



## **FAQs on Executive Order 14063** *and the Biden Administration'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](#). On August 19, the Federal Acquisition Regulatory Council issued a proposed rule, [Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects](#), implementing EO 14063, with a [public comment deadline of Oct. 18](#). Once implemented, 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, with some possible exceptions.

Government-mandated PLAs increase the cost of construction by [12% to 20%](#), reduce competition from [87.4% of the construction industry workforce](#) and [steal up to 34% of wages from the few nonunion workers allowed to work on a PLA jobsite](#).

ABC [slammed the EO](#) and [the proposed rule](#) in statements 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.”

A Feb. 9 ABC [op-ed in The Wall Street Journal](#) 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 [successfully opposing](#) government PLA mandates and preferences on taxpayer-funded construction projects procured by federal agencies. On Feb. 15, [an ABC-led coalition sent a letter](#) to President Biden opposing EO 14063 and “other policies encouraging PLAs on federally assisted projects via grant programs administered by federal agencies for state and local governments.” The coalition urged the White House to support “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 and federally assisted construction projects.” Subsequently, [governors and U.S. House and Senate lawmakers have also communicated to the White House](#) opposition to its pro-PLA policies.

ABC will fight this anti-competitive and costly EO—and other separate Biden administration policies pushing PLA mandates on federally assisted contracts [via federal agency grant programs for infrastructure projects procured by state and local governments](#)—with every legal, legislative, public relations, regulatory, grassroots and educational tool in our advocacy toolbox.

The EO and other pro-PLA policies by the Biden administration present great uncertainty to federal contractors, their employees and industry stakeholders. The following answers to FAQs provide insights and will be updated as we learn more about the policy as it continues through the federal rulemaking process.



## FAQs

### 1. The White House claims PLAs benefit taxpayers and will enhance the economy and efficiency of federal construction contracts. Is this true?

No. Government-mandated PLAs are not beneficial to taxpayers or the federal government. They needlessly:

- Increase taxpayer-funded construction costs by 12% to 20%.
- Result in less school, road, transportation, utility, clean energy and affordable housing construction.
- Steer contracts to contractors employing less than 13% of the U.S. construction industry and create jobs for unionized construction workers at the expense of hardworking taxpayers and the local construction industry workforce and businesses.
- Discourage competition from quality contractors not affiliated with unions, who employ 87.4% of America's construction workforce.
- Exacerbate the U.S. construction industry's 2022 skilled labor shortage of 650,000 craft workers by excluding almost 9 out of 10 construction workers from taxpayer-funded construction projects because they freely choose not to affiliate with a union.
- Harm America's small, minority and women contractors, as well as the overall construction industry, because almost all are not affiliated with specific unions designated in a PLA.
- Increase federal, state and local taxes.
- Reduce the number of new construction projects, cut infrastructure maintenance and undermine important government programs and public employee salaries.

Government-mandated PLAs undermine the economy and efficiency in federal contracting due to increased costs, reduced competition, delays, litigation and poor local hiring outcomes, as described below. Federally assisted PLA projects have a similar track record.

### 2. Which taxpayer-funded construction contracts are covered by the EO?

The EO applies only to large-scale federal construction projects, as defined in [Section 2](#) of the EO as, "a Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is \$35 million or more." These are construction contracts typically procured by federal agencies like the U.S. Army Corps of Engineers, the Naval Facilities Engineering Systems Command and U.S. General Services Administration.

### 3. Does the EO apply to subcontractors with subcontracts below the \$35 million threshold?

The EO applies to all federal construction projects, "for which the total estimated cost of the construction contract to the Federal Government is \$35 million or more." [Section 3](#) of the order says, "Federal 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." All prime contractors and subcontractors performing work on that project, regardless of the value of the subcontract, are required to negotiate or become party to a PLA. There is no exemption for small, minority or disadvantaged businesses in the proposed rule. The proposed rule says, "agencies may continue to require PLAs for projects that do not meet the \$35 million threshold at their discretion."

### 4. When does this policy take effect and when will we see PLAs mandated in federal agency solicitations for construction projects?

It is unclear when the Biden EO and related regulations will apply to federal contracts, but it will likely be in early 2023 when the proposal is finalized and included in federal agency solicitations. However, the Biden EO is effective immediately. It encourages federal agencies to mandate PLAs now under the existing pro-PLA policy [EO 13502](#), which was implemented by the Obama administration and remains in place while the FAR completes its Biden EO rulemaking. The FAR Council [issued a proposed rule Aug. 19](#). Stakeholders can submit comments in opposition to the proposal until Oct. 18. After the public's comments on the proposed rule are received,



the FAR Council will take public comments into consideration and issue a final rule, generally a few months after the proposed rule deadline.

