County of Los Angeles
CHIEF EXECUTIVE OFFICE
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
http://ceo.lacounty.gov

WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

November 9, 2010

To: Supervisor Gloria Molina, Chair
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

MARTIN LUTHER KING, JR. MEDICAL CENTER REPLACEMENT PROJECT MULTI-SERVICE AMBULATORY CARE CENTER PROJECT RECOMMENDATION NO. 4 - AUTHORIZE NEGOTIATION OF A PROJECT LABOR AGREEMENT (ITEM NO. S-1 OCTOBER 19, 2010, AGENDA)

On October 19, 2010, your Board referred the subject recommendation back to my office, and requested a report back with more information regarding the proposed Project Labor Agreement (PLA), including, among other things, better estimates of cost, how the PLA will be used, detail on how the PLA would be implemented, and with whom we would negotiate.

Under the recommended action, the PLA would be used exclusively for the Multi-Service Ambulatory Care Center (MACC) project. After it is approved by your Board, it would become part of the contract with the design-builder, and would establish the framework for how labor is provided for the project, including local worker hiring. As part of the negotiations, we will seek to obtain terms that establish labor harmony on the project, and also support programs such as the Small Business Enterprise (SBE) program approved by your Board. We plan to negotiate with both the Carpenters and the Building Trades, and to attempt to have both groups sign any potential PLA as a means of attempting to minimize jurisdictional conflicts during construction.

Background

Owners often want to establish a labor plan or framework for management of labor relations for the construction of a large project or a Capital Improvement Program (CIP). This is often done through the use of a PLA (sometimes alternatively referred to as a

Project Stabilization Agreement), which is an agreement that has been negotiated and entered into between an owner, and International Unions and Local Unions, and their related Trades Council.

The purpose of a PLA is to establish a specific agreement to construct a particular project or projects that delivers on the owner's objectives. These objectives can be many and varied. In the "conventional" view, these agreements endeavor to provide for work force stability and standardized work rules that promote the timely completion of the project without costly delays or interruptions. This is accomplished through negotiating an effective "No-strike/No-lockout" provision, and an effective dispute resolution procedure to immediately resolve disputes. This, along with standardized terms and working conditions, and the payment of prevailing wage rates, aims to promote labor peace and harmony between the contractors and unions for the projects involved.

More recently, under the more "progressive" view of PLAs, they have been used them to deliver on a range of public policy objectives. Generally, this has meant the inclusion of "Workforce Development Programs" that focus on local hire, business outreach, and training. The PLA can serve as a means to reach out to the local community where the project is being built.

PLAs have been utilized in the construction industry for many years; allowing contractors to know their labor costs before bidding and to establish an available supply of skilled craftsmen. PLAs were upheld as legal for public agencies in the 1993 Boston Harbor case by the United States Supreme Court, and by the California Supreme Court in the "ABC vs. SF Airports, 1999".

PLAs have since been negotiated and implemented by the Metropolitan Water District, Riverside Community College District, City of Los Angeles, Port of Long Beach, City of Los Angeles Community Redevelopment Agency, Los Angeles Unified School District, and Los Angeles Community College District. Other jurisdictions have prohibited the use of PLAs, including the cities of Oceanside, Chula Vista, and most recently, the County of San Diego.

PLA Terms and Conditions

Based upon discussions with other jurisdictions and our consultants, we have compiled the following list of the typical terms and conditions included in PLAs:

1. **No-Strike/No-Lockout provision:** Unions will not engage in strikes, slowdowns or disruption of work and contractors will not cause, incite, encourage, condone or participate in any lockout of employees.

2. **Dispute resolution procedures for grievances/jurisdictional disputes:** Procedures are established in the PLA to effectively resolve any disputes, misunderstandings, contract interpretations or alleged violations of the PLA. One of the most divisive issues among construction unions in today's labor market is jurisdiction. This is a major source of contention between the BCTC and the Carpenters Union and is discussed in more detail later in this memo.

