

TESTIMONY BY
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BEFORE THE
U.S. HOUSE COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
SUBCOMMITTEE ON CYBERSECURITY, INFORMATION TECHNOLOGY, AND
GOVERNMENT INNOVATION

FOR THE HEARING TITLED
“CUTTING COMPETITION IN CONTRACTING: THE ADMINISTRATION’S
PRICEY PROJECT LABOR AGREEMENT MANDATE”

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Chairwoman Mace, Ranking Member Connolly, and Members of the Committee, thank you for the invitation to testify before the House Committee on Oversight and Accountability’s Subcommittee on Cybersecurity, Information Technology, and Government Innovation on the concerns related to the implementation of President Biden’s Executive Order on the Use of Project Labor Agreements for Federal Construction Projects, Executive Order 14063 (EO 14063).

My name is Glenn Ledet, and I have the honor of serving as the Executive Director for the Coastal Protection and Restoration Authority of Louisiana (CPRA). With this testimony, I will describe the anticipated consequences of this order on Louisiana’s coastal program.

CPRA’s mission is to provide hurricane protection for our coastal communities and ecosystem restoration to counteract the widespread coastal wetland loss that threatens our homes and businesses, natural resources, and way of life. CPRA provides a comprehensive response to our coastal crisis by developing, updating, and implementing a 50-year, \$50 billion Coastal Master Plan to achieve a more sustainable coast. Since our inception in 2005, CPRA has already overseen the investment of \$21.6 billion in the project planning, design, construction, operations, and maintenance of protection and restoration projects. These investments have improved 383 miles of levees, rebuilt 71.6 miles of barrier islands, and restored coastal ecosystems by benefiting over 67,000 acres. This work could not have been accomplished without our critical partnership with the U.S. Army Corps of Engineers (USACE) on significant federal Civil Works infrastructure projects on Louisiana’s coast.

Coastal protection infrastructure is costly, but the need is great across our entire coast. Therefore, every dollar obtained must result in the greatest impact and benefit for the citizens of Louisiana. Additional funding directed to one or more federal projects through cost increases unfortunately means that other coastal areas with state and local projects will miss out on much needed critical investments. We are concerned that EO 14063 could result in schedule impacts and cost increases with respect to Louisiana’s federal projects with the USACE.

CPRA of Louisiana and Our Partnership with the USACE in Coastal Louisiana

Following Hurricanes Katrina and Rita in 2005, the Louisiana Legislature created CPRA intentionally to partner with the USACE on the Greater New Orleans Hurricane and Storm Damage Risk Reduction System. CPRA serves as the primary Non-Federal Sponsor on Federal USACE Civil Works in the Louisiana coastal zone for hurricane and coastal storm damage risk reduction and coastal ecosystem restoration projects. We need this partnership to take on the largest projects that have nationwide benefits. In the last 19 years, we have signed at least 40 cost-sharing agreements with the USACE that commits the State of Louisiana to provide a set percentage of the project's total cost. These projects are typically cost shared at 65% Federal (by USACE) and 35% Non-Federal (by CPRA). The match from the Non-Federal Sponsor must be funded through cash or work-in-kind payment. These projects can cost billions, but the projects are a good value and provide significant National Economic Development benefits. Congress only authorizes and appropriates funding for projects achieving a favorable cost-benefit ratio. Once built, these investments will pay off, as long as project costs are controlled properly throughout the project delivery process. Without an effective, efficient partnership with the USACE – as well as the USACE's experienced federal contractors – Louisiana's coastal program will be unable to achieve its vision for a resilient, sustainable coast.

CPRA is proud to be one of the largest Non-Federal Sponsors in the country, with a proven record of successful project implementation. We have over \$39 billion in authorized federal USACE projects in Louisiana's coastal portfolio. CPRA is also the Non-Federal Sponsor on many major ongoing projects with an authorized cost over \$1 billion including the New Orleans Hurricane and Storm Damage Risk Reduction System, West Shore Lake Pontchartrain, Morganza to the Gulf, Southwest Coastal Louisiana, Upper Barataria Basin Risk Reduction, and South Central Coastal. Additionally, CPRA has the St. Tammany Flood Risk Management project awaiting authorization in the upcoming Water Resources Development Act (WRDA) of 2024.

Executive Order 14063

President Biden's EO 14063 states, "It is the policy of the Federal Government for agencies to use project labor agreements in connection with large-scale construction projects to promote economy and efficiency in Federal procurement." EO 14063 directly applies to a Non-Federal Sponsor like CPRA, as it requires the signing of a Project Labor Agreement (PLA) with at least one labor organization prior to the initiation of a large-scale federal construction contract that has a total cost of at least \$35 million.

