

Project Labor Agreement Policy Update

JPB Finance Committee
April 24, 2023



Board Referral – Overview

In December, the JPB requested that Caltrain staff report back to the board with:

1. A draft policy relating to a framework for Project Labor Agreements (**PLA**) and Community Hiring Provisions, collectively known as Community Workforce Agreements (**CWA**) for Caltrain owned projects, similar to that of VTA and Santa Clara County.
2. A draft CWA for the development of Diridon Station.

Today's Focus

Board Referral – Overview

Since December, Caltrain staff have convened regional labor leaders, an internal steering committee, and conducted peer agency research to develop a draft PLA Policy Framework.

- Caltrain staff are seeking JPB input on the draft, including options related to PLA Policy scope and dollar thresholds, and the process of negotiating and administering PLAs.

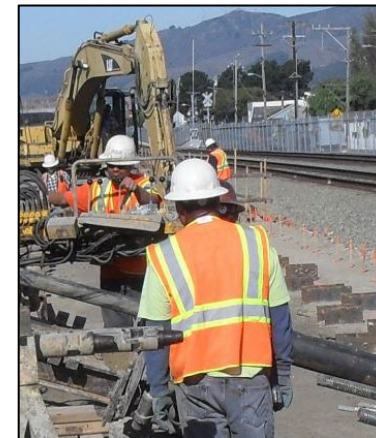
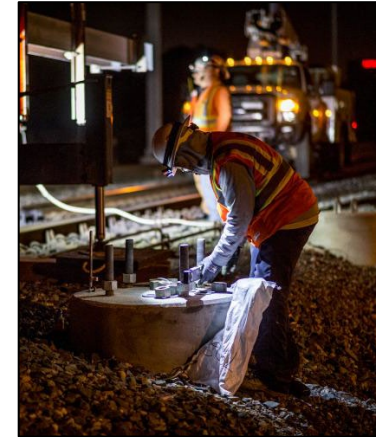
Caltrain staff is **not** seeking direction **yet** regarding the preparation of a CWA for the JPB-owned Diridon Station TOD parcels.

- Because a Caltrain RFQ is not anticipated until late 2023 or early 2024, JPB input will be requested in fall 2023 or later.

PLA Policy Framework – Definition

A PLA is an agreement between a public agency planning to authorize and fund a construction project and the unions that represent the pool of skilled labor needed for that project.

- PLAs spell out the terms and conditions that govern labor on a project.
- PLAs often apply to specific construction projects or construction projects over a certain dollar threshold.



PLA Policy Framework – Common Elements

Common elements of a PLA include:

- Statement of purpose and parties
- Scope of agreement, including covered and excluded work
- Prohibitions on work stoppages, strikes, sympathy strikes, and lockouts
- Pre-Construction Conference with county labor council,, project owner, and contractors
- Union security statement and referral process for craft roles
- Apprenticeship programs
- Joint Administrative Committee structure
- Grievance and dispute resolution procedure

Community Workforce Agreements

The JPB referral requested a draft policy framework for PLAs and “Community Hiring Provisions, collectively known as **Community Workforce Agreements (CWA)** for Caltrain owned projects...”

- CWAs are often part of a PLA, designed to **target disadvantaged or underrepresented workers for training and hiring** on construction projects.
- Targeted hiring requirements in a CWA are often called “**Community Hiring Provisions**” and focus on apprenticeships, administered by the relevant labor council on a project, serving as the “Community Workforce Coordinator”.

Community Workforce Agreements

For CWA purposes, a “disadvantaged” or “underrepresented” worker often means a person who has one of the following common barriers to employment:

- Currently receiving public assistance
- Veteran
- Former foster care youth
- Formerly incarcerated
- Currently homeless or recently housed
- Continuously unemployed for one year
- Household income below HUD poverty thresholds
- Survivor of human trafficking
- At-Risk Youth
- Living in an Economically Disadvantaged Area

PLA Policy Framework – Research

Engaged peers and stakeholders with PLA experience include:



San Mateo
Building Trades



San Francisco Building
& Construction Trades
Council



Santa Clara County



LA Metro



AC Transit



BART



Caltrain
Electrification



SamTrans
Shared Services



Building
Trades
The outstanding workforce

Santa Clara & San
Benito Counties
Building Trades



City of San Jose



TJPA



VTA

PLA Policy Framework – Research

PLAs often apply to **specific capital projects** or **capital projects over a certain dollar threshold**. Peer PLA examples showed a range of thresholds:

| Organization | PLA Threshold |
|-----------------------|--------------------------------------|
| Sonoma County | \$10 million |
| Santa Clara County | \$2 million |
| VTA | \$2 million |
| City of San Jose | \$1.25 million |
| City of San Francisco | \$1 million |
| Alameda County | \$1 million |
| AC Transit | All Bus Rapid Transit (BRT) projects |
| TJPA | All Phase I & II projects |
| BART | Specified “Major Projects” |
| LA Metro | Measure M and R projects, P3s |

Draft Caltrain PLA Policy – Overview

Caltrain staff have developed a draft PLA Policy for JPB consideration. It includes:

- PLA definition, including applicable Caltrain projects
- Dollar threshold options for Caltrain construction projects
- Federal and state regulations that any PLA must adhere to
- Process for incorporating Caltrain DBE and SBE goals, project-specific CWAs
- Process for PLA adoption
- Process for PLA management during construction projects, including establishment of a Joint Administrative Committee

