

Michele King

Subject: FW: 5/26 Mtg. Agenda Item 2.8 - Consideration of Project Labor Agreements - There are alternative solutions.

Attachments: Local Workforce Concepts.docx; Santa Clara Valley Water District PLA Term Sheet.docx; Standard PLA Provisions - City of San Jose.docx; EBMUD 2015 PLA Contractor Survey.pdf

From: Nicole Goehring <nicole@abcnorcal.org>

Sent: Thursday, May 21, 2020 4:13 PM

To: Board of Directors <board@valleywater.org>

Subject: 5/26 Mtg. Agenda Item 2.8 - Consideration of Project Labor Agreements - There are alternative solutions.

Chairman Hsueh and Directors,

On behalf of the Associated Builders and Contractors Northern California Chapter representing nearly 500 essential construction and construction related firms, we greatly appreciate your dedication and professionalism in response to the outbreak of the coronavirus (COVID 19). We would like to acknowledge the extensive effort all local governments have exhibited to work collaboratively with our industries to support the local economy while protecting the public safety.

We were all shocked to learn that a record number of Americans have filed for first-time unemployment - higher than anytime in US history. With the speed of the crash of the economy, we are sure that you share our concern and ongoing desire to keep some elements of the economy moving. The construction industry is predicated on maintaining a safe workplace. Our members provide an essential service to the public.

Our members have implemented strict measures to ensure the safety of our workforce and the community during these times. They have significantly enhanced and modified their safety and stop work plans to effectively mitigate the risk for workers and their families. Our industry remains committed to the health and welfare of our workforce and the public while continuing to build a better California. The work performed by these frontline men and women is not only helping to ease a negative impact on public health but is also helping to create a better quality of life for all of our residents.

The scale of this global crisis is unprecedented, and so is the scope of the local government response. California cities of all sizes are coordinating across jurisdictional lines, enacting emergency measures to slow the spread of the coronavirus pandemic, taking action to protect individuals and small businesses on the economic margins, while spending such sums as necessary to protect public health.

There is no question all local governments across the Bay Area will need financial assistance to persevere through the hardship resulting from rising costs and decreasing tax revenue and fees due to COVID-19. A recent [LA Times Article](#) reported California's 482 cities say they will collectively lose \$6.7 billion over the next two years because of the pandemic, prompting layoffs and furloughs for public workers and potential cuts to basic services. As you continue to face unprecedented challenges on the frontlines of responding to the coronavirus outbreak in your community and doing what is necessary to ensure the health and safety of their residents, now is not the time to be implementing a Project Labor Agreement (PLA) that excludes certain essential workers and apprentices. Projects with PLAs historically cost taxpayers an additional 10 to 20 percent. That savings is even more important to ratepayers in this time of economic distress.

Before you implement a Project Labor Agreement on all or a portion of over \$6B of projects and historically change the way you have done contracting in your district, have you studied how many local companies' and their workers would be shut out from helping to rebuild their community at a time when they could use these opportunities the most? On

Santa Clara Valley Water District Capitol Projects from August 2013 to July 2018, 63% of the projects went to union contractors and 34% to non-union contractors. Can you afford to lose 34% of your contractor base?

Furthermore, numerous [academic studies](#) of public construction projects already subject to government-determined prevailing wage laws indicate PLAs increase the cost of construction between 12 percent and 18 percent when compared to similar projects not subject to union-only PLAs.. Open competition is healthy and increases quality. It levels the playing field and local money is invested into the community.

EBMUD surveyed 11 contractors (8 union) – 11 contractors said PLAs increase costs and 7 said PLAs are a disincentive to bid. They ultimately decided against PLAs.

Earlier this month, the county reinstated that all construction work could resume and all construction workers are considered essential. Why would you want to limit the amount of essential workers who can work in your community?

