



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement and/or adopt a resolution committing to negotiate and execute a Project Labor Agreement per project
Category:	Leadership and Support Services
Meeting Date:	11/10/2020
Staff Contact:	Christopher J. Diaz, 408-586-3040 Steve McHarris, 408-586-3059
Recommendation:	Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement with the Building and Construction Trades Council and/or consider adopting a resolution committing to negotiate and execute a Project Labor Agreement per project.

Background:

At the August 4, 2020 City Council meeting, the City Council directed the City Attorney to return to Council with more information on a Project Labor Agreement or Community Workforce Agreement. Specifically, the City Attorney was asked to come back with more information on where such an agreement would work, either on one project or for a list of potential projects, as determined by staff. The City Attorney was to develop a draft agreement and begin negotiations with construction labor organizations.

A project labor agreement (“PLA”) ensures that City projects covered by the PLA are performed by union-represented workers. A PLA requires that all contractors performing work typically within the jurisdiction of the trade unions on the covered projects, whether they are normally signatories to a collective bargaining agreement or not, submit to union representation, at least for the duration of the PLA projects.

Analysis:

As a general matter, a PLA is an agreement entered prior to the beginning of a project or group of construction projects that (1) necessitates worker representation by labor unions determined per trade on the covered projects and (2) sets forth basic terms and conditions of employment by relevant contractors. PLAs typically require workers membership in certain trade unions, at least for the time relevant to the project. Therefore, by requiring adherence to various union collective bargaining agreements, PLAs also specify wages, fringe benefits, and overtime pay, as well as working conditions and work rules for the workers employed on the relevant construction project(s). A PLA may also include no-strike and no lock out provisions and procedures for resolving disputes. These agreements also sometimes include local hiring goals and targets for hiring disadvantaged demographic groups and those traditionally underrepresented in the construction industry.

California Public Contract Code section 2500, *et seq.*, governs a public entity’s use of PLAs. A public entity may only utilize such an agreement if it includes all of the taxpayer protection provisions set forth in Section 2500(a). A public agency enters into a PLA with local labor unions before seeking bids from contractors. While both union and non-union contractors may bid on projects governed by a PLA, all workers covered by the PLA are dispatched through local union hiring halls and subject to the various requirements of the collective bargaining agreements associated with those various trade unions.

Pursuant to Public Contract Code section 2500, the PLA must include, at a minimum, all of the following:

- Prohibition on 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.
- Permission for 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 (i.e., whether they are union or non-union).
- Agreed-upon protocol concerning drug testing for workers who will be employed on the project.
- Guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project
- Requirement that disputes arising from the PLA shall be resolved by a neutral arbitrator.

A PLA may cover one project, a particular classification of projects or all projects in the City's discretion. The City Council must adopt the PLA by majority vote and must also act by majority vote in each instance it wishes to allocate funding for any project covered by the PLA. (Pub. Contract Code, § 2501.)

Benchmarking Analysis

Staff reached out to other cities, counties, and school districts with current PLAs or CWAs and gathered information about agreement terms, eligible projects, administrative and construction costs, construction bids, and availability of labor. Detailed information is included in Attachment C.

1. Term of Agreement – Although this varied across jurisdictions, several cities and districts had 3 year terms, some had 5 year terms and only one entity that has a ten-year term with a five-year off-ramp. Some agreements were specific to projects and thus lasted through the completion of each specific project.
2. Eligible projects – All agreements included exclusions for certain types of projects. Several agreements have a dollar threshold of \$1 million for eligible projects, the County of Santa Clara has a threshold of \$2 million, while San Jose and certain projects in the County of Alameda have a dollar threshold of \$3 million.
3. Costs – Almost all jurisdictions indicated that they have incurred additional administrative costs. These ranged from 3%-15% of the project construction costs. The County of Alameda has a consultant contract of \$1.2 million for 3 years while the City of Anaheim has two on-call consultants with administrative costs being about 2%-3% of the engineer's estimate for each project. Some jurisdictions use in-house staff however, they were unable to quantify the additional costs. There was no specific information about any changes to the construction costs.
4. Construction bids – Most entities did not notice a significant impact in the number of bids; however, some did note that the smaller construction firms were not submitting bids.
5. Labor- In tight labor markets the availability of labor through union halls was noted as a common issue. With regards to meeting goals of local labor, many jurisdictions were unable to meet their goals, however the City of Anaheim has been able to meet and exceed their 35% local hire goal.

