

Cultivating Cartels:

How Sound Transit's labor policies entrench union monopolies, stifle competition, and harm minority contractors at taxpayer expense

By Amber Gunn

INTRODUCTION

Competition is the bedrock of free enterprise and the regulator of the price system. More than almost any other factor, competition drives innovation, productivity, quality, competitive pricing, inclusion and impartiality. Monopolies are primarily characterized by the absence of competition, and often lead to price-gouging, corruption, and bullying. Our government recognizes the value of competition, to the point where it may step in on behalf of consumers to protect them from the effects of monopoly through the enforcement of antitrust laws. Monopolies sometimes occur naturally, but often they are the result of regulations that favor certain businesses or behaviors while discouraging or downright outlawing others.

Sound Transit is responsible for just such a monopoly—one that would not exist without the power conferred on a select group of unions over the supply of labor for Link light rail construction and Sounder commuter rail station contracts. Known as a “Project Labor Agreement” or PLA, the agreement requires all contractors to hire workers through union hiring halls, and strictly governs working conditions, apprenticeship and diversity requirements, wages and benefits.

In November, voters in Sound Transit's Regional Taxing District (RTA) will be asked to authorize Phase 3 of Sound Transit's expansion. At \$53.8 billion, the plan qualifies as one of the most expensive public works projects in modern history. Whether the overall plan is worthwhile, or capable of achieving its stated purpose of reducing congestion is not the concern of this paper.

There is more to consider than the sole question of, “Should it be done?” but also, “How should it be done?” As a government agency, Sound Transit is primarily accountable to the public at large. There are stakeholders, of course—unions, contractors, workers, and private companies that would benefit from light rail expansion—but they are not the parties to which Sound Transit owes its principal responsibility.

At the root of Sound Transit's schizophrenic labor and competitive bidding policies is a deeply-fractured understanding and adoption of the agency's role. Sound Transit expects to deliver a quality product *and* require 20 percent of all project hours to be apprenticeships; to encourage all contractors to participate in the bidding process *and* require them to sign off on onerous labor requirements; to urge women and minority contractors to bid *and* require them to forego their own loyal workforce in exchange for union labor control; to require minimum levels of women and minority labor participation *and* expect no labor shortage; to deliver a cost-effective product to taxpayers *and* impose labor policies requiring taxpayers to pay twice for fringe benefits. Most of these goals are

totally at odds with each other. It is not possible to be all things to all people. However, this does not stop Sound Transit from struggling to do so through stakeholder and community meetings, presentations and education campaigns.

Unfortunately, as a government entity, the political incentives for Sound Transit appear to outweigh the economic ones. The agency's decision to impose a mandatory PLA displays the clear winner in the stakeholder battle: unions. Professor David G. Tuerck, Chairman and Professor of Economics and Executive Director of the Beacon Hill Institute at Suffolk University, Boston, put it bluntly: "A decision by public owners to enter into a PLA is a signal that they are willing to subordinate the interests of the general public to those of the unions."¹

Voters should ask themselves: Are the "social justice provisions" required by the Sound Transit's PLA worth the trade-off of higher costs, decreased competition, discrimination against more than three-quarters of Washington's private construction workforce, and extra barriers for small and minority-owned contractors? Can those social justice provisions be achieved in a different, less costly approach? Do we (the tax-paying public) believe Sound Transit's role extends to micromanaging the process by which contractors deliver a finished product, especially when that micromanagement leads to delays, increased costs and barriers to entry for otherwise qualified contractors?

At nearly \$54 billion, Sound Transit is asking taxpayers to put a colossal amount of trust in the agency's ability to deliver the project at cost and within promised timelines. It is past time for Sound Transit to abandon its established policy of favoring and subsidizing unions through mandatory Project Labor Agreements, and adopt competitive policies that serve the interests of the public.

