

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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June 16, 2022

Hon. Shalanda Young
Director
Office of Management and Budget
1650 Pennsylvania Avenue NW
Washington, D.C. 20502

Mr. Dominic Mancini
Deputy Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Avenue NW
Washington, D.C. 20502

Mr. Lesley A. Field
Acting Administrator
Office of Federal Procurement Policy
Office of Management and Budget
1650 Pennsylvania Avenue NW
Washington, DC 20502

Dear Director Young, Deputy Administrator Mancini, and Acting Administrator Field,

We write to you in your capacities at the Office of Management and Budget, Office of Information and Regulatory Affairs, and Federal Acquisition Regulatory Council (FAR Council) as development and review proceed for the Council's proposed rulemaking for project labor agreements (PLAs) in large-scale federal construction projects. President Biden's Executive Order 14063, "Use of Project Labor Agreements for Federal Construction Projects," charged the FAR Council to propose within 120 days a rule which could require PLAs in all federal construction projects worth \$35 million or more.¹ This order threatens to raise taxpayer costs, cut non-union workers out of federal projects, and force right-to-work states to freeze local workers out of cooperative federal projects.

As America emerges from the COVID-19 pandemic and confronts surging inflation, this is exactly the wrong policy to pursue—harming workers, punishing local economies and states, and increasing already out-of-control federal spending. It should come as no surprise, therefore, that Congress did not include PLA requirements in the American Rescue Plan Act of 2021,² the Infrastructure Investments and Jobs Act,³ and other recent infrastructure legislation. Eighty-seven percent of the U.S. construction workforce does not belong to a union.⁴ The President's

¹ 87 Fed. Reg. 7363 (Feb. 9, 2022).

² Pub. L. 117-2 (Mar. 11, 2021).

³ Pub. L. 117-58 (Nov. 15, 2021).

⁴ Ben Brubeck, *BLS: 87.4% of Construction Industry Does Not Belong to a Union*, (Feb. 2, 2022) (citing U.S. Bureau of Labor Statistics data), online at [BLS: 87.4% of Construction Industry Does Not Belong to a Union - The Truth About PLAs](#).

push for PLA requirements threatens to shut the vast majority of construction workers out of the employment opportunities Congress intended this legislation to provide. The danger is especially acute in right-to-work states, where the President’s order threatens to eliminate local workers entirely from work on the affected projects.

Studies show, meanwhile, that PLAs lead to increases of twelve to twenty percent in taxpayer-funded construction costs.⁵ Requiring PLAs drastically reduces the number of contractors and subcontractors able to bid on projects, inevitably raising costs. The anti-competitive policy of E.O. 14063 also has inherent legal implications, as it clearly is contrary to the terms of the Competition in Contracting Act (CICA) of 1984, 41 U.S.C. 253.⁶

Indeed, E.O. 14063 is directly in conflict with President’s Biden’s own “Executive Order on Promoting Competition in the American Economy.”⁷ That order declares a “fair, open, and competitive marketplace” to be “a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.”⁸ The order affirms that “[f]or workers, a competitive marketplace creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage.”⁹ And, the order directs the “heads of all agencies”—including each of you—to “consider using their authorities to further the policies . . . of this [competition] order, with particular attention to . . . the influence of *any of their respective regulations . . . on . . . competition in the industries under their jurisdictions*[.]”¹⁰ To issue a proposed rule requiring PLAs—restricting both labor-source competition and the number of contractors and subcontractors who can compete for federal procurement projects—would fly in the face of this directive.

In short, President Biden’s order on PLAs will likely lead to local workers losing out on jobs, unnecessary delay in the recovery of families and communities, higher costs for taxpayers, decreased competition, and incoherent Administration policy. We expect your development and review of the FAR Council’s proposed rule to account for these concerns and all relevant policy

