

Project Labor Agreement Information Brief (PLA)

Santa Clara Valley Water District

Oct. 21, 2019

Introduction – Ken Wong, FAC-PPM, FAC-C

- Over 30 years of experience in managing large scale capital projects, contract negotiation, claims and disputes with the federal and county governments
- Administered and negotiated PLAs in the past 10 years
- Held accountable for County of Santa Clara - Countywide PLA negotiation and policy amendment
- Information is based on 2 congressional reports, 1 federal agency impact study and references to State PCC and other public sources

Project Labor Agreement - Agenda

- Introduction
- Definition of PLA
- Public and Private sectors contracts included PLAs
- PLA project cost impact
- Pros and Cons
- Factors affecting efficacy of PLA
- National and Local PLAs
- Factors to consider in making decision to use PLA
- Conclusion

PLA - Definition PCC Chapter 2.8 (2500 -2503)

- A prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.

National Labor Relations Act, USC 158(f) – covering employees in the building and construction industry

- The Agreement must include all of the following taxpayer protection provisions:
 - 1. Prohibit discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project.
 - 2. Permits all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements.
 - 3. Contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project
 - 4. Contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project.
 - 5. Provides that disputes arising from the agreement shall be resolved by a neutral arbitrator

Private sector PLA projects- to be verified

May, 1999 GAO Congressional Report – 93% of PLAs were in private sector
Public sector's increasing use of PLA in recent years – 80/20% (Private/Public)

- Apple
- Toyota
- Facebook
- Walmart
- Samsung
- Tesla
- Hotel, casinos and high-tech industries
- Disney World
- Lowes Hotel
- Trans-Alaska Pipeline

County of Santa Clara Projects with PLA

2017 - Capital construction contracts threshold reduced from \$5 million to \$2 million with new version of PLA & Targeted Hiring Agreement

Countywide PLA (adopted by the Board of Supervisors in 2017)

- Animal Shelter \$34 M (2018) / Department of Tax and Collection \$12 M (2018)
- Santa Clara Jail Security \$10 M (2017)

Project specific PLAs

- James Ranch Expansion and Renovation \$48 M (2015)
- VMC Ancillary Building \$20 M (2015)
- County IT/ROV/DOR Berger Drive Building \$12.7 M (2015)
- Valley Medical Center (VMC) Bed Building #1 \$350 M (2009 Extension – adopting 2005 PLA)
- VMC Service Building Replacement \$55 M (2011)

Multiple projects PLA (2005)

- New Crime Laboratory /Fair Oaks Valley Health Center /Gilroy Valley Health Center /Milpitas Valley Health Center

PLA - Public Works Projects

• Contra Costa County Water District	
Los Vaqueros Dam (1995 - 1997)	\$450 million
Bollman Water Treatment (1995 -1999)	\$35 million
• Los Angeles Unified School District (1999)	\$2.4 billion
• Oakland USD Bond Program (2000)	\$200 million
• Lawrence Livermore Labs (1997 -2005)	\$1.2 billion
• San Francisco International Airport (1996- 2001)	\$2.4 billion
• San Mateo Community College (2003-2007)	\$90 million
• Eastside Unified School District (2002)	\$298 million
• San Diego Water Authority Emergency Storage (1999)	
• Grand Coulee Dam, WA (1938)	
• Shasta Dam, CA (1940)	

County of Alameda Adopted PS/CBA in 2013

All capital construction contracts over \$1 million

- Highland Acute Tower Replacement, Oakland - \$682 million
- East County Hall of Justice, Dublin -\$154 million
- Santa Rita Jail Security Systems - \$45 million
- Cherryland Fire Station -\$12 million
- Cherryland Community Center -\$22 million
- Castro Valley Parking lot - \$4.8 million
- Santa Rita Jail ADA Settlement - \$21 million
- County ITD Headquarters - \$20 million
- Santa Rita Jail Healthcare - \$ 65 million

Federal PLA projects – Cost Impact

- All Federal GSA projects require contractors to submit 2 separate bids, one with PLA and one without, bid award is based on the highest points scored under the best value selection process
- 50 United Nations Plaza, San Francisco - \$128 million project
 - PLA bid was 2% lower than the non-PLA bid
 - Completed on schedule & budget – Federal Building of the year
 - Long term relationship with subcontractors
- PJKK Federal Building and Courthouse, Honolulu – PLA for \$121 million Phase 1 out of \$321 million budget
 - PLA bid was 12% higher than the non-PLA bid
 - 2 years behind schedule and cost overrun
 - Relationship with subcontractors not established

