

## **PLAs CAN BE COST EFFECTIVE AND EFFICIENT IN CERTAIN CIRCUMSTANCES**

In testimony before the Regulatory Affairs Subcommittee on March 16, Administrator Dan Gordon of OMB's Office of Federal Procurement Policy said:

Each year, the government spends tens of billions of dollars on construction projects. As stewards of the public fisc, it is our responsibility to make sure these resources are spent in the most effective and efficient manner possible. Project labor agreements, like many other procurement authorities provided to agency contracting offices, are just one tool that may help agencies achieve greater economy and efficiency in particular cases. As the E.O. states, our policy is to encourage agencies to consider the use of project labor agreements, but not to require such use by agencies.

Despite the skepticism of some of my colleagues, there are numerous examples of PLAs that have been used with great success in both the public and the private sector including for example, the Tennessee Valley Authority and Toyota.

Q: Dr. Philips: In the course of your research, under what circumstances have you found that PLAs have promoted the success of a public sector construction project?

**When the government comes to the market with a large amount of real, tangible work, the government is in a position to demand concessions. If the government wants priority access to skilled union labor or the investment of union apprenticeship funds into minority training or the use of union hiring halls to facilitate local hire or the transitioning of returning veterans into well-paying construction careers or the implementation of project-specific work rules or the**

**application of new drug testing policies or any other union asset or concession useful to a specific project or government purpose, PLAs are the market contract of choice to harvest these benefits in exchange for access to the work the government controls.**

**Disallowing the government from using PLAs, robs the taxpayer of the ability to harvest the full value of their tax dollars, takes government interests out of the picture and confers the value of an asset the government owns to the general contractor.**

**Transferring the right to contract PLAs solely to the general contractor public works amounts to a taking of taxpayer's assets and transferring them to a private entity.**

Executive Order 13502 does not mandate the use of PLAs regardless of the circumstances. It merely allows agencies to require the use of a PLA on a project-by-project basis when the agency has determined through reasoned analysis that a PLA would facilitate greater economy and efficiency in that specific large-scale construction project.

Q: There will always be some instances where a PLA is not the best option for a large scale construction project. Based on your research, can you describe examples of public PLAs that fell short of their stated goals?

**Most chemical weapons disposal facilities have been built with project labor agreements. In these cases, the primary purpose of these PLAs are to obtain priority access to skilled labor on projects that were both time and quality critical.**

**The Pine Bluff Arkansas \$511 million Chemical Weapons disposal facility used a PLA on a fixed-price contract breaking**

**ground in January 1999 and scheduled for completion in 2002. Despite the PLA, the project ran into labor shortages forcing the Corps of Engineers in 2000 to grant an additional \$23 million in travel and other wage incentives to accelerate construction. The project was eventually completed by the end of 2002.**

Q: What went wrong in these examples and how can federal agencies avoid similar mistakes in their contracting procedures?

**1999 to 2002 was a period of severe labor shortages on civil engineering projects. By using a PLA, the Corp insured that good wages were paid on this project. A nearby Corp project started at the same time, the \$186 million Montgomery Point Dam, was a Davis Bacon job but not a PLA nor a union project. Facing the same tight labor market and paying less than union wages (not all prevailing wages are union rates), this project fell years behind schedule. So the Montgomery Point PLA prevented this catastrophe, but a \$23 million equitable adjustment to finance per diems and travel incentives were needed.**

Q: Dr. Philips: Based on your research of the construction industry, can you describe some examples of public PLAs that have promoted the success of a public sector construction project?

**The Corp was right to use a PLA to make sure this time and quality critical project had priority access to skilled labor in a tight labor market. But a more accurate projection of growing labor scarcities could have forestalled the need to implement an equitable adjustment midstream.**

**REPUBLICANS DENY FUNDING TO ENFORCE E.O.  
13502, LIMITING AGENCIES' ABILITY TO EXPLORE  
PLAs AS A COST CUTTING MEASURE**

Who would disagree with the general principle that in any economic climate, and particularly during lean times, taxpayers will suffer if agencies do not pursue every legitimate opportunity to ensure the efficient and effective completion of government construction projects.

But on May 24, 2011, House Appropriations Committee Republicans voted in favor of an amendment to the military appropriations bill that denied funding to implement and enforce Executive Order 13502. If Project Labor Agreements can be useful in reducing costs and increasing efficiency, this Republican amendment would remove one of the ways the government can reduce costs and increase efficiency.

Q: Dr. Philips: What will be the likely budgetary impact of this amendment? Will overall deficits rise or fall as a result of that amendment?