Project Labor Agreements (PLAs), create barriers for local, minority and women-owned construction employers and their employees who want to build in their community because they contain provisions that do not allow for the complete utilization of their skilled and trained workforces and exclude the men, women, and veterans who have graduated from state approved, unilateral apprenticeship training programs in pursuit of a construction career that provides stability for them, their family and their community. See the attached example regarding Standard PLA Provisions.

Let's not push construction professionals away from well-paying career opportunities within their community especially when they need these opportunities the most. Let's continue to keep the work open for those essential workers who want to work, support their families and their community.

Thank you for your consideration of this request to deny approval and look for solutions (see attached) that will maximize opportunities for all Santa Clara County residents and ratepayers.

Nicole Goehring

V.P. Government and Community Affairs

ABC NorCal

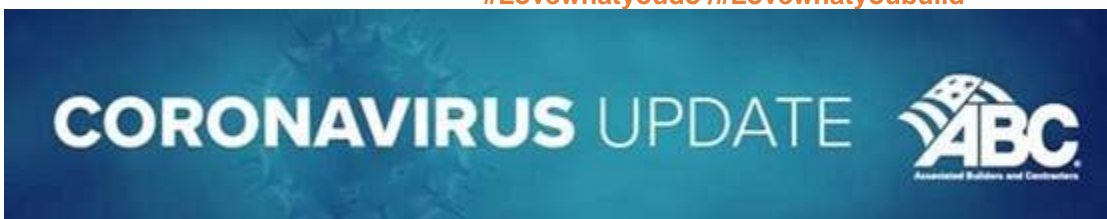
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Founded on the merit shop philosophy, ABC helps members develop people, win work and deliver that work safely, ethically, profitably and for the betterment of the communities in which ABC and its members work

#Lovewhatyoudo #Lovewhatyoubuild



See below for the information posted out by the EDD.

If you have to temporarily lay off any of your workers. Whether they need to stay home to take care of a child who's no longer in school or your business is forced to close as a non-essential business, your employees still have options to receive some income. If you as an employer are shut down, your employees can file an unemployment insurance claim, which will provide partial wage-replacement payments. An executive order issued by Gov. Gavin Newsom waives the typical one-week unpaid waiting period, which means your employees could start collecting benefits immediately. For those employees who cannot report to work because they either have or were exposed to COVID-19 — and were certified by a medical professional — they can file a disability insurance claim. Or if they need to skip work to care for an ill or quarantined family member with the disease, they can file a paid family leave claim. To find out more about your employees options visit:

https://www.edd.ca.gov/about_edd/coronavirus-2019.htm

<https://www.labor.ca.gov/coronavirus2019/>

Local or force Conce ts

Local is 75-mile road radius from project site.

Local goal is 80%

With the exception of the core workforce, unions are exclusive bargaining agent for all workforce and all workers shall be dispatched from hiring hall.

All workers pay working dues or representation fees but workers not previously members are not charged initiation or other “up front” fees.

Contractors allowed entire core workforce. If additional workers needed – dispatched per local union rules (must be local workers).

Core workforce will have been employed for at least six months by contractor or contractor from same association.

All contractors must use local apprentices from a state-approved program.

Contractors with a health plan in existence for six months can keep plan for core workers. Any dispatch from union hiring (other than a core worker) are paid per prevailing wage law. If company has no plan – workers are enrolled in union plan for duration.

Contractors with a retirement plan in existence for six months can keep plan for core workers. Any dispatch from union hiring (other than a core worker) are paid per prevailing wage law. If company has no plan – workers are enrolled in union plan for duration as long as contributions immediately vest and are portable.

Disputes over health/pension are resolved by three-member panel; one county representative, one union representative, one merit-shop contractor representative.

Irrespective of state law – all contractors must keep and submit certified payroll records.

Irrespective of state law – all contractors agree to DLSE enforcement of wage and hour law.

Industry advancement payment by non-signatory contractors will be made to a Santa Clara County 501(c-3) non-profit that is engaged in with academic instruction, employment opportunities, green job training, life skills instruction and other workforce development in Santa Clara County.