SUMMARY

- Government-Mandated Project Labor Agreements (GMPLA) confer monopoly power on a select group of unions over the construction labor supply.
- GMPLAs exclude open shop contractors unless they sign an agreement for the term of the project allowing union control over hiring and labor compensation. Excessive administrative costs, labor redundancy, and restrictions on the use of their existing workforce combine to discourage bids from contractors who do not want to be party to a PLA or do not employ a union workforce.
- Because women-owned and minority-owned construction and engineering businesses are more likely than majority-owned businesses to be small, any barriers for small contractors may have a disproportionate effect on them.
- Although unions supply a minority of the private construction workforce (less than 25 percent), GMPLAs presume that they will be the most reliable and cost-effective source for labor—a presumption that is demonstrably false.

¹ Tuerck, David G. (2010). *Why Project Labor Agreements Are Not in the Public Interest*. *Cato Journal*, Vol. 30, No. 1.

- The 78.4 percent of Washington’s private construction workforce that has chosen not to join a union is either unfairly shut out of the competition for Sound Transit’s contracts or forced to pay representation fees.
- Between 35 and 45 percent of individual worker compensation is deducted and deposited in union trust accounts. Workers that are not union members will not pay into the fund long enough to become vested—creating a huge windfall for unions.
- Sound Transit’s attempt to equalize the playing field between union and non-union contractors has led to taxpayers paying twice for fringe benefits for non-union labor—a payoff to unions with public tax dollars.
- GMPLAs drive up costs of a construction project by eliciting fewer competitive bids, and through dual benefit payments, biannual prevailing wage adjustments, jurisdictional boundaries that cause dead time between jobs, extra Sound Transit PLA staff and training, technical support, and enforcement.
- The majority of both union and open shop contractors believe that all of the benefits and goals of Sound Transit’s Project Labor Agreement could be met by putting the requirements in the bid specifications.
- Sound Transit should adopt a more competitive, cost-effective model that that allows both union and open shop contractors the freedom to operate, and does not discriminate based on labor affiliation, or lack thereof.

BACKGROUND ON SOUND TRANSIT’S PROJECT LABOR AGREEMENT

A Project Labor Agreement is negotiated between the construction owner (in this case, Sound Transit) and labor unions, with little or no input from the contractor. Unlike a typical collective bargaining agreement in which a union negotiates with a contractor about wages and working conditions without a particular construction project in mind, a PLA is negotiated between the entity that controls the project (Sound Transit) and multiple unions that want to be the exclusive source of labor on the project.

In general, PLAs: 1) Are project or location-based; 2) Supersede all other collective bargaining agreements; 3) Adopt working conditions, hours and dispute resolution procedures; 4) Establish wages and benefits; 5) Recognize signatory union(s) as the exclusive bargaining representatives of employees, whether or not they are union members; 6) Mandate union referral system hiring; 7) Prohibit lockouts and strikes; 8) Require all prime and subcontractors to become party to the agreement.

A PLA is sometimes voluntary, meaning a contractor may choose to become a party to the agreement or not, and may still bid on a project even if the contractor chooses not to participate. More often than not—and as in Sound Transit’s case—the agreement is government-mandated (GMPLA). Both union and open shop (non-union) contractors may bid, but whomever is awarded the contract must agree to abide by the terms of the PLA.

Sound Transit's PLA requires open shop contractors to operate nearly the same as union contractors.² All craft employees are hired through union halls, and worker compensation passes through union trust accounts where fringe benefits earned during the life of the project are forfeited unless the employee joins a union and becomes vested in the plans. Open shop workers must pay a representation fee equivalent to 94 percent of union dues. It is essentially a "pre-hire" agreement in which the contractor agrees to follow specific union work rules, hire apprentices exclusively from union apprenticeship programs, and pay into union benefit plans on behalf of employees even if they have their own qualified benefit programs.

