

July 12, 2022

U.S. House of Representatives
Washington, DC 20515

Dear U.S. Representative:

The diverse coalition of undersigned associations and organizations representing the interests of tens of thousands of companies and millions of skilled employees in the U.S. construction industry write to express opposition to an amendment to the National Defense Authorization Act for Fiscal Year 2023 (H.R. 7900) that will result in reduced competition, increased costs, delays, poor local hiring outcomes and litigation on critical federal construction contracts.

Amendment No. 1083,¹ offered by Rep. Dale Kilmer, D-Wash., would codify into law President Biden's Executive Order 14063,² which requires controversial project labor agreements³ on all federal construction contracts of \$35 million or more.

Government-mandated PLAs are jobsite-specific collective bargaining agreements unique to the construction industry that needlessly increase costs and unfairly limit competition by some of America's best contractors. Ultimately, they exclude almost 9 out of 10 of the construction industry's workforce from the middle-class jobs and benefits created by government investment in infrastructure via the Infrastructure Investment and Jobs Act of 2021 and other measures passed by Congress that fund public works contracts without government-mandated PLA requirements.

When mandated by government agencies, PLAs can supersede and interfere with existing collective bargaining agreements that contractors have already negotiated with various unions and prevent firms from using labor from certain unions, which is why some union organizations and contracting groups oppose government-mandated PLAs.⁴

In addition, typical terms within PLAs unfairly discourage competition from quality nonunion contractors and their employees, who comprise 87.4% of the private U.S. construction industry workforce, according to the most recent U.S. Bureau of Labor Statistics data.⁵

For example, a PLA 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. This forces employers whose workers have freely made the choice not to join a union to pay "double benefits" into their existing employee benefit plans and union plans and places these qualified firms at a significant competitive disadvantage. In addition, research suggests that the few nonunion employees permitted to work on a PLA jobsite lose 34% of wages and benefits unless they pay union dues and/or join a union and meet benefits plan vesting schedules.⁶ In short, these anti-competitive provisions in typical PLAs promote wage theft, eliminate employee choice for union representation and make it extremely difficult for many nonunion, and typically small, minority- or women-owned firms to win public works contracts subject to anti-competitive PLAs.

¹ Amendment No. 1083: https://amendments-rules.house.gov/amendments/KILMWA_082_xml1220705125754340.pdf

² The Federal Acquisition Council's proposed rule implementing Executive Order 14063, *Executive Order on Use of Project Labor Agreements For Federal Construction Projects*, signed Feb. 4, 2022, is expected to be issued this summer.

³ Learn more about government-mandated project labor agreements at <https://buildamericalocal.com/learn-more/>.

⁴ *Union Leaders and Contractors Oppose Government-Mandated Project Labor Agreements Too*, March 1, 2021, <https://tinyurl.com/yc727s58>.

⁵ See *bls.gov Union Members Summary*. Jan. 20, 2022, <https://www.bls.gov/news.release/union2.nr0.htm>.

⁶ 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.

Proponents of this amendment generally argue that a PLA is needed because businesses not affiliated with unions fail to deliver safe, on-time, on-budget government construction projects while obeying federal labor laws and paying high wages to employees. However, this misleading argument is undermined by facts. For example, federal government data indicates that, of the approximately 2,000 large-scale federal construction contracts procured from FY 2009 to FY 2021 subject to President Obama's pro-PLA policy via Executive Order 13502,⁷ at least 50% of contracts were awarded to prime contractors not signatory to unions.⁸ In addition, federal agency contracting officers chose to require PLAs on just 12 large-scale federal construction contracts out of more than 2,000 opportunities.⁹ There were no reports of widespread cost overruns, delays, labor unrest or poor-quality construction on non-PLA projects, indicating that PLA mandates are not needed to ensure economy and efficiency in government contracting.¹⁰

However, government-mandated PLAs on federal and federally assisted projects during this time period have resulted in reduced competition, increased costs, delays, poor local hiring outcomes and litigation.¹¹ In addition, multiple studies of hundreds of taxpayer-funded affordable housing¹² and school construction projects found that government PLA mandates increase the cost of construction by 12% to 20% compared to similar non-PLA projects already subjected to state prevailing wage regulations.¹³

In short, hardworking taxpayers are getting less and paying more when PLAs are mandated by the government on federal construction projects. In addition, PLA requirements will exacerbate the construction industry's 2022 projected skilled labor shortage of nearly 650,000 workers,¹⁴ reduce competition from experienced contractors and undermine the federal government's mission-critical infrastructure needs without strong participation from businesses and construction workers directly harmed by anti-competitive and costly pro-PLA policies.

Alternatively, our coalition asks Congress to promote inclusive, win-win policies that welcome all of America's construction industry to compete to rebuild our nation's infrastructure, increase accountability and reduce waste and favoritism in the procurement of federal construction projects.¹⁵ Ensuring fair and open competition on taxpayer-funded construction projects will ultimately result in savings to taxpayers,

⁷ President Obama's 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 projects in order to "promote the economy and efficiency in federal procurement." 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>).

⁸ Federal contract award data downloaded from usaspending.gov compared to list of nonunion general contractors with membership in various undersigned organizations, December 2021.

⁹ <https://tinyurl.com/2y87dvy3>

¹⁰ With or without a PLA, all federal projects are subject to federal labor and employment laws, including federal Davis-Bacon prevailing wage regulations, which require government-determined wages for building, heavy and highway projects that are typically union-scale wages where PLAs are most likely to be mandated.

¹¹ *Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects*, March 10, 2021, <https://tinyurl.com/3fefedna>.

¹² Ward, Jason M., *The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH*. Santa Monica, CA: RAND Corporation, 2021. https://www.rand.org/pubs/research_reports/RRA1362-1.html.

¹³ See multiple studies measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut, Massachusetts, New Jersey, New York and Ohio 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); 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>

¹⁴ *Biden's Project Labor Agreement Schemes Exacerbate Construction Industry's Skilled Labor Shortage*, June 29, 2022, <https://tinyurl.com/53n9x6b6>.

¹⁵ The coalition supports the Fair and Open Competition Act (S. 403/H.R. 1284), sponsored by Sen. Todd Young, R-Ind., and Rep. Ted Budd, R-N.C., would prevent federal agencies and recipients of federal assistance from requiring or encouraging contractors to sign a controversial PLA as a condition of winning a federal or federally assisted, taxpayer-funded construction contract.

more opportunities for all qualified small, minority- and women-owned businesses in the construction industry and the completion of more quality infrastructure projects on time and on budget.

Finally, because this amendment applies to all federal construction contracts and not just contracts within the scope of the NDAA, we urge the House Rules Committee to rule this amendment out of order.

Sincerely,

cc:

The Honorable Jim McGovern
Chairman
Rule Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Tom Cole
Ranking Member
Rules Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Chairman
House Armed Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Mike Rogers
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