



Understanding Executive Order 14063 and President Biden's Other Pro-PLA Policies on Federal and Federally Assisted Construction Projects

On Feb. 4, President Biden signed Executive Order 14063, [Use of Project Labor Agreements for Federal Construction Projects](#). Once implemented following a rulemaking by the Federal Acquisition Regulatory Council, federal agencies will require that every prime contractor and subcontractor on a federal construction project of \$35 million or more performed within the United States to sign a project labor agreement as a condition of winning a contract.

ABC [slammed](#) the EO in a Feb. 3 statement picked up in dozens of publications nationwide: “This anti-competitive and costly executive order rewards well-connected special interests at the expense of hardworking taxpayers and small businesses who benefit from fair and open competition on taxpayer-funded construction projects.” An ABC [op-ed in The Wall Street Journal](#) published on Feb. 9 lays out arguments against the Biden administration’s policy and concludes, “Taxpayers would be best served by the adoption of inclusive, win-win policies that help America’s construction industry realize the potential of the Infrastructure Investment and Jobs Act of 2021. We can’t rebuild our nation’s crumbling infrastructure effectively, increase accountability and reduce waste with PLAs.”

ABC has long been a leader in opposing government PLA mandates and preferences on taxpayer-funded construction projects procured by local, state and federal governments. ABC will fight this anti-competitive and costly EO—and other separate Biden administration policies pushing PLA mandates on federally assisted contracts—with every legal, legislative, public relations and educational tool in our advocacy toolbox.

Scope

EO 14063 applies to U.S. federal construction projects with a total estimated cost of \$35 million or more (Section 2) procured by the U.S. Army Corps of Engineers, General Services Administration, Naval Facilities Engineering Systems Command and other federal agencies that directly procure federal construction contracts. “Agencies shall require every contractor or subcontractor engaged in construction on the project to agree, for that

project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.” (Section 3).

Note: *The order does not apply to federally assisted construction contracts procured by state, local and private stakeholders, [although other Biden administration policies promote the use of PLAs on certain federally assisted construction projects](#).*



PLA Terms

Section 4 of the EO lays out minimum terms that must be included in the PLA, such as:

- Guarantees against strikes, lockouts and similar job disruptions;
- Effective, prompt and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement; and
- Other mechanisms for labor management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety and health.

Exceptions

Senior federal agency officials may grant an exception to the PLA requirement only under a very narrow set of circumstances highlighted in Section 5 of the EO. Exceptions can be granted in writing if, “at least one of the following circumstances exists with respect to the contract:

- (a) Requiring a project labor agreement on the project would not advance the Federal Government’s interests in achieving economy and efficiency in Federal procurement. Such a finding shall be based on the following factors:
 - (i) The project is of short duration and lacks operational complexity;
 - (ii) The project will involve only one craft or trade;
 - (iii) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors;
 - (iv) The agency’s need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable; or
 - (v) The project implicates other similar factors deemed appropriate in regulations or guidance issued pursuant to section 8 of this order.
- (b) Based on an inclusive market analysis, requiring a project labor agreement on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition.

- (c) Requiring a project labor agreement on the project would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.”

Federal Contracting Officer Education and Agency Reporting

The EO directs the departments of Defense and Labor, along with the Office of Management and Budget, to design within 90 days, “a training strategy for agency contracting officers to enable those officers to effectively implement this order.” In addition, “within 180 days of the date of the publication of proposed regulations,” they “shall provide a report to the Assistant to the President for Economic Policy and Director of the National Economic Council on the contents of the training strategy.” (Section 8 and 9).

In addition, the Biden administration will be exercising additional oversight on federal agency use of PLAs on federal contracts. “On a quarterly basis, agencies shall report to the Office of Management and Budget (OMB) on their use of project labor agreements on large-scale construction projects and on the exceptions granted under section 5 of this order.” (Section 4).

ABC anticipates federal contracting officers will be under tremendous pressure to mandate PLAs, and the forthcoming training and senior agency official oversight will limit their ability to rightfully opt out of requiring PLAs, as was the case on all but 12 of nearly 2,000 large-scale federal contracts totaling more than \$130 billion from FY2009 to FY2021.

Existing Pro-PLA Policy

Once issued, the FAR Council final rule will rescind and replace President Obama’s pro-PLA EO 13502 and related regulations, which encourage federal agencies to mandate PLAs on federal construction projects of \$25 million or more on a case-by-case basis. In the interim, the Obama pro-PLA policy is in effect and PLAs can be mandated by federal agencies. ABC will use a variety of tools to defeat such PLA mandates.

Timing

The EO is effective immediately; however, it will take months for the FAR Council to issue a final rule that will replace the federal government’s existing pro-PLA policy and incorporate the new policy into new federal contracts.



Impact

Research has demonstrated that government-mandated PLAs increase construction costs by 12% to 20%, which results in fewer construction projects and improvements to roads, bridges, utilities, schools, affordable housing and clean energy projects. PLAs steer contracts to unionized contractors and workers at the expense of the best-quality nonunion contractors and workers who want to compete at the best price for taxpayers. PLA mandates discourage the 87% of the industry that chooses not to join a union from participating in taxpayer-funded construction.

Next Steps

- ABC has already deployed an aggressive campaign of grassroots, public relations, educational, regulatory, legislative and legal tactics to push back against these policies.
- ABC leads a federal coalition of stakeholders opposed to government-mandated PLAs and will engage ABC members and industry stakeholders in the FAR rulemaking process.
- The coalition launched buildamericalocal.com, where the public can learn more and communicate with their election officials about government-mandated PLAs.
- ABC is evaluating legal options to challenge the EO policy and individual PLAs on federal construction contracts.
- ABC has already activated a grassroots campaign, including an action alert urging members of the U.S. House and Senate to co-sponsor the Fair and Open Competition Act ([H.R. 1284/S. 403](https://www.congress.gov/bills/116/1284)), which would prevent the federal government from mandating PLAs as a condition of winning federal or federally assisted construction contracts. ABC members are encouraged to visit the [ABC Action Center](#) and urge their members of Congress to support FOCA.
- Federal contractors are encouraged to continue to respond to federal agency PLA surveys used to determine if a PLA is appropriate for a project under current policies.
- In a [Feb. 10 webinar](#), ABC's Ben Brubeck provided an overview of the EO [and other policies independent of the EO that promote PLAs on state and local construction projects receiving federal dollars](#) and how they will affect ABC federal and public works contractor members.
- Donate to [ABC's Free Enterprise Alliance to support ABC's campaign against PLA mandates](https://freenterprisealliance.org/donate) and preferences on federal and federally assisted construction projects. Make a personal or corporate contribution today at freenterprisealliance.org/donate.

Questions?

Please contact ABC Vice President of Regulatory, Labor and State Affairs Ben Brubeck at brubeck@abc.org.