

Executive Summary

In 2009, the Federal Government, through Executive Order 13502, reversed an earlier order and now recommends that all federally funded projects with a total installed cost greater than \$25m require the use of a project labor agreement (PLA).

As part of their review for the procurement program for Phase 2 of the Dulles Corridor Metrorail Project (DCMP) the Metropolitan Washington Airports Authority (MWAA) is currently contemplating whether requiring the use of a project labor agreement will benefit the project.

By enabling both union and non-union contractors to bid work on an equal footing (they have the same wage rates) and eliminating the risk of work stoppages due to labor unrest, the project can be protected from costly labor related delays and is assured access to adequate numbers of skilled craft. The labor unions, wanting to ensure full utilization of their hiring halls for the project, will likely accept changes in standard work rules (as they have done on Phase 1). This will have the net effect of lowering the overall labor costs for the project. Furthermore, MWAA can provide support for local businesses by adding project labor agreement requirements to use local labor and contractors, thereby keeping tax dollars in the community.

It should be noted that a project labor agreement was implemented by Dulles Transit Partners (DTP), the design-build contractor, and is currently in force on Phase 1. DTP has confirmed that the agreement, as specifically negotiated for this project, has been an effective instrument for:

- establishing a predictable, competitive basis for pricing labor costs;
- ensuring a steady supply of trained and skilled workers during construction of the project; and
- eliminating labor problems that had the potential to threaten the efficient and timely completion of a project.

1.0 Background

The Dulles Corridor Metro Project, Phase 2, is an 11.6 mile extension of the DCMP Phase 1 project. It extends from Wiehle Avenue in Fairfax County, through Washington Dulles International Airport and terminates at Route 772 in Loudoun County, Virginia.

As part of the Phase 2 contract procurement process, the Metropolitan Washington Airports Authority is contemplating requiring that the winning contractor implement a project labor agreement for the design and construction of the Phase 2 project.

The paper covers:

- a summary of Executive Order 13502;
- a definition of a project labor agreement;
- the experience of Phase 1; and
- summary.

2.0 Project labor agreements (PLAs)

On February 6, 2009, President Obama signed Executive Order 13502. This Order encourages Federal agencies to require project labor agreements (PLAs) on Federal and federally funded construction projects with a total installed cost in excess of \$25m. This Order repealed the previous Order 13202 signed by President Bush, that had prohibited the Federal Government from requiring such labor agreements. Excerpts from Executive Order 13502 indicate that the goals of these agreements are to provide a predictable basis for

pricing labor costs during bidding, to ensure a steady supply of labor during execution, and to eliminate labor problems that can threaten the efficient and timely completion of a construction project.

Excerpts from Executive Order 13502:

Section 1. Policy.

- (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination among various employers or uncertainty about the terms and conditions of employment of various groups of workers can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.
- (b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

Section 2. Definitions.

- (c) The term “large-scale construction project” as used in this order means a construction project where the total cost to the Federal Government is \$25 million or more.
- (e) The term “project labor agreement” as used in this order means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

Project labor agreement definition

Project labor agreements are designed to provide a uniform labor policy for all construction workers involved in the building of a specific project. They can be negotiated between a private or public owner or a contractor and the applicable labor organizations having jurisdiction over work performed in the project area. In PLA negotiations, labor organizations collectively bargain with the entity that controls the work. The PLA typically addresses wage rates, benefits, working conditions, and the dispute resolution process. The agreement will also contain language whereby the labor organizations agree to use the dispute resolution procedure and forego strikes and other work actions in the event of a disagreement. This has the effect of creating both schedule and budget certainty and enables the project to be completed on schedule and in a cost-efficient manner. The Heavy & Highway Agreement and the site-specific Dulles Addendum is an example of a PLA. The PLA allows work to be subcontracted to merit and open shop firms.

What is covered in a project labor agreement?

Project labor agreements address those matters that are deemed critical to a project's success: meeting tight construction schedules and budget requirements. They protect an owner's rights by ensuring the continuous prosecution of the work and are advantageous to the work force because they provide work opportunities for both union and non-union labor alike.

In general, public and private PLAs contain language addressing the scope and length of agreement, labor/management committee, management rights, non-discrimination clauses, no strike-no lockout clauses, jurisdictional dispute resolution procedures, and working conditions. PLAs can also contain language addressing project safety, training, drug testing, minority participation, and the pre-qualification of bidders.

PLAs often address specific issues such as staggered starting times, breaks, uniform holidays, parking, use of staging areas, on-site transportation, restrooms, and equipment security. Normally, a government agency or owner would not want to be drawn into disputes concerning these types of operational matters; however, these are exactly the types of issues that create work stoppages and result in significant cost and schedule overruns. A PLA provides a pre-agreed set of working rules and wage rates and includes a mechanism for resolving disputes quickly and without impacting work progress.

