



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:

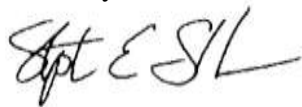
- What is the Department’s position on paying wages above the prevailing wage rates set forth in the applicable Davis-Bacon wage determination(s)?
- What is the Department’s position on payment for overtime work beyond what is required by the Fair Labor Standards Act and the Contract Work Hours and Safety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