Some contractors were initially included in Sound Transit's PLA negotiations to represent construction interests, but their concerns were overruled by union and certain community interests—many of which are affiliated with unions.³

The Sound Transit Board authorized the agency's first PLA in 1999. Sound Transit defines it as "a stand-alone collective bargaining agreement that applies to Link light rail construction contracts and Sounder commuter rail station contracts."⁴

DECONSTRUCTING THE CASE FOR GMPLAs

The case for PLAs is summarized as follows by Cornell University's Fred B. Kotler:

PLAs provide job stability and prevent costly delays by: 1) providing a uniform contract expiration date so that the project is not affected by the expiration of various local union agreements while the PLA is in effect; PLAs in New York City simply incorporate the new wage rates negotiated for those local union agreements; 2) guaranteeing no-strikes and no-lockouts; 3) providing alternative dispute resolution procedures for a range of issues; 4) assuring that contractors get immediate access to a pool of well-trained and highly-skilled workers through union referral procedures during the hiring phases and throughout the life of the project.⁵

Historically, PLAs have been used by contractors and unions for major projects that require a large numbers of different crafts. The practice was more common when unions represented a majority of the construction workforce. The traditional objective of a voluntary PLA was to improve the competitive position of the bidding contractor with respect to a specific project. It may modify the terms of existing local agreements, or create new terms and conditions altogether. The contractor and unions would come together freely prior to submitting a bid, in order produce a more competitive bid and to secure the work.

² Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 8.

³ AGC Representative, Email 8/16/2016.

⁴ Sound Transit [Project Labor Agreement webpage](#), accessed 8/6/16.

⁵ Kotler, Fred B. (2009). [Project Labor Agreements in New York State: In the Public Interest](#), p. 3. Accessed 8/10/2016.

Government-mandated PLA's purport to accomplish the same objectives of increasing collaboration and efficiency, and decreasing the potential for delays and disputes. However, when such agreements are negotiated between the *owner* (Sound Transit) and the unions, rather than the *contractor* and the unions (effectively substituting experienced contractors with political representatives), the result is an agreement that is less motivated by economic considerations than by political ones. The consequence is a less competitive bidding process, administrative headaches for contractors, and higher costs for taxpayers.

The percentage of unionized workers in private construction has declined by roughly one-third between 1983 and 2015, from 30.7 percent to 21.6 percent.⁶ The wage premium earned by union construction workers has also fallen, from 74 percent in 1983 to 51.8 percent in 2008. "This growing nonunion element was not the result of any organized attempt by nonunion contractors to diminish union power. It was the result, rather, of shifting living patterns and of technological progress."⁷

Whatever the cause, the effects are clear: unions are on the decline, and government-mandated PLAs are a tool to artificially slow their degeneration.

Sound Transit commissioned a PLA study in 2011, performed by Agreement Dynamics, that tracked stakeholder arguments on both sides of the PLA debate. Advocates, which consist of primarily of unions and union allies, cite three key benefits:

- Comprehensive no-strike/no lockout protection
- Effective jurisdictional dispute settlement process
- Diversity and apprenticeship goal that commit both unions and contractors to measureable results⁸

The no-strike/no lockout protection which can allegedly be provided solely by executing a PLA is an oft-cited benefit. Ostensibly in support of such an argument, the study noted, "Due to the fact that there is a strong presence regionally of unionized contractors, with or without a PLA, it is estimated that the majority of contractors will be union...Sound Transit's data indicates that 80% of the hours worked have been performed by union workers. This underscores the value of protections against labor disruptions."⁹

First, this is a concession that unionized workers are more likely to strike, and that they need a PLA to stop them from doing so. This should make them *less*—not more—appealing from an owner's perspective. Second, open shop contractors and workers are at a severe disadvantage under Sound Transit's PLA, creating the incentive to opt out of projects altogether. This at least partially explains the dominant union participation,

⁶ Hirsch, Barry. Macpherson, David. *Union Membership and Coverage Database from the CPS* (Unionstats.com). Accessed 8/1/16.

⁷ Tuerk, David G. (2010). *Why Project Labor Agreements Are Not in the Public Interest*. *Cato Journal*, Vol. 30, No. 1.

⁸ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 15.

⁹ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 9.

despite the fact that union workers make up less than 25 percent of the construction workforce. Third, the threat of strikes can easily be dispelled by simply hiring an open shop contractor in the first place. Open shop workers do not strike.

This last point also applies directly to the second championed benefit: jurisdictional dispute settlement. Unlike union workers, open shop workers do not have jurisdictional disputes. Open shop workers tend to be flexible, and may execute more than one craft or skill, to maximize efficiency and minimize dead time between jobs. This is not to say that union workers are more or less skilled than open shop workers, just that the role of a union worker is more defined, while the role of an open shop worker is more fluid. Jurisdictional disputes arise from disagreements over predefined roles within union trade agreements.

