

CAMPAIGN FOR QUALITY CONSTRUCTION



CONGRESSIONAL HEARING
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON REGULATORY AFFAIRS

March 16, 2011

**Regulatory Impediments To Job Creation:
The Cost Of Doing Business In The Construction Industry**

Statement for Submission to the Record

The Campaign for Quality Construction (CQC) is an employer-based construction coalition representing approximately 27,000 employers. We are comprised of the leading specialty contracting firms in the nation and include the International Council of Employers of Bricklayers and Allied Craftworkers (ICE), the National Electrical Contractors Association (NECA), the National Finishing Contractors Association (FCA), the Mechanical Contractors Association of America (MCAA), the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), and The Association of Union Constructors (TAUC). These groups represent more than 25% of the total building construction industry volume in this country and employ approximately 500,000 skilled workers. Specialty contractors hold a market share of more than 60% of non-residential building construction. Our members employ highly trained and highly skilled workers who are well compensated in wages, health and pension benefits – core components of a strong and sustainable workforce.

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The Campaign for Quality Construction is pleased to offer this statement for the record for the March 16, 2011 Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs hearing on “Regulatory Impediments to Job Creation: The Cost of Doing Business in the Construction Industry”. Although the scope of the Subcommittee’s hearing is a broader one, these comments specifically are in reference to and in support of project labor agreements (PLAs).

The Campaign for Quality Construction (CQC) is comprised of the International Council of Employers of Bricklayers and Allied Craftworkers (ICE), the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA), the National Finishing Contractors Association (FCA), the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), and The Association of Union Constructors (TAUC). Together these six organizations represent the interests of approximately 27,000 construction employers.

In both the private and the public sector, PLAs are considered to be a useful construction management tool for on-time, on-budget quality construction. They are valued by many experienced, cost-conscious owners and construction contractors. PLAs ensure that all parties associated with the completion of a construction project are working under the same set of rules from the outset, and also offer a defined roadmap for conflict resolution if the need arises.

It seems an odd oversight that the hearing panel today does not include a single construction contractor who has long-standing familiarity and experience with PLAs to speak in their support. The panel would benefit from more users/government owners of PLAs with a business or proprietary perspective that are also strong supporters of PLAs. In a prudent environment, Committee members should be able to weigh the facts after hearing from both supporters and opponents of PLAs. The CQC looks forward to a future hearing where CQC contractors can offer an alternative view of PLAs based on long experience with business conditions, current construction workforce development practices and workforce supply issues. There are a variety of enabling workforce development mechanisms such as dispute resolution and cooperative labor/management relations programs, including basic skills training and journeyman upgrade training, project safety training, and jobsite supervisory training, along with jointly administered health and welfare and pension benefits programs and other labor/management cooperative workforce development programs - including recruiting that stems from local area multiemployer and labor union collective bargaining agreements.

Background

Project labor agreements have been used for almost 100 years in private sector construction and for roughly 60 years in federally funded construction projects. The Supreme Court Boston Harbor Decision in 1993 permitted states and municipalities to

use project labor agreements. In 2009, President Barack Obama issued Executive Order 13502 to permit, not mandate, government agencies to consider Project Labor Agreements on projects over \$25 million.

Disney, Toyota, General Motors and major oil companies on the Trans Alaska Pipeline have all used Project Labor Agreements for major construction projects. The Grand Coulee Dam, Kennedy Space Center, several nuclear research facilities, the Woodrow Wilson Bridge Project, and dozens of professional sports stadiums, including the Washington Nationals Stadium, are examples of public sector projects that have used PLAs.

At times, PLAs have been lightning rods for political and legal challenges, but nearly all such challenges have failed. Through it all, PLAs have been proven to be sound tools that garner the highest quality workforce and project results. Republican and Democratic governors alike have endorsed the use of PLAs. Proprietary owners and government agencies reasonably assess the appropriateness of a PLA authorization on a project-by-project basis. It is also important to note that project labor agreements are neither mandatory nor “union-only” projects. Once a PLA has been negotiated, both union and nonunion contractors are free to bid on the work as they do on any other construction project.

PLAs Address Concerns by Prime Contractors Over Availability of Skilled Labor

The skilled construction industry faces many of the same problems as other business sectors when it comes to maintaining an adequate workforce, including the challenge of replacing an aging demographic with a new supply of apprentices with the proper skill sets and determination it takes to pursue these demanding and rewarding careers.

Public and private sector employers are beginning to acknowledge their own stake in addressing these workforce development deficits. Employers want to make sure that they, too, are contributing to the continued development of a skilled workforce, since the successful outcome of their future projects depends on it.

