



Policies and Procedures No. 66

Board Approval: 10/14/2021

SUBJECT:

PROJECT LABOR AGREEMENTS

PURPOSE:

The purpose of this policy (the Policy) is to establish guidelines for the use of a Project Labor Agreement on MTS construction projects that exceed \$1 million.

BACKGROUND:

A Project Labor Agreement (PLA) is a collective bargaining agreement between a public agency planning to authorize and fund a construction project – or the contractor or subcontractors on that project – and the unions that represent the pools of skilled labor that are needed for that project. A PLA spells out the specific terms and conditions that govern the employment of labor on a project for the duration of the project.¹ It is the intent of the Board to establish a PLA requirement for all construction projects exceeding \$1 million.

PROCEDURE:

MTS will utilize the following process to ensure the use of a PLA on construction projects covered by the Policy:

66.1 DEVELOPMENT OF A PLA

- a. Construction projects covered by the Policy must be governed by a PLA consistent with the following guidelines:
 - i. Executive Order (EO) 13502. EO 13502 explicitly allows the use of PLAs on federally funded projects, including the projects financed by the Federal Transit Administration. Specifically, EO 13502 states that the policy of the Federal government is to encourage the consideration of PLAs for large-scale construction projects, recognizing the benefits that PLAs can offer in promoting the efficient and expeditious completion of these projects. Any project labor agreement using FTA assistance should:

¹ Definition of PLA cited from Federal Transit Administration (<https://www.transit.dot.gov/foia/fta-project-labor-agreements-resource-page>)



- Bind the contractor and all subcontractors engaged in construction on the construction project through the inclusion of appropriate clauses in all relevant solicitation provisions and contract documents;
 - Allow the contractor and all subcontractors, including small and disadvantaged businesses wishing to compete for contracts and subcontracts to do so without regard to whether they are otherwise parties to collective bargaining agreements;
 - Contain guarantees against strikes, lockouts, and similar job disruptions;
 - Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
 - Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
 - Fully conform to all applicable statutes, regulations, Executive Orders, and agency requirements. This includes, specifically, all applicable requirements codified by Title 49 of the United States Code and Title 49 of the Code of Federal Regulations, such as the USDOT disadvantaged business enterprise (DBE) program, the requirement for full and open competition for all procurements, and the prohibition on exclusionary or discriminatory specifications in procurements.
- ii. Public Contract Code (PCC) Section 2500. PCC Section 2500 states that a public entity may use, enter into, or require contractors to enter into, a PLA for a construction project only if the agreement includes all of the following taxpayer protection provisions:
- The agreement prohibits 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;
 - The agreement permits 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;
 - The agreement contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project;
 - The agreement contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project; and

- The agreement provides that disputes arising from the agreement shall be resolved by a neutral arbitrator.
- iii. The MTS Board of Directors reserves the right to establish policy goals for PLAs. This includes, but is not limited to, goals that: aim to preserve local employment opportunities in construction; and encourage participation by DBE and Small Business Enterprises (SB).
- iv. A covered construction project under this Policy will be determined by whether the engineer's estimate is over \$1,000,000.

66.2 PLA NEGOTIATIONS AND ADOPTION OF PLA

- a. Based on the guidelines listed in 66.1, MTS staff will engage in PLA negotiations with the San Diego County Building and Construction Trades Council on projects covered by this Policy. Once an agreement has been reached in PLA negotiations, the PLA must be approved by the MTS Board. Upon approval by the MTS Board, the PLA will take effect by the effective date set forth in the PLA. A copy of the PLA will then be included in any applicable solicitation documents for a construction project covered by this Policy.

66.3 MANAGEMENT OF PLA

- a. MTS may engage third party contractor services for the development, implementation, and management of any PLA, in conformance with this Policy.
- b. To monitor performance and determine whether the agency's goals are being met by PLAs on MTS projects, an annual report regarding PLAs on MTS projects will be provided to the Board.

Original Policy Adopted on 10/14/2021.