It strains credulity to give the same unions that are the source of potential problems that the PLA is needed to correct (Strikes, Delays, Jurisdictional disputes, etc.) absolute monopoly power over the labor portion of the PLA.

The contractor—not the owner, not the union—is in the best position to decide when union or open shop labor will enhance the efficiency and cost-competitiveness of the bid. If a “union-only” contract creates these advantages and reduces costs, then union contractors should be able to use these advantages to offer the lowest bid, with or without a PLA. When a well-qualified contractor chooses not to bid because of a PLA, taxpayers lose.

LOCAL LABOR MANDATES MAY INCREASE PROJECT COSTS

The Sound Transit Board has established specific “labor, employment and economic objectives” which include the use of local labor. These objectives may or may not conflict with Sound Transit’s obligation to deliver a cost-effective product, but the question is whether a government-mandated PLA has intended or unintended effects on these objectives, and on the overall project outcome.

The use of local labor is almost always preferred, and often mandated, for government construction contracts. Many cries of woe arise from politicians discovering that local labor was not used on their favored projects, and valiant efforts are assumed to rectify the situation—down to the zip code in some cases.¹⁰ The high cost of living within certain cities is often the reason local labor is hard to come by, however, and no mandate can make workers appear where they do not live.

Well-meaning policies that seek to micromanage hiring decisions by contractors can result in higher costs to locate the correct quota of workers and prove such a quota has been achieved. Higher costs for contractors are inevitably passed on to the owner

¹⁰ Concern over the lack of Seattle resident labor on city projects led to the City Council’s adoption of a PLA in 2015. <http://www.seattletimes.com/pacific-nw-magazine/seattles-building-boom-is-good-news-for-a-new-generation-of-workers/>

(Sound Transit), which in turn passes them on to taxpayers, who have less to spend. If Sound Transit can spend the money more carefully than the taxpayers from whom it was taken, then perhaps this is not a problem. Even so, contractors dispute the notion that the use of local labor can be achieved exclusively through a government-mandated PLA, rather than through the bid specifications.¹¹

GMPLA RESTRICTIONS HARM THOSE THEY ARE MEANT TO HELP

One of the stated purposes of Sound Transit's PLA is "to promote fairness in employment for both union and non-union contractors and craft workers, without discrimination...The parties are committed to providing open access to bidding and employment opportunities for all contractors, prospective craft workers and other parties."¹²

Part of Sound Transit's evaluation of its PLA was whether its provisions were supportive of its objectives to increase participation of minority, women and Disadvantaged Business Enterprises (M/W/DBE's). Washington's Department of Transportation commissioned a "DBE Program Disparity Study" in 2012, that researched MBE and WBE participation in the construction and engineering industries, particularly as it relates to government projects.

The study notes that MBE and WBE businesses are more likely than majority-owned businesses to be small businesses, and that any barriers for small businesses may have a disproportionate effect on them.

"It appears that some businesses choose not to bid on or are precluded from bidding on public sector contracts due to what business owners and managers perceive to be overly restrictive contract requirements. Such requirements can disproportionately affect small businesses."¹³

"Some interviewees reported that overly complicated bidding processes can also present a barrier to firms seeking public sector work. (The white male owner of a construction company said that the difficult bidding process actually helps his company because it removes other businesses as competitors.)"

"A number of minority and female business owners indicated that the major barriers that they face are due to the size of their businesses."¹⁴

For 72 to 92 percent of MBE and WBE construction and engineering businesses, the largest contract they received was worth less than \$1 million, driving home the point that the vast majority of minority and women-owned contractors are small businesses.¹⁵

¹¹ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 4.

¹² [Sound Transit Project Labor Agreement](#), as amended thru Feb. 23, 2012. p. 2.

¹³ BBC Research & Consulting (2012). [2012 DBE Program Disparity Study](#). Chapter 4, p. 18.

¹⁴ Ibid. Chapter 4, p. 19.

¹⁵ Ibid. Appendix H, p. 9.

