

From: ericchristen < >
Sent: Tuesday, October 16, 2018 1:45 PM
To: The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10
Cc: City Clerk; Webmaster Manager; mkendall ;
mnletters ; jenniferw ;
eclendaniel ; dborenstein
Subject: Today's Vote on a Union Project Labor Agreement for All City Work

SUBJECT: Item 4.2 Approval of Project Labor Agreement (PLA) 18-1376

Dear San Jose City Council:

At your meeting today (October 16, 2018) [you will consider the long debated issue of Project Labor Agreements on all city projects worth \\$3 million or more](#). Having been backed into this corner by union bosses after having already approved a PLA that was fair (they didn't like that) and to which their response was to use extortion to force this union-only PLA, we would encourage the City to work to protect all workers.

In your negotiations you have already gotten the unions to agree to recognizing all state approved apprentices, which is a significant victory. Sadly you have agreed to limiting a non-union contractor to using only 5 of their employees on a PLA covered job, which of course if absurd.

There is one other provision found in all PLAs that is highly discriminatory too and we encourage the City to fight to exclude it and that is the "payment of benefits" provision. Forcing union-free workers to pay into union health, welfare and pension plans they will never benefit from when they already have such benefit packages set up with their companies is abhorrent. How to remedy this?

We suggest that the PLA address the matter of fringe benefits by including an expansion of exemption language that appears in the University of New Mexico Hospital West Wing Construction PLA, approved in May 2004. Although the language in the New Mexico PLA only applies to retirement plans, the City should expand the language to include employer payments for employee benefit plans included as part of prevailing wages as defined in Section 1773.1 of the California Labor Code.

Here is the language from the New Mexico PLA:

A contractor that is not a signatory to an existing collective bargaining agreement with any Union having jurisdiction over the Project and that has established and/or is making employer contributions to a retirement plan for its employees, may continue to make employer contributions to such plan on behalf of each of its "regular employee workforce" employed under this Agreement pursuant to 10.2 above, and for such other employees of the Contractor

working under this Agreement who meet the criteria below, in lieu of making employer contributions to a retirement plan pursuant to 14.3, provided the following conditions are met:

- (i) such Contractor's plan is a bona fide plan and in effect at the time that the Contractor commences Project work and has been in effect and applicable to the Contractor's employees, whether working on private or public projects, for the proceeding twelve (12) months;*
- (ii) the Contractor contribution amount represents the actual cost of the benefit (expressed as an hourly contribution) to the Contractor, and that is consistent with applicable laws related to wages and employee benefits; and*
- (iii) the employee on whose behalf the Contractor contribution is made is an active participant in the Contractor plan at the time of his initial employment on the project, or was an active participant in the plan at the time of his last employment with the Contractor.*
- (iv) Any difference between the total hourly contribution to a Contractor retirement plan under this section and the Contractor contribution due to the corresponding fund under 14.1 and 14.3, shall be paid directly to the employee as part of his paycheck for wages earned on the Project.*
- (v) For purposes of this Section 14.4, a bona fide retirement plan qualifying for recognition under 14.4(a) shall be a tax-qualified plan, subject to ERISA, and have a current SPD available for review. The Contractor shall advise the Project Labor Administrator and the affected Union(s) at least five (5) working days prior to exercising its rights under this section 14.4 and provide the Project Labor Administrator with such information as is necessary to demonstrate the appropriateness of the Contractor's utilization of this section.*

Other provisions to consider having included in your PLA:

Annual Review and Sunset Clause

Such a clause was included in the 1999 PLA for Los Angeles Unified School District, which contracted with the independent accounting firm of PriceWaterhouseCoopers to conduct a financial evaluation of the PLA. The clause was included as follows:

Section 3.5 The parties recognize that the District has elected to enter into this Agreement in expectation of projected cost savings. As such, the District shall enter into this Agreement on a trial basis for the duration of the first identified set of projects undertaken. This Agreement shall expire at the end of one year unless the District and/or Council demonstrate that expected economic savings to the District have materialized at a level sufficient to justify continuing the Agreement. Such a termination shall render all provisions of this Agreement completely null and void for all purposes.

Simple Sunset Clause

One example of such a sunset clause comes from the Orange County PLA, which the Orange County Board of Supervisors voted to terminate at the end of 2005:

21.2 The Agreement shall continue in full force and effect until December 31, 2005. The Agreement will automatically renew for an additional five (5) years unless the parties, one and/or both, notify each other ninety (90) days prior to the original expiration date of the Agreement, of the intent to terminate or renegotiate the Agreement.

Competitive Bid Requirement

In order to protect the city of San Jose from a reduced number of bidders resulting from a PLA, the PLA should contain a provision requiring covered work to be rebid without a PLA requirement if the City does not receive bona fide bids on that work on or before the deadline for receiving such bids from at least three (3) persons, firms, or corporations.

This is a sad day for the city of San Jose but a day that can be made less so with key provisions in the PLA being included and excluded.

Sincerely,

Eric Christen
Executive Director
Coalition for Fair Employment in Construction