Terms for Inclusive Project Labor Agreement

Santa Clara Valley Water District

May 21, 2020

1. Threshold/Applicable Projects. The PLA would only apply to general contracts (prime contracts) in excess of twenty-five million dollars (\$100 million) but would not apply to subcontracts/subcontractors of that general contractor whose contract is below one million dollars (\$1,000,000). The PLA exempts [small business, microbusiness and DVBes who are certified with DGS](#). Any company with headquarters located within 75 miles of the project are exempt from the PLA and can bid this as they would any other project.

2. Quarterly Reporting. The District will establish and monitor metrics for PROPER PLA compliance, accountability, and transparency. A report will be submitted quarterly by each trade signatory to the PLA to the controller to consolidate. The report will include the following with the quarterly delta. The report will be delivered quarterly to the Board of Directors.

- b. Gender
- c. Ethnicity
- d. New business engagement/cultivation
- e. Veterans
- f. # of union vs. non-union bidders on final bid results (Provided by District)
- g. % of union and non-union contractors working in District before PLA (Provided by District)
- h. Bid results compared to engineer's estimates (Provided by District)
- i. Proof from contractor to District validating use of a "skilled and trained workforce" per 2016 California Code Public Contract Code – PCC DIVISION 2 - GENERAL PROVISIONS PART 1 - ADMINISTRATIVE PROVISIONS CHAPTER 2.9 - Skilled and Trained Workforce Requirements Section 2601.

3. Wages and Benefits. Any non-signatory Contractor/Employer employing a core worker shall compensate the core worker for benefits in excess of the basic hourly wage rate in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to the California Labor Code. Contractor/Employer may: (1) contribute to Contractor/Employer's benefit plans on behalf of the core worker, or (2) contribute to the Union's established employee benefit plans on behalf of the core worker.

4. Core Employees and Local Hire. Local Hire is paramount. The local hire goal should be 80% defined as workers residing in the Santa Clara Valley Water District. Each Contractor/Employer will be permitted to use his/her own core workforce or utilize the name call system for hiring out of the hiring hall. When Contractor/Employer requires employees for covered work in addition to his/her initial core workers, Contractor/Employer shall utilize the Signatory Union(s) referral system of the local hiring hall. Out of area union members or "travelers" are prohibited.

5. Apprenticeship Programs. Contractors and Subcontractors will hire apprentices indentured in State-approved apprenticeship programs for the applicable craft or trade for work on the Project in accordance with the apprentice ratios contained in California Labor Code Section 1777.5.

6. PLA Task Force. The District will set up a PLA Task Force similar to the San Jose PLA Task Force to study the impacts of the proposed PLA and make a recommendation to the District prior to a vote. The Capital Improvement Committee studied the issue for a year and made the decision to bring the item back to the Board for consideration.

7. Suspension. The District would have the right to suspend the PLA on a particular project or contract and rebid the project without a PLA if (1) the District does not receive three bids or proposals for that project or contract or (2) all bids or proposals for that project or contract come in 20% or more above the budget for that project or contract.

8. Termination. The District would have the right to terminate the PLA by a majority vote of the Board at any time. The PLA would automatically terminate after one year.

How a PLA Discriminates and Reduces Bidders Thereby Increasing Costs

The following are the explicitly and implicitly discriminatory provisions contained within all boilerplate “agreements.” The [City of San Jose PLA](#) contains many of these provisions with the exception of the joint apprenticeship language.

Article X: Apprentices. *Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractors/Employers shall employ apprentices of a California State- approved **Joint** Apprenticeship Training Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. The apprentice ratios will comply with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination. Consistent with the Master Agreements and state law, there shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly supervised.*

Concern: All apprentices must come from state approved *union* programs, making it impossible for apprentices in state-approved merit shop programs to participate, even during this time when California is facing a massive workforce shortage.

