



# TODAY'S ACTION

## Consider:

- a. Receiving an update on the Interlake Tunnel and Spillway Modification Projects;
- b. Supporting a Project Labor Agreement (PLA) related to AB 1585 in a process open to interested parties, and emphasizing timeliness and accountability;
- c. Directing Staff to begin negotiations with labor immediately on points not requiring design process information; and to provide the Board of Supervisors with bi-weekly progress reports; and
- d. Providing that implementation of a PLA is contingent upon adequate funding being made timely available through enactment of, and budget appropriation for, AB 1585.







# Prior BOD/BOS Action

- Multiple presentations regarding the Interlake Tunnel Project and the Spillway Modification Project (Projects) over the last two years
- Dec 15, 2015 – BOS
  - Agency provided update on Projects
  - Agency introduced alternative funding mechanism
  - Third Reimbursement / Funding Agreement approved
  - BOS requested a Decision Matrix to be presented
    - Compare AB 155 versus P3 financing / procurement options
  - Assembly Member Alejo indicated he was introducing new legislation to acquire funding for the Projects





# Financial Impact

- Yet to be determined – dependent on the procurement methodology selected
- A Proposition 218 ballot measure will be necessary to fill the gap between any state-received monies and the total cost of the Projects





# Discussion

## Review of Interlake Tunnel and Spillway Modification Projects benefits

- Flood Control
  - Reduction in frequency by 60%
  - Reduction in flood volume by 52%
- Adds 59,000 AF of storage to San Antonio
  - Tunnel moves 50,000 AFY to San Antonio
  - Increased dry year release opportunities
- Reoperation provides a range of increased conservation releases
  - 8,000 to 20,000 AFY additional releases for groundwater recharge
  - Conservation releases politically influenced





# Discussion (cont.)

- Moving forward, the Projects need funding
- Currently there is a \$4M funding gap to reach the Proposition 218 ballot measure
- Two options for funding –
  - State monies (AB 155 / AB 1585)
  - P3 procurement process





# Discussion (cont.)

- Assembly Member Alejo introduced AB 1585 in January 2016
  - Seeking no less than \$25M
  - Labor endorsement will require PLA in Design/Build contract
  - AB 1585 currently under revision
    - Recent revision in BOS Packet
  - First Policy Hearing of AB 1585 – between Feb 8 and beginning of March





# Discussion (cont.)

- Critical decision points at this time in the process:
  - Funding
    - Currently \$4M shortfall to get to Proposition 218 ballot measure
    - AB 1585 / AB 155, or
    - P3
    - DRAFT Decision Matrix comparing AB 155 and P3 in BOS Packet
  - Project Labor Agreement (PLA)
    - What does negotiating a PLA entail?
    - Introduce Joan Cox, Partner at Burke, Williams & Sorensen, LLP



# **PROJECT LABOR AGREEMENT OVERVIEW BRIEFING**

**Monterey County  
Board of Supervisors  
February 9, 2016**





# OBJECTIVE

- Present background information on Project Labor Agreements
- Provide components of some recent Project Labor Agreements
- Present comments from Owners and Contractors regarding their opinions of Project Labor Agreements
- Provide a framework for Board discussion of Project Labor Agreement for the Interlake Tunnel Project



# PROJECT LABOR AGREEMENT (PLA)

- Unique to the construction industry
- Initially established as agreement between contractors and groups of building trade unions for specific projects
- Developed to supersede local trade agreements and local trade practices when larger contractors had nationwide agreements with building trades
- Has been expanded to agreements between Owners and groups of building trades to cover multi-project building programs or single projects exceeding \$25 million



# COMMON ELEMENTS

PLA's differ from Collective Bargaining Agreements (CBA's) in several key ways:

- CBA's cover a specific geographic area
- CBA's usually take into account local market trends
- CBA's usually last three to five years
- CBA's are negotiated between a contractor and a specific trade
- CBA's are superseded by Project Labor Agreements



