



October 17, 2022

The Regulatory Secretariat Division  
Federal Acquisition Regulatory Council

Submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>

RE: *FAR Case 2022– 003: Use of Project Labor Agreements for Federal Construction Projects*

To Whom it May Concern:

The Construction Employers of America (CEA) welcomes the opportunity to provide comments on proposed “FAR Case 2022– 003: Use of Project Labor Agreements for Federal Construction Projects” (hereinafter the “NPRM” or the “proposed rule”).<sup>1</sup> The proposed rule amends the Federal Acquisition Regulations (FAR) to implement President Biden’s February 4, 2022 Executive Order (EO) 14063, “Use of Project Labor Agreements for Federal Construction Projects.”<sup>2</sup>

## **I. Introduction**

### *A. Background on the Construction Employers of America (CEA)*

The CEA is a coalition of seven leading, national construction employer associations that collectively represent thousands of businesses employing more than 1.4 million skilled construction industry trades employees. The CEA works to strengthen the construction industry and advocates for the interests of construction employers that provide the best value to project owners through a highly productive, highly skilled workforce that earns fair wages and benefits.

### *B. Interest in the NPRM*

CEA member employers have considerable experience providing construction services to public and private owners pursuant to project labor agreements (PLAs). PLAs have been used to build courthouses, schools, stadiums, and advanced manufacturing facilities because they promote economy, efficiency, and quality.

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<sup>1</sup> Proposed Rule Regarding “FAR Case 2022– 003: Use of Project Labor Agreements for Federal Construction Projects,” 87 Fed. Reg. 51044 (Aug. 19, 2022).

<sup>2</sup> 87 Fed. Reg. 7363 (Feb. 9, 2022).

### C. Concise Summary of Points

The federal policy that PLAs promote economy and efficiency has been implemented and maintained across three consecutive Presidential Administrations. The arguments put forward against this proposal were already considered and rejected during this time. There is no new data that warrants displacing this longstanding, carefully considered policy determination. Moreover, major for-profit companies and state and local governments across the nation have recognized that PLAs promote economy and efficiency in completing large, critical, and complex construction projects. PLAs also promote equitable development of a future skilled workforce for such projects by supporting privately-funded training programs. In addition, use of PLAs ensures that government construction does not facilitate labor and employment law violations that transfer costs to taxpayers, harm workers, and prevent the law-abiding contractors committed to training the next generation of skilled craftspeople from competing on a level playing field. CEA also offers several suggestions for clarifying the exceptions to using PLAs on large-scale federal construction projects that will prevent these exceptions from being used in a manner that is inconsistent with the policy determination underlying EO 14063.

## II. Discussion

### A. *Three Presidents and the United States Treasury Department Have Determined that PLAs Promote Quality, Efficiency, and Economy in Taxpayer-Funded Construction*

EO 14063 guides a contracting officers discretion to use PLAs on federal government “large-scale construction projects.” The EO is just the latest instance of a President making a reasoned determination as a matter of Administration policy that PLAs promote “economy and efficiency” and address “special challenges” on large and complex construction projects. This same policy animated President Obama’s February 6, 2009 EO 13502. Notably, President Trump left EO 13502 in place. He declined to revisit EO 13502 despite strident calls to rescind it grounded in the same arguments<sup>3</sup> proffered by the same organizations leading the opposition to the NPRM.<sup>4</sup>

More recently, the Treasury Department endorsed PLAs as promoting economy and efficiency in guidance associated with a January 27, 2022 final rule governing use of the \$350 billion in State and Local Fiscal Recovery Funds (SLFRF) authorized by the *American Rescue Plan Act* to help communities restore or improve infrastructure in response to the COVID-19 pandemic. The Treasury Department explained that PLAs and the labor standards associated with them:

[E]nsure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. *Treasury assesses that these benefits will increase the economy and efficiency of*

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<sup>3</sup> January 24, 2018 Letter to President Donald J. Trump from Associated Builders and Contractors *et. al.* (urging repeal of EO 13502 encouraging the use of PLAs because the 14 signatories alleged that PLAs increase costs, reduce competition, exacerbate labor shortages, and create issues with existing collective bargaining agreements), available at <https://www.abc.org/Portals/1/aaaaaaaa.pdf>.

<sup>4</sup> August 18, 2022 Associated Builders and Contractors News Release (making same arguments as January 24, 2018 letter to President Trump), available at <https://www.abc.org/News-Media/News-Releases/entryid/19556/president-bidens-inflationary-pla-schemes-hurt-taxpayers-and-construction-job-creators>.

