



April 29, 2010

The Honorable Mitch McConnell
United States Senate
361A Russell Senate Office Building
Washington, D.C. 20510

Re: Support the Government Neutrality in Contracting Act

Dear Senator McConnell:

The Federal Acquisition Regulation (FAR) Council recently issued a final rule implementing Executive Order 13502 on the use of government-mandated project labor agreements (PLAs) on federal construction projects. For the reasons stated below, the Associated General Contractors of America (AGC) opposes this rule and urges you cosponsor the Government Neutrality in Contracting Act (H.R. 983 and S. 90).

AGC is the leading association for the construction industry. Founded in 1918 at the express request of President Woodrow Wilson, AGC now represents more than 33,000 firms in nearly 100 chapters throughout the United States. Among the association's members are approximately 7,500 of the nation's leading general contractors, more than 12,500 specialty contractors, and more than 13,000 material suppliers and service providers to the construction industry. These firms engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, hospitals, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. Many of these firms regularly perform construction services for the U.S. Army Corps of Engineers, the Naval Facilities Engineering Command, the General Services Administration and other federal departments and agencies. Most are small and closely-held businesses. Unlike many associations in the industry, AGC proudly represents both union and open-shop construction contractors.

It is our belief that the government should maintain full and open competition in the bidding process for federal and federally funded construction projects and oppose efforts to impose or favor the use of government-mandated PLAs on such projects. The Final Rule, which was published on April 12, 2010, gives contracting agencies broad discretion to determine whether to require a PLA on a project, when it should be executed, and what the terms the PLA will contain. While the FAR Council did accept AGC's recommendation not to retroactively impose a PLA mandate on a project after contracts have been awarded, there are many troublesome aspects of the new rule. We strongly oppose efforts by government officials, who often have little or no experience in construction labor relations, that undermine existing relationships between contractors and construction workers, and we continue to encourage agency officials to exercise the latitude provided by the rule to avoid imposing these agreements.

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AGC strongly supports full and open competition – among all qualified firms, and without regard to their labor policy. Such openness is needed even more so in an economy that has put the construction industry in a depression with almost 25 percent unemployment. AGC believes that government-mandated PLAs tread upon a union contractors’ statutory right to work under the terms and conditions of collective bargaining agreements that have already been negotiated on an area-wide basis. Furthermore, while a PLA mandate may be facially neutral and, as required by the Final Rule, permit both union and open-shop firms to compete for a contract, it has a discriminatory impact. Because such mandates 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 – they render competing for such contract impracticable for many potential bidders, particularly those firms not historically signatory to collective bargaining agreements. The effect is to reduce the number of potential bidders and competition, which can lead to increased costs to the government and, ultimately, the taxpayers.

Project owners have many ways to ensure that their construction contractors complete their projects in a timely manner, and there is no reliable evidence that PLAs improve the performance that an owner can expect in the absence of such an agreement. In cases where use of a PLA would benefit a particular project, the general contractor awarded the contract will be the first to recognize that need and will negotiate and execute a PLA voluntarily.

Please support H.R. 983/S.90. Keep the government neutral in labor-management relations in the construction industry and protect the cost-effectiveness of public works.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen E. Sandherr". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen E. Sandherr
Chief Executive Officer