# COMMON ELEMENTS

- Require recognition of the signatory union(s) as the exclusive bargaining representatives for covered workers
- Prohibit organized work stoppages (strikes) & lock-outs
- Requires hiring through union referral systems (hiring hall)
- Requires all contractors and subcontractors become signatory to the PLA
- Requires that all union employees be in good standing with dues
- Establish standardized and rapid dispute resolution or “grievance” procedures to resolve employee, contractor and/or inter-union disputes



# COMMON ELEMENTS

- Establish standard work rules, hours, holidays, overtime pay and dispute resolution procedures
- Establish wages/benefits & drug testing
- Establish management rights regarding hiring, promotion, transfer, discipline, discharge, and rejection of any applicant referred by a union
- Establish pre-job conference prior to commencing construction to clarify the scope of work between trades
- Establish a labor management committee to meet on a regular basis



# OTHER POTENTIAL ELEMENTS

- Social Justice Program
  - Local Business Preference
  - Local Workforce Hiring (before regional union hire)
- Supplemental Trust Contributions by nonunion workers
- Key / Core Employee Carve-outs
- Specialty Trade Carve-outs
- 48-hour referral timeline before looking elsewhere
- Underutilized Business Enterprise



# POTENTIAL PLA CARVE-OUTS

- Potential trade carve-outs are specific to the Project
  - Sometimes, includes specialized equipment, telecommunications, building automation systems, etc.
  - For a tunnel project, could include tunneling and surveying, although many experts are union shops
- Trucking (obligation to offload and reload at the perimeter of the project site; obligation for union labor to load tunnel debris onsite)
- Scope of offsite work subject to PLA



# HISTORY OF PLA'S

- Contractors and unions have used PLA's for major projects of extended duration that require many different trades
- Nationally, the use of PLA's has declined as union enrollment has declined
- A significant growth area for PLA's has been in public projects, rather than private projects
- Examples of California public projects with PLA's:
  - San Diego Unified School District
  - Shasta Dam
  - SF Yerba Buena Center
  - National Ignition Facility, Lawrence Livermore Labs
  - San Francisco International Airport
  - San Mateo County Jail Project
  - BART
  - LA Blue Line
  - Diamond Valley Reservoir
  - San Joaquin Hills Corridor



# FACTS

- Private construction in California more likely to use PLA's (82 CA PLA's surveyed: 72% were private projects)
- PLA's are "valued by contractors on huge construction projects where a myriad of trades will be brought in to do one particular task."
- Bureau of Labor Statistics: Union enrollment has declined over the last century. Less than 20% of all construction workers nationally are unionized.
- All contractors on public works projects must pay workers at least the established prevailing (i.e., union) wage, independent of the application of a PLA



# VALIDITY OF PLA'S

- June 1999 President Clinton issued Executive Memorandum giving federal departments the option to use PLA's on large and significant construction projects "where a [PLA] will advance the Government's procurement interest in cost, efficiency and quality..."
- February 2001 President Bush issued Executive Order prohibiting the use of PLA's on federally financed construction projects
- April 2001 President Bush amended his directive to exempt projects with a PLA established before 2/17/01 from his executive order
- 2009 President Obama revoked Bush Executive Order, urging federal agencies to consider mandating PLA's on federal construction projects of \$25 million or more



# **FUNDING CONSTRAINTS OF PLA FOR INTERLAKE TUNNEL PROJECT**

- Executive Orders 13203 and 13208 signed by President George W. Bush preclude federal funds for new construction projects that have a PLA
- Federal funds (USDA grant) were applied for and denied for the Interlake Tunnel Project
- The Water Resources Agency has not ruled out future applications for federal funds
- Once a PLA is in place, the Agency will be ineligible for federal funds for this Project



# ARGUMENTS FOR PLA

- Reduces risk of construction delays from worker shortages or labor disputes (labor peace)
- Fosters cooperation between construction workforce and management
- Established divisions of labor provide benefits:
  - ✓ Network referral systems (hiring halls)
  - ✓ Labor discipline
  - ✓ Higher skill levels developed by specialization



# ARGUMENTS FOR PLA

- Evaluation / renegotiation of local conditions to meet special needs of project
- Reduction in cost overruns / change orders as result of higher certainty in estimated costs
- Timely completion due to access to immediate labor supply



