

FAQs on Executive Order 14063 and the Biden Administration’s Other Pro-PLA Policies on Federal and Federally Assisted Construction Projects

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On Dec. 22, 2023, the Biden administration published in the Federal Register the long-awaited Federal Acquisition Regulatory Council’s final rule, Use of Project Labor Agreements for Federal Construction Projects,¹ implementing President Joe Biden’s Feb. 4, 2022, Executive Order 14063.²

Effective Jan. 22, 2024, the rule and a related White House Office of Management and Budget memo³ require federal agencies to “use project labor agreements in large-scale construction projects to promote economy and efficiency in the administration and completion of Federal construction projects.”⁴ The rule defines a large-scale construction project 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.”⁵

In short, the new Biden policy requires anti-competitive and inflationary PLAs on all federal agency construction contracts of \$35 million or more, with possible limited exceptions.

Government-mandated PLAs increase the cost of construction by 12% to 20%,⁶ reduce competition from qualified and experienced contractors and 89.3% of the construction industry workforce⁷ who do not belong to a union and steal up to 34% of wages and benefits from the few nonunion workers allowed to work on a PLA jobsite in limited circumstances.⁸

For these reasons and many others, on March 28, 2024, ABC filed a lawsuit in the U.S. District Court for the Middle District of Florida in Jacksonville seeking a national injunction against President Biden’s “executive overreach, which makes a mockery of federal procurement laws and rewards powerful special interests with government construction contracts at the expense of taxpayers and the principles of fair and open competition in government procurement.”⁹

¹ <https://www.federalregister.gov/documents/2023/12/22/2023-27736/federal-acquisition-regulation-use-of-project-labor-agreements-for-federal-construction-projects>

² <https://www.federalregister.gov/documents/2022/02/09/2022-02869/use-of-project-labor-agreements-for-federal-construction-projects>

³ A Dec. 18, 2023, White House Office of Management and Budget memo, M-24-06, Use of Project Labor Agreements on Federal Construction Projects, provides federal agency executives additional guidance on the final rule and offers details about exercising PLA exceptions and conducting market research. <https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-06.pdf>

⁴ <https://www.federalregister.gov/d/2023-27736/p-287>

⁵ <https://www.federalregister.gov/d/2023-27736/p-286>

⁶ <https://buildamericalocal.com/learn-more/#gmpla-studies>

⁷ <https://www.abc.org/News-Media/News-Releases/abc-a-record-893-of-the-us-construction-industry-is-not-part-of-a-union>

⁸ <https://buildamericalocal.com/gehudim/sites/18/2021/10/McGowan-Project-Labor-Agreement-and-Multiemployer-Pension-Study-October-2021.pdf>

⁹ ABC Files Lawsuit Against President Biden’s Anti-Competitive Project Labor Agreement Rule for Federal Construction Projects, March 28, 2024, <https://www.abc.org/News-Media/News-Releases/abc-files-lawsuit-against-president-bidens-anti-competitive-project-labor-agreement-rule-for-federal-construction-projects>

ABC has long been a leader in successfully opposing government PLA mandates and preferences on taxpayer-funded construction projects procured by federal agencies.¹⁰

ABC will fight this anti-competitive and costly EO—and other separate Biden administration policies pushing PLA mandates on federally assisted infrastructure, clean energy and manufacturing projects procured by private and government owners¹¹—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 experienced contractors, their employees and industry stakeholders and will increase the cost and reduce the speed and quality of taxpayer-funded construction projects. The following answers to FAQs will be updated as we continue to learn more about the final rule and how it will be implemented across federal agencies.

FAQs

1. Section 1 of EO 14063 and other Biden administration policy and statements claim 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 government stakeholders.¹² Government PLA mandates and preferences:

- Increase taxpayer-funded construction costs by at least 12% to 20%, on average.
- Result in less school, road, transportation, utility, clean energy, manufacturing and affordable housing construction projects.
- Steer contracts to certain union-signatory contractors and create jobs for favored unionized construction workers at the expense of hardworking taxpayers and the best and most qualified local construction industry workforce and businesses who are harmed by PLAs.
- Discourage competition from quality contractors not affiliated with unions, who employ 89.3% of America's construction industry.
- Exacerbate the U.S. construction industry's skilled labor shortage of more than half a million people by excluding almost 9 out of 10 members of the U.S. construction industry workforce from taxpayer-funded construction projects because they are not members of a union.
- Harm America's small, minority and women contractors and their diverse workforces—as well as the overall construction industry—because the vast majority are not affiliated with specific unions typically party to a PLA.

¹⁰ <https://thetruthaboutplas.com/2023/12/06/december-2023-update-abcs-fight-against-government-mandated-project-labor-agreements/>

¹¹ <https://www.abc.org/PLAgrants>

¹² Learn more at <https://buildamericalocal.com/learn-more/> and <https://thetruthaboutplas.com/>

- Decrease existing infrastructure maintenance and undermine important government programs and spending subject to finite government budgets.
- Interfere with existing union collective bargaining agreements and disrupt natural collaboration between contractors and unions negotiating and executing a PLA voluntarily without government interference.
- Do not result in any measurable benefits to construction industry stakeholders or taxpayers.

Government-mandated PLAs undermine the economy and efficiency in federal contracting due to increased risk and costs, reduced competition, delays, poor local hiring outcomes and litigation, as further described in these FAQs. Federally assisted PLA projects have a similar track record.¹³

2. Which taxpayer-funded construction projects are covered by EO 14063?

EO 14063 applies only to “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.”¹⁴ For example, the EO applies to large-scale construction contracts procured by the U.S. Army Corps of Engineers, the Naval Facilities Engineering Systems Command, the U.S. General Services Administration, the U.S Department of Veterans Affairs and other federal agencies.

According to the rule, “Construction means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.”¹⁵

3. Does EO 14063 apply to federally assisted construction projects?

The new policy does not apply to federally assisted projects, although a federal agency is not precluded by the rule from requiring a PLA on a federally assisted project procured by private owners or state/local governments.¹⁶ In fact, independent of the EO, the Biden administration has been extremely aggressive in promoting PLA mandates on state and local government infrastructure projects via more than \$271 billion in federal grants from the Infrastructure Investment and Jobs Act and the American Rescue Plan Act, privately developed clean energy projects funded by \$270 billion of tax incentives in the Inflation Reduction Act and microchip manufacturing facility construction projects via \$50 billion from the CHIPS Act.¹⁷

¹³ <https://thetruthaboutplas.com/2021/03/10/government-mandated-project-labor-agreement-failures-on-federal-and-federally-assisted-construction-projects/>

¹⁴ See Section 2 of EO14063: <https://www.federalregister.gov/documents/2022/02/09/2022-02869/use-of-project-labor-agreements-for-federal-construction-projects#p-5> and 22.502 of the final rule: <https://www.federalregister.gov/documents/2023/12/22/2023-27736/federal-acquisition-regulation-use-of-project-labor-agreements-for-federal-construction-projects#p-286>

¹⁵ <https://www.federalregister.gov/d/2023-27736/p-284>

¹⁶ See Section 7 of the EO: <https://www.federalregister.gov/d/2022-02869/p-30> and <https://www.federalregister.gov/d/2023-27736/p-113> of the final rule.

