

Commission-Public-Records

From: Jerry Dinndorf <Jdinndorf@agcwa.com>
Sent: Tuesday, January 12, 2016 4:12 PM
To: Commission-Public-Records
Cc: Soike, Tina
Subject: Draft Construction Labor Relations Resolutrion
Attachments: BPPC Draft PLA Comments 010516.docx; Draft_Resolution on Construction Labor v2 policy changes in red (2) JD REVS 010616.docx

Categories: Public Comment

Please distribute the attached memo and Resolution mark up to the Commissioners and in the meeting record when this item comes before them. Can you tell me the schedule for action on this item? Thank you.

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January 8, 2016

To: Ralph Graves

CC: Port of Seattle Commission
Ted Fick, CEO
David Freiboth, Senior Director of Labor Relations
David McFadden, Managing Director Economic Development.

From: Jeff Arviso, Co-Chair, AGC/POS Best Practices Committee

Ref: Draft Construction Labor Relations Resolution

Ralph:

In response to your request to review the referenced resolution the AGC of Washington members of the AGC/Port of Seattle Best Practices Committee and other AGCWA members knowledgeable of Project Labor Agreements (PLA) have prepared a marked up copy of the draft policy you provided with our recommended changes highlighted in yellow (Attached). A summary of our marked up comments is provided below.

General Comments

As you know AGC member contractor companies have extensive experience with PLA's both locally and nationally and have a good understanding of when a PLA is required. Their experience is that PLA's are most effective when reserved for large complicated projects of long duration with multiple trades and significant labor hours of work. The criteria for determining when to use a PLA should result in this outcome.

The previous policy developed by the AGC/Port of Seattle Best Practices Committee for when to implement a PLA for public work recognized that not every project merits a PLA. The vast majority of Port projects including apprenticeship and inclusion requirements have been readily accomplished using standard Port procurement contracts.

With regard to the implementation of PLA's, a long standing issue for our members is the Port negotiates the labor agreements with the Unions without contractors present at the table yet they must implement rules for which they have had no say. AGC members have been negotiating Master Labor Agreements with Unions for decades and have the knowledge, history and experience to negotiate a fair agreement to meet the needs of a specific project. The negotiation of any future PLA's should include contractor representation.

As far as expansion of PLA requirements to private work on Port property, it will likely have a number of consequences:

- PLA's are known to be problematic for small contractors including women and minority firms, who are mostly open shop, seeking to bid on projects since they must conform to union work rules. A low dollar threshold for the consideration of using a PLA and expanding the scope of PLA's to private work will further reduce the number of project where they have the ability to successfully compete.

Further, it will likely negatively impact the Port's goal of creating greater diversity in its commercial retailers at Port properties by increasing their improvement or expansion costs.

- The Port itself should carefully consider the PLA impacts on the commercial value of its leases. Developers will respond to PLA requirements (costs) by seeking concessions elsewhere. For this reason, the Seattle Housing Authority made the decision not to require a PLA for projects built by developers on land sold by the authority. They recognized it would reduce the value of the land and they wanted to maximize the sale price in order to build as much public housing as possible.

Summary of Marked Up Comments

Port Public Works Projects

Evaluate the applicability. "Fiscal Responsibility" should be highlighted as one of the critical elements to emphasize in determining whether to utilize a PLA in order to help ensure projects are delivered at a reasonable cost. We recommended a small change in this language.

*Project complexity...*The language here should be the same as used in the previous policy; *Project size, duration and complexity.*

*Project presents specific safety...*We do not understand how a PLA better addresses safety concerns. Every project, PLA or not must have a safety plan in place.

Other considerations... The number of labor hours by trade is a critical factor in determining the need for a PLA as well as for the calculation of apprentice and potential priority worker requirements.

For contracts of... If there is to be a default value at all it should be 100 million dollars or greater and a minimum duration of 2 years. PLA's are not cost effective for projects of lower value and less duration.

Further, the lower the default value, the more difficult it becomes for Open Shop Contractors, particularly, women and minority contractors who are smaller and mostly open-shop to compete for the work. Union work rules, representation fees, core worker requirements and payment into Union health and benefits trusts as contained in the **North Satellite Arrival Terminal PLA** present barriers that make it difficult for these companies to become a successful bidder on a project.

