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Agenda Date: 12/15/2015  
Agenda Placement: 9I  
Set Time: 10:45 AM  
Estimated Report Time: 20 minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Leanne Link for Nancy Watt - County Executive Officer  
County Executive Office  
**REPORT BY:** Liz Habkirk, PRINCIPAL MANAGEMENT ANALYST - 253-4826  
**SUBJECT:** Discussion on Project Labor Agreement for Staff Secure Re-Entry Facility

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### **RECOMMENDATION**

County Executive Officer requests the Board of Supervisors receives a report and provides direction to staff regarding a Project Labor Agreement for the Staff Secure Re-Entry Facility.

### **EXECUTIVE SUMMARY**

On October 20, 2015, the Napa County Board of Supervisors directed staff to return with a presentation and discussion on a possible Project Labor Agreement for the Staff Re-Entry Secure Facility. Staff from the County Executive Office, Public Works, and County Counsel have worked on researching Project Labor Agreements and the potential impact to the forthcoming capital project.

### **PROCEDURAL REQUIREMENTS**

1. Staff Reports
2. Public Comment
3. Discussion and Direction to Staff

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

**BACKGROUND AND DISCUSSION**

The Napa County Board of Supervisors Agenda includes "Future Agenda Items," whereby members of the Board of Supervisors present items they would like discussed by the full board at a future meeting date. At the September 15, 2015 meeting, Supervisor Luce requested that Project Labor Agreements for upcoming capital projects, including the Staff Secure Re-entry Facility and the new jail be considered. On October 20, 2015, the Board of Supervisors directed staff to return with a report on the components of a Project Labor Agreement (PLA) for the Staff Secure Re-Entry Facility. The Board stated that it wanted to see if a PLA could assist in increasing the number of local employees who could work on upcoming County Public Works projects.

Staff from the County Executive Office, Public Works and County Counsel have assisted in researching Project Labor Agreements in general and the potential impact on the upcoming Staff Secure Re-Entry Facility. In addition staff researched local hiring policies and contract provisions that have either been adopted by local jurisdictions or incorporated into public works contracts throughout the state. Staff has received information from both the Napa-Solano Building & Construction Trades Council and the Associated Builders and Contractors –Northern California, as well as staff from a variety of public agencies.

**General Background**

A PLA requires general contractors on government construction projects to adhere to pre-hire collective bargaining agreements setting the terms and conditions of employment. Public Contract Code Section 2500 requires any PLA entered into by a local agency to include the following:

1. Prohibit 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;
2. Permit 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;
3. An agreed-upon protocol concerning drug testing for workers who will be employed on the project;
4. Guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project; and
5. Provide that disputes arising from the agreements shall be resolved by a neutral arbitrator.

Additionally, PLA's often require:

- | Union wage rates and benefits (even for non-union employees) for the length of the project;
- | Payment of union dues by any non-union workers;
- | Utilization of local hiring halls to hire workers; and
- | Signatory unions to be the exclusive bargaining representative of covered employees.

Proponents of PLA's suggest that the benefits of a PLA include:

- | A guarantee of labor harmony with specific provisions included to avoid strikes and speedily resolve inter-union disputes or work slowdowns;

- | Providing a higher quality workforce because of the stricter apprenticeship program and training opportunities offered to union members; and
- | Providing comprehensive enforcement of wage rules.

Opponents of PLA's suggest the following are the potential downsides to a PLA:

- | They can increase the price of a project by:
  - | Reducing the number of general contractors and subcontractors that will bid to perform the proposed work;
  - | Reducing the flexibility of a general contractor and subcontractor to deploy their workforce (i.e. PLAs may give plumbers responsibility for fixtures from delivery on-site forward, whereas in a nonunion environment laborers might be used to offload fixtures); and
  - | Requiring all bidders, even non-union general contractors and subcontractors to include all union wages, benefits and dues as a part of their expenses when calculating their bids;
- | Create a detrimental effect on the opportunities available to small and minority owned businesses, because many smaller contractors are nonunion; and
- | Are unnecessary because existing prequalification procedures screen contractors that bid on public projects.

