



The State University
of New York

Office for Capital Facilities Guidance Document

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Project Labor Agreement Feasibility Studies

A guide for the use of Project Labor
Agreement Studies on construction
contracts

Summary

A project labor agreement (PLA) is “a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work” (New York State Labor Law Section 222.)

Sections 370 and 376 of the Education Law require Project Labor Agreements (PLAs), consistent with New York State Labor Law and state competitive bidding laws. This requires a feasibility study for all large-scale construction projects. Large-scale construction projects are defined as projects with an estimated construction cost of \$10 million or more. This requirement applies to construction projects procured by State University of New York campuses using funds appropriated to the State University Construction Fund, including dry appropriations (e.g. 074 and 384 funds). A PLA on a construction contract or contracts for such large-scale construction projects will be required if a study shows that the PLA would:

- Potentially generate cost savings;
- Result in the best work at the lowest possible price;
- Prevent favoritism, fraud and corruption;
- Reduce project delays; or
- Prevent labor unrest.

The law also requires:

- The PLA, if required on a large-scale construction contract will apply to all contractors and subcontractors on the project;
- A written explanation for each project/construction contract if it is determined a PLA will not be used on a large-scale construction project by the solicitation date;
- MWBE and SDVOB goals shall apply to all PLAs; and
- The Fund may use PLAs on other construction projects less than \$10 million where a study determines that the same efficiencies are achieved as outlined in the bulleted list above.
- The legislative changes are effective January 1, 2025, for all large-scale construction projects for which a bid advertisement has not been published in the contract reporter.

Process

1. Overview:

- a. A PLA feasibility study, pursuant to paragraph (a) of subdivision two of Section 222 of Labor Law, will be conducted for each large-scale construction project. The primary objective of a PLA is to generate cost savings, although other factors, such as the potential for labor unrest and the resulting schedule delays, or others in the summary above, can also be taken into consideration. Any potential cost savings identified in a PLA study must be properly documented and substantiated to ensure that the savings can be achieved. The Campus President, or designee, will make the final determination on whether a PLA will be required on a specific project.

2. Large-Scale Construction Project

- a. To determine whether a project is considered a large-scale construction project and subject to the PLA requirements, the construction value of every contract anticipated to be let, that is directly related to the timely and sequential completion of the project scope, should be aggregated to establish a single construction value. The construction value includes the base construction estimate plus escalation, and budgeted field and change order allowances.
- b. If the construction of a project is to be completed in timely and sequential phases (i.e., via multiple contracts), the aggregate sum of the various construction contracts will determine whether the project meets the threshold of a large-scale construction project. For example, a project for a full renovation of a building that anticipates two construction contracts, (e.g., one for the demolition and abatement of the building and a second for the fit-out of the interior), will be considered a large-scale construction project if the sum of the contracts construction values as defined above is \$10M or more.
- c. If a project is initiated, which includes distinct scopes of work which will be executed over a protracted timeline, the Campus may elect to perform separate PLA studies. For example, a single project initiated for the full renovation of two buildings that will not be performed concurrently is likely to merit separate reviews of collective bargaining agreements, market conditions and other evaluation criteria. This decision is predicated on the length of time between contracts and the certainty of whether funding will be made available.

3. Study Initiation and Procurement

- a. The PLA feasibility study will be initiated after the completion of the schematic design phase for a large-scale construction project, unless there is reason to delay the PLA study, such as the information required for a PLA study is not complete at this stage of design, or the project scope is anticipated to change significantly.
- b. **Procurement of a PLA feasibility study is treated as a service and procured pursuant to the requirements of Procedure 7553 Purchasing and Contracting – Procurement.**

- c. In most cases, procurement of a PLA feasibility study will be within the discretionary authority of the Campus as defined in Procedure 7553. In the event the estimated cost of a PLA feasibility study exceeds the Campus's discretionary authority, such procurements should be awarded on the basis of best value.

4. Study Scope

- a. Studies to determine the feasibility of a PLA must demonstrate that the inclusion of the PLA specification in construction contracts will result in the lowest reasonable cost for a project of that size, complexity and duration. Studies should consider factors such as:
 - i. The composition and availability of the regional union and non-union workforce including certified MWBE and SDVOB firms, and contractors expected to bid on the project.
 - ii. Project characteristics including project size, scope and complexity, number of single bid construction contracts, apportionment of building systems between trades, anticipated goals for MWBE and SDVOB subcontractors, anticipated goals for workforce diversity, construction schedule, anticipated labor cost, quality expectations for special/custom components and campus performed work.
 - iii. Prevailing wage rates in accordance with the schedules provided by the New York State Department of Labor, which should be the baseline for comparison in the study, and applicable collective bargaining agreements including number, expiration, dues, current and future member type (journeyman or apprentice), and specific terms and requirements of these agreements.
 - iv. Opportunities for employment for minorities, women and other economically disadvantaged groups.
 - v. The likelihood that labor unrest will occur on the project and the economic impact that any resulting schedule delays will have on the project.
 - vi. The economic benefits of a PLA, including contribution to achieving project schedule and budget goals.
 - vii. Other factors that affect the feasibility of the PLA.

5. Review and Evaluation of PLA Study and Advancing Recommendations

- a. As the primary objective of a PLA is to generate cost savings for the project, the evaluation of the PLA study should largely focus on the net savings to the direct labor portion of the project, including potential direct labor savings and the likelihood that such savings will materialize, offset by any additional costs that may result due to the cost of the PLA feasibility study, the cost of a Construction Manager or other entity needed to negotiate, manage and monitor a PLA, and any reduction in the level of competition. **The study should not make a recommendation as to whether a PLA will be beneficial or not, but instead provide factual information.**
- b. For a PLA to be considered for a large-scale construction project, the potential net savings to the project must be demonstrated, unless other factors will minimize risks of project delay or disruption (e.g., likelihood of labor unrest).

