

Using CDBG Funds for Activities Subject to a County Ordinance Requiring Project Labor Agreements

August 5, 1998

The Honorable Peter J. Visclosky
U.S. House of Representatives
Washington, DC 20515-1401

Dear Representative Visclosky:

Thank you for your letter of July 27, 1998, regarding a dispute in Lake County, Indiana, over the use of Community Development Block Grant (CDBG) funds for activities subject to a County ordinance requiring project labor agreements.

The Lake County ordinance at issue requires all general contractors and subcontractors involved in construction projects taking place on County-owned property to enter into a project labor agreement prior to hiring construction employees. All such agreements are to be negotiated by and through the Northwestern Indiana Building and Construction Trades Council, Inc. The Lake County Community Economic Development Department has expressed its concerns that the subject ordinance may impose an undue restriction on competition in procurement transactions for CDBG-assisted activities in violation of Federal procurement requirements. Thus, the County Community Economic Development Department is currently withholding CDBG funds previously budgeted for two activities that would be subject to the ordinance at issue. These activities include accessibility improvements to the County Government Center and the construction of a new visitation building at the Children's Advocacy Center.

As you note in your letter, President Clinton issued a Memorandum for the Heads of Executive Departments and Agencies on the Use of Project Labor Agreements for Federal Construction Projects on June 5, 1997. The President's Memorandum encourages departments and agencies to consider using project labor agreements:

"(a) where a project labor agreement will advance the Government's procurement interest in cost, efficiency, and quality and in promoting labor-management stability as well as compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (b) where no laws applicable to the specific construction project preclude the use of the proposed project labor agreement."

The President's Memorandum does not apply to Federally-assisted projects like those in question in Lake County; nevertheless, it specifically states that it does not preclude the use of project labor agreements on such projects. Accordingly, it is HUD policy to encourage the use of project labor agreements on Federally-assisted construction projects whenever a recipient of such assistance determines that the use of such an agreement comports with the standards described above.

Local governments carrying out activities with Federal grant funds, including CDBG, are required to comply with certain uniform administrative requirements developed under the auspices of the Office of Management and Budget (OMB). These include procurement standards as codified for HUD at 24 CFR 85.36 and made applicable to the CDBG program pursuant to 24 CFR 570.502(a)(12). A basic principle of these procurement standards is that grantees are to conduct all Federally-assisted procurement transactions in a manner providing full and open competition. Thus, any project labor agreement used for CDBG-assisted activities should allow all contractors and subcontractors wishing to compete for contracts and subcontracts on such activities to do so, without discrimination against contractors, subcontractors, or employees based on union or non-union status. A local ordinance is not discriminatory if it allows any contractor to bid on work regardless of its status as a union or non-union contractor and provides only that the contractor agrees to perform its work on the project under the terms of the project labor agreement.

In addition, local ordinances concerning project labor agreements, as well as the agreements themselves, should not exclude any worker from employment on CDBG-assisted construction projects on the basis of union membership or lack of union membership. A project labor agreement for a CDBG-assisted activity can, however, still provide that one or more unions shall be the exclusive source of labor on the job. This is because the National Labor Relations Act prohibits both employers and unions from discriminating against employees based on their membership or nonmembership in a union. Thus, a union operating a hiring hall under the project labor agreement must provide fair representation to all workers seeking employment, regardless of their union membership.

Based on the information provided to HUD, nothing in the Lake County ordinance concerning the use of project labor agreements indicates that it unreasonably restricts competition among prospective bidders for the opportunity to perform contracts or subcontracts on projects covered by the ordinance, or excludes workers from opportunities for employment on such projects on account of their union membership or lack thereof. Therefore, the subject ordinance should not interfere with the County's distribution of CDBG funds to assist the construction of projects owned by Lake County.

I hope this information is helpful to you. Please let me know if I may be of any further assistance.

Sincerely,

(signed)

Andrew Cuomo