

# Monday Morning Quarterback



AGC of America  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
Quality People. Quality Projects.



[www.agc.org](http://www.agc.org) • April 19, 2010

- ➔ [AGC Home Page](#)
- ➔ [Email our Editor](#)
- ➔ [Search Back Issues](#)
- ➔ [Forward to a Friend](#)
- ➔ [Subscribe](#)
- ➔ [Printer Friendly](#)

## On the Inside

### LABOR

- ➔ [Final Rule on Federal PLAs Gives Agencies Broad Discretion](#)

### FOUNDATION

- ➔ [2010 Carolyn Cooney Memorial Scholarship Awarded](#)

### CHAPTER AWARDS

- ➔ [AGC's Chapter PR Award Winners Announced at Convention](#)

### CURRICULUM & TRAINING

- ➔ [Interested in Partnering with AGC of America to Deliver Training?](#)

### UPCOMING WEBINARS

- ➔ [What Impact Will the New Health Care Law Have on Construction Employers?](#)
- ➔ [Construction Outlook: Ready for a Rebound? Presented in partnership with REED Construction Data.](#)
- ➔ [A Practical Framework for Implementing BIM - Presented in partnership with Autodesk, Inc.](#)
- ➔ [Advanced Issues about Worker Misclassification: What Every Construction Contractor Needs to Know](#)

### LABOR

#### Final Rule on Federal PLAs Gives Agencies Broad Discretion

The Federal Acquisition Regulation (FAR) Council has issued a **final rule** implementing **Executive Order 13502** on the use of project labor agreements (PLAs) on federal construction projects, giving contracting agencies broad discretion to determine whether to impose a PLA mandate on a project, when the PLA should be executed, and what terms the PLA will contain.

The rule implements the executive order's stated policy to "encourage" executive agencies to "consider" requiring the use of project labor agreements in connection with large-scale construction projects, which are defined as projects with a total cost to the federal government of \$25 million or more. Mimicking the Executive Order, the rule provides that an agency "may" require that every construction contractor and subcontractor on a particular project agree to negotiate or become a party to a PLA if the agency decides that use of a PLA will (1) advance the government's interest in achieving economy and efficiency in federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and (2) be consistent with the law. The rule adds several other factors that agencies may consider in their project-by-project evaluation of whether a PLA is appropriate, but it neither requires the agencies to consider those factors nor limits their consideration to those factors. The added factors include whether:

- (1) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades;
- (2) There is a shortage of skilled labor in the region in which the construction project will be sited;
- (3) Completion of the project will require an extended period of time;
- (4) PLAs have been used on comparable projects undertaken by federal, state, municipal, or private entities in the geographic area of the project;
- (5) A PLA will promote the agency's long-term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs; and
- (6) Any other factors that the agency decides are appropriate.

If an agency decides that it will impose a PLA, then the rule provides the agency with three options for going forward. The agency may require submission of an executed PLA (1) when offers are due; (2) prior to award, by the apparent successful offeror; or (3) after award. If the agency decides to permit execution of the PLA after award, then the contractor "will be required to submit an executed copy of the agreement to the contracting officer." This is a troubling change from the **proposed rule**, which required only that the contractor "bargain in good faith to a PLA." Requiring

## MEMBER DISCOUNTS

- ➔ AGC Members Enjoy Special Pricing on HP Business Products

## CONSENSUSDOCS

- ➔ Earth Day Webinar – Green Building: Contract Essentials
- ➔ Webinar – Integrated Project Delivery Under ConsensusDOCS & AIA

## EVENTS

- ➔ Registration Open for Ownership Transfer and Management Succession Course
- ➔ Transportation Construction Coalition Fly-In May 25-26, 2010
- ➔ Registration Open for Summer 2010 BIMForum and BIM Education Programs in Kansas City
- ➔ Registration Open for June Building Contractors Conference
- ➔ Save the Date for the 2010 ELC Annual Conference
- ➔ 2010 ACI-NA/ACC/AGC Airport Project Delivery Systems Summit
- ➔ Registration Open for AGC Safety & Health Conference
- ➔ 2010 Training & Development Conference and HR Professionals Conference