Consider the benefits... As you know Seattle has implemented a **Priority Hiring Program** and the Port has this requirement on the **North Satellite Arrival Terminal**. AGC contractors working on City projects report that not all trades enthusiastically support this requirement and it is getting increasingly difficult to meet the requirements for qualified workers due to lack of availability

As part of AGC's participation in developing the Seattle program, we calculated the labor hours available for all City projects in 2014 and concluded that there were not enough hours by trade to support the preferred entry requirements of the program for apprentices from economically distressed zip codes.

We strongly support the objective of creating more opportunities for disadvantaged workers but for the program to be successful, it must include the Port, the City and Sound Transit.

The port would be prudent to demonstrate the value and assess the cost of this unknown program before including it in any of its future public works projects let alone expanding it to private work. *(These comments apply to the following two sections as well.)*

Projects Paid by Tennent Reimbursement

Encourage... AGC is concerned about the expansion of the Public Works Act requirements such as prevailing wage into areas that may not be covered by the law. We believe this invites arguments regarding the use of PLA's on private projects and its attendant prevailing wage rate requirements for work on Port property.

If the private entity is responsible for procuring and employing the contractor to perform the work, they should have the flexibility to choose procurement and labor practices that best suit their business practices for accomplishing the work which could include the use of a PLA. They should not perceive an obligation to use a PLA as a condition for securing or renewing the lease.

Require the payment... Provisions "requiring" the payment and reporting of prevailing wages should be clarified. It is understood that payment of prevailing wages is required

by law on Public Works jobs but that may not be the case on leased property. If the payment of prevailing wages will be required, it should be clear that it is a contractual requirement and does not constitute an agreement by the parties that the Public Works Act applies as a matter of law.

Projects Constructed on Port Property at the Full Cost of the Tenant.

State the Port's support... This should apply only for projects greater than \$100 million dollars with a duration of 2 years or more.

Require of proposers... This should only be a requirement if the developer chooses to proceed with a PLA.

Evaluate the (labor measures) plans... Developers will consider this as a de facto requirement for winning the project and adjust their proposal accordingly or choose not to participate at all. The result will be a smaller return for the Port than might have been realized without the encouragement of a PLA.

New section 4... Currently the Port negotiates the PLA with the unions absent the contractor yet the contractor is responsible for carrying out requirements in the PLA for which the contractor has had no say in developing. Often these requirements are contrary to or exceed provisions in our Master Labor Agreements negotiated by AGC with the unions. If it is determined it is in the best interests of the Port to impose a PLA, the port needs to include the prime contractor at the table selected to perform the work.

Item Number: _____
Meeting Date: _____

Draft Resolution No. nnnn

A Resolution of the Port of Seattle Commission directing practices for construction labor for projects located on property of the Port.

WHEREAS, the Washington State Legislature in 1911 authorized local voters to create publicly owned and managed port districts as independent government bodies run by directly elected port commissioners with powers to acquire and manage resources that promote trade and commerce;

WHEREAS, constructed transportation, industrial and administrative facilities such as terminals, roads, berths, runways, warehouses, parking garages and warehouses are critical to accomplishing the Port's transportation and economic development missions;

WHEREAS, expanding and diversifying operations as well as need for facilities renewal and replacement drive an ongoing Port program of capital development;

WHEREAS, effective and economical execution of the Port's capital program depends on a healthy and diverse market of general contractors, sub-contractors and suppliers;

WHEREAS, to ensure diverse competition and provide fair access to economic opportunity that market should include small, minority-owned and women-owned businesses who successfully compete for a share of direct and subcontracted Port construction work;

WHEREAS, Port capital program success depends also on availability of a skilled, experienced, capable construction labor workforce;

WHEREAS, Project Labor Agreements can facilitate drug testing to help ensure construction workplace safety;

WHEREAS, to meet labor supply needs and to ensure equality of opportunity the construction labor workforce should encourage participation by women and minorities;

WHEREAS, for timely and efficient delivery of construction projects the Port has an interest in avoiding work stoppages;

