



VIA ELECTRONIC SUBMISSION

Aug. 22, 2022

Stephanie Pollack
Deputy Administrator, Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

RE: Docket No. FHWA-2022-0008, Proposed Rule on the National Electric Vehicle Infrastructure Formula Program [RIN: 2125-AG10]

Dear Ms. Pollack:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Transportation in response to the DOT's request for comments in the above-referenced Notice of Proposed Rulemaking published in the Federal Register on June 22, 2022, at 87 Federal Register 37262.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for private and government customers. Moreover, the vast majority of ABC's contractor members are classified as small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 100 employees).¹ U.S. Census Bureau, data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=1

¹ www.census.gov/programs-surveys/cbp/data/tables.2019.html and

² 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), page 3, cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf.

professionals compose 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.³

In addition to small businesses that build private and public works projects, ABC also has large member companies that contract directly with federal, state and local governments to successfully build projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal, state and local government small business contracting goals.⁴

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Comments on the Proposed Rule

ABC previously offered comments⁵ in response to the DOT's request for information on implementing the National Electric Vehicle Infrastructure Formula Program, specific to future guidance on project development of EV charging infrastructure and hydrogen, propane and natural gas fueling infrastructure by state, tribal and local governments. ABC's comments warned that attempts to craft policy to allow for the predictable deployment of such EV and clean infrastructure receiving federal grants funded by taxpayers⁶ must champion inclusive and equitable policies to attract a skilled workforce and qualified contractors to build clean energy projects.

Unfortunately, Section 680.106(j)⁷ of this proposed rule fails to thoroughly address these concerns. Instead, it proposes problematic language requiring qualified electric vehicle supply equipment technicians⁸—defined as, “all electricians installing, operating, or maintaining EVSE [Electric Vehicle Supply Equipment]” on National Electric Vehicle Infrastructure Formula Program projects—to hold certification from the International Brotherhood of Electrical Workers' Electric Vehicle Infrastructure Training Program.⁹

As an alternative, the proposed rule states that qualified EVSE electricians are required to have graduated from a government-registered apprenticeship program, or GRAP, “for

³ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, available at [thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx](https://www.thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx).

⁴ For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021.

⁵ See ABC's Jan. 28, 2022, comments on Docket Number FHWA-2021-0022: www.regulations.gov/comment/FHWA-2021-0022-0387.

⁶ See RFI part 11, “What topics do you suggest that we address in guidance on project development of EV charging infrastructure and hydrogen, propane, and natural gas fueling infrastructure at the State, Tribal, and local levels to allow for the predictable deployment of that infrastructure?”

⁷ Section 680.106(j)⁷ Installation, operation, and maintenance by qualified technicians of electric vehicle charging infrastructure at: www.federalregister.gov/documents/2022/06/22/2022-12704/national-electric-vehicle-infrastructure-formula-program#sectno-reference-680.106.

⁸ www.federalregister.gov

electricians that includes EVSE-specific training and is developed as a part of a national -

Currently, EVSEs or EV chargers are installed by electricians holding appropriate licenses, certifications and education as required by the state where the EV charger is installed.

In discussing the EVITP with contractors and EV stakeholders, ABC found that it is unclear if the EVITP curriculum is relevant and/or useful to EVSE installation and service technicians already engaged in this work. Stakeholders also said that it is unclear if the EVITP is affordable, easily accessible online and testing is available online and on demand that would allow the EVITP to be adopted across the industry. In short, the proposed rule's establishment of EVITP as the primary gateway for labor to build EV charging stations all(en)10i2 T Tc 0.0Aunbuid (h)-6

electricians that includes EVSE-specific training and is developed as a part of a national

chargers. I

The vast majority of contractors in almost all markets do not participate in GRAPs for a variety of reasons. In general, contractors who refrain from GRAPs argue these programs result in excessive government red tape and compliance burdens; teach employees unnecessary skills and tasks not utilized in a company's traditional/specialty scope of work; and subject firms to needlessly restrictive federal or state³⁶ apprentice-to-journey-level worker ratios that are especially onerous for small businesses and specialty contracting firms with a small number of craft workers on a jobsite.

Feedback from ABC contractors who do not participate in GRAPs indicate they prefer existing, industry-driven workforce development programs that produce a safe, competent and productive workforce through innovative and flexible learning models like just-in-time task training, competency-based progression and work-based learning. In addition, some contractors participate in workforce development programs through vocational and technical schools and community workforce development program partnerships that are not registered with the state or federal government, in order to attract minorities, women, veterans and other stakeholders in a community into the construction industry.

It is a common misperception by construction industry outsiders that GRAPs are the only way to attract new workers into the construction industry and educate a skilled, safe, productive and diverse construction workforce.³⁷ In contrast, data demonstrates the government-registered apprenticeship system is not meeting the industry's demand for skilled labor and cannot do it alone. According to FYidin(l)2 (n -0 Tc -0.002 Tw -37.53 -1.15 Td [(r)7 (egijgi)6 (s)4 4n (di)62

registered construction industry apprenticeship program completers to fill the estimated 650,000 vacant construction jobs needed just in 2022.

For these reasons, a GRAP mandate will exacerbate the construction industry's current skilled labor shortage, eliminate opportunities for small businesses opposed to GRAP requirements and harm existing workforce development pipelines and programs not registered with federal or state government but utilized by the construction industry.

ABC is concerned GRAP requirements on EV chargers will result in favoritism toward unionized contractors and union workers by suppressing fair and open competition from firms that do not participate in registered apprenticeship programs.

According to U.S. Bureau of Labor Statistics data, in 2021 unionized contractors employ less than 13% of the U.S. construction workforce, while 87.4% of the U.S. construction workforce freely chooses to work for contractors not af

should clarify that EVITP/GRAP requirements do not extend to OEM servicing and related activity following initial EV charger installation to ensure that there are no unintended consequences to requiring EV chargers to be maintained exclusively by EVITP/GRAP electricians. Additional certification and gatekeeping may disrupt this marketplace as well as healthy competition and innovation in this young industry.

Finally, if the DOT is unwilling to establish alternatives to EVITP and GRAP requirements, the agency should at a minimum consider a phased approach to these requirements. In the first four years of the NEVI program following completion of a rulemaking for EVITP and GRAP alternatives, all licensed electricians with a certain amount of demonstrated experience could be permitted to install charging infrastructure, with EVITP/GRAP requirements introduced in later years once these programs are feasible and have produced graduates. While still not an ideal approach, this would mitigate the impact of these requirements and allow more contractors and electricians the time to complete this training.

Questions

Should the DOT proceed with the ABC-opposed EVITP/GRAP requirements, ABC requests

The rule also fails to provide clarity on how the recently passed Inflation Reduction Act's Davis-Bacon and GRAP requirements for clean energy projects receiving tax incentives will impact NEVI requirements.⁴⁴

ABC also strongly opposes Section 680.118(b), which states that "Davis Bacon Federal wage rate requirements... must be paid for any project funded with NEVI Formula Program funds."⁴⁵ Prevailing wage regulations under the Davis-Bacon Act will artificially raise costs, increase administrative burden and likely decrease the quantity of contractors submitting bids on NEVI-funded projects.

The DOL is currently engaged in a sweeping revision of Davis-Bacon regulations,⁴⁶ Form 304 544.8 oSaeeping revaili