Project Labor Agreements: What’s Good, What’s Bad, and What’s Ugly

League of California Cities Public Works Officers Institute
March 13, 2024
4:15 – 5:30 p.m.

Speakers:
Jonathan Holtzman – Founding Partner, Renne Public Law Group (RPLG)
Julian Gross – Principal, Law Office of Julian Gross
Prentiss Jackson – Principal-in-Charge, Workforce Integrity & Training Solutions (WITS)
PLA Basics

A Project Labor Agreement (PLA) is a specialized type of labor agreement, covering project construction. It is a contract, not a law, policy, or regulation.

Parties for public works PLAs:
- Public Owner
- Construction trades unions & local Building Trades Council
- quasi-party status for contractors (prime and subs)

Basic Bargain:
- Public Owner gets:
  - assurance of labor peace and project support
  - possible advancement of workforce goals
- Unions get broad application of terms of collective bargaining agreements
PLA Basics: Legality

The legality of using PLAs under federal and state law is well-established.

Federal law:
- Leading case: *Boston Harbor*, 507 U.S. 218 (1993); see also *Rancho Santiago*, 623 F.3d 1011 (9th Cir. 2010)
- PLAs are *encouraged*, but not *required*, on federally-funded transportation projects

State law:
- Legality under state law established by Public Contract Code sec. 2500
- Sec. 2500 requires some specific PLA terms
  - requires explicit statement that union and non-union contractors can participate
PLA Basics: Contract Structure

• Public Owner enters into a PLA either for a single large project, or a set of projects

• Trades Council and individual unions sign the PLA

• Public Owner requires prime contractor to sign the PLA (included in bid specs and/or prime contract)

• Prime contractor requires subcontractors to sign a “Letter of Assent” to terms of the PLA
PLA Basics: Master Labor Agreements

PLAs reference the collective bargaining agreements of the unions that sign, and requires *all contractors (union or non-union!)* to comply with the collective bargaining agreements.

- PLAs *override* conflicting terms of collective bargaining agreements!
- Collective bargaining agreements = Master Labor Agreements = Master Agreements = “Schedule A” Agreements

*Myth: you have to be a union contractor to bid on a PLA project!*

PLAs negotiated by public entities *must* allow participation by non-union contractors
Every PLA contains the following basic provisions:

- an agreement by unions *not to strike* or take other collective action against the project or contractors working on it;
- requirements that contractors working on the project abide by terms of the relevant collective bargaining agreement in performance of project work;
- provisions describing *how* non-union contractors work under the PLA;
- dispute resolution systems for quickly resolving any jurisdictional disputes between unions, and any violations of the PLA.
PLA Deal Points: Negotiation Topics

Three major areas on which public entities generally wish to negotiate:

- Cost Control
- Targeted Hiring (Equity Issue!)
- Targeted Contracting (Equity Issue!)

**NOTE: PLAs are not “form contracts” – they are negotiated agreements!!**
PLA Deal Points: Cost Control

Deal points related to cost control center on *ability and willingness of non-union contractors* to participate:

- core workers
- benefits contributions
- use of non-union apprenticeship programs
- exclusions

Other cost-control options include:

- option to re-bid prime contract
- “rule of three”
- exemptions from PLA coverage: “carve-outs” / specialized crafts
Targeted Hiring Requirements:

- local workers; disadvantaged workers
- Federally-funded projects:
  - New flexibility
  - affirmative action requirements (E.O. 11246)

PLAs can contain provisions that advance workforce goals by *overriding MLAs*:

- priority referral, *a.k.a.* “jump the list”
- alternate referral sources
- promote enrollment and utilization of new apprentices from quality, diverse pre-apprenticeship programs
PLA Deal Points: Equity Issues and Contracting

• Longstanding concerns regarding PLAs as an impediment to increased diversity in subcontracting

• Many public owners have existing policies targeting categories of contractors (small/local; DBEs; etc.)

• above issues regarding participation by non-union contractors are directly relevant to this issue

• Negotiated PLA terms can provide flexibility for categories of contractors – but underlying issues remain
Thank you!

More in the Q&A...
Efficiency and Effectiveness in PLAs

Presentation Overview

Jonathan V. Holtzman, Managing Partner – Renne Public Management Group (RPLG)

• Overview

• Inefficiencies of PLAs

• Ideas for Efficiency

• Effectiveness

• Ideas for Effectiveness
Overview

A PLA is not a commodity; it is a contract. Like any contract, there are good PLAs and less good PLAs.

What makes a good PLA?

• Efficiency

• Effectiveness
Outside of very large projects, all PLAs create inherent inefficiency.

Sources of inefficiency:

- PLAs reduce the pool of bidders – which drives price
- Transparency mechanisms that exist for work assignment have a tendency of an upscale to hire specialized trades for work
- Aspects of PLAs often limit newer construction methods or require payment of prevailing wage for non-prevailing wage work
- Need for oversight
Ideas for Efficiency

Top five issues to ensure that PLAs are efficient:

1. Carefully limited scope
2. Higher thresholds for coverage
3. Clarity, clarity, clarity
4. Necessary exclusions
5. Core workers
Effectiveness

• Legislative bodies (who typically initiate interest in having a PLA) typically justify a PLA/CWA based upon workforce development and/or employment of local residents.

• A large PLA with a predictable workflow in an area with underserved or low-income population can create employment opportunities, if the PLA is properly structured.

• Ideally, before considering a PLA, it is best to have considered and studied these issues.

• Although it requires courage, it is really staff’s role to bring these issues into the light.

