



Todd Roberts, President
Rick Andritsch, Senior Vice President
Trey Pebley, Vice President
Mac Caddell, Treasurer
Jeffrey D. Shoaf, Chief Executive Officer
James V. Christianson, Chief Operating Officer

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Ryan King
U.S. Army Corps of Engineers
Louisville District
600 Dr Martin Luther King Jr. Pl.
Louisville, KY 40202

Sent via electronic mail to ryan.m.king2@usace.army.mil

RE: PLA Survey – Advanced Skills Trainee Barracks – Camp Parks, CA– W912QR25R0028

Dear MAJ Forde,

On behalf of The Associated General Contractors of America (“AGC”), I thank the U.S. Army Corps of Engineers (“USACE”) for soliciting input from the construction community regarding the potential use of a project labor agreement (“PLA”) or large-scale construction projects (exceeding \$35 million) for the construction of a 45,000-SF barracks to support the Non-Commissioned Officers Academy (NCOA) and 80th Training Command Total Army School System (TASS) at Camp Parks in Dublin, California (hereinafter “Advanced Skills Trainee Barracks Project”). While AGC is not an interested source, as the largest trade association representing potential offerors on your projects, we are an interested party and wish to offer our input.

AGC believes that the USACE should not mandate use of a PLA on any project. AGC neither supports nor opposes contractors’ *voluntary* use of PLAs on the Advanced Skills Trainee Barracks Project or elsewhere but strongly opposes any *government mandate or prohibition of* contractors’ use of PLAs. AGC is committed to free and open competition for publicly funded work and believes that the lawful labor relations policies and practices of private construction contractors should not be a factor in a government agency’s selection process. AGC believes that neither a public project owner nor its representative should compel any firm to change its lawful labor policies or practices to compete for or perform public work, as PLAs effectively do. AGC also believes that government-mandated use of PLAs can restrain competition, drive up costs, cause delays, and lead to jobsite disputes. If a PLA would benefit the construction of a particular project, the contractors otherwise qualified to perform the work would be the first to recognize that fact, and they would be the most qualified to negotiate such an agreement. In short, the choice of whether or not to use a PLA on a public construction project should be left to the contractor’s discretion.

We provide the following comments in response to your questions in reference to the Advanced Skills Trainee Barracks Project:

- 1. Do you have knowledge that a PLA has been used in the local area on projects of this kind? If so, please provide supporting documentation.**

AGC is not aware of any PLAs that have been used in the local area on projects of this kind and

defers to the wisdom of local contractors and local associations on this issue. AGC has a network of 88 [local chapters](#), including several in the general vicinity of the Advanced Skills Trainee Barracks Project. The chapter covering the project location is [AGC of California](#). AGC encourages USACE to contact the chapter for more information on the use of PLAs in the project area.

- 2. Are you aware of skilled labor shortages in the area for those crafts that will be needed to complete the referenced project? If so, please elaborate and provide supporting documentation where possible.**

AGC also defers to the wisdom of local contractors and local AGC chapters (see chapter information in the response to question 1 above) concerning local labor supply and demand. However, we question the relevance of this inquiry in the assessment of the need for a PLA mandate. Should skilled labor shortages arise, how would a PLA mandate remedy the problem? Is there objective evidence that the local union hiring halls for the specific trades needed for this project will be able to supply the number of workers needed? Is there evidence that they can supply such labor more efficiently or effectively than other labor and recruitment resources that may be available?

- 3. Are you aware of time sensitive issues/scheduling requirements that would affect the rate at which the referenced project should be completed? If so, please elaborate and provide supporting documentation where possible.**

AGC is not in a position to answer this question and defers to the wisdom of contractors on this matter. However, we again question the relevance of this inquiry in the assessment of the need for a PLA mandate. Even if there are such time-sensitive issues and scheduling requirements – as is typically the case with a large-scale construction project – how will a PLA mandate help? Under certain circumstances, a PLA may help avoid delays caused by labor disputes, but it cannot do anything to prevent the vast majority of causes of construction project delay. It cannot prevent or cure common causes of delay, such as supply chain problems, weather, force majeure, permitting, or unexpected site conditions. As explained below in our answer to question 4, there is no reliable evidence that indicates that a government-mandated PLA would favorably impact the construction schedule or advance the federal government’s interest in achieving economy and efficiency in federal procurement.