### **Staff Secure Re-Entry Facility**

The following is a discussion on the findings of potential impacts on the Staff Secure Re-Entry Facility project based on general terms of the PLA provided in draft by the Napa-Solano Building and Construction Trades Council. As background, the Staff Secure Re-Entry Facility will be a 72-bed dormitory style minimum custody correctional facility. The current project cost (without a PLA) is estimated at \$16.9 million. The following is a breakdown of budgeted revenues to fund the project:

<b><u>Revenue Source</u></b>	<b><u>Total</u></b>
State SB 1022 Funding	\$13,474,000
Accumulated Capital Match	\$980,000
Local Community Corrections (Realignment) Match	\$1,886,000
County In-Kind Match	<u>\$531,000</u>
Total Project	\$16,871,000

The project budget was developed based on the architectural program and design created by the staff team in conjunction with Nacht & Lewis Architects. The cost estimate was validated by Sierra West Group, with an additional peer review completed by Cummins Construction Management. Both cost estimators used their significant experience within the correctional construction field, as well as current market examples of bids on correctional construction projects, to help determine the various cost factors and develop the final estimated cost.

In separate discussions with each of the cost estimators, both indicated that they would increase this budget by a minimum of 5% on the construction cost if the County were to propose a PLA. In addition to the construction costs, factors such as contingency amounts, escalation and construction management services would be expected to increase as these are often considered as a percentage of the total construction costs for a project. Ultimately, the cost estimators anticipate roughly \$915,000 in increased costs at a minimum to construct the project under a PLA arrangement.

Because all public projects require the contractor to pay prevailing wages, whether or not a PLA is present, staff inquired into the reasoning for the estimated cost increase. Both estimators identified the main reasoning as the

likely lower number of bidders on a PLA project. Both estimators have worked on a variety of projects with and without PLAs in addition to following actual bid responses from around the state. The change in the bidding environment would make the bids less competitive and therefore increase the costs.

This reasoning appears to be validated through additional research conducted by staff into the use of PLA's on public projects. In many articles and studies, authors noted the same additional costs identified by the County's architect and cost estimator for the Staff Secure Re-Entry Facility. In one such study, "Measuring the Cost of Project Labor Agreements on School Construction in California," researchers from the National University System Institute for Policy Research used construction cost data and project information to create statistical comparisons of construction projects completed with and without PLAs. The study notes that PLAs are "associated with higher construction costs...13 to 15 percent higher when school districts construct a school under a PLA."

Additional research into projects around California showed that several projects, when bid with and without a PLA showed cost increases attributed to the PLA bid. An elementary school in Oakland saw the number of bidders drop from eight to three when the project was re-bid with PLA requirements, with the low bid increasing by 24% and the City of Pasadena's Glendale Power Plant project low bid increased by more than 15%. In a more recent example, the County of Imperial saw the number of contractors decrease from 6 to 2 from the pre-qualification process to actual bids when a PLA became mandatory on their AB 900 correctional facility.

### **Background on Local Trades**

After the Board's direction in October to further research PLAs, staff reached out to the Napa-Solano Building and Construction Trades council as well as individual trades who had participated in earlier discussions. In order to understand if PLA's could beneficially impact the number of local workers who would work on a public works project, staff attempted to gather a number of informational items from the individual trades as well as the Council including:

1. Copies of all PLA side letters past and present that each union and the trade council are signatories to;
2. A list of all signatory contractors for each union, any related contracts, and any separate documents that provide the referral procedures for those signatories;
3. Documentation showing the total number of laborers/tradesmen/etc. on their rolls, and the number of those laborers/tradesmen/etc. currently on their rolls that are currently residents of Napa County;
4. Separately, documentation showing the total number of laborers/tradesmen/etc. on their rolls, and the number of those laborers/tradesmen/etc. currently on their rolls that are currently residents of Solano, Sonoma or Lake Counties; and
5. Statistics on at least three projects (one of which should be the Solano County Correctional Facility) of demonstrating the success of local hiring.

The following are the trades that participated in the reporting on the total number of local members:

- | Iron Workers (Local 378): 51 members; consisting of 37 Journeyman and 14 Apprentices (Total of 1,740 active members)
- | Sheet Metal Workers (Local 104): 72 members

Staff also asked for information regarding signatory contractors to their association. Again, two of the trades responded with that information:

- | Iron Workers (Local 378): 1 local contractor
- | Sheet Metal Workers (Local 104): 4 local contractors

Staff conducted additional research and learned that on average, the Bay Area union membership in the trades runs at about an average of 25% of the construction workforce, but that in Napa County that figure is closer to about 7.5% (unionstats.com).

Additionally, the Iron Workers shared their previous PLA contracts and Master Labor Agreement, and the Sheet Metal Workers also shared their Master Labor Agreement, which staff has used to help guide the terms discussion below.