⁵ See Vince Vasquez, Dale Glaser, W. Erik Bruvold, *Measuring the Cost of Project Labor Agreements on School Construction in California*, NAT’L UNIV. SYS. INST. FOR POL’Y RSCH.; William F. Burke, David G. Tuerck, *The Effects of Project Labor Agreements on Public School Construction in Connecticut*, BEACON HILL INST. FOR PUB. POL’Y RSCH. (Jan. 2020); David G. Tuerck, Paul Bachman, *Project Labor Agreements and Financing Public School Construction in Massachusetts*, BEACON HILL INST. FOR PUB. POL’Y RSCH. (Dec. 2006); William F. Burke, David G. Tuerck, *The Effects of Project Labor Agreements on Public School Construction in New Jersey*, BEACON HILL INST. FOR PUB. POL’Y RSCH. (Aug. 2019); Paul Bachman, David G. Tuerck, *Project Labor Agreements and Public Construction Costs in New York State*, BEACON HILL INST. AT SUFFOLK UNIV. (April 2006); Paul Bachman, David G. Tuerck, *Project Labor Agreements and the Cost of School Construction in Ohio*, BEACON HILL INST. FOR PUB. POL’Y RSCH. (May 2017).

⁶ See, e.g., 41 U.S.C. 253(a)(1) (“except in the case of procurement procedures otherwise *expressly authorized by statute*, an executive agency in conducting a procurement for property or services . . . shall obtain full and open competition through the use of competitive procedures in accordance with this title”) (emphasis added). In fact, the Competition in Contracting Act requires compliance with and is a cornerstone of the Federal Acquisition Regulation itself. See *id.*

⁷ 86 Fed. Reg. 36987 (July 14, 2021).

⁸ *Id.*, sec. 1, 86 Fed. Reg. at 36987.

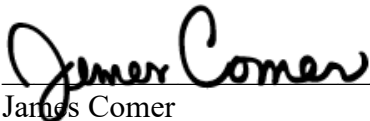
⁹ *Id.*

¹⁰ *Id.*, subsec. 5(a), 86 Fed. Reg. at 36992 (emphasis added).

and legal issues. Accordingly, we ask your offices to brief Committee staff on the proposed rule and its responsiveness to our concerns before the Office of Information and Regulatory Affairs completes review of the proposed rule. Unlike the President’s order, any final FAR Council rule will be subject to review in federal court for whether it is “arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with law.”¹¹ If the rule violates that standard, the reviewing court will be obliged to hold the rule unlawful and set it aside.¹² Indeed, President Biden appeared to recognize the legal dangers of the FAR Council simply rubber-stamping his order—directing the Council to issue a rule only “to the extent permitted by law.”¹³

The Committee on Oversight and Reform has primary legislative jurisdiction over the “overall economy, efficiency, and management of government operations and activities, including Federal procurement” pursuant to House Rule X. In addition, the Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Jody Hice
Ranking Member
Subcommittee on Government
Operations



Glenn S. Grothman
Ranking Member
Subcommittee on National Security



Michael Cloud
Ranking Member
Subcommittee on Economic and
Consumer Policy



Ralph Norman
Ranking Member
Subcommittee on Environment



Nancy Mace
Ranking Member
Subcommittee on Civil Rights and
Civil Liberties

¹¹ 5 U.S.C. sec. 706(2).

¹² *Id.*

¹³ Sec. 8, E.O. 14063, 87 Fed. Reg. at 7365.



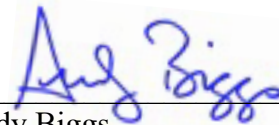
Virginia A. Foxx
Member of Congress



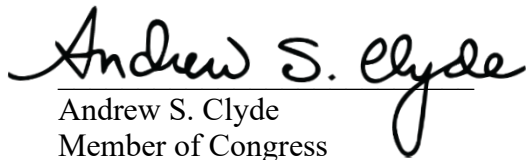
Bob Gibbs
Member of Congress



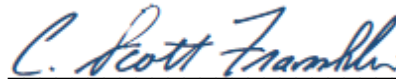
Fred Keller
Member of Congress



Andy Biggs
Member of Congress



Andrew S. Clyde
Member of Congress



Scott Franklin
Member of Congress



Jake LaTurner
Member of Congress

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Gerald E. Connolly, Chairman
Subcommittee on Government Operations

The Honorable Stephen F. Lynch, Chairman
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman
Subcommittee on Economic and Consumer Policy

The Honorable Ro Khanna, Chairman
Subcommittee on Environment

The Honorable Jamie Raskin, Chairman
Subcommittee on Civil Rights and Civil Liberties