CLIENT ALERTS & INSIGHTS

Biden Administration Requires Labor Agreements for Federal Construction Projects

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On February 4, 2022, President Joe Biden signed an Executive Order ("EO") requiring project labor agreements (each a "PLA") with unions on all federal construction projects valued at $35 million or more (defined in the EO as "Large-scale construction projects").

The EO mandates that federal agencies awarding large-scale construction projects or obligating funds pursuant to such a contract require every contractor or subcontractor engaged on the project to agree to negotiate or become a party to a PLA. A PLA is a binding, pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project. The PLA requirement established by the EO is intended to assist the efficient and timely completion of large-scale construction projects by providing the various employers on a project with a single set of terms and conditions of employment, including a single dispute resolution mechanism.

Any PLA reached pursuant to the EO must:

- bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- contain guarantees against strikes, lockouts, and similar job disruptions;
- set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
- provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.

The EO also allows for exceptions from the PLA requirement, where a senior official, no later than the solicitation date of the contract, provides a specific written explanation of why at least one of the following circumstances exist with respect to the contract:

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Requiring a PLA on the project would not advance the federal government's interests in achieving economy and efficiency in federal procurement. Such a finding shall be based on the following factors:

- The project is of short duration and lacks operational complexity;
- The project will involve only one craft or trade;
- The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors;
- The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable; or
- The project implicates other similar factors deemed appropriate in regulations or guidance issued pursuant to section 8 of this order.

- Based on an inclusive market analysis, requiring a PLA on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition.
- Requiring a PLA on the project would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.

The Federal Acquisition Regulatory Council ("FAR Council") has been tasked with creating related regulations within 120 days, after which point the use of PLAs with unions on all large-scale federal construction projects will be mandatory. Between the date of this order and the 120 days prior to the issuance of the final regulations by the FAR Council, federal agencies are "strongly encouraged" but not obligated to comply with the requisites of the EO.

The EO will apply only to directly financed federal construction projects, not projects funded by federal grants but carried out by other entities. This is notable, as the latter category will make up the majority of the projects funded under the recent $1.2 trillion Infrastructure Investment and Jobs Act.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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