Once issued, the final rule will direct the FAR to be amended and the Biden administration will direct federal agencies to incorporate this policy's new FAR clauses into future federal agency solicitations for construction services. While we don't know how long this rulemaking will take, we do know President Obama's pro-PLA EO was issued Feb. 2, 2009, and the final rule was not effective until May 2010. Of note, federal agencies can mandate PLAs at any time under existing Obama administration pro-PLA policy, and federal agencies are under additional pressure by the White House to do so during the FAR rulemaking.

#### 5. How does the Biden EO affect President Obama's current pro-PLA policy?

The Trump administration did not rescind the Obama administration's pro-PLA policy. [President Obama's EO 13502](#) and related FAR regulations encourage, but do not require, federal agencies to mandate PLAs on a case-by-case basis on federal construction projects totaling \$25 million or more. According to the Biden pro-PLA EO, the Obama policy will be replaced when a final rule is issued. The Biden EO encourages federal agencies to mandate PLAs now under existing Obama administration policy, which remains in place while the FAR completes its Biden EO rulemaking. The Biden EO does not prohibit federal agencies from mandating PLAs on federal contracts below its \$35 million threshold. ABC will remain vigilant, but we believe the status quo will continue until a final rule is issued by the FAR.

#### 6. How many federal contracts were subject to government-mandated PLAs under the Obama administration's policy?

[According to ABC research](#), from FY2009 to FY2021, just 12 PLAs valued at a total of \$1.25 billion were mandated on large-scale federal construction projects of \$25 million or more. This is out of a total population of 2,075 federal construction contracts of \$25 million or more, totaling roughly \$129 billion in value. This data demonstrates that when federal contracting officers and agencies are given an opportunity to freely evaluate the effectiveness of government-mandated PLAs without undue political pressure, PLAs are not needed to enhance the economy and efficiency in federal contracting.

#### 7. How many federal contracts were won by nonunion prime contractors from FY2009 to FY2021?

Federal contract awards posted on [usaspending.gov](#) cross-referenced with trade association contractor member lists [indicate](#) that nonsignatory prime contractors won more than 51% (1,061 contracts) of 2,075 large-scale federal construction contracts of \$25 million or more from FY2009 to FY2021, and more than 57% (\$73.46 billion) of the total value of \$128.73 billion. This demonstrates nonunion prime contractors successfully built federal large-scale projects safely, on time and on budget, free from government-mandated PLAs. In contrast to the rationale used by the White House to justify the use of PLA mandates, there were no reports of widespread delays, cost overruns, reduced competition or poor quality because of a lack of government-mandated PLAs during this time period.

#### 8. What provisions in typical PLAs are of most concern to nonunion contractors and employees?

A PLA typically requires all prime contractors and subcontractors 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 apprenticeship programs.
- Follow inefficient union work rules.
- Pay into union benefit and multiemployer pension plans. This provision 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 estimated to needlessly increase their employee compensation costs by 35%.
- Most or all nonunion employees must accept union representation, pay union dues, and/or join a union as a condition of employment.



**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. In short, these anti-competitive provisions in typical PLAs promote wage theft, eliminate employee choice and make it extremely difficult for many nonunion firms to win public works contracts subject to anti-competitive PLAs, including small, minority- and women-owned businesses that are typically nonunion.

All of these provisions negatively affect nonunion contractors and workers and discourage competition from some of the most qualified and experienced contractors and workers who want to compete on a level playing field to deliver to taxpayers the best possible product at the best possible price.

#### 9. Can nonunion contractors and workers compete for and win a federal project subject to a PLA?

Technically, nonunion contractors and workers are permitted to compete for federal projects subject to a PLA. However, the anti-competitive and costly terms and conditions of the PLA discourage nonunion contractors from competing for projects and make it difficult for them to win the prime contract or perform work as a subcontractor due to labor uncertainty, increased risk and unnecessary additional costs.

Nonunion construction workers are also harmed by PLAs. An October 2021 report by John R. McGowan, Ph.D., CPA, "[Government-Mandated Project Labor Agreements Result in Lost and Stolen Wages for Employees and Excessive Costs and Liability Exposure for Employers](#)," finds that employees of nonunion contractors who are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay conservatively estimated at 34% unless they join a union, pay union dues and become vested in union plans. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of an estimated 35% in compensation costs above and beyond existing

rates already subject to prevailing wage laws as a result of "double payment" of benefit costs to union plans as a result of a PLA.

#### 10. If nonunion contractors win a federal or federally assisted construction project subject to a PLA, will that expose them to multiemployer pension plan liabilities?

Possibly. Seek legal advice and request copies of all applicable union collective bargaining agreements and multiemployer pension plan actuarial statements and fringe benefits contribution requirements before agreeing to participate in the PLA project in order to properly assess risk. Exposing a firm to [unknown multiemployer pension plan liabilities](#) has the potential to bankrupt a company.