¹⁷ For more details on pro-PLA language contained in grants for these federally assisted projects, visit www.abc.org/PLAgrants, www.abc.org/IRA and www.abc.org/CHIPS

4. Does the new policy apply to federal construction contracts below the \$35 million threshold?

Yes, federal agencies may require PLAs on federal construction contracts below the \$35 million threshold, if appropriate.¹⁸

The rule explains, “(1) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will— (i) Advance the Federal Government’s interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and (ii) Be consistent with law.”¹⁹

There are six factors federal agencies may consider when deciding if a PLA is appropriate for a project less than \$35 million:

“(i) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(ii) There is a shortage of skilled labor in the region in which the construction project will be sited.

(iii) Completion of the project will require an extended period of time.

(iv) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(v) A project labor agreement will promote the agency’s long term program interests, such as facilitating the training of a skilled workforce to meet the agency’s future construction needs.

(vi) Any other factors that the agency decides are appropriate.”²⁰

5. How does the new policy apply to IDIQ contracts?

According to the rule, “(d) For indefinite-delivery indefinite-quantity (IDIQ) contracts the use of a project labor agreement may be required on an order-by-order basis rather than for the entire contract. For an order at or above \$35 million an agency shall require the use of a project labor agreement unless an exception applies. See 22.504(d)(3) and 22.505(b)(3).”²¹

6. Does the new policy apply to subcontractors?

Yes, the rule makes it clear that subcontractors performing work on a qualifying PLA contract—regardless of the value of individual subcontracts with prime contractors—are

¹⁸ <https://www.federalregister.gov/d/2023-27736/p-289>

¹⁹ <https://www.federalregister.gov/d/2023-27736/p-290>

²⁰ <https://www.federalregister.gov/d/2023-27736/p-293>

²¹ <https://www.federalregister.gov/d/2023-27736/p-300>

required to agree to the PLA negotiated by the prime contractor and unions. There is no PLA exemption for small, minority- or women-owned firms. Subcontractors self-perform work and typically do not negotiate the terms of a PLA with unions. Prime contractors negotiate such PLAs, which may create problematic terms in the PLA for potential subcontractors.

7. When does this policy take effect and when will there be PLAs mandated in federal agency solicitations for construction projects?

The final rule is effective Jan. 22, 2024, and PLA requirements are already appearing in federal agency pre-solicitations and solicitations for construction services on standard and IDIQ contracts. ABC expects PLA mandates to continue to be included in solicitations indefinitely, absent a successful legal challenge (see FAQ No. 46 and 47 for more details on litigation).

Of note, the Biden administration's federal agencies have been able to mandate PLAs at any time under prior Obama administration pro-PLA policy but have not done so on billions of dollars of federal construction projects prior to the effective date of this new Biden policy.

8. How does the Biden EO differ from President Obama's pro-PLA EO and policy?

President Obama's EO 13502 and related FAR regulations²² encouraged, but did not require, federal agencies to mandate PLAs on a case-by-case basis on federal construction projects totaling \$25 million or more.²³ The Obama policy was replaced by the Biden policy on Jan. 22, 2024. The Biden policy raises the applicable contract threshold for PLA requirements from \$25 million to \$35 million, although projects less than \$35 million may be subjected to a PLA mandate under certain circumstances. The Biden policy also applies to certain indefinite delivery/indefinite quantity contracts (see FAQ No. 5 for more details).

In short, the Biden policy is a blanket PLA requirement, with limited exceptions that federal agencies can exercise under rare and specific circumstances to opt out of the PLA requirement (see FAQ No. 11-19). In contrast, the Obama policy effectively allowed federal agencies to opt in to require PLAs, when appropriate, which they rarely did when given the option because PLAs injure the economy and efficiency in federal contracting.

9. How many federal contracts were subject to government-mandated PLAs under the Obama administration's policy?²⁴

According to ABC research, from FY2009 to FY2023,²⁵ just 12 PLAs²⁶ 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 3,222 federal construction contracts of \$25 million or

²² <https://www.federalregister.gov/documents/2010/04/13/2010-8118/federal-acquisition-regulation-far-case-2009-005-use-of-project-labor-agreements-for-federal>

²³ <https://www.federalregister.gov/documents/2010/04/13/2010-8118/federal-acquisition-regulation-far-case-2009-005-use-of-project-labor-agreements-for-federal>

²⁴ Data tables for question 9 and 10 available at <https://thetruthaboutplas.com/2023/12/06/december-2023-update-abcs-fight-against-government-mandated-project-labor-agreements/>

²⁵ Of note, the Trump administration did not repeal the Obama administration's pro-PLA policy but did not require PLAs on any federal construction projects.

²⁶ The final rule also corroborates ABC's research: <https://www.federalregister.gov/d/2023-27736/p-117>

more, totaling roughly \$238.45 billion in value.²⁷ 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 and restrictive policies, PLAs are not needed to enhance the economy and efficiency in federal contracting.

10. How many federal contracts of \$35 million or more were won by ABC prime contractors from FY2009 to FY2023?

Federal contract awards posted on [usaspending.gov](https://www.usaspending.gov)²⁸ cross-referenced with ABC membership indicate that ABC prime contractors won 50.04% (1,054 contracts) of 2,106 large-scale federal construction contracts of \$35 million or more from FY2009 to FY2023, and 54.22% (\$111.46 billion) of the total value of \$205.56 billion. This demonstrates ABC member prime contractors successfully built federal large-scale projects safely, on time and on budget, free from government-mandated PLAs.²⁹

In contrast to the faulty rationale used by the White House to justify the use of PLA mandates, there were no reports of widespread delays, union-led strikes, cost overruns, reduced competition or poor construction quality because of a lack of government-mandated PLAs during this time period. The same can be said of the \$147 billion worth of federal construction contracts subject to President George W. Bush's Executive Order 13202 and 13208, which prohibited government-mandated PLAs on federal and federally assisted construction projects from 2001 until it was repealed by the Obama policy in 2009.³⁰

11. Are there exceptions to the Biden EO 14063's blanket PLA mandate policy?

The rule claims that there are exceptions, but no federal agency has granted an exception, to date. The final rule states that a federal agency's "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:³¹

(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:³²

- (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

²⁷ Of note, from FY2009 to FY2023, there were 2,106 federal construction contracts of \$35 million or more valued at \$205.56 billion. All the 12 PLAs mandated during this time period were on contracts greater than \$35 million.

