

Project Labor Agreements on Large-Scale Federal Construction Projects Required by Executive Order

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A project labor agreement (PLA) will be required prior to awarding federal construction projects valued at \$35 million or more to any construction contractors and subcontractors under the [Executive Order on Use of Project Labor Agreements for Federal Construction Projects](#) signed by President Joe Biden while visiting Ironworkers Local 5 in Marlboro, Maryland, in February of 2022. This Order is consistent with Biden's campaign promise to be the most union-friendly president in U.S. history.

The Order is technically in effect as of February 4 and applies to all solicitations for contracts for these projects. However, the Federal Acquisition Regulatory Council (FAR Council) must propose regulations by June 4, 2022, to implement the Order. In addition, the threshold of \$35 million may increase over time if the FAR Council decides it will be adjusted based on inflation.

An estimated \$262 billion in federal construction contracts and around 200,000 construction workers are expected to be affected by the Order.

PLA Basics

A PLA is a pre-hire, collective bargaining agreement that contractors enter with one or more labor organizations establishing terms and conditions of employment for a specific construction project. The PLA can include dispute resolution procedures, wages, hours, working conditions, and bans on work stoppages.

Non-union contractors may work on PLA projects, but they must abide by the terms of the PLA (and the specific union's local collective bargaining agreement) for the duration of that project. For contractors already signatory to a union contract, the PLA would be an additional layer to the existing union agreement. The non-union contractor need not sign on to union agreements for other work not covered by the PLA.

Key Provisions

Under the Order, the PLA must:

1. Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
2. Provide mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;
3. Provide a guarantee against strikes, lockouts, and similar job disruptions; and
4. Conform to all statutes, regulations, executive orders, and presidential memoranda.

The Order also allows contractors to compete for contracts and subcontracts regardless to whether they are unionized or non-union.

Exceptions

There are exceptions to the PLA requirement. The Order does not mandate a PLA if

doing so would:

1. Substantially reduce the number of potential bidders;
2. Otherwise be inconsistent with federal law; or
3. Would result in inefficiency in federal procurement.

Inefficiency factors can include:

- a. The project is of short duration or lacks complexity;
- b. The project involves only one craft or trade;
- c. The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors; and
- d. The agency's need for the project is so unusual and urgent that a PLA would be impracticable.

While PLAs are ostensibly meant to improve timeliness and lower cost of federal construction projects to get the best value for taxpayers, there are concerns that PLAs could decrease competition by discouraging smaller and nonunion contractors from bidding on these large-scale federal projects. Many such employers find compliance with a PLA too cumbersome to be worth pursuing.

Further, nonunion contractors may find it difficult to operate under the terms of union contracts and a PLA they do not otherwise have to follow. Unions also may utilize PLA work as an opportunity to attempt to organize employees of nonunion contractors, leading some contractors to simply avoid union-related issues altogether in their operations. Ultimately, where fewer nonunion contractors bid on such work, thereby eliminating some typically lower-cost contractors from the bidding pool, PLAs may undermine the administration's stated goal of reducing project expenses.

Importantly, the Order does not affect projects controlled by state and local governments, even those that receive federal funding. The Order also does not affect most projects state and local governments will take on under the [Infrastructure Investment and Jobs Act \(2021\)](#). Many state and local governments already have PLA-friendly legislation or regulations.

Please contact a Jackson Lewis attorney with any questions.

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