

# PUBLICATION

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## Contractors Continue to Challenge Project Labor Agreements on Large-Scale Federal Construction Projects

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**The construction industry continues to challenge Executive Order (EO) 14063, which requires project labor agreements (PLAs) on federal construction projects of \$35 million or more. The Associated Builders and Contractors (ABC) recently appealed the denial of its request to enjoin EO 14063 to the U.S. Court of Appeals for the Eleventh Circuit. The Eleventh Circuit's opinion is forthcoming, but the court has already shown it may be skeptical about whether it has authority to decide disputes concerning alleged statutory violations of federal procurement processes.**

Contractors should consider the developing law related to the PLA mandate in EO 14063 and the forthcoming opinion from the Eleventh Circuit when performing under existing contracts, bidding on "large-scale" construction projects, negotiating for an exception or modification to the PLA mandate, or protesting a solicitation that includes the PLA mandate.

### The PLA Mandate in Executive Order 14063

For "large-scale construction" projects, EO 14063 mandates procuring agencies to "require every contractor or subcontractor engaged in construction on the project to agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations."<sup>1</sup> A "large-scale construction project" is "a Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is \$35 million or more." A "project labor agreement" is a "pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project . . . ." A "labor organization" is an organization that deals "with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work" and includes building and construction employees as members.<sup>2</sup>

EO 14063 may allow an exception to the PLA requirement if, among other things:

- Requiring a PLA would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement;
- Inclusive market analysis shows that requiring a PLA would substantially reduce the number of potential bidders and frustrate the full and open competition; or
- Requiring a PLA would be inconsistent with statutes, regulations, executive orders, or Presidential Memoranda.<sup>3</sup>

### The U.S. Court of Federal Claims Rules the PLA Mandate in EO 14063 Violates the Competition in Construction Act

In January 2025, the U.S. Court of Federal Claims ruled that EO 14063 violates the Competition in Construction Act (Construction Act).<sup>4</sup> The plaintiffs, twelve large construction companies, challenged various solicitations issued by several agencies that required a PLA by incorporating the applicable FAR rules.

The court ruled that the PLA mandate in EO 14063 violates the Construction Act, which requires procuring agencies "to obtain full and open competition through the use of competitive procedures,"<sup>5</sup> because:

- The FAR's implementation of EO 14063 was arbitrary and capricious, as the agencies' own market research indicated PLAs would reduce competition and increase costs, which the agencies ignored;
- Requiring PLAs will exclude responsible contractors that decline to enter a PLA, regardless of that contractor's capability to perform the contract; and
- The agencies did not seek exceptions to the PLA requirement, even when market research recommended against the inclusion of a PLA.<sup>6</sup>

The plaintiffs also argued that EO 14063 exceeds the President's authority under the Federal Property and Administrative Services Act (FPASA).<sup>7</sup> The court strongly suggested that it agreed but ultimately did not decide this issue, noting the lack of guidance from the Supreme Court of the United States and the U.S. Court of Appeals for the Federal Circuit.

Although the court ruled that the PLA mandate in EO 14063 violates the Construction Act, the court did not enjoin the enforcement of the PLA mandate. Instead, the court allowed the agencies to reconsider whether to include the PLA mandate in their solicitations.<sup>8</sup>

### **Will the Eleventh Circuit Enjoin the Enforcement of EO 14063?**

In the U.S. District Court for the Middle District of Florida, the ABC and an ABC Florida chapter sought a nationwide preliminary injunction against EO 14063. The ABC made similar arguments to the plaintiffs in *MVL*. The trial court found that the ABC was likely to succeed in its challenge to EO 14063 under the FPASA because the statute "does not grant agencies – or the executive – specific authority to place *any* restriction or specification into bids."<sup>9</sup> Although the trial court was "highly skeptical" of the President's authority to mandate PLAs under the FPASA, the trial court did not decide this issue, citing a lack of briefing and argument by the parties.

Relying on *MVL*, the trial court also found that ABC was likely to prevail on its claim under the Construction Act because the PLA mandate "applies across a wide swath of government contracts; has few exceptions and any exceptions are, at best, infrequently used; and is not directly tailored to the needs of a particular solicitation, including the ability of the [contractor] to effectively and competently complete the project."<sup>10</sup> Still, the trial court denied the ABC's request for an injunction, suggesting that a bid protest may provide an adequate remedy for violations of the Construction Act.<sup>11</sup>

On appeal, the ABC asks the Eleventh Circuit to overturn the trial court's denial of the ABC's request for a preliminary injunction. The Eleventh Circuit's opinion is forthcoming, but the court has already raised issues about whether it has the authority to decide disputes concerning alleged statutory violations involving federal procurements, or whether the U.S. Court of Federal Claims has exclusive jurisdiction over such issues.

### **Looking Ahead**

The Eleventh Circuit's opinion should provide guidance about what courts can decide disputes involving the PLA mandate (the United States District Courts, the U.S. Court of Federal Claims, or both) and provide guidance about the legality of the PLA mandate. For now, contractors should comply with obligations in existing contracts, monitor the laws related to EO 14063, and consult legal counsel about challenging PLA requirements or negotiating PLA requirements with procuring agencies.

If you have any questions related to the Eleventh Circuit's opinion, PLA requirements, or EO 14063, please contact [Darwin A. Hindman III](#), [F. Dalton Thompson III](#), or a member of Baker Donelson's [Construction Group](#) or [Government Contracts Group](#).

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<sup>1</sup> Exec. Order No. 14,063, 87 Fed. Reg. 7363 (Feb. 4, 2022). EO 14063 became effective in January 2024 through the Federal Acquisition Regulation (FAR) Council's issuance of a final rule implementing the Executive Order. See FAR 52.222-33 and 34.

<sup>2</sup> *Id.*; see also 29 U.S.C. § 152(5).

<sup>3</sup> Exec. Order No. 14,063, 87 Fed. Reg. 7363 (Feb. 4, 2022).

<sup>4</sup> See *MVL USA, Inc. v. United States*, 174 Fed. Cl. 437 (Jan. 21, 2025); see also 41 U.S.C. § 3301.

<sup>5</sup> See 41 U.S.C. § 3301(a).

<sup>6</sup> *MVL*, 174 Fed. Cl. at 463–67, 469.

<sup>7</sup> See 40 U.S.C. § 101, *et seq.*

<sup>8</sup> *MVL*, 174 Fed. Cl. at 474. In a May 6, 2025, Order, the court noted that the agencies either canceled or removed the PLA requirement from each solicitation at issue. Following this corrective action, the plaintiffs moved for a permanent injunction, and the government moved to dismiss plaintiff's case as moot. The court ruled that, based on the corrective action by the government, the need for injunctive relief was moot and granted the government's motion to dismiss. See *MVL USA, Inc. v. United States*, 176 Fed. Cl. 582 (May 6, 2025).

<sup>9</sup> See *Associated Builders and Contractors Florida First Coast Chapter, et al. v. Gen. Services Admin., et al.*, Case No. 3:24-cx-318-WWB-MCR (M.D. Fla. March 28, 2025). A party moving for a preliminary injunction must establish four factors:

(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

*Id.* (quoting *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000)).

<sup>10</sup> See *First Coast Chapter*, Case No. 3:24-cx-318-WWB-MCR (M.D. Fla. March 28, 2025).

<sup>11</sup> The court also found that the harm alleged by the subcontractor members required the court to speculate about the likelihood of contingencies that would harm the subcontractors, such as the subcontractors being selected by a successful general contractor but being unable to perform the work for various reasons caused by the PLA mandate. See *id.*