



One Step to Restore Competition to Public Works Bidding

By Tom Lampman

Executive Summary

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Ohio needs to reform the process used to select public works contractors to reduce construction costs and spend taxpayer dollars more wisely. The current system allows union representatives to control the terms of bidding, forcing every participant to comply with costly union practices. Unions accomplish this by negotiating project labor agreements (PLAs) with the government before bidding begins. These agreements stipulate that any contractor whose bid is accepted will agree to follow union-dictated practices. Generally these practices include using union hiring halls to staff projects, paying into union benefit funds, and requiring all workers on the project to pay union “agency fees.”

Forcing every bidder into the same mold creates three problems.

- The costs to taxpayers increase.
- Non-union employers cannot compete on even footing.
- Non-union workers are either deprived of job opportunities or forced to make payments to the union from which they will not benefit.

On April 14th, 2015 the House Finance Committee proposed a budget bill that would help alleviate these concerns. The bill prohibits state agencies from discriminating against a contractor for refusing to sign a PLA. Unions will still be free to negotiate a PLA and contractors may agree to their terms if they choose, but the field would remain open to more competitive bids free of union influence.

A more competitive bidding process will produce more efficient bids, allowing efficient contractors to thrive and taxpayer money to go farther. These reforms pose significant improvements to the status quo and should be carefully considered.



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POLICY REPORT

Introduction

Project labor agreements (PLAs) are contracts negotiated between unions and construction project managers. They stipulate that any contractor whose bid is accepted will agree to follow certain practices. These practices generally pertain to using union hiring halls to staff projects, paying into union benefit funds, and requiring all workers on the project to pay union “agency fees.” PLAs effectively enable union negotiators to define the terms by which all contractors must bid.

Lawmakers need to reform the use of PLAs on government projects. Forcing PLAs on contractors increases costs to taxpayers, limits competition in favor of union firms, and harms workers. For these reasons, 22 states restrict using PLAs on government projects. Ohio can and should follow suit by prohibiting forced participation in PLAs.

The House Finance Committee has included such reform in its proposed FY 2016-2017 budget.¹ The House proposal prohibits state agencies from discriminating against bidders who choose not to comply with a PLA, thereby removing the competition-stifling mandate from the PLA system. Under the House bill, unions may still negotiate PLAs with project managers and make them available to contractors, but will do so in a more competitive environment that will push all participants to being more efficient.

A more competitive bidding system will not only increase opportunities for contractors and workers, it will also allow more efficient contractors to engage union shops on equal footing. Equal competition will help both union and non-union contractors become more efficient, and more efficient bids will mean more savings for taxpayers.

¹ Legislative Service Commission, “Comparison Document: House Bill 64,” Legislative Service Commission, April 14, 2015, <http://www.lsc.ohio.gov/fiscal/comparedoc131/h1/comparedoc-hb64-h1.pdf>, p. 297.

Mandatory project labor agreements hurt the public

When unions use PLAs to force every contractor to negotiate on their terms they harm the public in three ways.

- PLAs drive construction costs up 12-18%, which hurts the taxpayer.²
- PLAs stack the deck against non-union contractors bidders, which hurts these contractors and their employees.
- PLAs force workers to pay into union agency fees and retirement plans without receiving any benefit from the plans.

Construction costs rise

Ohio has firsthand experience with costly PLAs. When PLAs are dropped between rounds of bidding, bids on the same projects have come back by as much as 22% lower.³ Studies on industry-wide trends show that these are not isolated incidents. The presence of a PLA was shown to cause a 12% increase in school construction costs in Boston, an 18% increase in costs in Connecticut, and a 20% cost increase in New York City.⁴ Some variations between these estimates may be attributable to differences in the types and sizes of the projects. Analysis that corrects for these factors has shown that PLAs increase costs to taxpayers by \$18.83 per square foot.⁵ Another study that also controlled for these factors estimated that PLAs increased construction costs by 13-15%.⁶