*infrastructure projects* undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.<sup>5</sup> (Emphasis added)

Given this history, there is no reason for the FAR Council to suddenly credit comments built on tired arguments disputing the policy determination that PLAs promote economy and efficiency in the federal government’s procurement of construction services for large-scale projects. These arguments have been assessed and disregarded as a matter of Administration policy across three Administrations. The FAR Council has discretion to determine how it will faithfully implement the Executive Order and advance the well-settled policy determination underlying it. But it does not have the authority to reconsider the longstanding policy determination that PLAs promote economy and efficiency benefitting the federal government and taxpayers.

*B. Leading For-Profit Companies and State and Local Governments Rely on PLAs to Ensure Quality and Value for their Largest, Most Critical Construction Projects*

Three Presidents and the U.S. Treasury are not alone in their assessments that PLAs and the labor standards associated with them promote economy and efficiency on large, complex, mission-critical construction projects.

1. Leading for-profit companies rely on PLAs for their largest, most important projects

Leading businesses recognize that PLAs promote economy and efficiency when committing shareholder funds for their largest, most critical, and complex construction projects. A representative sampling of some major private sector construction projects that have utilized PLAs include:

- *The Dominion Cove Point LNG terminal (2014)*<sup>6</sup>: A PLA was used for this \$3.4 billion LNG export terminal led by IHI/Kiewit, which required 1,500 construction workers. This state-of-the-art facility included a 1.25-mile underwater tunnel connecting the onshore facilities to the offshore platform in the Chesapeake Bay. It was the first facility of its kind on the East Coast.
- *Shell Beaver County Cracker Plant (2016)*<sup>7</sup>: This massive energy project built under a PLA required 6,000 construction craft workers.
- *Honda of America* signed a PLA for a \$210 million project to build a new, state-of-the-art 300,000-square-foot paint facility that will be able to handle 229,000 vehicles a year.<sup>8</sup> It

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<sup>5</sup> Final Rule Regarding “State and Local Fiscal Recovery Funds,” 87 Fed. Reg. 4338, 4444 (January 27, 2022).

<sup>6</sup> See “Dominion Energy reaches milestone for Cove Point LNG,” GAS PROCESSING & LNG, available at <http://www.gasprocessingnews.com/columns/201412/executive-qa-viewpoint.aspx>.

<sup>7</sup> See “Shell’s multibillion-dollar PA plant project to create 6K construction jobs,” CONSTRUCTION DIVE, June 9, 2016, available at <https://www.constructiondive.com/news/shells-multibillion-dollar-pa-plant-project-to-create-6k-construction-jobs/420637/>.

<sup>8</sup> See “Honda of America Signs PLA for Marysville Project,” ACTOHIO.ORG, Feb. 8, 2016, available at <https://www.actohio.org/honda-signs-pla-for-marysville->

will be the company's most energy-efficient paint facility, utilizing several new technologies to significantly reduce energy consumption, water usage, and emissions while also shortening Honda's painting process.

- *The Citizens Imperial Solar, LCC Project*<sup>9</sup>: The new IID/Citizens low-income community solar project is being built under a PLA. The project will serve upwards of 12,000 electric customers in an economically distressed desert area of California. It is one of the largest low-income community solar projects in the nation, and unique among community solar energy projects in its structure and implementation.
- *The Oregon Clean Energy Center*:<sup>10</sup> North America Project Development, LLC, a joint venture of CME and Pure Energy, utilized a PLA to build the Oregon Clean Energy Center. The Center is an 869 MW (Peak: 951 MW) natural gas-fired electric power plant in Oregon, Ohio that uses state-of-the-art technology to capture exhaust heat to generate enough electricity to power over 700,000 homes. The project required around 1,500 skilled construction craftspeople, whose services were secured and coordinated through a PLA.<sup>11</sup>

## 2. State and local governments across the nation also recognize the benefits of PLAs

State and local governments across the nation also recognize the economy and efficiency of PLAs for large-scale public construction projects that require economic and efficient use of taxpayer dollars. Representative examples of such projects include:

- *The Franklin County Ohio Hall of Justice (2015)*<sup>12</sup>: Franklin County Ohio's Hall of Justice was built under a PLA. Eighty-two percent of the contractors used under this PLA were able to bring their portion of the project in significantly under budget, saving taxpayers over \$2 million.
- *The City of Boston Public Housing Energy Efficiency Project*<sup>13</sup>: Boston used a PLA for a \$66.7 million energy efficiency rehabilitation of 13 public housing properties owned by the Boston Housing Authority (BHA). The work resulted in millions of dollars in energy savings and capital upgrades to BHA's public housing portfolio. The BHA was so pleased with the results that it subsequently entered into additional PLAs.

