AGC Talking Points on Executive Order 13502  
*May 21, 2009*

**The Significant Limits of Executive Order 13502**

- The President’s recent executive order on project labor agreements is carefully circumscribed.

- While the executive order lifts the prior ban on government mandates for project labor agreements, it does not go so far as to require their consideration, much less their use.

- While the executive order observes that “[l]arge-scale construction projects pose special challenges,” it makes no finding to that construction contractors lack the experience or expertise to determine the most effective way of meeting those challenges.

- The executive order does not find that project labor agreements are in any way necessary to promote economy or efficiency in federal procurement.

- The executive order provides that federal agencies “may” require project labor agreements, but only on a “project-by-project basis,” and where doing so will (i) advance the Federal 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 (ii) be consistent with laws.” Before requiring a project labor agreement, a federal agency must therefore make a number of factual findings specific to a particular project, and square such a requirement with the National Labor Relations Act and other laws.

**Overview of AGC’s Position**

- AGC supports open and unrestricted competition for public construction contracts.

- AGC considers it inappropriate if not unlawful for public agencies to use their contracting authority to interfere with labor-management relations in the private sector – between private employers and their employees.
  - Construction employers have the right to decide whether they will sign pre-hire agreements.
  - Union contractors have the right to negotiate their own labor agreements – without government interference in the collective bargaining process.
  - All employees have the right to decide whether they want union representation.
AGC opposes government mandates for project labor agreements (PLAs) because such mandates restrict competition for public construction contracts and infringe on rights that federal law grants to construction employers and their employees.

- Public agencies should not compel construction firms to change their labor policies simply to qualify for public contracts.
- Public agencies should not compel any employee to join or otherwise support a union simply to qualify for employment on a public construction project.
- Public agencies should not discriminate against construction employers for lawfully choosing not to work under pre-hire agreements.
- Public agencies should not discriminate against employees for lawfully deciding not to join or otherwise support a union.

AGC opposes federal recommendations that states or localities mandate PLAs agreements, particularly where the latter have to depend on federal funding for their projects.

AGC is not aware of any documentation or analysis demonstrating that past mandates for PLAs have consistently lowered the cost, increased the quality or otherwise improved the construction of federal, state or local projects.

The Davis-Bacon Act already requires all of the contractors and subcontractors working on a federal or federally assisted construction project to pay their employees at the rates prevailing in the relevant area.

**How Government Mandates for Project Labor Agreement Hurt Union Contractors**

- Government mandates for PLAs disrupt the often complex relationships between union contractors and their counterparts in the building trade unions, interfering with the parties’ private negotiations, and often making it more difficult for union contractors to reach the agreements they need to remain competitive.

- On their members’ behalf, over half AGC’s 95 chapters negotiate area-wide agreements with the building trade unions. One reason the federal government cannot demonstrate that mandating PLAs will have any economic or other benefit is that many of these area-wide agreements are already state-of-the-art. Many of these agreements already provide the benefits that PLAs are said to provide, such as:
  - Common or similar grievance and arbitration procedures among crafts.
  - Common or similar jurisdictional dispute resolution procedures among crafts.
  - Common work rules, hours of employment, holidays and shift provisions.
  - No-strike, no-lockout clauses.

- The terms and conditions that public officials negotiate with the building trade unions are rarely more competitive or cost-effective than the terms and conditions found in the area-wide agreements. In fact, public PLAs frequently conflict with the area-wide agreements they displace. Such PLAs can inject new and unfamiliar terms and conditions into the relationship between labor and management, and may well increase the cost of performing the work. For example, public PLAs frequently:
• Require contractors to deal with additional or different unions, whom such contractors may be unfamiliar;
• Establish new or different grievance or arbitration procedures, with their own rules of evidence and the like;
• Establish new or different rules or procedures for resolving jurisdictional disputes among the building trade unions, often reviving historical claims not recognized in the local area;
• Establish new and unfamiliar work rules that contractors cannot use effectively;
• Add reporting and other paperwork requirements that drive up the contractors' overhead.

• As they disregard the expiration dates for the area-wide agreements, public PLAs can have a significant impact area-wide bargaining. Such agreements may enable union members to continue to work (at the sites that the PLAs cover) while the union contractors in the same area and their clients have to deal with labor unrest. The negative effects on local labor-management relations can last for many years.

**How Government Mandates for Project Labor Agreements Hurt Open Shop Contractors**

• Public PLAs frequently make it impractical for open shop contractors to use their current employees to perform the work that such agreements cover. Such PLAs typically permit open shop contractors to use a small "core" of their current employees to perform the work, but no more. To qualify for employment on the project, everyone else must get a referral from the appropriate union hiring hall.

• The union security clauses included in public PLAs typically require all craft workers to pay either union dues or an equivalent amount of union agency fees, whether or not such workers have any interest in union representation.

• Public PLAs frequently require open shop contractors to change the way they would otherwise perform the work. Such agreements require open shop contractors to make sharp distinctions between and among each of the construction crafts, which can cripple their efforts to make competitive bids. Open shop contractors not only have to use a different workforce, they also have to deploy it in very different ways.

• Public PLAs typically require open shop contractors to pay for fringe benefits that their non-union employees will never see. Such contractors have to contribute to union benefit funds even though their non-union employees will never qualify for the union benefits. To continue their current benefits for such employees, open shop contractors have to contribute to both the unions’ benefit funds and to their own benefit plans.
  • Union benefit plans typically have vesting and eligibility requirements based on the length of service performed under union labor agreements.

**Other Practical and Legal Issues Surrounding Government Mandated Labor Agreements**

• In May of 1998, the Government Accounting Office (GAO) reported that it could not document any of the alleged benefits of the PLAs imposed on federal construction projects in the past. GAO also doubted that the federal government could ever document such benefits.
Project Labor Agreements: The Extent of Their Use and Related Information (GAO/GGD-98-82).

- Government mandates for PLAs have frequently led to litigation, which is expensive in itself, and may lead to costly delays. Many of the cases have focused on the state laws that require open competitive bidding. The other significant legal issues that the Executive Order 13502 neglects to address include the following:
  - Whether government mandates for project agreements violate the provisions of the National Labor Relations Act (NLRA) intended to deal specifically with the construction industry – permitting employers “engaged primarily in the building and construction industry,” but only such employers, to enter into pre-hire agreements.
  - Whether government-mandated labor agreements violate the section of the NLRA that generally prohibits “hot-cargo” agreements.
  - Whether government mandates for PLAs have a disproportionately adverse impact on minority and women business enterprises, in violation of Title VI of the Civil Rights Act of 1964.