PLAs add to labor costs by increasing payments to unions rather than workers. Non-union employees on PLA projects are required to use union hiring halls as middlemen between them and their employer, padding labor costs with agency fees and payments into union benefit funds.⁷ The non-union employee does not reap any rewards from these costs, since they receive

2 David G. Tuerck, Sarah Glassman, Paul Bachman, "Project Labor Agreements on Federal Projects: A Costly Solution in Search of a Problem," Suffolk University, accessed April 16, 2015, <http://www.beaconhill.org/BHISudies/PLA2009/PLAFinal090923.pdf>, p. 21.

3 Bill Bush, "New Bids Drop Cost of Work on Deaf, Blind Schools," The Columbus Dispatch, November 10, 2010, http://www.dispatch.com/content/stories/local/2010/11/11/New_bids_drop_cost_of_work_on_deafx_blind_schools.html

4 David G. Tuerck, Sarah Glassman, Paul Bachman, "Project Labor Agreements on Federal Projects: A Costly Solution in Search of a Problem," Suffolk University, accessed April 16, 2015, <http://www.beaconhill.org/BHISudies/PLA2009/PLAFinal090923.pdf>, p. 21.

5 Paul Bachman and Jonathan Haughton, "Do Project Labor Agreements Raise Construction Costs?" Bentley University, accessed April 16, 2015, <http://www.bentley.edu/centers/sites/www.bentley.edu.centers/files/csbiggs/bachman.pdf>, p. 75.

6 Vice Vasquez, Dale Glaser, and W. Erik Bruvold, "Measuring the Cost of Project Labor Agreements on School Construction in California," National University System Institute for Policy Research, accessed April 20th, 2015, <http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf>, p. 10

7 David G. Tuerck, "Why Project Labor Agreements are Not in the Public Interest," The Cato Institute, accessed April 16, 2015, <http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2010/1/cj30n1-3.pdf>, p. 51.

employment benefits from their employer and not the union, and there is no guarantee that the union will negotiate a higher pay for workers to make up for fees and benefits. The Association of Builders and Contractors reported that this shortfall, caused by PLAs on two federal projects, reduced net pay by almost \$10 per hour.⁸

PLA advocates claim that PLAs lower costs by improving labor stability.⁹ The supposed stability, they contend, derives from PLA clauses providing “no-strike” agreements, alternate dispute resolution procedures, and ready access to labor. Whether these clauses actually improve labor stability remains debatable. During the Bush administration’s moratorium on using PLAs use in federal projects no cases of labor strife were attributed to the absence of PLAs.¹⁰ The presence of a PLA did not save Boston’s infamous “Big Dig” project from finishing nine years late and 190% over budget.¹¹ If these clauses are of real value to project managers then managers will seek them out in a competitive bidding process without the need for mandates.

Competition is limited

Mandatory PLAs allow unions to define the terms of the bidding process, harming the competitive process. Forcing all firms to follow union protocol adds costs onto non-unionized firms, giving an edge to unionized firms.¹² Even if a non-unionized firm manages to win the bid, the union has already ensconced their costs in the terms of the bidding process itself. Accordingly, competition for lower costs is stymied and costs are likely to rise.

Some non-union contractors still manage to be competitive under these conditions, but many choose not to bid on PLA-dictated projects. A study of federal contractors found that 70% of them are less likely to bid on a project controlled by a union PLA.¹³ Similarly, non-union contractors in Washington were found 86% less likely to bid on PLA projects.¹⁴ When a school construction project in Columbus abandoned its PLA between bidding rounds it

8 Association of Builders and Contractors, Comments of Associated Builders and Contractors, Inc. Before the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council, Association of Builders and Contractors, accessed April 20, 2015, http://thetruthaboutplas.com/wp-content/uploads/2012/12/ABC-Comments_FAR_PLA-NPRM_081309.pdf, p. 6.

9 *Ibid*, p. 53.