3. **Payment of prevailing wages and fringe benefits, holidays, travel, and overtime:** The PLA may include specific language regarding payment of applicable prevailing wage rates, fringe benefits, holidays, travel, and overtime (the PLAs provide that wages and benefits shall be consistent with applicable prevailing wage rate determinations).

4. **Standardized hours of work and shifts:** The PLA may include specific language regarding hours of work and shifts (subject to and consistent with applicable law).

5. **Scope of work:** The PLA includes a specific description of the project(s) that would be covered or not covered under the PLA.

6. **Safety/Substance abuse policy:** The PLA may establish reasonable substance abuse testing procedures and regulations to the extent permitted by and consistent with applicable law.

7. **Management rights:** Contractors and the owner have the sole and exclusive right and authority to oversee and manage construction operations on the project without any limitations unless expressly limited by a specific provision in the PLA.

8. **Union rights/Union recognition:** Contractors recognize the Trades Council and signatory local unions as the exclusive bargaining representative for all employees working on the project subject to the PLA, including construction workers who are not members of a union (usually referred to as "core workers"). The unions will ask for the right to collect dues and fees from all workers working under the PLA.

9. **Subscription or Participation Agreements:** Unions may ask that each contractor that is not already a signatory to a union collective bargaining agreement be required to sign a subscription or participation agreement requiring them to make contributions to the applicable union trust fund.

10. **PLA Administrator's duties/responsibilities:** Actively administers the PLA, including monitoring compliance with the PLA, acting as a facilitator/mediator when requested, and oversees disputes resolution procedures on behalf of owner.

11. **Labor/ Management and Cooperation:** The parties to the PLA will form a joint committee to promote harmonious and stable labor management relations on the project, ensuring effective and constructive communication between labor and management parties, to advance the proficiency of work in the industry, and evaluate and ensure an adequate supply of skilled labor for the project.

12. **Apprentices**: Contractors are required to utilize apprentices on the project (enforced by the Division of Apprenticeship Standards). Unions will ask that all apprentices utilized at PLA-covered projects be referred only from State-approved apprenticeship programs which are jointly administered by labor (unions) and management (contractors). Community college and non-union apprenticeship programs may be excluded from this requirement.

13. **Community work force development/SBE/etc.:** The PLA may include target goals or requirements related to developing and hiring community workforce, and including small businesses in the construction project.

14. **Hiring procedures/core work force**: Non-union contractors may be required to utilize some union workers on the project along with its core workforce (generally a 1:1 ratio up to a designated maximum of core workers). Hiring halls are not permitted to discriminate between union and non-union workers.

15. **Turnover**: Final acceptance of completed work. As areas of covered work are accepted by the client/owner, the PLA has no further force or effect on such areas.

16. **Duration**: The PLA establishes an effective date and an expiration date for the PLA.

17. **Intent and Purpose**: The PLA outlines its primary objectives/goals.

18. **Letter of Assent**: A one-page document that every contractor and subcontractor working on the project must sign, which confirms the conctractors' acceptance of the PLA's terms and legally binds them to the PLA for a specific project.

19. **Schedule A's (craft local master agreement)**: Local collective bargaining agreements of the Signatory Unions having jurisdiction over work on the project. These are attached as exhibits to the PLA.

A public agency, in adopting PLAs, will be acting as a "market participant" rather than a regulator. To secure the maximum benefits negotiated in the PLA, it appears beneficial for owners to strive for effective monitoring and administrative compliance with the PLA; this is often achieved by retaining a PLA administrator to act on their behalf.

PLA Participants

Unions

Unions represented by the Building and Construction Trades Councils have been very active in pursuit of PLAs. They have been very effective in the Los Angeles area in securing PLAs with some public agencies as compared to other regions in Southern California. Some PLAs have been long-term relationships with successful results.

The issue of jurisdiction is very important to the unions; the unions also ask that PLAs provide a vehicle by which to address many issues that are of concern to the unions as well as facilitating work force development programs.