Federal/State PLA projects - Cost Impact

- **Federal GAO Congressional Report (1998)**
 - **New York Thruway Authority – Tappan Zee Bridge 1996**
 - \$130 million project budget with 4.6 % saving
 - PLA avoided negotiation of 19 local collective bargaining agreements
 - **Lawrence Livermore Laboratory 1997**
 - \$1.2 billion project budget with 0.2 % saving
 - Employed more apprentices and fewer higher-paid journeyman
 - **New York State Dormitory Authority 1995**
 - Budget not identified but alleged a 26 % additional cost

Local PLA - Community Workforce Agreement Cost Impact – Bay Area (Based on engineers' cost estimates)

- **City of Berkeley:**
 - Engineers' estimates - \$578,426 to \$2,700,000
 - Bid prices ranged between -13% to +31%
 - Bidders either refused to comply with CWA or suffered big losses
- **City of Fremont**
 - Without PLA, 4 bids at prices 32% below similar project in Costa Costa County
- **County of Alameda:**
 - Peralta Oaks Seismic Upgrade (D/B/B) \$24 million bid @ 10% over the estimate and East County Hall of Justice (D/B) \$110 million @ 15% over the estimate
 - Both projects had 40% local hiring requirement

PLA/CWA Cost Impact – Types of Project Matter

- City of Berkeley with CWA
 - Street Rehabilitation Project: \$1.6 M **(Est)** - low bid at \$1.4 M
 - Sanitary Sewer Rehab Proj. 11: \$1.3 M **(Est)** – low bid at \$1.28 M
 - Sanitary Sewer Rehab Proj. 10: \$1.3 M **(Est)** – low bid at \$1.057 M
 - Claremont Branch: \$2.9 M **(Est)** – low bid at \$2.97 M
 - North Branch: \$3.8 M **(Est)** – low bid at \$4.25 M
 - South Branch: \$4.3 M **(Est)** – low bid at \$4.6 M

Pros of PLA

1. Provides uniform wages, benefits, overtime pay, working conditions, and work rules for different crafts
2. Provides stable supply of qualified labor for large & long term projects and cost certainty during boom and bust cycles
3. Ensures no labor strife by prohibiting strikes and lockouts
4. Reduces misclassification of workers
5. Provides binding procedures to resolve labor disputes
6. Requires provisions for recruitment, apprenticeship and training programs for under-represented groups (CWA provision)
7. Joint Administrative Committee – partnering opportunity

Cons of PLA

1. Increase costs by mandating union wages and work rules and inhibiting competition (2 general contractors refused to bid – Berger Drive ROV project)
2. Non-union contractors' use of their core employees are highly restrictive, skillful workers from the union hall during boom time are in short supply
3. Employee contributions for union benefits by non-union contractors are non-recoverable at the completion of short-term projects
4. Schedule impact due to union work rules, work hours and shift structure
5. Administration process is burdensome and redundant to public contracting requirements, (SB854) DIR's Compliance and Monitoring Unit for labor compliance (F/T in-house coordinator and 3rd party consultant to monitor)
6. PLAs can only increase not decrease wages and benefits without concessions

Factors affecting Efficacy of PLA

(Intent/Effectiveness)

- Economy and market conditions – supply and demand
- General contractor's relationship with subcontractors
- Size of general contractor – cost of administering the labor compliance program (Div.1 –General Conditions)
- Size and duration of project - stability of long-term employment but may affect the bid price due to build in wage/benefits adjustments
- Political Climate (Executive Orders on federally fund public projects)

Factors affecting Efficacy of PLA (Intent/Effectiveness)

- Funding source – Federal & State grants/Bond Measure/Capital Funding/P3
- PLA signatories to include relevant trades and be bound by the agreement
- Procurement planning – market outreach/source selection/prequalification/project delivery methods
 - Design Bid Build/Design Build/CMGC(IPD)
 - JOC/ multiple-primes/fixed price/Guaranteed Maximum Price
- Project and contract administration

