October 18, 2022

General Services Administration
Ms. Dana Bowman, Procurement Analyst
FAR Case 2022-003
Dana.bowman@gsa.gov

MCAA Comments on FAR Case 2022-003 submitted to:
https://www.regulations.gov

SUBJECT: FAR Case 2022-003, Federal Acquisition Regulation: Use of Project Labor Agreements (PLAs) for Federal Construction Projects

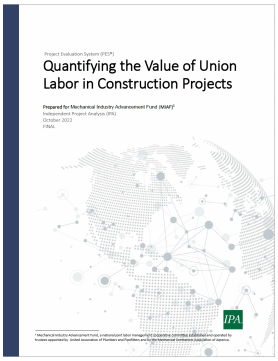
Dear Ms. Bowman and GSA Regulatory Secretariat Division:

Please consider the following comments submitted on behalf of the Mechanical Contractors Association of America (MCAA), a national specialty construction industry trade association representing some 2,700 union-signatory mechanical construction and mechanical service firm employers nationwide.

MCAA members are represented in some 82 multiemployer bargaining units across the country that negotiate construction labor pacts with local affiliate unions of the national United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (UA).

Across all those bargaining units, MCAA members and their UA local union counterparts jointly sponsor industry-leading apprenticeship and journeymen upgrade training programs, along with top-quality pay, pension, and health care benefits that operate together to build, maintain, sustain, and continuously improve the workforce skills and management expertise of the high-technology mechanical construction industry.

It is this superior commitment to both workforce and project management skills training and high-performance standards in the mechanical construction industry as a whole by the MCAA and the UA together which combines to provide substantial project productivity gains to project owners to a demonstrably more substantial degree than lower overall project productivity levels produced by the non-union sector. ***(See, Quantifying the Value of Union Labor in Construction Projects, Independent Project Analysis,*** October 2022, below.)



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MCAA members range across the full spectrum of business sizes – from large national industrial firms operating well above the Small Business Administration's (SBA) dollar volume size standards, and competing for project awards in the mega project markets for energy, industrial, food processing, and computer chip plant building, where large public and private sector project owners frequently avail themselves of the manifold project advantages of project labor agreements – down to relatively small plumbing and mechanical service businesses competing for work within the range of the SBA size standards, where project owners are less likely to use PLAs in acquisition and project planning and project purchasing policies.

Yet even still, many MCAA small business members perform work on PLA projects across the country in both public and private sector markets. PLAs in those markets have long been proven to be both prudent and fiduciarily sound choices to ensure successful project completion. Major industrial project owners, and large Federal and state and local project owners too, have recognized the PLA productivity advantages inherent in an organized employment and project workforce deployment system.

PLAs primarily afford project owners the manifold productivity advantages of the national workforce training system provided through the union-sector jointly administered workforce development infrastructure. Moreover, PLAs provide uniform work rules and project schedules, expeditious dispute resolution, craft and subcontractor jurisdictional alignment and project scheduling trade sequencing, and other important benefits coordinating the work of multiple trades contractors on projects of significant size and complexity. Labor-represented workforces can offer important no-strike pledges largely not available through non-union employers. PLAs are an effective hedge on broader workforce availability issues, including skilled worker portability resources to meet specific labor market demands and volatility in the project locality due to a variety of factors – ***i.e.***, too much or too little work in the area, competing demand for labor on surrounding projects, and extending to material price and supply disruptions, and even recent

pandemic and force majeure conditions pertaining to workforce accommodations implemented in an organized workforce deployment model.

Anti-union red herrings dispelled – Consequently, it should be noted that MCAA strongly contests the anti-union rhetoric inappropriately interjected into a procurement policy debate claiming that PLAs operate to exclude small businesses from performing on PLA projects (objective analysis on many PLA projects shows substantial participation by small and non-union firms); that non-union small businesses are somehow excluded from PLAs because of their pre-existing non-union labor positions (they are not required to sign any other labor pact to qualify for the PLA project); and, that the non-union sector overall, based on immaterial national union/non-union workforce statistics, is somehow therefore excluded from particular projects in specific project labor markets.

Federal projects are not performed nationally, they are specific to particular places. The project labor policy too is determined by the scope and complexity of the particular project, and the locality of the project. Consequently, Federal project PLA procurement policy choices perforce depend on particular types of workforce skills and availability required to perform each particular project in each specific location – and Section 5 of the Executive Order acknowledges that in the list of considerations for Exceptions.

