

March 4, 2009

President Obama Signs Fourth Executive Order Concerning Unions

On February 6, 2009, President Barack Obama signed his fourth executive order concerning federal contractors and labor matters. This order (the "Order") encourages federal agencies contracting with private businesses for large-scale construction projects to mandate project labor agreements ("PLA") for the entirety of the project. The Order, which specifically revokes a contrary executive order issued by former President George W. Bush in 2001 and reinstates a Clinton-administration rule, applies to government-funded projects providing for "construction, rehabilitation, alteration, conversion, extension, repair or improvement of buildings, highways or other real property" where the total cost to the federal government is \$25 million or more. The Order primarily encourages widespread use of PLAs for construction projects generated by the funds provided for in the American Recovery and Reinvestment Act of 2009.

Under the terms of the Order, which is effective immediately, executive agencies may now require the use of a PLA on a project-by-project basis, which would bind all contractors and subcontractors on the project. The Order, however, does not require executive agencies to insist upon PLAs, nor does it require contractors or subcontractors to enter into a PLA with any particular labor organization.

Project Labor Agreements in General

A PLA is a labor agreement that is intended to apply to all phases of, and to all contractors and employees working on, a single large construction project. PLAs are often implemented for such projects because many construction employers do not have a permanent workforce (which makes it difficult to predict labor costs and ensure a steady supply of laborers), and large-scale projects usually involve multiple employers at a single location. Because a lack of coordination among the various contractors can lead to labor disputes and cause delay, the use of a PLA may provide structure and stability to a project, resulting in its efficient completion.

How the Order May Affect Employers

The Order provides several potential benefits for construction contractors. In particular, any PLA reached under the Order must allow all contractors and subcontractors to compete for contracts without regard to whether they are otherwise parties to collective bargaining agreements. Additionally, the PLA must contain no-strike pledges, expedited dispute resolution mechanisms, and provide other means for labor-management cooperation on matters of mutual interest, including productivity, quality of work, and safety and health.

Unfortunately, the costs for a PLA-covered project are typically higher, sometimes significantly so. A contractor must pay its employees the wages and benefits set forth in the PLA, over which the contractor has little or no influence, and PLAs almost universally require contractors to make contributions to various union benefit funds and to deduct union dues from employees' paychecks. Additionally, the restrictions contained in a typical PLA regarding management's rights to make and implement business decisions can increase the costs involved in a project. To be sure, some union-free employers will undoubtedly be concerned that once their employees are represented by a union through a PLA, the employees might seek representation on other work. PLAs may also have the effect of requiring employers to discriminate against those potential employees who, for whatever reason, do not wish to be represented by a union or pay union dues. While these potential hazards await unwary employers who proceed

without guidance, an employer who understands and addresses the risk of doing business with the federal government under a PLA could be rewarded by diminished competition from others who refrain from bidding on these projects.

If you have any questions concerning the Order or project labor agreements in general, please contact:

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