting.
- Government-mandated PLAs and discriminatory PLA preferences on federal and federally assisted construction projects. These agreements cause delays, lead to jobsite disputes, disrupt local collective bargaining, 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 reduced job creation. These special interest agreements prevent taxpayers from receiving the best possible construction product at the best possible price.