#### 11. Were there any examples of increased costs, reduced competition or delays on the few PLA projects under the Obama administration?

Yes. See answers to FAQ Nos. 30-33.

#### 12. Will federal agencies continue to advertise PLA surveys on sam.gov?

Yes, ABC expects federal agencies to continue to advertise [PLA surveys](#) on [sam.gov](#) and conduct outreach directly to federal contractors to evaluate if a PLA is appropriate on an individual project. Of note, no federal agency has ever required a PLA following the issuance of a federal PLA survey. This indicates that the contracting community must continue to respond to PLA surveys and communicate the anti-competitive and costly impact of PLA mandates and preferences on potential bidders in the short, and perhaps, long term. ABC will continue to notify stakeholders about federal agency PLA surveys and encourage a robust response. ABC members can learn more [here](#).

#### 13. How many future federal contracts will this policy apply to and how many will be subjected to PLAs?

The proposed rule estimates about 120 contracts totaling roughly \$10 billion annually will be affected by this proposal. In 2021, the federal government put in place about \$25 to \$30 billion worth of construction, [according to federal data](#). In addition, data from [usaspending.gov](#) indicates a total of 120



new U.S. construction contracts of \$35 million or more in total cost, valued at a total of \$9.5 billion, were awarded in FY2021. It is unclear how many federal construction contracts of \$35 million or more will be issued in FY22 and beyond. In addition, it is unclear which of these projects will be subjected to PLA mandates.

#### 14. What criteria can federal agency senior procurement officials use to exempt certain projects from PLA mandates?

The [proposed rule](#) permits an exception to the PLA requirement for federal construction projects of \$35 million or more only under a very narrow set of circumstances [listed in FAR 22.504\(d\)](#):

(d) Exceptions to project labor agreement requirements —(1) Exception. The senior procurement executive may grant an exception from the requirements at 22.503(b), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

- (A) The project is of short duration and lacks operational complexity.
- (B) The project will involve only one craft or trade.
- (C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.
- (D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104). A likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with statutes, regulations, Executive orders, or Presidential memoranda.

(2) When determining whether the exception in paragraph (d)(1)(ii) of this section applies, contracting officers shall consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a project labor agreement ( e.g., costs of labor or materials, supply chain costs). Agencies may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope.

(3) Timing of the exception —(i) Contracts other than IDIQ contracts. The exception must be granted for a particular contract by the solicitation date.

(ii) IDIQ contracts. An exception shall be granted prior to the solicitation date if the basis for the exception cited would apply to all orders. Otherwise, exceptions shall be granted for each order by the time of the notice of the intent to place an order ( e.g., 16.505(b)(1)).

#### 15. Why is this EO needed? Can't firms traditionally negotiate and execute a PLA on their own on a voluntary basis, without government interference?

Yes. The National Labor Relations Act allows all firms to negotiate and execute PLAs voluntarily with unions without government interference. Some firms did so on large-scale federal contracts from FY2009 to FY2021 independent of the federal agency's competitive bidding process. This is generally not a problem for opponents of government-mandated PLA schemes because voluntary PLAs typically do not decrease fair and open competition and increase costs for taxpayers.

The voluntary nature of PLAs calls into question the need for the Biden EO policy with a blanket PLA requirement. If PLAs were so beneficial, contractors would voluntarily use them without government coercion, when appropriate. Critics contend that PLAs are not needed to execute industry practices related to targeted local and diverse hire, small business utilization, schedule efficiency, improved labor relations and apprenticeship and workforce development strategies that are commonly achieved in contracting language and policies independent of the onerous terms and conditions of a PLA. The truth is policies



supporting government-mandated PLAs on federal and federally assisted construction projects are needed to steer work to certain unionized firms and union labor, which are large political supporters of the Biden administration and need government intervention to maintain and grow their market share because they cannot compete in a free market successfully.

**16. Does the Biden EO apply to federally assisted construction projects?**

No. However, other Biden administration policies independent of EO 14063 [promote the use of PLAs on certain federally assisted construction projects such as those funded by federal agency infrastructure grant programs for state and local governments procuring infrastructure projects](#). Federal dollars distributed to state and local governments via multiple grant programs administered by the departments of [Treasury](#), [Transportation](#), [Agriculture](#) and [Interior](#) encourage state and local applicants to mandate PLAs on water, sewer, broadband, offshore wind, energy and infrastructure projects. In addition, a Feb. 7 White House Task Force on Worker Organizing and Empowerment [report](#) makes a number of new policy recommendations to expand PLAs onto federally assisted projects and other federal contracting opportunities that the Biden administration may implement in the future.

