



May 27, 2025

VIA ELECTRONIC SUBMISSION

Hon. Abigail Slater
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

RE: Request for Comments, Anticompetitive Regulations Task Force (Docket No. ATR-2025-0001-0002).

Dear Assistant Attorney General Slater and Members of the Anticompetitive Regulations Task Force:

The American Road & Transportation Builders Association (ARTBA), representing more than 8,000 members across the transportation construction industry, respectfully submits the following comments in response to the Anticompetitive Regulations Task Force's request for information on regulations that create barriers to competition.

Background

ARTBA represents members of all sizes from every sector of the transportation construction industry, including contractors, materials suppliers, planning and design firms, state and local transportation agencies, and equipment manufacturers, among others. Our members plan, finance, design, build, and maintain the nation's critical transportation infrastructure assets across all modes. They seek to deliver these projects as safely, efficiently, and cost-effectively as possible.

Unfortunately, certain federal policies impose anti-competitive barriers that inhibit innovation and limit opportunities for fair and efficient contracting. These constraints ultimately undermine the optimal delivery of critical transportation infrastructure projects by our members. We respectfully urge the Task Force to consider the enclosed comments as it evaluates and addresses these regulatory obstacles.

ARTBA's Comments

ARTBA is currently participating in regulatory reform efforts across multiple federal agencies. For purposes of the Task Force's deliberations, we recommend review of the following policy areas

carrying the potential to “impose undue burdens on small businesses and impede private enterprise and entrepreneurship.”¹

1. *Manual on Uniform Traffic Control Devices* (MUTCD), as issued by the Federal Highway Administration (FHWA), and
2. Mandated use of project labor agreements (PLAs) under the Federal Acquisition Regulations.

We discuss both issues in detail below.

I. FHWA should lift the ban on proprietary products within the MUTCD.

The MUTCD² sets national standards for traffic control devices on streets, highways, and pedestrian and bicycle facilities. Last updated in December 2023, it includes guidelines for emerging technologies, while intending to enhance consistency, clarity, and accessibility in traffic control. ARTBA members rely on the MUTCD as a core resource for designing systems that support safe, efficient mobility across all roadways.

In 2019, FHWA repealed a 103-year-old rule prohibiting the use of patented or proprietary products in federal-aid highway and bridge projects.³ The agency called the rule a barrier to innovation, as numerous products could not be utilized on those projects unless manufacturers surrendered their patents. FHWA’s action affirmed the priority of enhancing safety and mobility on our roadways, rather than maintaining an edict from President Woodrow Wilson’s administration.

Unfortunately, the 2019 repeal did not extend to the MUTCD, which still prohibits the use of patented traffic control devices.⁴ ARTBA urges the Task Force to recommend updating the MUTCD in this regard, which would resolve this internal conflict within FHWA’s purview and facilitate deployment of advanced technologies.

Indeed, small businesses often lead these innovations. Federal rules should serve as a gateway - rather than a barrier - to their designing and manufacturing next-generation smart markers, collapsible barriers, and the like.

¹ Exec. Order No. 14,219, § 2(a)(vii), 90 Fed. Reg. 10,583, 10,584 (Feb. 25, 2025).

² U.S. Dep’t of Transp., Fed. Highway Admin., *Manual on Uniform Traffic Control Devices for Streets and Highways* (11th ed. 2023), https://mutcd.fhwa.dot.gov/pdfs/11th_Edition/MUTCD11th.pdf.

³ See *Administering the Repeal of the FHWA Proprietary Products Rule*, 84 Fed. Reg. 16,635 (Apr. 22, 2019) (repealing 23 C.F.R. § 635.411).

⁴ “A traffic control device design or application shall not be eligible for official experimentation or interim approval unless it is in the public domain. Express abandonment of any and all forms of proprietary protection, such as patents, trademarks, or copyrights, related to the design and application of the traffic control device shall satisfy the requirement for the traffic control device to be in the public domain.” U.S. Dep’t of Transp., Fed. Highway Admin., *Manual on Uniform Traffic Control Devices for Streets and Highways* pt. 1, at 34 (11th ed. 2023), https://mutcd.fhwa.dot.gov/pdfs/11th_Edition/part1.pdf (internal cross-references omitted).

