

## GUIDELINES FOR NEGOTIATING PROJECT LABOR AGREEMENTS

1. The safest course for a Council to follow in securing a PLA on a private sector construction project is to negotiate the actual PLA with a construction manager or general contractor that employs construction workers, and not with the owner/developer.
  - Unless the owner/developer traditionally has a presence in the construction industry and intends to have employees working on the construction site, it should not be a party to the PLA or to an agreement with the Council or any union 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 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 contractor and subcontractor that is selected on the site should also be required to sign the PLA or a Letter of Assent agreeing to abide by the PLA while working on the project.

2. A public sector entity's procurement laws will determine whether it can directly negotiate and enter into a PLA. As a general matter, however, whether the public entity negotiates the agreement with the Council or directs its project manager or general contractor to do so, the best course is to negotiate the agreement before the agency solicits bids for work on the project, and to include in the bid specifications a requirement that every contractor and subcontractor awarded a contract agree to abide by and become a signatory to the PLA while working on the project.
3. If portions of the Council's affiliates' existing collective bargaining agreements are intended to apply to work on the project, the parties should specifically list those provisions in the PLA and include the referenced portions in an appendix to the PLA.
4. Some public sector procurement laws require public agencies to undertake a formal process to determine whether using a PLA would best serve the agency's interest. In most cases, it is prudent for public agencies to do so, regardless whether it is legally required.
  - 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."
5. Among the significant reasons to use a PLA – which should be included in the agreement's statement of purpose or preamble– are avoiding workplace tension when union and non-union employees work side-by-side; assuring that there will be no work stoppages, through

no-strike clauses and expedited dispute resolution mechanisms; and assuring that there will be a sufficient supply of skilled workers to complete the project efficiently. 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 of the job, and not simply recite “boilerplate” language.
6. As members of the community in which the project is being planned, unions are often involved in environmental and permitting processes. It is important to keep 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 PUBLIC WORKS PROJECTS**

1. Some state or local laws require public agencies to support their procurement decisions with a statement of reasons. Regardless whether it is legally required, it is best practice for a public agency considering whether to use a project labor agreement on a particular project to retain a project manager or consultant or to assign staff to prepare a report analyzing whether it would serve the agency's interests to utilize a PLA on the 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 may 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 ways in which a PLA could reasonably be expected to contribute to the economic and efficient completion of the project. The factors to be considered include:
  - a. Savings in labor costs, due to coordinating various craft schedules and other terms and 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 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 if area agreements are scheduled to expire during the course of the project;
  - 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. Whether a PLA would provide for better compliance with prevailing wage requirements if there is a history of violations on non-union projects in the area;
  - g. How a PLA would contribute to an on-time and on-budget completion of this particular project.

4. Although the decision whether to use a PLA should primarily depend on whether doing so would advance the public agency's economic interests, where the agency is permitted to use its procurement policies to achieve benefits for the community in which the project is being conducted, the report may include factors such as:
  - a. How a PLA could be used to increase employment for members of local disadvantaged communities;
  - b. How a PLA could be used to increase job training for members of local disadvantaged communities (Apprenticeship Readiness Programs); and
  - c. How a PLA could be used to increase job opportunities for veterans (Helmets to Hardhats).
5. 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. In particular, the public entity should explain why it decided that using a PLA would advance its interests on this particular job, and not simply recite "boilerplate" language.
6. Some public entities have authority to negotiate and enter into the PLA themselves, while others are either required or choose to authorize their project manager to negotiate the agreement. If the public entity authorizes its project manager to negotiate the PLA, the agency should retain the right to reject or approve the resulting agreement, in order to ensure that it does, in fact, satisfy the agency's objectives, and should direct that negotiations be concluded prior to soliciting bids.
7. The public entity should ensure that the PLA provides that:
  - a. Hiring will be done on a non-discriminatory basis;

- b. There is a procedure for expedited dispute resolution, along with a project- long prohibition on strikes and lockouts;
  - c. There are uniform job conditions, such as start-times, workday, workweek and work rules, for all contractors and subcontractors on the project; and
8. Courts have looked favorably on public sector PLAs that also include the following provisions:
- a. Successful nonunion bidders may retain a certain number or percentage of “core employees” (*i.e.*, employees who have previously worked for the bidder for a specified period of time) for the project, independent of their obligation to secure all employees through the collectively-bargained referral systems;
  - b. Any nonunion contractor that provides its employees with bona fide health and welfare benefits may continue to provide those benefits, rather than contributing to the health and welfare funds designated in the PLA or the underlying collective bargaining agreements, provided that if the value of the nonunion contractor’s benefits is less than the value of the benefits provided under the PLA, the contractor will pay the difference directly to its employees.
9. The public entity should implement the agreement by including it in the bid specifications for contractors bidding for work covered by the PLA. The bid specification should make clear that bidding is open to union and nonunion contractors, provided only that a contractor that is a successful bidder must agree to become a party to and comply with the PLA while working on the project.