

GUIDELINES FOR NEGOTIATING PROJECT LABOR AGREEMENTS

1. Whether in the public or private sector, the safest course for a Council to follow whenever possible is to negotiate the actual PLA with a construction manager or general contractor, and not with the public entity or private owner/developer.
 - If the owner/developer – whether a public entity or private agency – does not traditionally have a presence in the construction industry and does not intend to have any employees working on the construction site, it should not be a party to the PLA or to an agreement committing to use a PLA. The owner/developer may, however, establish the labor relations policy for a particular project by making the decision to use a PLA on the project, and may unilaterally implement that decision by directing its construction manager or general contractor to negotiate a PLA.
 - Ideally, the entity that signs the PLA – *e.g.*, a construction manager or general contractor – should have a collective bargaining relationship with one or more of the unions that will be operating on the site. At the very least, the entity signing the PLA should have control over labor relations on the worksite and should directly hire, or have the intent to hire, craft employees to work on the site. The agreement, moreover, should make clear that its terms will apply to any such employees.
 - If the public agency or private owner/developer chooses to negotiate and sign the PLA, the construction manager or general contractor, once selected, should sign the agreement as well.
 - Each subcontractor that is selected to work on the site should also sign the PLA or a Letter of Assent agreeing to abide by the PLA.

2. If portions of the Council's affiliates' existing collective bargaining agreements are intended to apply to work on the project, those provisions should be specifically recited in the PLA and the referenced provisions should be included in an appendix to the PLA.

3. It is important that the decision to use a PLA on a particular project be based on the needs of the particular project, and that the entity that makes that decision documents its reasons.

- In the public sector we recommend that the public agency undertake a formal process to determine whether using a PLA would best serve the agency's interests.
 - The agency should retain a project manager or consultant, or assign staff, to prepare a report that identifies the agency's interests in undertaking the project and, if recommending a PLA, explains how the PLA can help the agency achieve its objectives.
 - Guidelines for performing this analysis are set forth in the attached "Guidelines for Public Entities Considering Using a PLA on a Public Works Project."
- It is not as important that a private sector owner/developer perform a formal evaluation. However, the owner/developer should nonetheless be able to demonstrate that it seriously considered the nature of its project and the reasons why using a PLA would advance its interests.

4. Among the significant reasons to use a PLA – which should be included in the agreement's statement of purpose – are avoiding workplace tension when union and non-union employees work side-by-side and assuring that there will be no work stoppages, through no-strike clauses and expedited dispute resolution mechanisms. Other reasons, which are appropriate in both the private and public sectors, are spelled out in the attached "Guidelines."

- It is important that the statement of purpose address the particular concerns for the job, and not simply recite “boilerplate” language.

5. In the public sector, the safest course is to require all contractors or subcontractors to agree to abide by the terms of the agreement while operating on the site

6. As members of the community in which the project is being planned, unions are often involved in environmental and permitting processes. Keep participation in these legal proceedings separate from efforts to convince the owner/developer to use a PLA. In particular, any decision to withdraw from or settle claims raised in these proceedings must be made strictly on their merits.

**GUIDELINES FOR PUBLIC ENTITIES
CONSIDERING USING A PLA ON A PUBLIC WORKS PROJECT**

1. Retain a project manager or consultant, or assign staff, to prepare a report analyzing whether it would serve the agency's interests to utilize a project labor agreement (PLA) on the particular project.
2. The report should describe the project and identify the agency's interests in undertaking it. In addition to the public entity's general interest in assuring that public works projects proceed in an efficient, safe and orderly manner, identify any particular objectives the agency may have in undertaking this project or any special problems it anticipates encountering. As examples, the following factors may heighten the public agency's concerns about assuring access to skilled labor and avoiding any construction delays:
 - a. A documented skilled labor shortage in the area or the anticipation that a number of significant projects will simultaneously be competing for labor;
 - b. The need to complete this project before other construction can go forward, or to enable the public entity to provide scheduled services or public functions (*e.g.*, school openings);
 - c. Particular problems posed by the location of the work (*e.g.*, highway construction in congested areas, restricted access to the worksite, bridge renovation while the highway remains open);
 - d. Interference with public-revenue raising functions (*e.g.*, delays in finishing the bridges or highways interfere with toll collection).
3. The report should analyze the particular benefits that a PLA could reasonably be expected to provide and, to the extent possible, tie these benefits to the agency's objectives of the project. The factors to be considered include:

a. Savings in labor costs, due to coordinating various craft schedules and other terms/conditions through a uniform agreement, rather than utilizing various local union agreements or permitting contractors to establish their own terms and conditions;

b. Potential cost savings and flexibility, due to alternative dispute resolution procedures to resolve job site problems and (where permitted by state law) workers compensation claims;

c. Potential benefits (*e.g.*, time and money saved, public convenience) of ensuring labor harmony for the duration of the project, including an analysis of other jobs where costs have been increased as a result of labor disputes;

d. Whether a PLA would provide more immediate and efficient access to an adequate pool of skilled journey-level workers and apprentices than would otherwise exist, and the benefits this would yield, including avoiding construction delays due to labor shortages;

e. The likelihood that the enhanced skill level will translate into safer and better quality job performance, with reductions in costs due to lower injury rates and lower likelihood of work having to be redone (if this can be documented);

f. How a PLA would contribute to an on-time and on-budget completion of this particular project.

3. The public entity should base its decision whether to authorize negotiation of a PLA on a review of the report and recommendations. The public entity should issue a written determination, based on the report and recommendations, explaining its decision.

4. If the public entity decides to authorize its project manager to negotiate a PLA, the agency should retain the right to reject or approve the resulting agreement, in order to ensure that

it does, in fact, satisfy its objectives, and should direct that negotiations be concluded prior to soliciting of bids.

5. The public entity should ensure that the PLA provides that:

a. hiring will be done on a nondiscriminatory basis;

b. successful nonunion bidders may retain a certain number or percentage of “core employees” (*i.e.*, employees who have previously worked for the bidder) for the project, independent of their obligation otherwise to secure all employees through the collectively-bargained referral systems;

c. there is a procedure for expedited dispute resolution, along with a project-long prohibition on strikes and lockouts; and

d. there are uniform job conditions, such as start-times, workday, workweek and work rules, for all contractors and subcontractors on the project.

6. The public entity should implement the agreement by including it in the bid specifications for contractors for work covered by the PLA. The bid specifications should make clear that bidding is open to union and nonunion contractors, provided only that a contractor that is a successful bidder agrees to become a party to and comply with the PLA while working on the project.