Stakeholder Outreach

Staff has been working with the Executive Director of the Santa Clara and San Benito Building and Construction Trades Council on the draft agreement. The Executive Director had provided the City with their preferred template agreement. Staff has made some revisions to the template agreement and is seeking Council feedback on the agreement terms. The Executive Director has asked expressed concerns about three key areas – term of agreement, dollar threshold of eligible projects, and project exclusions. Although staff understand the concerns from the Executive Director, since this is the City's first citywide PLA, staff recommendations are based on input from other agencies with experience in implementing PLAs, the City's prior experience in implementing a PLA for the Library project, as well as on the analysis of the types of projects in the City's CIP and existing staff capacity and expertise.

Staff has shared the draft PLA with the developer and construction community; however, additional outreach is envisioned to occur after preliminary feedback from the Council.

Key Terms of draft PLA

Staff is seeking input from the City Council on the draft PLA. The draft PLA is intended to be an agreement between the City of Milpitas and the Santa Clara and San Benito Building and Construction Trades Councils

(Building Trades Council) and its affiliated Unions. The purpose of this Agreement is to promote the efficiency of construction operations through the use of skilled labor resulting in quality construction outcomes, 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 the Project(s) covered by this Agreement

Term of agreement

Staff is proposing an Agreement term of three years. Council approval will be required to continue the agreement after the three-year term.

Eligible Projects

Eligible projects include all projects for which the City sends out the initial solicitation of a bid or proposal after the effective date of the Agreement, and that meets all three of the following requirements:

1. It is a public works project (subject to certain exemptions) for construction awarded by the City,
2. It is paid for in whole or in part out of City funds, and
3. The City's engineer's estimate of the total cost of the Construction Contract(s) to construct it exceeds three million dollars.

In determining the \$3 million threshold, the City will consider all Construction Contracts required to complete an integrated construction project and will include design costs for a design-build Construction Contract but will not include costs covered by design consultants or other technical consultants.

Each year on the anniversary date of the day this Agreement became effective, the parties will adjust up or down the \$3 million threshold based on the Consumer Price Index for All Urban Consumers — U.S. city average. The adjusted threshold amount will apply to Construction Contracts in which the City solicits bids or proposals after the effective date of the adjusted amount.

This Agreement does not apply to the following:

1. Any Project in which a federal, state, or other public entity with jurisdiction over, or with authority to approve, all or some portion of the Project prohibits the use of project labor agreements on the Project.
2. Renovation, assessment, repair, and rehabilitation projects and programs such as projects for street resurfacing and re-striping; bridge and soundwall repair and renovation; curb, gutter, & sidewalk repair program; park renovations; building repairs; water meter replacement program; hydrant replacement program; sewer pump station rehabilitation program; and sanitary sewer assessment program.
3. Work required to complete emergency repairs such as water, storm, and sanitary sewer pipeline breaks.
4. On-call contracts for various repairs and minor projects.

Based on an evaluation of recently completed, current, and upcoming capital projects, the City anticipates that approximately 39 projects in the City's Capital Improvement Program (CIP) will be subject to the proposed PLA. It is important to note that not all of these projects are currently fully funded.

Pre-Job Conferences

The City's Project Manager shall convene and conduct, at a location and time mutually agreeable to the Building Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues, at least fourteen (14) calendar days prior to the commencement of any Project work, and the commencement of Project work on any subsequently awarded Construction Contract. The pre-job conference shall include but not be limited to the following subjects: a listing of each Contractor's scope of work; the craft assignments; the estimated number of craft workers required to perform the work; transportation arrangements; the estimated start and completion dates of the work; and discussion of pre-fabricated materials.

