



Construction Industry Round Table

Regulatory News

A force for positive change in the design / construction industry

7/14/09 – PLA Changes Move Forward

The FAR Council has posted a proposed rule (note: NOT an interim rule as expected) for President Obama's Feb. 6 Executive Order 13502 regarding the use of PLAs on federal construction projects. The proposed rule, along with a formal revocation of EO 13202, will be published Tuesday, 7/14 in the Federal Register and comments will be due 30 days from publication. Initially, the fact that the FAR Council issued a proposed rule instead of an interim final rule is a positive development for opponents of PLAs and giveaways to construction labor unions. An interim rule would have accelerated the appearance of PLAs on federal work; whereas the proposed rule gives opponents more time to build a regulatory and legal record against them. However, the OMB memo is troubling because it means that the OMB is in effect implementing the interim rule even while they call it a proposed rule. Specifically, they are encouraging the agencies to move ahead with PLAs without waiting for the proposed rule to become final. The proposed rule itself (not surprisingly) contains many serious flaws, particularly with regard to the impact statement (which completely ignores the impact on subcontractors), the absence of any meaningful criteria for agencies to use in deciding whether to impose PLAs, and the absence of any empirical justification for PLAs at all on federal projects.