

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 4/7/2015	(3) CONTACT/PHONE Wade Horton, Director of Public Works (805) 781-5252 Machelle Vieux, Interim Director of General Services	
(4) SUBJECT Submittal of an informational report regarding Project Labor Agreements. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board receive and file this informational report on Project Labor Agreements.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent { } Presentation { } Hearing (Time Est. ___) {X} Board Business (Time Est. <u>90 min.</u>)			
(11) EXECUTED DOCUMENTS { } Resolutions { } Contracts { } Ordinances {X} N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5 Vote Required {X} N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY {X} N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW Guy Savage			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Wade Horton, Director of Public Works
Machelle Vieux, Interim Director of General Services

DATE: 4/7/2015

SUBJECT: Submittal of an informational report regarding Project Labor Agreements. All Districts.

RECOMMENDATION

It is recommended that the Board receive and file this informational report on Project Labor Agreements.

DISCUSSION

At previous Board meetings, members of the public during public comment requested that the Board adopt a policy for the use of Project Labor Agreements or Project Stabilization Agreements (referred to here as "PLAs") on County public construction projects. In response to this public comment and direction from your Board on October 28, 2014, staff has assembled information explaining what a PLA is, how it works, and some of the benefits and disadvantages associated with PLAs. Ultimately, the Board may wish to give further direction to staff with regard to potential implementation of PLAs for use on County public construction projects.

A PLA is an agreement negotiated by a public entity and the various unions representing different construction trades setting minimum levels of wages and benefits to be paid to workers on public contracts. PLAs are primarily used to ensure against labor disruption, however local agencies often employ PLAs in an attempt to address other governmental goals such as targeted hiring and training requirements. These provisions require careful wording and management to facilitate monitoring and enforcement. If the County were to require use of PLAs, any contractor on a covered project must agree to be bound by the terms the County negotiated with the labor unions in the PLA, regardless of whether or not the contractor is a union shop.

State law authorizes, but does not require, local agencies to use PLAs on their projects. However, state law prohibits a county from enacting an ordinance or policy absolutely prohibiting PLAs; if a local government does so, it may not receive many state funds. Since the state passed this law, a number of cities and counties with policies have repealed their anti-PLA policies. Under a PLA, workers are dispatched from union halls to perform labor on the project. State law prohibits the

unions from discriminating between union and non-union members, but both union and non-union workers must register with union halls and pay money (the amount of which is possibly subject to negotiation in a PLA) to the union. Many PLAs include a “core worker” clause. Under this, the government entity and the unions agree in the PLA on a ratio of union hall-dispatched workers to a contractor’s own workforce. Some counties have a 1:1 ratio, but others allow contractors to use more core workers. However, even when a contractor uses his or her own employees, those employees must receive all benefits and wages dictated in the PLA.

Among counties, PLAs typically are used in the San Francisco Bay and Los Angeles areas. Counties like San Francisco, Los Angeles, Sonoma, Solano, San Mateo, Santa Clara, and Alameda have used or recently adopted PLAs. Among the counties that do not use PLAs are San Diego, Orange, Riverside, and San Bernardino. Counties like Santa Barbara and Monterey do not presently have PLAs in place. Santa Barbara recently underwent months of negotiations with approximately 20 labor unions on a jail project, but when one union did not sign the PLA agreed to by the County and the other unions, the agreement did not move forward.

Locally, neither the Cities of San Luis Obispo, Morro Bay, Paso Robles, Arroyo Grande, Grover Beach, Atascadero, Pismo Beach, nor Cal Poly, use PLAs.

Proponents of PLAs cite several benefits, including:

- A promise of labor peace, including a promise that there will be enough laborers to do required work and that there would be no worker strife-related delays in finishing a project.
- That union workers receive better training through union apprenticeship programs than non-union workers.
- On some projects built using a “design-build” method (used at times constructing large buildings), a PLA can supply all the required evidence needed to meet regulatory requirements for skilled workers’ participation on the project.
- A proper PLA can exempt the County from obligations to ensure compliance by contractors and subcontractors with state prevailing wage laws.

