

Contact: Aimee Clayton

### **PROJECT LABOR AGREEMENTS**

**Action Requested:** Receive the report on Project Labor Agreements.

**Executive Summary:** At the April 2010 meeting, the Board requested a report on Project Labor Agreements. The following provides information on public sector Project Labor Agreements.

**Background:** A Project Labor Agreement (PLA) is a multi-craft pre-hire collective bargaining agreement (CBA) that is negotiated between the owner of a project, or its designated representative, and one or more local unions prior to the bidding of the project and the hiring of labor. It defines the terms and conditions of employment and takes precedence over all preexisting CBAs. A PLA is project-specific and remains effective for the life of the project even if local CBAs expire prior to project completion.

Project Labor Agreements are typically utilized on large, complex construction projects. The stated goal of a PLA is to minimize labor strife and work stoppages and assure timely and efficient project completion. PLAs may be useful tools for employers in locales where contentious labor relations have led to costly project delays. They are often utilized during periods of unusually high labor shortage to assure an adequate supply of qualified labor to meet the project's needs. Alternatively, a PLA may be used during periods of high unemployment to facilitate use of local labor on a public project.

When considering a PLA for a public project, the potential benefits are reviewed in light of a predetermined set of criteria. The public entity may conduct this analysis internally, or it may engage the services of an outside party. If a construction manager (CM) is used on the project, the CM may be asked to provide a feasibility letter that reviews the pros and cons of a PLA as part of its professional services contract. The public entity then determines whether a PLA is appropriate based on the recommendation of the CM or results of the internal analysis.

Once negotiated and accepted by a public entity, a public sector PLA is incorporated into the bid specifications that are released when a project is let for competitive bidding. A contractor must be ready, willing and able to execute and be bound by the terms of the PLA in order to be deemed a responsible bidder. A prime or subcontractor who is unwilling to execute the PLA will not be awarded the contract, regardless of whether or not it would otherwise be considered the lowest responsible bidder.

Although the public entity negotiates and approves a PLA, in practice the agreement governs the rights and responsibilities of the contractors and the local trade unions. The owner does not subject itself or its employees to the terms of the agreement, and does not become party to a CBA with any of the signatory unions by virtue of including a PLA in its bid specifications.

On projects that do not utilize a CM the owner or its designated representative may be required to play a more active role in the implementation of the agreement. This may include coordinating and facilitating joint committee meetings and grievance resolution procedures, in addition to monitoring overall compliance with the agreement.

**Standard Terms and Conditions:** While an owner should tailor the specific terms of a PLA to the needs of the individual project, certain provisions are standard in public sector PLAs.

- **Nondiscrimination** – Contractors and unions agree that neither will discriminate in the employment of an individual based upon union membership or affiliation, among other things. Non-union laborers are assured access to union hiring halls, and their union affiliation cannot be taken into consideration when job referrals are made.
- **No Strikes, Work Stoppages or Lockouts** – One of the primary goals of a PLA is to facilitate timely and efficient completion of the project. To accomplish this, PLAs explicitly preclude labor from engaging in any form of strike or work stoppage. This provision applies regardless of whether affiliated union employees are engaging in a strike on projects not subject to a PLA. The employer is similarly precluded from engaging in a lockout. While no written agreement can guarantee that labor disruptions will not occur, significant monetary penalties encourage compliance.
- **Union Recognition and Representation** – Contractors are required to recognize the signatory unions as the exclusive representatives of all labor working on portions of the project covered by the PLA, and authorized representatives of the unions (stewards) are permitted reasonable access to the worksite. Contractors are only required to recognize the signatory unions for the life of the project and are not required to recognize unions on projects not subject to the PLA.
- **Management Rights** – The contractor retains authority over direction of the workforce; including, hiring, discipline and termination of any employee. The contractor also retains authority over direction of the worksite; including, assigning and scheduling work and equipment and materials selection consistent with the owner's specifications. These rights are not absolute, however, as the PLA may include specified limitations on a contractor's control of the worksite and labor.
- **Hiring Methods** – Under a PLA, contractors may not be able to fully utilize their existing workforce due to limitations in the manner in which labor is recruited. Contractors may be permitted to retain "core" employees based on a pre-determined ratio, while the remaining employees are referred through local union hiring halls. A PLA may permit an alternative hiring method if the contractor is unable to obtain a satisfactory number of qualified laborers from the union hiring halls.
- **Grievance Resolution Procedures** – PLAs include expedited grievance resolution procedures that are frequently mandatory and binding. These procedures are often two-fold, relying on both a cooperative joint committee and arbitration. A joint committee consisting of contractor and union representatives meets regularly to discuss potential issues and achieve acceptable resolution. If the committee is unable to satisfactorily resolve the issue, the parties may submit the matter to a preselected arbitrator to whose ruling the parties agree to be bound.
- **Uniform Work Rules** – PLAs standardize work days and shifts, overtime rules and recognized holidays for all trades working on the project. Wages and benefits are stabilized, and may be independently negotiated for each trade or the parties may elect to adopt the wage formula in the then-current local CBAs.

**Executive Order 22:** On February 3, 2010, Governor Culver signed Executive Order Number 22, encouraging all state departments and agencies to consider using Project Labor Agreements in connection with public construction projects where the total project cost is \$25 million or more. In determining whether use of a PLA on a public project will advance the state's interest, the department or agency shall consider the following factors:

- The potential for labor disruptions, such as strikes, lockouts or slowdowns, which could affect the timely completion of the project;
- The number of trades and crafts anticipated to be used on the project;
- The need and urgency of the project and the harm to the public if the completion of the project is delayed;
- The size and complexity of the project and the time needed for its completion;
- The benefits to the public from the use of a Project Labor Agreement relative to a project's cost, efficiency, quality, safety and timeliness of completion; and
- The ability to ensure compliance with applicable State laws and regulations governing safety and health, equal employment opportunity, labor and employment standards.