²⁸ https://files.usaspending.gov/generated_downloads/PrimeAwardSummariesAndSubawards_2023-12-04_H19M49S49753665.zip

²⁹ Note that the government does not publish subcontracting data awarded by prime contractors, but it is likely the percentage of subcontracts won by ABC member subcontractors is the same or greater.

³⁰ See Sept. 23, 2009, report by the Beacon Hill Institute, Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem, available at: <https://thetruthaboutplas.com/wp-content/uploads/2012/12/PLAs-on-Federal-Construction-Projects-A-Costly-Solution-in-Search-of-a-Problem-BHI-090923.pdf>

³¹ See 22.504: <https://www.federalregister.gov/d/2023-27736/p-303> and see discussion of PLA exception policy in final rule: <https://www.federalregister.gov/d/2023-27736/p-133>

³² <https://www.federalregister.gov/d/2023-27736/p-304>

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.³³

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.”³⁴

A Dec. 18, 2023, White House Office of Management and Budget memo, M-24-06, Use of Project Labor Agreements on Federal Construction Projects,³⁵ provides federal agency executives additional guidance on the final rule and offers details about exercising PLA exceptions and conducting market research.

ABC believes that the final rule is constructed in a way to make it incredibly difficult and impractical, if not impossible, for federal agencies to execute a PLA exception.

ABC has received consistent and widespread reports that some federal agency contracting officers are not even conducting research about whether a PLA is appropriate for a project. To date, all are not seeking and/or receiving a PLA exception in advance of project solicitation issuance and submission dates, calling into question the legitimacy of the claim that the rule is not a blanket PLA requirement.

12. What is the procedure for a contracting officer and senior procurement executive to grant the PLA exception?

According to the rule, “The new procedures require the contracting officer to prepare a written explanation to request an exception and route the request for approval by the senior procurement executive.”³⁶

13. Who is the senior procurement executive that grants the PLA exception, exactly?

The senior procurement official will vary by federal agency. According to the rule, “FAR 2.101 identifies the senior procurement executive as the responsible official for management direction of the acquisition system in an executive agency (41 U.S.C. 1702(c)).”³⁷ For

³³ <https://www.federalregister.gov/d/2023-27736/p-309> and pg. 7. Part B. ii. of OMB memo: <https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-06.pdf>

³⁴ <https://www.federalregister.gov/d/2023-27736/p-310>

³⁵ <https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-06.pdf>

³⁶ <https://www.federalregister.gov/d/2023-27736/p-235>

³⁷ <https://www.federalregister.gov/d/2023-27736/p-152>

example, Doug Bush, Assistant Secretary of the Army (Acquisition, Logistics, and Technology) is the USACE's senior procurement executive in charge of granting PLA exceptions.³⁸

14. Will PLA exceptions be posted for public review?

Yes. The final rule "implements section 6 of the E.O., which requires agencies to publish data and descriptions of the waivers granted on a centralized public website by the solicitation date to the extent permitted by law and consistent with national security and executive branch confidentiality interests."³⁹

ABC expects unions, PLA advocates and pro-PLA lawmakers to attempt to shame federal contracting officers/agencies for not requiring a PLA on a particular solicitation, as they have done unsuccessfully under the Obama policy.

15. What factors will federal contracting officers consider when conducting market research to determine if a PLA is appropriate for a project?

According to the rule, "(2) *Considerations*. 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."⁴⁰

According to the OMB memo, "Exercising exception where PLA would inhibit competition. In evaluating the anticipated impact of a PLA on the agency's ability to conduct a competition, the agency should focus on whether the results of inclusive market research point to a sufficient number of anticipated offerors to achieve fair and reasonable pricing. In general, **two or more qualified offers is sufficient to provide adequate price competition for negotiated contracts** (FAR 15.403-1(c)(1)) and **three or more qualified bids is sufficient to provide adequate price competition for sealed bids** (FAR 14.408-1(b)). If adequate price competition can be achieved, use of this exception would not be appropriate, even if the number of offerors who indicate they will not compete because of the PLA is significantly higher than the number of sources who have expressed an intent to compete. If, based on market research for a given project, an adequate number of offers may be submitted, but prices are expected to be higher than the government's budget, the agency should highlight the magnitude of the construction project in the solicitation, as required by FAR 36.204."

In short, if a project receives just three bidders, no PLA exception will be granted. This clearly violates federal laws requiring full and open competition on federal contracts.

³⁸ <https://api.army.mil/e2/c/downloads/2022/02/14/c440c78f/hon-bush-bio.pdf>

³⁹ <https://www.federalregister.gov/d/2023-27736/p-137>

⁴⁰ <https://www.federalregister.gov/d/2023-27736/p-311>

16. Will federal agencies continue to advertise PLA surveys on sam.gov as part of market research?

Yes, ABC expects some federal agencies to continue to advertise PLA surveys⁴¹ on sam.gov and conduct outreach directly to federal contractors to evaluate if a project is eligible for a PLA exception, in accordance with Section 5 of the EO⁴² and the Dec. 18, 2023, White House OMB memo, M-24-06.⁴³

However, ABC members have reported recent instances of certain federal agency contracting officers conducting no research about the feasibility of PLAs in advance of a project's solicitation. Contracting officers have privately stated that the PLA exception is impossible to receive in a timely manner by going up the Army's chain of command, for example. A PLA exception will only be sought if there aren't enough bidders and/or if the bids exceed the project's anticipated budget. Only then will the contracting officer seek a PLA exception, which may or may not be granted.

Of note, under the Obama administration's optional PLA policy, no federal agency has ever required a PLA following the issuance of a federal PLA survey.

ABC urges the federal ABC contracting community to continue to respond to PLA surveys and communicate the anti-competitive and costly impact of PLA mandates and preferences on potential bidders, even if it appears futile. Building an administrative record against PLA mandates will help with future litigation and education of federal agencies and may eventually lead to PLA exceptions if a legal challenge fails. ABC will continue to notify stakeholders about federal agency PLA surveys and encourage a robust response. ABC members can learn more about the federal agency PLA survey process at abc.org/pla.

