

June 9, 2010

The Honorable John Kerry
The Honorable Joseph Lieberman
U.S. Senate
Washington, DC 20510

Re: Project Labor Agreements and the American Power Act

Dear Senators Kerry and Lieberman:

On behalf of the undersigned organizations representing tens of thousands of federal construction contractors of every size in every industry sector, including open shop and union employers, we are very concerned about Section 4103(g) of the American Power Act, which contains language encouraging government-mandated project labor agreements (PLAs) on federal and federally assisted construction projects. We urge the removal of this section from the legislation.

Our organizations are committed to free and open competition in all public construction markets and believe that publicly financed contracts should be awarded without regard to the labor relations policy of the government contractor. We believe that neither a public owner nor its representative should mandate the use of a PLA that would compel any firm to change its labor policy or practice in order to compete for or perform work on a publicly financed project. We further believe that government-mandated PLAs can restrain competition, drive up costs, cause delays, lead to jobsite disputes and disrupt local collective bargaining. If a PLA would benefit a particular project, construction contractors working on the project would be the first to recognize that need and negotiate or adopt a PLA on a voluntary basis.

There is no reliable evidence demonstrating that government-mandated PLAs provide value to federal owners, construction contractors, construction employees or American taxpayers. In its 1998 study titled "Project Labor Agreements: The Extent of Their Use and Related Information," the Government Accounting Office (GAO) reported that it could not document the alleged benefits of past PLA mandates on federal construction projects and that it doubted such benefits could ever be documented. GAO concluded that it would be difficult to find projects similar enough to compare and, even if such projects were found, it would be difficult to demonstrate conclusively that any performance differences were due to the use of the PLA versus other factors.

While case studies have been conducted with varying results, we are not aware of any documentation or analysis demonstrating that past mandates for PLAs have consistently lowered the cost, increased the efficiency or improved the quality of construction of public projects.

In the face of this lack of reliable evidence that PLA mandates promote economy and efficiency in federal procurement is the argument that such mandates actually drive up costs. One way that they may do this is by limiting competition. Government-mandated PLAs typically require contractors to make fundamental changes in the way they do business, such as adopting different work rules, hiring practices, and wages and benefits, as well as restraining their ability to use

their current employees on the project. Many firms will be unwilling or unable to make those changes. Therefore, the effect of government mandates for PLAs is to decrease the number of potential bidders and competition, which leads to increased costs to the government and, ultimately, the taxpayers.

This is contrary, both in letter and spirit, to the March 4, 2009, Presidential Memorandum to the Heads of Executive Departments and Agencies on Government Contracting, which states: “The Federal Government has an overriding obligation to American taxpayers. It should perform its functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers....When awarding Government contracts, the Federal Government must strive for an open and competitive process.”

Even if the changes in business practices required by a government-mandated PLA do not deter potential bidders, a PLA can drive up costs in a more direct manner: contractors passing along the added costs incurred in changing their business practices to the contracting agency. For example, PLAs typically require contributions to union pension and health and welfare funds, even though the benefit plans’ eligibility and vesting rules usually prevent open shop employees from ever receiving the benefits of their employers’ contributions to the funds. To maintain benefits for its regular employees, open shop contractors must contribute to both the union benefit funds and to their own benefit plans, causing employment costs to skyrocket.

These added burdens go beyond what is already required of federal contractors under the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act. These statutes set minimum standards for wages, benefits and labor practices based on prevailing practices, leaving the parties to a PLA free to negotiate higher rates and more stringent practices.

We believe that PLAs are an inappropriate and unnecessary mechanism for public owners to ensure that its contractors’ employees are fairly compensated and that all contractors compete on an equal basis. Another cost that can result from government mandates for PLAs is the high cost of litigation, as such mandates frequently lead to litigation, which is expensive and can result in costly delays.

There is no proof that government-mandated PLAs help agencies manage workforce challenges that arise in connection with large-scale construction contracts. In fact, 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 required under their regular collective bargaining agreements, and by otherwise altering the previously agreed-upon status quo. Furthermore, strikes and other work stoppages rarely occur on projects not covered by collective bargaining agreements.

In addition, a PLA does not guarantee freedom from the effects of strikes and work stoppages. Alleged “wildcat” strikes have occurred on several projects covered by PLAs in the past. A PLA does not (and cannot, because of its nature) prohibit offsite strikes or work stoppages at related facilities (such as a fabrication or material yard) that can impede progress on the PLA-covered project.

Moreover, if a PLA is needed on a particular project to prevent jobsite friction or other causes of delay or expense, the construction contractors working on the project will be the first to recognize that need and to negotiate an agreement. Current federal rules and the broader federal policies strongly favoring open competition for federal contracts are more than enough to ensure that PLAs are put in place when and where they are most likely to serve the public interest.

The potential for a government-mandated PLA to raise project costs, create inefficiencies, restrain competition and bring about legal challenge should not be underestimated. Accordingly, we strongly believe Section 4103(g) should be stricken from the bill. We appreciate the opportunity to alert you to our concerns. We believe our comments, if taken into consideration, will prevent a great deal of confusion in the federal construction procurement process. Thank you again for considering our views. We welcome the opportunity to provide additional information.

Sincerely,

Associated Builders and Contractors
Associated General Contractors
Construction Industry Round Table
Independent Electrical Contractors, Inc.
National Association of Government Contractors
National Association of Minority Contractors - Philadelphia Chapter
National Association of Women in Construction
National Black Chamber of Commerce
National Federation of Independent Business
National Ready-Mixed Concrete Association
National Utility Contractors Association
Small Business & Entrepreneurship Council
Women Construction Owners and Executives, USA

cc: United States Senate