Political Influence of PLA

- July, 1992 President George H.W. Bush EO 12818 sided with organized labor and required the use of PLA for federally funded projects
- Oct., 1992 President George H.W. Bush revoked EO12818 and prohibited the use of PLA
- February, 1993, President Clinton issued EO 12836 revoked EO 12818
- June, 1997, President Clinton issued a Clinton Presidential Memorandum encouraged the use of PLAs on contracts over \$5 million owned by a federally owned department including leased projects
- Feb., 2001, President George W. Bush issued EO 13202 revoking EO12836 and the Clinton Presidential Memorandum and prohibited the use of PLA
- April, 2001, President George W. Bush amended his EO and allowed PLAs be used in projects awarded prior to 2/17/2001
- Feb. 2009 President Obama signed EO13502 encouraged the use of PLAs for federal construction projects over \$25 million

Major components of PLA - National Level 2009 with Federal GSA

- Article 1 - Purpose
- Article 2 – Scope of Agreement
- Article 3 – Union Recognition
- Article 4 – Management Rights
- Article 5 – Work Stoppages and Lockouts
- Article 6 – Disputes and Grievances
- Article 7 – Jurisdictional Disputes
- Article 8 – Subcontracting
- Article 9 – Helmets to Hardhats
- Article 10 – to be determined by local collective bargaining Referral Procedures, apprentice, work rules etc.

Major Components of Local PLA

Community Workforce Agreement (CWA)

Project Stabilization/Community Benefits Agreement (PSCBA)

- Between 10 (National) to 27 (County of Alameda) articles plus addendum/addenda
- **County of Santa Clara – Countywide PLA 2017 adopted by the Board of Supervisors**
- Article 1 – Definitions
- Article 2 – Scope of Agreement
- Article 3 – Effect of Agreement
- Article 4 -Work Stoppages, Strikes, Sympathy Strikes and Lockouts
- Article 5 – Pre-Construction Conference
- Article 6 – No Discrimination
- Article 7 – Union Security
- Article 8 – Referral
- Article 9 – Wages and Benefits

Major Components of PLA/CWA (continued)

- Article 10 – Apprentices
- Article 11 - Helmets to Hardhats
- Article 12 – Compliance
- Article 13 – Grievance Arbitration Procedure
- Article 14 – Work Assignment and Jurisdictional Disputes
- Article 15 – Management Rights
- Article 16 – Drug & Alcohol Testing
- Article 17 – Savings Clause (legality)
- Article 18 – Term (5) + (5) years
- Article 19 – Miscellaneous Provisions
- Addendum A – Agreement To Be Bound
 - Subscription Agreement(s) for Trust Fund(s)
- Addendum B – Targeted Hiring Agreement

National PLAs – Building & Construction Trades Department (National Office – Washington DC)

90 versions of PLAs being used in 20 states

- Heavy and Highway Construction Project Agreement
(For heavy highway construction, improvements, modification, or repairs)
- General Presidents Project Maintenance Agreement
(For maintenance and repair of existing facilities)
- National Maintenance Agreement
(For maintenance and repair of existing facilities)
- National Construction Stabilization Agreement
(For construction of industrial operating and /or manufacturing facilities)
- **Building and Construction Trades Department (BCTD) Standard Project Labor Agreement for all new construction work**
(Department's 1997 Letter - Standard PLAs per GAO Report)

Factors to consider in making decision to use PLA

Recommended by: Dept of Commerce/Dept. of Defense/General Services Administration/Dept. of Interior/NASA/ Dept. of Transportation & my experience

- History of labor disputes in the area
- Expiration dates of local collective agreements with needed crafts during the performance period
- Availability of qualified craft workers in the area
- Effect of government delays in contract performance
- Probable effects on competition – nonunion contractors and small businesses in the area
- Establish 2 bid prices requirement and utilize best value criteria for contract evaluation and award
- Continuous measurement of the effect of PLA
- Current policy to allow discretion to exempt or include PLA in project below or above the established threshold

Conclusion

- PLAs are more widely used by private sector than public sector
- Changes to the Building & Construction Trades Department's standard PLA require national office's approval which is time consuming
- Construction costs increase (2% to 15%) are expected due to terms, conditions and administration of PLAs
- PLAs may result in cost savings during downturn of the economy if concessions are offered by the unions
- PLAs can be project specific, program specific or Districtwide
- Public entities sometimes adopt other public entities' PLAs

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