

May 12, 2021

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**RE: PLA Survey – DB GBSD Re-Entry Vehicle Maintenance Facility, Vandenberg AFB, CA**

Dear Ms. Carvajal,

On behalf of The Associated General Contractors of America (“AGC”), I thank the U.S. Army Corps of Engineers (“USACE”) for soliciting input from the construction community regarding the potential use of a project labor agreement (“PLA”) for the Construction of a 24,000 SF single story Re-entry Vehicle Maintenance facility at North Base, Vandenberg AFB to support Ground Based Strategic Deterrent (GBSD) operations (the AGC is committed to

open competition for publicly funded work and believes that the lawful labor relations practices of private construction contractors should not be a factor in a government selection process. AGC believes that neither a public project owner nor its employees should compel any firm to change its lawful labor policies or practices to compete for public work, as PLAs effectively do. AGC also believes that government-imposed PLAs can restrain competition, drive up costs, cause delays, and lead to jobsite safety issues. If a PLA would benefit the construction of a particular project, the contractors best qualified to perform the work would be the first to recommend it. It is the contractor's judgment as to whether a PLA is appropriate for a given project.

See the following comments in response to your questions in reference to the GBSD Project:

**1. Do you have knowledge that a PLA has been used in the local area on projects of this kind? If so, please provide supporting documentation.**

AGC does not have knowledge as to whether a PLA has been used in the local area on projects of this kind. However, AGC has a network of 89 local chapter affiliates—at least one in each state— including the AGC of California Chapter (<https://www.agc-ca.org>) and AGC of San Diego Chapter (<https://www.agcsd.org>). AGC encourages USACE to contact the local chapters for more information.

**2. Are you aware of skilled labor shortages in the area for those crafts that will be needed to complete the reference project? If so, please elaborate and provide supporting documentation where possible.**

AGC defers to the wisdom of local prime contractors and the AGC of California and AGC of San Diego chapters concerning local labor supply and demand. However, we question the relevance of this inquiry in the assessment of the need for a PLA mandate. Should skilled labor shortages arise, how would a PLA mandate remedy the problem? Is there objective evidence that the local union hiring halls for the specific trades needed for this project will be able to supply the number of workers needed? Is there evidence that they can supply such labor more efficiently or effectively than other labor and recruitment resources that may be available? The data below indicate otherwise.

Data from the Bureau of Labor Statistics (BLS), derived from the Current Population Survey (CPS), evidence that the majority of construction in the U.S. in general is performed on an open-shop basis. While data specific to construction employment in the local project ar (L)1 (S)- (t)-2 ( a)-6

AGC believes that a PLA *mandate* would *not* advance the Federal Government's interests in achieving economy and efficiency in federal procurement. There are no widely published studies establishing that the use of PLAs has consistently lowered the cost, shortened the completion time, or improved the quality of construction of public projects. While case studies have had varying results, research regarding the impact of PLA use on the economy or efficiency of projects in general is inconclusive. In a 1998 study by the agency then called the Government Accounting Office, the agency reported that it could not document the alleged benefits of past mandates for PLAs on federal projects and that it doubted such benefits could ever be documented due to the difficulty of finding projects similar enough to compare and the difficulty of conclusively demonstrating that performance differences were due to the PLA versus other factors. (U.S. Government Accounting Office,

require extra pay for overtime work, travel, subsistence, shift work, holidays, “show-up,” and various other premiums beyond what is required by law.

Another way that government mandates for PLAs can drive up costs and create inefficiencies is related to who negotiated the terms of the PLA and when the PLA must be submitted to the agency. With regard to who negotiates the PLA, the Federal Acquisition Regulation implementing Executive Order 13502 (“FAR Rule”) allows (but does not require or even encourage) agencies to include in the contract solicitation specific PLA terms and conditions. Exercising that option, though, can lead to added costs, particularly when the agency representatives selecting the PLA terms lack sufficient experience and expertise in construction- industry collective bargaining. AGC strongly believes that, if a PLA is to be used, its terms and conditions should be negotiated by the employers that will employ workers covered by the agreement and the labor organizations representing workers covered by the agreement, since those are the parties that form the basis for the employer-employee relationship, that have a vested interest in forging a stable employment relationship and ensuring that the project is complete in an economic and efficient manner, that are authorized to enter into such an agreement under the National Labor Relations Act (“NLRA”), and that typically have the appropriate experience and expertise to conduct such negotiations. Under no

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contractor over another). Such a requirement contravenes the executive order's directive that mandatory PLAs "allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements" as well as its objective of advancing economy and efficiency in federal procurement.

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On the other hand, if the agency requires only the apparent successful bidder to execute a PLA after offers have been considered, or if it requires only the successful bidder to execute a PLA after the contract has been awarded, then cost terms may be too uncertain at the time that offers are considered to elicit reliable proposals. A4 ( u)w4 (b)1Wty 0.004 Tw [af)3c04 Tc 0.004 Tw mm-4 (o)-4 o (ons)-

USACE refrain from mandating the use of a PLA on the GBSD Project and instead leave to contractors the option of

What is the recent history of PLA use on comparable projects in the local area? If PLAs recently have been used there, what quantifiable impact (positive or negative) have they had on project cost, timeliness, quality, and other factors? Have comparable projects in the area been successfully completed without use of a PLA?

Will the project be subject to a prevailing wage law? If so, which one(s)? How would the requirements of the law differ from the contractual requirements of the PLA with respect to wages, fringe benefits, and labor practices? How will this affect the cost of the project?

Would a PLA mandate violate the Competition in Contracting Act, Federal Acquisition Regulation, National Labor Relations Act, Employee Retirement Income Security Act, Small Business Act, or any other applicable procurement or funding legislation?

Are there any local or state laws requiring, prohibiting, or otherwise governing the use of PLAs in the area of the project? If so, do those laws apply to the present project? Would they have an impact on the lawfulness or propriety of a decision to mandate a PLA or to not mandate a PLA?

Is a PLA mandate likely to provoke a bid protest or other challenge under federal, state or local laws? Could such a challenge increase the cost of the project or delay its initiation and completion? Would a public hearing be required or appropriate under the relevant procurement laws and regulations?

AGC further urges the USACE (if rejecting our primary recommendation of imposing no PLA mandate) to provide offerors maximum flexibility by allowing them three options on any project on which a PLA mandate is being considered: (1) to submit a proposal based on performance under a PLA, (2) to submit a proposal based on performance not under a PLA, or (3) to submit two proposals, one based on performance under a PLA and one based on performance not under a PLA. This will enable the agency to better evaluate the likely cost impact of the PLA. If the USACE rejects this recommendation as well and decides to require negotiation of a PLA, then AGC recommends that the agency refrain from requiring actual agreement and execution of a PLA, and instead require only that the contractor bargain in good faith with one or more labor organizations.

**7. Identify any additional information you believe should be considered on the non-use of a PLA on the referenced project.**

Please see the response to question 6.

We appreciate the opportunity to share our insights with you and to help advance our common goals of fair competition and of economic and efficient performance of publicly funded construction projects. If