



Campaign for Quality Construction

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General Services Administration
Regulatory Secretariat (VPR)
1800 F Street, N.W., Room 4041
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RE: Federal Acquisition Regulation; FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects

Please consider the following comments on behalf of The Campaign for Quality Construction (CQC) Alliance—composed of six leading construction specialty trade associations which jointly represent the interests of approximately 27,000 construction employers. Many of our member companies perform large volumes of direct federal construction work variously contracting either as prime contractors with Federal agencies or as subcontractors to prime contractors. The CQC supports the use of PLAs and Executive Order 13502. CQC signatory contractors have experience with PLAs on small and large projects in both the public and private sector because their use provides demonstrable benefits to building owners and employers. The federal government, as an owner, stands to gain significant savings and value from consistent expanded use of PLAs on federal construction projects.

General Requirements for PLAs: Presume Payment of Industry Funds in PLA Specifications

The CQC submits that Industry Funds provide funding for a variety of enabling workforce development mechanisms such as dispute resolution and cooperative labor/management relations programs. They also cover basic skills training and journeyman upgrade training, project safety training, and jobsite supervisory training. Jointly administered health and welfare and pension benefits programs and other labor/management cooperative workforce development programs are also funded by Industry Fund contributions, including recruiting which stem from local area multiemployer and labor union collective bargaining agreements.

In virtually all cases, those bargaining systems, the development and maintenance of them, are financed and underwritten in varying and often substantial degrees by employer contributions to local area employer industry improvement funds. In fact, increasingly, the Federal agencies are relying on those systems for the very favorable cost-benefit returns they provide for agency procurement programs and related Federal proprietary workforce development policies.

In recognition of this, the CQC proposes that Federal agency specifications should require that any PLA proposal presume that payments to industry funds are appropriate and should be included in the PLA for all participating contractors operating under the local system for each participating craft. While these payments are not required by, nor includable, in the prevailing wage determinations, they very much support the many positive workforce development programs and bargaining structures that develop and maintain the high-skill and high-labor standards workforce in any particular area served by those multiemployer bargaining systems, and should thereby be duly recognized and supported.

Broaden the Scope of Executive Order

The Executive Order directed the Office of Management and Budget (OMB) to consult with other Federal agencies and make recommendations about whether to expand the Order beyond construction contracts valued at or above \$25 million. To limit the use of a PLA to a project over \$25 million seems to be an arbitrary limitation when PLAs may be of use on complex projects that may have a smaller price tag, and it would seem appropriate to allow their use on a discretionary basis by the relevant agency when it is determined through procurement analysis that a project warrants its use. PLAs ensure that all parties associated with completing a construction project are working under the same set of rules from the onset, and also offer a defined vehicle for conflict resolution, should the need arise. Given this fact, as the complexity of any given construction project increases, the need for standardization is apparent specifically as it relates to the owner, in this case the federal government. The CQC recommends that OMB recommend that the Order be expanded:

- To encourage PLAs on Federal construction projects worth \$5 million or more;
- To encourage PLAs on projects receiving Federal assistance; and
- To make clear that nothing precludes agencies from using PLAs on Federal projects valued at less than \$5 million, when the agency determines it would be in its best interest.

General Comments on the Proposed Rules

The stated purpose of the Executive Order is to encourage agencies to consider using PLAs on more projects. To achieve that goal, the CQC believes that

- proposed § 22.504(2) of the new rules states that even if an agency determines that it would be in a project's best interests to use a PLA, the agency has "complete discretion" to decide not to use one. The rules should state that once an agency determines that using a PLA meets the rules' standards, the agency should require its use.

Factors for Determining Whether to Use PLAs

The FAR Council requested input on factors agencies should consider in determining, on a case-by-case basis, whether it would be in the Government's best interest to use a PLA. The CQC proposes that Executive Order 13502 should be regarded as creating a presumption that PLAs will be used on projects that come within its scope (\$25 million) *unless* the agency finds that the project does not satisfy any one or more of the following criteria:

1. The project will require the services of two or more construction contractors and/or subcontractors that together employ workers in three or more crafts or trades (e.g. carpenter, laborer, and electrician);
2. Completing the project will require an extended period of time;
3. There is a need for peaceful, orderly, and mutually binding procedures for resolving labor disputes and conflicts on the project;
4. The project will require a substantial number of experienced, skilled building trades and craft workers;
5. The agency has a significant interest in assuring that the project will be completed on schedule and within budget; and

6. There is a labor organization or group of labor organizations whose geographic jurisdiction includes the area where the project will be constructed that can provide a reliable source of experienced skilled building trades and craft workers to successfully complete the project and that can negotiate a PLA applicable to the project.

CQC Members

The CQC is comprised of the **Finishing Contractors Association (FCA)**, the **International Council of Employers of Bricklayers and Allied Craftworkers (ICE)**, the **Mechanical Contractors Association of America (MCAA)**, the **National Electrical Contractors Association (NECA)**, the **Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)**, and **The Association of Union Constructors (TAUC)**. According to Bureau of Labor Statistics' figures, CQC associations and their members represent the vast majority of industry employment at 64% of employment overall in the industry.

CQC member companies compete for work in the industrial, manufacturing, commercial and institutional sectors of the overall construction market, as well as light commercial and residential markets. These firms perform new construction, maintenance and service works for both public-sector and private-sector clients nationwide and as prime contractors and subcontractors. CQC firms compete for public works contract selection under a variety of procurement methods including low bid competition and competitive negotiations and best-value selection.

The undersigned groups appreciate GSA consideration of our comments, and the following staff members are available for questions or comments.

Sincerely,

The Campaign for Quality Construction

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