Recommendation: The word “Joint” needs to be removed to allow for all state and federally approved apprentices to be used.

See below from the DIR website the definitions for Joint and Unilateral apprentices – all state and federally approved.

[Apprenticeship programs information guide - definitions](#)

UAC (Unilateral Apprenticeship Committee) means non-union vs. Joint or J.A.T.C. which is union.

Article VII: 7.2. Union Security. *All employees who are employed by Contractors/Employers to work on the Project will be required to become members and maintain membership in the appropriate Union on or before eight (8) days of consecutive or cumulative employment on the Project. Membership under this section shall be satisfied by the tendering of periodic dues and fees uniformly required to the extent allowed by law.*

Concern: Workers must pay significant union dues, even if the employee is not a union member. These dues can cost upwards of \$1100!

Recommendation: Employees of non-signatory employers shall not be required to pay union dues and fees.

Article VIII 8.4.1 Core Workers: *The following procedure shall apply for dispatch of Core Workers: The first one (1) worker will be referred from the applicable Union hiring hall out-of-work list, then one (1) Core Worker shall be selected and referred from the hiring hall, followed by one (1) worker from the hiring hall out-of-work list, and this process shall repeat until such Contractor/Employer’s requirements are met or until such Contractor/Employer has hired five (5) such Core Workers for that trade or craft, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the applicable hiring hall out-of-work list. In the event the Contractor/Employer reduces the workforce, such reduction will take place in the reverse order starting with a Core Worker and in the same ratios as was applied in hiring. In addition, at the request of the Building Trades Council or Union, Contractor/Employer shall submit a Core Worker list to the requesting party and shall provide payroll records evidencing the worker’s qualifications as a Core Worker.*

Concern: When a non-union company is granted the contract, it is not able to use its own skilled and trained journey-workers and apprentices (including minorities, veterans, and those employees formerly incarcerated). Instead, they must attempt to perform the work using workers sent by a union hall that the company has no previous experience with giving out-of-town union workers priority over nonunion workers living closer to home. In other words, construction firms owned by women, veterans, and minorities – being generally smaller and nonunion – need not apply.

When non-union contractors bid work, they bid based on what they know their crews can perform. Their bids are based on their crew's talent, training, experience, commitment to quality, and track record of performing work safely and ethically. It is wrong for the city to force contractors to have their own skilled, trained, and certified workers miss out on work that they have spent their careers performing. This forces the contractor to potentially use someone with a different (potentially lower) skill set or ability, with no history with the company.

Recommendation: Allow the workers employed by non-signatory Contractor/Employer to come from its own core workforce, prior to the imposition of any requirement to hiring workers from the union hall.

Article IX: Wages and Benefits: 9.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on the Project, in the amounts designated in the Master Agreements) of the appropriate local Union(s). 9.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 9.1, which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if made by the Contractors/Employers. The Contractors/Employers agree to execute a separate Subscription Agreement(s) when such Trust Fund(s) requires such documents).

Concern: All employees must contribute to union health, welfare and pension plans, regardless of whether or not the workers already have their own plans. Union plans also require long vesting periods making it unlikely that the non-union worker will see the benefit of their contributions.

Recommendation: A non-signatory Contractor/Employer shall compensate any workers for benefits in excess of the basic hourly wage in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to California Labor Code and the City's Prevailing Wage Policy. Contractor/Employer shall either:

- Contribute to Contractor/Employer's sponsored benefit plans on behalf of the worker, or
- Contribute to the union's established employee benefit plan on behalf of the worker.