- 4. Identify specific reasons why or how you believe a PLA would advance the Federal Government’s interest in achieving economy and efficiency in federal procurement.**

AGC believes that a PLA *mandate* would *not* advance the Federal Government’s interests in achieving economy and efficiency in federal procurement. There are no widely published studies establishing that the use of PLAs has consistently lowered the cost, shortened the completion time, or improved the quality of construction of public projects. While case studies have had varying results, research regarding the impact of PLA use on the economy or efficiency of projects in general is inconclusive. In a 1998 study by the agency then called the Government Accounting Office, the agency reported that it could not document the alleged benefits of past mandates for PLAs on federal projects and that it doubted such benefits could ever be documented due to the difficulty of finding projects similar enough to compare and the difficulty of conclusively demonstrating that performance differences were due to the PLA versus other factors. (U.S. Government Accounting Office, *Project Labor Agreements: The Extent of Their Use and Related Information*, GAO/GGD-98-82.) The Congressional Research Service reached the same conclusion in a report issued in July 2010. (U.S. Congressional Research Service Report R41310, *Project Labor Agreements*, by Gerald Mayer.) Government mandates for PLAs—even when competition, on its

face, is open to all contractors— can have the effect of limiting the number of competitors on a project, increasing costs to the government and, ultimately, the taxpayers. This is because government mandates for PLAs typically require contractors to make fundamental, often costly changes in the way they do business. For example:

- PLAs typically limit open shop contractors’ rights to use their current employees to perform work covered by the agreement. Such PLAs usually permit open shop contractors to use only a small “core” of their current craft workers, while the remaining workers needed on the job must be referred from the appropriate union hiring hall. While such hiring halls are legally required to treat union nonmembers in a nondiscriminatory manner, they may, and typically do, maintain referral procedures and priority standards that operate to the disadvantage of nonmembers.
- PLAs frequently require contractors to change the way they would otherwise assign workers, requiring contractors to make sharp distinctions between crafts based on union jurisdictional boundaries. This imposes significant complications and inefficiencies for open-shop contractors, which typically employ workers competent in more than one skill and perform tasks that cross such boundaries. It can also burden union contractors by requiring them to hire workers from the hiring halls of different unions from their norm and to assign work differently from their norm.
- PLAs typically require contractors to subcontract work only to subcontractors that adopt the PLA. This may prevent a contractor (whether union or open shop) from using on the project highly qualified subcontractors that it normally uses and trusts and that might be the most cost-effective.
- PLAs typically require open-shop contractors to make contributions to union-sponsored fringe benefit funds from which their regular employees will never receive benefits due to time-based vesting and qualification requirements. To continue providing benefits for such employees, such contractors must contribute to both the union benefit funds and to their own benefit plans. This “double contribution” effect significantly increases costs.
- PLAs typically require contractors to pay union-scale wages, which may be higher than the wage rates required by the Secretary of Labor pursuant to the Davis-Bacon Act. They often also require extra pay for overtime work, travel, subsistence, shift work, holidays, “show-up,” and various other premiums beyond what is required by law.

A key component exacerbating the potential for inefficiency and costliness of a PLA mandate under Executive Order 14063 is the extraordinary power that it grants labor organizations to influence which contractors are able to fulfill the solicitation or award requirements and which contractors are able to bid competitively. The amendments to the Federal Acquisition Regulation implementing the Executive Order provide contracting agencies with three options. They may require submission of an executed PLA: (1) when offers are due, by all offerors; (2) prior to award, by only the apparent successful offeror; or (3) after award, by only the successful offeror. Since issuance of the rule, most agencies have exercised the option to require all offerors on a particular project to submit an executed PLA with their bids. This practice is highly inefficient and unduly wasteful of both the bidders’ and labor organizations’ time and resources, not to mention that of the agencies that must review all of the proposals. Furthermore, many contractors interested in submitting an offer—particularly where construction in the project area or of the project type are typically performed by open-shop contractors— have no familiarity with the labor organizations there and have no idea of whom to contact for the required negotiations. In these ways, the PLA mandate is likely to deter many qualified contractors from bidding on the project.

Moreover, even if the contractor is able to identify representatives of appropriate labor organizations and attempts to contact them to request negotiations for a PLA, the contractor has absolutely no means to require the labor organizations to even answer their call, nonetheless to engage in negotiations over PLA terms with them. Absent an established collective bargaining relationship with the contractor under Section 9(a) of the National Labor Relations Act ("NLRA"), unions have no legal obligation to negotiate with any particular contractor and have no legal obligation to negotiate in a good-faith, nondiscriminatory, and timely manner. Thus, requiring offerors to negotiate with another party—a party with which the offeror has no authority to compel negotiations—effectively grants the other party (i.e., labor organizations here) the power to prevent certain contractors from submitting an acceptable offer. Requiring submission of an executed PLA not only enables the labor organizations to determine which contractors can submit a responsive offer (by picking and choosing with which contractors they will negotiate), it also enables them to determine which contractors will submit a competitive attractive offer (by giving a better deal to one contractor over another). Such a requirement contravenes the Executive Order's directive that mandatory PLAs "allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements" as well as its objective of advancing economy and efficiency in federal procurement.