In one case, a smaller firm within ARTBA’s membership patented a solar-powered safety device designed to help prevent deadly collisions caused by wrong-way drivers. However, a state transportation department insisted the company waive its patent rights for the product to be considered for its projects.

The MUTCD already includes robust provisions to ensure consistency and driver expectancy. FHWA should instead allow patented products to be evaluated through existing testing processes, maintaining patent protections in those earlier phases. This approach would support business innovation, promote faster deployment of proven safety solutions, and better align the MUTCD with FHWA’s broader objectives of flexibility and modernization.

II. The use of project labor agreements for federally-funded construction projects should never be mandated.

A project labor agreement (PLA) requires the use of personnel from designated labor unions on a construction project. Through executive order and a subsequent rulemaking, President Biden mandated the use of PLAs on direct federal construction contracts valued at \$35 million or more.⁵ Subsequent litigation challenged this mandate, with the outlook uncertain.⁶

In representing both union and open-shop contractors, ARTBA has repeatedly detailed the shortcomings of mandated PLAs for the transportation construction industry.⁷ PLAs can work when a market’s union contractors participate in crafting the PLA with government and labor officials, seeking to maximize competition in procurement and minimize conflicts with existing collective bargaining agreements.

However, PLAs often undermine those existing agreements and create union jurisdiction issues. Furthermore, these agreements often require contractors to adopt labor terms that may differ from their existing practices. For contractors operating under different models, these requirements can limit their ability to compete, potentially reducing the pool of qualified bidders, which can increase project costs. Such outcomes run counter to the intent of the Competition in Contracting Act (CICA), which promotes full and open competition in federal procurement.⁸

⁵ *Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects*, 88 Fed. Reg. 88727 (Dec. 22, 2023) (codified at 48 C.F.R. §§ 22.501–22.505). See also Exec. Order No. 14,063, 87 Fed. Reg. 7363 (Feb. 9, 2022).

⁶ See *MVL USA, Inc. v. United States*, 174 Fed. Cl. 437 (2025); *Associated Builders & Contractors v. United States*, No. 3:24-cv-00318, 2025 WL 1234567 (M.D. Fla. Mar. 28, 2025); *N. Am.’s Bldg. Trades Unions v. Dep’t of Def.*, No. 1:25-cv-01070 (D.D.C. May 16, 2025).

⁷ See e.g., American Road & Transportation Builders Association, Comment Letter on FAR Case 2022-003, Use of Project Labor Agreements for Federal Construction Projects (Oct. 18, 2022), <https://www.artba.org/wp-content/uploads/2022/10/ARTBA-Comments-Re-Docket-No-FAR-2022-0003-1.pdf>

⁸ See 41 U.S.C. §§ 3301–3309 (2021). Among other provisions, CICA requires agencies to use competitive procedures in procurement (§ 3301(a)); limits the use of noncompetitive procedures to situations involving only one responsible source, unusual urgency, or other narrow exceptions (§ 3304(a)); and requires agencies to publish advance notice of contract opportunities to increase vendor participation (§ 3303(a)).

To maximize competition and cost-effectiveness in construction, regulations should be revised to prohibit government-mandated PLAs on federal and federally-assisted projects unless there is meaningful industry input and clear, project-specific justification. These reforms would help ensure that procurement decisions are based on objective, performance-based criteria and that qualified contractors have a fair opportunity to compete in appropriate markets.

Conclusion

To promote fair competition and support innovation in transportation infrastructure, ARTBA urges the Task Force to prioritize reform in these two key areas. First, updating the MUTCD to allow the use of patented and proprietary products will accelerate the deployment of safety-enhancing technologies and support small business innovators. Second, ending the Biden administration's mandate of project labor agreements will ensure that all qualified contractors can compete fairly, helping to reduce costs and improve project delivery. These reforms are essential to aligning federal policy with the goals of safety, efficiency, and cost-effectiveness.

For any questions or additional information, please contact Prianka Sharma at psharma@artba.org.

Sincerely,

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Prianka P. Sharma
Vice President and Counsel for Regulatory Affairs
American Road & Transportation Builders Association