**Project labor agreements are market contracts designed to use the governments bargaining power derived from bringing work to the labor market. During slack times, any owner bringing work to the market has enhanced bargaining power. Now is precisely the time when the government has the most to win by using PLAs. If the PLA does not get more bang for the buck, as in the nature of all freely contracted arrangements, the government need not and will not sign it. This amendment asks the government to turn a blind eye to opportunity and missed opportunities will mean higher costs and a larger deficit.**

Q: What do you think the intended effect of this amendment was, if it can't be justified for budgetary reasons?

**This is a giveaway to general contractors who will control the work, themselves, and seek their own advantages in spots through PLAs. It is also an effort on the part of nonunion contractors to prevent unions from bringing to the market values for exchange such as access to top quality multiemployer apprenticeship programs for returning veterans or disadvantaged workers.**

In testimony Professor Dale Belman of Michigan State submitted to the Regulatory Affairs Subcommittee on March 16, he noted that “[b]ecause PLAs have many elements ... an agreement’s success at adding value is dependent on design choices and how its provisions are implemented during the project.”

Executive Order 13502 encourages agencies to conduct the due diligence necessary to determine if a PLA can be a tool to help achieve these goals by reducing challenges to timely completion of a large scale construction project and keeping costs down by having an agreed-upon resolution mechanism in place to address labor disputes.

Q: Dr. Philips: How do federal agencies determine whether a PLA will facilitate a more cost effective and efficient large scale construction project? What kinds of research do they conduct? What factors do they consider?

**Federal procurement agencies look at three factors: project specific needs, labor market conditions and positive externalities. Is the project so big that it will overwhelm the local labor market? Is the project on a tight time line? Does the project require scarce skills? Is it an unusually dangerous project? Is the overall local construction labor market tight?**

**Are the local Davis Bacon rates union rates or well below collectively bargained rates? Are there particular night-time or off-hour scheduling needs for this project? Should part of the work not fall under the PLA? How should the PLA provide for key workers of nonunion contractors? Are there special security requirements for this project? These are traditional FACTORS in considering the use of a PLA as a means of obtaining priority access to local skilled labor.**

**Innovative factors include can this project be used to ramp up local apprenticeship training? Is this a good project to facilitate veteran re-entry into the skilled labor force? Is this a good project for innovative approaches to safety or drug testing? Are PLAs the best approach to these issues or are there other contractual alternatives?**

Q: Can this advanced research help agencies avoid some of the potential pitfalls that other witnesses have identified regarding the use of PLAs?

**In all aspects of construction, careful pre-planning and due diligence forestalls future problems. No one contractual tool in construction is fool-proof or eliminates the need to appropriately plan and research the project. PLAs are no different. A well-designed PLA does what it is aimed to do: harvest for the taxpayer the value of bringing significant amounts of work to the market all-the-while maximizing the prospect of bringing the project to completion, on-time, within budget and with a minimum of downstream maintenance.**

**CONCERNS REGARDING PROJECT LABOR  
AGREEMENTS LIMITING COMPETITION AND RAISING  
COSTS ARE OVERSTATED**

Today you've heard the testimony of several individuals and associations from the construction industry claiming that federal agencies' use of PLAs will negatively impact competition and thus drive up construction costs.

According to researchers from the Beacon Hill Institute "it is widely believed that construction projects are more expensive when a PLA is in effect because the competitive pressure that holds down prices in other industries is eroded."

Executive Order 13502 focuses on "large-scale construction projects ... where the total cost to the Federal Government is \$25 million or more" and which are "generally more complex and of longer duration."

Q: Can you discuss how competition among bidders for these types of large construction projects impacts cost?

**Generally, larger projects need fewer bidders to obtain a competitive price. Because the opportunity cost of losing a large project is correspondingly high, contractors invest more in estimating the project coming closer to the true cost of the project and because they know more what they are doing, they place lower margin-for-error premiums into their markups. So on large projects, three or four bidders will give you the same competitive price as nine or ten.**

Q: Dr. Philips, What effect does the use of PLAs have on competition for contracts on these large federal construction projects?

**Critics of PLAs on federal projects claim that PLAs raise construction costs by reducing the number of bidders on these projects. Their basis for this claim is surveys of nonunion contractors' intentions.<sup>1</sup> This has four weaknesses: intentions are not actions; no actual project was under consideration; survey respondents may not be the relevant contractors for federal projects; and the surveyors failed to ask union contractors their intentions.**

**In contrast, in a controlled study of real bids involving real contractors bidding on real school construction projects in the Bay Area, I found that there was no statistically significant difference in the number of bids after one school district adopted a PLA compared not only to before that district had a PLA, but also compared to the adjoining district which did not have a PLA.<sup>2</sup>**

Another Beacon Hill study states that “open-shop (non-union) contractors contend that their competitive advantages are nullified by the PLA even as they comply with other mandates such as the prevailing wage law. The result is that in practice, if not in principle, they are unable to bid competitively on jobs that have a PLA requirement.”