At the same time, if the agency requires only the apparent successful bidder to execute a PLA after offers have been considered, or if it requires only the successful bidder to execute a PLA after the contract has been awarded, then cost terms may be too uncertain at the time that offers are considered to elicit reliable proposals. Furthermore, these options again create a serious risk of granting labor organizations excessive bargaining leverage. The agency could be putting the contractor in the untenable position of having to give labor organizations literally anything they may demand or having their contract with the government terminated. Parties involved in collective bargaining should never be required to reach an agreement but should be required only to engage in good-faith bargaining to impasse, consistent with the mandates of the NLRA.

Given the uncertainty of cost savings and potential for cost increases as described above, not to mention the delays that can be caused by litigation and the like, AGC recommends that the USACE refrain from mandating the use of a PLA on the Advanced Skills Trainee Barracks Project and instead leave to contractors the option of using PLAs on a voluntary basis.

5. Identify specific reasons why you do not believe a PLA would advance the Federal Government's interest in achieving economy and efficiency in federal procurement.

Please see the response to question 4.

6. Identify any additional information you believe should be considered on the use of a PLA on the referenced project.

As stated above, AGC strongly recommends that the USACE allow prime contractors to decide whether a PLA is appropriate for a particular project and to execute one voluntarily should they deem it appropriate. If, however, the USACE chooses or must reject our primary recommendation, then we urge you, before imposing a PLA mandate on any project, to conduct, on a project-by-project basis, a scientific and well-documented study of relevant factual conditions and circumstances to determine whether a PLA mandate would advance each of the government interests set forth in Section 1 of Executive Order 14063 more than the interests would be advanced without a PLA mandate. Such an analysis should include thorough research and analysis of such issues as:

- Which firms normally perform the types of construction services involved in the project and are likely to submit a well-qualified proposal? What proportion of them are union contractors and what

proportion are open-shop contractors? What experience do they have in working under a PLA? Are they willing to work under a PLA, or would a PLA mandate deter them from bidding on the project?

- Is there a sufficient number of qualified contractors (including subcontractors) in the local area of the project willing and able to work on the project if it has a PLA mandate? If not, will USACE or the prime contractor have to rely on out-of-town contractors? If so, what impact might this have?
- Is there a set-aside goal for small businesses? If so, what proportion of the contractors in the area that would qualify to satisfy the goal are union contractors and what proportion are open-shop contractors? Are these contractors willing and able to work under a PLA?
- What specific crafts are needed for the project and what is the specific level of labor surplus or shortage for each of those crafts in the local area? What percentage of each of those craft workforces is represented by a union? What evidence is there that the local union hiring halls for each craft will be able to supply the particular labor needed? What other sources of labor or recruitment are available?
- What is the recent history of construction-industry strikes, jurisdictional disputes, or other delay causing labor strife in the local area? If the area is largely open-shop, is a PLA actually needed to prevent such problems? If the area is largely union, would local-area CBAs offer sufficient protection against such problems? Will all of the unions representing the trades needed for the project be willing to execute the PLA? If not, could the PLA create problems for contractors signatory to CBAs with the trades that are not party to the PLA and lead to jurisdictional disputes?
- What is the recent history of PLA use on comparable projects in the local area? If PLAs recently have been used there, what quantifiable impact (positive or negative) have they had on project cost, timeliness, quality, and other factors? Have comparable projects in the area been successfully completed without use of a PLA?
- Will the project be subject to a prevailing wage law? If so, which one(s)? How would the requirements of the law differ from the contractual requirements of the PLA with respect to wages, fringe benefits, and labor practices? How will this affect the cost of the project?
- Would a PLA mandate violate the Competition in Contracting Act, Federal Acquisition Regulation, National Labor Relations Act, Employee Retirement Income Security Act, Small Business Act, or any other applicable procurement or funding legislation?
- Are there any local or state laws requiring, prohibiting, or otherwise governing the use of PLAs in the area of the project? If so, do those laws apply to the present project? Would they have an impact on the lawfulness or propriety of a decision to mandate a PLA or to not mandate a PLA?
- Is a PLA mandate likely to provoke a bid protest or other challenge under federal, state, or local laws? Could such a challenge increase the cost of the project or delay its initiation and completion? Would a public hearing be required or appropriate under the relevant procurement laws and regulations?

