

City of Chula Vista Fair and Open Competition Ordinance

February 2010

Board Recommendation:

SUPPORT

Rationale:

SDCTA supports open competition on projects that are partially or wholly funded with public dollars as a means to ensure taxpayers receive the best return on investment. Mandatory project labor agreements discourage competition between union and open shop contractors, thereby increasing the likelihood that public agencies will not achieve the most cost-effective arrangement.

This measure does not prohibit a private developer from entering into a collective bargaining agreement with a contractor or subcontractors following Council approval of a project.

Background

Project labor agreements (sometimes referred to as project stabilization agreements) are a pre-hire form of collective bargaining agreements that set the stage for labor relations on projects. These agreements typically occur between construction sponsors—in many cases, a public entity—and labor unions. Project labor agreements (PLAs) set forth the terms of work for the construction project, such as striking rules, hiring procedures, wages, and benefits. Through these agreements, it is also typically arranged that the construction project will hire a specified percent or number of contractors through union halls as well as a specified number or percent of location-based contractors. Even if they are not members of the specified union or construction firm awarded the bid, if hired on, all contractors must abide by the PLA, which may include paying union dues and altering usual employment procedures. The purpose of a PLA or PSA is to establish a harmonious working environment that will deliver the project on-time and on-budget without labor disputes, e.g. striking.

Proponents of PLAs argue that these agreements do the following:

- Mitigate labor disputes (including strikes and lockouts)
- Prevent schedule conflicts and variances
- Assist in the completion of projects in a timely manner
- Provide skilled craftsmen in sufficient quantity
- Ensure less likelihood of safety issues to arise
- Ensures local workers would receive the work
- Ensure at least the prevailing wage is being paid
- Ensure high quality work through union certifications and apprenticeships

Opponents of PLAs argue against PLAs for the following reasons:

- Inhibits competition by reducing the numbers of bidders
- Increases construction costs through union rules and regulations
- Imposing union dues and union rules on non-union contractors is unfair and disadvantageous
- Union work rules can be arduous and archaic

National: At the national level, President Bush prohibited the mandatory use of PLAs in federal construction projects through Executive Order 13202, issued in 2001. In February 2009, President Obama overturned this Executive Order. Nationwide, 16.2% of employed construction workers were represented by unions in 2008 (or 83.8% were unrepresented).¹

State: In California, project labor agreements have a long history. The construction of the Shasta Dam from 1938-1944 used a PLA and was one of the only projects during that time that was completed without labor strikes.² To-date, numerous projects have been completed using PLAs throughout the state as well as the San Diego region.

Local: Over the past five years, the City of Chula Vista has not entered into a PLA or PSA on any construction project funded wholly or in part by the City.³ However, it attempted to enter into a labor agreement for the proposed Gaylord development in 2007 and 2008. After disputes between the Gaylord company and labor groups, the company opted to not pursue Chula Vista for its project.

The courts have intervened on several occasions regarding the legality of PLAs. However, it has been affirmed through the California Supreme Court (*ABC v. San Francisco Airports Commission*) that PLAs do not discourage market competition if crafted appropriately.

Proposal

Ballot Language:

“Shall the Chula Vista Municipal Code be amended to mandate that the City or Redevelopment Agency not fund or contract for public works projects where there is a requirement to use only union employees?”

Ordinance

The proposed Chula Vista *Fair and Open Competition Ordinance* would amend the City’s municipal code relating to administration and personnel. These amendments would “establish criteria to ensure fair and open competition for public works projects funded in whole or in part with public funds.” A public works project includes all construction projects paid for, wholly or in part, by the City of Chula Vista and/or its Redevelopment Agency. The initiative outlines the following major components:

¹ U.S. Bureau of Labor Statistics. “Union affiliation of Employed Wage and Salary Workers by Occupation and Industry.” Data for 2008. Available from <http://www.bls.gov/cps/cpsaat42.pdf>. Accessed on December 21, 2009.

² Johnston Dodds, Kimberly. *Construction California: A Review of Project Labor Agreements*. October 2001. Available from http://builtbest.org/sites/builtbest.prometheuslabor.com/files/full_text_california_state_library_project_labor_agreement_report.pdf. Accessed December 11, 2009.

³ Confirmed via facsimile to SDCTA on December 22, 2009.

“In contracting for the construction, maintenance, repair, improvement or replacement of public works projects:

- a) The City shall not fund, in whole or in part, or enter into, any contract which **contains a requirement** that a contracting party:
 - 1) execute, comply with, or become a party to an agreement between a Labor organization, on the one hand, and the City, the Contract Party, or any third party on the other;
 - 2) Become a signatory to a collective bargaining agreement;
 - 3) Be required to make payments on behalf of employees to union benefit plans or other trust funds;
 - 4) Require its employees to be represented by a Labor organization; or
 - 5) Encourage or discourage employees of a contracting party to have representation by a Labor organization.
- b) The City shall not impose, as a bid specification, contract prerequisite, contract term or otherwise, any requirement prohibited by subsection (a) of this Section.
- c) Nothing in this Section shall be construed as prohibiting private parties covered by this provision from entering into individual collective bargaining relationships, or otherwise as regulating or interfering with activity protected by applicable law, including bu[t] not limited to the Act.” *(emphasis added)*

The effective date of this initiative would be ten days following an announcement of election results by the City of Chula Vista City Council. All contracts awarded prior to this initiative would not be subject to this law.