17. How many future federal contracts will this policy apply to and how many will be subjected to PLA mandates?

Based on FY2019-FY2021 contract award data, the FAR final rule estimates 119 contracts—at an average value of \$114 million—will be subject to the policy annually.⁴⁴

Of note, data from usaspending.gov indicates a total of 179 new U.S. construction contracts of \$35 million or more in total cost, valued at a total of \$15.9 billion, were awarded in FY2023. According to census.gov data, the federal government put in place about \$33 billion worth of construction in 2023, indicating a significant segment of the federal construction contracting marketplace will be subject to the rule.⁴⁵

It is unclear how many federal construction contracts of \$35 million or more will be issued in FY24 and beyond, but ABC now estimates the rule is likely to impact more than \$16 billion

⁴¹ <https://thetruthaboutplas.com/tag/pla-survey/>

⁴² <https://www.federalregister.gov/d/2022-02869/p-19>

⁴³ <https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-06.pdf>

⁴⁴ <https://www.federalregister.gov/d/2023-27736/p-225>

⁴⁵ https://www.census.gov/construction/c30/historical_data.html

worth of federal construction contracts of \$35 million or more annually. In addition, it is unclear which of the projects below the \$35 million threshold will be subjected to PLA mandates.

18. When will contracting officers notify potential bidders about the PLA exception during the contract procurement process?

According to the rule, “(3) *Timing of the exception* —(i) *Contracts other than IDIQ contracts*. The exception must be granted for a particular contract by the solicitation date.⁴⁶ However, ABC is already receiving reports that some federal agencies are not seeking a PLA exception until after bid results demonstrate reduced competition and increased costs, which undermines OMB direction to research the impact of a PLA requirement in advance of the publication of a solicitation containing a PLA mandate.

Of note, if a PLA exception applies after bid due dates (or before), contracting officers must give contractors and their subcontractors—who were boxed out of the initial competition by the PLA—enough time to properly re-engage and estimate the project. It costs contractors hundreds of hours and hundreds of thousands of dollars to properly estimate and bid on a project.

19. When will contracting officers notify potential bidders about the PLA exception on IDIQ contracts?

According to the rule, “(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)).”⁴⁷

20. Does the final rule direct federal agencies on how to incorporate the PLA requirement in the solicitation and does the executed PLA have to be submitted with its offer?

The PLA requirement must be contained in the solicitation. In addition, the final rule provides a basic provision and two alternative provisions from which the contracting officer can select. The selected provision identifies whether, (1) all offerors (as part of their proposal), (2) the apparent successful offeror prior to award or (3) the awardee, must provide a copy of the PLA executed with labor unions.⁴⁸ According to the rule, “Contracting officers have the discretion to select the most appropriate option for the particular procurement.”⁴⁹

However, each of these options poses challenges for both the contracting officer and the contractors submitting proposals and performing work on the PLA project. With all three options, unions can refuse to negotiate and execute a PLA with certain bidders, which effectively ensures certain favored contractors are awarded work. In addition, unions can

⁴⁶ <https://www.federalregister.gov/d/2023-27736/p-312>

⁴⁷ <https://www.federalregister.gov/d/2023-27736/p-313>

⁴⁸ <https://www.federalregister.gov/d/2023-27736/p-227>

⁴⁹ <https://www.federalregister.gov/d/2023-27736/p-200> and <https://www.federalregister.gov/d/2023-27736/p-314>

insist the PLA contains many anti-competitive and costly provisions, knowing that a contractor cannot be awarded a contract and/or proceed to build the project without executing a signed PLA. The very nature of the PLA mandate disrupts normal collective bargaining and existing collective bargaining agreements and can lead to delays, increased costs, additional risk and/or bidding with unknown labor costs because a PLA has not been executed prior to bid estimates and offer submission.

21. Can a federal agency force a contractor to negotiate with a specific union or group of unions? Does the final rule specify which unions must be party to the PLA?

No, the rule is clear that the prime contractor and subcontractors can negotiate a PLA with any union.⁵⁰

The rule states that a union does not need to have membership or affiliation in a building trade construction council to become a party to a PLA when required for a construction project.⁵¹ Regardless of whether a PLA is required at the time of proposal submittal, award or post-award, all contractors working on the project are required to become a party to the PLA. However, the final rule does require that the PLA be with a “labor organization,” which is defined as one in which “building and construction employees are members, as described in 29 U.S.C. 158(f).”^{52 53}

It is unclear how contractors who are signatory to non-construction unions can effectively negotiate PLAs with unions who are not members of the building trades unions due to a variety of reasons, including local jurisdictional issues between construction unions and other unions.

There have already been reports of contractors reaching a PLA agreement with a limited number of unions but they have been unable to get other construction trade unions representing the remainder of a project’s specialty trades, for example. Of note, contractors are not sure if this satisfies the FAR rule, which requires all of a project’s subcontractors to be subject to a PLA and therefore coverage of all construction workers on a project—not just workers who are represented by the two construction trade unions in this example—which leads to additional uncertainty and possible bid protests from competitors.

22. Can a federal agency negotiate the terms of a PLA?

No. Only employers and unions may negotiate the PLA.⁵⁴ Federal agencies are prohibited from negotiating the terms of the PLA or supplying a PLA or model PLA with the procurement.

⁵⁰ <https://www.federalregister.gov/d/2023-27736/p-161> and <https://www.federalregister.gov/d/2023-27736/p-302>

⁵¹ <https://www.federalregister.gov/d/2023-27736/p-161>

⁵² <https://www.federalregister.gov/d/2023-27736/p-159>, <https://www.federalregister.gov/d/2023-27736/p-163> and <https://www.federalregister.gov/d/2023-27736/p-285>

⁵³ <https://www.govinfo.gov/link/uscode/29/158>

⁵⁴ <https://www.federalregister.gov/d/2023-27736/p-210>

23. Does the final rule establish what terms are required in the PLA?

Yes, the final rule establishes minimum terms that must be included in every PLA.

“Sec. 4. Requirements of Project Labor Agreements. Any project labor agreement reached pursuant to this order shall:

- (a) bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- (b) allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- (c) contain guarantees against strikes, lockouts, and similar job disruptions;
- (d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
- (e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- (f) fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.”

