

## Talking Points

### For Meetings with Public Officials on Government-Mandated Labor Agreements for Public Construction Projects

#### Overview of AGC's Position

- AGC supports open and unrestricted competition for public construction contracts.
- AGC considers it inappropriate for the government to use its contracting authority to interfere with labor-management relations in the private sector -- between private employers and their employees.
  - Construction employers have the right to decide whether they will sign pre-hire agreements.
  - Union contractors have the right to negotiate their own labor agreements -- without government interference in the collective bargaining process.
  - All employees have the right to decide whether they want union representation.
- AGC opposes government mandates for project labor agreements (PLAs), whether federal, state or local, because such mandates restrict competition for public construction contracts and infringe on rights granted to construction employers and their employees by federal law.
  - The government should not compel any firm to change its labor policy either to compete for or to perform a public construction contract.
  - The government should not compel any employee to pay a union for the opportunity to work on a public construction project.
  - The government should not discriminate against construction employers for lawfully choosing not to work under collective bargaining agreements. The government should not discriminate against employees who lawfully make the same choice.
- AGC opposes government directives or instructions to subordinate agencies or departments that recommend or mandate project labor agreements, particularly where the latter have to depend on the superior authority to provide funding for their public construction projects.
- AGC is not aware of any documentation or analysis demonstrating that past government mandates for project labor agreements have lowered the cost, increased the quality or otherwise improved any federal, state or local construction project.

- The Davis-Bacon Act and its state counterparts already require all of the contractors and subcontractors working on most publicly funded construction projects to pay their employees at the rates prevailing in the relevant area.
- Government-mandated labor agreements rarely improve on the area-wide agreements that would otherwise be applied to a particular project by signatory contractors.

### **How Government-Mandated Labor Agreements Impact Union Contractors**

- Government mandates for project labor agreements disrupt the often complex relationships between union contractors and the building trade unions, interfering with their efforts to negotiate competitive labor agreements for their common benefit.
- On their members' behalf, over 50 of AGC's 100 chapters negotiate local area agreements with the building trade unions. One reason that government authorities cannot demonstrate that mandating a project labor agreement will have any economic or other benefit is that many of these local area agreements are already state-of-the-art. Many of these agreements already provide the benefits that government-mandated labor agreements are said to provide, such as:
  - Common or similar grievance and arbitration procedures among crafts.
  - Common or similar jurisdictional dispute resolution procedures among crafts.
  - Common work rules, hours of employment, holiday and shift provisions.
  - No strike, no lockout clauses.
- The terms and conditions that government officials negotiate with the building trade unions are rarely more competitive or cost-effective than the terms and conditions found in the local area agreements. In fact, government-mandated labor agreements frequently conflict with the local area agreements that they displace. They introduce new and unfamiliar terms and conditions that may increase even union contractors' costs of performing the work. For example, government-mandated labor agreements frequently:
  - Require contractors to deal with additional or different unions, whether familiar or not;
  - Establish different grievance and arbitration procedures, with their own rules of evidence and the like;
  - Establish different rules and procedures for resolving jurisdictional disputes among the building trade unions, often reviving historical claims not recognized in the local area;
  - Establish new and unfamiliar work rules that contractors cannot use effectively;
  - Add reporting and other paperwork requirements that drive up the contractors' overhead.

- Government-mandated labor agreements may require labor practices and work assignments that conflict with the Davis-Bacon Act and/or state prevailing wage laws. Any such conflicts can cause not only jurisdictional disputes among the building trade unions but also pay disputes. Such prevailing wage laws have their own job classifications.
- If it disregards the expiration date for the local area agreements, a government-mandated labor agreement can significantly impact the union contractors' necessary effort to negotiate competitive agreements for the future. Such a mandated project labor agreement may enable union members to continue to work at the site that the agreement covers while the union contractors and their other clients have to deal with labor unrest. The negative effects on the local marketplace can last for many years.

### **How Government-Mandated Labor Agreements Impact Open Shop Contractors**

- Government-mandated labor agreements frequently render it impractical for open shop contractors to employ their current employees to perform the work that the agreement covers. Such agreements typically permit open shop contractors to retain a small "core" of their current employees but no more. To work on the project, everyone else must get a referral from the appropriate union hiring hall.
- The union security clauses typically included in government-mandated labor agreements require all craft workers to pay either union dues or an equivalent amount of union agency fees, whether or not they have any interest in union representation.
- Government-mandated labor agreements require open shop contractors to organize the work around the unfamiliar lines of union jurisdiction, crippling their efforts to make competitive bids. Open shop contractors not only have to use a different workforce, they also have to deploy it in very different ways.
- Government-mandated labor agreements typically require open shop contractors to pay for fringe benefits that their non-union employees will never see. Such contractors have to contribute to union benefit funds even though their non-union employees will never qualify for the union benefits. To continue their current benefits for such employees, they have to contribute to not only the union benefit funds but also their own benefit plans. This requirement for "double contributions" is another competitive disadvantage.
  - Union benefit plans typically have vesting and eligibility requirements based on the length of service performed under union labor agreements.

### **Other Practical and Legal Issues Surrounding Government-Mandated Labor Agreements**

- In its May 1998 report, the Government Accounting Office (GAO) could not document any of the alleged benefits of the government-mandated labor agreements imposed on federal construction projects in the past. GAO also doubted that the federal government could ever document such benefits. *Project Labor Agreements: The Extent of Their Use and Related Information* (GAO/GGD-98-82).

- A joint statement issued by AGC, the American Association of State Highway and Transportation Officials (AASHTO) and the American Road and Transportation Builders Association (ARTBA) expressed their position on the U.S. Department of Transportation (DOT) memorandum on government-mandated labor agreements. The joint statement recommends that the DOT take a neutral position on the use of government-mandated labor agreements on DOT-funded construction projects.
- Government mandates for project labor agreements frequently lead to litigation, which is expensive in itself and may lead to costly delays. Many of the cases have focused on the state laws that require open competitive bidding. The other significant legal issues that public agencies must face include the following:
  - Whether the Competition in Contracting Act or other federal statutes permit federal agencies, or the recipients of federal funds, to mandate labor agreements on federally funded construction;
  - Whether government-mandated labor agreements violate the construction industry provisions of the National Labor Relations Act (NLRA) permitting employers “engaged primarily in the building and construction industry,” but only such employers, to enter into pre-hire agreements.
  - Whether government-mandated labor agreements between an owner and a labor organization violate the NLRA prohibition against agreements restricting an employers’ right to do business with any other employer or person.
  - Whether government mandates for project labor agreements have a disproportionately adverse impact on minority and women business enterprises, in violation of Title VI of the Civil Rights Act of 1964 and/or its state counterparts.