

DRAFT Clean Water Fund Memorandum (2013-003)

October 10, 2013

TO: All Connecticut Municipalities and Consultants – For review and feedback by November 12, 2013

RE: Protocol for Use of a Project Labor Agreement on Clean Water Funded Projects

I. PURPOSE

The principal purpose of this document is to develop a procedure for a public entity electing to utilize a Project Labor Agreement (PLA) on a public works project receiving a Clean Water Fund (CWF) grant or loan. The procedure specifies the statutory factors and criteria, required documentation and associated submittal requirements, and Department of Energy and Environmental Protection (DEEP) specific parameters for implementation/utilization of a PLA.

II. BACKGROUND

A Project Labor Agreement (PLA) is a public contracting tool. In early 2009, President Obama issued an Executive Order specifically allowing the use of PLAs in federal contracting. The order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by the order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization. The State of Connecticut subsequently passed Public Act 12-70, codified in Connecticut General Statutes (CGS) Sec. 31-56a through 31-56d, which is similarly permissive. CGS Sec. 31-56b(a) states that "a public entity may require a project labor agreement for any public works project when such public entity has determined, on a project-by-project basis and acting within its discretion, that it is in the public's interest to require such an agreement." The public act also defines PLAs and sets out criteria for use of a PLA.

III. GOVERNING STATUTES

- A. CGS Sec. 31-56a defines the terms "project labor agreement", "public entity" and "public works project" as follows:

(1) "**Project labor agreement**" means a prehire agreement covering the terms and conditions for all persons who will perform work on a specific public works project;

(2) "**Public entity**" means the state and any agency, instrumentality or political subdivision thereof;

(3) "**Public works project**" means the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any other public works by a public entity.

- B. CGS Sec. 31-56b (a) provides the permissive authority for any public entity to require a PLA for any public works project. In addition, this section lays out factors which may be considered when making a determination that that it is in the public's interest to require a PLA.

CGS Sec. 31-56b **Project labor agreements for public works projects.**

(a) Notwithstanding the provisions of any general statute, regulation or requirement regarding procurement of goods or services, a public entity may require a project labor agreement for any public works project when such public entity has determined, on a project-by-project basis and acting within its discretion, that it is in the public's interest to require such an agreement. In making such determination, the public entity may consider the effects a project labor agreement may have on (1) the efficiency, cost and direct and indirect economic benefits to the public entity; (2) the availability of a skilled workforce to complete the public works project; (3) the prevention of construction delays; (4) the safety and quality of the public works project; (5) the advancement of minority and women-owned businesses; and (6) employment opportunities for the community.

- C. CGS Sec. 31-56b(c) sets criteria which must be within a PLA:

CGS Sec. 31-56b (c) Any project labor agreement required by a public entity pursuant to this section shall: (1) Set forth mutually binding procedures for resolving disputes that can be implemented without delay; (2) include guarantees against a strike, lockout or other concerted action aimed at slowing or stopping the progress of a public works project; (3) ensure a reliable source of skilled and experienced labor; (4) include goals for the number of apprentices and for a percentage of work to be performed by minorities, women and veterans; (5) invite all contractors to bid on the project without regard to whether the employees of any such contractor are members of a labor organization, as defined in section 31-101 of the general statutes; (6) permit the selection of the lowest responsible qualified bidder without regard to labor organization affiliation; (7) not require compulsory labor organization membership of employees working on the project; and (8) bind all contractors and subcontractors to the terms of the agreement.

- D. CGS Sec. 31-56b (d) establishes that bidders not abiding by or agreeing to PLA requirements will be eliminated from consideration:

CGS Sec. 31-56b (d) Any bidder for a public works project that does not agree to abide by the conditions of the project labor agreement or a requirement to negotiate a project labor agreement shall not be regarded as a responsible qualified bidder for such project.

IV. DOCUMENTATION PROCEDURE

DEEP has developed the following documentation process for a public entity receiving a CWF grant or loan and electing to utilize a PLA. The public entity must fulfill three distinct requirements under the provision of CGS Sec. 31-56b.

STEP 1. PUBLIC INTEREST DETERMINATION. First, the public entity shall review the applicability of PLAs for a specific project or program and provide a reasoned public interest finding to ensure compliance with federal and state requirements, and eligibility for state and federal funding. The public interest finding shall be project specific and require certification from the public entity proposing to utilize a PLA and present evidence that the PLA is in the public's interest and consistent with state and federal law. Furthermore, the public interest determination shall specifically consider but is not limited to the following factors:

- (1) the efficiency, cost and direct and indirect economic benefits to the public entity;
- (2) the availability of a skilled workforce to complete the public works project;
- (3) the prevention of construction delays;
- (4) the safety and quality of the public works project;
- (5) the advancement of minority and women-owned businesses; and
- (6) employment opportunities for the community.

A showing of any of these factors may be adequate to justify the use of a PLA in a particular project. This list is not exclusive – other factors may reasonably permit a public entity to conclude that the use of a PLA is appropriate for a given project.

This step must be completed and submitted to DEEP as part of the bid approval package.

STEP 2. NOTICE OF INTENT TO ALL BIDDERS. The bid package, including the bid advertisement, must clearly indicate that a PLA will be utilized on the project. The bid documents shall also state that any bidder for a public works project that does not agree to abide by the conditions of the project labor agreement or a requirement to negotiate a project labor agreement shall not be regarded as a responsible qualified bidder for such project. A

draft PLA shall be made available to all potential bidders in order to provide transparency.

STEP 3. CERTIFICATION OF PLA CONDITIONS AND REQUIREMENTS. Upon execution of a PLA with the selected bidder/contractor, the public entity shall submit to the department a signed certification attesting that all of the conditions and requirements listed below have been satisfied. This submission shall be part of the Application for Construction Assistance in accordance with Section 22a-482-2(c)(3) of the Clean Water Fund Regulations.

As per CGS sec. 31-56b(c) any project labor agreement required by a public entity shall:

- (1) set forth mutually binding procedures for resolving disputes that can be implemented without delay;
- (2) include guarantees against a strike, lockout or other concerted action aimed at slowing or stopping the progress of a public works project;
- (3) ensure a reliable source of skilled and experienced labor;
- (4) include goals for the number of apprentices and for a percentage of work to be performed by minorities, women and veterans;
- (5) invite all contractors to bid on the project without regard to whether the employees of any such contractor are members of a labor organization, as defined in section 31-101 of the general statutes;
- (6) permit the selection of the lowest responsible qualified bidder without regard to labor organization affiliation;
- (7) not require compulsory labor organization membership of employees working on the project; and
- (8) bind all contractors and subcontractors to the terms of the agreement.

V. PARAMETERS FOR IMPLEMENTATION

In applying the factors identified earlier, DEEP has determined the following criteria or thresholds shall apply in order for any public entity to undertake a PLA using a CWF grant or loan:

- Individual construction contract value shall be \$10 million or more;
- Construction activity shall span a duration of more than 365 days;

- Candidate projects shall allow adequate time to document a finding of public interest, provide notice of intent to all bidders, and execute the actual PLA for inclusion in the contract;
- The intent to require a PLA shall be clearly stated in the bid documents and bid advertisement in order to provide notice to all potential bidders; and
- The public entity proposing a PLA shall adhere to the 3 step procedure contained in section IV above.

_____ Signature

_____ Date

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