### **PLA Terms Discussion**

Based upon the potential cost increases to the County's Staff Secure Re-Entry Project from the establishment of a PLA, the County would benefit from a principle that allows equitable participation for all contractors and does not provide a competitive advantage to any particular group of contractors. Below is a brief discussion on some of the major terms of a PLA that should be considered due to their impact on such a principle:

1. **Local Hire Provision:** The Board has indicated that the ability to include a local hire provision within the PLA would be a benefit to the community. Staff researched the use of local hire provisions in PLA's to determine both their structure and their effectiveness.

Targeted hiring policies are frequently at odds with the requirements of collective bargaining agreements. Targeted hiring policies, like local hire, require contractors to make efforts to employ specified categories of workers – but collective bargaining agreements almost always require contractors to utilize their current workers or workers who are referred from a union hiring hall in a specified order. (Most collective bargaining agreements contain “name call” allowances or other provisions that give contractors additional control over selection of workers; however, these provisions vary, and are usually restricted to workers who have worked for the contractor in the past). Because contractors working under a collective bargaining agreement have limited control over which particular individuals they hire, they may be unable to comply with both the requirements of a targeted hiring policy and those of an applicable collective bargaining agreement.

Some union representatives have offered that with a PLA they would be able to negotiate the ability of local residents to “jump the line” ahead of more senior members to meet requirements for local hiring. However, as noted above that ability is designated within the respective Master Labor Agreement (MLA) and is not consistent between trades.

Because of the requirements of the various MLA as to hiring protocols, the PLA's researched, including those with the County of Solano, offered only goal language that was general rather than specific to local hiring requirements (i.e. “the Unions agree to encourage the referral and utilization of qualified local residents...”). Although offered as a major benefit of the PLA, the local trades groups have not provided any information on performance related to meeting such goals and stated they did not track that kind of performance measure. This was consistent with conversations with agency staff from Solano County who did not have verifiable information on the impact of such stated goals.

Some of the PLA's staff researched have more specifically stated goals for local hiring. For example, Sonoma County created an ad hoc committee who spent a year working with local trades groups to develop their County policy regarding PLAs. The policy “strongly encourages” at least 70% of hours be worked by local residents. They define local as having a physical address within Sonoma, Marin, Lake, Mendocino or Napa counties. Even with a more specifically stated percentage within a County policy, the local hiring numbers are only “strongly encouraged” within the PLA to be consistent with MLA requirements.

Further, significant complexity would result from a local hire provision. Conversations with project labor management consultants revealed that like those referenced above these provisions are typically without realistic enforcement mechanisms and often get renegotiated during the project. For example, if a contractor is unable to meet a local hire goal, agencies may be hesitant to use punitive fees or monetary penalties, if any have been included in the PLA, and instead renegotiate the term so that the contractor meets at least some of the stated goal (i.e. hires 15% local instead of the negotiated 30%).

2. **Core Workers:** One of the critical barriers for participation by nonunion contractors is the restriction on the number of “core” workers a contractor may use before being required to hire from union hall rolls. A core worker is generally defined as a person who has been in the employ of the contractor for a defined period of time prior to the award of the contractor. The Draft PLA provided to staff by the Napa-Solano Building Trades Council, suggests that only employees at or above the level of General Foreman would be at the hiring discretion of the contractor. Other PLAs researched generally have some requirement for the use of dispatched union employees interspersed with only the occasional core worker. Concerns may arise regarding the efficient and effective performance of the work and the potential requirements for union membership/benefit payments (discussed below).

3. **Union Initiation and Monthly Fees by Non-Union Workers:** Should a nonunion contractor bid successfully on a project, a PLA would generally require core workers to become members in the appropriate Union. Some contractors have expressed a strong reluctance to having their core work force become members of unions as a condition of working on the job. Santa Barbara County has avoided this by having to agree to notify nonunion members of their right to remain nonunion workers during the project.

4. **Dual Benefits/Union Benefit Trust Fund Contribution by nonunion Contractors:** Related to the idea of core worker use, another potential barrier for nonunion contractors and subcontractors from bidding on a PLA project is the idea of requiring payment into the union benefit system even for their own core workers who they may already cover with benefits.

5. **Prime Contractor hiring nonunion subcontractors:** In many Master Labor Agreements, signatory contractors are restricted from hiring nonunion subcontractors. This is especially of concern in Napa, where it may be unlikely for a general contractor to bid on a correctional facility project but a number of subcontractors could bid and participate on the project. In this case, only union local subcontractors would be eligible to work on the project.

6. **Workforce/Management Rights:** Contractors have also expressed concern about their ability to assign work, determine the number and types of employees required for any specific portion of work, assign all supervisors and determine overtime scheduling.