**17. Does EO 14063 only apply to projects funded in the infrastructure bill signed into law in 2021?**

No. EO 14063 applies to all federal construction projects of \$35 million or more, regardless of the legislation funding applicable projects. For example, military construction projects were not funded by the Infrastructure Investment and Jobs Act of 2021 but are covered by this EO. The Feb. 3 [White House Fact Sheet on the EO](#) regrettably caused confusion when it included the following text inconsistent with the EO: “The Order will only apply to provisions in the Bipartisan Infrastructure Law that are direct federal procurement, which excludes construction projects financed through grant dollars to non-federal entities.”

**18. I'm a lawmaker/stakeholder from one of the 24 states that have current laws restricting government-mandated PLAs on state, state-assisted and local construction projects to some degree. Will such state laws prevent federal PLA mandates on military bases, federal office buildings and other federal construction projects in my state?**

No. [These state Fair and Open Competition Act statutes](#) do not apply to federal construction contracts. Federal procurement law and other federal statutes apply to federal construction projects, regardless of where they are performed. Of note, these state statutes may offer a level of protection against PLA mandates and/or encouragements tied to federal grants, money and other assistance (unrelated to EO 14063) for construction projects procured by state and local governments.

**19. Are PLA mandates on federal construction projects in right-to-work states legal?**

Federal, state and local government-mandated PLAs can occur in right-to-work states. A right-to-work law simply states that employees cannot be forced by their employer to join a union as a condition of employment. However, the terms of the PLA must reflect the status of the state or locality's right-to-work law. Of note, in some government-mandated PLAs in right-to-work states, employees have been compelled to pay agency shop and representation fees to unions but not to join a union as a condition of employment. However, lawsuits reflecting the 2018 Janus vs. American Federation of State, County and Municipal Employees decision by the U.S. Supreme Court have undermined controversial agency shop fee and union membership requirements applying to public sector government employees. Additional litigation challenging government-mandated PLA clauses that require private sector workers to join and/or pay fees to a union as a condition of employment on a government contract have been filed in the courts with promising results.



**20. Federal construction contracts require government-determined Davis-Bacon prevailing wage and benefits rates to be paid to construction workers on an hourly basis. How do PLAs interact with that policy?**

All federal construction projects exceeding \$2,000, as well as almost all federally assisted construction projects, require government-determined prevailing wage and benefits to be paid on an hourly basis to construction workers performing work on jobsites covered by the 1931 Davis-Bacon Act and related regulations, which are currently undergoing reforms via a sweeping and controversial Biden administration rulemaking expected to be finalized later this year or early 2023. Davis-Bacon rates are set through an archaic and inefficient process administered via the U.S. Department of Labor's Wage and Hour Division. Government data indicates Davis-Bacon rates are union scale on almost 50% of all rates published by the DOL. The other rates are a blend of union and nonunion rates.

Davis-Bacon rates are required with or without a PLA, undermining PLA advocates' claims that PLAs are needed to ensure high wages and benefits for construction workers employed on federal and federally assisted construction projects. PLAs can stipulate that construction workers must be paid the Davis-Bacon rate or a rate consistent with current union collective bargaining agreements for each trade that cannot be less than the Davis-Bacon rate.

**21. How exactly does a PLA fit into a government agency's contracting process?**

Typically, unions and PLA proponents lobby federal, state and local lawmakers and government agencies to require a PLA on individual taxpayer-funded construction projects or they lobby in support of legislation or local ordinances that require a PLA on a series of certain public works projects greater than a certain dollar threshold. A PLA is typically drafted by unions without input from contractors/potential bidders and presented for review to government officials.

If lawmakers decide a PLA is appropriate for a project, the PLA requirement is included in a government agency's solicitation to contractors/bidders for construction services. When a PLA is required, it typically discourages competition from nonunion contractors and construction

workers and steers contracts to union contractors and union labor.

It is generally unknown how much PLAs increase costs and reduce competition on a specific project unless the project is rebid without an anti-competitive and costly PLA requirement, or a series of similar projects are bid with and without PLAs. Such instances and research has found that PLAs increase the cost of construction by 12 to 20% compared to similar non-PLA projects.

The FAR Council's proposed rule (52.222-33) provides a basic provision and two alternative provisions for the contracting officer to select from to include in solicitations when requiring a PLA in the procurement of a federal construction contract. The provision selected identifies whether all offerors, the apparent successful offeror or the awardee must provide a copy of the PLA.

The proposed rule says that FAR 22.504(b)(6) authorizes agencies to ensure the PLA includes any additional requirements as the agency deems necessary to satisfy its needs and is sufficient, and FAR 52.222-34 allows the contracting officer to choose when to require the executed PLA.

There are practical problems with all of the FAR's options to include a PLA in a federal agency procurement.

**22. Does the Biden EO specify what provisions must be contained in the PLA?**

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.

PLAs typically include additional provisions negatively affecting cost, competition, schedule, safety, workforce development, construction quality and small, minority and disadvantaged contractor and workforce utilization. Of note, PLAs often require companies to obey local collective



bargaining agreements of unions signatory to the PLA and pay into applicable union pension and benefits plans, which creates additional uncertainty, risk and increased costs.

