



April 5, 2017

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, D.C. 20590

Dear Secretary Chao:

AGC was disappointed to learn that the U.S. Department of Transportation has approved the request from the New York State (NYS) Department of Transportation to mandate the use of project labor agreements (PLAs) on four upcoming federally assisted highway and bridge construction projects. AGC urges you to reconsider this approval and instead disallow NYS DOT's attempt to mandate use of PLAs on any federally funded project. In addition, AGC encourages you to be the voice of reason in the Administration, opposing President Obama's policy of encouraging PLA mandates and advocating President Trump's adoption of a policy permitting free and open competition in all public construction markets without regard to a contractor's lawful labor relations practices.

AGC neither supports nor opposes PLAs *per se* but strongly opposes *government mandates for PLAs* on publicly funded construction projects. AGC believes that neither a public project owner nor its representative should compel any construction firm to change its lawful labor policies or practices to compete for or perform public work, as PLAs effectively do. AGC also believes that government mandates for PLAs can restrain competition, drive up costs, cause delays, lead to jobsite disputes, and disrupt local collective bargaining. If a PLA would benefit the construction of a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact and to voluntarily adopt such an agreement. Accordingly, AGC urges all government agencies to refrain from imposing any PLA mandates on their contractors and to defer to the contractor's judgment as to whether a PLA is appropriate for a given project.

While PLA proponents cite theories and studies indicating that PLA mandates ensure stability, efficiency, and productivity for construction projects, there are at least equally as many studies supporting the opposite conclusion. There are no widely published studies establishing that the use of PLAs has consistently lowered the cost, shortened the completion time, or improved the quality of construction of public projects. While case studies have had varying results, research regarding the impact of PLA use on the economy or efficiency of projects in general is inconclusive, including studies by the Government Accounting Office and the Congressional Research Service.

In the face of this paucity of reliable evidence that PLA mandates promote economy and efficiency in government procurement is the argument that such mandates can actually drive up costs. One way that they drive up costs is by favoring union contractors and thereby limiting competition. Even when competition, on its face, is open to all contractors willing to adopt the PLA, the PLA mandate can have the effect of limiting the number of competitors on a project, increasing costs to the government and, ultimately, the taxpayers. This is because government mandates for PLAs typically require contractors to make fundamental, often costly changes in the way they do business. For example:

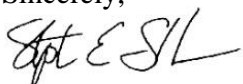
- PLAs typically limit open shop contractors' rights to use their current employees to perform work covered by the agreement. Such PLAs usually permit open shop contractors to use only a small "core" of their current craft workers, while the remaining workers needed on the job must be referred from the appropriate union hiring hall. PLAs frequently require contractors to change the way they would otherwise assign workers, requiring contractors to make sharp distinctions between crafts based on union jurisdictional boundaries. This imposes significant complications and inefficiencies for open-shop contractors, which typically employ workers competent in more than one skill and perform tasks that cross such boundaries.
- PLAs typically require contractors to subcontract work only to subcontractors that adopt the PLA. This may prevent a contractor (whether union or open shop) from using on the project highly qualified subcontractors that it normally uses and trusts and that might be the most cost-effective.
- PLAs typically require open-shop contractors to make contributions to union-sponsored fringe benefit funds from which their regular employees will never receive benefits due to time-based vesting and qualification requirements. To continue providing benefits for such employees, such contractors must contribute to both the union benefit funds and to their own benefit plans. This "double contribution" effect significantly increases costs.
- PLAs typically require contractors to pay union-scale wages, which may be higher than the wage rates required by the Secretary of Labor pursuant to the Davis-Bacon Act. They often also require extra pay for overtime work, travel, subsistence, shift work, holidays, "show-up," and various other premiums beyond what is required by law.

Another cost that can result from government mandates for PLAs is the high cost of litigation, as such mandates have frequently led to litigation, which is expensive itself and can lead to costly delays.

Furthermore, while a PLA can establish uniform standards and dispute-resolution mechanisms that may help avoid or solve some workforce problems, a government-mandated PLA can also cause or exacerbate such problems. First, strikes, jurisdictional disputes, and similar work disruptions, as a matter of fact, rarely occur on projects not covered by collective bargaining agreements (CBAs). Second, a government-mandated PLA can be the source of new frictions, disputes, and confusion by forcing a new labor framework onto previously nonunion employees, by forcing union contractors to assign work to the members of different trades than they do under their regular CBAs, and by otherwise altering the previously agreed-upon status quo.

For all of the above reasons and more, AGC encourages you to take a strong stand against this government intrusion into a private company's labor practices. We urge you to deny any state department of transportation future request to impose a PLA mandate and to direct the agency to use PLAs only at prime contractors' discretion.

Sincerely,



Stephen E. Sandherr