REPRESENTING UTILITY & EXCAVATION CONTRACTORS

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July 16, 2021

Katharine Richards
Office of Recovery Programs
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Coronavirus State and Local Fiscal Recovery Funds; TREAS-DO-2021-0008; RIN 1505-AC77

Dear Ms. Richards:

The National Utility Contractors Association (NUCA) represents construction contractors, manufacturers, and distributors who build and maintain a wide range of our nation's infrastructure. Member companies provide the manpower and equipment needed to build, repair, and maintain the infrastructure needed for drinking water and wastewater, stormwater, gas distribution, broadband, and the electric grid as well as the nation's surface transportation system.

NUCA submits the following comments to the U.S. Department of the Treasury in response to the above-referenced interim final rule published in the Federal Register on May 17, 2021 (86 FR 26786).

NUCA has previously written to the U.S. Department of Treasury concerning regarding guidance related to federally assisted state and local infrastructure projects, including those related to underground utility infrastructure deployment. The guidance includes language that promotes controversial labor provisions on eligible construction projects, including anticompetitive project labor agreements (PLAs). NUCA represents both union and merit shop contractors, and we respectfully encourage the administration to encourage policy that will allow all qualified construction entities to participate in the effort to rebuild American infrastructure.

The interim final rule provides related to $350 billion in federal funding for state and local fiscal recovery allocated in the American Rescue Plan Act of 2021. Unfortunately, the guidance includes language that promotes PLAs, which needlessly increase taxpayer-funded construction costs and discourage competition from many small and large nonunion construction businesses.

Consider the following language taken from the interim final rule:

"Treasury's Interim Final Rule also encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions."

PLA requirements essentially exclude many construction firms from the opportunity to compete on contracts that include federal financing assistance at a time when we need to create opportunities for all employers and employees who have been severely affected by the Covid-19 pandemic. While we appreciate that the language provided in the guidance is not a mandate, NUCA is concerned that encouragement of PLAs and related reporting requirements could lead to confusion and discourage state and local governments from contracting with qualified nonunion contractors and local workers who could provide the best quality and cost for taxpayers.

One of the biggest challenges facing the construction industry is the lack of enough workers in the market to carry out the demands of not only installing new infrastructure but repairing and replacing the aging infrastructure that so much of the country still relies upon. The importance of keeping Americans connected in the face of the ongoing coronavirus pandemic only exacerbates our workforce capacity challenges at a time when demand is only rising. Mandating union labor while cutting out valuable non-union workers though mandated PLAs will unquestionably delay the construction of the infrastructure created by any major federal investment.

Furthermore, collective bargaining agreements between construction employers and unions are the result of negotiations between entities with competing interests but reflect local market conditions and practices. PLAs mandated by the government interfere with that balance and often impose questionable terms and conditions, inefficient work rules and staffing requirements, and other inefficiencies.

When left to their discretion, federal contracting agencies have affirmatively declined mandating PLAs, which undercuts the argument that government-mandated PLAs increase efficiency in federal contracts. PLAs often produce higher construction costs than under open and fair competition for contracts. As a result, studies have shown that these construction projects are often 12 to 18 percent more expensive than comparable non-PLA projects.

The COVID-19 pandemic has demonstrated the essential nature of the various utility infrastructure assets our members build and support every day. For instance, ensuring broadband service has become and must remain a national priority. Increased use of telehealth, work-at-home directives, and hybrid classrooms where many students spend more time in a “virtual” classroom all underscore the importance of keeping America connected. Recognizing the overwhelming amount of work expected in the coming years to deploy broadband across the country and the fact that our industry already faces significant workforce capacity challenges, the last thing the federal government should do is encourage policy that would cut out the majority our workforce – specifically, nonunion construction workers. The same applies to other critical infrastructure initiatives, such as replacement of lead service water lines and the expansion and modernization of the electric grid.

NUCA has previously encouraged the Treasury Department to clarify that state and local governments are in no way required to mandate PLAs on eligible construction projects and that the federal government’s encouragement of PLAs will not become a mandate or requirement at a later date.

NUCA appreciates your consideration of our comments and we welcome the opportunity to discuss these concerns in in a virtual setting or in person.