10 David G. Tuerck, Sarah Glassman, Paul Bachman, “Project Labor Agreements on Federal Projects: A Costly Solution in Search of a Problem,” Suffolk University, accessed April 16, 2015, <http://www.beaconhill.org/BHISTudies/PLA2009/PLAFinal090923.pdf>, p. 40.

11 *Ibid*, p. 37; National Academy of Engineering, “Completing the Big Dig: Managing the Final Stages of Boston’s Central Artery/Tunnel Project,” The National Academic Press, accessed April 16, 2015, http://www.nap.edu/openbook.php?record_id=10629&page=14, p. 14.

12 David G. Tuerck, Sarah Glassman, Paul Bachman, “Project Labor Agreements on Federal Projects: A Costly Solution in Search of a Problem,” Suffolk University, accessed April 16, 2015, <http://www.beaconhill.org/BHISTudies/PLA2009/PLAFinal090923.pdf>, p. 19.

13 *Ibid*.

14 Gary Galles, “The PLA Menace,” Mises Institute, January 28, 2002, <https://mises.org/library/pla-menace>.

attracted 18 new bids.¹⁵ A similar situation in Connecticut produced six new bids.¹⁶ These studies and situations indicate that contractors are unafraid of a truly competitive bidding process, but less inclined to compete when PLAs are involved.

Allowing unions to dictate the bidding rules crowds-out competitive contractors and their employees from the market. This not only harms the contractors themselves by denying them opportunities for success, but also the contractor's employees by denying the opportunity to compete for wages on a level playing field, and ultimately the public by restricting the state's access to more efficient bidders.

Some Workers Do Not Benefit

Unions currently represent less than 15% of construction workers, both in Ohio and nationwide.¹⁷ Such a relatively small group should not define the terms of employment for every worker, particularly when their input does little to help the non-union majority. Non-union workers on PLA projects can be required to pay into union retirement funds from which they will receive no benefit.¹⁸ They can also be forced to pay "agency fees" directly to the union, using their wages to subsidize an organization that actively worked to deny them access to those wages in the first place.

PLAs are trumpeted as a boon to workers, but really they are a boon to unions—subsidized by workers, employers, and taxpayers. Additional reforms are needed to remove the mandatory elements from PLAs, but the just-released House budget takes a good and much-needed first step.

Conclusion

Forcing participation in PLAs—whether on the federal, state, or local levels—stifles the competitive marketplace and harms workers, contractors, and taxpayers in the process. Amended House Bill 64 promotes free-market policy by barring Ohio's state agencies from discriminating against bidders that do not sign a PLA. A more competitive bidding process will produce more efficient bids, allowing efficient contractors to thrive and taxpayer money to go

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- 15 Bill Bush, "New Bids Drop Cost of Work on Deaf, Blind Schools," *The Columbus Dispatch*, November 10, 2010, http://www.dispatch.com/content/stories/local/2010/11/11/New_bids_drop_cost_of_work_on_deaf_blind_schools.html.
- 16 Hartford Courant, "State's Dubious Labor Policy," *Hartford Courant*, August 20, 1998, http://articles.courant.com/1998-08-20/news/9808200031_1_project-labor-agreements-pla-contractors.
- 17 Barry Hirsch and David Macpherson, "U.S. Historical Tables: Union Membership, Coverage, Density, and Employment, 1973-2014," *UnionStats.com*, accessed April 16, 2015, <http://www.unionstats.com/>.
- 18 David G. Tuereck, "Why Project Labor Agreements are Not in the Public Interest," *The Cato Institute*, accessed April 16, 2015, <http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2010/1/cj30n1-3.pdf>, p. 52.

farther. The House bill thus ensures that efficient bids are not precluded from the competitive process, while still respecting federal labor law and allowing PLAs to be available when desired. Such reform is a commonsense approach to improving the status quo by advancing a more competitive market, lowering costs for contractors and taxpayers, and giving non-union workers the chance to compete for wages on a level playing field.

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