

STEPHEN E. SANDHERR, Chief Executive Officer

AGC of America

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Quality People. Quality Projects.



October 1, 2010

Captain Peter S. Lynch
Commanding Officer
NAVFAC Marianas
PSC 455, Box 195
FPO AP 96540-2937

RE: Use of Private Law Amendments on Construction Projects Associated with the Guam

[REDACTED]

does not *require* agencies to use PIAs under any circumstances. The EO effectively and the

As your letter also acknowledges, the EO and FAR Rule further provide that agencies may

PIA [redacted] to determine if the agency determines that all of

DI A typically limit open shop contractors' rights to use their current employees to perform

discussed in the agreement. Clear DI A generally permit open shop contractors to use

appropriate experience and expertise to conduct such negotiations. Under no circumstances

should a contracting agency require contractors to adopt a PIA that was unilaterally written by a

required to reach an agreement but should only be required to engage in good-faith bargaining to impasse, consistent with the mandates of the NLRA.

Finally, yet another cost that can result from government mandates for PLAs is the high cost of

~~litigation, as well as the cost of government-mandated litigation, which is expensive in itself and can~~

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rampant employer violations of employment laws in Guam and suggests that, if any exists, then it is the responsibility of the appropriate government enforcement agencies to curb that misconduct.

5. Consistency with Law

As mentioned above, government mandates for PLAs are often challenged on legal grounds. While the U.S. Supreme Court's 1993 decision in the Boston Harbor case (*Building & Construction Trades Council v. Associated Builders & Contractors*, 113 S. Ct. 1190) is often

3. Completion of the project will require an extended period of time;
4. PLAs have been used on comparable projects undertaken by federal, state, municipal, or private entities in the geographic area of the project;
5. A PLA will promote the agency's long-term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs; and

The preamble to the FAR Rule explains that this list of factors is “non-exhaustive” and that, in order to “preserve agency discretion,” the rule:

leaves an agency free to decide whether it will adopt some or all of the factors (or any other factor that the agency considers to be appropriate) as part of its own procedures. Similarly, how an organization structures its review team, draws upon agency or external resources, documents any decisions relating to the use of a project labor agreement, and addresses similar management matters is left to the discretion of each agency. (75 Fed. Reg. 19172.)

Again, AGC recommends that NAVFAC exercise the discretion provided in both the EO and the FAR Rule to refrain from imposing any PLA mandate on projects associated with the Guam realignment. However, should NAVFAC reject this recommendation and continue to consider imposing PLA mandates, then AGC recommends that NAVFAC exercise the discretion provided in the FAR Rule to make a more in-depth analysis of factors to determine, on a project-by-

union? What evidence is there that the local union hiring halls will be able to supply the

~~labor needed? What other sources of labor or recruitment tools are available?~~

5. What is the recent history of construction-industry strikes or other delay-causing labor disputes in the local area of the project? If the area is largely open-shop, is a PLA actually needed to prevent such problems? If the area is largely union, would local area CBAs offer sufficient protection against such problems?

~~What is the recent history of government-mandated DLAs in the local area? If DLAs~~

Conclusion

AGC continues to oppose government mandates for PLAs on federal construction projects and provides the preceding comments to explain why such mandates are problematic in general, as well as why such a mandate on Guar realignment construction projects in particular is not only unnecessary but could impede economy and efficiency in government procurement and other objectives of the EO. We urge you to allow your contractors maximum flexibility and defer to their judgment as to whether a PLA is appropriate for a given project and to their expertise in

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