No less an authority than the Construction Users Roundtable (CURT) is encouraging its private and public sector market participants to incorporate workforce development factors in their contractor evaluation/responsibility determination process. CURT counts many federal procurement agencies among its members, including USACE, GSA, NAVFAC and others. It cannot be challenged that the scope of proprietary interest pursued in EO 13502 is more narrow than the industry standard established by CURT. On the contrary, U.S. Army Corps of Engineers (USACE) is pursuing that proprietary interest most robustly by participating in the overall CURT workforce development efforts and by finding standardized ways to routinely evaluate and implement BCTD PLA's. In a PLA project for West Point, to the extent that the PLA would draw on the resources of the local BCTD workforce training and development jointly administered

apprenticeship programs, and the good pay and benefits investments of BCTD employers in the area, is the same extent to which the USACE would be supporting those high-value workforce investments to buttress its future proprietary interest in a skilled workforce in the area.

Moreover, we might add that those same BCTD unions and employers frequently participate in military workforce recruiting programs, such as Helmets-to-Hardhats and the United Association's Veteran in Piping programs. These programs are exemplary workforce development efforts as well as very sound equal employment opportunity and affirmative action programs because they rely on the integrated gender and racial military workforce as a recruitment source, as per the EEO/AA objectives laid out in EO 13502.

PLAs Benefit Projects with Unique and Compelling Mission Critical Schedules

To the extent a project requires workforce screening and background credentialing, the BCTD apprenticeship and referral system that would be used under the PLA provides an administrative system that facilitates that project security requirement. Security screening delays can be addressed under a PLA, and the BCTD and local referral procedures can facilitate the E-Verification program to a degree a non-PLA project would not. Moreover, the BCTD system can include drug testing and other background screening that would not otherwise be available for all workers assigned to the project in the absence of a PLA.

Workforce availability disruptions are effectively hedged against under a PLA, as the standard BCTD PLA can rely on a nationwide referral network to meet manpower needs in all covered crafts. A BCTD PLA standardizes scope of work assignments for all crafts and provides a problem-solving mechanism to address work assignment questions. Furthermore, there are “no-strike/no-lockout” features to a PLA that are unavailable to firms not working under such collective agreements. Also, local bargaining agreements frequently include local labor/management cooperative committees that provide even further problem-solving capabilities, in line with EO 13502's labor/management cooperative aspects. Of course, those same forums facilitate compliance with wage and hour laws, project safety standards, and guard against illegal employment and worker misclassification on all projects — again, all in line with EO 13502's larger proprietary objectives.

PLAs Do Not Discriminate Against Nonunion Contractors and Workers

Public sector PLAs are designed to obtain the best possible work at the lowest possible price. While union-only agreements are permitted in the private sector, bid awards in the public sector cannot be based on union or nonunion status. In addition, according to the NLRA, job referral procedures cannot lawfully favor union members or discriminate against equally qualified non-members. Any contractor has the sole right

to reject any applicant referred by a local union. Nonunion contractors are permitted to by-pass union referrals for an agreed-upon percentage, such as 12% of its “core employees.” Nonunion contractors have challenged the fairness and legality of PLAs for years, but the courts have indicated that as long as union and nonunion employers are free to participate in the bidding process, PLAs are not anticompetitive. The Court of Appeals echoed the U.S. Supreme Court, stating, “The fact that certain, nonunion contractors may be disinclined to submit bids does not amount to the preclusion of competition...”

PLAs Neither Limit the Pool of Bidders nor Raise Construction Costs

Specific quantification is not possible pre-award or perhaps even after project completion. However, alternate bidding schemes are no way to prove the differential either, as first cost is theoretical as compared with actual project experience. And, the project owner cannot know what they might have experienced had they used an alternative. Only specific project experience can be relied on to prove the benefits of a PLA relative to not using a PLA. As virtually all projects under EO 13502 would be subject to the Davis Bacon Act or other prevailing wage workforce protections, the actual per-hour craft worker costs would be based on comparing the wage determinations for the project with the rates applicable under the PLA. To the extent there is a differential, then that added cost would have to be weighed against the manifold benefits returned under a PLA as compared with project administration and performance without a PLA.

As PLAs standardize project workforce terms and conditions; provide problem solving and dispute resolution mechanisms; guard against delays for project staffing; guard against strikes and lockouts to a degree to which is not available in the absence of a collective bargaining agreement; contain workforce supply and credentialing mechanisms; guard against illegal employment, worker misclassification and promote E-Verification; contain OSHA and other labor and employment law protections and safeguards against disruption because of non-compliance; and, promote the high-value workforce development systems in the area, then the return to the project and the project owners' direct proprietary stake in industry standards is manifest.