# ARGUMENTS AGAINST PLA

- Possibility for strikes & lockouts still exists (wildcat)
- Organizing tool to require construction workers on a PLA project to pay for union membership
- Potential increased construction costs (10-15%)
- Project-only union members may lose benefit of payments to union-controlled benefit programs at end of project



# ARGUMENTS AGAINST PLA (CON'D)

- Results in unfair pressure for non-union shops to unionize.
- Limits rights of non-union shops to hire their regular non-union workers (only small number of “core employees” are usually allowed)
- Rigid divisions of labor and work rules slow down productivity. Non-union workforce rules allow:
  - ✓ Assignment of work across trade lines
  - ✓ Use of laborers to move materials
  - ✓ Employment of generalized helpers
  - ✓ Setting hourly wages based upon specific market requirements



# VIEWPOINTS

“Most important and most clearly set out in the President’s Memorandum [Clinton] is that PLA’s should be employed where they will advance the Government’s procurement interest in cost, efficiency and quality and in promoting labor-management stability as well as compliance with applicable legal requirements. Accordingly, PLA’s should be used where they address broad public and policy interests, not the narrower interests of builders, unions or employees.”

- Nancy McFadden, General Counsel United States Department of Transportation

“...union referral systems are positive, well-proven systems, especially on large complex projects.”

- Bechtel



# **VIEWPOINTS (CON'D)**

Refuting a claim that PLA's are anti-competitive, "We have seen no reduction in competition...and [the presence of PLA's] has consistently produced bids at or below the engineer's estimate."

- Michael D'Antuono, President of Parsons Construction Company

"...many in our workforce are multi-trade...I was unable to utilize this benefit due to the union's involvement. Laborers are only allowed to perform labor that fits within their trade."

- Rosario Ramirez Girard, Owner Phoenix Construction Services



# **VIEWPOINTS (CON'D)**

“Public owners have a duty to the public to be fiscally responsible...These interests are not served when the agency requires a union-only PLA, which discourages the vast majority of the industry (over 80%) from bidding, particularly small and minority- or women-owned businesses.”

- Barbara Hoberock, Owner hth Companies

“In its May 1998 report on project labor agreements on federal construction contracts, the General Accounting Office was unable to document any cost-efficiencies achieved by [PLA's].”

- Mike La Pointe, Vice President JL Steel Inc

**The previous statements were taken from testimony given at the August 6, 1998 Hearing for the House Small Business Committee**



# VIEWPOINTS (CON'D)

The Beacon Hill Institute at Suffolk University, 2003  
Study on PLA's and School Construction Costs in  
Massachusetts

- Analyzed 126 school construction projects in the Boston and Massachusetts area
- Finding: Construction costs are 8% - 15% higher on PLA projects when compared to non-PLA projects

“..contracts for construction should be awarded solely on the basis of merit rather than union affiliation.”

- Associated Building Contractors



# ALTERNATIVES TO PLA'S

- Local hire guidelines:
  - ✓ Generally focus on subcontractors (although some agencies include truckers)
  - ✓ Metric is hours worked, not salary
  - ✓ Some policies are mandatory; others are goals, both well monitored with timed reporting
  - ✓ Policies generally state minimums, although some agencies give extra points / incentives to contractors who promise more
- SB 785: Requires design-build projects to increase number of workers that are graduates of state-approved apprenticeship programs to 60% by 2020



# **POTENTIAL PLA NEGOTIATION PROCESS FOR BOARD CONSIDERATION**

- Notice to All Interested Parties of Commencement of Process
- Meetings with Local Unions to Align on Timeline and Key Points to be Negotiated
  - ✓ Monterey/Santa Cruz Counties Building and Construction Trades Council
  - ✓ Tri County Building and Construction Trades Council
  - ✓ Notice to Other Parties Subject to PLA: IBEW and others
- Meetings with AGC and other interested parties / stakeholders



# **PLA NEGOTIATION PROCESS**

## **(CON'D)**

- Circulate initial draft confined to those points that don't require specific information from the design process
- Workshop with Residents
- Workshop with Board of Supervisors



