

March 28, 2019

United States Senate
Washington, D.C. 20510

Dear Senator:

The diverse group of undersigned construction and business associations writes in strong support of Rep. Todd Young's (R-Ind.) Fair and Open Competition Act (S. 907), which ensures fair and open competition on federal and federally assisted construction contracts.

The Fair and Open Competition Act would prevent federal agencies and recipients of federal assistance from requiring contractors to sign a controversial project labor agreement as a condition of winning a federal or federally assisted construction contract. It also would eliminate discriminatory PLA preference policies that discourage competition during the procurement of 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 multi-employer pension plans that nonunion employees will be unlikely to access. This forces employers to pay "double benefits" into existing plans and union plans and places firms opposed to these costly provisions at a significant competitive disadvantage. In addition, PLAs typically force construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project.

When mandated by government agencies, PLAs can interfere with existing union collective bargaining agreements. In addition, they unfairly discourage competition from quality nonunion contractors and their employees, who comprise 87.2 percent of the private U.S. construction industry workforce, according to the most recent U.S. Bureau of Labor Statistics data.¹

President 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 and permits states and localities to mandate PLAs on federally assisted projects² in order to "promote the economy and efficiency in federal procurement."

However, multiple studies of hundreds of taxpayer-funded school construction projects found that PLA mandates increase the cost of construction by between 12 and 18 percent compared to similar non-PLA projects.³ In addition, recent government-mandated PLAs on federal and federally assisted projects have resulted in litigation, reduced competition, increased costs, needless delays and poor local hiring outcomes. Simply put, taxpayers are getting less and paying more when PLA preferences and mandates are required during the procurement of federal and federally assisted construction projects.

¹ See bls.gov [Union Members Summary](https://www.bls.gov/news.release/union2.nr0.htm). Jan. 18, 2019, <https://www.bls.gov/news.release/union2.nr0.htm>.

² Executive Order 13502, *Use of Project Labor Agreements for Federal Construction Projects*, signed Feb. 6, 2009 (<https://www.gpo.gov/fdsys/pkg/FR-2009-02-11/pdf/E9-3113.pdf>) and related FAR Case 2009-005, effective May 13, 2010 (<https://www.regulations.gov/docket?D=FAR-2009-0024>).

³ See multiple studies measuring the impact of PLAs on school construction in Connecticut, Massachusetts, New York and Ohio by the Beacon Hill Institute at Suffolk University (<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); 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>).

In addition, the Obama executive order and related regulations have exposed agency procurement officials to intense political pressure from special interest groups and politicians to mandate PLAs on federal and federally assisted projects even when they are not appropriate.

The Fair and Open Competition Act seeks to counteract potential 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* enter into PLAs before or after a fair and open competitive bidding process, a common industry practice permitted by the National Labor Relations Act.

A total of 25 states have passed measures similar to the Fair and Open Competition Act in order to 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.

If you would like to promote fairness, efficiency and transparency in government contracting, please contact Nancy Martinez (Nancy_Martinez@young.senate.gov) in Sen. Young's office and ask to cosponsor S. 907.

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, curb construction costs and spread the job-creating benefits of federal and federally funded contracts throughout the construction industry.

Sincerely,

American Fire Sprinkler Association
American Road & Transportation Builders Association
Associated Builders and Contractors
Business Coalition for Fair Competition
Construction Industry Round Table
Electronic Security Association
Independent Electrical Contractors
National Association of Home Builders
National Black Chamber of Commerce
National Ready Mixed Concrete Association
NFIB
Small Business & Entrepreneurship Council
U.S. Pan Asian American Chamber of Commerce