



November 23, 2010

U.S. Army Engineer District, Honolulu
Attn: Kent Tamai, Contracting Division
Honolulu, Building 230
Fort Shafter, HI 96858-5440

In Reply to: Sources Sought Notice W9128A-PLA-INFO on USACE Project Labor Agreements,
Part II

Subject: (1) FY11 MCA PN52267, Construct 140PN Unaccompanied Enlisted Personnel
Housing Facility (Barracks), Helemano Military Reservation (HMR), Oahu, Hawaii

(2) FY11 MCA PN52267, Construct 228PN Unaccompanied Enlisted Personnel
Housing Facility (Barracks), Schofield Barracks, Oahu, Hawaii

(3) FY11 MCA PN PN67258, WBR Brigade Complex PH7A, Tripler Army Medical
Center, Oahu, Hawaii

(4) FY11 MCA PN52269, Quad D, Whole Barracks Renewal Phase 3B, Buildings
450 and 452, Schofield Barracks, Oahu, Hawaii.

Dear Mr. Tamai:

Thank you for soliciting additional comments from the contracting community on the U.S. Army Corps of Engineers (USACE) Honolulu District's potential use of project labor agreements (PLAs) on four Oahu construction projects listed above.

On October 18, I sent a detailed letter to you highlighting the interests of Associated Builders and Contractors (ABC) in PLA surveys. In it I explained why government-mandated PLAs are unnecessary on USACE projects in the Honolulu district. These agreements typically restrict competition, increase costs, create delays, discriminate against non-union employees and place non-union contractors at a significant competitive disadvantage.

I appreciate the opportunity to provide additional information about these controversial agreements.

Responses to USACE Questions:

a. Should a PLA be executed on each project?

No. If USACE were to require PLAs on these projects, it would likely increase costs and create inefficiencies for contractors and procurement officials that could jeopardize budgets and delay the projects due to a variety of reasons highlighted in my previous correspondence. The USACE needs to devise ways to attract all qualified general contractors and subcontractors in Hawaii instead of discouraging their participation on these projects through PLA mandates. If a contractor feels that a PLA is a valuable tool, they should freely enter into a PLA at their discretion instead of being forced to agree to a PLA as a condition of receiving contracts and performing work.

b. Is the use of PLAs effective in achieving economy and efficiency on barracks project? What is the estimated relative cost impact, or any other economies or efficiencies derived by the Federal Government, if using PLAs? Will a PLA impact the cost of submitting an offer?

A PLA stands as a barrier to the goal of achieving economy and efficiency in government contracting. The cost increases resulting from a lack of competition, inefficient union work rules, and requirements of double payment into union and existing non-union pension and benefit plans in typical PLAs would likely apply to these Hawaii projects. In my previous correspondence, I explained how PLAs increase costs and I discussed studies that found that PLAs typically increase the cost of construction between 12 percent and 18 percent. In addition, contractors may have to account for additional costs to negotiate a PLA with unions, depending how and when the USACE implements a PLA mandate or preference in the procurement process for these projects. Finally, the USACE may face added costs resulting from a legal challenge against the USACE's PLA preference or mandate.

PLA proponents will attempt to demonstrate how PLAs can reduce construction costs, but they do so by comparing the costs of an *already unionized project workforce* with and without a PLA.¹ This is a poor comparison because it ignores the fact that a non-union workforce is typically immune from the higher costs unique to union labor and the comparison does not consider competition from non-union contractors and other cost advantages that should serve as the non-PLA cost baseline when comparing these scenarios.

c. Will a PLA produce labor-management stability on the barracks project? Have labor disputes or other labor issues contributed to project delays on barracks type projects in the local area? If so, please provide examples containing the date and a brief summary.

Instability between labor and management can lead to strikes and labor unrest, but it is rare in today's construction climate. Strikes and labor unrest can be prevented using strong management and a variety of other clauses utilized in contracts. In the event that there is labor unrest, it can be managed without a PLA. It is also important to remember that non-union employees don't strike.

In today's construction marketplace, many union collective bargaining agreements already contain a promise against strikes, so the alleged need to enter into a PLA to prevent labor unrest may be a moot point. Before deciding whether a PLA is appropriate for USACE work, it is important for USACE officials to become familiar with the collective bargaining agreements of trade unions that may work on Hawaii USACE projects.

¹ See Kotler *supra* n. 20; Belman, Bodah and Philips, *supra* n. 20.