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

The final rule outlines a handful of mandatory provisions. However, ABC expects any PLA executed with construction unions to have many more provisions of concern because unions have all of the leverage and power to decide who wins a contract or not by refusing to execute a PLA with certain bidders. Controversial provisions in a PLA typically require the prime contractor and all 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 instead of existing apprenticeship programs not affiliated with unions.
- Follow inefficient union work rules.
- Pay into union benefit and multiemployer pension plans. This provision typically 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%. Paying into a union multiemployer pension plan may also expose a firm to unknown pension liabilities and other costly requirements.

- For the limited nonunion employees allowed on a PLA project, most or all 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 union benefits plan vesting schedules.⁵⁵

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 more likely to be nonunion.

All of these controversial 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.

Construction unions are unlikely to agree to a PLA that is missing these provisions, especially when they know contractors must submit an executed PLA with their bid or upon award in order to win a federal contract.

Of note, other provisions of a typical PLA related to labor disputes, pre-job conferences, safety, workforce compensation, holiday schedules, community benefits, workforce development, etc., are frequently achieved in contracting language independent of a PLA, yet PLA advocates sell these points as being part of a PLA in order to disguise the discriminatory nature of controversial provisions in typical PLAs.

Finally, most PLAs include a requirement to follow individual union collective bargaining agreements of all applicable construction unions signatory to the PLA concerning matters not explicitly addressed in a PLA. This means contractors must follow a PLA and applicable CBAs and related benefits contributions requirements.

Contractors must closely examine PLAs containing language stating that the PLA supersedes all local CBAs on issues specifically addressed in the PLA. Contractors entertaining a PLA would be wise to get copies of all applicable local CBAs, work rules, benefits contributions requirements and pension/benefits actuarial statements before contemplating PLA negotiation and execution.

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

Technically, nonunion contractors and their union-free employees are permitted to compete for federal contracts subject to a PLA and build those projects. However, the anti-competitive and costly terms and conditions of a typical PLA discourage nonunion contractors from

⁵⁵ <https://buildamericalocal.com/wp-content/uploads/sites/18/2021/10/McGowan-Project-Labor-Agreement-and-Multiemployer-Pension-Study-October-2021.pdf>

competing for projects and make it difficult for them to win the prime contract—and/or perform work as a subcontractor—due to labor uncertainty, increased risk and unnecessary additional costs and red tape caused by the PLA.

Nonunion construction workers are also harmed by PLAs. PLAs require contractors to force union representation on any of its existing nonunion employees permitted to work on a PLA project, even if union representation is unwanted by nonunion employees.

In addition, 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,” found 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.⁵⁶ 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 in order to make employees whole. 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 and existing company benefits plans. This adds additional costs to nonunion contractors’ bids and makes them less competitive against unionized firms that do not face these duplicative benefits costs.

26. If nonunion contractors win a federal or federally assisted construction project subject to a PLA, will that expose them to multiemployer pension plan liabilities or other obligations to union benefits plans?

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. Signing a PLA, even if it contains language exempting firms from pension and benefits liabilities, has exposed firms to litigation and significant multiemployer pension plan liabilities⁵⁷ and has the potential to bankrupt a company.

27. 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. 36-39.

⁵⁶ <https://buildamericalocal.com/wp-content/uploads/sites/18/2021/10/McGowan-Project-Labor-Agreement-and-Multiemployer-Pension-Study-October-2021.pdf>

⁵⁷ <https://www.jdsupra.com/legalnews/third-circuit-joins-sister-circuits-in-9647788/>

28. 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 FY2023 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 because they give both unions and contractors equal footing when negotiating an agreement.

The voluntary nature of PLAs calls into question the need for the Biden policy that is effectively a blanket PLA requirement. If PLAs were so beneficial, contractors would voluntarily use them without government coercion, when appropriate. PLA critics contend that PLAs are not needed to execute industry practices related to targeted local and diverse workforce and subcontracting hiring, 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 donors and 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.

29. I am a lawmaker/stakeholder from one of the 25 states⁵⁸ 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 statutes⁵⁹ do not apply to federal construction contracts. Federal law related to procurement of federal contracts and other federal statutes apply to federal construction projects only, regardless of where they are performed. Of note, state FOCA statutes offer a level of protection against PLA mandates and/or encouragements on federally assisted projects tied to federal agency infrastructure grants, tax credits and other assistance that may be subject to Biden administration pro-PLA policies unrelated to EO 14063 for construction projects procured by state and local governments and private developers.

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<https://www.abc.org/Portals/1/2023/Politics%20Policy/FOCA%20State%20Map%20as%20of%20032323.png?ver=FQfwcRvKr7Hmcug-wVmGw%3d%3d>.

⁵⁹ <https://www.abc.org/Portals/1/2023/Politics%20Policy/Current-State%20FOCA-Laws%20GMPLA%20Bans%20through%20Wyoming%20Updated%20March%202023.xlsx?ver=s7UjTDwzb4TjGifOMOmOBw%3d%3d>

30. 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 or other entity 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.

In non-right-to-work states, language in PLAs forcing nonunion workers to join a union as a condition of working on the project is permissible but unethical.

31. 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.⁶⁰

Of note, in 2023 the Biden administration overhauled these regulations, making sweeping and controversial changes that will increase costs, reduce competition and favor union interests and unionized contractors.⁶¹ Davis-Bacon rates⁶² are set through an archaic and inefficient process administered via the U.S. Department of Labor's Wage and Hour Division. The new changes are expected to ensure that more government-determined prevailing wages and benefits will be set by union collective bargaining agreement rates for the majority of occupations, types of construction and geographic locations across America. The other remaining rates are a blend of union and nonunion rates.

At a minimum, 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. Of note, 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 as long as it is not less than the government's Davis-Bacon rate.

⁶⁰ <https://www.dol.gov/agencies/whd/government-contracts/construction>

⁶¹ <https://www.abc.org/davisbacon>

⁶² <https://sam.gov/search/?index=dbra&sort=-modifiedDate>

32. How exactly does a PLA fit into a government agency's contracting process, in general?

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 state 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 and a final PLA document is included in a government agency's solicitation to contractors/bidders for construction services without meaningful contractor input and negotiation directly with unions.

However, under the Biden PLA rule, contractors are expected to develop and execute their own PLA containing minimum terms outlined in the FAR final rule, which presents unique challenges.

When a PLA is required, it typically discourages competition from nonunion contractors and construction workers and steers contracts to union contractors and union labor represented by certain unions party to the PLA.

