

POLICY RESOLUTION NO. 05-02
Of the Board of Supervisors of the County of Santa Clara
Approving Modifications to the Board Policy Manual Relating to
Project Labor Agreements

WHEREAS, the Board of Supervisors recognizes that certain large, complex County capital construction projects require a significant investment of County funds, involve numerous contractors and employees in different trades, require a skilled and properly trained workforce to successfully complete the work in a proper and timely manner, and have critical time lines for completion; and

WHEREAS, the Board of Supervisors recognizes that in order to avoid costly delays and additional expense to the County, it is essential that construction on such projects proceed without the labor disruptions that can occur on long-term projects both from external labor relations problems and from the frictions that often arise when a large number of contractors and their employees work in proximity to one another on a job site; and

WHEREAS, it is in the public's interest that labor issues be resolved prior to commencement of project construction and that projects have an adequate and steady workforce during project construction; and

WHEREAS, Project Labor Agreements have been successfully used by government agencies and private business owners to ensure a steady project workforce and prohibit work stoppages due to labor issues;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara that a policy be established for the use of Project Labor Agreements and that the Board of Supervisors' Policy Manual is hereby amended by adding Section 5.7.4 as follows to establish this policy;

BE IT FURTHER RESOLVED that the Clerk of the Board is directed to incorporate this additional language into the Manual so that it is available to all County staff.

5.7.4 PROJECT LABOR AGREEMENTS

A Project Labor Agreement (PLA) is an agreement typically negotiated between a project owner, construction manager or general contractor, and one or more labor organizations prior to award of a construction contract. A PLA is designed to eliminate potential project delays resulting from labor strife, ensure a steady supply of skilled labor on a project, and provide a contractually binding means of resolving worker grievances. Although PLAs can be complex, the basic exchange is that the unions agree not to strike while a project is being built and to use high-speed arbitration to resolve workplace disputes. The owner agrees to require all contractors and subcontractors to accept the PLA's terms.

(A) Purpose

The purpose of this policy is to promote efficiency of construction operations during the County's construction of capital projects and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of projects.

The types of projects that are most amendable PLA usage are large capital projects that have a substantial financial requirement, are technically complex, involve numerous contractors and employees in different trades, have critical time lines for completion, and require a skilled and properly-trained workforce to successfully complete the work in a proper and timely manner.

(B) Required Analysis

All capital projects having construction costs exceeding ten million dollars (\$10,000,000) will be analyzed to determine whether usage of a project PLA will further a legitimate government interest of the County. Capital projects having construction costs under ten million dollars (\$10,000,000) may be evaluated if a unique feature or requirement of a project (i.e. time sensitivity in maintaining or providing a vital government service) would benefit from the use of a PLA. When staff determines that a legitimate County interest is furthered by implementing a PLA for a particular capital project, the recommendation will be forwarded the Board of Supervisors for consideration.

(C) Conceptual Principles

The negotiations for each PLA will be guided by the following principles:

(1) Stipulations will be established that insure there will be no labor-related schedule delays, and that this requirement will be met by the numerous unions working on a project. PLA requirements should be established to manage union-to-union jurisdictional disputes; for agreement to continue work during management-labor disagreements and all other project-related disagreements; for agreement to continue work despite the expiration of collective bargaining agreements; and for financial penalties against a union if it violates this provision of the agreement.

(2) Procedures will be established for the expeditious and fair resolution of disputes regarding violations of the no strike and no lockout provisions, jurisdictional disputes regarding work assignments, and other alleged violations of the agreement with appropriate and enforceable consequences for those committing the violation.

(3) PLAs are a risk management tool used to avoid or reduce project costs. Thus, a PLA that has terms that increase project costs contravenes one of the primary objectives of having the PLA. While there is some administrative burden in managing any PLA, the cost of this administrative burden should be de minimus in relation to the overall administrative cost of a project.

(4) The County will retain its ability to meet all competitive bidding requirements of public law. To this end non-union contractors and non-union employees will not be required to become unionized to work on a PLA project. Additionally, the County retains the ability to select the lowest qualified bidder regardless of the bidder's union status.

(5) PLAs will only apply to public works projects as defined by the Public Contracts Code that have a published prevailing wage for the crafts involved. PLAs will not apply to regular maintenance or non-construction projects. PLAs will not apply to any work performed by County employees, and will not otherwise interfere with normal County operations.

(6) PLAs will provide the County with sole discretion to end, delay, and/or suspend any or all portions of the work covered by the PLA and to combine, consolidate, modify, and/or not build any one or more of the portions of work covered by the PLA.