However, a PLA offers no guarantee against strikes. In 1999, union carpenters working on the union-only San Francisco Airport expansion struck over wages even though their union had signed a PLA. The union electricians, plumbers and painters also went on strike in support of the union carpenters.² The strike cost \$1 million. The project, which was already a month behind schedule, lost even more time.³ Similar strikes on PLA projects have occurred on public projects in the Chicago area in 2010 and on a private project in 2006.⁴

The investigations of ABC and other groups indicate there have been no significant labor-related problems on any large federal construction projects since President George W. Bush issued a 2001 executive order barring government-mandated PLAs on federal and federally assisted projects.⁵ There have been no publicly reported delays or cost overruns resulting from any “lack of coordination” among employers on labor issues, nor any reported labor disputes that have caused significant delays or cost overruns. In other words, none of the claimed labor problems—which are the sole stated justifications for federal PLAs referenced in the final rule—have arisen on any of the thousands of large federal projects (totaling \$147.1 billion⁶) built since 2001, despite the outright prohibition of any PLAs on any large (projects exceeding \$25 million in total cost) or small federal construction projects.

The Office of Management and Budget (OMB) essentially admitted the complete absence of any factual support for Executive Order 13502 and the FAR Council final rule in response to a Freedom of Information Act (FOIA) request filed by ABC, which asked for all documents identifying any federal construction projects suffering from delays or overruns as a result of labor-related problems of the sort identified in Section 1 of Executive Order 13502. OMB failed to identify any federal project that has suffered from any labor “challenge” due to the lack of a PLA.

ABC submitted similar FOIA requests to every federal agency that has engaged in significant amounts of construction since 2001, and *no* agency identified any large federal construction project suffering significant cost overruns or delays as a result of any of the labor-related issues cited in Executive Order 13502 or the final rule.

ABC also surveyed its own members, receiving responses from contractors that have performed billions of dollars worth of large federal construction projects during the past decade. These contractors uniformly confirmed the absence of any of the labor “challenges” identified in President Obama’s Executive Order 13502 as the sole justification for encouraging federal agencies to impose PLAs on future federal

² *Carpenters at Airport Protest Against Union Leadership*, San Francisco Chronicle, May 21, 1999; see also *Arbitrator Orders California Carpenters To End Wildcat Strike, Return to Work*, Daily Labor Report, June 23, 1999.

³ *Carpenters at Airport Protest Against Union Leadership*, San Francisco Chronicle, May 21, 1999.

⁴ See www.TheTruthAboutPLAs.com, [PLA Projects Delayed By Chicago Construction Union Strike: Another PLA Myth Busted](http://www.TheTruthAboutPLAs.com/PLA-Projects-Delayed-By-Chicago-Construction-Union-Strike-Another-PLA-Myth-Busted), 07/17/10

⁵ In 2001, President George W. Bush issued Executive Order No. 13202, prohibiting any government mandate of PLAs on federal and federally funded or assisted construction projects. It was repealed by President Obama’s Executive Order 13502.

⁶ See <http://www.census.gov/const/C30/federal.pdf>

construction projects. Finally, a study of this issue conducted by the Beacon Hill Institute revealed no evidence of any significant labor problems on federal construction projects in the absence of PLAs.⁷

Thus, the entire factual premise underlying Executive Order 13502, the final rule, and USACE's interest in using government-mandated PLAs to prevent labor disputes is demonstrably false.

In Hawaii, I am not aware of any examples of labor unrest, strikes or work stoppages and other delays in the construction industry and specifically on federal construction projects.

Fair and open competition free from PLAs saved American taxpayers billions of dollars on federal construction spending and has a proven track record of delivering positive results for federal agencies and local, state and private projects wherever the USACE is engaged in construction activity.

d. Does the complexity of a design build barracks project justify the use of PLAs? If yes, provide explanation.

I defer to survey responses from contractors with experience evaluating the complexity of these specific projects. However, it is important to note that hundreds of complex private, federal, state and local projects are completed without PLAs every year using exclusively non-union labor or a mix of union and non-union labor. It is a myth that PLAs are specifically needed on complex projects.

e. Please identify the shortages of skilled labor in the region (Oahu, Hawaii) for those crafts or trades required the barracks project? f. What is the anticipated volatility, one (1) to four (4) years, in the labor market for the trades required for the execution of the projects?

A shortage of skilled labor is unlikely and a PLA will exacerbate possible shortages by discouraging Hawaii's existing non-union workforce from building PLA projects.