So, anti-union partisans and groups that would interpose general and national union/non-union representation rates in the industry as somehow relevant to specific project labor policy choices are transparently pushing forward a red herring disguised as a material policy consideration. Union representation rates vary by segment of the industry and area of the country. Higher skilled trades require the workforce development and skill training of the union-sector joint apprenticeship system to build and maintain the skill base of the industry. Moreover, areas where the market calls for a predominance of high-skill industrial and other high-skill project performance, union representation rates increase.

Moreover, to the extent there is some relevance in considering nationwide data as some sort of market proxy, that too lends a benefit to the union sector. The building trades all have nationwide worker portability, travel card systems, where skilled workers from one area with perhaps not much work, can be called on to travel to high demand work areas to answer skilled workforce shortages in that locality – allowing the project owner a significant hedge against volatility in labor markets during the project. The non-union has no such organized, flexible workforce deployment system.

The serious Federal construction purchasing policy question addressed by EO 14036 is: whether and how responsible Contracting Officers – exercising their fiduciary duties under their warrants to represent the best interest of the government in their acquisition and procurement planning processes for large scope Federal construction projects ($35 million or more) – should

routinely and carefully assess the specific workforce skills, abilities, and availability to complete each particular project successfully and productively and at less risk of schedule and cost growth to the agencies and the taxpayers.

Conclusion – MCAA fully supports the Biden Administration's Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects, and these proposed regulations implementing that Executive Order – MCAA supports the Administration's Executive Order 14063 and these proposed regulations as sound, judicious and an entirely appropriate exercise of the President's authority and obligation under the Federal Property and Administrative Services Act to promote economy and efficiency in Federal construction contracting.

Furthermore, MCAA will be alert to further Office of Management Guidance on how the well-considered and adequate exceptions and reporting requirements under Sections 5 and 6 of the EO will be spelled out as called for in Section 8(b) of the EO to ensure the full benefits of implementing the EO while at the same time safeguarding the taxpayers' interest in gaining successful project completions.

MCAA recognizes that the EO establishes a strong presumption in favor of use of PLAs on large scope projects, and that the preamble also grants that there will be some flexibility in adopting that approach in the initial phases, at least. Furthermore, we would expect that the OMB Guidance will address the application of both the Section 5 exceptions and the Section 6 reporting requirements and the range of flexibility and decision protocols running between the Contracting Officers and Senior Procurement Officials in applying the Section 5 Exceptions decision analysis.

Union-signatory employer advisory role offered under Section 9 of the EO – Moreover, MCAA also would offer to serve in a union-signatory contractor advisory role, perhaps along with other union-signatory employer groups, that perform as both prime contractors and subcontractors on direct Federal projects, providing valuable perspectives to the Department of Defense, Department of Labor, and the Office of Management and Budget as they develop the Contracting Officer training called for under Section 9 of the Executive Order. In particular, union-signatory employer input through an advisory council might be particularly valuable to the procurement personnel in making the decisions about whether to apply the PLA specification for all bidders/offerors in the initial solicitation, or whether to require the PLA only of successful offerors or bidders, or even to postpone the final PLA to be provided only after the contract award. Union-signatory employers that compete for direct Federal project awards as either prime contractors or subcontractors could offer valuable input on how the various options with respect to when to specify and produce the PLA in the contracting process would impact their bid or offer preparation and the impact of those choices on contract pricing and changes for late adjustments relative to bid or offer acceptance.

Validation of the EO policy by experience and actual project data research – The discussion below will detail generally how past practice and experience in both the public and private sectors validates the policy under the EO. A look at the list of Federal PLA projects going back to the Grand Coulee and Shasta and Hoover Dams, Cape Canaveral, and even Tennessee Valley Authority (TVA) projects, the record establishes that Federal procurement agencies have long had discretion to use PLAs in the sound exercise of their purchasing discretion, even in the absence of a specific EO direction or mandate. Also, the increasingly long list of private sector and state and local and Federally assisted PLAs too validates their efficacy over time. The Boston Harbor project is a prime example of a successful PLA – and the project that began the process of the competing PLA EOs between various administrations going back to the first Bush Administration. More recent experience in the Washington, DC, area on some large scope mega projects such as the Metro Silver Line Phase 1 and the Cove Point Liquid Natural Gas Facility on the Chesapeake Bay in Maryland are leading primary examples of how PLAs can play integral roles in large scope project success and control against too common unanticipated large cost and schedule problems too often occurring on large scope mega projects that don't take such precautions as using PLAs.