However, the [FAR proposal revised](#) FAR 22.504(c) and removed “direction that allowed agencies to specify terms and conditions of the PLAs and to engage in efforts to identify the appropriate terms and conditions for a particular construction project.”

**23. Will federal agencies negotiate a PLA with unions and include it in a federal contract solicitation?**

It is unclear, but likely no. The FAR proposal does not provide additional information on this question. We do know that under the Obama administration's pro-PLA policy, agencies did not draft a PLA and include it in the solicitation during the limited use of PLA mandates. Each contractor was responsible for drafting, negotiating and executing a PLA with applicable unions, which led to some unintended negative consequences, delays and significant differences in the scope of various PLAs.

**24. What happens if certain unions will not negotiate or sign a PLA with certain contractors?**

It is unclear. The FAR rulemaking and contracting officer training discussed in [Section 9 of the EO](#) may address this question following a future OMB rulemaking [discussed in the proposed rule](#). We do know that under the Obama administration's pro-PLA policy, a GSA construction project was [significantly delayed because unions refused to sign a post-award PLA presented by the prime contractor who had been awarded the contract for the GSA headquarters building](#) in Washington, D.C. This resulted in a 107-day delay and increased costs by millions of dollars that affected the project significantly. The added costs were resolved through a change order negotiation.

**25. Will federal contractors submit a copy of the PLA they have negotiated with unions with their response to the solicitation and will it be evaluated by contracting officers?**

It is unclear. See answer to question 21.

**26. How will federal agency contracting officers evaluate multiple PLAs submitted by multiple offerors?**

It is unclear. See answer to question 21.

**27. Will federal agencies designate which unions should be party to the PLA?**

It is unclear. The FAR rulemaking and contracting officer training may address this question. According to the FAR proposal, FAR 22.504(c) says, “An agency may not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization when the project labor agreement includes multiple signatory labor organizations representing the same trade.”

**28. I'm a contractor signatory to a union that is excluded from PLAs typically. I'm not allowed to sign collective bargaining agreements, including PLAs, with other unions as a condition of my existing collective bargaining agreement. What should I do if I want to compete for a federal or federally assisted construction project subject to a PLA?**

Unfortunately, if a PLA requires you to sign a jobsite-specific collective bargaining agreement with unions that you are not signatory to, your existing union agreement may prevent you from utilizing unionized employees from other unions. Request a copy of the PLA to see which unions are signatory to the PLA and compare that to your existing agreement.

For this reason, many unions, union workers and organizations representing union contracting groups [oppose government-mandated PLAs](#) because they interfere with existing union collective bargaining agreements and discourage and/or prohibit certain union-signatory firms and union members from working on PLA projects. PLAs can limit competition from both quality union and nonunion contractors and employees.

The answer to question 27 does not address circumstances where a contractor is signatory to a labor union that is not signatory to the PLA. ABC will be asking the FAR for clarification on this issue.



### 29. Will the Biden EO apply to existing contracts or new contracts?

The FAR rulemaking may clarify this. We expect it to apply to new construction contracts for projects of \$35 million or more only and not ongoing projects that have already been awarded. However, the [proposed rule says this about IDIQ contracts](#):

Some agencies use indefinite-delivery indefinite-quantity (IDIQ) contracts to award orders for large-scale construction projects. IDIQ contracts may cover multiple projects of varying values. For an order at or above \$35 million, an agency shall require a PLA, unless an exception applies. An exception may only apply to the entire IDIQ contract if the basis for the exception cited would apply to all orders. Use of PLAs on orders is also not restricted to those projects valued at or above the \$35 million threshold. The offerors are alerted in the provision at FAR 52.222-33, Notice of Requirement for Project Labor Agreement, that a PLA may be required at the order stage. The clause at FAR 52.222-34 allows the contracting officer to choose when to require the executed PLA, with the order offer, after the offer but prior to order award, or after award of the order.

ABC will request additional clarity about how this will impact small MATOC and IDIQ contracts on construction projects. If it does apply to small MATOC and IDIQ contracts, that would have a disproportionately negative impact on small businesses.

### 30. Federal contracting officers I work with tell me this pro-PLA EO policy will needlessly increase costs, reduce competition and undermine agency efforts to deliver specific mission-critical construction projects paid for by taxpayers. However, they fear they will be silenced and or lose their jobs if they push back. What can be done?

Whistleblower protections extend to federal agency contracting officers. In addition, federal agencies have the ability to comment on the FAR Council's proposed rulemaking process, answer oversight questions from federal lawmakers,

participate in litigation against federal agency policies and exempt certain projects under the narrow set of guidelines established by the EO and forthcoming FAR rulemaking.