Hawaii contractors report that a shortage of union and non-union skilled tradesmen in all trades for future USACE projects in the next 12 to 24 months is very unlikely.

The recession's weak economy resulted in a decreased demand for construction services and pushed the U.S. construction unemployment rate to a high of 27.2 percent in February of this year—the highest level recorded since the federal government began making the data available in 1976.⁸

Between August of 2006 and August 2010, employment in the construction industry dropped 27.4 percent, as 2.1 million construction workers lost their jobs. To put the construction

⁷ See Tuerck, Glassman and Bachmann, *Union-Only Project Labor Agreements On Federal Construction Projects: A Costly Solution In Search Of A Problem*. (August 2009), available at <http://abc.org/plastudies>.

⁸ U.S. Bureau of Labor Statistics, *Industries at a Glance: Construction: NAICS 23*
<http://www.bls.gov/iag/tgs/iag23.htm>, accessed 10/25/10

industry's job losses in perspective, the 5.6 million people working in construction today is barely higher than the 5.59 million people who were working in construction in August 1996.⁹

Construction industry economists predict the U.S. construction unemployment rate, which currently stands at 17.3 percent—nearly twice the overall national average—to remain the same or slightly increase in the long term as a variety of economic factors will keep construction demand stagnant.

The attached sheet of seasonally adjusted state construction employment data, prepared by Associated General Contractors of America, indicates that the construction industry in Hawaii and surrounding states has not bucked national trends of construction industry employment job losses and sluggishness. Hawaii's construction employment picture has remained flat during the last year of the recession.

The pool of available skilled labor for USACE projects breaking ground in 2013 and beyond will depend on the economy and the current volume of local, state and private construction projects. Given the uncertainties regarding the economy, it is difficult to predict the number of future construction projects that may impact the pool of available labor.

However, a PLA may exacerbate shortages of skilled labor by discouraging and discriminating against Hawaii's existing non-union construction workforce (65.5 percent of Hawaii's construction workforce).¹⁰ In contrast, a lack of a PLA does not discourage or restrict union members from working on these projects; furthermore, the Davis-Bacon Act requires federal prevailing wage and benefit rates, which are closely linked to union rates, to be paid to all construction workers on federal projects.

g. Have PLAs been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of this project?

Federal agencies have successfully built a number of federal projects in Hawaii from 2001 to 2009 that were free from government-mandated PLAs. However, it appears that some Hawaii projects have and will be built with PLAs.

It is unclear if developers voluntarily signed PLAs (or agreements similar to PLAs) or if no agreements were reached on the following projects:

⁹Associated General Contractors 10/8/10 Construction Update, *Construction employment near 14-year low as 21,000 Industry Jobs Lost in September, Unemployment Rate Climbs to 17.2 percent*.

<http://newsletters.agc.org/datadigest/2010/10/08/construction-employment-september-2/#more-1085>

¹⁰The *Union Membership and Coverage Database*, available at www.unionstats.com, is an online data resource providing private and public sector labor union membership, coverage and density estimates compiled from the Current Population Survey (CPS), a monthly household survey, using BLS methods. The database, constructed by Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David Macpherson (Department of Economics, Trinity University), is updated annually.

- Cleveland-based Forest City began developing five neighborhoods for the U.S. Navy in 2005. Media reports estimated that its initial development costs were \$358 million.¹¹
- Napa Valley, Calif.-based Actus Lend Lease's contract for redevelopment of Army housing is valued at \$1.7 billion over its 10-year development. A “Stabilization Agreement” was signed for this project.
- It is unclear if Actus Lend Lease’s Hickam Air Force Base contract, valued at \$197 million, is subject to a similar agreement.
- It is rumored that Fluor Hawaii's development of Pearl Harbor's Ford Island (\$84 million) is subject to a PLA or similar agreement, but could not be confirmed.

Of course, these agreements appear to have been voluntarily entered into and not mandated by the government before and during bidding – which might not be the case with a government-mandated PLA on the current slate of USACE projects.

We are aware that a PLA has been executed for the Honolulu rail project, but it is uncertain if this project will move forward.

h. Would consideration of a small business set aside make a PLA more or less appropriate to meet the design build barracks project? Provide a brief explanation.

