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Mass. unions want exclusive access to big public projects. Bad idea (Editorial)

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The Republican Editorials

Springfield recently got a close-up look at how some public agencies, when awarding lucrative contracts, engage in corrupt favoritism – and, importantly, how the courts play a crucial role in checking such abusive municipal contracting.

That judicial safeguard is about to be dismantled, thanks to a new bill on the verge of passage in the Massachusetts Legislature.

Hampden Superior Court Judge Michael K. Callan's ruling in May against the Springfield Water and Sewer Commission laid out the sordid details in living color:

- How the commission's own consultant said using a Project Labor Agreement (PLA) would increase the cost of water plant work in Westfield by about $15.5 million.
- How big labor unions lobbied commission members to require a PLA and thereby freeze out bid competition from open shop contractors.
- How the commission gave "lip service" in competitive bidding in order to benefit powerful labor unions.
- And how the commission relied on "excuses" rather than evidence in concluding that a PLA was needed to assure labor harmony (no strikes) during the project.

Now, less than two months later, with a few words tucked into a massive economic development bond bill, big labor unions and their political allies have engineered a way to get those pesky judges out of the business of enforcing public bidding laws.
The rule that's been in effect for more than 25 years was made for the benefit of taxpayers: Contracts must be awarded through open and robust competition. That's the way the public gets the lowest price from responsible contractors.

This meant, for the purpose of using a PLA on a project, that the awarding agency had to prove the agreement was consistent with the aims of competitive bidding – specifically, to obtain the lowest price for the taxpaying public.

We are not opposed to PLAs as a general matter. They can at times serve a useful purpose to prevent costly schedule disruptions caused by unforeseen labor strikes.

But PLAs are inherently anti-competitive. As Judge Callan explained in his May ruling, they in effect prevent open shop contractors from submitting bids, decreasing competition and driving up overall costs.

As a result, the rule in Massachusetts for more than two decades has been this: To justify use of a PLA, an agency like the Springfield commission needed to prove that such a pact will advance (not impede) the objective of obtaining the lowest overall price.

That pro-taxpayer rule is now on its way out, under the language before lawmakers.

In its place comes a new anti-competitive rule that elevates the pecuniary interest of labor unions over the interests of the taxpaying public — and of the vast majority of construction workers who chose not to be part of organized labor. Over 80% of all Massachusetts construction industry workers are not unionized.

Under the new rule, to justify using a PLA, an agency only has to make a finding that such an agreement is in its "best interest."

That vague open-ended test is intended to green light PLAs whenever a local agency feels like it.

Unlike the current rule, which uses objective criteria to judge whether the PLA serves the public's fiscal interest, the proposed law would let local agencies do whatever they want without fear of judicial oversight – and without requiring a contract award to the lowest bidder.

Stung by court rulings such as Judge Callan's order, labor unions rushed to gut the long-standing rule that required a PLA to be justified by whether or not it would assist in reducing the cost of a project.

They found eager allies in lawmakers who appear to have forgotten they were elected to represent regular people and taxpayers, not special interests.

In fact, a main proponent of this new rule is state Rep. Aaron L. Saunders, D-Belchertown. Thanks to his efforts, the pending measure — which is steamrolling toward passage — eviscerates judicial oversight of local contract awards. It sanctions unaccountable favoritism and overrides what has long been the main purpose of competitive bidding – to award a contract based on the lowest price.