

Congress of the United States
Washington, DC 20515

April 22, 2010

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Solis:

We have united with small business, minority interest groups, and federal contractors in opposition to the implementation of President Obama's February 11, 2009 executive order, E.O. 13502, encouraging federal agencies to consider the use of a project labor agreement (PLA) on large scale construction projects, where the total cost to the Government is \$25 million or more.¹ Despite promises of greater efficiency and labor peace, ample evidence shows that PLAs do not promote efficiency or labor peace and are discriminatory, wasteful, and anticompetitive. This Administration has chosen to adopt a final rule to reward its union allies at the expense of jobs. We have instructed our staffs to conduct meaningful oversight into all PLAs on large scale federal construction projects to evaluate the value and cost of these programs to the American taxpayer.

Project Labor Agreements Do NOT Promote Efficiency

PLAs use uniform collective bargaining agreements that cover all crafts on a construction project - setting work schedules, hours, payment arrangements, grievance procedures, and other terms and conditions of employment. These uniform contracts limit both employee and employer choice and innovation. Employees have no choice in representation. Contractors and subcontractors are forced to accept the PLA conditions, eliminating any chance of efficiency through innovation and forcing many employers to overhaul their structures to accommodate the new requirements.

Project Labor Agreements Do NOT Promote Industrial Peace

There is no evidence that PLAs are more successful than traditional contracts at securing industrial peace. A recent study by the Beacon Hill Institute found that the Bush Administration initiated 57,287 construction projects worth \$25 million or more without a single PLA.² None of these projects suffered from labor strife, slowdowns, or

¹ Letter from Rep. Darrell Issa, Ranking Member, H. Comm. on Oversight and Gov't Reform to Supervisor Hada Flowers, General Services Administration, Sept. 23, 2009.

² David G. Tuerch, Sarah Glassman, and Paul Bachman, *Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem*, The Beacon Hill Institute, Aug. 2009, at 5.

significant cost overruns.³ Clearly, PLAs and their grievance provisions are not necessary to ensure industrial peace on federal projects.

Project Labor Agreements are Wasteful

It is estimated that PLAs increase the costs of projects by between 20 and 26 percent.⁴ If PLAs had been used on all federal construction projects financed by the American Recovery and Reinvestment Act, assuming PLA agreements increase project costs by 20 percent, the federal government would have spent \$131 billion on work that could have been done for \$109 billion without the PLA.⁵ This labor windfall will cost the American taxpayer billions of dollars and innumerable jobs.

Project Labor Agreements are Anticompetitive

In 2001, approximately 80 percent of all construction workers were not affiliated with a union organization, and 75 percent of all construction projects nationwide were completed with non-union labor. To avoid the difficulties inherent in PLAs, many employers who are capable of managing and completing large projects choose not to bid on construction projects covered by a PLA. This response reduces competitive bidding and quality of workers. The 1995 study of the Buffalo Roswell Park project estimated that a PLA reduced total bidders by 30 percent.⁶ All federal contracts should be open to competitive bidding without PLAs to ensure best value and quality of work.

Project Labor Agreements are Discriminatory

The underrepresentation of minorities in unions, and the lack of non-union contractor bidding on construction projects covered by PLAs, act as barriers for minority workers and contractors. In 2008, approximately 73 percent of union members were white, 13 percent were African-American, four percent were Asian, and 11 percent were Hispanic.⁷ Further, 98 percent of black construction workers and construction companies are non-union.⁸ The National Black Chamber of Commerce, Women Construction Owners & Executives USA, Bay Area Black Contractors Association, Latin Builders

³ *Id.*

⁴ Paul Bachman and David G. Tuerck. "Project Labor Agreements and Public Construction Costs in New York State." Beacon Hill Institute at Suffolk University, 2006. Association of Builders and Contractors to Harry Robinson, Apr. 6, 1995 available at <http://opencontracting.com/studies/pdfs/Letters.pdf>; Ernest and Younge, Erie County Courthouse Construction Projects, Sept. 10, 2001, available at <http://opencontracting.com/studies/pdfs/Erie.pdf>.