The purported benefits of this PLA rule relate to avoiding labor disruption such as strikes and lockouts and securing skilled labor. These outcomes do not appear to apply to our situation. To our knowledge, the coastal program has never had issues with lockouts or strikes, so a mandate like this is unnecessary. While having more skilled labor available would be beneficial, in CPRA's view, this rule will have the opposite effect to the stated intent by shrinking the available contractor and labor pool for a project. According to government data, approximately 3% of Louisiana's construction workforce is unionized, which means this PLA mandate rule is likely to discourage the remaining local businesses that employ more than 97% of the construction workforce.

Unfortunately, CPRA is concerned that the implementation of the EO 14063 will strain our partnership with the USACE. Since Hurricane Katrina in 2005, the State of Louisiana and CPRA have developed a proven record of successfully implementing large-scale federal projects with the

USACE. With this experience informing our view, CPRA anticipates that this policy has the potential to negatively impact our project by adding great uncertainty to the project cost, schedule, and labor. This PLA rule brings up concerns about cost increases from the specific requirements of a project specific labor agreement, reduced bid submissions from local and qualified contractors further driving up costs, project delays, and reduced opportunities for the local workforce. These risks and anticipated outcomes are problematic.

This does not appear to be just an issue for Louisiana. Any state with a major USACE project should be concerned. In the recent WRDA bills enacted since 2014, Congress has authorized USACE projects of at least \$1 billion covering fifteen other states, including California, Florida, Georgia, Kentucky, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, and Virginia. Those same bills authorized projects that exceed \$500 million in cost in Colorado, Illinois, North Carolina, Tennessee, and Washington, as well. Large-scale USACE projects take a long time to come to fruition, so it is likely that many of these projects are still underway and would be impacted by this policy.

Concerns from the Application of PLA Requirements to Louisiana's Federal Projects

Louisiana is a Right-to-Work State

The application of the PLA requirements will be particularly challenging for states like Louisiana, which is a Right-to-Work state with a low percentage of union workers. Louisiana's Right-to-Work law, La. R.S. § 23:981, states that it is "the public policy of Louisiana that all persons shall have, and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join and assist labor organizations or to refrain from any such activities." Furthermore, through Act 134 of the 2011 La. Regular Session, Louisiana enacted a law that prohibits public entities from requiring certain agreements related to labor organizations, such as PLAs, as a condition of bidding on construction projects. While it is our understanding that PLAs can be tailored to address Right-to-Work laws, at a minimum, this policy that forces contractors to have their employees recognize unions as their representatives on a PLA jobsite as a condition of winning a federal construction contract issued by the USACE violates the spirit of Louisiana's Right-to-Work laws. Additionally, it is worth noting, that Louisiana already follows all applicable and required federal labor laws and policies such as the Davis Bacon Act. Again, only 3% of our state's workforce is unionized.

As these policies and numbers indicate, the PLA rule would be a major change to the way we currently implement construction projects in Louisiana.

Cost Impacts

CPRA's top concern is the potential cost increases resulting from the application of PLAs to our USACE projects. To satisfy the aspirations of the involved labor organizations, it appears sensible that additional wages, benefits, hiring preferences, and other policies would be applied to a project than would otherwise be committed. In addition, many union workers are specialized, which could result in more workers being needed to be hired to complete a job. Any additional cost to the federal government would require a subsequent increase in the amount of cost share that the State of Louisiana would need to provide per our cost-sharing agreements. For example, if a project costs exactly \$1 billion, then every single percentage of cost increase to that project would be \$10 million in additional total cost, of which the USACE would owe an additional \$6.5

million and the Non-Federal Sponsor would owe an additional \$3.5 million. To meet this shortfall, Congress and state legislatures would have to appropriate additional funds or reprogram funding from other needed projects. While EO 14063 is a federal rule, it reaches far beyond the national treasury and into the limited budgets of individual states, tribes, municipalities, levee districts, and other local entities who serve as Non-Federal Sponsors in nationally important projects.