In a study by Fred B. Kotler, J.D., Cornell University School of Industrial and Labor Relations, it is noted that market conditions and business cycles impact bidding behavior. During the current economic downturn, CQC contractors who normally work exclusively in the private sector have bid on public sector work to keep workers on the payroll and to stay afloat financially until the construction market returns to normal. As the volume of work increases in the construction market, there will be a decline in the number of bidders on any project, public or private. Mr. Kotler also notes that separate prime contracts lead to more bidding activity. The point is a number of factors contribute to the pool of bidders, including the fact that some nonunion contractors do want to work under the specifications set out under a PLA. We know some contractors

do not want to work for the federal government at all due to payment and paperwork issues and some do not want to work under prevailing wage law.

PLAs Do Not Thwart Participation by Small Businesses or Women or Minority Owned Firms

The construction industry is one comprised almost totally of small businesses. In fact, 90 percent of construction employers have 20 or fewer employees. CQC member employers are no different. An overview of our six organizations would reveal that 80 percent of our employers have ten employees or fewer and 50 percent employ five or fewer workers. The union and nonunion sector mirror each other with regard to firm size. So, it is not a valid argument to say that small business contractors cannot successfully bid on PLA jobs. Likewise, each organization has women and minority owned businesses that successfully bid and complete work on PLA projects.

One of the women-owned companies from Oregon sent forms from the Edith Green – Wendell Wyatt (Portland, Oregon) project. The PLA specifically required reach-out to small businesses and established a Small Business Subcontract Plan to ensure small businesses were included in the project. A Small Business Fair event was held June 29, 2010 for the project.

The truth is, many CQC business owners come from the ranks of the apprenticeship programs and working in the craft. Women and minorities have business opportunities based on their career training and work experience that are facilitated by PLAs. PLAs in no way thwart small businesses opportunities.

PLAs Help Prevent Degradation of Workforce Standards

The PLA is a business model that offers jobsite efficiencies, with a steady, local and legal supply of highly trained and productive skilled craft workforce from training programs that invest almost one billion dollars a year in private investment in apprenticeship programs. A workforce that is well-paid with health care and pensions contributes to a solid tax base and the health of local business. PLAs contribute to the health of the U.S. economy and local communities where they are used.

Some may believe that the construction industry and public construction projects in general are best served by assembling the lowest cost, most vulnerable and exploitable workforce. The construction of the Veterans Affairs (VA) Medical Center in Orlando, Florida is a poignant example of how taxpayer dollars can be ill-used when PLAs are not utilized. In the Florida VA project without a PLA in place, subcontractors on the jobsite hired illegal workers, some of whom were living on the construction site. This should never happen on a public job, as it does not serve the best interests of the owner, the unemployed legal workforce, the abused worker, the local community or the tax payer at large.

PLAs are not detrimental to the taxpayer or to the nonunion contractor or to any small business owner. In fact, the taxpayer and local workers and communities are hurt when illegal and undocumented workers are paid “off the books” or misclassified as independent contractors.

PLAs greatly assist in establishing a higher workforce standard that all contractors should be willing to meet.

CLRC Study on the National Maintenance Agreements 2007-2009

The National Maintenance Agreements (NMA) is one of the largest private-sector PLAs in the country. The Construction Labor Research Council (CLRC) recently completed a study on the impact that the NMA has had in the creation and promotion of work opportunities in the U.S. construction industry. CLRC utilized work hour data supplied by the National Maintenance Agreements Policy Committee, Inc. (NMAPC) covering the years 2007 through 2009, but the analysis goes beyond simply using work hours reported in evaluating the impact of the Agreements. CLRC found that during this three-year period the NMA on average has been responsible for facilitating **40,000** full-time industrial construction and maintenance jobs per year within the construction industry. In 2008 alone, the total amount of taxes (Federal Social Insurance Taxes, Federal Income Taxes and State Income Taxes) paid by workers on NMA projects were **\$420 million**.

Conclusion

CQC employers provide good wages, health care and pension benefits. They compete successfully every day in the marketplace against employers who do far less for their employees. These employers compete successfully because they have a ready source of trained labor available to do the job on-time and on-budget. They are successful in the private market because they have learned how to achieve efficiencies that building owners want even though it may not be at the lowest price.

The Campaign for Quality Construction strongly urges the committee to support EO 13502 giving government owners the same flexibility to use Project Labor Agreements. Private owners have determined that on many important projects PLAs give them the most cost-effective way to build a project and government owners and contracting officers should have the same construction management tool for on-time, on-budget quality construction.