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[project/#:~:text=The%20Columbus%2FCentral%20Ohio%20Building,Honda's%20most%20energy%20efficient%20ofacility.](#)

<sup>9</sup> See "IID & Citizens commission community solar project dedicated to low-income customers," IID.ORG, Sept. 25, 2019, available at <https://www.iid.com/about-iid/news-resources/news-releases/-item-709>.

<sup>10</sup> See "Oregon, Ohio Clean Energy Center," CME-ENERGY.COM, available at <https://www.cme-energy.com/content/oregon-ohio-clean-energy-center>.

<sup>11</sup> See "Power plant project starts under PLA in Northwest Ohio," ACTOHIO.ORG, Dec. 23, 2014, available at <https://www.actohio.org/power-plant-project-starts-under-pla-in-northwest-ohio/>.

<sup>12</sup> See "Project Spotlight," ACTOHIO.ORG, available at <https://www.actohio.org/project-labor-agreements/>.

<sup>13</sup> See "City Celebrates Largest Public Housing Energy Project in Nation's History," AMERESCO.COM, May 19, 2014, available at <https://www.ameresco.com/city-celebrates-largest-public-housing-energy-efficiency-project-nations-history/>.

- *The City of Columbus, Ohio Linden Community Center (2019)*<sup>14</sup>: The Columbus Building Trades and the City of Columbus entered into a PLA with a Community Benefits Agreement for the construction of the city’s new Liden Community Center and Park.

*C. PLAs Ensure a Skilled Workforce to Meet Federal Agencies’ Future Construction Needs*

The workforce training requirements associated with most PLAs support the continued success of privately-funded apprenticeship training programs that ensure a future skilled workforce for large-scale, complex federal government construction projects. This includes the training programs CEA-affiliated contractor associations sponsor through their Collective Bargaining Agreements. Under these agreements, the contractors pay a set amount per worker per hour into a training fund for their respective crafts that is matched by contributions from labor partners. This successful, privately-funded, industry-wide model provides training at no cost to the government or taxpayers. These training funds administer apprenticeship and training programs that invest between \$750 million and \$1 billion annually, ensuring properly staffed, resourced, and well-run programs. All successful PLA bidders – union and nonunion – can access this labor pool under a PLA. Non-union PLA signatories have recognized that union referrals enable them to compete for – and more likely successfully perform – jobs requiring a higher degree of worker skill and technical experience.

Joint apprenticeship programs in the building trades advance economy and efficiency by continuously updating and improving the value and relevance of their training. This is done through ongoing national instructor preparation and upgrading, arranging for college credit for learning during apprenticeships, and expansion of journey-level update training. Research confirms that: (1) union programs enroll the majority of building trade registered apprentices, (2) the apprentice completion rates from union programs are higher than from non-union programs, (3) union programs enroll non-traditional populations in higher numbers and at higher rates than do non-union programs, and (4) the apprentice completion rates of non-traditional populations from union programs is higher than from non-union programs.<sup>15</sup>

One of the successful training funds in which a CEA member participates is the NECA-IBEW: Electrical Training ALLIANCE.<sup>16</sup> The ALLIANCE (previously called NJATC) was created over 70 years ago as a joint training program between the National Electrical Contractors Association (NECA) and the International Brotherhood of Electrical Workers (IBEW) aimed at training the best electrical workers the industry has to offer. Today, the Electrical Training ALLIANCE has developed into the largest apprenticeship and training program of its kind, having trained over 350,000 apprentices to journeyman status through local affiliate programs. NECA-IBEW jointly invest over \$300 million annually without any cost to taxpayers.

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<sup>14</sup> See “Columbus Building Trades Sign Community Benefits Agreement with City of Columbus,” ACTOHIO.ORG, Apr. 11, 2019, available at <https://www.actohio.org/columbus-building-trades-sign-community-benefits-agreement-with-city-of-columbus/>.

<sup>15</sup> Annetta Argyres and Susan Moir, *Building Trades Apprentice Training in Massachusetts: An Analysis of Union and Non-Union Programs, 1997-2007* at iv (Oct. 2008), available at [https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1001&context=lrc\\_pubs](https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1001&context=lrc_pubs).