⁵ Elise M. Carlin, The American Recovery and Reinvestment Act of 2009 and Its Impact on Federal Construction Contracting, Feb. 18, 2009, available at <http://federalconstruction.phslegal.com/tags/american-recovery-and-reinvest/>.

⁶ Ernest and Younge, Erie County Courthouse Construction Projects, Sept. 10, 2001, available at <http://opencontracting.com/studies/pdfs/Erie.pdf>.

⁷ Household Data Annual Averages, available at <http://www.bls.gov/cps/cpsaat40.pdf>.

⁸ *The Games They Play on Blacks*, National Black Chamber of Commerce, available at http://www.nationalbcc.org/index.php?option=com_content&view=article&id=752:the-games-they-play-on-blacks&catid=63:beyond-the-rhetoric&Itemid=8.

Association Inc., United States Pan-Asian-American Chamber of Commerce, American Asian Contractors Association, and National Association of Women Business Owners recognize that these disparities ensure that small and minority businesses are not able to compete on PLAs.⁹

Despite significant opposition from small business, federal contractors and minority interest groups, on April 13, 2010, the Federal Acquisition Regulation Council amended the Federal Acquisition Regulation to implement President Obama's February 11, 2009 executive order, E.O. 13502. The final rule:

- Encourages agency planners to consider use of PLAs early in the acquisition process;
- Clarifies that if an agency decides to use a PLA on a particular project, then the contractor must submit an executed PLA, meaning that a contractor can no longer merely bargain in good faith;
- Provides a non-exhaustive list of factors agencies may consider when deciding, on a case-by-case basis, whether to use a PLA;
- Allows agencies to either dictate the terms and conditions of the PLA or solicit a PLA from offerors;
- Requires PLAs to bind all contractors and subcontractors engaged in construction on the construction project to comply with the PLA;
- Requires PLAs to set forth mutually binding procedures for resolving labor disputes arising during the term of the PLA; and
- Requires contractor to provide a copy of the PLA to the contracting agency.¹⁰

In light of the leeway granted to agencies in the use, procedure, and terms of PLAs on large scale federal construction projects and the waste, discrimination, and anticompetitive elements of PLAs, we have instructed our staffs to monitor all large scale federal construction project that use a PLA very closely. In the event that your agency chooses to use a PLA on a large scale federal construction project, we would anticipate sending a letter requesting detailed documentation covering all levels of the decision making process and implementation.

⁹ *Union-Only PLAs Discriminate, Put Freedom to Work*, available at <http://opencontracting.com/info/index.cfm?page=5>.

¹⁰ 75 FR 19168-19179, available at <http://frwebgate6.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=344120141976+0+2+0&WAIAction=retrieve>.

To assist the Committees in developing a better understanding of your agency's position on this rulemaking and to facilitate future investigations, please provide the following information and documents:

1. Produce any guidance memorandums or other documents prepared by agency officials relating to this rulemaking, the implementation of a PLA, or any other document relating to the agency's contemplation of implementing a PLA.
2. Identify all large scale construction projects on which the agency is considering the use of a PLA. Provide the location and nature of the construction project, the source of financing, identity of the unions and contractors involved, and the expected cost.
3. Should your agency use a PLA on a large scale construction project, we may request that you brief our staffs about the decision-making process, the mechanics of implementation, and terms of the PLA. To facilitate the Committees' oversight work in this area, please identify a staff contact with subject matter expertise on PLAs to serve as a liaison between the agency and our Committees.
4. Please provide any and all documents and communications with persons, groups, or organizations outside the agency regarding the use of PLAs, and identify any policy decision(s) or programmatic requirement(s) made or included (for example, apprenticeship requirements) based on consultation with these parties.

We request that you provide the information by May 6, 2010. If you have any questions or comments please contact Marvin Kaplan or Steve Castor of the Oversight Committee staff at (202) 225-5074 or Loren Sweatt of the Education and Labor Committee staff at (202) 225-7101.

Sincerely,



Darrell Issa
Ranking Member
Committee on Oversight and
Government Reform



John Kline
Senior Republican Member
Committee on Education
and Labor

cc: Chairman Edolphus Towns, Chairman
Committee on Oversight and Government Reform
Chairman George Miller, Chairman
Committee on Education and Labor