

March 27, 2017

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

Dear Chairman Chaffetz and Ranking Member Cummings:

The diverse group of undersigned construction and business associations writes in strong support of Rep. Dennis Ross' (R-Fla.) Fair and Open Competition Act (H.R. 1552).

H.R. 1552 would prevent federal agencies and recipients of federal assistance from *requiring* contractors to sign an anti-competitive and costly project labor agreement (PLA) as a condition of winning a federal or federally assisted construction contract. It also would eliminate discriminatory PLA preference policies that discourage competition and result in needless waste and favoritism in the procurement of taxpayer-funded construction projects.

A PLA is a collective bargaining agreement unique to the construction industry that typically requires general contractors and all subcontractors to agree to recognize unions as the representatives of their employees on that job; use the union hiring hall to obtain workers; follow union work rules; and pay into union benefit and multi-employer pension plans that nonunion employees will be unlikely to access. This forces employers to pay "double benefits" into existing plans and union plans, and it places them at a significant competitive disadvantage. In addition, PLAs typically force construction workers to pay union dues or join a union if they want to receive union benefits and work on a PLA project.

When mandated by government agencies, PLAs can interfere with existing union collective bargaining agreements and unfairly discourage competition from nonunion contractors and their employees, who comprise 86.1 percent of the U.S. private construction workforce.

President Obama's 2009 Executive Order 13502 encourages federal agencies to require PLAs on federal construction projects exceeding \$25 million in total cost on a case-by-case basis "in order to promote the economy and efficiency in federal procurement."

However, studies have found that PLA mandates increase the cost of construction between 12 percent and 18 percent compared to similar non-PLA projects. Recent government-mandated PLAs on federal and federally assisted projects have resulted in litigation, reduced competition, increased costs and needless delays.

In addition, the executive order and related FAR regulations have exposed agency procurement officials to intense political pressure from special-interest groups and politicians to mandate PLAs on federal projects even when they are not appropriate.

Finally, the order rescinded President George W. Bush's Executive Orders 13202 and 13208, which prohibited government-mandated PLAs on federal and federally assisted construction projects. As a result, the Obama order has led to a sharp increase in government-mandated PLAs on billions of dollars' worth of state and local projects receiving federal assistance. For example, according to a U.S. Department of Transportation (DOT) Federal Highway Administration (FHWA) February 2017 report, lawmakers mandated PLAs on 382 state and local construction projects (totaling an estimated

\$8.723 billion) that received federal assistance and formal approval from the FHWA from 2010 until February 2017.

In response to the threat of the Obama administration's pro-PLA actions, 20 states have enacted legislation or executive orders restricting PLA requirements and preferences on state and local projects since 2011. Currently, 22 states have measures that guarantee fair and open competition on taxpayer-funded construction projects and more states are poised to pass similar measures this year.

The Fair and Open Competition Act seeks to counteract potential special-interest favoritism by prohibiting federal agencies and recipients of federal assistance from *mandating* PLAs and using PLA preferences. However, it also would permit federal agencies to award contracts to businesses that *voluntarily* enter into PLAs, which is protected by the National Labor Relations Act and related case law.

H.R. 1552 will curb waste and favoritism in the procurement of construction projects and ensure taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate. We ask that you take a stand against discrimination and special-interest carve-outs in government contracting by supporting H.R. 1552.

The Fair and Open Competition Act will create a level playing field in the procurement of government construction contracts, increase competition, help small businesses grow, curb construction costs and spread the job-creating benefits of federal and federally funded contracts throughout the entire construction industry.

Sincerely,

Associated Builders and Contractors (ABC)
Associated General Contractors (AGC)
U.S. Chamber of Commerce
National Federation of Independent Business (NFIB)
National Association of Home Builders (NAHB)
National Black Chamber of Commerce (NBCC)
Small Business & Entrepreneurship Council (SBEC)
American Council of Engineering Companies (ACEC)
American Road & Transportation Builders Association (ARTBA)
Business Coalition for Fair Competition (BCFC)
Construction Industry Round Table (CIRT)
Electronic Security Association (ESA)
Independent Electrical Contractors (IEC)

cc: House Oversight and Government Reform Committee Members