(7) County contracts will require all contractors performing construction work covered by the PLA (to include sub-contractors of all tiers) to sign the PLA agreed to between the County and the San Benito and Santa Clara Building Trades Council (BTC) and agree to be bound by its provisions with no obligation to sign any other local, regional, or national agreement as a condition of performing work covered by the PLA. Contractors will comply with the PLA and all applicable provisions of local, state, and federal law.

(8) The PLA will not require any contractor or employee to join any union as a condition of employment or of being awarded a contract under the PLA. Agreements may contain a lawful agency shop clause that will require non-union employees for the period during which they are performing work under the PLA to pay an agency fee.

(9) The PLA will allow all contractors to use their core workforce, whether union or non-union. The PLA may also require that for any additional workforce required outside the core that contractors will use the Union referral system first, and if the union is unable to supply a worker within a set time period, will be free to hire any worker it so chooses.

(10) The PLA will give contractors full and exclusive authority over the management of their operations, the choice of materials or design in accordance with the project's contract documents, and the use of equipment provided that staffing levels are consistent with established standards for protecting employees and equipment, that no employee will be required to work in unsafe or hazardous conditions, and that work assignments to BTC unions will follow the Procedural Rules of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

(11) Contractors will be required to pay hourly wage rates and benefits that comply with the applicable Santa Clara County prevailing wage rate and benefits for all craft employees unless the contractor is obligated to a higher rate by an existing collective bargaining agreement.

(12) Contractors will contribute to health care, pension, and training trust funds for each of their employees at the rates in accordance with local collective bargaining agreements.

(13) Contractors will guarantee they will not lock out the project site for any reason during execution of the project work that is covered by the PLA.

(14) BTC and the unions will guarantee that at no time during the PLA will there be any strikes, work stoppages, hand billing, slowdowns, informational picketing, or "sympathy strikes" at the project site for any reason, including labor disputes due to expiration of current collective bargaining agreements.

(15) PLAs may recognize the unions as having the sole and exclusive bargaining representatives of all craft employees on the project working within the scope of the PLA. BTC unions may designate stewards and their authorized representatives may have access to project sites so long as they do not interfere with employees and their work.

(16) PLAs may establish a coordinated set of job site hours for work, overtime, shifts, and holidays.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____ by the following vote:

AYES: Supervisors

NOES: Supervisors

ABSTAIN: Supervisors

ABSENT: Supervisors

Liz Kniss, Chair
Board of Supervisors

ATTEST: _____
Phyllis Perez, Clerk
Board of Supervisors

DATED: _____

APPROVED AS TO FORM AND LEGALITY:

Leslie Orta
Leslie Orta
Deputy County Counsel

DATED: 1-31-05

County of Santa Clara
Facilities And Fleet Department
Capital Programs



FAF01 021005

DATE: February 10, 2005

TO: Supervisor Pete McHugh, Chairperson
Supervisor James T. Beall, Jr., Vice-Chairperson
Finance & Government Operations Committee

FROM: *Larry Jenkins 510*
Larry Jenkins
Director of Facilities and Fleet Department

SUBJECT: Project Labor Agreements (Referral from the October 19, 2004 Board Meeting)

RECOMMENDED ACTION

1. Recommend the Finance and Government Operations committee (FGOC) support the attached Resolution for establishing the recommended policy pertaining to the use and implementation of Project Labor Agreements (PLA) for specific projects and forward the Resolution to the Board of supervisors with a favorable recommendation for approval.
2. Recommend the FGOC support the use of PLAs for the Gilroy Valley Health Center (VHC), Fair Oaks VHC, Milpitas VHC, and the New Crime Lab and forward this recommendation to the Board of Supervisors with a favorable recommendation for approval.

FISCAL IMPLICATIONS

There are no immediate financial impacts resulting from approving this Resolution implementing PLAs on selected projects. PLAs are a cost avoidance contracting tool that may reduce the cost of construction projects by ensuring an adequate and steady workforce on construction projects, and by avoiding delays caused by labor disruptions on those projects.

CONTRACT HISTORY

The County's first and only PLA with the Santa Clara and Santa Benito Counties Building & Construction Trades Council (BTC) was approved by the Board of Supervisors on November 23, 2004 solely for the construction of the Valley Specialty Center Bid Package # 2 project.

REASONS FOR RECOMMENDATION

This transmittal is in response to a referral made by the Board of Supervisors on October 19, 2004.