# CONCLUSION

- PLA's have evolved from large single projects to multi-project or program agreements
- PLA's are negotiated independently for each project or program and can contain many elements, many of which are project-specific
- PLA's are not solely about wages paid workers; public projects such as this already require the payment of prevailing wages
- There are many political, economic and social issues surrounding Project Labor Agreements



# Q & A







# Discussion (cont.)

- Also requested at the Dec. 15 meeting
  - Decision Matrix comparing AB 155 versus P3 methodologies
    - Decision Matrix bases decision on comparison of criteria within specific categories related to the project
      - Categories are the following:
        - Financing
        - Stakeholder support
        - Schedule
        - Procurement
        - PLA
        - Risk management
        - OCIP
        - Cost
        - Regulatory
  - Categorical issues are given a weighted score
  - Scores are then totaled



# Discussion (cont.)

Criteria	Description	Alternative 1 AB 155 - Design Build under CA Public Contract Code	Alternative 2 P3 - Design, Build, Finance under CA 5956 - Infrastructure Financing Act
Category	Weight	SCORE	SCORE
<b>Financing</b>	Provides interim financing for project development to Prop 218 election	<b>NO</b> - Requires \$4+ million interim financing. No known source	<b>YES</b> - provides funding for development work to Prop 218 election.
	Optimizes potential success of Prop 218 election	<b>NO</b> - PLA requirement may discourage votes. Substantial delay before election.	<b>YES</b> - Guaranteed Maximum Price assures confidence with electorate.
	Provides expediency to accomplish Prop 218 election	<b>NO</b> - 18 months to complete engineering/environmental and Engineer's Report for Prop 218	<b>YES</b> - focused intensive effort and risk management to prepare Engineer's Report for Prop 218 in 6 - 8 months.
	Allows opportunity for State funding participation	<b>YES</b> - state funding amounts, conditions, and availability unknown.	<b>NO</b> - CA 5956 precludes state funding participation. Splitting project into 2 may accommodate state funds.
	Allows opportunity for Federal Funding participation	<b>NO</b> - Presidential Executive Order No. XXXX precludes Federal funds if PLA in place.	<b>YES</b> - CA 5956 allows Federal Funds Participation.
	Allows opportunity for local funding	<b>YES</b> - local funding participation likely will be required.	<b>YES</b> - CA 5956 allows local funding sources.
	Allows opportunity for private financing	<b>NO</b> - difficult to structure equity participation on return on investment for private capital.	<b>YES</b> - CA 5956 specifically designed to utilize private financing for the project.
	Provides Guaranteed Maximum Price	<b>NO</b> - Full costs are not known until design and construction are completed.	<b>YES</b> - P3 contractor provides Guaranteed Maximum Price as basis for Proposition 218 financing.
	Provides overall lowest cost to stakeholders	<b>NO</b> - higher cost potential from PLA costs, longer project duration, change orders.	<b>YES</b> - Incentive for P3 contractor to manage risks and control costs to achieve the lowest cost project.



# Discussion (cont.)

Criteria	Description	Alternative 1 AB 155 - Design Build under CA Public Contract Code	Alternative 2 P3 - Design, Build, Finance under CA 5956 - Infrastructure Financing Act
Category	Weight	SCORE	SCORE
<b>Schedule</b>	Achieves project schedule for construction start in 2018	<b>NO</b> - if \$4 mil development funding for engineering/ environmental work is not provided in FY16.	<b>YES</b> - if P3 can be solicited and secured by June 30, 2016.
	Provides engineering services to support current environmental clearance work.	<b>NO</b> - no identified funding for engineering work in FY15	<b>YES</b> - P3 contractor will perform engineering work to support environmental work, define costs, and prepare Engineer's Report for Prop 218.
	Provides fast track project development	<b>NO</b> - conventional design build approach with lengthy procurement processes.	<b>YES</b> - P3 contractors risk mitigation includes fast track performance and completion objectives as soon as possible.
<b>PLA</b>	Project Labor Agreement required	<b>YES</b> - AB 155 requires PLA.	<b>NO</b> - PLA is optional at the discretion of project owner.
	PLA increases project costs	<b>YES</b> - PLA adds additional labor costs for union dues and fees.	<b>YES</b> - PLA adds additional labor costs for union dues and fees.
	PLA enhances securing project financing	<b>YES</b> - Labor support for AB 1585 may obtain \$25 mil with a PLA stipulation. <b>NO</b> - Prop 218 may not be fully supported by electorate if PLA included.	<b>NO</b> - PLA adds to project costs, complexity and duration of project development and may jeopardize Prop 218 election.
<b>OCIP</b>	Allows OCIP programs	<b>Yes</b> - but OCIP not required.	<b>YES</b> - but OCIP not required.
	Provides expedient means to address regulatory demands	<b>NO</b> - conventional process followed during project development phase without leverage.	<b>YES</b> - P3 contractor can be responsive in negotiating and incorporating regulatory demands in the project.
	CEQA approval required before procurement	<b>YES</b> -CEQA approval required before solicitation of DB contractor. June 2017 earliest forecast FEIR.	<b>NO</b> - P3 contractor can be procured before CEQA approval.