<sup>16</sup> See Electrical Training ALLIANCE homepage, available at <https://www.electricaltrainingalliance.org/>.

Another successful joint training programs supported by PLAs in which is a CEA member participates in the funds SMACNA operates with its union partner, SMART. This training fund has provided skilled, trained, and certified workers to respond in a timely manner to meet the sheet metal industry's demands for more than a century. The program provides classroom instruction, hands-on training, jobsite experience, and rapid response training to SMART members through federal and state registered apprenticeships in more than 150 privately-funded and administered state of the art training centers throughout North America.

PLAs also ensure a per hour investment in the International Training Fund of the United Association of Plumbers and Pipefitters that the UA jointly administers with signatory contractors affiliated with CEA member, MCAA. This fund is a multimillion-dollar national training program providing substantial infrastructure grants and support to over 200 national joint apprenticeship and training committees across the United States.

There are numerous examples of specific commitments in PLAs ensuring continued support for and equitable access to the opportunities such proven, privately-funded, joint training programs offer for a career in construction trades critical to our nation's economy:

- The PLA governing Valero Energy's California refineries commits the signatory contractors and labor unions to coordinating with the Center for Military Recruitment, Assessment and Veterans Employment, a joint Labor-Management Cooperation Trust Fund, to create and maintain a database of veterans and members of the National Guard and Reserves interested in apprenticeship training and employment opportunities in construction crafts required for the project.
- The City of Boston Housing Authority (BHA) PLA discussed above included language providing opportunities for BHA residents to begin careers in the construction trades through the Building Pathways Program. This PLA created approximately 600 permanent jobs for local workers, including public housing residents and low-income individuals. It also provided opportunities for small and minority owned businesses. During the three-year construction period, BHA residents were hired and trained for skilled trades positions. This PLA also established a pre-apprenticeship program open to BHA public housing and Section 8 residents, YouthBuild eligible participants, and very low-income Boston residents. Graduates who successfully complete the pre-apprenticeship training are given direct entry slots into apprenticeship opportunities through the Building and Construction Trades Council.

*D. PLAs Promote Labor Law Compliance and Business Practices that Allow Law Abiding Businesses to Compete on a Level Playing Field*

1. PLAs curtail misclassification of construction workers as independent contractors

The standard terms of PLAs require compliance with applicable labor and employment laws while ensuring worker representatives are involved in the project to verify that these commitments are fulfilled. This reduces the prevalence of numerous types of labor and employment violations that are rampant in the construction industry, including the pervasive

practice of misclassifying construction workers as independent contractors instead of employees. It has been well established in congressional hearings and academic research that by misclassifying their workforce, construction companies avoid costs such as overtime, workers' compensation, unemployment insurance, employment taxes, and compliance with health and safety requirements. In its October 13, 2022 proposed rule on "Employee or Independent Contractor Classification under the Fair Labor Standards Act,"<sup>17</sup> the U.S. Department of Labor confirmed the many costs transferred to workers and taxpayers because of misclassification.<sup>18</sup> The Labor Department highlights construction as one of the handful of industries in which it has documented a "[h]igh incidence of misclassification of employees as independent contractors."<sup>19</sup>

Under the "most conservative" estimates, misclassified construction workers lose over \$800 million per year in overtime.<sup>20</sup> Misclassification and other forms of payroll fraud in construction allow employers to evade \$2.98 billion per year in Social Security and Medicare taxes.<sup>21</sup> Such nefarious practices cause an estimated \$1.74 billion annual shortfall in state workers compensation programs. Construction industry misclassification results in annual state unemployment insurance program shortfalls of over \$700 million.<sup>22</sup> Moreover, it is generally accepted that "employers are more likely to withhold and submit taxes than independent contractors are to voluntarily pay their tax liabilities."<sup>23</sup> This reality is an acknowledged part of the "tax gap" that reduces resources available for public services and social safety net programs, leaving taxpayers holding the bag for shortfalls.

Misclassification also makes it hard for honest contractors to compete. Recent academic research confirms the competitive advantage contractors derive by misclassifying workers, as well as the costs misclassification imposes on workers and American taxpayers.<sup>24</sup> As the President of the Signatory Wall and Ceiling Contractors Alliance (SWACCA)—a CEA member association—detailed in a 2019 Congressional hearing on worker misclassification, construction companies that misclassify their workforce as independent contractors save at least 20-30% on labor costs compared to law-abiding competitors.<sup>25</sup> When competing against companies like CEA members that pay middle-class wages, sponsor registered apprenticeship programs, and offer retirement

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<sup>17</sup> Proposed Rule Regarding "Employee or Independent Contractor Classification under the Fair Labor Standards Act," 87 Fed. Reg. 62218 (Oct. 13, 2022).

