



October 7, 2011

Miriam J. Holst
Contract Specialist
U.S. Department of Labor
200 Constitution Avenue, NW, Room N-4308
Washington, District of Columbia 20210

RE: Construction of New Job Corps Center in Manchester, New Hampshire, Solicitation Number DOL111RI20431

Dear Ms. Holst:

This letter is sent to express the Associated General Contractors of America's (AGC) strong concerns and questions about the Department of Labor's (the Department) decision, as indicated in its Sources Sought Notice dated September 23, 2011, Solicitation Number DOL111RI20431 (the Notice), to impose a project labor agreement (PLA) on contractors that will perform the construction of the Department's new Job Corps Center in Manchester, New Hampshire.

In a letter to Ms. Lynn Intrepid and Mr. Al Stewart of the Department dated September 23, 2009, a copy of which is enclosed for your convenience, AGC conveyed our myriad concerns about the Department's original plan to mandate use of a PLA on the Manchester Job Corps Center project as indicated in presolicitation and solicitation notices issued by the Department in August and September 2009. In the letter, we requested, pursuant to the Freedom of Information Act (FOIA), information in response to a number of questions regarding the Department's determination that a PLA mandate was appropriate for the project. We did not receive a response from the Department. Instead, in November 2009, the Department cancelled the solicitation, specifically citing its belief "that it is in the public interest for the Department to further evaluate the issues involved in the PLA requirement."

We heard nothing further on the matter until the Department issued the present Notice. The Notice demonstrates that the abeyance of the project is over and that the Department is preparing to solicit bids from construction contractors again. With regard to the PLA issue, the Notice simply states: "The work will be subject to the terms of a Project Labor Agreement (PLA), pursuant to FAR Subpart 22.5, to be negotiated by the DOL, which all project contractors and subcontractors will be required to sign. The PLA will be included in the DOL's solicitation for this Project." Nothing in the Notice, or in any other communication issued by the Department of which AGC is aware, provides answers to the vast majority of questions raised in our September 23, 2009 FOIA request; nor does it describe what steps the Department has taken to "further evaluate the issues involved in the PLA requirement" as planned.

Hence, we are still left with numerous questions. Again, pursuant to FOIA and the principles of President Obama's January 21, 2009, memorandum on Transparency and Open Government, we request answers to the questions raised in our earlier letter as well as answers to additional questions raised in the present letter.

First, please advise what ‘further evaluation’ the Department has undertaken to lead it to re-issue a PLA requirement and please provide any supporting reports or other documentation. AGC is unaware of any PLA feasibility study conducted in the project area since the 2009 solicitation cancellation. If such a study were conducted in a reliable manner, surely the research would have included an effort to obtain input from such significant industry players as AGC of New Hampshire, our local chapter, and its member contractors; to our knowledge, however, no such effort was made. Furthermore, if the Department did conduct such a study, why has it not been released to the public? And if such a study has not been conducted, then please explain how the Department has completed sufficient ‘further evaluation’ to support its decision to go forward with a PLA requirement two years after acknowledging the complexity of the issue and the need for a thorough analysis to determine whether a PLA requirement is appropriate for the particular project and circumstances at hand.

One question raised in our earlier letter that the Department did address in the Notice, to some extent, is who will negotiate the PLA itself. The Notice states that the Department will negotiate the PLA and will include it in the solicitation. Given this information, AGC wishes to reiterate the following position and questions set forth in our earlier letter:

AGC strongly believes that the proper parties to negotiate a PLA are the employers that will employ workers covered by the agreement and the labor organizations representing workers covered by the agreement, since those are the parties that form the basis for the employer-employee relationship, have a vested interest in forging a stable employment relationship and ensuring that the project is completed in an economic and efficient manner, and are authorized to enter into such an agreement under the National Labor Relations Act.

* * *

If the Department plans to negotiate the PLA terms with labor itself, does the Department have staff with sufficient experience and expertise in negotiating construction labor agreements, as compared to the very experienced union representatives, to ensure that the government’s interests are advanced? If the Department plans to hire an outside expert, does the expert have sufficient knowledge of local area practices and labor relations?

Further, please provide information on exactly who will conduct the negotiations on behalf of the Department in the PLA negotiations. Please identify the individual’s or individuals’ prior experience in negotiating PLAs for similar projects. Please also identify any past or current relationship and experience that the individual or individuals have with the labor unions and union representatives against whom they will be negotiating the PLA for this project.

In addition, we request information about the Department’s position on the following issues that might arise in PLA negotiations:

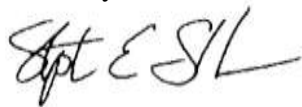
- What is the Department’s position on paying wages above the prevailing wage rates set forth in the applicable Davis-Bacon wage determination(s)?
- What is the Department’s position on payment for overtime work beyond what is required by the Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act?