• Too many PLAs are justified by workforce development and hiring promises that were not achievable, even at the outset.

• At a minimum, if a PLA is not going to achieve these purposes, it helps argue for greater efficiency.
Ideas for Effectiveness

How to ensure Local/Targeting Hiring is successful:

• Monitoring/Governing body reporting
• Preference for disadvantaged and local workers in the pre-apprentice programs and hiring halls
• Enforcement provisions that permit alternative sources of recruiting labor when goals not met
• Exclusions for SBEs/DBEs
• Outreach to minorities/disadvantaged contractors
• Grievance procedures that permits public agency to enforce goals
Presentation Overview

Prentiss Jackson, Principal-in-Charge of Workforce Integrity & Training Solutions (WITS)

• The Approach
• Labor Compliance & Project Marketing
• Enforcement
• Local Hire Program & Pipeline Development
• Pre-Bid, Pre-Construction, and Pre-Job Meetings
• Contractor Education & Information
• Local Hire Performance Data Visualization
THE APPROACH
THE APPROACH

Administration
- Conduct Pre-Bid, Pre-Construction & Pre-Job Meetings
- Provide Contractor Education & Outreach
- Facilitate Joint Administrative Committee

Enforcement
- Enforce the provisions of the CWA
- Manage Grievance and Arbitration
- Matters of Law and Matters of Contract
- Conduct Labor Compliance Monitoring

Local Hire and Apprentice Pipeline Development
- Leverage Community, Union, and Education Partnerships for Outreach & Recruitment
- Contractor relationship development
- Expand opportunities for Local Workers

Leveraging Data & Information toward Accountability & Impact
- Utilize real-time payroll, Local Hire and field data to inform decisions
- Provide City leadership and stakeholders with information on CWA impact
WITS’ experienced Labor Compliance team will review all submitted CPR for prima facia compliance with the relevant prevailing wage determinations, ensure that fringe benefit statements and other required documents are current, and identify any unlisted subcontractors.

**CPR Review**

WITS conducts regular construction site visits to interview workers regarding work hours, wages, and classification.

**Site Visits & Worker Interviews**

Site visits are a critical tool for assessing CWA compliance to identify unlisted contractors.

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WITS will validate CPR accuracy by confirming at least one worker for at least one weekly period per month using independent sources, such as employee interviews, daily inspection reports, and payroll records, such as pay stubs and canceled checks.

**Reconciliation of CPR**
Regular and timely transmission of CPR allows the compliance team to regularly and quickly review CPR and reduces the administrative burden, and cost, of requesting CPR. WITS utilizes a CPR Tracking Tool to monitor timely submission and notify contractors who fall behind.

**Verification of Registered Apprentices and Certified Electricians**

WITS utilizes CPR along with the California Division of Labor Standards Enforcement Apprenticeship Standards databases to verify the current standing of Apprentices (CA Labor Code § 3077) and Certified Electricians (CA Labor Code § 108.2).

**“Paper” CPR Transcription**

A recommended best practice is to require submittal via an electronic certified payroll system. If there is not one already used by the City, then WITS can provide one. WITS has developed a system for transcribing “Paper” CPR to digital format which is utilized to analyze wage and local hire data.
WITS utilizes Certified Payroll Records, Inspection Reports, Site Visit data and regular communication with labor unions to ensure contractors adhere to the Referral and Core Worker provisions of the CWA.

WITS has successfully facilitated the resolution of the grievance and arbitration process on several PLAs and CWAs. Rapid and amicable resolution requires transparency, and communication with all stakeholders.

WITS will facilitate the amicable resolution with all crafts - including those whose procedure is outside the National Building Trades Plan for the Settlement of Jurisdiction Disputes (Plan). Our experience includes helping prepare cases for the Plan and mediating resolution without arbitration.
Leverage relationships with Labor, Education, and Community Based Organizations throughout project defined specific communities. Develop an Outreach and recruitment program to target Local Area jobseekers.

Educate and inform contractors of the Local Hire goals and the benefits of hiring locally. Utilize data collection to forecast workforce needs. Create a seamless process to request Local Area workers through Union Hiring Halls.

Provide regular reporting on Local Hire performance, identify trade-level trends and areas for increased collaboration with Labor partners.
PRE-BID, PRE-CONSTRUCTION & PRE-JOB MEETINGS

Meeting Facilitation
WITS uses a Pre-Job Minutes template designed over years of experience organizing, leading, and tracking compliance with Pre-Job Meeting requirements.

Agreements to be Bound
WITS has developed an online system for collecting and tracking Agreements to be Bound from all contractors prior to starting work.

Timely Distribution of Minutes
WITS will transcribe and summarize Pre-Job Meeting minutes for approval by all parties and ensure information is quickly disseminated.
CONTRACTOR EDUCATION & INFORMATION

Documentation
WITS will develop fact sheets and handouts outlining CWA provisions such as Referral, Core Worker, Local Hire and Prevailing Wage requirements.

Resource and Guidance
WITS utilizes Pre-Job and Pre-Construction meetings to educate and inform contractors of their responsibilities under the CWA and to answer any questions related to compliance and expectation of performance.
LOCAL HIRE PERFORMANCE DATA VISUALIZATION

Local Hours by Craft

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<th>Craft</th>
<th>Total Hours</th>
<th>Local Hours</th>
<th>Local Workers</th>
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<tbody>
<tr>
<td>Postman</td>
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<tr>
<td>Locksmith</td>
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<tr>
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<tr>
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<tr>
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Local Resident Hours Worked by Zip Code

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Q & A
Thank you!

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