<sup>18</sup> *Id.* at 62268-69.

<sup>19</sup> *Id.* at 62267.

<sup>20</sup> Russell Ormiston, Dale Belman, and Mark Erlich, *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry* (2020) at 5, available at <https://stoptaxfraud.net/wp-content/uploads/2020/03/National-Carpenters-Study-Methodology-for-Wage-and-Tax-Fraud-Report-FINAL.pdf>.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> See Congressional Research Service, *The Tax Gap: Misclassification of Employees as Independent Contractors* at 1 (Dec. 23, 2011), available at [https://www.everycrsreport.com/files/20111223\\_R40807\\_f23bbc37cc588a74650a677be2a69c4a49b1faa6.pdf](https://www.everycrsreport.com/files/20111223_R40807_f23bbc37cc588a74650a677be2a69c4a49b1faa6.pdf).

<sup>24</sup> See Ormiston, Belman, and Erlich, *supra* note 20.

<sup>25</sup> Testimony of Matt Townsend, Workforce Protections Subcommittee, U.S. of Representatives Committee on Education and Labor, Hearing on Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy (Sept. 26, 2019) at 3, available at <https://edlabor.house.gov/imo/media/doc/TownsendTestimony092619.pdf>.

plans and health benefits, contractors who misclassify their workers gain closer to a 50% cost advantage.<sup>26</sup>

To the extent that PLAs make it harder for federal contractors to misclassify their workers and transfer to taxpayers shortfalls in myriad federal, state, and local social safety net programs, PLAs promote economy and efficiency that benefits American taxpayers. These savings need to be considered in any cost-benefit analysis of the proposed rule, just as they were in the Labor Department’s recent proposed rule on “Employee or Independent Contractor Classification under the Fair Labor Standards Act.”

2. PLAs make it harder to misclassify workers as lower skilled trades for Davis-Bacon purposes

PLAs also deter another type of pernicious worker misclassification: the misclassification of construction craftspeople as lesser skilled crafts so they can be paid less than they should be compensated under federal prevailing wages laws. This is yet another type of misclassification that results in law-abiding contractors being underbid and not having a level playing field on which to compete. PLAs address this kind of misclassification by stipulating the wages and fringe benefits to be paid to specific worker classifications agreed to in the master agreement (including but not limited to hazard pay, acid pay, high or low work, and other similar premiums). PLAs also address subsistence, travel allowances, mileage, or pay for travel time that must be paid to employees. PLAs further require detailed reporting of employee pay that confirms proper payment of all wages, benefits, and other amounts. This ensures transparency for the project owners, contractors, workers, and tax authorities regardless of the number of crafts, differentiated pay scales, or hours worked across a job.

*E. Comments on Exceptions to the Presumption to Use PLAs on Large-Scale Federal Construction Projects*

For the NPRM to realize fully the many benefits intended by the Executive Order it implements, the FAR Council should consider several clarifications related to the scope and operation of the proposed exceptions to the presumption that PLAs should be used on large-scale federal construction projects.

1. Exception for when a PLA would otherwise be inconsistent with statutes, regulations, EOs, or Presidential Memoranda

The FAR Council must clarify that the exception to using a PLA on an otherwise eligible project because it is inconsistent with “statutes, regulations, Executive Orders, or Presidential memoranda” is limited to instances when a PLA is inconsistent with only a *federal* statute, *federal* regulation, or *Presidential* Executive Order. The final rule must make clear that state and local statutes and regulations and governors’ Executive Orders are irrelevant to this assessment.

If this exception is not clarified to make clear that it only applies to inconsistent federal law or regulations and Presidential Executive Order, contracting officers will be precluded from using

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<sup>26</sup> *Ibid.*



PLAs in two dozen states. Currently, by legislation or executive action the following states prohibit state and/or local government from requiring the use of PLAs: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin.<sup>27</sup> We do not believe that the President intended his PLA Executive Order to be a nullity in half of the states. Moreover, if the federal government is going to subordinate federal procurement policy grounded in what the President has determined promotes economy and efficiency to state and local laws and regulations, it could threaten numerous other requirements currently applicable to federal contractors and subcontractors under the same federal procurement authority used to justify EO 14063 and this proposed rule. These include the minimum wage for federal contractor employees, paid sick leave for federal contractor employees, and certain affirmative action requirements for federal contractors and subcontractors.