Large, complex County capital construction projects require a significant investment of County funds, involve numerous contractors and employees in different trades, require a skilled and properly trained workforce to successfully complete the work in a proper and timely manner, and have critical time lines for completion. In order to avoid costly delays and additional expense to the County, it is essential that construction on such projects proceed without the labor disruptions that can occur on long-term projects from external labor relations problems and from the frictions that often arise when a large number of contractors and their employees work in proximity to one another on a construction job site.

PLAs have been successfully used by numerous government agencies and private business owners to ensure a steady project workforce and to avoid costly project delays caused by labor disruptions. The County of Santa Clara currently does not have a policy addressing the use of PLAs. The attached Resolution includes a policy for the Board of Supervisors' Policy Manual to provide such direction.

Smaller projects up to \$10 million have varying degrees of complexity; whereas, projects over \$10 million are almost always technically complex, require the work of many construction craft employees and contractors, have the involvement of many unions, and by their size represent a substantial financial investment and an associated substantial financial risk. These larger projects usually have long duration and complex construction schedules. PLAs can be

useful in avoiding schedule delays and cost overruns in projects having these characteristics. The proposed policy requires an analysis of all future County capital construction projects costing over \$10 million to determine the costs and benefits of using PLAs on those projects.

A referral was also made during the October 19, 2004 Board Meeting for Staff to review all capital projects administered by Facilities and Fleet Department (FAF) to determine possible implementation of PLAs on existing capital projects. Staff has conducted this review and recommends that PLAs be established for the Gilroy VHC, Fair Oaks VHC, Milpitas VHC, and New Crime Lab. Other capital projects do not entail the level of technical complexity, long duration schedules, level of financial risk exposure, and other characteristics described in the recommended policy that would benefit from PLAs or that would justify the administrative time and costs of managing PLAs.

The four projects (Gilroy VHC, Fair Oaks VHC, Milpitas VHC, and New Crime Lab) recommended above for establishment of PLAs all have construction costs above \$10 million and have all of the above-listed characteristics that would benefit from PLAs.

These four projects will be constructed during the next three years, and 19 union collective bargaining agreements, whose workers will likely perform on these projects, will expire during this time. One or more of the 19 BTC unions may strike while its collective bargaining agreement is being negotiated during the next three years. Such a strike by even one union could stop work on one or all four of the projects recommended for implementation of a PLA.

Due to the characteristics of these four projects, the County's substantial financial investment in each project, the goal of timely completion of the projects in order to improve current County services, and the apparent risk of one or more of the unions possibly striking during the construction of these projects, Staff recommends establishing a PLA for each of these four projects as a prudent risk management action to take for protecting public funds from substantial financial loss that could be caused by labor disruptions during construction.

The County Center at Charcot (CCC) and Court Seismic bond projects were also evaluated for possible PLA usage. Sixty percent of the CCC costs are in the purchase of the buildings, and the remaining tenant improvement work is being accomplished through a series of small contracts. Work has already started on the tenant improvements. The Court Seismic project is actually a series of four projects for seismically reinforcing four court houses. None of the

CCC tenant improvement projects or the four seismic retrofit projects appear to have the level of technical complexity, financial investment, or involvement of numerous crafts that would rise to the level of benefiting from PLAs.

BACKGROUND

A PLA is a contract typically negotiated between a project owner, a general contractor, and one or more labor organizations. It is designed to eliminate potential delays resulting from labor strife, ensure a steady supply of skilled labor on the project, and provide a contractually binding means of expeditiously resolving worker grievances. Although PLAs can be quite complex, the basic exchange is that the union agrees not to strike while the project is being built and to use high-speed arbitration to resolve workplace disputes. The owner agrees to require all contractors and subcontractors to accept the PLA's terms.

A public agency may enter into a PLA for purposes of constructing a project if the agency can demonstrate that the PLA furthers a legitimate government interest, such as preventing costly delays and assuring contractors access to skilled craft workers. The local agency must make a record of its legitimate government interest for use of a PLA on a project-by-project basis.

CONSEQUENCES OF NEGATIVE ACTION

A policy pertaining to the usage of PLAs may not be established at this time, and PLAs would not be implemented for the Gilroy VHC, Fair Oaks VHC, Milpitas VHC, and the New Crime Lab projects.

STEPS FOLLOWING APPROVAL

Forward to the full Board with a recommendation for approval of the proposed policy and implementation of PLAs for the four projects identified above.