Union Jurisdiction

One of the most divisive issues among construction unions in the current market is that concerning different unions' the "jurisdiction" to perform defined scopes of work on a project. The Carpenters Union is no longer a part of the Building and Construction Trade Council (BCTC). The BCTC will ask that all union jurisdictional disputes (as defined below) be mediated and resolved using the National Building and Construction Trades Department's jurisdictional dispute resolution policy and procedure booklet, or "Plan". The Carpenters Union typically does not sign PLAs that require resolution of jurisdictional disputes using the Plan. As such, dual negotiations usually must occur if the Carpenters Union is to be considered for PLAs. Typically, a jurisdictional dispute involves the situation where two different trade unions each contend that a particular work task must be performed only by its own members and not by another craft.

Contractors

Design-Build contractors usually do not initiate PLAs unless they are in a region that is highly unionized. Even then, some have not pursued a PLA for their work. Some try to leave the decision up to their involved subcontractors to decide on an individual basis. Each of the general contractors that is prequalified for the MACC project has previous experience building projects with or without PLAs. If your Board decides to proceed

with a PLA for the MACC project, we plan to collaborate with these contractors as we develop our negotiating position.

As mentioned above, the issue of how a PLA impacts non-union contractors and subcontractors must always be considered. Some non-union contractors do bid on PLA covered work as the downturn in the economy has hurt the contracting community. Contractors involved in PLAs that are non-signatory/non-union contractors are required to sign letters of assent binding them to the PLA for the PLA covered job they are working on. It does not apply to their non-PLA work. Some non-union contractors have asserted that while they are not explicitly excluded from work under a PLA, some of the terms and conditions of PLAs make it difficult for them to be competitive.

Estimated Development and Implementation Cost

In the Board letter, we reported that the steps necessary to negotiate and implement a PLA could increase the project cost by approximately $1 million, and your Board requested that we report back with better estimates of the cost. Based upon further review and refinement, we are now estimating a potential cost impact of up to $810,000. This cost is comprised of three elements:

- the cost to negotiate the PLA;
- the costs associated with delaying construction of the MACC; and
- the cost to manage the implementation of the PLA over the two-year duration of construction.

The cost for negotiations is estimated at $110,000, including approximately $80,000 for Parsons to conduct the negotiations of the PLA in conjunction with County staff and $30,000 for outside legal counsel to support County Counsel in review of the final agreement for approval by your Board.

In addition, as we reported to your Board, negotiating and gaining your Board's approval of a PLA could extend the schedule for the MACC project by approximately four months. As a result, we need to shift certain items of construction from the MACC project to the Inpatient Tower project to assure that they are completed in time for the opening of the hospital. We estimate that the cost of these revisions to the plans will result in an increased fee for the architect of roughly $50,000. Also, this increased duration for the MACC project will result in increased project management services in the amount of approximately $250,000. These costs are based on the estimated schedule of four months and could shift based on changes in the schedule.

We also estimate that the cost of implementing the PLA will not exceed $400,000 over the two-year duration of construction. Implementation costs could be lower based on the actual level of services that are required. Other agencies with whom we have spoken have a variety of approaches to managing the implementation of PLAs during construction; including using in-house resources, consultants, or attempting to shift the implementation responsibilities to the general contractor. In order to assure the effectiveness of the PLA and the successful delivery of construction, we need to have people with proven expertise in implementing PLAs, and while our approach will likely develop over the life of the project, at this point, we plan to retain Parsons for this work.

Pro's and Con's

The question of whether PLAs are effective/efficient is a hotly debated topic. Both advocates and opponents of PLAs have commissioned numerous studies to substantiate and validate their conflicting positions. A review of many of these studies, however, reveals that a consensus has yet to be attained among industry participants and academics with respect to the cost impacts, benefits, and drawbacks of PLAs on project budgets and objectives. The following describes the general views of both the advocates and opponents of PLAs.