### 31. Will PLA mandates reduce competition from contractors who build federal projects?

Yes. According to the results of a [September 2022 survey of ABC contractors](#), 99% of survey respondents said they were less likely to bid on a taxpayer-funded construction contract if the bid specifications required the winning firm to sign a PLA with labor unions. 96% said they would expect less competition from subcontractors for construction contracts subject to a government-mandated PLA.

Numerous real-world examples illustrate the anti-competitive and costly impact of PLAs on taxpayer-funded construction contracts. For example, a DOL Job Corps Center in Manchester, New Hampshire, was originally bid with a PLA mandate in 2009 and then 2012. After nearly a total of three years of PLA-related delays and litigation, the project was finally rebid without a PLA in late 2012. Bid results from February 2013 prove PLAs increase costs and reduce competition. Without a PLA, there were more than three times as many bidders (nine vs. three) and the low bidder's offer was \$6,247,000 (16.47%) less than the lowest PLA bidder. In addition, firms who participated in both rounds of bidding submitted an offer that was nearly 10% less than when they submitted a bid with a PLA. Without a PLA, a local firm from New Hampshire won the contract and built it on time and on budget to the satisfaction of the DOL. In contrast, the low bidder under the PLA mandate was from Florida.<sup>1</sup>

### 32. Will PLA mandates increase costs to contractors who build federal and federally assisted projects and isn't that a cost ultimately paid by taxpayers?

Yes. Federal, state and local government-mandated PLAs on public works projects receiving federal taxpayer dollars will likely increase construction

<sup>1</sup> See [TheTruthAboutPLAs.com](#) for full details on the project. *U.S. Department of Labor Job Corps Center Opening Demonstrates Value of Fair and Open Competition*, Oct. 26, 2015. See table of bid results via TruthAboutPLAs.com at: <http://thetruthaboutplas.com/wp-content/uploads/2013/04/Bid-Results-of-Manchester-NH-DOL-Job-Corps-Center-bid-with-and-without-a-PLA-042313.pdf>.



costs and decrease the value of investment by hardworking taxpayers in schools, roads, bridges, utilities, clean energy, transportation, affordable housing and infrastructure. **97% of survey respondents** said a construction contract that required a PLA would be more expensive compared to a contract procured via free and open competition. Overall, PLA mandates will lead to fewer construction projects and fewer construction industry jobs created and/or additional state and local tax hikes to pay for construction needs.

### 33. How much do PLA mandates typically increase the cost of construction?

Multiple studies of hundreds of similar taxpayer-funded affordable housing<sup>2</sup> 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 prevailing wage regulations.<sup>3</sup> In addition, projects bid with and without PLAs anecdotally illustrate how PLAs increase costs and reduce competition. Simply put, hardworking taxpayers are getting less and paying more when PLAs are encouraged or mandated during the procurement of federal and federally assisted construction projects.

In addition to the DOL Job Corps Center and the GSA federal projects discussed above, a number of real-world examples on federal and federally assisted contracts<sup>4</sup> suggests government-mandated PLA mandates increase the cost of construction.

For example, in 2010, the GSA awarded a \$52.3 million contract to a general contractor to build the federal Lafayette Building in Washington, D.C., but then forced the contractor to sign a change order post-award and build it with a union-only PLA. The PLA requirement cost taxpayers an additional \$3.3 million.<sup>5</sup>

### 34. Will PLA mandates exacerbate the skilled labor shortage facing the construction industry?

Yes, **ABC projects a 650,000-person skilled labor shortage in the construction industry in 2022**. PLAs force contractors to hire most or all employees from union hiring halls and prohibit the use of all or most of a contractor's existing nonunion employees on a PLA project. **PLA mandates will exacerbate the skilled labor shortage in the construction industry** in the short term by excluding almost 9 out of 10 U.S. construction workers who freely choose not to join a union.

In the long term, PLAs undermine community, association and **company investments in workforce development and government-registered apprenticeship programs not affiliated with unions**. For example, PLAs require the use of apprentices from union apprenticeship programs. Investments made by community education systems, workforce development stakeholders and nonunion firms into nonunion apprenticeship programs registered with the DOL and state governments are undermined when nonunion apprentices can't work on taxpayer-funded construction projects.

Finally, according to the results of the **September 2022 ABC membership survey**, 96% of survey respondents said a PLA would harm their company's investment in workforce development programs to address the industry's skilled workforce shortage. In addition, almost 90% of respondents said that a PLA would decrease the hiring of women, veteran and disadvantaged business enterprises and construction workers, which have traditionally been unaffiliated with labor unions. Further reading can be found [here](#).

2 Ward, Jason M. *The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH*. Santa Monica, California: RAND Corporation, 2021. [https://www.rand.org/pubs/research\\_reports/RRA1362-1.html](https://www.rand.org/pubs/research_reports/RRA1362-1.html).

