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Obama Administration's Executive Order on Project Labor Agreements

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On February 6, President Obama issued an executive order declaring that executive agencies awarding contracts on "large scale construction projects" having a total cost to the federal government of \$25 million or more "may, on a project-by project basis, require the use of a project labor agreement" by a contractor (binding all subcontractors). The agency must find that such an agreement will "advance the federal government's interest in achieving economy and efficiency in federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health equal employment opportunity, labor and employment standards, and other matters, and be consistent with law." The Order sets forth a series of policy justifications for these provisions that are demonstrably false. Significantly, no PLAs have been imposed on federal construction projects for at least the last eight years, and none of the adverse effects identified in the policy statement have occurred.

While the Obama Order directly imposes PLAs on large scale construction projects, equally important is that the Order revokes President Bush's Executive Order 13202, which had barred any recipient of federal financial assistance, i.e., state and local governments, from imposing PLAs. As a result of the new order, state and local governments in some parts of the country will undoubtedly start imposing PLAs where they previously had not done so because of the federal ban.

The Obama Order goes into effect immediately, but will only apply to solicitations for contracts issued on or after the effective date of implementing regulations to be issued by the FAR Council, which is ordered to occur within 120 days. The Order further directs OMB to assess whether even broader use of PLAs should be directed.

The Obama Executive Order exceeds the President's statutory authority. Whether and when a court challenge should be filed is under review at the national level. The Order will result in widespread discrimination against the many construction workers who do not belong to unions, and denies their right to Freedom of Association and Equal Protection. The Order will cause money to be unfairly taken from such workers and funneled into under-funded union pension plans, from which the workers can receive no benefits. The Order will increase costs to the federal taxpayers by arbitrarily limiting competition for federal construction work.