To avoid any such improper limitations on the President's PLA EO, we suggest that the proposed text of 48 CFR 22.504(iii) be revised to state: "Requiring a project labor agreement on the project would otherwise be inconsistent with *federal* statutes, *federal* regulations, *Presidential* Executive orders, or *Presidential* memoranda." (Revisions in italics).

## 2. Market Research Exception Based on Projects Involving Specialized Work Only Available From a Few Contractors

We believe that the exception to the use of a PLA on an otherwise eligible project under proposed 48 CFR 22.504(d)(i)(C) for projects on which a PLA would not promote economy or efficiency because they involve specialized work only available from a few contractors needs to be clarified to ensure it is not used inappropriately. Specifically, we recommend that the final rule require that before a contracting agency applies this exception it should confer with both union and non-union contractor associations, as well as construction labor unions. This will ensure that determinations about economy and efficiency are based on complete and current information. The markets in which contractors operate are not static. With the stability and certainty PLAs provide, qualified contractors are often willing to travel for work outside their home market. This is especially true with large-scale federal construction projects that make it economically feasible for contractors to travel to markets in which they would not seek work on smaller projects for which they would have to compete against contractors using a misclassified workforce. Large union contractor associations, like those composing CEA and their non-union counterparts, as well as the national construction unions, have the most current knowledge on the markets in which various types of contractors are operating or would be willing to perform work subject to the standards associated with a PLA.

## 3. Market research exception based on projects of such unusual and compelling urgency that a PLA would be impractical

CEA understands that there may be exigent projects for which quick completion is essential. This may be true of projects to restore basic services after a disaster or construction associated

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<sup>27</sup> Associated Builders and Contractors Map of States Prohibiting Requirements to Use PLAs, *available at* [https://www.abc.org/Portals/1/2021%20Files/Map\\_FairCompetition\(June\).PNG?ver=2021-06-29-132759-323](https://www.abc.org/Portals/1/2021%20Files/Map_FairCompetition(June).PNG?ver=2021-06-29-132759-323).

with national security matters. We would, however, submit that PLAs may be useful on such projects. PLAs ensure an adequate workforce. And the “no-strike” clauses that are standard in PLAs protect against work stoppages by workers engaging in protected concerted activity. We also note that getting a PLA in place should not delay a project. PLA terms are fairly standardized. They do not usually require extended negotiation. We respectfully suggest that final rule direct contracting agencies to confer with union and non-union contractor associations and relevant labor organizations when assessing the “impracticality” of utilizing a project labor agreement to ensure these assessments are not based on outdated or inaccurate information about available contractors, the relevant workforce, or the realities of securing and executing a PLA.

If after consultation with contractors and construction unions an agency remains convinced that its need for the project is of such an unusual and compelling urgency that a PLA would be impracticable under proposed 48 CFR 22.504(d)(i)(D), it should be required to memorialize in writing (subject to appropriate national security considerations) why it believes this to be the case. This will ensure that such assertions are not based on a lack of information or misinformation about PLAs or the available contractors and workforce. Such justifications should be made available for public review on a periodic basis to assess their rationale and to prevent fallacious assertions about PLAs from persisting over time.

#### 4. Market research exception based on projects that only require one trade

Similarly, CEA suggests that there should be a mechanism over time to examine and assess the justifications for otherwise eligible projects excepted from using a PLA because they only allegedly require a single trade under proposed 48 CFR 22.504(d)(i)(B). The use of this exception should be confirmed by querying both relevant union and non-union contractor associations and construction unions to confirm the assessment of the trades required. Absent such a mechanism, we are concerned that this exception could be misapplied, thereby depriving the government, taxpayers, workers, and contractors the benefits of a PLA on some large-scale federal construction project.

### **III. Conclusion**

CEA is grateful for the FAR Council’s work to faithfully implement Executive Order 14063 to effectuate the longstanding policy judgment that PLAs promote economy and efficiency in the procurement of large-scale federal construction. We appreciate the Council’s consideration of our comments and suggestions to ensure that any final rule realizes this goal.

Sincerely,

The Construction Employers of America

FCA International

International Council of Employers of Bricklayers and Allied Craftworkers

Mechanical Contractors Association of America

National Electrical Contractors Association

Sheet Metal & Air Conditioning Contractors National Association

Signatory Wall and Ceiling Contractors Alliance

The Association of Union Constructors