3 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](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>).

4 See *Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects*, March 10, 2021.

5 See TheTruthAboutPLAs.com, *GSA Wasted Millions on Union Handout, Where's the Outrage?* April 10, 2012.



### 35. How can I find out how many construction workers in my state or region belong to a union?

According to Bureau of Labor Statistics data, **87.4% of the U.S. construction workforce does not belong to a union**. Updated state-specific union membership information for various industries, including the construction industry, is available at unionstats.com (see Table 3), which is mined from raw data published by BLS data. ABC has created a [map](#) of state unionization rates with data from unionstats.com and the BLS.

### 36. PLA advocates claim PLAs are needed to prevent strikes and labor unrest on a federal construction project. Don't unions cause strikes, and how do I know if there is a history of strikes and labor unrest in a marketplace?

Why lawmakers continue to soak taxpayers with a 20% cost premium on public works projects for a solution to a problem that is rare in today's construction marketplace and rewards the party that creates the problem is baffling. It's even more puzzling when examining the government data on union strikes on public and private projects subjected to PLA mandates, despite promises that PLAs allegedly prevent strikes.<sup>6</sup>

### 37. Will government-mandated PLAs harm federal agency and state and local small, minority and disadvantaged businesses and workforce utilization goals?

Yes. The vast majority of small, minority and disadvantaged businesses and workers are not affiliated with unions and will be discouraged from competing for projects subject to special-interest PLA schemes. Additional research on the impact of PLA schemes on these populations is ongoing.

In addition, according to the results of the [September 2022 ABC membership survey](#), 97% of respondents who are federal contractors who self-identified as small businesses said they would be less likely to bid on contracts if the rule is finalized, potentially affecting the federal government's small business procurement goals. 73% of small

businesses stated PLAs decrease hiring of minority, women, veteran and disadvantaged business enterprises, which have traditionally been unaffiliated with labor unions. 93% of surveyed federal contractors stated the FAR proposal would result in less competition from subcontractors.

### 38. Do PLA mandates result in better local hiring outcomes?

It is no surprise that construction unions and their members—who make up just **12.6% of the private construction workforce**—spend millions of dollars lobbying for government-mandated PLAs on taxpayer-funded construction contracts. It means more contracts for union-signatory contractors and more jobs for union members—likely from out of the area—at the expense of hardworking taxpayers, fair and open competition and local workers and businesses.

According to the results of the [September 2022 ABC membership survey](#), 94% of survey respondents said a PLA would result in worse local hiring outcomes for a project.

In addition, data collected by Del. Eleanor Holmes-Norton, D-D.C., on federal projects subject to PLA mandates located in the District of Columbia demonstrated that PLAs delivered worse local hiring outcomes for Washington residents than other large-scale federal projects not subject to a PLA in the region.<sup>7</sup>

Fair and open competition is the best way to ensure local contractor and workforce participation. However, targeted local hiring objectives for workers and contractors can be achieved through contracting specifications independent of discriminatory PLAs.

### 39. Do PLA mandates result in better safety or quality outcomes?

There have been numerous examples of unfortunate accidents and safety issues on government-mandated PLA projects, which suggests that government-mandated PLAs cannot guarantee the safe delivery of a quality construction project.<sup>8</sup>

6 See TheTruthAboutPLAs.com <https://thetruthaboutplas.com/tag/strikes/> for further reading with links to government data on infrequent construction industry strikes from the [U.S. Department of Labor Bureau of Labor Statistics' Work Stoppages Program](#) and the [Federal Mediation and Conciliation Service](#).

7 See TheTruthAboutPLAs.com, [Data Busts Myth That Project Labor Agreements Result in Increased Local Hiring](#), March 11, 2013.

8 See [Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects](#), March 10, 2021.



In addition, participants in the September 2022 ABC membership survey said PLA mandates would either result in construction projects that are less safe (65%) or have no impact on safety (34%).

Finally, the BLS is the federal agency tasked with calculating and reporting workplace injuries, which is primarily performed through the BLS Survey of Occupational Injuries and Illnesses and the BLS Census of Fatal Occupational Injuries. The SOII includes data on total recordable incident rates and days away, restricted or transferred rate in the construction industry. The number is represented as the number of injuries and illnesses per 100 full-time equivalent workers.