Our coastal projects are already experiencing significant cost increases from a variety of sources. We cannot afford another policy that escalates costs. For example, the West Shore Lake Pontchartrain Project was once estimated to cost \$760 million to be completed. However, after a re-assessment on the project's economics, the USACE raised the cost estimate tremendously, with an expected cost of \$3.7 billion. The State of Louisiana went from a position of having secured sufficient funding for completion the project, or possibly even having excess credit available, to an ongoing challenge to find creative ways to allocate additional funding for the increases to the Non-Federal cost-share. Now, in the middle of constructing this project, we have a new policy via EO 14063 that adds uncertainty and likely significant costs increases. Studies on government mandated PLAs have found that a PLA could add 12 – 20% in cost to a project.¹ Using those percentages for an estimate, the application of PLAs could raise the cost of our \$3.7 billion project by \$444 – \$740 million.

For the State's coastal program, these dollars could be put to good use in protecting another community from a hurricane, or restoring additional coastal wetlands acreage. Alternatively, if CPRA were to have challenges meeting the Non-Federal cost share, then the USACE could delay project implementation until we secure the requisite funding. That decision could result in a cascade of effects, such as prolonged higher flood risk for the Louisiana's coastal residents.

As you can see, cost increases have a significant impact on our ability to protect Louisiana's coastal communities and ecosystems, as well as the nation's water resources infrastructure. It is vital that we avoid unnecessary additional costs.

Reduction in Construction Competition

CPRA anticipates that another concern from the EO 14063 would be from the potential of reduced competition and a reduction in the number of bids received on a construction contract. While the policy allows non-union firms to participate, we have heard that the PLA requirement will discourage some companies from bidding. For these types of project, such as constructing higher earthen levees to thwart storm surge or building pump stations for drainage improvements or raising hundreds of homes, we only have so many construction businesses with the expertise to serve as the contractors on these large-scale initiatives. If any companies opt-out of bidding, then that makes the bidding less competitive, resulting in higher costs. On our first federal contract with the PLA rule, associated with the West Shore Lake Pontchartrain project, the project only received a single bid. To CPRA, that seems to be a telling indicator for how the PLA rule is perceived by the industry.

Schedule Impacts

Time is a scarce resource for our coastal program. CPRA is concerned about the potential for project delays resulting from this PLA policy. Agreeing to a PLA will take considerable time

¹ "Government-Mandated PLA Studies," BuildAmericaLocal.com, accessed June 25, 2024, <https://buildamericalocal.com/learn-more/#gmpla-studies>.

given the project-specific nature of PLAs, the many policies that could be considered, and the number of interested parties. We anticipate that the negotiations on PLAs for Louisiana projects will take even more time than in states where this is more commonly used. PLAs and the associated labor organizations and contractors would likely be rather unfamiliar concepts and partners for construction projects in Louisiana, which has a very low percentage of union membership. In addition, negotiations with the USACE are already a lengthy, onerous process, even for experienced partners.

Delays can be quite significant, as the construction season in Louisiana has to take into account hurricane season. A three-month delay could be compounded significantly if there is a subsequent storm that further extends the timeline. Delay is significant for our projects for two other major reasons – prolonged exposure to risk from hurricanes for our citizens and further degradation of our wetlands through coastal land loss. With each year that passes without a completed hurricane risk reduction project, our communities remain vulnerable to the next major storm. We cannot know exactly when that hurricane will arrive, but Louisianans know it will come eventually. Coastal land loss is a steady problem, constantly getting worse through a variety of processes. Rebuilding lost land is costly. It requires both funding, which is limited, and a resource, available sediment, that is finite. We cannot always get back what we lose. The sooner we can rebuild coastal marsh and preserve what is still there, then the more territory we can sustain. Louisiana has lost over 2,000 square miles of marsh over the past 100 years, more than the land mass of Delaware. With this crisis unfolding daily, we have an urgency to act. Protracted PLA negotiations are thus a source of concern and risk to the health, safety, and welfare of the citizens these projects are intended to protect. One hurricane could have the potential to eliminate any perceived economic or social benefits of a PLA.

As demonstrated, Louisiana's coastal projects do not need additional delay. Most of our major projects have been envisioned for decades, and we have worked hard to bring these efforts to the construction phase. Take the example of the Morganza to the Gulf Hurricane and Storm Damage Risk Reduction Project. Since 1991, the communities in and around Houma, Louisiana, have envisioned partnering with the USACE on this 98-mile coastal hurricane and storm damage risk reduction system. Such a system would provide protection for these communities that provide national benefits by supporting the energy, fisheries, and shipbuilding sectors. While state and local dollars have been invested, only recently have federal construction dollars have been deployed to the project, particularly through the Infrastructure Investment and Jobs Act. However, if the project's upcoming construction contracts have PLA requirements, then the construction of the project could be delayed. Delay means additional exposure to storm seasons for the community of over 200,000 people that has already waited for over thirty years for protection.