New specific project research validating PLAs sponsored by the Mechanical Industry Advancement Fund and commissioned from Independent Project Analysis – In new construction project productivity research commissioned by the Mechanical Industry Advancement Fund (MIAF), a national labor/management cooperative committee with trustees appointed by the UA and the MCAA, from the national, and independent, construction engineering and cost consulting firm, Independent Project Analysis (IPA), incontrovertibly demonstrates from actual specific project analysis that the union sector is substantially more productive and cost effective than the open shop sector. The IPA study encompasses some 1,550 projects performed in the U.S. over the past 20 years. ***The IPA data analysis shows a 14% work output productivity advantage for union projects over non-union projects, and fully a 15% advantage for union mechanical work as compared with non-union mechanical scope.***

Moreover, the new IPA study data shows not only wide productivity advantages of the union projects over open shop projects, but also demonstrate that the advantages of union workforce skill and training, more reliable union-sector workforce deployment of adequate numbers of skilled workers, and the lower turnover rates of union labor on projects relative to the open shop, all combine to lower overall project costs substantially, and serve too as effective and significant risk mitigation safeguards against the risk of project cost and schedule slippage relative to open shop projects.

While the open shop wages come in on average some 9.7% below the all-in union rates, in the IPA analysis, the union sector work productivity advantages, ***and lower union craft staffing levels (10 % below the open shop) and more reliable workforce deployment with less turnover over the course of the project combine to make the union sector fully 4% more cost effective overall relative to the open shop***. Furthermore, IPA concludes that the combined

effect of these union-sector advantages relative to non-union projects advantages further substantially diminishes the risk of substantial cost and schedule overruns relating to staffing problems. Moreover, the IPA data shows that project execution with ***union subcontract labor as compared with owner or prime contractor direct hire deployment is an additionally 3% more cost effective due to difference in workforce project management practices.***

Following is the Executive Summary from the IPA report for the MIAF dated October 2022:

Executive Summary: This study expands on an earlier study that found that union labor is more productive than open shop labor and projects that employed union labor cost less, despite the higher average all-in wage rate paid to union labor.

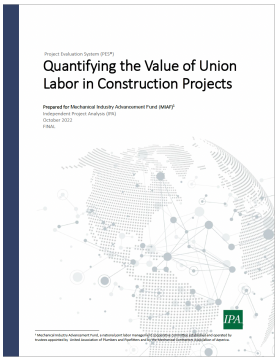
Other studies have found that higher craft labor costs for union labor on prevailing wage projects do not result in higher project costs than non-prevailing wage projects.

The current study confirmed the findings from the earlier IPA study and examined some of the underlying differences in union labor versus open shop labor that may explain the differences in productivity as well as the overall effect on project outcomes.

The study found:

- Productivity for union labor is 14 percent higher versus open shop labor
- Productivity for projects that used a mix of union and open shop labor were 8 percent more productive than projects that used all open shop labor
- The use of union labor reduces the total cost of projects by an average of 4 percent versus when open shop labor was used
- The union craft labor and foremen have demonstrated a significantly higher level of skills versus open shop labor
- Strong relationships exist between higher craft skills and lower project total costs as well as better construction schedule predictability
- Projects are 40 percent less likely to experience a shortage of skilled labor when union labor was sourced versus open shop labor
- Projects that are short on skilled labor are twice as likely to have a 10 percent or higher cost overrun and are more likely to have schedule slip of 25 percent or higher
- Turnover of labor on projects was one-third less likely when union labor was employed versus open shop labor
- Turnover of labor was linked to worse project cost and schedule outcomes

The overall findings indicate that the combination of better skills, more reliable sourcing of sufficient skilled labor, and better labor stability (e.g., less labor turnover) all contribute to better productivity and better project outcomes.



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MCAA Conclusion – In summary, long-recognized use and experience with PLAs in the private and public sectors nationwide on a great many notable projects extending for many years, combined now with new objective research on union/non-union productivity on a database of some 1,550 private sector capital projects in IPA's database over the past 20 years convincingly validates the sound purchasing policy advanced in Executive Oder 14063.

Respectfully submitted,

Jim Gaffney, President Goshen Mechanical Contractors, Inc., West Chester PA, and Chair MCAA Government Affairs Committee

Timothy J. Brink, CEO MCAA