A survey of other counties discovered the following difficulties with PLAs:

- Estimates are that PLAs increase the cost of public contracts by 0-15%, with occasional estimates of up to a 30% increase.
- Negotiating a PLA can take a long time, anywhere from several months to a year and a half. It also takes significant county resources, with a typical team consisting of a deputy county counsel, a director or assistant director of public works, a director or assistant director of general services, and an analyst from the administrative office away from many of their duties for that several-month period.
- Some counties implementing PLAs have indicated that some unions have not been forthcoming with information, even when required by the PLA. This interferes with the ability to measure local-hire effects of PLAs, whether or not the union is discriminating against non-union workers, and other aspects of project administration.

- At least one county has needed to hire an outside firm to handle the administrative complexities involved with implementing PLAs.
- Some counties note that local non-union contractors, in some cases including some minority-owned or woman-owned businesses, have complained that PLAs make participating in local construction projects too difficult or expensive.
- Unions may not have enough control over employees to prevent wildcat strikes by individuals or small groups of employees, meaning there is no guarantee of labor peace, a principal benefit promised by PLA proponents.

Proponents of PLAs suggest that they foster and increase the use of local labor on PLA-covered projects. Due to lack of available statistics, it is difficult to evaluate whether this is actually the case. Staff has contacted a number of other counties that use PLAs, but none of them have statistics about what effect the PLAs have on local hire rates, and some of those counties have indicated that they have requested such information from union halls without success. At least one county with a PLA requires all workers to be dispatched out of the local union hall, but this does not guarantee local workers in the positions. Many union halls cover more than just San Luis Obispo county, with some union halls covering regions much larger than our county, and local union halls dispatching workers as far away as Las Vegas. In San Luis Obispo, local hire provisions on large contracts can be problematic because many large projects require expertise in specialized trades, which may not be available locally. There may not be any contractors with those specialty skills, or there may be so few that there would be no meaningful competition that would keep costs reasonable. The pool of local contractors may not be able to provide the financial bonding capacity, managerial skill, and labor organization required to deliver larger projects.

On County projects with federal funding, some federal agencies would require the County to demonstrate that the agreement alleviates a significant risk of disruption due to labor unrest and show a cost benefit.

The Public Works and General Services Departments have performed a high-level review of the construction projects awarded between 2009 and 2014 in an attempt to shed some light on the amount of local labor usage.

The bid results of all formally bid projects in that period were reviewed, the dollar amount of prime and subcontract bids tallied, and sorted into local and non-local firms to determine the percentage of local contractor usage. For the purposes of this analysis, a "Local" firm is defined as a firm based in San Luis Obispo or northern Santa Barbara Counties.

This analysis is obviously not a direct measure of local labor usage, but relies on the assumption that local firms use more local labor than non-local firms. The dollar amounts used in the analysis are based on bid prices, which include payments to material suppliers, as well as contractors' overhead and profit. The final amount expended on construction contracts is typically different than prices at the time of bidding due to quantity variances and change orders. The data is skewed somewhat for material-intensive projects with lower proportional labor costs, such as pavement overlays.

The analysis illustrates that small- and medium-sized projects less than \$5 million are predominately performed by local firms, whereas about 76% of the value of projects greater than \$10 million are delivered by non-local firms. Table 1 illustrates the value of projects given to local contractors and non-local contractors by the Public Works Department, and Table 2 shows the data for projects managed by the Department of General Services.

The Public Works Department administered five projects valued at more than \$5 million between 2009 and 2014. Four of these were part of the Los Osos Sewer Project, and one was the Willow Road Extension Overpass. Within the same timeframe, the Department of General Services administered three projects valued at more than \$5 million; Women’s Jail Expansion, Juvenile Hall Expansion, and Terminal Aircraft Parking Ramp.