Overall, very few construction and engineering companies have the capacity to bid on large contracts. This is disproportionately true of MBEs and WBEs, who are more likely to participate as open shop subcontractors.

Sound Transit's PLA makes it more difficult for these businesses to bid and meaningfully participate due to artificial barriers unrelated to the efficient and cost-effective delivery of any given project. Sound Transit's own PLA evaluation recounts a litany of complaints from non-union contractors, including small businesses and minority or women-owned contractors. Union dispatch rules, dues requirements, trust payments, fines for late trust payments, "core employee" restrictions, and disputes with unions over the interpretation of PLA work rules were some of the problems encountered by non-union contractors. A sampling of contractor responses follows.

"I think the unions need to work closer with the DBE contractors. I think most of the PLAs have not been a good fit for DBEs."¹⁶

"Absolutely a miserable experience fighting both Sheetmetal Workers Local 66 and Roofers and Waterproofers Local 54...I had to pay union dues for the project costing me around \$6,000.00 on a job that was already bid very tight. In addition, I have been audited by both the Local 66 and the Local 54 since then. In hind site [sic], I should have told the general contractor that I could not do the project and suffer whatever consequences were imposed by the GC. It wouldn't have been near as bad as what I went through dealing with the PLA."¹⁷

"...The majority of subcontractors, regardless of classification, who have gone through the PLA process have said they would not do it again. The smaller the subcontract value, the more likely that the subcontractor would not bid on a PLA project again."¹⁸

The agency's response to the problems noted above has been to double the staff responsible for the PLA administration, adopt some amendments primarily around arbitration and grievances, and engage in small business PLA training for prospective bidders.

In other words, rather than remove the government-mandated PLA cancer that is responsible for the contractor headaches, higher costs and discrimination against DBEs, Sound Transit has doubled down in its efforts to make the PLA workable. More training, more time, and more money—all to ensure that union labor remains the only game in town.

¹⁶ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), Subcontractor Responses, p. 204.

¹⁷ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 101.

¹⁸ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), Prime Contractor compilation, p. 224.

But even union contractors have not universally supported PLAs. Many of them have spent time and resources negotiating master agreements with the individual trade unions in their market, and they are not generally eager to have those agreements superseded by a complicated PLA negotiated without their input.¹⁹

Who Benefits

Who Pays

<p style="text-align: center;"><u>UNIONS</u></p> <ul style="list-style-type: none"> · Easy recruiting of new members, since all workers are required to be dispatched through union halls · Dues or Representation fees collected from every worker on the project · Typically retains 35 to 45 percent of craft worker wages in trust accounts · Control most work rules and conditions · Apprentices must be hired exclusively from union apprenticeship programs 	<p style="text-align: center;"><u>TAXPAYERS</u></p> <ul style="list-style-type: none"> · Fewer bids and less competition results in higher overall costs for Sound Transit projects. · Higher administrative, compliance and labor costs to contractors are passed onto taxpayers. · Dual Benefit payments: Sound Transit reimburses open shop contractors for the benefits they must pay into union trust accounts on behalf of employees even if they already pay for qualified plans (double benefit payments). <p style="text-align: center;"><u>CONTRACTORS</u></p> <ul style="list-style-type: none"> · Local Collective Bargaining Agreements established with union contractors are superseded by the PLA · Open shop contractors may only bring up to five previous employees in each craft, prove they possess union-approved qualifications, and be alternated with union choices. · Loss of control of work schedule and rules for employees · Administrative costs and time associated with mandatory biannual prevailing wage adjustments that go beyond the Davis-Bacon Act. · Flexibility to employ multi-skilled or semi-skilled workers is eliminated. <p style="text-align: center;"><u>WORKERS</u></p> <ul style="list-style-type: none"> · Must pay union dues or representation fees, even if they do not want to participate in a union · Open shop workers must prove they hold union-approved qualifications and must get in the union hiring line in order to work for their existing employer · 35 to 45 percent of their earnings deducted on their behalf. Open shop workers will usually not work long enough to become vested, thus forfeiting any benefits earned. · Subject to union jurisdictional rules. Working across crafts is not allowed.
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¹⁹ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 175-176. Also throughout the study, contractors express frustration at the discrepancies between Sound Transit's PLA prevailing wage escalation dates versus their master agreement escalation dates.