Q: Dr. Philips: Based on your research and familiarity with numerous project labor agreement projects, do PLAs prevent nonunion subcontractors from being included in large federal construction projects?

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<sup>1</sup> David G. Tuerck, PhD, Sarah Glassman, MSEP, Paul Bachman, MSIE, [Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem](#), THE BEACON HILL INSTITUTE AT SUFFOLK UNIVERSITY, AUGUST 2009, p. 18. (All of the following PLA criticisms discussed below are reprised in this report).

<sup>2</sup> Dale Belman, PhD, Matthew Bodah, PhD and Peter Philips, PhD, [Project Labor Agreements](#), ELECTRICAL INTERNATIONAL, THE FOUNDATION FOR ELECTRICAL CONSTRUCTION, 2007, Chapter 4, "Bidding and Costs" pp. 35-37. [http://en.wikipedia.org/wiki/Project\\_Labor\\_Agreement](http://en.wikipedia.org/wiki/Project_Labor_Agreement)

**PLAs do not give the unions or union contractors sole access to federal projects. Federal PLAs permit nonunion contractors to bid on the work. Government PLAs typically permit nonunion contractors to bring key workers onto the project independent of union hiring halls. PLAs can set aside some work for minority contractors; and some of the work can be set outside the PLA. PLAs are flexible and creative labor procurement contracts that bend to the needs of specific projects.**

## ADDRESSING THE BEACON HILL RESEARCH

The Beacon Hill Institute published a report characterizing project labor agreements on federal construction projects as “A Costly Solution in Search of a Problem.”

Q: Dr. Philips, how does this Beacon Hill study stand up?

**This study has not been vetted in any peer-review process and would be unlikely to survive peer-review.**

**Beacon Hill alleges that PLAs raise costs because unions have onerous work rules. This ignores the fact that PLAs are precisely the market instrument capable of setting and adjusting work rules to the specific needs of particular projects. Robbing the government of PLA contracts robs the government of the ability to address this issue that critics claim is salient.**

**Beacon Hill also argue that PLAs raise costs because nonunion contractors must pay double both into their own health insurance program and also into union health programs. However, this argument ignores the fact that only 12 percent of nonunion workers have their health insurance paid fully by their nonunion contractor, and 65 percent receive no health insurance whatsoever from their nonunion contractor.<sup>3</sup> PLAs expand health insurance coverage on federal projects with negligible double premium problems.**

**Critics of PLAs on federal projects claim that PLAs raise construction costs by reducing the number of bidders on these projects. Their basis for this claim is surveys of nonunion**

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<sup>3</sup> Jaewhan Kim and Peter Philips, "Health Insurance and Worker Retention in the Construction Industry," *Journal of Labor Research*, Table 3, Sample means for key variables for union/nonunion workers in the 2001 panel, <http://www.springerlink.com/content/60656065515x8463/>

**contractors' intentions.<sup>4</sup> This has four weaknesses: intentions are not actions; no actual project was under consideration; survey respondents may not be the relevant contractors for federal projects; and the surveyors failed to ask union contractors their intentions.**

**In contrast, in a controlled study of real bids involving real contractors bidding on real school construction projects in the Bay Area, I found that there was no statistically significant difference in the number of bids after one school district adopted a PLA compared not only to before that district had a PLA, but also compared to the adjoining district which did not have a PLA.<sup>5</sup>**

**Beacon Hill claims there were no non-PLA projects during the Bush Administration that incurred cost overruns or labor problems. However, they admit that their collection of data from OMB was incomplete; and they failed to pursue further information from OMB or other pertinent sources such as the Corps of Engineers or lawsuits lodged at the Federal Court of Claims.**

Some of the other witnesses on this panel have claimed that requiring the use of PLAs for federal construction projects raise the cost to tax payers. Your research, however, suggests that these concerns are overstated, if not, explicitly incorrect.

**Q: Can you explain this discrepancy, particularly in cases where you and other experts have examined the same projects?**

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<sup>4</sup> David G. Tuerck, PhD, Sarah Glassman, MSEP, Paul Bachman, MSIE, [Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem](#), THE BEACON HILL INSTITUTE AT SUFFOLK UNIVERSITY, AUGUST 2009, p. 18. (All of the following PLA criticisms discussed below are reprised in this report).

