

* PROJECT LABOR AGREEMENTS



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Public Agency Law Group

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*What is a PLA?

- * Pre-hire collective bargaining agreement between the District and one or more labor organizations establishing terms and conditions for a specific project or group of projects
- * Negotiated terms and conditions; scope and terms/conditions of PLA vary from PLA to PLA
- * Other public works bidding/contract requirements unaffected by PLA
 - * Award to bidder submitting lowest priced responsive proposal
 - * Bond requirements (bid bond, payment bond, performance bond)
 - * Licensing and District established qualifications requirements
 - * Prevailing Wage Rates

* Legal Authority for PLA

Case Law

Associated Builders and Contractors, Inc. v. San Francisco Airports Commission, California Supreme Court (1999)

- * A public agency, acting as the owner of a construction project has legal authority to mandate a project labor agreement as a bid specification for the project.
- * PLA does not exclude any contractor, union or nonunion, from bidding
- * PLA does not extract contractors' commitment toward the unions on any project not subject to PLA

Statutory

- * Public Contract Code § 2500, enacted 2010
- * Authorizes PLA
 - * District discretion to enter into PLA, determine Project(s) subject to PLA and to establish PLA terms/conditions
 - * Mandatory “taxpayer protection provisions”

* PLA Defined; Public Contract Code §2500

* “Pre-Hire” Agreement; Public Contract Code § 2500(a)(1)

"Project labor agreement" means 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.

*Mandatory PLA Provisions

Non-Discriminatory Practices; §2500(a)(1)

The agreement prohibits 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.

Non-Union Contractor Participation; §2500(a)(2)

The agreement 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.

Drug Testing; §2500(a)(3)

The agreement contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project.

No-Strike/No-Lock Out Commitments; §2500(a)(4)

The agreement contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project.

Alternative Dispute Resolution; §2500(a)(5)

The agreement provides that disputes arising from the agreement shall be resolved by a neutral arbitrator.

* Board/District Actions

- * Majority Board vote necessary to adopt PLA

Public Contract Code §2501:

“The members of the governing board of a local public entity may choose by majority vote...”

- * Board discretion to designate projects subject to PLA

Public Contract Code §2501:

“...require contractors to enter into a project labor agreement that includes all the taxpayer protection provisions of Section 2500 for a specific project or projects awarded by that entity...”

* Typical PLA Terms & Conditions

- * Contractor and all subcontractors for trades/crafts included in PLA scope required to assent to and comply with terms of PLA, regardless of union or non-union status
- * Project craft labor
 - * Union hiring hall labor; exclusive source of project craft labor or priority preference for union hiring hall labor
 - * Specific management and supervisory personnel not subject to union hiring hall
 - * Commitment of adequate labor resources
 - * Craft labor who are not union members not required to join union as condition of employment, but subject to union contributions and terms of PLA
 - * Uniformity of workdays, work hours, payday schedules
 - * Establish priority/preference for specific labor resources, i.e., local residents, veterans, etc.
- * Labor disputes
 - * Unions' no-strike commitment; management no lock-out commitment
 - * PLA project unaffected by expired collective bargaining agreement
 - * Alternative dispute resolution procedures for job-site labor disputes

* Pros & Cons

PLA Opponents:

- * PLAs erode competitive bidding process; bid competition reduced if capable non-union contractors elect not to bid projects subject to PLA, potentially resulting in higher project costs
- * Workforce and work assignments subject to union rules and collective bargaining requirements
- * Union recruitment of craft labor
- * Non-union craft laborers contributions for union representation and union health/benefits
- * Loss of value for non-union craft labor mandated union contributions during project
- * Increased project costs where collective bargaining wage rates exceed prevailing wage rates or inadequate bid competition
- * Administrative burdens and costs to District for PLA negotiation, implementation and administration

* Pros & Cons (Continued)

PLA Proponents:

- * Uniformity of wages, benefits, overtime pay, hours, working conditions, and work rules

- * Capability and qualifications of craft labor

- * Maximize timely project completion by: (i) commitment of a reliable and uninterrupted supply of qualified labor and (ii) elimination of job-site labor disturbances

- * Minimize job-site labor disputes by alternative dispute resolution procedures

- * Community benefits
 - * Preference/priority local residents craft labor hires
 - * Preference/priority for other under-represented groups i.e., veterans, women, minorities, etc.
 - * Construction industry skills training

* Preliminary Considerations

- * Trades/crafts included or excluded from PLA

- * Project(s) subject to PLA
 - * Funding source
 - * Project value
 - * Projects constructed by project completion alternative to design-bid-build, i.e., design-build, lease-leaseback, etc.
 - * Exclusion of non-construction services related to PLA Project
 - * Project type; maintenance, energy conservation (Government Code §4217 and/or Prop 39), etc.

- * Identify mutual interests of labor organizations and District for labor-management cooperation; health & welfare, quality control, site safety, productivity, etc. to be addressed in PLA

- * Access District administrative costs/burdens

* Preliminary Considerations, Continued

- * No labor disturbance, no project disruption commitment
- * No management lock-out
- * Commitment of sufficient pool of skilled labor resources for PLA Project(s)
- * Mechanisms for mutually binding labor disputes resolution process
- * Community benefits commitments

* Next Steps

* Board of Education establish District PLA objectives

* Federal Agency Objectives; Executive Order 13502 (February, 2009)

“...executive agencies may, on a project-by-project basis, require the use of project labor agreement where the use of such an agreement will (i) advance the Federal Government’s interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal opportunity, labor and employment standards, and other matters and (ii) consistent with law. “

* Potential PLA objectives

- * Quality and craftsman equal to or exceeds non-PLA projects
- * Construction cost not increased with PLA and project value not impaired by PLA
- * Value of apprenticeship and apprenticeship and training programs under PLA
- * Timely project completion
- * Meeting community/constituent expectations
- * Minimize District costs to negotiate, implement and administer PLA

* Next Steps (Continued)

* Board Committee or Task Force

- * Refine Board objectives

- * Assess achievement of Board objectives with and without PLA

- * Assess community and constituent expectations; assess meeting community and constituent expectations with and without PLA

- * Report to Board with recommendations for proceeding or not proceeding to engage Building Trades Council in PLA discussions