Coastal Louisiana Workforce

Creating good jobs through infrastructure investment is a goal of EO 14063 that we share at CPRA. Louisiana's commitment to the coastal program has provided the foundation for many good jobs. As mentioned, our Coastal Master Plan provides a long-term vision, but CPRA also develops an Annual Plan for yearly expenditures. These investments sustain a coastal restoration and protection economy. For Fiscal Year 2025, the Louisiana legislature unanimously passed CPRA's \$1.71 billion Annual Plan. According to an economic analysis by Greater New Orleans, Inc., the implementation of the full Fiscal Year 2025 Annual Plan would result in 11,312 direct jobs with a labor income of nearly \$670 million. Of those jobs, 10,159 would be in construction,

totaling over \$580 million in construction labor income. Through our coastal program, Louisiana has helped expand a coastal construction sector that involves firms and workers throughout the State and along the Gulf Coast. We have not needed a signed PLA to deploy a project successfully or access the talent and expertise of this coastal workforce. The coastal workforce is highly skilled and versatile, allowing companies to tackle many complex jobs with efficiency. Bringing in specialized union members from afar that are unfamiliar with the unique nature of coastal construction work could present challenges.

Additionally, CPRA is concerned about policies like the EO 14063 that would shrink the pool of contractors and labor. Together with the USACE, we are working to develop an emerging coastal workforce for non-structural flood risk reduction projects. The term nonstructural relates to the elevating of homes and flood proofing of businesses, rather than constructing a physical structure, such as a levee. Nonstructural investments can specifically target the most at risk properties, including underserved and rural communities where major structural investments may not meet the necessary cost benefit ratio. The USACE increasingly recommends these solutions in their flood risk management efforts. CPRA is embarking on the first major nonstructural project nationwide with the USACE with the Southwest Coastal, Louisiana project. Congress has provided \$296 million for the nonstructural program through this authorization, primarily through the Infrastructure Investment and Jobs Act. CPRA knows that we need a growing workforce and specialized industry to elevate thousands of homes and flood proof hundreds of businesses. We do not have the necessary workforce developed to date, as this is a new industry at this scale. Conducting these projects at the scale we need will require working with many subcontractors and small businesses. We need policies to facilitate greater entry into the sector, not less. It seems that this PLA policy would shrink an available workforce that we need to expand greatly instead. Thus, this policy appears likely to hamper our efforts to get the most vulnerable properties – and the residents that live there – out of harm’s way.

Furthermore, CPRA recognizes that maximizing the economic opportunity of our coastal construction work for our communities, residents, and workers requires intention. We do not think a PLA mandate is the right way to do this, however. Instead, we welcome the opportunity to partner with any business that can deliver value to the coastal program. We believe a better approach to sharing these opportunities is through education and connection. In partnership with Louisiana Economic Development (LED), CPRA has established the Coastal Technical Assistance Center (CTAC). Accepting clients of all kinds, CTAC shares information and provides connections in order for small local businesses to get involved in the coastal economy. CPRA also participates in programs such as Louisiana’s Hudson and Veteran Initiatives. The primary intent of the programs are to provide additional opportunities for Louisiana-based small businesses that are certified by the LED to participate in contracting and procurement with the State. CPRA also participates in policies that can support and encourage contracting opportunities with certified small entrepreneurs and certified veteran or service-connected disabled veteran owned small entrepreneurs.

Recommendations

CPRA supports policy changes that allows our team to work more quickly and efficiently with the USACE. We have advocated for decades about the urgency we have to battle Louisiana’s coastal crisis. Fortunately, we are witnessing buy in for this mission from all levels of the USACE, from Congress, and from the Biden Administration. Yet, it is disappointing to see any policy

changes, such as this one related to PLAs, which would likely reduce efficiency and slow down our shared momentum. Given this, CPRA supports repealing this policy, such as proposed in legislation like Chairman James Comer's H.R. 1209, the Fair and Open Competition Act, and Congressman Clay Higgins' Congressional Review Act resolution, H.J. Res 132. Should the policy remain in place, CPRA believes that it would be beneficial to allow for exemptions from PLAs for USACE Civil Works projects, particularly those related to reducing life and safety risks, or responding to a deteriorating ecosystem. As Congress moves to authorize the WRDA 2024, it should also consider exempting these types of projects from the PLA requirement. Otherwise, our partnership with the USACE to protect coastal communities and restore coastal ecosystems could become more costly, slower to act, and ultimately less impactful.