

Memorandum

Date: June 9, 2019

To: Santa Clara Valley Water District
Capital Improvement Program Committee

From: Jonathan V. Holtzman, Partner

Re: Observations About PLAs, Cost Control and Hiring Goals

The following is a brief summary of our observations regarding cost control and other PLA issues based upon a review of materials submitted to the Committee and our own experience with negotiating numerous project labor agreements.

1. Evidence about whether PLAs add to the cost of construction *projects* is contradictory and anecdotal. We are aware of no rigorous study that finds PLAs add to the total cost of a project, although there is anecdotal evidence. Many industry experts suggest that PLAs generally add at least 5% to overall cost, partly because much of the work would be performed union in any event. How much a PLA costs depends on a number of other factors including (1) the familiarity of bidders in working with PLAs; (2) the percentage of sub-contractors who are signatory to master labor agreements; (3) the competitive environment (i.e. demand for contractors' services and labor supply); (4) degree of specialization of the work; and (5) the overall size of the project(s).
2. There are a number of demonstrable ways in which they may add to construction costs:
 - a. It is beyond dispute that some contractors and sub-contractors will not bid on a PLA project. Thus, PLAs likely reduce competition, and for that reason alone, probably add to cost.
 - b. Many contractors and subcontractors state that they bid higher on PLA projects, presumably because of administrative costs and risks that work could be "upskilled."

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- c. PLAs generally require off-site fabrication by sheet metal, plumbing (and sometimes electrical) trades to be covered; this work need not be done at prevailing wage rates otherwise. There is also a greater risk of disputes over pre-assembled supplies.
 - d. PLAs limit (and sometimes prohibit) non-union contractors from using their "core" workers. This can result in additional cost or reduced competition for highly specialized contractors with standing crews. Even the best core worker provisions require "1 for 1" from the hiring hall.
 - e. PLAs require that a significant portion of compensation be spent on benefit trust funds managed by unions; this results in a lower wage for non-union employees than would otherwise be paid directly to those employees on a prevailing wage job. It is unclear, however, whether this fact alone discourages non-union contractors from bidding on PLA-covered prevailing wage jobs.
 - f. To the extent that contractors have standing workforces and provide health insurance or 401k matches, payment into union trust funds while maintaining may increase costs.
 - g. PLAs increase transparency in work assignments by requiring pre-job conferences. While this reduces the potential for disputes regarding payment of the appropriate prevailing wage, it may result in some "upskilling" of work claimed by specialized trades that might otherwise be performed by less expensive trades. This has been a particular problem on pipe-related work.
 - h. Administration costs, particularly on smaller PLAs
3. There may well be offsetting savings from PLAs as well.
- a. PLAs guarantee that disputes over work assignment, terms and conditions of employment, successor master agreements, and other disputes do not result in project delays. In our experience, these mechanisms are highly effective.
 - b. PLAs do not guarantee a supply of labor when the construction industry is busy, but certainly can help. Implicitly, PLAs encourage unions to find available sub-contractors.
 - c. On larger jobs where union and non-union crews are working side-by-side, PLAs assure labor harmony and avoid the necessity of reserve gates.
 - d. On larger projects and in urban areas, most general contractors are signatory to labor agreements anyway, and are familiar with union work rules.
4. Not All PLAs are created equal economically; there are a number of critical provisions that are helpful in controlling cost in a PLA, including:
- a. For agency-wide PLAs, higher thresholds for coverage are better.

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- b. Clear definition of what constitutes a project and/or contract that meets the dollar threshold for coverage purposes
- c. Core workers
- d. Clear exclusions for work by agency employees, warranty work, technical work, art work, utility work, federal issues, jointly funded or performed work, maintenance work, repair
- e. Depending on circumstances, consider limiting coverage to funding – e.g. CIP
- f. Clear language regarding when PLA coverage begins and ceases
- g. Clear language regarding agreement to install materials/items selected by contractor
- h. Clear delineation of any coverage for work performed off-site along with side letters for addressing disputes where off-site work is covered
- i. Exclusion off-haul trucking if performed by owner-operators
- j. Exclusion of other sole proprietors
- k. Exclusions for construction performed by tenants including tenant build-out
- l. Coverage based on engineer estimate, not contract amount
- m. Clear language excluding pre-contract preparatory work
- n. Freeze on prevailing wage after bid, during project?
- o. Exclusions for small contracts/SBE/DBE
- p. For agency-wide PLAs, limited duration combined with assessment conveyed to governing body
- q. For agency-wide PLAs, provision that allows individual projects to be excluded where PLA coverage not in the public interest
- r. Clarity, clarity, clarity – ambiguity causes contractors to bid high

5. If Local/Targeted Hiring is a key goal, make sure it's real

- a. Monitoring and public/governing body reporting
- b. Preference for disadvantaged/local workers at hiring halls and in selection of apprentices from pre-apprenticeship programs
- c. Aggressive goals based on workforce availability study, applicable to both union and contractors
- d. Link with existing pre-apprenticeship programs and funding
- e. Enforcement provisions that permit alternative sources of recruiting labor when goals not met
- f. Exclusions for SBEs/DBEs
- g. Partner with community workforce development agencies for oversight
- h. Include goals in bid specs; PLA simply facilitates contractor achievement of goals
- i. Ensure that PLA does not negatively affect participation by minority/disadvantaged contractors
- j. Special grievance procedure for public agency to enforce goals where necessary

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- k. Limit fees for non-union disadvantaged workers to monthly dues (not initiation fees)**