Table 1

Public Works Project Summary 2009-2014				
Project Size	Local Contractors	Non-Local Contractors	Total	Percent Local
Small Projects (<\$1M)	\$ 11,435,792	\$ 4,067,674	\$ 15,503,466	74%
Medium Projects (\$1M to \$5M)	\$ 21,366,535	\$ 3,260,891	\$ 24,627,426	87%
Large Projects (>\$5M)	\$ 42,339,854	\$ 126,599,990	\$ 168,939,844	25%
Total	\$ 75,142,181	\$ 133,928,555	\$ 209,070,736	36%

Table 2

General Services Project Summary 2009-2014				
Project Size	Local Contractors	Non-Local Contractors	Total	Percent Local
Small Projects (<\$1M)	\$ 3,680,684	\$ 245,776	\$ 3,926,460	94%
Medium Projects (\$1M to \$5M)	\$ 7,709,374	\$ 768,535	\$ 8,477,909	91%
Large Projects (>\$5M)	\$ 15,181,848	\$ 33,743,052	\$ 48,924,900	31%
Total	\$ 26,571,906	\$ 34,757,363	\$ 61,329,269	43%

The lower level of local contractor participation on these projects stems from several factors including specialized skillsets not available in the local area, financial bonding capacity, and availability of local labor during the bidding period and construction activities. For some large scale projects such as the Women’s Jail Expansion and Juvenile Hall Expansion projects, a large portion of work involves highly technical and specialized skills for detention equipment and security systems which are not found within the county.

A PLA does not guarantee local work force labor. Availability of local personnel depends on demand as well as the necessary skillsets. During a period of high demand for a particular trade, work force labor will need to be leveraged from surrounding areas, regardless of whether or not PLAs are in place.

Regarding work force composition, anecdotal reports indicate that non-local firms typically build crews around key foremen and tradesmen who live near the contractors' home office, while the line workers often are hired from the local labor pool. Contractors typically pay travel costs for the labor force they bring from outside.

When it comes to requiring local workers on County projects covered by a PLA, the County has fewer options than some other entities that use PLAs. The U.S. Supreme Court has set a high standard of evidence that a county must use to justify a requirement in a PLA. This is because policies requiring contractors to be local residents interfere with the Constitutional right to Privileges and Immunities of out-of-state residents. Although local vendor preferences are allowable for purchase of goods and services, the courts treat construction projects differently. For a county to implement any meaningful local-hire program as part of a PLA for contractors' employees, the county would need to show a substantial interest in the local hire requirements and show that the preference is substantially related to this interest. The City of San Francisco has been able to include a local-hire preference in its contracts, but it is different from the County for two reasons: (1) it is a charter city not bound by the Public Contract Code; and (2) it was able to show the court that residing in San Francisco and meeting the various local requirements for business was substantially more expensive than the surrounding communities. A far more detailed study would be needed even to see if our County had a chance of showing similar results. The private sector (including local solar projects) that use PLAs have more freedom to demand local-hire goals than the County would because they are non-governmental and thus not covered by the Privileges and Immunities Clause of the Constitution. Accordingly, if the County decided to negotiate a PLA that had a local hiring preference, the most defensible process would be to conduct a study in order to determine if any such efforts can be legally justified.

There are different approaches to using PLAs. The first approach is to use a PLA on a single project, usually a multi-million dollar project like a jail facility. The second approach is to set a threshold for projects above certain dollar amount which PLAs must be used (e.g. \$1 million, \$5 million, or \$10 million). Another approach is to require staff to evaluate whether using a PLA is helpful for projects valued at \$10 million or more (or some other threshold amount), and leave it to staff's discretion to do a cost/benefit analysis on projects valued less than \$10 million.

OTHER AGENCY INVOLVEMENT/IMPACT

The Public Works Department and Department of General Services have worked with the Administrative Office and County Counsel in the preparation of this transmittal.

FINANCIAL CONSIDERATIONS

For information only, there are no financial considerations at this time.

RESULTS

The recommended action will inform the Board and public on Project Labor Agreements.

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