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# The Ongoing Impacts of Project Labor Agreements and the Build America, Buy America Act

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# Project Labor Agreements

- PLA Basics
- Regulations vs. Reality – the Practical Effect of PLAs
- Legal Challenges and the Future of PLAs



# What is a Project Labor Agreement?

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- Pre-hire collective bargaining agreement
- With one or more labor organizations
- Establishes the terms and conditions of employment for a specific construction project

# Executive Order 14063

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- Requires use of PLAs on all large-scale direct federal construction projects (\$35m)
- Previous Executive Orders prohibited the use of PLAs, or encouraged but did not require their use
- FAR Council published the final rule in December 2023, effective January 2024

# When PLAs Are Required

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- Only Direct Federal Contracts – Applies to direct federal construction contracts—not federal aid (like transportation) contracts—including ***all*** subcontracts
- Direct federal construction contractors are contractors with prime contract with a federal agency owner, and their subcontractors
- The final rule applies to FAR-based contracts awarded by the federal government. The rule does not apply to grants or contracts awarded by states or localities with federal funding
- Only applies to covered construction projects within the United States

# The FAR Contract Provisions

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- FAR 52.222-33 Notice of Requirement for Project Labor Agreement
- FAR 52.222-34 Project Labor Agreement
- Government does not specify which unions should be party to PLA



# Six Mandatory PLA Provisions

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1. Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents.
2. 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.
3. Include guarantees against strikes, lockouts, and similar job disruptions.

# Six Mandatory PLA Provisions

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4. Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the PLA's term.
5. Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.
6. Fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.



# Subcontract Flowdown

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- When awarding a contract in connection with a large-scale construction project, agencies shall require use of PLAs for contractors and subcontractors engaged in project construction, unless an exception applies
- All subcontractors must agree to become a party to the PLA negotiated by the prospective offeror or prime contractor in order to participate on the project, unless an exception applies
- All subcontracts must include a flow down provision to apply to lower-tier subcontractors

# PLA Exceptions

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1. PLA would not promote ***economy and efficiency***
2. Based on 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***
3. Requiring a PLA on the project would otherwise be inconsistent with federal statutes, regulations, Executive Orders, or Presidential memoranda

# Grating Exceptions

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- Realistically, exceptions are only likely to be granted where agency determines that PLA requirement would result in only one proposal (negotiated procurement) or two bids (sealed bidding), or where bids are more than 10% above the government's budget
- OMB has instructed agencies that they are not permitted to apply their own interpretations to the regulations



# Regulation vs. Reality

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- The FAR does not prescribe the terms of a PLA, or which labor organizations must be parties
  - The stated goal is to allow contractors and labor organizations to negotiate agreeable terms
- The reality is that labor organizations know the contractors have no choice

# Labor Demands in PLAs

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PLAs from labor organizations can require:

- Contractor employees to become union members, or to pay union dues if they do not join
- Contractors to pay into union fringe and pension funds even though contractor employees will not benefit
- Project hiring based on union seniority rules
- Hiring of apprentices
- Invasive audit rights

# Legal Challenges to PLAs

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## ***ABC Florida First Coast Chapter v. Clark;*** **USDC for Middle District of FL, Jacksonville Div.**

- Constitutional, statutory, and regulatory challenges
- Specific injury alleged by named industry contractors
- Seeking injunctive and declaratory relief – nationwide ban on enforcement
- Status: Denial of preliminary injunction on appeal to 11<sup>th</sup> Circuit; motions for summary judgment fully briefed since October 2024, but undecided



# Legal Challenges to PLAs

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## ***N. Am. Bldg. Trades Unions (NABTU) v. Dept. of Defense; USDC for District of Columbia***

- NABTU challenged DOD and GSA blanket exceptions/deviations from PLA requirement
- Court issued preliminary injunction prohibiting agencies from enforcing the memoranda issued directing that project labor agreements not be required in large-scale federal construction projects
- Status: Case terminated

# Legal Challenges to PLAs

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## Consolidated Bid Protests – U.S. Court of Federal Claims

- Second round – protesters succeeded in *MVL USA, INC. v. U.S.* in January 2025
  - Held that PLA requirement violated CICA requirement for full and open competition in those procurements
- Similar arguments in this round
- Limitations: Decision will only cover challenged projects/solicitations
- Status: Undecided

