[Insert Company Letter Head]

March X, 2020

Ms. Derrica J. Frazier-Corbie

Contract Specialist

U.S. Army Corps of Engineers, Mobile District

KO Contracting Division

109 St. Joseph Street

Mobile, AL 36628-001

Submitted via e-mail to derrica.j.fraziercorbie.mil@mail.mil in reply to solicitation number W9127820R0007.

Dear Ms. Frazier-Corbie:

Thank you for soliciting comments from the construction community on the U.S. Army Corps of Engineers (USACE) Mobile District’s potential use of a project labor agreement (PLA) for the Site Development and Utilities Phases I and II at Tyndall Air Force Base in Bay County, Florida.

[Note: Insert information about your company and your interest in responding to the PLA survey here or in appropriate places throughout the letter.

Suggested information: What type of contractor are you? How many employees do you have? Do you build federal projects? Where do you build federal projects? Have you ever built a project for the USACE? Was it without a PLA? Share a bad experience on a PLA project in Florida or in the surrounding area. Do you employ veterans or have a connection to the USACE? etc.]

[Insert Company Name] is opposed to government-mandated PLAs because these agreements usually restrict competition, increase costs, create delays, discriminate against nonunion employees and place nonunion general contractors and subcontractors at a significant competitive disadvantage. Typical government-mandated PLAs are nothing more than anti-competitive schemes that end open and fair bidding on taxpayer-funded projects.

Following are answers to the questions posed by the USACE in the sources sought notice W9127820R0007:

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.***

[Identify local similar projects, if applicable.] No. We are not aware of a PLA mandated by the USACE or any other a federal agency on projects similar to this project in the region and across the country.

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

The December 2019 NSA construction industry unemployment rate in Florida was 2.4 percent.[[1]](#footnote-1) The U.S. construction industry has a shortage of skilled workers and has an unemployment rate of 5.4 percent (as of January 2020).[[2]](#footnote-2) A PLA is sure to exacerbate the industry’s existing shortage of skilled labor by discouraging competition from firms employing the area’s nonunion construction workforce. According to unionstats.com, 96.7 percent of Florida’s private construction workforce does not belong to a union, so it makes little sense to discriminate against more than nine out of 10 construction workers in the state.[[3]](#footnote-3)

[Insert information about local registered apprenticeship programs, craft training programs, or local programs that you or the contracting community participate in absent a PLA, that will help develop tomorrow’s workforce but will be barred from working on a PLA project since it is not a union apprenticeship program]

1. ***Are you aware of time sensitive issues/scheduling requirements that would impact the rate at which the referenced project should be completed? If so, please elaborate and provide supporting documentation where possible.***

There is no reliable evidence suggesting that a lack of a PLA prevents qualified firms from completing construction project on schedule.

1. ***Identify specific reasons why or how you believe a PLA would advance the Federal Governments interest in achieving economy and efficiency in federal procurement.***

As described, a PLA would **not** advance the Federal Government’s goal of achieving economy and efficiency on this project.

1. ***Identify specific reasons why you do not believe a PLA would advance the Federal Governments interest in achieving economy and efficiency in federal procurement.***

If USACE were to require a PLA on the project, it would reduce competition, increase costs and create inefficiencies for contractors and procurement officials that could jeopardize the project for numerous reasons.

First, labor costs increase under typical PLAs due to inefficient union work rules and requirements of double payment into union and existing nonunion pension and benefit plans.

Second, a PLA mandate makes submitting a bid more expensive, as contractors unfamiliar with operating under these union contracts are faced with increased legal and administrative costs if they are forced to negotiate a PLA with multiple unions and/or comply with a PLA.

Third, a PLA mandate may limit the ability of the USACE to meet federal and agency-wide small and disadvantaged contracting goals and requirements; the majority of these firms are not unionized and would be disenfranchised by anti-competitive and costly provisions within typical PLAs.

Fourth, because PLAs discourage competition from qualified contractors, overall bid prices tend to increase when there is less competition from a smaller pool of qualified competitors.