<sup>5</sup> Dale Belman, PhD, Matthew Bodah, PhD and Peter Philips, PhD, [Project Labor Agreements](#), ELECTRI International, The Foundation for Electrical Construction, 2007, Chapter 4, "Bidding and Costs" pp. 35-37. [http://en.wikipedia.org/wiki/Project\\_Labor\\_Agreement](http://en.wikipedia.org/wiki/Project_Labor_Agreement)

**Beacon Hill's work suffers from the basic statistical fallacy of spurious correlation. We know that PLA jobs typically are more complex, involve more amenities, more extensive construction and tend to be built in urban settings. Beacon Hill conflates the effect of PLAs on school costs with the cost effects of the complexity of projects on which PLAs are used.**

**Statistically, one could easily show that pom-poms stunt teenage growth. All you have to do is go to a high school basketball game and put all those holding pom-poms on one side of the room and all the remaining teenagers who just happen to be the basketball players on the other. Lo and behold, all those holding pom-poms have stunted growth compared to the control group! Similarly, Beacon Hill put all the complex jobs on one side and all the simple jobs on the other. Lo and behold, because the simple jobs did not have PLAs and most of the complex jobs did, PLAs cost more money! This sort of simple minded statistics just does not pass muster.**

**Q: Is it your contention that PLAs should be used on every large scale construction project?**

**No. Large scale construction offers the potential for PLAs because by brining lots of work to the market, the government has bargaining power that it might be able to exploit. But the specifics of the project and the local labor market will determine whether this opportunity can or should be taken.**

**Q: Based on your research, what kinds of federal construction projects are best suited for the use of PLAs?**

**PLAs are best suited for large projects where on-time delivery with minimal construction defects are important considerations. More complex and skill demanding projects**

**and/or projects built into relatively tight labor markets are more likely candidates for PLAs. Projects that offer positive externalities associated with skill development and the promotion of construction careers or local hire may offer scope for the use of PLAs. Any time the government comes to the market with jobs when jobs are scarce, the government has bargaining power. PLAs may be a useful vehicle for harvesting that bargaining power in a range of traditional and innovative ways.**

In his written testimony, Dr. Tuerck states:

“The adoption of a PLA amounts, in effect, to the conferral of monopoly power on a select group of construction unions over the supply of construction labor. The putative reason for adopting a PLA, as articulated by PLA advocates, is quite different. The PLA is supposed to be something the owner would welcome. But the real reason a PLA is used or mandated by government agencies at the request of union supporters is to discourage bids from contractors who do not want to sign the PLA and/or do not employ a union workforce.”

Q: Dr. Philips, how would you respond to the claim that PLAs confer monopoly power on a select group of construction unions in order to discourage bids from contractors who do not employ a union workforce?

**The government is the one with bargaining power--not the unions. The government comes into the market with jobs and says--here they are: what are you willing to give up to get these jobs? If the unions are not willing to give up enough, no PLA is signed. If a PLA is signed, the government always demands that nonunion contractors can bid on the work. The government typically requires that some key workers can come**

**on the job with their nonunion contractors independent of the hiring hall. The reason for a PLA is to allow the government to capture its monopoly power over jobs for the benefit of taxpayers. Banning PLAs deprives the government of its bargaining power.**

## **PROJECT LABOR AGREEMENTS CAN HELP CREATE LOCAL JOBS AND ADDRESS OTHER SOCIAL ISSUES**

Project Labor Agreements have been relied upon to do more than just lower costs and ensure the timeliness of large scale projects. PLAs have been used to rebuild communities at the State and local level.

The Partnership for Working Families has praised the use of PLAs in Los Angeles for creating more local jobs by requiring local hiring goals and having the potential to alleviate poverty in low-income communities.

In 2010, Walmart signed a project labor agreement in order to secure the company's expansion into Chicago, a move that would not only require hiring of local contractors, but also combat the city's "food deserts" – poor inner city areas that have been largely abandoned by supermarket chains.

Q: Dr. Philips: Can you discuss how government entities have used PLAs to create local jobs and to address other social issues?

**PLAs allow governments to negotiate with unions over access to work. One typical example is school districts integrating their construction preparation programs to apprenticeship training after graduation with pre-apprenticeship internships on the work governed by the PLA. Another example is community redevelopment agencies rebuilding blighted areas while creating access to construction careers for local residents through union apprenticeship programs. Construction union apprenticeship programs are the largest privately financed post secondary school educational system in America. PLAs are a method of harnessing this system to build local human**

**capital and create opportunities for minorities, women and disadvantaged workers.**

Q: How does H.R. 735 limit the federal government's ability pursue interests such as promoting local and minority hiring?