The majority of ABC’s contractor members are classified as small businesses by the Small Business Administration (SBA). This is consistent with the SBA’s findings that the construction industry has one of the highest concentrations of small business participation (more than 86 percent).¹² At the same time, many ABC members are large construction companies that have contracted directly with the federal government to successfully build large projects of the type that might be impacted by USACE’s decision to build on Hawaii with PLAs.¹³

As discussed in my previous correspondence, most small-business contractors are not signatory to a union and would be discouraged from participating on USACE projects subject to PLAs.

The fact that PLAs harm small businesses is one of the many reasons why the Small Business & Entrepreneurship Council and the following groups are opposed to government-mandated PLAs: Associated General Contractors, Construction Industry Round Table, Independent Electrical Contractors, National Association of Government Contractors, National Association of Minority Contractors - Philadelphia Chapter, National Association of Women in Construction, National Black Chamber of Commerce, National Federation of Independent Business, National Ready-Mixed Concrete Association, National Utility Contractors Association, U.S. Chamber of Commerce and Women Construction Owners and Executives, USA.

¹¹ David K. Choo. Labor at a Crossroads. *Hawaii Business Journal*. July 2005.

<http://www.allbusiness.com/legal/contracts-agreements/469572-1.html>

¹² *The Small Business Economy: A Report To The President*, U.S. Small Business Administration, Office of Advocacy (2009), at 8.

¹³ All of the top 10 companies on *Engineering News-Record’s* 2009 Top 400 Contractors list, and 21 of the top 25, are ABC member firms.

While an exemption for small businesses from PLAs has the potential to attract more non-union competitors, it is difficult to evaluate the impact on small businesses without examining the specific terms and conditions of each PLA and language related to such exemption regarding company size, contract threshold, etc. If a PLA is right for a large or small business, they should use a PLA voluntarily and not be forced to use one.

Conclusion

ABC appreciates the opportunity to share our perspective on government-mandated PLAs. We believe these anti-competitive and costly agreements have no place on federal construction projects in Hawaii or in the mainland United States. We encourage USACE to proceed with construction projects free from PLA mandates and in the spirit of fair and open competition. Doing so will help USACE provide taxpayers with the best possible construction product at the best possible price.

Sincerely,



Ben Brubeck
Director of Labor and Federal Procurement, Federal Affairs
Associated Builders and Contractors, Inc. (ABC)
4250 North Fairfax Drive, 9th Floor
Arlington, VA 22203
Direct Phone: (703) 812-2042
Direct Fax: (703) 812-8202
Email: brubeck@abc.org

Enclosure:

State unemployment statistics

cc: Lieutenant General Robert L. Van Antwerp, USACE Commanding General
Gregory Noonan, USACE Labor Counsel
Robert Slockbower, USACE Military Programs Director
Kim Denver, National Contracting Organization Director, USACE
Jonathan Young, ABC Hawaii President
James Martinez, Guam Contractors Association President
Steve Sandherr, Associated General Contractors (AGC) President