- c. If a PLA study identifies net direct labor savings, a PLA may still not be feasible based on other factors such as:
 - i. There are other large-scale construction projects in process or scheduled in the region that may cause regional unions to decline to negotiate identified contract concessions necessary for the savings to materialize.
 - ii. There are known labor shortages in the region the large-scale construction project will take place.
 - iii. The project involves only one-trade, has a short duration, or lacks operational complexity.
 - iv. It is likely that the PLA requirement will result in less than 3 qualified contractors from bidding the work.
 - v. The project requires specialized construction available only from a limited pool of contractors or subcontractors.
 - vi. There is an unusual and compelling urgency to complete the project on an accelerated schedule that would make pursuit of the PLA infeasible.
 - vii. A PLA would violate state competitive bidding laws (e.g., evidence exists that requiring a PLA would reduce the number of likely bidders to an extent that the PLA requirement will not result in the best work at the lowest possible price).
 - viii. It is likely that a PLA would significantly reduce the ability of MWBE and/or SDVOB participation goals to be met.

6. Approval Process

- a. After the study draft is finalized, the Campus shall make a recommendation to the Campus President as to whether a PLA should be required or not, **supported with a written justification, a sample Campus Benefit Analysis is provided as part of this guidance document.**
- b. The Campus President, or designee, will make the final determination as to whether to proceed with a PLA negotiation with relevant Building Construction and Trades Councils.

7. Negotiation with the Building Construction and Trades Councils

- a. The University is not permitted to be the signatory to the PLA.
- b. If it is recommended to proceed with a PLA requirement on the construction contract/project, the Campus will determine the appropriate method and entity(s) to conduct the negotiations, execution and management of a PLA for the construction contract(s) related to the project. This may include the procurement of Construction Manager services, the consultant that conducted the PLA feasibility study, or other entity(s) as appropriate.
 - i. Procurement of a Construction Manager is treated as a service and procured pursuant to the requirements of Procedure 7553 Purchasing and Contracting – Procurement; such procurements should be awarded on the basis of best value.
- c. The designated entity procured for this purpose, is responsible for negotiating with the regional Construction Building and Trades Councils and executing the final PLA.

- d. The negotiations should result in concessions that will produce the estimated cost savings to the project as outlined in the PLA feasibility study.
 - e. Every PLA that is negotiated must exclude the following from covered work or covered employees:
 - i. The purchase and installation of Furniture, Fixtures & Equipment (FF&E) is NOT part of the contract work. FF&E is funded and procured as a separately from the construction contract and therefore must be excluded.
 - ii. Off-site prefabrication/fabrication is excluded from covered work as it is not defined nor enforceable and including it in the PLA may violate the National Labor Relations Act (NLRA).
 - iii. Excluded employees shall always include employees of the State University Construction Fund, the State of New York, the State University of New York, employees of any college or university in the State University of New York, employees of any other municipal or State Authority, agency or entity, or employees of any other public employer unless they are performing manual on-site labor included in the scope of covered Project Work.
 - iv. Prior to the PLA negotiation, the Campus will review the project scope and provide a list of specific project exclusions including items such as additional campus or auxiliary services employees, specialty systems that require supplier/manufacture installation, specific work that requires certifications, expertise or qualifications that the trades do not possess, or other items determined necessary for the project.
 - f. If the negotiations do not result in the estimated savings to the project, or a key labor union(s) refuses to sign on to the PLA, this occurrence(s) should be documented and a final decision of whether to proceed with requiring a PLA on the project will be made by the Campus President, or designee.
8. Construction Bidding with a PLA Requirement
- a. If a signed pre-negotiated PLA has been finalized, the construction bid documents should clearly identify that only contractors and subcontractors who sign the PLA can perform the project work.
 - b. If a construction contract that is bid results in fewer than 3 qualified bidders, the Campus shall solicit feedback from the bidders that did not submit a bid to determine if the PLA requirement resulted in the lack of bidders. Based on this feedback, a determination should be made by the Campus President, or designee, as to whether to re-bid the work without the PLA requirement if it is in the public's best interest.
9. Monitoring
- a. The Campus shall establish a monitoring process to track the costs of associated with the PLA feasibility studies, the cost of the Construction Manager services, or the services of the entity(s) designated, required to negotiate a PLA where recommended, the results of construction projects bid with a PLA requirement as well as the results when one is not required. The monitoring should include:

- i. The duration of the study process;
- ii. The duration of the negotiation and execution of the PLA;
- iii. The concessions expected in the study compared to the concessions achieved in the PLA;
- iv. The number of bidders;
- v. Bid results vs. the initial project budget;
- vi. and any other relevant information for the University to evaluate the effectiveness of requiring PLA's on projects.
- vii. A Construction Manager, or other designated entity(s), on a large-scale project will be responsible for making best efforts to obtain and monitor compliance with the provisions of the negotiated PLA and notify the contractor(s) on the project promptly of any non-compliance. The Construction Manager shall maintain a log of each negotiated provision within the PLA and contractor(s) compliance thereof and make such log available to the Campus at its request.

Attachments

- Sample Scope of Work – Project Labor Agreement Feasibility Study
- Sample PLA Benefit Analysis

References

- 7553 – Purchasing and Contracting – Procurement
- 7554 - Construction Contracting
- New York Labor Law §222 (Project Labor Agreements)