Neither Executive Order 13502 nor the corresponding FAR final rule identifies any factual basis to support the claim that government-mandated PLAs will reduce the costs of construction on large federal projects. However, a number of studies have demonstrated that PLAs increase costs—typically in the range of 12 percent to 18 percent when compared to similar non-PLA projects.[[4]](#footnote-4)

PLAs on any USACE projects will cause procurement delays and not achieve “efficiency” in federal procurement. All of the PLA procurement options permitted under the FAR final rule create problems that may lead to delays and inefficiencies in the USACE procurement process.

Finally, construction industry attorneys believe federal PLA mandates are illegal and violate several laws that govern federal procurement.[[5]](#footnote-5) The USACE Mobile District will expose itself to costly bid protests, litigation and related delays if it mandates or uses a PLA preference on this project.

A federal project perfectly demonstrates the anti-competitive and costly problems with PLA mandates on large-scale federal contracts. A solicitation for a U.S. Department of Labor Job Corps Center in Manchester, New Hampshire, was originally issued with a PLA mandate. After nearly a total of three years of PLA-related delays and litigation, the project was rebid with a PLA and then again without a PLA following a successful GAO bid protest. Comparing the project’s bid results with and without a PLA prove PLA mandates increase costs and reduce competition.[[6]](#footnote-6) Without a PLA, there were more than three times as many bidders (nine vs. three) and the lowest bidder’s offer was $6,247,000 (16.47 percent) less than the lowest PLA bidder. In addition, firms who participated in both rounds of bidding submitted an offer that was nearly 10 percent less than when they submitted a bid with a PLA. The low bidder under the PLA mandate was from Florida, but without a PLA, a local firm from New Hampshire won the contract[[7]](#footnote-7) and completed it on time and on budget to the satisfaction of the DOL.[[8]](#footnote-8)

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

As mentioned, there is no circumstance where the USACE should mandate a PLA for the Site Development and Utilities Phases I and II at Tyndall Air Force Base in Bay County, Florida.

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

[Insert Company Name] urges the USACE Mobile District to refrain from imposing PLA mandates on any federal projects.

The USACE should allow contractors—the only parties with experience in labor-management relations in the construction industry, and the only ones that would be subject to the terms and conditions of a PLA—to decide whether a PLA is appropriate for a particular project. The USACE should expect contractors to voluntarily execute PLAs if they would lower their costs, make them more competitive, and help them achieve economy and efficiency in federal procurement.

It is difficult to make a convincing case that government-mandated PLAs are needed on any USACE project for a variety of compelling reasons. However, here’s one key reason why a PLA mandate is not needed: The Bureau of Labor Statistics’ (BLS) most recent report indicates 87.4 percent of the U.S. private construction industry workforce does not belong to a union.[[9]](#footnote-9) In Florida, 96.7 percent of the respective private construction workforce does not belong to a union.[[10]](#footnote-10)

In today’s construction marketplace, as has been the case for decades, there is a qualified, thriving and skilled alternative to union labor. Quality merit shop contractors and skilled employees can build these projects on time and on budget without a PLA. However, if these projects are subject to a PLA, the USACE can expect less competition, increased costs and potential delays.

In the interest of understanding [Insert Company Name’s] perspective on the controversial PLA issue and putting our comments in the appropriate context, the USACE should know that it is difficult to predict precisely how a PLA will impact the Mobile District projects without reviewing the exact content of a PLA. A PLA is a contract, so the various terms and conditions contained within will significantly increase or decrease its anti-competitive and discriminatory effect.

Without knowing the exact timing, process and content of a PLA mandate in the USACE procurement, our response assumes a USACE PLA will contain the following mandatory provisions that are particularly objectionable to nonunion companies and their employees:

1. Nonunion companies must obtain most or all of their employees from union hiring halls. Often, PLAs prevent contractors from using their existing nonunion workforce. This provision is problematic because firms can’t use most of their trained, productive employees. In some PLAs, a nonunion contractor is permitted to use a small number of its existing nonunion workforce, but they must send these employees to the union hiring hall and hope the union dispatches the same workers back to the PLA jobsite, and/or the PLA requires existing nonunion employees to join a union within eight days of employment on the project.[[11]](#footnote-11) This provides unions with the opportunity to dispatch “salts” with conflicts of interest to nonunion companies. Unfamiliar union workers may be of unknown quality and may delay time- and cost-sensitive construction schedules that add uncertainty to the ability of a contractor to deliver a quality, on-time and on-budget construction product to USACE.
2. Nonunion employees must pay nonrefundable union dues and/or fees and/or join a union to work on a PLA project, even though they have decided to work for a nonunion employer.[[12]](#footnote-12) PLAs require unions to be the exclusive bargaining representative for workers during the life of the project. When agreeing to participate in a PLA project, the decision to agree to union representation is made by the employer rather than the employees.[[13]](#footnote-13) Construction employees often argue that forced unionization and/or representation—even for one project—is an infringement of their workplace rights and runs contrary to their intentional decision not to join a union.
3. PLAs require contractors to follow union work rules, which changes the way they otherwise would assign employees to specific job tasks—requiring contractors to abandon an efficient labor utilization practice called “multiskilling” and instead assign work based on inefficient and archaic union craft jurisdictional boundaries that increase labor costs. Open shop contractors achieve significant labor cost savings through multiskilling, in which workers possess a range of skills that are appropriate for more than one work process and are used flexibly across multiple trades on a project or within an organization. This practice has tremendous labor productivity advantages for contractors, but it is forbidden by typical union work rules and, by extension, PLAs.[[14]](#footnote-14)
4. PLAs require nonunion companies to pay their workers' health and welfare benefits to union trust funds, even though these companies have their own benefits plans. Workers cannot access any of their union benefits accrued during the life of the PLA project unless they decide to leave their nonunion employer, join a union and remain with the union until vested.[[15]](#footnote-15) Because few nonunion employees choose to join a union after working on a PLA project, companies end up paying benefits twice: once to the union plans and once to the existing company plans to ensure employees have direct access to retirement and benefits plans. Nonunion contractors have to factor this double benefit cost into their bid, which needlessly increases costs and puts them at a competitive disadvantage against union contractors that are not saddled with these unnecessary costs. In addition, paying into underfunded and mismanaged union-affiliated multi-employer pension plans may expose merit shop contractors to massive pension withdrawal liabilities. Depending on the health of a union-managed multi-employer pension plan, signing a PLA could bankrupt a contractor or prevent it from qualifying for construction bonds needed to build future projects for the USACE and other clients.[[16]](#footnote-16)
5. PLAs require nonunion companies to obtain apprentices exclusively from union apprenticeship programs. Participants in federal and state-approved nonunion apprenticeship programs and community or employer training programs cannot work on a job covered by a PLA. This means future construction industry workers enrolled in qualified apprenticeship programs could be excluded from working in their own community if these training programs are not run by unions.[[17]](#footnote-17)

This begs the question: Why not eliminate these provisions and therefore eliminate the controversy? The answer: Without these anti-competitive and discriminatory provisions that discourage nonunion contractors from competing for public projects, unions rarely agree to concessions regarding labor peace, work schedules and other provisions that are the cornerstones of the alleged benefits of a PLA. PLA proponents require these provisions because they are crucial to reducing competition and ensuring union contractors have an unfair advantage over nonunion contractors.

**Conclusion**

[Insert Company Name] appreciates the opportunity to share its perspective on government-mandated PLAs. We believe these anti-competitive and costly agreements have no place in Florida on other projects within the USACE Mobile District boundaries. 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,

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[Insert Title & Contact Information]

