HRPA HR POLICY ASSOCIATION®

July 13, 2022

The Honorable Jim McGovern
Chairman
Rule Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Tom Cole
Ranking Member
Rules Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Chairman
House Armed Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Mike Rogers
Ranking Member
House Armed Services Committee
U.S. House of Representatives
Washington, DC 20515

Dear Representatives:

HR Policy Association writes in opposition to several labor amendments to the National Defense Authorization Act (NDAA) for Fiscal Year 2023 (H.R. 7900). The inclusion of labor amendments which will be applicable to all federal construction contracts and not just contracts within the scope of the NDAA will have negative ramifications for U.S. businesses, employees, and the economy.

HR Policy Association represents the most senior human resource executives in more than 400 of the largest companies in the United States. Collectively, these companies employ more than 10 million employees in the United States, nearly nine percent of the private sector workforce, and 20 million employees worldwide. The Association's member companies, the majority of whom are government contractors, have a long-standing commitment to complying with all federal and state employment and labor laws.

Specifically, we oppose the inclusion of labor amendments No. 13 (to require local hiring for construction contracts), No. 237 (to eliminate secret ballot protections for union elections for some DoD contractors), No. 403 (blacklisting federal contractors for violations of the Fair Labor Standards Act, even if they are not willful), No. 443 (blacklisting federal contractors from DoD contracts for National Labor Relations Act violations), No. 809 (to eliminate nonunion contractors from DOD contracts), and No. 1083 (use of project labor agreements).

Of note, amendment No. 403 was previously added to the National Defense Authorization Act for Fiscal Year 2022 (H.R. 4350) and was ultimately removed from the final bill. The Association once again urges the Committee to rule this amendment out of order because, at minimum, it is not specific to the DoD and would apply to all federal agencies, as currently written. This amendment directs all federal agencies and department heads to automatically initiate a temporary or permanent debarment proceeding against federal contractors with certain qualifying violations of the Fair Labor Standards Act in the previous five years. Similarly, amendment No. 443 prohibits the Secretary of Defense from "enter[ing] into a contract" with an employer found to have violated (or is under investigation) of the National Labor Relations Act during the three-year period preceding the proposed date of award of the contract. In addition to temporarily or permanently debarring federal contractors, amendments No. 403 and 443 will impose significant new recordkeeping and reporting responsibilities on most government contractors and subcontractors, threatening some contractors' ability to secure federal contracts.

We are also concerned about amendments No. 403 and 443 needlessly duplicating the existing procedures and remedies under federal labor laws. The Department of Labor already has robust auditing authority to ensure that federal contractors are abiding by federal labor laws, and when contractors fall out of compliance, the Department has a number of mechanisms to hold them accountable, including imposing fines, engaging in future oversight, and suspending or debarring them from receiving future federal contracts. Among other concerns, Amendments no. 403 and 443 would deny due process to federal contractors, including applicable rights of appeal for alleged FLSA and NLRB violations. Absent due process and an opportunity to fully adjudicate any alleged violation, a federal contractor will be at risk of losing its contracting status, while jeopardizing the jobs of those employees the labor laws are intended to protect. Moreover, suspension and debarment officials within each federal agency already have broad discretion to exclude companies from contracting with the federal government, which could be triggered by the most egregious employment law violations.

Amendment No. 1083 requires project labor agreements on all federal construction contracts of $35 million or more. Government-mandated PLAs are jobsite-specific collective bargaining agreements unique to the construction industry that often increases cost and unfairly limit competition. When mandated by government agencies, PLAs can supersede and interfere with existing collective bargaining agreements that contractors have already negotiated with various unions and prevent firms from using labor from certain unions, which is why some union organizations and contracting groups oppose government-mandated PLAs.

Finally, the inclusion of the above provisions in a final bill will harm competition by limiting the pool of contractors able to bid on a contract and prevent the federal government from procuring the best possible services at the most efficient price. Such a result will cause considerable disruptions to the federal contracting supply chain at a time when the delivery of goods and services remains critical. Further, companies who rely significantly on federal contracts could see a major contraction of their business which could ultimately lead to job losses and a negative impact on the American economy as a whole.

The HR Policy Association appreciates your attention to our concerns and strongly urges you to oppose these amendments.

Sincerely,

Chatrane Birbal

Chatrane Birbal
Vice President, Government Relations
HR Policy Association

cc: U.S. House of Representatives