# Discussion (cont.)

Criteria	Description	Alternative 1 AB 155 - Design Build under CA Public Contract Code	Alternative 2 P3 - Design, Build, Finance under CA 5956 - Infrastructure Financing Act
Category	Weight	SCORE	SCORE
<b>Stakeholder support</b>	Provides strongest unified support for the project from stakeholders.	<b>NO</b> - Lack of State funding and requirement to use PLA threatens strong stakeholder support..	<b>YES</b> - P3 approach can be fast and responsive without the requirement for additional local funding or PLA obligations.
	Removes/reduces stakeholder actions to advance the project.	<b>NO</b> - AB 155 implementation requires \$4 million funding from undefined sources to advance the project to Prop 218 election.	<b>YES</b> - P3 contractor provides private capital for development work removing the need for stakeholder action to secure interim funding.
<b>Procurement</b>	Requires compliance with Public Contract Code	<b>YES</b> - lengthy public procurement process required.	<b>NO</b> - P3 contractor selected expeditiously by competitive solicitation & negotiation. No bidding required.
	Provides expedient procurement of design build contract services	<b>NO</b> - Design Build services cannot be secured until CEQA approved. DB legislation requires lengthy procurement of DB services.	<b>YES</b> - Timely procurement of P3 contractor can commence design build services as soon as possible.
	Provides off-ramps to change course and use alternative delivery methods	<b>NO</b> - AB 155 and related regulations and codes restrict flexibility in project financing and procurement of services.	<b>YES</b> - off ramps can be designed into the P3 process to change course or restructure as needed.
<b>Risk Management</b>	Provides options to separate projects into different procurements	<b>NO</b> - AB 155 addresses the tunnel only. There is not an option to include the spillway project.	<b>YES</b> - P3 approach can accommodate multiple configurations of project financing and delivery including separating the tunnel and spillway into 2 separate projects.
	Optimizes management of risks	<b>NO</b> - Risks of cost overruns and schedule delays are difficult to manage in the conventional risk shifting process.	<b>YES</b> - Risk management by P3 contractor provides lowest cost project and Guaranteed Maximum Price with off ramps if needed.
<b>Cost</b>	Project delivery approach increases project costs.	<b>NO</b> - Project cost estimate is based on conventional Proposition 218 financing model.	<b>YES</b> - Private financing costs for development capital add increased project costs.
		30	95





# Summary

- Reviewed Projects benefits
- Presented funding challenges to the Projects
- Received a primer on PLA's
- Received and reviewed a DRAFT Decision Matrix





# TODAY'S ACTION

- a. Receive an update on the Interlake Tunnel and Spillway Modification Projects;
- b. Support a Project Labor Agreement (PLA) process related to AB 1585; with the process emphasizing timeliness and accountability rather than an arbitrary deadline;
- c. Direct Staff to begin negotiations with labor immediately on those points that do not require information from the design process;
- d. Direct Staff to provide the Board of Supervisors (or its designee) with progress reports every two weeks;
- e. Provide that implementation of an Agreement with labor is contingent upon funding provided in AB 1585 in substantially its current form and for the current amount; and,
- f. Require an open process (i.e., available to be observed by other interested parties, similar to negotiations for the Water Recycling Agreement, which entailed numerous meetings open to the stakeholders).