It is generally unknown exactly how much PLAs increase costs and reduce competition on a specific project unless the project is rebid without PLA requirement, or a series of similar projects are bid with and without PLAs. Such instances and research have consistently found that PLAs increase the cost of construction by 12% to 20%, on average, compared to similar non-PLA projects.⁶³ This PLA cost premium may actually be more or less, depending on the union market share of the project's location and other factors.

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

It is unclear. The final rule and OMB memo discuss contracting officer training that may address this question. ABC has received reports of certain construction unions giving favored contractors more attractive PLA terms compared to other contractor competitors, which will make certain firms less competitive. ABC expects unions to also delay PLA negotiations or refuse to make any concessions on key anti-competitive provisions because they have all negotiating leverage under a PLA mandate.

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.⁶⁴ This resulted in a 107-day delay and increased costs by

⁶³ <https://buildamericalocal.com/learn-more/#gmpla-studies>

⁶⁴ <https://thetruthaboutplas.com/2013/03/05/delays-and-increased-costs-the-truth-about-the-failed-pla-on-the-gsas-1800-f-street-federal-building/>

millions of dollars that affected the project significantly. The added costs were resolved through a change order negotiation between the contractor and the GSA.

ABC is receiving reports that local construction unions are unprepared to negotiate multiple PLAs with multiple bidders for a single project. They are asking for help and language approval from their national leaders at the North America's Building Trades Unions (NABTU) to negotiate and execute PLAs for federal projects, which is further delaying the economy and efficiency in contracting. NABTU is reportedly not altering the terms of their national PLA, which contains problematic language. In addition, certain contractors have reported they are getting no responses from local construction unions with jurisdiction in the geographic area of the federal project and are not sure what can be done to compel unions to negotiate a PLA with them.

Finally, some unions are reporting that their union hiring halls are empty and that there is not enough time to request traveling union members from other hiring halls to meet contractor needs, which further adds to confusion, labor shortages and an unwillingness to execute a PLA with unions.

34. I am a contractor signatory to a union that is typically excluded from PLAs negotiated by construction unions that belong to the North America's Building Trades Union. I am 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 with unions I am not signatory to?

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 PLAs⁶⁵ 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 final rule makes it clear that a prime contractor can negotiate a PLA with any labor organization as long as they have members employed in the construction industry. However, the final rule fails to account for the fact that subcontractors are not typically part of PLA negotiations and are given the PLA to sign or refuse to sign by the prime contractor. Therefore, subcontractors are more likely to be harmed by this situation. In addition, construction unions have historically refused to agree to a PLA where non-construction trades unions are party to the agreement, as the unions have leverage during PLA negotiations since the PLA is required.

⁶⁵ <https://thetruthaboutplas.com/tag/unions-oppose-pla-mandates/>

35. Federal contracting officers I work with tell me the Biden pro-PLA 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 or request PLA exceptions. They also feel like the final rule has been crafted in a way to trigger PLA mandates with little effort and grant PLA exceptions in extremely limited circumstances. What can be done?

Whistleblower protections extend to federal agency contracting officers. In addition, federal agency employees have the ability to answer oversight questions from federal lawmakers, speak to the media anonymously, participate in litigation against federal agency policies and seek exemptions for certain projects under the narrow set of guidelines established by the EO and final FAR rule.

Concerned federal agency officials are welcome to reach out to ABC with information that will help restore fair and open competition in government contracting. Contact Ben Brubeck (brubeck@abc.org) with anonymous and confidential information.

Ultimately, successful litigation or new White House policies on PLAs are the only solutions to this politically motivated problem.

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

Yes. According to the results of a September 2022 survey of ABC contractors,⁶⁶ 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. Meanwhile, 96% said they would expect less competition from subcontractors for construction contracts subject to a government-mandated PLA. ABC members have performed more than 50% of all large-scale federal contracts from FY2009 to FY2023.

In addition, 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

⁶⁶ <https://www.abc.org/News-Media/Newsline/entryid/19618/survey-97-of-abc-contractors-say-bidens-government-mandated-project-labor-agreement-policies-would-make-federal-construction-more-expensive>

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.⁶⁷

37. 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 costs and decrease the value of investment by hardworking taxpayers in schools, roads, bridges, utilities, clean energy, transportation, affordable housing and infrastructure. In addition, 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.

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

Multiple studies of hundreds of similar taxpayer-funded affordable housing⁶⁸ 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.⁶⁹ 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, several real-world examples on federal and federally assisted contracts⁷⁰ 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

⁶⁷ 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>.

⁶⁸ Ward, Jason M. The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH. Santa Monica, California: RAND Corp., 2021. https://www.rand.org/pubs/research_reports/RRA1362-1.html.

⁶⁹ 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 (<https://thetruthaboutplas.com/wp-content/uploads/2011/07/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California-NUSPIR-2011.pdf>).

⁷⁰ See [Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects](#), March 10, 2021.

a change order post-award and build it with a PLA. The PLA requirement cost taxpayers an additional \$3.3 million.⁷¹

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

Yes, ABC projects a labor shortage in the construction industry in 2024 of more than half a million people.⁷² 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 do not belong to a union.⁷³

In the long term, PLAs undermine community, association and company investments in workforce development⁷⁴ and government-registered apprenticeship programs⁷⁵ not affiliated with unions. For example, PLAs typically require the use of apprentices only 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 cannot 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.

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

According to U.S. Bureau of Labor Statistics data, 89.3% of the U.S. construction workforce did not belong to a union in 2023.⁷⁶ Updated state-specific union membership information for various industries, including the construction industry, is available at unionstats.com, which is mined from raw data published by BLS.⁷⁷ ABC has created a map of state unionization rates with data from unionstats.com and the BLS.⁷⁸

⁷¹ See TheTruthAboutPLAs.com, [GSA Wasted Millions on Union Handout, Where's the Outrage?](#) April 10, 2012.