WHEREAS, apprenticeship and pre-apprenticeship programs play a key role both in providing access for individuals aspiring to good construction jobs and in supplying sufficient trained and capable labor to meet the construction needs of the Port and other public and private facilities owners;

WHEREAS, RCW 39.12 requires the payment of prevailing wages on all public works contracts of government entities such as the Port;

WHEREAS, some projects constructed on Port property are contracted for by the Port under the provisions of RCW 39.04 and other applicable statutes, some projects are contracted for by Port lease tenants with all or part of the cost reimbursed by the Port and some are constructed entirely at the cost of Port tenants; and

WHEREAS, Project Labor Agreements (PLA), also known as Community Workforce Agreements (CWA), authorized under the National Labor Relations Act (NLRA), 29 U.S.C., provide a means for aligning the interests of public owners such as the Port with those of construction labor unions.

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Seattle as follows:

1. For major construction contracts (excluding small works executed per RCW 39.04.155) the Port shall:
 - a. Evaluate the fiscal impacts and labor needs for and against the applicability of a PLA for each contract according to the following criteria:
 - i. Project needs for labor continuity and stability
 - ii. Project size duration and complexity
 - iii. Value of having uniform working conditions
 - iv. Potential impact of PLA on small business opportunities
 - v. Past labor disputes or issues indicating risk of delay
 - vi. Potential PLA impact on project cost
 - vii. ~~Project presents specific safety concerns to the public~~
 - viii. Value of an established PLA grievance process to resolve labor-management or jurisdictional disputes
 - ix. Other considerations (identify). ~~Anticipated project labor hours by trade.~~
 - b. For contracts of value greater than \$10 ~~\$100 million dollars~~ and a duration of 2 or more years the default assumption will be in favor of employing a PLA. ~~For contracts less than \$100 million dollars the default assumption will be to use regular labor practices unless most of the criteria in 1.a above indicate the need for a PLA.~~
 - c. Commission approval is needed to employ a PLA.
 - d. Require the payment and reporting of prevailing wages per RCW and State

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- Department of Labor and Industries requirements.
- e. Establish in contracts and PLAs appropriate apprentice hiring goals.
- f. Establish in contracts and PLAs appropriate aspirational women and minority apprentice hiring goals.
- g. ~~Consider the benefits and applicability of locality hiring preferences.~~

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2. For construction contracts paid for entirely or in part by the Port through tenant reimbursement or other means, the Port shall:

- a. ~~Encourage tenants to examine the applicability of a PLA for each contract according to the criteria in (1.a.) above.~~
- b. ~~Contractually~~ Require the payment and reporting of prevailing wages consistent with per RCW and State Department of Labor and Industries requirements. [Already in place at the airport but new elsewhere.]
- c. Encourage the establishment in contracts and PLAs of appropriate apprentice hiring goals.
- d. Encourage the establishment in contracts and PLAs appropriate aspirational women and minority apprentice hiring goals.
- e. ~~Encourage consideration of the benefits and applicability of locality hiring preferences.~~

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3. For construction contracts performed on Port property at the full cost of tenants, the Port shall:

- a. In requests for proposal (RFPs) establishing new leases:
 - i. State the Port's support for the construction labor measures described in (1) above ~~for projects greater than \$100 million dollars and a duration of two or more years.~~
 - ii. ~~If proposers choose to implement a PLA, require of proposers~~ their plans for implementing any or all of the measures.
 - iii. ~~Evaluate the plans as an element in determining the winning proposer.~~
- b. Incorporate into the lease with the winning proposer the labor harmony measures in their proposal.
- c. ~~Similarly encourage the employment by Port tenants of the measures described in (1) above for construction contracts under non-competitive or existing leases. This needs clarification, not all of 1 is applicable. Eliminate or clarify consistent with revisions above.~~

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- e.4. ~~For projects that meet the criteria in 1.a. and b. for use of a PLA, the Agreement shall be negotiated between the Port, the Prime contractor selected to perform the work and the applicable unions.~~

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ADOPTED by the Port Commission of the Port of Seattle at a duly noticed meeting thereof, held this ____ day of _____, 2015, and duly authenticated

in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

Port Commission

DRAFT