Table 1: Definitions⁴

<i>Term</i>	<i>Description</i>
City	City of Chula Vista and the Redevelopment Agency of the City of Chula Vista
Contracting Party	Owners, developers, contractors, subcontractors or material suppliers involved in public works projects
Public Works Project	All construction projects paid for, in whole or in part, by the funds of the City or the Redevelopment Agency, including but not limited to any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility.

The city attorney analysis states the following:

“The measure would prohibit the City or Redevelopment Agency from mandating that a contracting party enter into an agreement with a labor organization as a condition of award of the contract, or from funding such a contract.”

Analysis:

The use of mandatory PLAs may inhibit non-union bidders from entering the process, which will lead to inflated costs due to the lack of adequate competition.⁵ Economic theory states that healthy competition will

⁴ Chapter 2.59, section 020 of the Fair and Open Competition Ordinance.

result in lower prices for the consumer. This is true for publicly-funded construction projects as well. A 2001 Ernst & Young (E&Y) study on PLAs stated that a “healthy tension between organized labor and non-union labor is conducive to a competitive, non-discriminatory marketplace; that tension and competition leads to better pricing for all consumers.”⁶ Thereby, the more bids you receive on a project, the greater likelihood that the price of those bids will come in at more favorable prices.

There are two components of “typical” project labor agreements that may lead to increased costs: additional worker benefits, such as retirement and healthcare that may not be included for non-union workers and setting up and administering the agreements and management process. Some of these costs may be offset through savings and specifications within the project labor agreements. However, E&Y suggests in their review that many of the “pluses” involved with PLAs can be accomplished through bid specifications.

Project labor agreements allow local agencies to bypass some state general law requirements, such as the setup of a labor compliance program. However, since the City of Chula Vista is a Charter City, the city can already bypass many of the State’s general law requirements. It is also important to note that regardless of whether a PLA is entered into, prevailing wage compliance is required in the City of Chula Vista.

Another measure qualified for the June 2010 ballot also aims at restricting the required use of project labor agreements as a tool of cities. The City of Oceanside’s Charter language is proposed as follows:

“Section 303. Fair and Open Competition. *The City shall not, in any contract for the construction, maintenance, repair, or improvement of public works, require that a contractor, subcontractor, material supplier, or carrier engaged in the construction, maintenance, repair or improvement of public works, execute or otherwise become party to any project labor agreement, collective bargaining agreement, prehire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works contract. Nothing in this section shall be construed as prohibiting private parties from entering into individual collective bargaining relationships, or otherwise as regulating or interfering with activity protected by applicable law, including but not limited to the National Labor Relations Act.”*

There is a \$114,000 cost associated to place this measure on the ballot.

Research and Studies:

Research and studies about the cost effectiveness of project stabilization/labor agreements have been conflicting. Below are some of the most referenced studies.

⁵ Ernst & Young. “Erie County Courthouse Construction Projects: Project Labor Agreement Study.” September 2001.

⁶ Ibid.

Those with evidence in favor of PLAs:

- UCLA found that PLAs that had local hiring provisions significantly increased the number of local hires.⁷
- Another study conducted concluded that the additional costs associated with PLAs cannot be directly attributed to PLAs as they instead result from “additional amenities or requirements that are inherent in large, complex jobs, which are more likely to be covered by PLAs.”⁸ This same study criticized many PLAs for not inviting contractors into the bargaining table which tends to isolate a single industry. Finally, the study also concluded that there was overall satisfaction with PLAs by stakeholders, and it is an effective tool to “improve scheduling, safety, training, and minority employment.”⁹

Those with evidence against PLAs:

- In 2001, Ernst & Young conducted a study on project labor agreements in Erie County, New York. Erie County was undergoing a project that consisted of two phases; the first phase had a PLA and the study E&Y conducted reviewed the impacts of the PLA on Phase I in regard to competition and future bidding for Phase II. This study noted that “PLAs have the practical effect, if not the stated purpose, of eliminating competition.”¹⁰
 - “PLAs are discriminatory and anti-competitive and there are no apparently valid economic justifications for the continued use of a PLA...”¹¹
- In 2006, the Beacon Hill Institute updated their original 2003 study on PLAs and concluded that PLAs can add anywhere between 12% and 18% onto construction costs. It was also concluded that PLAs are anticompetitive.¹²
 - The Beacon Hill Institute study found that projects received less bidders as a result of the County using a PLA. “... open-shop contractors contend that their competitive advantages are nullified by the PLA. The result is that in practice, if not in principle, they are unable to bid competitively on jobs that have a PLA requirement. In turn, the absence of open-shop bidders for PLA projects results in fewer bidders for the project, and with fewer bidders, the lowest bids come in higher than if open-shop contractors had participated. Therefore, the cost of the project will be higher, with fewer bidders attempting to under-bid each other for the contract.”¹³

⁷ UCLA Labor Center. “Construction Careers for Our Communities.” 2008.

⁸ Belman, PhD, Dale, Matthew M. Bodah, PhD et al. “Project Labor Agreements.” Available from <http://www.onlinecpi.org/downloads/PLA-report.pdf>. Page 37.

⁹ Ibid. Page 61.

¹⁰ Ernst & Young, page 2.

¹¹ Ibid.

¹² Beacon, page 15.

¹³ Tuerck, PhD, David G. and Paul Bachman, MSIE. *Project Labor Agreements and Financing Public School Construction in Massachusetts.* Beacon Hill Institute at Suffolk University. December 2006. Available from <http://www.beaconhill.org/BHISTudies/PLA2006/BHIMASSPLAUpdate061204FINAL.pdf>. Accessed on December 11, 2009. Page 7.