State Construction Employment (seasonally adjusted), 9/09-9/10

	<u>September</u> <u>2009</u>	<u>July</u> <u>2010</u>	<u>August</u> <u>2010</u>	<u>September</u> <u>2010</u>	<u>1-mo. %</u> <u>Change</u>	<u>1-mo Job</u> <u>Loss/Gain</u>	<u>12-mo. %</u> <u>Change</u>	<u>Total Job</u> <u>Loss/Gain</u>	<u>12-mo. % change</u> <u>Rank</u>
Alabama	87,200	87,600	87,600	85,500	-2.4%	-2,100	-1.9%	-1,700	20
Alaska	15,800	16,500	16,100	15,800	-1.9%	-300	0.0%	0	11
Arizona	117,200	113,000	113,500	112,800	-0.6%	-700	-3.8%	-4,400	29
Arkansas	51,400	53,300	53,400	53,200	-0.4%	-200	3.5%	1,800	5
California	578,700	546,900	541,300	528,000	-2.5%	-13,300	-8.8%	-50,700	44
Colorado	123,500	109,600	109,300	109,300	0.0%	0	-11.5%	-14,200	48
Connecticut	52,900	51,000	50,500	50,000	-1.0%	-500	-5.5%	-2,900	36
Delaware*	18,900	18,000	18,200	18,600	2.2%	400	-1.6%	-300	19
District of Columbia*	11,000	10,900	11,300	11,500	1.8%	200	4.5%	500	4
Florida	372,200	361,700	359,800	361,500	0.5%	1,700	-2.9%	-10,700	26
Georgia	156,800	150,700	151,500	153,000	1.0%	1,500	-2.4%	-3,800	23
Hawaii*	29,600	28,500	28,500	29,900	4.9%	1,400	1.0%	300	9
Idaho	32,400	29,100	28,400	28,400	0.0%	0	-12.3%	-4,000	49
Illinois	212,200	185,400	198,000	198,700	0.4%	700	-6.4%	-13,500	37
Indiana	115,200	115,600	114,300	114,700	0.3%	400	-0.4%	-500	12
Iowa	63,000	62,300	62,800	62,200	-1.0%	-600	-1.3%	-800	16
Kansas	56,100	62,100	62,700	61,100	-2.6%	-1,600	8.9%	5,000	2
Kentucky	71,400	66,200	64,600	64,400	-0.3%	-200	-9.8%	-7,000	47
Louisiana	127,900	127,800	129,100	127,100	-1.5%	-2,000	-0.6%	-800	13
Maine	24,400	23,000	23,100	23,500	1.7%	400	-3.7%	-900	28
Maryland*	148,800	149,700	151,100	150,800	-0.2%	-300	1.3%	2,000	8
Massachusetts	106,000	108,800	109,700	108,100	-1.5%	-1,600	2.0%	2,100	7
Michigan	118,800	116,300	114,800	113,300	-1.3%	-1,500	-4.6%	-5,500	32
Minnesota	91,100	84,400	82,000	85,100	3.8%	3,100	-6.6%	-6,000	38
Mississippi	49,500	46,200	46,800	46,200	-1.3%	-600	-6.7%	-3,300	40
Missouri	114,500	102,400	104,600	103,600	-1.0%	-1,000	-9.5%	-10,900	45
Montana	23,500	21,500	21,400	21,700	1.4%	300	-7.7%	-1,800	42
Nebraska*	47,300	47,300	45,700	46,400	1.5%	700	-1.9%	-900	20
Nevada	73,400	60,000	60,500	59,200	-2.1%	-1,300	-19.3%	-14,200	51
New Hampshire	22,500	23,200	23,900	24,300	1.7%	400	8.0%	1,800	3
New Jersey	133,400	124,700	124,400	123,300	-0.9%	-1,100	-7.6%	-10,100	41
New Mexico	46,300	44,900	43,900	43,900	0.0%	0	-5.2%	-2,400	35
New York	317,400	314,000	314,800	309,000	-1.8%	-5,800	-2.6%	-8,400	24
North Carolina	182,500	171,300	172,800	170,400	-1.4%	-2,400	-6.6%	-12,100	38
North Dakota	21,900	21,200	21,400	21,000	-1.9%	-400	-4.1%	-900	30
Ohio	173,100	174,500	174,000	169,600	-2.5%	-4,400	-2.0%	-3,500	22
Oklahoma	66,100	70,200	72,500	72,600	0.1%	100	9.8%	6,500	1
Oregon	72,200	68,900	66,900	65,900	-1.5%	-1,000	-8.7%	-6,300	43
Pennsylvania	217,600	218,900	218,300	215,800	-1.1%	-2,500	-0.8%	-1,800	15
Rhode Island	16,500	16,200	17,100	16,600	-2.9%	-500	0.6%	100	10
South Carolina	83,900	79,400	80,100	79,600	-0.6%	-500	-5.1%	-4,300	34
South Dakota*	21,500	20,600	20,800	21,200	1.9%	400	-1.4%	-300	17
Tennessee*	106,000	101,900	102,400	101,600	-0.8%	-800	-4.2%	-4,400	31
Texas	578,700	568,800	570,200	563,200	-1.2%	-7,000	-2.7%	-15,500	25
Utah	68,400	68,200	67,500	67,900	0.6%	400	-0.7%	-500	14
Vermont	13,500	11,600	11,600	11,600	0.0%	0	-14.1%	-1,900	50
Virginia	184,400	178,600	179,100	178,000	-0.6%	-1,100	-3.5%	-6,400	27
Washington	152,100	136,200	136,600	137,700	0.8%	1,100	-9.5%	-14,400	45
West Virginia	32,200	34,200	33,800	33,000	-2.4%	-800	2.5%	800	6
Wisconsin	98,400	99,700	99,400	97,000	-2.4%	-2,400	-1.4%	-1,400	17
Wyoming	23,200	21,300	22,200	22,100	-0.5%	-100	-4.7%	-1,100	33

*Mining and logging is combined with construction.