AGC
THE CONSTRUCTION ASSOCIATION

How Government Mandates for Project Labor Agreements Hurt Open-Shop Contractors

Government mandates for PLAs – even when competition, on its face, is open to all contractors – put open-shop contractors at a competitive disadvantage and discourage them from bidding on covered projects. This is because PLAs typically require such contractors to make fundamental and often costly changes in the way they do business. For example:

- Most PLAs severely limit open-shop contractors' rights to use their current employees to perform work covered by the agreement. They usually permit contractors to use only a small "core" of their current craft workers, while the remaining workers on the job must be referred from union hiring halls. Hiring halls typically maintain referral procedures and priority standards that favor union members with seniority.

- PLAs normally contain union security clauses that require all craft workers to pay either union dues or an equivalent amount of union agency fees, whether or not the workers have any interest in union representation. This may deter workers from applying for, or accepting an assignment on, a PLA project, exacerbating already-challenging labor supply conditions.

- PLAs frequently require contractors to change the way they assign work to employees, requiring sharp distinctions between crafts based on union jurisdictional boundaries. This imposes significant complications and inefficiencies for open-shop contractors, which typically employ workers who are competent in more than one skill and perform tasks that cross such boundaries.

- PLAs usually require contractors to pay union-scale wages, which may be higher than the wage rates required under the governing prevailing wage law. PLAs often also require extra pay for overtime work, travel, subsistence, shift work, holidays, "show-up," and various other premiums beyond what's required by law.

- PLAs normally require contractors to make contributions to union-sponsored fringe benefit funds. But an open-shop contractor's regular employees probably won't receive any benefits from those funds because of the plans' time-based vesting and qualification requirements. To continue providing benefits for such employees, the contractor must contribute to both the union benefit funds and the contractor's regular benefit funds. The cost of such double payments can make the contractor's bids uncompetitive.

- In rare but occasional situations, the obligation to contribute to union-sponsored pension funds under a PLA can lead to expensive withdrawal liability for the open-shop contractor once the contribution obligation ends.

- PLA mandates normally require all contractors working on the project to adopt the PLA terms, restricting or eliminating a contractor's freedom to select subcontractors. Instead of awarding subcontracts based on cost-effective bids and performance history, the contractor must make awards based a company's willingness to operate under the PLA.

- PLA mandates can also act as a barrier for the hiring of small businesses, including minority- and woman-owned businesses, and the fulfillment of small-business utilization goals. Such businesses are largely open-shop and are among those least able to make the above-described changes that a PLA requires.