⁷² <https://www.abc.org/News-Media/News-Releases/abc-2024-construction-workforce-shortage-tops-half-a-million>

⁷³ <https://thetruthaboutplas.com/2024/05/14/biden-policies-on-project-labor-agreements-and-apprenticeship-exacerbate-construction-industry-skilled-labor-shortage/>

⁷⁴ https://www.abc.org/Portals/1/FMI-ABC%202023%20Member%20Workforce%20Development%20Survey%20-%20External%20-%20Final.pdf?ver=qls0kVE6wOfbNif_dnsbqQ%3d%3d

⁷⁵ www.abc.org/GRAPMAP

⁷⁶ <https://www.abc.org/News-Media/News-Releases/abc-a-record-893-of-the-us-construction-industry-is-not-part-of-a-union>

⁷⁷ https://unionstats.com/state/htm/state_2023.htm

⁷⁸ <https://thetruthaboutplas.com/2024/01/31/bls-a-record-89-3-of-the-u-s-construction-industry-is-not-part-of-a-union/>

41. 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 needlessly reduce competition and soak taxpayers with a 20% cost premium on public works projects for a solution to a problem that is extremely rare in today's construction marketplace—and rewards the party that creates the problem—is baffling. It is even more puzzling when examining the government data on union-led strikes on public and private construction projects subjected to PLA mandates, despite promises that PLAs allegedly prevent strikes.⁷⁹

42. 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 that 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. In the survey, 73% of small businesses stated PLAs decrease hiring of minority, women, veteran and disadvantaged business enterprises, which have traditionally been unaffiliated with labor unions, while 93% of surveyed federal contractors stated the FAR proposal would result in less competition from subcontractors.

In addition, almost 90% of all survey 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.

The U.S. Small Business Administration's Office of Advocacy filed comments that were extremely critical of the FAR Counsel's proposed rule⁸⁰ and the final rule ignored many concerns raised by the SBA that the rule will reduce competition from small businesses.⁸¹ In addition, the OMB memo acknowledges that small businesses will have a hard time navigating PLA mandates and alleges that, "DOL and OMB will work with Small Business Administration and their development centers, as well as DoD and the APEX Accelerators, to determine the best way to help small entities in understanding how to navigate construction

⁷⁹ 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](#).

⁸⁰ SBA Comments on FAR Case 2002-003, Oct. 18, 2022, <https://advocacy.sba.gov/wp-content/uploads/2022/10/PLA-Letter-final.pdf>

⁸¹ <https://www.federalregister.gov/d/2023-27736/p-86>

contracts with PLAs.”⁸² SBA’s Office of Advocacy has reported that no such outreach has occurred, to date.

43. Do PLA mandates result in better local hiring outcomes?

It is no surprise that construction unions and their members—who make up less than 11% of the U.S. private construction workforce—spend millions of dollars lobbying for government-mandated PLAs on taxpayer-funded construction contracts.⁸³ It means more contracts for union-signatory contractors and more jobs for union members—likely from out of the area⁸⁴ in most geographic markets across America—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 under the Obama administration’s PLA policy demonstrated that PLAs delivered worse local hiring outcomes for Washington, D.C., residents than other large-scale federal projects not subject to a PLA in the region.⁸⁵

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.

44. 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.⁸⁶

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%) because safety programs are developed independent of PLAs.

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.

⁸² OMB memo, Dec. 18, 2023, page 7, <https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-06.pdf>

⁸³ <https://thetruthaboutplas.com/wp-content/uploads/2023/04/NABTU-PAC-Money-Raised-and-Distributed-2021-to-2022-Cycle.png>

⁸⁴ <https://thetruthaboutplas.com/tag/union-only-plas-harm-local-workers/>

⁸⁵ See TheTruthAboutPLAs.com, [Data Busts Myth That Project Labor Agreements Result in Increased Local Hiring](#), March 11, 2013.

⁸⁶ See [Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects](#), March 10, 2021.

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.⁸⁷ This suggests that PLAs have no measurable impact on safety.

ABC members take safety seriously. Improve your company's safety culture and performance via [ABC.org/STEP](https://www.abc.org/STEP).

45. Which construction and industry groups oppose the Biden administration's pro-PLA policies?

On Jan. 4, 2024, an ABC-led federal coalition sent a letter to Congress and President Biden opposing EO 14063 and Biden administration actions to push PLAs on federally assisted construction projects.⁸⁸ The letter was signed by more than 20 construction industry trade associations and employer groups. Similar letters were submitted in 2021, 2022 and 2023. Additional construction industry and pro-taxpayer groups oppose this policy and have sent communications to Congress and the White House independent of the coalition. In 2021, an ABC-led coalition of construction industry groups launched [BuildAmericaLocal.com](https://www.buildamericalocal.com) in opposition to government-mandated PLAs, the Biden administration's pro-PLA policies and some members of Congress' failed attempt to mandate PLAs in legislation.

46. How is this legal? Can the courts rule against this policy?

ABC believes the Biden EO and final rule violates the First Amendment, the federal Competition in Contracting Act and several other federal procurement laws by compelling PLAs and thereby injuring competition on federal projects exceeding \$35 million.

ABC filed a lawsuit seeking a nationwide injunction against the Biden policy on federal construction projects in the U.S. District Court for the Middle District of Florida in Jacksonville, Florida, on March 28.⁸⁹ ABC filed a motion for preliminary injunction on April 26, which includes affidavits from a number of federal contractors and subcontractors, and is optimistic a hearing on the motion can happen as early as mid-June.⁹⁰ ABC is also assessing a number of other litigation options to challenge this rule and individual PLA mandates.

47. 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

⁸⁷ See TheTruthAboutPLAs.com, [Setting the Record Straight: Do Government-Mandated Project Labor Agreements Really Improve Safety Performance?](https://www.thetruthaboutplas.com/setting-the-record-straight-do-government-mandated-project-labor-agreements-really-improve-safety-performance/) March 16, 2021.

⁸⁸ <https://www.abc.org/News-Media/Newsline/updated-jan-16-abc-leads-coalition-opposition-to-bidens-pla-final-rule>

⁸⁹ ABC Files Lawsuit Against President Biden's Anti-Competitive Project Labor Agreement Rule for Federal Construction Projects, March 28, 2024, <https://www.abc.org/News-Media/News-Releases/abc-files-lawsuit-against-president-bidens-anti-competitive-project-labor-agreement-rule-for-federal-construction-projects>

⁹⁰ <https://thetruthaboutplas.com/2024/05/13/abc-files-motion-for-preliminary-injunction-against-president-bidens-anti-competitive-project-labor-agreement-rule-for-federal-construction-projects/>

GAO bid protests against federal agencies on five different projects and, in all instances, federal agencies removed the PLA requirement following the bid protest.⁹¹ However, filing hundreds of GAO bid protests and individual lawsuits on federal projects subject to a PLA is not a feasible strategy to stop the Biden's blanket PLA mandate policy. If you are interested in pursuing legal strategies against individual PLAs, please contact Ben Brubeck at brubeck@abc.org.

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

Yes. Concerned stakeholders should contact their federal lawmakers⁹² and urge them to support the Fair and Open Competition Act ([H.R. 1209/S. 537](#)), which was introduced on Feb. 27, 2023, by Rep. James Comer, R-Ky., and Sen. Todd Young, R-Ind. Broadly supported by industry and pro-taxpayer 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. As of June 7, 2024, FOCA has 118 U.S. House of Representatives and 27 U.S. Senate co-sponsors, respectively.