Many of these considerations are relevant to the considerations for determining whether an exception is in order as authorized in Section 5 of the Executive Order, as implemented by FAR Section 22.504(d), *Exceptions to project labor agreement requirements*. The regulation provides:

(1) Exception. The senior procurement executive may grant an exception from the requirements at 22.503(b), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve 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.

(D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104). A likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

(2) Considerations. When determining whether the exception in paragraph (d)(1)(ii) of this section applies, contracting officers shall consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a project labor agreement (*e.g.*, costs of labor or materials, supply chain costs). Agencies may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope.

(3) Timing of the exception—

(i) *Contracts other than IDIQ contracts.* The exception must be granted for a particular contract by the solicitation date.

(ii) *IDIQ contracts.* An exception shall be granted prior to the solicitation date if the basis for the exception cited would apply to all orders. Otherwise, exceptions shall be granted for each order by the time of the notice of the intent to place an order (*e.g.*, 16.505(b)(1)).

OMB Memo M-25-29 and M-24-06 (as revised by OMB Memo M-25-29) provide agencies with further guidance on granting an exception. Notably OMB Memo M-25-29 states:

If, based on market research for a given project, two or more offerors express interest (or three bids for sealed bidding) but prices are expected to be higher than the government's budget by more than 10 percent due to the PLA requirement, the agency may use this finding to support a determination that fair and reasonable pricing cannot be achieved.

Given this, AGC urges the USACE to allow offerors three options on any project on which a PLA mandate is being considered: (1) to submit a proposal based on performance under a PLA, (2) to submit a proposal based on performance without a PLA, or (3) to submit two proposals, one based on performance under a PLA and one based on performance without a PLA. This will enable the agency to better evaluate the likely cost impact of a PLA on the particular project and the appropriateness of granting an exception.

Last but certainly not least, we point out an important recent development directly relevant to considering, as required by FAR Section 22.504(d)(1)(iii), whether “requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.” In its January 21, 2025, opinion and order in *MVL USA v. U.S.*, the Court of Federal Claims, in addressing bid protests brought before it, found that the PLA mandate violates the Competition in Contracting Act (CICA). The court held:

In sum, the PLA mandate “precludes full and open competition by effectively excluding [a non-PLA] offeror from winning an award”—both in the function of the mandatory rule itself and in the apparent policy to deny exceptions even when the agency itself commissions data indicating an exception should be made. See *NGS*, 923 F.3d at 990. Accordingly, the Court finds the PLA mandates have no substantive performance relation to the substance of the solicitations at issue and violate CICA’s requirement that procuring agencies “obtain full and open competition through the use of competitive procures.”

The court further noted, “Without invoking any other statutory authority, the government’s argument the PLA mandate is ‘authorized by law’ falls short of the express statutory authorization mandated by Congress in § 3301(a) of CICA.”

While the court’s remedy for the violations was limited to the specific projects involved in the protests, the ruling is significant. It demonstrates that agencies cannot blindly impose PLA requirements, especially when market research indicates an anti-competitive impact. The ruling also established a precedent that has already led to similar challenges of PLA mandates imposed on other projects. If USACE imposes a PLA mandate on the Advanced Skills Trainee Barracks Project, contractors are very likely to file bid protests, possibly leading to the same fate as the PLA mandates in the *MVL* projects.

7. Would the inclusion of a Project Labor Agreement (PLA) requirement affect your firm's ability or decision to propose on this project? If so, please explain how or why.

As AGC is an association of construction contractors and not a contractor itself, this question is inapplicable to AGC.

8. Please select one of the following:

- 1. My company will not submit a proposal if PLA is required.**
- 2. My company plans to submit a proposal whether PLA is required or not.**
- 3. My company only plans to submit a proposal if PLA is required.**

As AGC is an association of construction contractors and not a contractor itself, this question is inapplicable to AGC.

Conclusion

In summary, AGC opposes government mandates for PLAs on federal construction projects and urges USACE to refrain from imposing such a mandate on the Advanced Skills Trainee Barracks Project. For the reasons discussed above, USACE should aptly consider granting an exception and to allow its contractors – the parties that have experience in construction labor relations and that would be directly governed by a PLA and that bear liability for delivering the project according to plans – to decide whether a PLA is appropriate for the project and to execute one voluntarily should they deem it appropriate. We appreciate the opportunity to share our insights with you and to help advance our

common goals of fair competition and of economic and efficient performance of publicly funded construction projects. If you would like to discuss this matter with us further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Shoaf", with a stylized, cursive script.

Jeffrey D. Shoaf
Chief Executive Officer