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PLA Survey of Selected Contractors who have Bid on District Projects

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	Yes	Yes	<p>PLA not good public policy for agencies to be married to unions+and require hiring of union workers. 90% of our staff are long-time employees who are also members of union but we will not bid SFPUC projects because of PLA and generally stay away from PLA jobs.</p> <p>Prevailing wage enforcement is a level playing field for all contractors and is sufficient. Hiring staff should be prerogative of the contractor . better contractors develop their own trained personnel, have lower turnover and better safety records. Employees lose benefits if they shift from one trade union to another. We are signatory to laborers union because we reached agreement with them on training and ability to pay benefits directly to employee rather than to union trust fund.</p>
	No	Yes	Yes	<p>Prefer not to bid PLA jobs but it depends on the PLA. SFPUC's PLA is contractor friendly and has no problem working with it. Allows contractor some freedom to negotiate terms and conditions. Jurisdictional disputes between unions are a bigger problem than the PLA itself.</p> <p>Despite the fact contractors have their own benefits plans, PLAs require open shop contractors to pay their workers health and retirement benefits to union benefit and pension funds. Thus, companies have to pay benefits twice: once to the union and once to the company plan. Nonunion employees never see any of the benefits from contributions sent to union plans unless they decide to join a union and remain with the union until vested.(So now the open shop contractor is at a disadvantage with wage rates)</p> <p>We have had employees to previous PLA's let their pension funds go. In order to stay vested for the pension funds, the employee had to continue paying union dues or bring union dues up to date in order to obtain their pension monies.</p>

EBMUD

PLA Survey of Selected Contractors who have Bid on District Projects

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	No	Yes	<p>Do not care for PLA but deal with it. No purpose except to complicate and confuse issues. Forces work with teamsters and electricians union. Work rules of some unions increase costs . e.g. pipe fitters union not competitive.</p> <p>Bids are higher for SFPUC work because of PLA. Requiring non-union contractors to pay into union trust fund under a PLA helps level the playing field for union contractors. Union contractors are hampered by union jurisdictional issues and lack flexibility of non-union contractors to have workers perform multiple tasks and pay the appropriate prevailing wage for the different tasks.</p>
	Yes	Yes	Yes	<p>PLAs do not make much sense for modest sized projects (<\$100M). The main benefit provided by PLAs, if properly negotiated, is the assurance of labor peace, no pickets or work stoppages and a 4-10 staggered work week.</p> <p>Prevailing wage enforcement is a sufficient step to assure the level playing field between union and non-union contractors. On larger projects, bonding and pre-qualification requirements are a better method to assure a qualified construction team.</p> <p>PLAs are expensive to negotiate/implement and limit competition from both union and non-union contractors. Costs/bids increase largely due to the reduced control over craft labor and it becomes more difficult to ensure safety. We are very selective in deciding to bid projects for Contra Costa County and SFPUC when the bid documents include a PLA.</p>
	Yes	No	Yes	<p>Generally not a fan of PLA but will bid those jobs. Not a big fan of unions either but being a union contractor helps to avoid pickets on prevailing wage jobs. Prevailing wage enforcement provides a level playing field.</p> <p>Biggest problem with PLA is jurisdictional disputes between unions particularly with plumbers and what work do plumbers have to do vs. laborers or boiler workers. PLA increases bid amount due to limiting competition.</p>