## BOOKSTORE

- ➔ Bookstore Featured Product - AGC Guide to Federal Construction Contracting

## Other Newsletters

- ➔ Construction Legislative Week in Review
- ➔ News & Views
- ➔ Data DIGest
- ➔ Environmental Observer
- ➔ Human Resource and Labor News
- ➔ The Knowledge Source
- ➔ Safety and Health
- ➔ Building Material
- ➔ Highway Facts Bulletin

settlement of a contract rather than just good-faith bargaining may give the unions involved extraordinary bargaining leverage, as the contractor must execute a PLA or it will be in breach of its contract with the government.

Moreover, the rule allows agencies to include in the contract solicitation specific PLA terms and conditions and to require the successful offeror to become a party to a PLA containing those terms and conditions. This is another troubling change from the proposed rule, which expressly prohibited the contracting agency from participating in the negotiations of any PLA. The final rule notes that that the agency “may seek the views of, confer with, and exchange information with prospective bidders and union representatives” in its efforts to identify appropriate terms and conditions and to facilitate agreement on those terms and conditions.

Every PLA must meet certain minimum requirements like those established in the executive order:

- (1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;
- (2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- (3) Contain guarantees against strikes, lockouts, and similar job disruptions;
- (4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
- (5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- (6) Include any additional requirements as the agency deems necessary to satisfy its needs.

On a positive note, the FAR Council adopted AGC’s recommendations that the final rule clarify that agencies must notify contractors of a PLA mandate prior to contract award and that they are prohibited from initiating a PLA mandate after contract award. The FAR Council also encouraged agencies to make their evaluations about whether to impose a PLA mandate early in each project’s planning process.

The final rule is expressly limited to direct federal contracts over \$25 million, as covered in the executive order. The FAR Council did not (and could not) expand coverage to projects below that cost threshold or to federally funded projects, although it points out that the executive order states that agencies are not precluded from using PLAs on projects not covered by the order.

“We appreciate that the Administration accepted our counsel to avoid retroactively imposing government-mandated labor agreements once contracts have already been awarded,” responded AGC Chief Executive Officer Stephen Sandherr. However, we continue to strongly oppose any effort by government officials, who often have little or no experience in construction labor relations, to undermine existing relationships between contractors and construction workers by imposing project labor agreements. Any comprehensive review of existing construction worker benefits and current federal contracting guidelines will prove that government mandated labor agreements are as unnecessary as they are costly and counterproductive. That is why we will continue to encourage agency officials to exercise the broad latitude provided by these rules to avoid imposing these agreements.”

***For more information on the rule, contact Denise Gold, Associate General Counsel, at (703) 837-5326 or [goldd@agc.org](mailto:goldd@agc.org), or Marco Giamberardino, Senior***

- ➔ **Federal Contractor Report**
- ➔ **The Pipeline**
- ➔ **Specialty News**

**Director, Federal and Heavy Construction Division, at (703) 837-5325 or [giamberm@agc.org](mailto:giamberm@agc.org).**

For more information on PLAs, go to AGC's [Labor & HR Topical Resources Web page](#), then select the category "Collective Bargaining" and subcategory "Project Labor Agreements." [Return to Top](#) ↑



**2300 Wilson Boulevard, Suite 400 • Arlington, VA 22201 • 703.548.3118 (phone) • 703.548.3119 (fax) • [www.agc.org](http://www.agc.org)**  
[AGC Home](#) | [About AGC](#) | [Advocacy](#) | [Industry Topics](#) | [Construction Markets](#) | [Programs & Events](#) | [Career Development](#) | [News & Media](#)

To ensure delivery of AGC's Monday Morning Quarterback, please add '[brewere@agc.org](mailto:brewere@agc.org)' to your email address book or Safe Sender List. If you are still having problems receiving our communications, [visit our white-listing page](#) for more details.

© Copyright 2010 The Associated General Contractors (AGC) of America. All Rights Reserved.