# Legal Challenges to PLAs

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## ***Slayden Plumbing & Heating, Inc. v. General Services Administration, et al.; USDC for Alaska***

- Filed by a subcontractor
- Challenges PLAs on the basis that subcontractors have no negotiating authority, and would have to effectively override employees' preference to remain non-union
- Status: Complaint filed November 5, 2025



# Build America, Buy America Act

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- BABA – Federal Highway Administration (FHWA)
- BABA Federal Aviation Administration
- BABA Implemented by Other Federal Agency Grants



# BABA Review Basics

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- All federal funding on state and local projects to meet minimum BABA requirements for (1) iron and steel, (2) manufactured products, and (3) construction materials.
- In addition to the already existing iron and steel and manufactured products requirements, BABA introduced a broad new category of “construction materials.”
- A 4th BABA category is aggregate and cement products, which are exempt under Section 70917(c) of BABA, and do not have to be produced in the United States.

# FHWA General Waiver for Manufactured Products Ends

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- As required in BABA, the FHWA reconsidered its across-the-board 1983 manufactured products waiver.
- January 2025 – Final Manufactured Product rule issued. Big change for October 2025 and then October 2026.
- Predominantly iron or steel components of a product classified as a manufactured product do not need to comply with FHWA's Buy America requirements for iron and steel.



# FHWA 2025 Manufactured Product Rule

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- Deviates from for two specific products: (1) precast concrete products and (2) electronic hardware systems (like intelligent transportation systems and metal casings of items in road right of way).
- These two specific products require domestic iron and steel as opposed to all other FHWA manufactured products which now do not require domestic iron and steel.

# FHWA 2025 Manufactured Product Rule

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- The BABA rule requires that manufacturing takes place in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product.
- Phased in: for Oct. 2025 – manufactured in USA, Oct. 2026 55% total cost from USA of components.

# FHWA Two De Minimis Iron and Steel Rules

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- The 2023 De Minimis Costs FHWA waiver waives the application of the requirements of the Build America, Buy America Act (BABA) under a single financial assistance award when the total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project.
- Importantly, prior to the FHWA 2025 manufactured product rule, the De Minimis waiver did not apply to manufactured products, now that 2023 waiver applies.

# FHWA Second De Minimus Rule

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- The FHWA does not apply its Buy America requirements to minimal use, where the cost of steel and iron materials is less than 0.1 percent of the total contract cost or less than or equal to \$2,500, whichever is greater. 23 CFR 635.410(b)(4).
- 2025 FHWA final rule: DOT does recognize the potential for confusion that could be created by having two separate de minimis waivers for the same products under the same financial assistance program.



# Alaska DOT BABA Compliance Forms

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- **AK 25D-62, Certificate of Buy America Act Compliance Federal-Aid Highway Contracts.** Form references 4 CFR 184—which implements BABA.
- **AK 25D-60, MATERIAL ORIGIN CERTIFICATE Federal-Aid Highway Contracts.**
  - Form incorporates an allowance is one-tenth of one percent (0.1 percent) of the total contract amount, or \$2,500, whichever is greater, per 23 CFR 635.410(b)(4).
  - Also, the contract allowance is no more than the lesser of \$1,000,000 or 5% of the total applicable costs for the project, per the USDOT Waiver of Buy America Requirements for De Minimis Costs and Small Grants 88 FR 55817.

# FAA BABA Implementation

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- **FAA's "Buy American" is Really "Buy America" under BABA**
- **FAA still requires 100% domestic content, not 55% as set forth in BABA for manufactured products**
- **FAA waiver** confirms the total cost of components and subcomponents are more than 60% sourced from the United States, which is critical for FAA Type (iii) waivers.

# Other Agency BABA Updates for 2025

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- **FY 2025:** HUD began phasing in BABA requirements, applying to all new obligations under its community planning and development programs.
- EPA; Office of Water BABA Implementation Procedures. Updates to the BABA memorandum were completed on August 8, 2025.
- The Department of Agriculture (USDA) and the National Telecommunications and Information Administration (NTIA) both have major broadband funding programs that implement BABA.



# Questions?

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