- What is the Department's position on requiring contributions to specified Taft-Hartley fringe benefit plans by contractors whose employees are covered by different benefit plans (such as single employer health insurance and retirement plans, or Taft-Hartley plans other than those specified in the PLA) and whose employees will not receive the benefits of such contributions due to time-based vesting and qualification requirements?
- What is the Department's position on exclusive, or near-exclusive, hiring hall arrangements that, through the operation of referral procedures and priority standards, effectively cause the regular employees of open-shop contractors to lose the job opportunity to union members who have never worked for those contractors before?
- What is the Department's position on requiring contractors to abide by union-set jurisdictional boundaries, even if the selected contractors (whether union contractors or open shop) normally assign work in a different manner?
- What does the Department plan to do if one or more building trade unions refuse to agree to the PLA terms agreed upon by the other unions?
- What does the Department plan to do if one or more building trade unions refuse to sign onto a PLA at all?

In closing, we re-affirm our position that neither a public owner nor its representative should compel any contractor to change its lawful labor policies or practices to compete for or perform public work – which, even when nondiscriminatory on their face, PLAs effectively do. We also believe that government mandates for PLAs can restrain competition, drive up costs, disrupt local collective bargaining, and lead to jobsite disputes, delays, and litigation – especially in largely open-shop areas like Manchester, New Hampshire. In cases where a PLA would benefit the construction of a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact and to execute a PLA voluntarily. They would also be the most qualified to negotiate the terms of the PLA. Accordingly, AGC urges the Department to refrain from imposing either a PLA mandate or an already-negotiated PLA on its construction contractors and their subcontractors.

We continue to look forward to your response to our information request, and we remain available to discuss this matter with you further should you so desire. Thank you in advance for your cooperation.

Sincerely,



Stephen E. Sandherr
CEO

cc: Gary Abbott, AGC of New Hampshire



The Associated General Contractors of New Hampshire, Inc.

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603/225-2701 ▼ Fax 603/226-3859

October 21, 2011

Senator Jeanne Shaheen
U.S. Senate
520 Hart SOB
Washington, D.C. 20510

Dear Senator Shaheen:

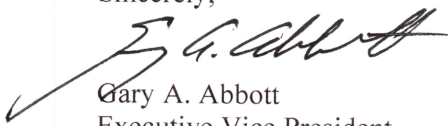
As you are probably aware, the Manchester Job Corps project has returned following its cancellation in 2009. The cancellation was a result of a bid protest over the inclusion of a project labor agreement (PLA). The Associated General Contractors of New Hampshire (AGC of NH) supports union and open shop contractors, but opposes government mandated PLAs as they restrict competitive bidding. Furthermore, they interfere with a company's standard business practices.

I know that you were a part of the movement to bring the project back to New Hampshire, and AGC of NH commends your effort. This project will be a much needed boost to our commercial construction industry and to the economy, both during its construction and after its completion. It is the Association's hope that you will support New Hampshire once again, and speak out against the imposed PLA. If allowed to move forward, the PLA will prevent otherwise qualified contractors from being able to bid on this project, and that is not what we want to see in this economy.

I have included an article we wrote in our October 17 AGC Newsletter that explains the issue in more detail. I have also enclosed the letter written by AGC of America highlighted in the article. I hope after reading the enclosed materials, you will see how a government imposed PLA will negatively affect this project.

I encourage you to call me at (603) 225-2701 to discuss this issue further.

Sincerely,



Gary A. Abbott
Executive Vice President

Enclosures

cc: The Honorable Governor John Lynch
The NH Executive Council
Christopher Clement, NH DOT Commissioner
Linda Hodgdon, NH Administrative Services Commissioner



AGC



"Serving the industry since 1949"

Newsletter for the Commercial Construction Industry

AGC of America Questions DOL Use of PLA

Following the release of the Sources Sought Notice for the Manchester Job Corps project, AGC of America has contacted the Department of Labor (DOL) about their inclusion of a project labor agreement (PLA). In a letter dated October 7, the Association asks the Department to explain their reasoning for including a government mandated PLA in the project. AGC of America reiterates the letter sent in 2009, which questioned the use of a PLA during the initial bidding process.



In 2009, the DOL cancelled the bid solicitation citing the need to conduct further research on the use of a PLA. AGC of America is now questioning what further research was conducted in the past two years that led them to the decision to include a PLA in this second solicitation. From the letter, "AGC is unaware of any PLA feasibility study conducted in the project area since the 2009 solicitation cancellation. If such a study were conducted in a reliable manner, surely the research would have included an effort to obtain input from such significant industry players as AGC of New Hampshire ..., and its member contractors; to our knowledge ... no such effort was made."