ATTACHMENTS

- Policy Resolution

5.0 POLICIES ON SOLICITING AND CONTRACTING (Adopted 2-28-12)

5.1 INTRODUCTION

This Chapter of the Board's Policy Manual contains the policies relating to the County of Santa Clara's solicitation and contracting processes. These policies reflect the Board of Supervisors' commitment to establishing an open and competitive process for individuals and organizations that do business with the County, ensuring fairness and equal access to business opportunities in the County, and promoting the most cost-effective use of taxpayer dollars and County resources in its contracting and solicitation processes. These policies also reflect the Board's commitment to increasing social and environmental awareness and responsibility in the County.

By implementing these policies, the Board's goal is to ensure that Agencies/Departments comply with applicable laws, regulations, and contractual obligations and follow industry best practices that result in the best outcome for the County. These policies set the framework by which the County, County Agencies/Departments, County officials and County employees should conduct their solicitation and contracting processes.

The County Executive or designee is responsible for reviewing these policies on an annual basis to ensure that they continue to comply with the Board's goals. Any proposed changes to these policies must be discussed with County Counsel and the Director of Procurement, prior to bringing the proposed changes to the Board for approval.

Procedures and guidelines related to these policies are contained in the County Executive's Administrative Guidelines, the County's Contracting Manual that is developed, maintained and disseminated by the Procurement Department, and/or other procedures that may be developed by other Agencies/Departments relative to a particular subject area. These Guidelines, Manual and procedures must be consistent with the policies contained in this Chapter, and all Agencies/Departments are required to follow these Guidelines, Manual and procedures, if applicable. If there is a conflict between any of the procedures developed by Agencies/Departments and the County's Contracting Manual, the Manual shall prevail.

of Industrial Relations (DIR), in collaboration with affected agencies and interested parties, has published model guidelines for rating bidders and has drafted a standardized questionnaire for use by public agencies. The County will use the DIR model questionnaire as a guide in drafting its own questionnaire; any deviations from the model are subject to review by County Counsel. The DIR documents and any procedure adopted by the County must meet the requirements of PCC section 20101 which are:

- (A) Use of a standardized questionnaire and financial statement including a completed statement of the prospective bidder's experience in performing public works projects;
- (B) Adoption and application of a uniform system to objectively rate bidders on the basis of the completed questionnaires and financial statements; and
- (C) Establishment of a process that allows prospective bidders to dispute the proposed prequalification rating prior to the closing time for receipt of bids on a project requiring prequalification by the public entity. The required elements of the appeal process are detailed in PCC section 20101(d) (1), (2), and (3).

Completed prequalification questionnaires and financial statements, as well as information gathered from contractors' references will be evaluated by a review panel established by the appropriate Agency/Department Director or designee. Only contractors determined to be qualified will be provided with bid packages and invited to bid on the particular project subject to the prequalification procedure.

5.7.5.4 Project Labor Agreements

A Project Labor Agreement (PLA) is an agreement typically negotiated between a project owner and one or more labor organizations prior to award of a construction contract. A PLA is designed to eliminate potential project delays resulting from labor strife, ensure a steady supply of skilled labor on a project, and provide a contractually binding means of resolving worker grievances. Pursuant to a PLA, an owner agrees to require all contractors and subcontractors to accept the PLA's terms.

(A) Purpose

The purpose of this policy is to promote efficiency of construction operations during the County's construction of capital projects and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of projects.

The types of projects that are most amenable to PLA usage are large capital projects that have a substantial financial requirement, are technically complex, involve numerous contractors and employees in different trades, have critical time lines for completion, and require a skilled and properly-trained workforce to successfully complete the work in a proper and timely manner.

(B) Required Analysis

All capital projects having construction costs exceeding ten million dollars (\$10,000,000) will be analyzed to determine whether usage of a project PLA will further the County's interests. Capital projects having construction costs below ten million dollars (\$10,000,000) may be evaluated if a unique feature or requirement of a project (i.e., time sensitivity in maintaining or providing a vital government service) would benefit from the use of a PLA.

When staff determines that a County interest is furthered by implementing a PLA for a particular capital project, the recommendation will be forwarded to the Board of Supervisors for consideration.

Conceptual Principles related PLAs are contained in the Administrative Guidelines and are incorporated and made part of this policy by this reference.

5.7.6 Guidelines/Procedures

Additional information can be found in the County Executive's Administrative Guidelines, the County's Contracting Manual and any other applicable procedures developed for this subject area.

5.7.7 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

Uniform Public Construction Cost Accounting Act

Public Contract Code Sections 20101; 20122; 22032