

March 14, 2017

United States Senate
Washington, D.C. 20510

Dear Senator:

The diverse group of undersigned construction and business associations writes in strong support of Sen. Jeff Flake's (R-Ariz.) Fair and Open Competition Act ([S. 622](#)), which ensures fair and open competition on federal and federally assisted construction contracts.

S. 622 would prevent federal agencies and recipients of federal assistance from requiring contractors to sign an anti-competitive and costly project labor agreement (PLA) as a condition of winning a federal or federally assisted construction contract. It also would eliminate discriminatory PLA preference policies that discourage competition during the procurement of taxpayer-funded construction projects.

A PLA is a collective bargaining agreement unique to the construction industry that typically requires companies to agree to recognize unions as the representatives of their employees on that job; use the union hiring hall to obtain workers; follow union work rules; and pay into union benefit and multi-employer pension plans that nonunion employees will be unlikely to access. This forces employers to pay "double benefits" into existing plans and union plans, and it places them at a significant competitive disadvantage. In addition, PLAs typically force construction workers to pay union dues or join a union if they want to work on a PLA project and receive benefits.

When mandated by government agencies, PLAs can interfere with existing union collective bargaining agreements and unfairly discourage competition from nonunion contractors and their employees, who comprise 86.1 percent of the U.S. private construction workforce.

President Obama's Feb. 6, 2009, Executive Order 13502 encourages federal agencies to require PLAs on federal construction projects exceeding \$25 million in total cost on a case-by-case basis "in order to promote the economy and efficiency in federal procurement."

However, studies found PLA mandates increase the cost of construction between 12 percent and 18 percent compared to similar non-PLA projects. Recent government-mandated PLAs on federal and federally assisted projects have resulted in litigation, reduced competition, increased costs, needless delays and poor hiring outcomes for minorities, women, veterans and local workers not affiliated with unions. Simply put, taxpayers are getting less and paying more when PLA preferences and mandates are required during the procurement of federal and federally assisted construction projects.

Likewise, the Obama executive order and related FAR regulations have exposed agency procurement officials to intense political pressure from special interest groups and politicians to mandate PLAs on federal and federally assisted projects even when they are not appropriate.

The Fair and Open Competition Act seeks to counteract potential special interest favoritism by prohibiting federal agencies and recipients of federal assistance from *mandating* PLAs and implementing PLA preferences. However, this legislation would allow federal agencies to award contracts to businesses that *voluntarily* enter into PLAs before or after a fair and open competitive bidding process, a common industry practice permitted by the National Labor Relations Act.

S. 622 will curb waste and favoritism in the procurement of construction projects and ensure taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate. If you would like to take a stand against discrimination and special interest carve-outs in government contracting, please

contact Nick Morrison (Nick_Morrison@flake.senate.gov) in Sen. Flake's office and ask to cosponsor S. 622.

Your support of the Fair and Open Competition Act will create a level playing field in the procurement of government construction contracts, increase competition, help small businesses grow, curb construction costs and spread the job-creating benefits of federal and federally funded contracts throughout all of the construction industry.

Sincerely,

Associated Builders and Contractors (ABC)
Associated General Contractors (AGC)
U.S. Chamber of Commerce
National Federation of Independent Business (NFIB)
National Association of Home Builders (NAHB)
National Black Chamber of Commerce (NBCC)
Small Business & Entrepreneurship Council (SBEC)
U.S. Pan Asian American Chamber of Commerce (USPAACC)
American Council of Engineering Companies (ACEC)
American Road & Transportation Builders Association (ARTBA)
Business Coalition for Fair Competition (BCFC)
Construction Industry Round Table (CIRT)
Electronic Security Association (ESA)
Independent Electrical Contractors (IEC)

cc: United States Senate