### **Previous Board Direction**

The Board of Supervisors considered PLAs in 2010 as a part of a larger discussion on the local vendor preference policies. At that time, the Board did not adopt a policy relating to PLAs with staff noting that they do not necessarily facilitate the hiring of local residents. However, as a general discussion, Board members expressed the possibility of raising the topic of PLAs on certain projects in the future. As a part of the presentation, staff noted that PLAs frequently require that workers on a project be hired through the local union hall, but clarified that a “local” union hall refers only to location; it does not necessarily mean the members, or those being hired for a project, live within the County's boundaries. The local hiring hall for the Building Trades unions is the Napa Solano Hiring Hall located in Fairfield, but members come from all over California. At the hiring hall, union members are dispatched to worksites based on seniority, without regard to whether or not that person is from the local jurisdiction.

Based on the discussions during the series of meetings in 2010, the Board adopted local vendor preference provisions in a revised purchasing policy. The policy requires staff to take measures that ensure local providers are given access to all competitive purchasing announcements, as well as providing specific outreach procedures. For professional service contracts, the policy gives local vendors preference when qualifications are equal and extends specific language in Requests for Proposals to include encouragement to subcontract with qualified local vendors. The existing local vendor preference requires that the County:

- | Directly notify local vendors of procurement opportunities;
- | Post procurement opportunities on the County's website;
- | Conduct annual meetings and clinics with local vendors to discuss upcoming contracts for all services, and to provide a better understanding of the County's contracting programs;
- | Include language in RFP/RFQs encouraging non-local firms to partner with local firms where appropriate;
- | Implement the Uniform Cost Accounting procedures as allowed under Public Contract Code Section 22030-22045, which allow for a simplified, alternative procedures for bidding and awarding public construction projects;
- | Inform local contractors of the services of the Workforce Investment Board (WIB) and encourage contractors to contact the WIB to assist in their hiring needs;
- | Obtain Board approval of a contractor pre-qualification package to be used for pre-qualification of contractors on major capital improvement projects that included input from interested parties including local labor unions and contractors.

Since the implementation of the local vendor preference policy, which includes significant outreach to local vendors to encourage their participation in bidding on construction contracts, the County has awarded local firms major projects such as:

- | The South Campus Project. This is the largest construction contract the County has entered into over the last decade. The County pre-qualified contractors who could provide construction bids, and on May 12, 2015 the County entered into a construction contract in the amount of \$9,609,400 with BHM Construction of Napa. In addition, several of the sub-contractors are local vendors. There is also local vendor participation on the contracted design team for the project.
- | Napa County Various Facilities Photovoltaic Project. On August 14, 2012 the County entered into a construction contract in the amount of \$2,992,021 with Bright Power Inc. of Napa.
- | Staff Secure Facility. The contracted design team for this \$15 million project includes local vendor participation.
- | New Jail. The contracted preliminary design team for this \$66 million project includes local vendor participation.
- | Devlin Road Extension/Fagan Creek Bridge. The contracted design team for this \$6 million project includes local vendor participation.

Since the implementation of the policy, the County has entered into various contracts with local vendors. The County Purchasing Manager provides annual reports to the Board to inform the Board of those contracts.

### **Strengthening Local Hire Provision**

Staff believes that, should the Board want to initiate a stronger requirement for local hiring than the current policies, additional research would be required to set appropriate goals. If the Board is interested in strengthening the existing local hiring provisions of contracts, staff proposes the following:

- | Initiate a study of local hiring conditions currently: After discussions with various counterparts in other

counties as well as with project labor management consultants, it is apparent that baseline data on local hire conditions in Napa County is needed. In order to set realistic goals for local hire, it is important to identify the percentages of local contractors/workers currently participating on County projects. Without such information, and without comparable information on how the goals included in other PLAs have worked, staff cannot provide a realistic and defensible policy for negotiating a local hire provision and cannot accurately evaluate performance. Additionally, it is important to know how many workers in various trades currently reside in Napa County.

- | As indicated above, increasing the number of local residents working on jobs may not necessarily be increased through the use of a PLA. Other agencies have adopted internal policies and ordinances that include specific requirements for local hiring in the bid documents. Staff could research specific local hiring provisions that have been adopted by other jurisdictions and return with an analysis of which provisions might be implemented in Napa County given Napa's local work force characteristics.

### **Recommendation**

The Board of Supervisors directs staff to:

- | Conduct a local hiring study and return to the Board with baseline data;
- | Based on the data above, prepare a draft local hiring ordinance for consideration by the Board; and
- | After consideration of local hiring ordinance staff will return to the Board to determine if the Board would like staff to negotiate a PLA for the Staff Secure Re-Entry Facility.

### **SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve

Reviewed By: Molly Rattigan