PLA EFFECTS ON COSTS

There is little dispute that PLAs increase costs to open shop contractors. Sound Transit's PLA study acknowledges administrative costs associated with jurisdictional and other specific PLA issues increases bid costs as much as 10 percent.²⁰ For example, extra costs are incurred due to: 1) Compliance with shift differentials; 2) Show up/reporting pay; 3) Dual benefit payments; 4) Biannual prevailing wage adjustments.

However, PLA advocates argue that *overall* project cost savings or increases cannot be calculated. "To date there has not been a comprehensive study that definitively proves that PLAs increase or decrease costs."²¹

This conclusion is flawed. The Beacon Hill Institute at Suffolk University, Boston conducted regression analyses of PLA projects in Massachusetts, Connecticut, and New York, which determined that the anti-competitive nature of government-mandated PLAs coupled with increased labor costs and regulations for contractors increased contractor bids between 14 and 20 percent, and increased final construction costs ranging from 12 to 18 percent. Critics who have run regressions of their own dismiss these findings, maintaining that because they can build a model in which the effects of PLAs are insignificant, there is no need to pay attention to models that show the opposite.²²

Regardless of where one falls on the spectrum of PLA cost effects in general, in Sound Transit's case, there are known, quantifiable costs that are embraced within the PLA, namely, dual benefit payments and biannual prevailing wage adjustments that exceed Davis-Bacon Act requirements.²³ To atone for what Sound Transit acknowledges is a discriminatory requirement for open shop contractors, the agency can either stop the reimbursements and force the contractor to bear the cost (pricing them out of the competition altogether), or simply eliminate the requirement that open shop contractors with qualified benefit plans also pay into union trust accounts.

A BETTER MODEL: COMPETITION AND COOPERATION

In November, voters will be asked to approved Sound Transit's most extensive expansion to date. If approved, the \$53.8 billion tax package would take 25 years to complete, and would cost the typical adult \$169 annually. Using the agency's estimates of 1.93 adults per household, each household would pay \$326.17 annually for ST3. Residents in Ballard and Everett would wait as long as 22 and 25 years respectively, before light rail would be

²⁰ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 3.

²¹ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 4.

²² Tuerk, David G. (2010). [Why Project Labor Agreements Are Not in the Public Interest](#). Cato Journal, Vol. 30, No. 1.

²³ The Davis-Bacon Act of 1931 is a federal law that establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics.

delivered to their locations.²⁴ That works out to \$8,154.25 paid by an Everett household before they even get to ride it.

ST3 VS. MODERN MEGAPROJECTS

ORIGINAL PANAMA CANAL: \$8.7 BILLION

THE “CHUNNEL”: \$22.4 BILLION

31.4-MILE, HIGH SPEED UNDERSEA “CHUNNEL”
CONNECTING ENGLAND AND FRANCE.

BOSTON’S “BIG DIG”: \$23.1 BILLION

REROUTING I-90 THROUGH THE HEART OF THE CITY.

BEIJING-SHANGHAI HIGH-SPEED RAILWAY: \$26.1 BILLION

THE LONGEST HIGH-SPEED RAILWAY EVER
CONSTRUCTED IN ONE PROJECT.

THE INTERNATIONAL SPACE STATION: \$150 BILLION

THE ENTIRE U.S. INTERSTATE HIGHWAY SYSTEM: \$459
BILLION

SOURCE: [BUSINESS INSIDER](#), INFLATION-ADJUSTED TO 2012 U.S.
DOLLARS

The question for taxpayers is whether they want an agency that is a fiduciary on behalf of taxpayers, or one that is a self-appointed arbiter of employee/employer relations and disputes. Washington already has existing agencies to handle discrimination, prevailing wage, and worker safety disputes—issues the Sound Transit PLA is purported to solve.²⁵ A mandatory PLA puts the owner and the unions in charge of dictating all of the working conditions and terms, even though the contractor is ultimately responsible for upholding them.

