Issue Brief

Market Enhancement Recovery Funds (MERFs)

Overview

MERFs, also known as Job Training Funds (JTFs) are trust funds created by some construction trade unions through payment from industrial construction work, that are used to subsidize bids for commercial, institutional and industrial construction work. MERFs allow unionized contractors to lower labour cost for more competitive bids, in some cases deliberately under-cutting non-union contractors' bids. Typically MERFs are cross sector subsidies with firms benefitting disproportionately to any contributions made into the funds.

The principal concern with MERFs is that subsidizing bids artificially distorts the tendering process, and creates an uneven wage playing field in the construction sector. This is akin the distasteful practice of buying jobs. In Alberta, MERFs' most common use is by the unions for electrical workers, pipefitters/plumbers, insulators and sprinkler technicians. In some cases, the subsidy can reach in excess of $15/hr with costs in the millions of dollars.

Merit Supports

- A level playing field between non-unionized workers and contractors when competing for work with unionized workers and contractors
- Competition in the construction industry based on price and productivity, regardless of whether or not the contractor is union-affiliated
- Revisions to the *Alberta Labour Code* to correct the deficiencies which permit subsidies to continue unabated under different union programs. Specific changes to the Code include:
  - Restricting unions from making direct or indirect contributions to companies and,
  - Prohibiting companies from contributing to bid subsidy funds
  - Establishing an appropriate mechanism for any claims to be litigated

Merit Opposes

- The status quo in the current *Alberta Labour Code* which enables current cross sectoral subsidies

- Subsidies that shield contractors and unions from market forces and perpetuate the myth that all is well under the current system

Background

Originally created in the United States in the early 1980s, MERFs were later adopted by some construction unions in Alberta's industrial sector to offset wage costs in the commercial and institutional sectors in an attempt to increase market share in that highly competitive environment. Alberta's energy industry mega-projects are union-only closed shops. Unions have used their labour supply monopoly on these multi-billion dollar industrial projects to amass millions of dollars in funds that are used to subsidize work in commercial/institutional markets.

Alberta's construction tendering system relies on awarding contracts to qualified contractors with the lowest bid price for specified work. In the highly competitive market outside of the industrial sector, non-union contractors cannot bid successfully against competitors whose wages may be subsidized in excess of $15.00/hr. To compound the problem, most MERF funds are derived from what is charged to multi-national energy companies for the construction of projects. These projects generate considerable royalty income for Albertans once the capital costs are recovered by the companies. The capital costs for these projects are inflated in part due to MERFs, denying taxpayers appropriate royalty income. MERFs, as part of the total cost of these investments, are, in effect, subsidized by the taxpayer.

There is no dispute that the union sector has the right to compete on price. Yet, the manner in which they attempt to compete through MERFs distorts the market, and should be declared an unfair practice. The unions themselves in their descriptions of MERFs indicate that their process is highly selective, creating inequities between unionized contractors, and attempts to drive non-union contractors out of business.

Open shop contractors are legitimately concerned at what they describe as legalized bid-rigging. In those instances, MERFs remove the issue of worker productivity from the tendering process where the most productive and efficient contractor fails to win the contract against a subsidized bid. The balance in construction competitive tendering is further weakened in cases where the most cost effective, productive contractors refuse to bid projects, and costs invariably go up.

Finally, while unions seek to stop their loss of construction market share, they are in fact increasing the negative impact on their business model, which could hasten their demise. In order to survive in this highly competitive environment, unions and their contractors should seek to negotiate collective agreements that reflect market realities, not seek to perpetuate the myth that MERFs will halt the decline in their ranks.