In addition, the construction industry coalition supports a resolution of disapproval (H.J. Res. 132)⁹³ under the Congressional Review Act introduced April 28 by Rep. Clay Higgins, R-La., nullifying the Biden administration's PLA final rule on federal construction projects.⁹⁴

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

Numerous governors and House and Senate lawmakers oppose PLA mandates and preferences on federal and federal assisted construction projects.⁹⁵

On Oct. 18, 2023, ABC filed extensive formal comments⁹⁶ in response to the FAR Council's ABC-opposed⁹⁷ Aug. 19, 2022, proposed rule. ABC's opposition to the FAR Council's proposed rule was shared by more than 50 members of the Senate and House,⁹⁸ 19 Republican governors⁹⁹ and a diverse coalition of construction industry, small business and taxpayer advocates¹⁰⁰ urging the administration to withdraw its proposed rule and other Biden administration schemes pushing government-mandated PLAs on state and local government

⁹¹ See TheTruthAboutPLAs.com, [Legal Challenges Against Federal Government-Mandated Project Labor Agreements During President Obama's First Term](#), Jan. 22, 2013.

⁹² <https://www.votervoice.net/ABC/Campaigns/116222/Respond>

⁹³ <https://www.congress.gov/bill/118th-congress/house-joint-resolution/132>

⁹⁴ <https://buildamericalocal.com/gehudim/sites/18/2024/06/Coalition-Letter-to-Congress-Supporting-CRA-Opposing-Biden-Project-Labor-Agreement-Final-Rule-060324.pdf>

⁹⁵ <https://buildamericalocal.com/learn-more/#letters>

⁹⁶ <https://www.abc.org/News-Media/News-Releases/abc-lawmakers-and-industry-groups-call-on-president-biden-to-withdraw-his-inflationary-pla-mandate-policies1>

⁹⁷ <https://www.abc.org/News-Media/News-Releases/president-bidens-inflationary-pla-schemes-hurt-taxpayers-and-construction-job-creators>

⁹⁸ <https://buildamericalocal.com/gehudim/sites/18/2022/10/10.18.22-Congressional-Comment-Letter-FAR-PLA-Rule-Final.pdf>

⁹⁹ https://buildamericalocal.com/gehudim/sites/18/2022/10/Joint_Governors_Comment_Letter_Opposing_Biden_PLA_Mandate_s.pdf

¹⁰⁰ <https://thetruthaboutplas.com/2022/10/17/construction-and-taxpayer-coalitions-opposes-bidens-pro-project-labor-agreement-proposal/>

construction projects receiving federal assistance via federal agency infrastructure grant programs¹⁰¹ private microchip manufacturing facilities receiving \$50 billion in CHIPS Act funding¹⁰² and private clean energy projects receiving \$270 billion in enhanced tax incentives funded by the Inflation Reduction Act.¹⁰³

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

Yes, 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.

In addition, the 2024 elections present an opportunity to elect House and Senate majorities who support fair and open competition. At a minimum, one chamber of Congress can hold the Biden administration and other pro-PLA lawmakers accountable for this handout to special interests at the expense of free enterprise and taxpayers.

In contrast, if pro-PLA lawmakers control Congress and the White House, their top priority will be to codify these harmful policies into law, which will be extremely difficult to reverse in the future.

Visit ABC's [Free Enterprise Alliance](#) to donate and help educate candidates and voters about this critical issue.

51. Can you provide background on the regulatory history of this final rule?

- On Feb. 3, 2022, [ABC issued a press release](#) opposing President Biden's Feb. 4, 2022, [Executive Order 14063](#), which mandates PLAs on federal construction projects of \$35 million or more.
- On August 19, 2022, 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, 2022. Thousands of ABC members, lawmakers and coalition stakeholders submitted comments opposing the FAR Council's proposal.
- On Oct. 19, 2022, [ABC issued a news release](#) on its [comments filed](#) in opposition to the FAR Council's proposed rule. The release included links to comments from members of Congress, governors and industry stakeholders opposing Biden administration PLA policies.
- ABC [slammed the EO](#), [the proposed rule](#) and the [final 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."

¹⁰¹ Visit abc.org/plagrants to learn more.

¹⁰² Visit abc.org/chips to learn more.

¹⁰³ Visit abc.org/ira to learn more.

- A Feb. 9, 2022, 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.”
- On Dec. 22, 2023, the Biden administration published the long-awaited Federal Acquisition Regulatory Council’s final rule, Use of Project Labor Agreements for Federal Construction Projects,¹⁰⁴ implementing President Joe Biden’s Feb. 4, 2022, Executive Order 14063.¹⁰⁵
- A Jan. 4, 2024, ABC [op-ed in Fox Business](#), radio and TV appearances and [ABC chapter letters to the editor](#) made similar statements about the final rule and Biden administration’s pro-PLA actions.
- The policy is effective Jan. 22, 2024, on applicable federal construction contracts.
- On March 28, ABC [filed a federal lawsuit](#) against the Biden PLA rule from the FAR Council.

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

Additional ABC Resources:

- Detailed ABC analysis of EO 14063 and its final rule can be found at www.abc.org/BidenPLAFAQs and www.abc.org/pla
- Request an ABC members-only memo on federal agency PLA surveys via NoPLAsFed@abc.org
- List of federal agency grant programs subject to pro-PLA language on federally assisted projects at www.abc.org/PLAgrants
- ABC grassroots campaign against Biden PLA policies: <https://www.voterve.net/mobile/ABC/Campaigns/109831/Respond>
- BuildAmericaLocal.com coalition website
- TheTruthAboutPLAs.com blog
- ABC Free Enterprise Alliance website: FreeEnterpriseAlliance.org
- Follow [@ABCgovAffairs](https://twitter.com/ABCgovAffairs) and [@TruthAboutPLAs](https://twitter.com/TruthAboutPLAs) on X
- Email NoPLAsFed@abc.org to flag federal agency PLA surveys, federal PLA mandates and other questions.

¹⁰⁴ <https://www.federalregister.gov/documents/2023/12/22/2023-27736/federal-acquisition-regulation-use-of-project-labor-agreements-for-federal-construction-projects>

¹⁰⁵ <https://www.federalregister.gov/documents/2022/02/09/2022-02869/use-of-project-labor-agreements-for-federal-construction-projects>