There is a better, more inclusive, more competitive and more cost-effective model that does not involve force. The Associated General Contractors of Washington, whose contractor members are roughly half union and half open shop, has developed an “Open Competition Project Stabilization Agreement” that is based on successful agreements used to deliver projects such as Denver’s Stapleton International Airport, the Maryland Harbor Tunnel, and the Baltimore Ravens Stadium. In each of these cases, agreements were established between all parties (unions, contractors, local governments), but did not require any contractor or subcontractor to exclusively use union labor, nor did it modify or supersede any existing collective bargaining agreements. Under such an agreement, both union and open shop contractors have freedom to operate in the way that each can deliver the best product, and coordination occurs when needed. Discrimination based on labor affiliation, or lack thereof, is eliminated in the award of contracts.

This kind of model agreement simply illustrates that if a PLA is needed on a project for the right reasons, an agreement can be put into place that both union and open shop contractors can support.

²⁴ Lindblom, Mike. “[\\$50B Sound Transit proposal: big taxes, big spending, big plan](#),” Seattle Times. March 25, 2016.

²⁵ Washington State Human Rights Commission (Federal), Equal Opportunity Employment Commission (Discrimination), Labor & Industries (Prevailing wage and worker safety).

Additional provisions pertaining to prevailing wages, drug testing, work hours, apprenticeship programs and diversity goals could easily be incorporated into such an agreement, or be added to the bid specifications. As argued by Sound Transit contractors, “The objectives of the Sound Transit PLA (no strikes, no lockouts, adequate skilled labor, higher apprentice utilization, increase women and minority contracting and expanded employment opportunities, etc.) can be achieved without a PLA by putting them in the bid specs.”²⁶ Either of these alternatives would be preferable to a government-mandated PLA.

The correct policy answer is to allow the competitive bidding process to determine which contractor and workers can deliver the best results at the best price. Competition corrects inefficiencies and enhances quality. Invite the unions to win work voluntarily through skill, professionalism and experience of the workers that comprise them. Let them prove that they have the market on worker training and quality, and can finish the work faster and better to justify their cost premium over open shop workers. If it is in the contractor interest to do so, for example, access to a steady supply of skilled labor, they will do so voluntarily. If it is in the workers’ interest to join a union, they will do so voluntarily. The only entity that has a vested interest in making PLAs mandatory is the unions. Clearly, they are the most powerful group at the negotiating table. They have demanded and received the entire marketplace for Sound Transit contracts. But there are two classes of workers in Washington: union and open shop. The policies should be good for both of them.

CONCLUSION

Sound Transit has a history of overpromising and underperforming,²⁷ as painfully catalogued in the state auditor’s 2007 performance audit of the agency.²⁸ From an elaborate launch party costing nearly \$1 million at taxpayer expense, to millions spent each year on public relations and communications for the agency targeting the 79 percent of commuters that don’t use transit, the agency has pulled out all the stops to celebrate its achievements and get more voters on board—figuratively and literally.²⁹

The adoption of an expensive, burdensome, inflexible, discriminatory PLA is yet another injury in a long line of abuses leveled at the tax-paying public, though perhaps one of the least known outside of the construction industry. It is a false narrative that in order to operate more efficiently, we must eliminate choice and freedom for contractors and workers, but this is exactly what is at stake with Sound Transit’s PLA. Pay the unions, work with unions, or step down.

Sound Transit has chosen loyalty to union bosses at the expense of taxpayers, small and minority contractors, and the 78.4 percent of Washington’s private construction workforce that has chosen not to be part of a union. It’s time for the agency to stop

²⁶ Agreement Dynamics (2011). [Sound Transit Project Labor Agreement Study](#), p. 4.

²⁷ Lindblom, Mike. “Should you trust Sound Transit Now?” *Seattle Times*. October 12, 2007.

²⁸ Washington State Auditor Brian Sonntag (2007). [Performance Audit Report: Sound Transit Link Light Rail Project](#).

²⁹ Ryan, John. [“Sound Transit: Light rail and heavy marketing.”](#) *KUOW*. June 19, 2016.

playing political favorites with unions and adopt a better, more competitive plan that serves the people who pay the bill.