

**Proposition A: County of San Diego Fair & Open Competition for
County Construction Contracts**

Board Action:

SUPPORT

Rationale:

As stated during the June 2010 Primary election, SDCTA supports open competition for publicly funded projects to ensure taxpayers receive the best return on investment. The proposed measure further clarifies any ambiguity that may exist regarding the legality of those projects that include a Project Labor Agreement (PLA) and receive State or federal funding. The measure does not prohibit a private party from entering into a PLA but rather restricts any mandate to do so by the Board of Supervisors.

Background:

County of San Diego Actions

On February 23, 2010, the San Diego County Board of Supervisors considered either placing a measure on the June Primary election ballot or approving an Ordinance that would prohibit the requirement of a Project Labor Agreement (PLA) on County construction projects, unless required by State or federal law.

At this meeting, the Board approved an Ordinance that added Section 428 to the Administrative Code. The Ordinance was formally adopted by the Board on March 2, 2010.

On July 13, 2010, Supervisor Horn introduced a ballot measure asking voters to amend the County Charter by adding a section with the same language to that of the Ordinance adopted by the Board on March 2nd. The measure would be placed on the November 2010 General Election ballot. The Board approved placement of the measure on the November 2010 ballot by a 4-1 vote (Supervisor Cox dissenting).

Project Labor Agreements

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.

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.

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:

The ballot question that will be put before voters will read as follows:

“Shall the San Diego County Charter be amended to prohibit the County from requiring the use of project labor agreements on County construction projects except where required by State or federal law?”

If voters approve the measure, section 705.4, titled “Prohibition on Requiring Project Labor Agreements”, would be added to the County Charter. The language of the amendment is provided below:

- (a) *For the purposes of this Section, the following definitions apply:*
- (1) *“Contractor” shall mean and include a contractor, subcontractor, material supplier, carrier or other person or firm engaged in the completion of a construction project.*
 - (2) *“Construction project” shall mean and include any project for the construction, rehabilitation, alteration, conversion, extension, maintenance, repair, or improvement of any structures or real property.*
 - (3) *“Project labor agreement” shall mean any pre-bire, collective bargaining or similar type of agreement entered into with one or more labor organizations, employees or employee representatives that establishes the terms and conditions of employment on a construction project.*
- (b) *Except as required by State or federal law as a contracting or procurement obligation, or as a condition of the receipt of State or federal funds, the County shall not require a contractor on a construction project to execute or otherwise become a party to a project labor agreement as a condition of bidding, negotiating, awarding or the performing of a contract.*
- (c) *Nothing in this Section shall be construed as prohibiting private parties that may perform work on County construction projects from entering into project labor agreements or engaging in activity protected by law.*

Any further amendment(s) to this section following voter approval would require additional approval by voters.

Policy Discussion:

Proposed Measure vs. June 2010 Measures

The proposed measure includes similar language to that of the measures passed by Chula Vista and Oceanside voters during the June 2010 Primary election. This measure is similar in that the language does not prevent a private developer or contractor from entering into a collective bargaining agreement or outright ban PLAs, but rather prohibits the Board of

Supervisors from requiring a contractor enter into such an agreement as a condition of bidding, negotiating, awarding or the performing of a contract.

During the discussions of Propositions G and K leading up to the June 2010 election, questions were raised as to whether approval of those measures would hinder each city's ability to receive State or federal funding to complete projects in which these types of collective bargaining agreements are in place. The proposed measure differs from the two (2) recently passed measures in that it includes explicit language that allows for the use of PLA in those instances when required by law or as a condition of the receipt of State or federal funds.

Past SDCTA Position

The San Diego County Taxpayers Association (SCTA) supported Propositions G (Chula Vista Fair & Open Competition Ordinance) and K (Oceanside City Charter) during the June 2010 Primary election. These measures included similar language that prohibited each Council from requiring a PLA on City-funded construction projects. The rationale for these positions stated:

“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.”

Fiscal Impact

The cost to place this measure on the ballot totals approximately \$100,000 and is currently budgeted within the Registrar of Voters' Fiscal Year 2009-11 Budget.