cc: Ben Brubeck, ABC National

1. <https://www.abc.org/News-Media/News-Releases/entryid/16932/december-construction-state-unemployment-rates-down-from-a-year-ago-says-abc> [↑](#footnote-ref-1)
2. <https://data.bls.gov/timeseries/LNU04032231> [↑](#footnote-ref-2)
3. See Table II, Union Membership, Coverage, Density and Employment by State, 2019, unionstats.com [↑](#footnote-ref-3)
4. Please refer to <http://thetruthaboutplas.com/2012/12/28/plastudies/> (Updated October 2019) which includes a summary of studies and additional data indicating that PLAs increase the cost of construction. [↑](#footnote-ref-4)
5. See www.TheTruthAboutPLAs.com, [*Legal Challenges Against Federal Government-Mandated Project Labor Agreements During President Obama’s First Term*](http://thetruthaboutplas.com/2013/01/22/legal-challenges-against-federal-government-mandated-project-labor-agreements-during-president-obamas-first-term/)*.* 1/22/13. [↑](#footnote-ref-5)
6. See table of bid results via TruthAboutPLAs.com at: <http://thetruthaboutplas.com/wp-content/uploads/2013/04/Bid-Results-of-Manchester-NH-DOL-Job-Corps-Center-bid-with-and-without-a-PLA-042313.pdf> [↑](#footnote-ref-6)
7. See www.TheTruthAboutPLAs.com for full details on the project. [*U.S. Department of Labor Job Corps Center Opening Demonstrates Value of Fair and Open Competition*](https://thetruthaboutplas.com/2015/10/26/u-s-department-of-labor-job-corps-center-opening-demonstrates-value-of-open-competition/), 10/26/15. [↑](#footnote-ref-7)
8. <http://www.nhbr.com/September-4-2015/From-the-ground-up-NH-Job-Corps-Center/> [↑](#footnote-ref-8)
9. *See* www.bls.gov “*Union Members Summary”* (Jan. 22, 2020). <https://www.bls.gov/news.release/pdf/union2.pdf> [↑](#footnote-ref-9)
10. The *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. The most recent data lists the union membership of the private construction workforce. There is no data on construction union membership at the local, city or county level. [↑](#footnote-ref-10)
11. See www.TheTruthAboutPLAs.com, [Understanding Core Workforce Provisions in Project Labor Agreements](http://thetruthaboutplas.com/2014/04/07/understanding-core-workforce-provisions-in-project-labor-agreements/), 4/7/14, and [*Project Labor Agreement Basics: What is a PLA?*](http://www.thetruthaboutplas.com/2009/04/24/project-labor-agreement-basics-what-is-a-pla/)4/24/09. [↑](#footnote-ref-11)
12. The legality of clauses in typical PLAs that require compulsory union membership and payment of union dues and fees to unions by workers in order to work on a PLA project depend on the state’s Right to Work law status. See www.TheTruthAboutPLAs.com, [*Understanding PLAs in Right to Work States*](http://www.thetruthaboutplas.com/2009/07/20/understanding-plas-in-right-to-work-states-2/), 7/20/09. [↑](#footnote-ref-12)
13. Workers normally are permitted to choose union representation through a card check process or a federally supervised private ballot election. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The [National Labor Relations Act](http://www.nlrb.gov/about_us/overview/national_labor_relations_act.aspx) generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the opportunity for construction workers to choose a federally supervised private ballot election or a card check process when deciding whether union representation is right for them. [↑](#footnote-ref-13)
14. See www.TheTruthAboutPLAs.com, [*Understanding the Merit Shop Contractor Cost Advantage*](http://www.thetruthaboutplas.com/2010/05/17/understanding-the-merit-shop-contractor-cost-advantage/). 5/17/10. [↑](#footnote-ref-14)
15. An October 2009 report by Dr. John R. McGowan, *The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements*, finds that employees of nonunion contractors that are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20 percent. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of 25 percent in benefit costs above and beyond existing prevailing wage laws as a result of “double payment” of benefit costs. See www.TheTruthAboutPLAs.com, [*New Report Finds PLA Pension Requirements Steal From Employee Paychecks, Harm Employers and Taxpayer*](http://thetruthaboutplas.com/2009/10/24/new-report-finds-pla-pension-requirements-steal-from-employee-paychecks-harm-employers-and-taxpayers/)*s*. 10/24/09. [↑](#footnote-ref-15)
16. See www.TheTruthAboutPLAs.com, [*The Dismal Future of Construction Industry Multi-Employer Pension Plans*](http://thetruthaboutplas.com/2012/04/23/the-dismal-future-of-construction-industry-multiemployer-pension-plans/).4/23/12. [↑](#footnote-ref-16)
17. See [www.thetruthaboutplas.com/tag/training-apprenticeship](http://www.thetruthaboutplas.com/tag/training-apprenticeship). [↑](#footnote-ref-17)