EBMUD

PLA Survey of Selected Contractors who have Bid on District Projects

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	No	Yes	<p>PLA can work well. Have not had a negative experience. Danger is when agency and union negotiate PLA without contractor input . sometimes local area practices are not included. Increases costs for some trades where we are not signatory because non-union subs will not bid PLA jobs and competition is limited. Bigger problem is jurisdictional disputes between unions (e.g. pipe fitters vs. millwrights). PLA could help by clarifying who does what work.</p> <p>PLA does not help with quality/safety and in fact may hinder it. Quality/safety is driven by company not the unions. Like the %core worker+and trust fund payment provision in PLA because it increases costs for non-union contractors who have to pay into union trust fund.</p>
	Yes	No	Yes	<p>Generally have no problems with PLA and it works for us. However pre-qualification is a better route to go than PLA. As a union contractor, we can only hire union sub-contractors. However, some disciplines have no union contractors (e.g. slurry sealing) and this causes problems.</p> <p>PLA can help with jurisdictional disputes between unions (e.g. plumbers vs. boiler workers re: welding of large diameter pipe). Plumbers want to do it but are generally not qualified. PLA requirements regarding payment into union trust funds do not affect us but it impacts non-union contractors. Non-union workers never see the benefits paid into the trust fund on their behalf.</p>
	No	Yes	Yes	<p>Do not like PLA and avoid at almost all cost. Limits freedom with staffing and ability to move people around. Prevailing wage provides level playing field.</p> <p>Was a sub on SFPUC job with PLA . did not receive good service from union because (as a non-union signatory) we were low on totem pole. PLA did allow our staff to join union, and then hired them for the job. But benefit costs increased because we had to pay benefits to union in addition to company benefits in order to ensure staff retention after the PLA job was over. Extra cost was about \$12/hour per worker.</p>

EBMUD

PLA Survey of Selected Contractors who have Bid on District Projects

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	No	Yes	Yes	<p>85% of the construction work force in California is non-union. Non-union contractors have accepted prevailing wages as the level playing field. There are penalties for violating prevailing wage laws and EBMUD does a good job monitoring prevailing wages.</p> <p>Unions do not want non-union contractors on PLA jobs and it is a blatant move to eliminate the open shop. We did seven jobs for the Port of Oakland prior to the PLA but now can't bid Port jobs anymore. Absolutely increases contract costs due to limiting competition. Also increases agency costs for administering the contract and PLA.</p> <p>Workers should not be forced to join union to work on PLA job. There should be no requirement for companies to pay into the union trust fund for workers who are not union members, thereby paying double benefits. We would want a minimum of two core workers before being required to go to the union hiring hall. Unions deliberately send the bottom of the barrel to non-union contractors on PLA jobs because trust fund payments are for one project only. District should set a high threshold of \$35m contract amount for PLA projects.</p>
	Yes	Yes	Yes	<p>Do not like PLAs. If they have to be used, the threshold for contract amount should be \$20m. Problems occur with some disciplines where union subcontractors are not available and the non-union subs stay away from PLA jobs. It is impossible for us to build jobs without the ability to use our core workers. We are forced to carry excess baggage in order to meet the requirements of a PLA.</p> <p>Jurisdictional issues are a problem with plumbers who are unable to meet the needs for mechanical piping on water and wastewater jobs but claim the work is theirs. Prevailing wage provides a level playing field. On PLA, non-union subcontractors have to pay double benefits to union trust fund if workers are not union members. On one SFPUC job this amounted to \$46/hour per worker. PLA limits competition by effectively removing non-union subcontractors from the bidding pool.</p>

EBMUD

PLA Survey of Selected Contractors who have Bid on District Projects

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	Yes	Yes	<p>A PLA not only limits the number of general contractors looking at a project, but also limits the number of subcontractors exponentially reducing competition and increasing costs. Even non-union contractors are impacted by a PLA because many contractors are only signatory to a few trades, but under a PLA the contractor is now bound to the collective bargaining agreements of <u>all</u> trades and those work rules, another factor that increases costs.</p> <p>The double payment of benefits or waiting period for union benefits discourages contractors from bidding PLA projects, and most likely increases costs for those that do bid. Each contractor whether non signatory, or signatory with only a few unions had made that business decision and obviously felt that decision and their means and methods made them competitive. A PLA changes those means and methods which in turn can change the contractor's costs and bid.</p> <p>Core worker provisions, while a novel concept and offered in some PLAs by proponents to hide the discriminatory nature of a PLA, do little to address the issues created by a PLA. While a core worker provision does allow contractors not signatory with a particular trade to bring in some of its workers for that trade it still disrupts the crew already established by the contractor (union and non-union).</p>

Survey initially conducted 5/15/12 to 5/29/12

Updated 7/15/15