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Maurice Baskin

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### The Final Rule Implementing the PLA Executive Order: Why it Should Be Challenged

On April 13, 2010, the Federal Acquisition Regulation (FAR) Council issued a “final rule” to implement President Obama’s Executive Order 13502 (issued Feb. 6, 2009). The Executive Order declared that executive agencies awarding contracts on “large scale construction projects” (having a total cost to the federal government of \$25 million or more) “may, on a project-by project basis, require the use of a project labor agreement (PLA)” by a contractor (binding all subcontractors). The final rule amends the Federal Acquisition Regulation (FAR) to enforce the Executive Order.

The Administration’s actions violate federal procurement laws; discriminate against 85% of the construction industry workforce and many small businesses; and hurt taxpayers, for each of the following reasons:

- This is the first time that the federal government has issued a rule with the force of law encouraging PLA requirements on federal construction projects. Serious questions have been raised about the legality of Executive Order 13502. The new rule fails to address those questions in any serious way and is itself unlawful.
- The drafters of the new rule acknowledge that they received hundreds of comments in opposition to their proposal. The final rule nevertheless fails to meaningfully address any of the facts or law cited by the rule’s opponents.
- In particular, the final rule offers no support for the claim that government-mandated PLAs are needed to solve any existing labor relations problem on federal construction projects. The FAR Council does not dispute that, during the previous decade in which PLAs were banned on federal and federally assisted construction projects via President Bush’s Executive Order 13202, none of the labor issues identified as potential problems in the new rule and/or the Obama Executive Order promoting PLAs occurred on any federal project.
- The final rule primarily cites as its models for PLAs such outdated construction projects as the Grand Coulee Dam, which were undertaken more than 50 years ago, before Congress passed the Competition in Contracting Act. Since that time, the construction industry has changed from being dominated by union monopolies to being 85% non-union with full and open competition. The final rule would turn the clock back from healthy competition to a tarnished era of strikes, favoritism and blatant discrimination in the construction industry.
- The final rule fails to acknowledge any of the discriminatory effects of government-mandated PLAs on non-union contractors and their employees. The rulemaking record is filled with proof that PLAs discriminate against such firms, most of whom are small businesses, by greatly increasing their costs and forcing them to pay for union pensions that will never benefit non-union employees.
- The final rule fails to identify any cost savings that will result from PLAs, and ignores testimony in the record that PLAs will increase the costs to taxpayers by as much as 20%. Numerous studies have shown that PLAs increase the cost of government construction, either because of the smaller number of bidders or because of the added costs of dealing with unions and inefficient union work rules.
- The final rule does not cite any evidence that the increased costs have produced any proven increases in construction quality, safety, or timeliness. Instead, many government projects that have been subjected to PLAs have encountered problems with construction defects, delays, and workplace injuries.

- Neither the Executive Order nor the final rule identifies any meaningful criteria for federal agencies to apply in deciding whether to impose PLAs on specific projects. This failure will lead to arbitrary and discriminatory results.
- The final rule violates the Regulatory Flexibility Act and the Small Business Act by failing to acknowledge the significant economic impact on small businesses caused by imposing PLAs on federal construction projects. In particular, the final rule wrongly ignores the impact of PLAs on subcontractors, many of whom are small businesses.
- Where the government imposes a PLA, all employees working on that project become subject to the union's authority and typically must pay dues to the union, regardless of what they want. But 85 percent of all construction workers have chosen not to be represented by labor unions; they do not want any union to act as their bargaining agent. Under a PLA the government forces employees to become associated with a labor organization against their will.
- Numerous studies have shown that imposing PLAs on government construction projects reduces the number of bidders willing to perform the work. PLAs thus undermine the competitive bidding laws, whose purpose is to maximize competition for the benefit of taxpayers. PLAs instead promote favoritism for the small group of contractors who have signed union agreements.