In addition to lack of research, AGC of America also questioned the PLA negotiation. The Sources Sought Notice states that the Department of Labor will negotiate the terms of the PLA. AGC of America believes that if a PLA must be in place, the employers who employ the workers should be the ones negotiating the terms of the PLA. These parties have a vested interest in creating and maintaining a stable employment relationship. If the Department moves forward with negotiating the PLA on its own, does it have sufficient staff that has experience negotiating terms of a PLA? The Association would also like to know if the individual negotiating the PLA has any past or current relationships and/or experience with the labor unions and union representatives against whom they will be negotiating the PLA for this project.

AGC of America also raised the following additional questions in the letter:

- What is the Department's position on paying wages above the prevailing wage rates set forth in the applicable Davis-Bacon wage determination(s)?
- What is the Department's position on payment for overtime work beyond what is required by the Fair Labor Standards Act and the Contract Work Hours Safety Standards Act?

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Drive Down Fuel Costs App

Reauthorization Funding

EPA Greenhouse Gas Report

Ways to Reform Regulations

AGC Annual Convention

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- What is the Department's position on requiring contributions to specified Taft-Hartley fringe benefit plans by contractors whose employees are covered by different benefit plans (such as single employer health insurance and retirement plans, or Taft-Hartley plans other than those specified in the PLA) and whose employees will not receive the benefits of such contributions due to the time-based vesting and qualification requirements?

- What is the Department's position on exclusive, or near-exclusive, hiring hall arrangements that, through the operation of referral procedures and priority standards, effectively cause the regular employees of open-shop contractors to lose the job opportunity to union members who have never worked for those contractors before?



- What is the Department's position on requiring contractors to abide by union-set jurisdictional boundaries, even if the selected contractors (whether union contractors or open shop) normally assign work in a different manner?

- What does the Department plan to do if one or more building trade unions refuse to agree to the PLA terms agreed upon by the other unions?

- What does the Department plan to do if one or more building trade unions refuse to sign onto a PLA at all?

AGC of America also included a copy of their original 2009 letter, requesting answers to the questions in that letter as well, as no responses were received in 2009. AGC of NH supports this letter, and hopes that the Department will respond with answers. The full letter is available on the AGC of NH website, www.agcnh.org, under "AGC Resources" and then under "AGC News." AGC of NH will continue to keep members updated on this issue as more information becomes available.

Committee Works on Prioritizing School Building Aid Projects



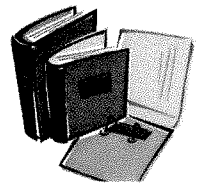
The House Education Committee has been working to establish a priority ranking for School Building Aid projects throughout the summer. House Bill 604, which is the legislation to establish the priority parameters, was retained by the Committee at the start of the 2011 Legislative Session. Through an amendment, the bill will give the Department of Education the authority to establish the priority parameters. The Committee believed that trying to define the parameters in legislation, as in the original bill, would be unsuccessful. The Executive Session is scheduled for October 18.

While the priority will help create a spending plan for the program, currently no schools are eligible for School Building Aid. This year's biennial budget continued the moratorium on School Building Aid through 2013. As the process works now, each district is eligible for a percentage of School Building Aid, and the project must meet basic requirements to qualify for aid. This legislation will create further eligibility requirements, and help establish a ranking for project completion.

House Bill 604 was introduced in companion with two other bills, one to establish a cap on the amount of School Building Aid provided each year (HB 533), and one that mandated schools develop a maintenance and capital improvement plan (HB 528). In recent years, the School Building Aid program has risen to unsustainable levels as school districts build more elaborate facilities. Additionally, in the last two years before the moratorium was enacted, the state decided to bond the program rather than use general funds, which was standard practice. This added to the already high debt level the program is facing. These three bills are an effort to return the School Building Aid to its purpose—funding necessary renovation and construction to better educate the state's schoolchildren. AGC of NH will keep members updated on this issue.

Free Publication on Best Value Procurement

AGC of America in companion with the National Association of State Facilities (NASFA) has developed a new document for best practices when using Best Value Selection. The document provides definitions, when to use best value selection, and explains the selection and evaluation criteria.



Best Value Selection is defined in the document as a selection process for construction services where total construction cost, as well as other non-cost factors, are considered in the evaluation, selection, and final award of construction contracts. The document cautions that owners must be careful in selecting the non-cost criteria to avoid public scrutiny.

AGC of America states that the document does not advocate for or against best value selection, but serves as a reference guide to owners considering this method. AGC of America encourages members to read through the document and make comments. The publication is available for download at: <http://www.agc.org/galleries/projectd/Project%20Delivery%20-%20Best%20Value%20Selection.pdf>.