Data shows that states with laws prohibiting government-mandated PLAs averaged a lower level of total recordable incidents, with an average of 2.4, while states that allow and encourage government-mandated PLAs averaged 3.5 total recordable construction incidents.<sup>9</sup>

#### 40. Which construction and industry groups oppose this policy?

On Feb. 15, 2022, [an ABC-led federal coalition sent a letter](#) to President Biden opposing EO 14063 and recent federal agency actions to push PLAs on federally assisted construction projects. The letter was signed by 16 construction industry trade associations and employer groups. [A similar letter](#) was sent to Congress on Feb. 28, 2022. Additional groups oppose this policy and have sent communications to Congress and the White House independent of the coalition. In addition, a dozen taxpayer and worker freedom advocates sent [this letter to Congress Feb. 24, 2021](#), in opposition to government-mandated PLAs. An April 6, ABC-led [letter to the Biden administration](#) signed by more than 1,200 contractors opposed to this policy drew [TV](#) and [print](#) media coverage. In 2021, a coalition of construction industry groups launched [BuildAmericaLocal.com](#) in opposition to government-mandated PLAs.

#### 41. How is this legal? Can this policy be challenged by the courts?

ABC believes the Biden EO violates the Competition in Contracting Act and other federal

procurement laws by compelling PLAs and thereby injuring competition on projects exceeding \$35 million. ABC is considering a number of litigation options at this time.

#### 42. Can individual PLA mandates be challenged in the courts?

Yes, ABC believes individual PLAs can be challenged in the courts or via a bid protest filed with the Government Accountability Office. During the Obama administration, contractors filed GAO bid protests against federal agencies on five different projects and, in all instances, federal agencies removed the PLA requirement following the bid protest.<sup>10</sup> ABC is considering a number of litigation options at this time.

#### 43. Is there a legislative solution to end government-mandated PLA schemes?

Yes. Concerned stakeholders [should contact their lawmakers](#) and urge them to support the Fair and Open Competition Act ([H.R. 1284/S. 403](#)), which was introduced Feb. 24, 2021, by [Sen. Todd Young](#), R-Ind., and [Rep. Ted Budd](#), R-N.C. [Broadly supported by industry stakeholders](#), the legislation would restrict government-mandated PLAs and PLA preferences and support fair and open competition on federal and federally assisted construction projects. The legislation would still permit contractors to voluntarily execute PLAs with unions independent of the government's procurement process, which will foster robust competition and best value for taxpayers.

#### 44. Which lawmakers are opposing this policy and government-mandated PLAs?

Numerous governors and U.S. House and Senate lawmakers [oppose PLAs on federal and federal assisted construction projects](#).

- On April 26, 2022, 18 Republican governors, led by Asa Hutchinson of Arkansas and Bill Lee of Tennessee, [sent a letter](#) to President Biden opposing the Biden administration's policies promoting government-mandated PLAs on taxpayer-funded construction projects, calling

<sup>9</sup> See TheTruthAboutPLAs.com, [Setting the Record Straight: Do Government-Mandated Project Labor Agreements Really Improve Safety Performance?](#) March 16, 2021.

<sup>10</sup> See TheTruthAboutPLAs.com, [Legal Challenges Against Federal Government-Mandated Project Labor Agreements During President Obama's First Term](#), Jan. 22, 2013.



for President Biden “to be equitable in your treatment of America’s construction workers whether union or nonunion.”

- On March 8, 2022, 60 members of the House [sent a letter](#) to President Biden saying that PLA mandates and preferences will “deny critical construction jobs to local workers and small businesses,” urging the White House to refrain from “attaching strings to infrastructure funding that create discriminatory barriers to recovery.”
- On March 7, 2022, 43 Republican senators [sent a letter](#) to the Biden administration saying that “a fair and open bidding process for federal construction projects would guarantee the best value for hardworking taxpayers located in all geographies and regions across the United States.”

#### 45. Is there a political solution to end government-mandated PLA schemes?

Yes, the midterm elections present an opportunity to elect U.S. House and Senate majorities who support fair and open competition and can hold the Biden administration accountable for this handout to special interests at the expense of free enterprise and taxpayers. The 2024 presidential election presents an opportunity to elect a new president who can rescind costly and

discriminatory pro-PLA policies so all of America’s construction industry can compete to deliver the best possible product at the best possible price. Visit [FreeEnterpriseAlliance.org/FOCA](https://FreeEnterpriseAlliance.org/FOCA) to get involved in educating candidates and voters about this critical issue.

#### 46. Where can I learn more about PLAs and this issue and who should I contact on ABC staff to ask questions?

Additional ABC Resources:

- [ABC press release on EO 14063](#)
- [Detailed ABC analysis of EO 14063](#)
- [ABC Newsline on EO 14063](#)
- [ABC WSJ op-ed](#)
- [ABC memo on PLA surveys](#)
- [BuildAmericaLocal.com](#) coalition website
- [TheTruthAboutPLAs.com](#) blog
- ABC Free Enterprise Alliance website: [FreeEnterpriseAlliance.org/FOCA](https://FreeEnterpriseAlliance.org/FOCA)
- Follow [@ABCGovAffairs](#) and [@TruthAboutPLAs](#) on Twitter
- Email [NoPLAsFed@abc.org](mailto:NoPLAsFed@abc.org)