PLAs typically provide for job referrals through union hiring halls and contain a union security provision. It is important to note, however, that these provisions do not restrict employment opportunities to union members or require employees of non-union contractors to become union members. Instead, the PLA has the effect of creating a single project labor organization whose members consist of all the union and non-union contractors and labor organizations doing business with the project. Through a "Letter of Assent," all contractors, subcontractors, and labor organizations are then required to abide by the terms of the PLA.

What is the benefit of a project labor agreement to the project?

The project's interests can be protected by specific PLA language to ensure best value for the project and strict adherence to budget constraints and construction schedules. The project is then delivered as designed, when needed, and without any surprises.

In northern Virginia's highly competitive market for skilled labor, guaranteed access to skilled craftsmen is critical to the success of any project. By enabling both union and non-union contractors to bid work on an equal footing (they have the same wage rates) and eliminating the risk of work stoppages due to labor unrest, the project is protected from costly labor related delays and is assured access to adequate numbers of skilled craft. Furthermore, the community's interests can be assured and protected by PLA requirements for using local labor and contractors, thereby keeping tax dollars in the community. Thus, owners can provide support for the local businesses by using PLAs.

The true benefit of a PLA is that it enables the owner to address specific needs and concerns of the project and various stakeholders, e.g., the requirement to hire local labor from the Metropolitan Washington labor area.

3.0 Dulles Transit Partners' experience on Phase 1 of the DCMP

Considering the complexity, size, cost impact, need for efficiency and the economies of scale on Phase 1 of the DCMP design-build contractor, Dulles Transit Partners (DTP), felt it was beneficial to negotiate a project labor agreement that provided for a well trained and highly experienced workforce and to allow for flexibility in addressing the working conditions necessary to construct the Dulles Corridor Metro Rail Project in the heavily congested area of Northern Virginia.

Specifically, the DTP PLA has provided a reliable, stable supply of trained and skilled union construction craft workers that promote safety, quality, and productivity while delivering a cost-effective project on time and within budget. Some of the more salient cost saving features of the DTP agreement are noted below.

- Permission to use non-union and merit-shop sub-contractors, thereby ensuring that MWAA and DTP gain the benefit of best value contracting utilizing the most responsive and responsible low bidder regardless of union affiliation. Non-union or merit-shop contractors do not have to sign the DTP agreement nor be bound by any local collective bargaining agreement or union referral process. This has supported DTP's ability to meet or exceed MBE/DBE/WBE subcontracting goals, by extending opportunities to compete on a level playing field to the widest possible field of potential MBE/DBE/WBE subcontractors.
- Allows for the use of composite crews using the skill set of various crafts thereby reducing the unit hourly crew cost on the project.
- Selection of general foreman and foreman is at sole discretion of DTP without regard to union affiliation. This allows DTP to seek out the best supervisory skills within the marketplace.
- All general foreman, foreman, and stewards work with their tools; there are no non-working craft employees.
- The project may use apprentices for up to 33.3% of the work force. This benefits local hiring and workplace training programs.
- The project has the flexibility to establish shifts outside "normal" starting times at straight time to support lane closures, MOT, segmental bridge erection, or other activities that require special scheduling to meet the needs of MWAA, WMATA, and VDOT.
- There are no paid holidays/vacation except for those specifically required pursuant to a Davis-Bacon wage determination.
- Overtime is paid at the rate of time-and-a-half for all hours worked after 8 hours per day or 40 hours per week.
- In the event of weather delay, Saturday(s) can be used as a make-up day at straight time.
- There is flexibility to utilize 5-8 hour days (temporary power), 4-10 hour days (civil) or 5-12 hour days (tunnel) in any combination deemed necessary to support the project requirements.
- To meet MOT needs, DTP has the ability to start work on Sunday nights at straight time.
- Unrestricted movement of operators between various pieces of equipment is allowed throughout the work day thereby ensuring maximum utilization of equipment and manpower.

- There are no restrictions on material suppliers or off site fabricators that DTP can use.
- Unrestricted use of outside vendors to support the project includes, but is not limited to, equipment maintenance, repair, and fueling.
- Establishes a joint committee to address labor shortages and implement the means to mitigate them should the need arise.
- Ensures there will be no striking, slow-downs or work stoppages.
- Provides for mandatory pre-employment and random drug and alcohol testing of all craft employees.

In addition to the above, DTP has the ability to utilize the various union training facilities, programs, and instructors to assist them in the certification and training of craft workers at no cost to either DTP or MWAA. To date, DTP has used these programs to certify welders, scaffold erectors, flaggers, signalers, and equipment operators.

The conditions included in the DTP project labor agreement have provided for significant labor efficiencies and reduced the labor risks. This has benefited MWAA and the other stakeholders by enabling DTP to provide the lowest price to perform Phase 1 of the DCMP.

4.0 Summary

If structured appropriately, a project labor agreement for Phase 2 of the DCMP could provide:

- a predictable basis for pricing labor costs during bidding;
- ensure a steady supply of trained and skilled workers during construction of the project; and
- eliminate labor problems that can threaten the efficient and timely completion of a project.