Federal and State Policy Considerations

There are federal, state, and regional policy considerations related to PLAs:

- **Executive Order 13502:** issued by President Biden in February 2022, requires the use of PLAs on federally funded projects over **\$35 million**.
- **California Public Contract Code Sec. 2500:** public entities may require PLAs if the agreement includes a series of taxpayer protection provisions:
 - Anti-discrimination provisions
 - Drug testing requirements
 - Guarantees against strikes, work stoppages, and lockouts
 - All qualified contractors may be awarded work without regard to whether they are otherwise parties to collective bargaining agreements
 - Dispute resolution by neutral arbitrator

Caltrain Financial Considerations

A range of financial, personnel, political and other considerations have been studied:

- **Will PLAs increase project costs?**
- **Will PLAs reduce the number of bids on JPB projects?**
- **Will a PLA Requirement for Certain Projects Decrease DBE / SBE Participation?**
- **What is the impact on Federal and state grant competitiveness**
- **Does Caltrain have staff with the proper experience drafting, negotiating, executing, and administering PLAs?**

Draft Caltrain PLA Policy – JPB Options to Discuss

There are important options for the JPB to carefully consider before adopting a PLA Policy:

- 1. Should Caltrain have a PLA Policy?**
- 2. What type of project does the PLA Policy apply to?**
- 3. What is the dollar threshold for the PLA Policy?**
- 4. Who negotiates the PLA on a project? How is the PLA administered?**

Draft Caltrain PLA Policy – Board Options

1. Should Caltrain have a PLA Policy?

Pro: A PLA Policy will provide structure and a consistent approach to labor agreements on Caltrain projects. PLAs will make Caltrain more competitive for federal and state grant funding opportunities, and will build support among labor and labor-affiliated policymakers as the railroad explores options for new, necessary revenue.

Con: Caltrain does not currently have the resources to properly negotiate, execute, or administer PLAs under a new policy. Because of the unique qualities of Caltrain as a three-county commuter railroad, the experience of Bay Area peers may not address all risks to the organization, including administrative and other project cost increases.

Draft Caltrain PLA Policy – Board Options

2. What type of project does the PLA Policy apply to?

Alternative 1: Construction projects with a contract awarded by the JPB and an engineer's initial cost estimate is over a JPB-approved dollar threshold.

- Pro: Consistent, intuitive approach for Caltrain and the contractor community; common among peers, does not require projects to be selected for policy inclusion.
- Con: Likely requires regular updates, is not tied to specific programs or projects or the structure of the future Caltrain Capital Investment Plan (CIP).

Draft Caltrain PLA Policy – Board Options

2. What type of project does the PLA Policy apply to?

Alternative 2: Grade separation projects within the scope of the ongoing Corridor Crossing Study. Applicable projects definition will be revisited when the CIP is completed.

- Pro: programmatic approach ensures use of PLAs on Caltrain's largest capital projects. CIP connection will link the railroad's new, more systematic approach to capital planning and delivery with Caltrain's labor policy.
- Con: projects that could benefit from a PLA, but not part of a larger capital program (such as grade separations), may be left out, requiring an ad hoc approach.

Draft Caltrain PLA Policy – Board Options

3. What is the dollar threshold for the PLA Policy, if that approach is taken?

Caltrain staff propose JPB consideration of the following threshold levels:

- **\$2 million:** included in JPB referral, also VTA and Santa Clara County's threshold
- **\$5 million:** FY2024 top ranked non-planning projects average \$7.41M
- **\$10 million:** current Caltrain Management Committee-approved, railroad-led projects average \$14.4M.
- **\$35 million:** EO 13502 requirement for federally funded projects; current Management Committee-approved, external sponsor projects average \$100M

Draft Caltrain PLA Policy – Board Options

4. Who negotiates the PLA on a project? How is the PLA administered?

- **Alternative 1:** Caltrain would negotiate the PLA with the applicable labor councils. The PLA would then be binding on the contractor.
 - Pro: Caltrain retains control over the process and relationship with the labor councils. This is the standard arrangement among regional and state peer agencies.
 - Con: Caltrain does not currently have the resources to properly negotiate, execute, or administer PLAs under a new policy. This may increase administrative, project costs.

Draft Caltrain PLA Policy – Board Options

4. Who negotiates the PLA on a project? How is the PLA administered?

- **Alternative 2:** Under the Caltrain policy, a PLA is required as a condition of contract award on applicable projects. The contractor then negotiates the PLA with the labor councils.
 - Pro: Caltrain shifts the burden of negotiation and administration to the contractor and does not have to add new internal resources.
 - Con: Caltrain loses a large degree of control over the process and relationship with the labor councils. Issues between labor and the contractor will likely be elevated to the JPB.

Draft Caltrain PLA Policy – Alternatives Recap

Alternative 1

- \$X million dollar threshold
- JPB negotiates PLA

Alternative 2

- Grade Separations / CIP
- JPB negotiates PLA

Alternative 3

- \$X million dollar threshold
- Contractor negotiates PLA

Alternative 4

- Grade Separations / CIP
- Contractor negotiates PLA

Draft Caltrain PLA Policy – Next Steps

The JPB will consider the Caltrain PLA Policy over the coming months:

- ☑ **April 24:** Finance Committee – Informational Item
- **May 4:** JPB Regular Meeting – Informational Item
- **May 22:** Finance Committee – Action
- **June 8:** JPB Regular Meeting – Action