



## **ACCNJ LEGAL & INSURANCE UPDATE**

APRIL 2025

### **COURT OF FEDERAL CLAIMS RULES AGAINST FEDERAL PLA MANDATE**

In previous alerts, we reported on the Associated General Contractor's (AGC) case in the Court of Federal Claims, challenging Executive Order (EO) 14063, which mandates the use of project labor agreements (PLA) on large-scale federal construction projects. You may recall the AGC consolidated 12 federal bid protests filed by contractors into one lead case to challenge the mandate, arguing that the EO FAR regulations violated the Competition in Contracting Act's (CICA) "full and open competition" requirements.

On January 21st, the court ruled in favor of the AGC, determining the federal PLA mandate violated CICA because it inappropriately allowed federal agencies to reduce competition for large-scale federal construction contracts to only PLA-contractors. In coming to this determination, the court explained CICA's requirement for "full and open competition" meant that all responsible sources were to be allowed to compete for contracts. Therefore, including the PLA mandate in solicitations, according to the court, hindered responsible, capable contractors from bidding on these contracts because the requirement "has no bearing on whether plaintiffs can perform the contract at issue."

Finally, the court held that the agencies subject to the protests acted arbitrarily and capriciously by disregarding their market research, which ultimately revealed PLAs on these projects would increase prices and reduce competition. As a result, the contracting agencies involved in the case were given a February 10th deadline to "reassess their PLA decision" and advise the court of their plan for each solicitation moving forward, inferring that the mandatory PLA provisions of the solicitations must be removed from the contract requirements. To avoid confusion moving forward, the contractor plaintiffs in AGC's lawsuit requested a permanent injunction ordering the Government to rescind EO 14063. As this motion makes its way through the court, ACCNJ staff will monitor how the court reacts and provide updates when further information becomes available.

### **TRUMP ADMINISTRATION REVOKES ANTI-DISCRIMINATION HIRING RULE**

On January 21, 2025, President Trump signed a new Executive Order (EO) ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity"), requiring the Office of Federal Contract Compliance Programs (OFCCP) to immediately cease promoting diversity, stop federal contractors and subcontractors from taking affirmative action, and end workforce balancing by federal contractors based on race, color sex, sexual preference, religion, or national origin. The EO rescinds prior executive actions dating back to 1965 relating to equal employment opportunity and affirmative action based on race and sex in federal employment and government contracting activities.

As we begin to see a shift away from DEI initiatives, ACCNJ staff has been paying close attention to the possible implications on the construction industry, particularly set-aside programs. At the federal level, the Small Business Administration's 8a and Women-Owned Small Business programs set aspirational goals for women and socially and economically disadvantaged individuals to receive portions of government construction contracts. Importantly, these programs are statutorily mandated by Congress, meaning they cannot simply be eliminated by executive order. However, the recent executive orders clearly indicate

hostility towards disadvantaged business initiatives, and the potential second-order impacts resulting from changing leadership at the SBA and the DOT could lessen their support.

So, while DBE programs are rooted in longstanding federal and state mandates aimed at addressing historical disparities, ultimately, there is uncertainty about whether the federal shift away from DEI initiatives will influence federal and/or state-level programs. That said, ACCNJ staff will be paying close attention to any trickle-down effects these policies may have on set-asides in the future.

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