**Government could simply put into its project specifications that a certain percent of the workforce should be local or minority or disadvantaged. But PLAs can put these folks not only onto the job site but into the union apprenticeship program. With the first approach, the job opportunity ends with the government's project. With the PLA approach, the job opportunity lasts past the project and into a construction career at good wages and solid benefits.**

Both Democrats and Republicans have stated that one of the best ways to get Americans working again is to support small business.

Several experts have found that PLAs can encourage minority and other small business utilization by exempting them from the provisions of the PLAs and including provisions to encourage them to participate in projects.

Q: Dr. Tuerck: Do you believe that if an agency determines that requiring a PLA for a specific project will increase efficiency and promote the creation of jobs for minority and small businesses that requiring a PLA for that project should be prohibited?

Q: Dr. Philips: How can PLAs be used by federal agencies to promote minority and women owned businesses as well as small businesses?

**Unions like to have nonunion contractors on PLAs to let them "test-drive" the union. On a PLA project, small nonunion**

**contractors learn how to expand their business by using already trained and highly skilled workers coming out of the union hall. The small contractor's key workers learn the benefits of top tier family health insurance. This creates a pathway for growth so that women and minority owned businesses on PLA construction sites actually discover new routes for growth open to them by using the abundant skilled labor force available from union hiring halls.**

**PLA critics also ignore the flexibility in PLA contracts to set aside work on the project outside the PLA such as landscaping and making this unskilled work available to minority owned businesses. But in the end, small minority and women owned business can actually become larger businesses through the opportunities and exposures made available through PLAs.**

**HR 735 WOULD PROHIBIT THE FEDERAL  
GOVERNMENT FROM GAINING THE ADVANTAGE  
THAT PRIVATE COMPANIES ENJOY FROM PROJECT  
LABOR AGREEMENTS**

It is important to remember that neither Executive Order 13502 nor the implementing regulation require the use of PLAs on any federal construction project. The order states that in connection with a large-scale construction project, more than \$25 million in total cost to the federal government, an executive agency MAY, on a project-by-project basis, require the use of a project labor agreement only if the agreement will (1) advance economy and efficiency AND (2) is consistent with the law.

My colleagues will no doubt point out that nothing in H.R. 735 “shall be construed to prohibit a contractor or subcontractor from voluntarily entering into” a project labor agreement. However, H.R. 735 would prevent agencies from requiring the use of a PLA except where an agency head “determines that special circumstances exist that require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.”

Q: Dr. Philips: Why should agencies be allowed to require the use of a PLA in other circumstances, rather than letting the contractors/industry decide?

**The answer is simple: the government has its own interests as distinct from the interests of general contractors. The government may value some positive externality such as local hire that the contractor is not interested in. The government may wish to reduce the probability of downstream maintenance past the 5 or 10 years that contractors, given their often short lifespans, are unable to guarantee. The government may have schedule requirements that it does not**

**wish to take any chance with while the contractor may be willing to risk failure to perform in order to win the bid. Government PLAs allows the government to take charge directly of its own destiny when matters warrant. Ceding this in all cases to the market shifts the value of the government's asset--real work--to private entities which will use that asset for their own purposes which may or may not correspond to the government's interests.**

Private PLAs have been shown to help contractors complete large scale projects on time and under budget. The United States Supreme Court has held that public PLAs are constitutional in part because there is a distinction between government as regulator of business and government as proprietor on behalf of the public. As recently as April 18, 2011, the Supreme Court of the United States denied a writ of certiorari to revisit the theory of federal preemption of PLAs.

Q: Dr. Philips, if private PLAs can help private contractors complete large scale construction projects under budget and ahead of schedule, why shouldn't government contract officers use this same process in an effort to spend taxpayer dollars more efficiently?

**To the carpenter with a only hammer, everything is treated like a nail, but sawing two-by-fours with a hammer is inefficient and slow. The market has developed multiple tools for procuring construction services because different construction projects have different needs calling for different forms of contract. PLAs are one of tool among many and private owners have found them to be the right tool for some jobs. Two-thirds of all PLAs are in the private sector.<sup>6</sup> To**

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<sup>6</sup> Kimberly Johnston-Dodds , Constructing California: A Review of Project Labor Agreements, California Research Bureau, California State Library, 2001, p. 1; <http://www.library.ca.gov/crb/01/10/01-010.pdf>

**bind the government's hands in construction procurement, deprives government procurement officers of the right tool for certain jobs, particularly larger jobs with demanding schedules and/or significant skill requirements.**