Referral

Contractor(s)/Employer(s) performing construction work on the Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory to the PLA.

a. Core Workers

Core Workers are defined as a worker who the Contractor proposes to use for Project work who the Contractor has employed for at least ninety (90) out of the one hundred and twenty (120) working days prior to award of a construction contract and meets the minimum experience and licensure requirements to do the work in question. Core Workers will be dispatched in the following manner: The first one (1) worker will be referred from the applicable Union hiring hall out-of-work list, then one (1) Core Worker shall be selected and referred from the hiring hall, followed by one (1) worker from the hiring hall out-of-work list, and this process shall repeat until such Contractor/Employer's requirements are met or until such Contractor/Employer has hired five (5) such Core Workers for that trade or craft, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the applicable hiring hall out-of-work list. In the event the Contractor/Employer reduces the workforce, such reduction will take place in the reverse order starting with a Core Worker and in the same ratios as was applied in hiring. In addition, at the request of the Building Trades Council or Union, Contractor/Employer shall submit a Core Worker list to the requesting party and shall provide payroll records evidencing the worker's qualifications as a Core Worker.

b. Local Area Preference

The Agreement strives to facilitate employment of Local Area residents and to use resources in the Local Area in construction of the Project. It is the objective of the parties that not less than twenty percent (20%) of all hours worked on the Project will be worked by residents of the Local Area, defined as the City of Milpitas. However, if a Contractor/Employer does not have a sufficient number of City of Milpitas residents to satisfy the goal, the Contractor/Employer may count residents of Santa Clara County toward the goal. The Unions will exert their utmost efforts to recruit sufficient numbers of craft persons to fulfill the referral requirements of the Contractor(s)/Employer(s). To the extent allowed by law, and consistent with the Unions' hiring hall provisions, and as long as they possess the requisite skills and qualifications, residents of the Local Area, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

Apprenticeships

Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts, to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured. In order to increase apprenticeship opportunities for traditionally underrepresented and targeted workers, the parties shall comply with the Targeted Hire Addendum (Addendum B) in the Agreement.

Compliance

It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of Article IX of this Agreement.

Dispute Resolution

All disputes involving the application or interpretation of the proposed Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV and Article XIV, shall be subject to resolution by the grievance arbitration procedures set forth in Article XIII of the Agreement.

All jurisdictional disputes on this Project between or among the Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.

Joint Administrative Committee

In order to ensure the terms of this Agreement are being fulfilled and concerns pertaining to the operation of this Agreement are addressed, the City and the Building Trades Council shall establish a Joint Administrative Committee comprised of an equal number of representatives from the City and the Council. The Joint Administrative Committee shall meet on a periodic basis during the term of construction, at least semi-annually, to assess the implementation of this Agreement, review the progress of the Projects, and facilitate harmonious relations between the parties. Both the City and the Council shall have the right to call a meeting of the Joint Administrative Committee

Next Steps

Based on Council input and direction, staff will negotiate Agreement with the Building Trades Council and bring back to Council for approval.

Policy Alternative:

Alternative: Adopt a Resolution committing the City to negotiate and enter into PLAs for specific future projects, as outlined in the draft Resolution.

Pros: Enables the City to focus staff time and effort towards a limited number of large projects that would benefit from PLAs. This policy alternative could also result in a higher number of competitive bids and lower construction costs for projects not subject to PLAs.

Cons: Does not align with prior Council direction.

Reason not recommended: Does not align with prior Council direction, but Council could provide new direction through adoption of a resolution.

Fiscal Impact:

At this time, although staff anticipates the need for additional resources and staff training to implement and enforce the PLA as well as potential additional construction and project administration costs to account for the additional time, consultants, and effort required from contractors, staff is unable to accurately determine the potential fiscal impacts of this policy at this time. If Council provides direction to move forward with the policy, staff will need to evaluate the impact of the policy on staff and/or consultant costs, number of competitive bids, and construction costs and return to Council with the information.

California Environmental Quality Act:

This action(s), and any potential adoption of a resolution, is not a project subject to the California Environmental Quality Act (CEQA) as it can be seen with certainty that the project does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is more akin to a administrative activity of the government intended to working conditions on public projects in the City pursuant to CEQA Guideline 15378.

Recommendation:

Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement with the Building and Construction Trades Council or consider adopting a resolution committing to negotiate and execute a Project Labor Agreement per project.

Attachments:

Draft Agreement

Draft Resolution

Benchmarking Data