

# PUBLICATION

---

## THEY'RE BAAAAACK: PLAs Return to Haunt Non-Union Contractors

May 13, 2010

On April 13, 2010, the Federal Acquisition Regulation (FAR) Council released a final rule implementing President Obama's Executive Order 13502, which encourages federal agencies to use Project Labor Agreements (PLA) on federal construction projects valued at \$25 million or more. EO 13502, which was actually issued on February 6, 2009, repealed President Bush's Executive Orders 13202 and 13208, which in turn declared that neither the federal government, nor any agency acting with federal assistance, shall require or prohibit construction contractors to sign union agreements as a condition of performing work on government construction projects. It is estimated that President Bush's EO 13202, in the eight years it was in existence, caused at least \$147.1 billion worth of federal construction projects to be competitively bid without discrimination against non-union contractors.

So what's the big deal about PLAs anyway? A PLA is a multi-employer, multi-union, pre-hire agreement designed to systemize labor relations between multiple construction trade unions and contractors on a specific construction site. PLAs typically require that the contractor hire all workers through union halls, that nonunion workers pay dues for the length of the project and that the contractor follow union rules on pensions, work conditions and dispute resolution. Opponents of PLAs argue that they are nothing more than payback to organized labor, citing the fact that the construction industry has changed from being dominated by union monopolies to being 85% non-union with full and open competition. In addition, the Associated Builders and Contractors Association complains that the final rule fails to acknowledge any of the discriminatory effects of government-mandated PLAs on non-union contractors and their employees, noting in particular that 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.

What does the final rule address?

- As noted, it applies to federal construction projects costing \$25 million or more and does not specifically address smaller-scale federal projects.
- The rule does not mandate the use of PLAs. Rather, it allows federal agencies flexibility in developing individual agency PLA policies that can be applied to federal projects on a case-by-case basis.
- It allows federal agencies several options for when they can require contractors to submit a PLA during the acquisition process: (1) when the offers are due; (2) prior to an award (by apparent successful offeror); or (3) after an award.
- It allows agencies to specify the minimum terms and conditions of a PLA in the project bid solicitation. As a condition of receiving a contract award, federal agencies can require the successful offeror to become a party to a PLA containing a minimum of agency-drafted terms and conditions.
- It prohibits agencies from retroactively mandating PLAs on federal projects already underway.
- It gives agencies discretion in addressing the impact of a PLA on small businesses.

Shortly after President Obama issued EO 13502, an effort got underway in the U.S. House and Senate to pass legislation designed to override the executive order. Bills S.90 and H.R.983, the Government Neutrality in Contracting Act, would direct the head of any federal agency that awards or obligates funds for any construction contract, or that awards grants, provides financial assistance, or enters into cooperative

agreements for construction projects, to ensure that bid specifications, project agreements or other controlling documents do not: (1) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, agreements with a labor organization, with respect to that construction project or another related construction project; or (2) otherwise discriminate against such a party because it did or did not become a signatory or otherwise adhere to such an agreement.

Construction contractors opposed to PLAs are encouraged to contact their representatives in Washington to seek co-sponsors for these Bills. To that end, Baker Donelson's nearly 70 labor and employment attorneys and nearly 45 public policy advisors stand ready to assist with these or any other labor and employment concerns. Do not hesitate to contact your Baker Donelson attorney or any of Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

Baker Donelson gives you what boutique labor and employment firms can't: a set of attorneys who are not only dedicated to the practice of labor and employment issues, but who can reach into an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs. We set ourselves apart by valuing your entire company. And when it comes to your company's most valuable asset – your employees – we're committed to counseling with and advocating for you every step of the way.