Advocates for PLAs

PLAs have been demonstrated to be a very useful construction management tool for cost savings, for on-time, on-budget, and quality construction. PLAs make sense for public works projects because they promote a planned approach to labor relations, allow contractors to more accurately predict labor costs and schedule production timetables, reduce the risks of shoddy work and costly disruptions, and encourage greater efficiency and productivity. PLAs provide job stability and prevent costly delays by:

- providing a uniform contract expiration date so that the project is not affected by the expiration of various local union agreements while the PLA is in effect;
- guaranteeing no-strikes and no-lockouts;
- providing alternative dispute resolution procedures for a range of issues; and

- assuring that contractors get immediate access to a pool of well-trained and highly-skilled workers through union referral procedures during the hiring phases and throughout the life of the project.

On a typical construction project operating without the benefit of a PLA, there can be 15 or more different collective bargaining agreements covering work being performed by various crafts. As many as 15 separate union contracts are not generally coordinated in any meaningful way and this leads to certain inefficiencies that can be addressed by a PLA.

A PLA can also establish a framework for community workforce development and business outreach, which may include target goals or requirements related to developing and hiring community workforce and including small businesses in the construction project.

Opponents of PLAs

The main arguments made by opponents to using PLAs are that PLAs increase construction costs and are anti-competitive by excluding or discouraging non-union contractors from bidding on public construction projects.

Opponents assert that PLAs increase construction costs. Because a PLA sets standard labor costs and work rules, non-union contractors cannot win bids based on lower costs. If a PLA requires contractors to hire workers through a union hiring hall, contractors also may not be able to use a portion of their own workers. Under a PLA, contractors are required to make contributions to the union fringe benefit programs. This may increase the cost of non-union contractors because they may need to continue to pay costs to maintain their own company benefit plan.

In addition, employees of non-union contractors usually gain no benefit from contributions made to the unions' benefit plans because the non-union employees rarely build up enough time to be vested in the union programs. In addition, non-union employees would be required to pay applicable monthly working dues, non-initiation or application fees uniformly required for membership in the union.

PLAs can discourage some non-union or open shop contractors from bidding on a project because of the different financial conditions and work rules that a PLA would impose upon them. A reduction in the number of bidders can reduce competition and tend to increase project costs.

Legal challenges have been made against PLAs claiming that PLAs are preempted by related state or federal legislation. These claims generally fall into one of the three areas: preemption by federal labor law, preemption by state "right to work" laws, and preemption by state competitive bidding laws. However, to date, PLAs have been upheld in the State of California.

Exposition Line Construction Authority

During the discussion before your Board, Supervisor Yaroslavsky requested that we speak with the Exposition Line Construction Authority (Expo) regarding its experience with PLAs. As you know, the first phase of the Expo project did not have a PLA, and Expo is presently in the process of negotiating a PLA for their Phase II project. Expo primarily has sought a PLA for Phase II in order to assure work force stability, and to enhance the implementation of its local hiring goals. Expo plans to include a SBE program as part of the Phase II construction. According to their staff, Expo understands that many SBEs that would typically work on a rail project are not union contractors.

While typical PLAs do not explicitly preclude non-union contractors from working on the project, some of the common PLA provisions, including the worker referral/core workers provisions, and the exclusive use of joint union/management apprenticeship programs, can make it difficult for small non-union contractors to compete for the work. Expo staff is presently attempting to negotiate terms for the proposed PLA to address these concerns. Because your Board has approved a SBE program for the MACC, this issue would have to be carefully addressed as part of any proposed PLA.

Also, because rail projects generally utilize only a portion of the trades, versus all of the trades needed to construct a building, a PLA for a rail project must contain special provisions to assure clear jurisdiction over elements of work to avoid labor disputes. They are continuing to negotiate this point as well. While jurisdictional issues are always key in any PLA, this issue would be different for the MACC than for a rail project.

Should you require additional information regarding PLAs, your staff may contact David Howard, Public Works, at (626) 300-2300 or Jan Takata of my office at (213) 974-1360.

WTF:BC
DJT:DH:zu

c: Executive Office, Board of Supervisors
County Counsel
Public Works