



Working Under the NYC Project Labor Agreements (PLAs)

NYC

Project Labor Agreement (PLA) - Definition

An agreement by an owner (here, the City) with construction trades that all bidders must agree to as part of a responsive bid. Subcontractors to be used by prime contractors on a City contract must also agree to the terms of the PLA to be approved.

PLAs: Key Concepts

Bidders that assent to the PLA need not be signatory to any other union agreement (thus, open shop contractors that don't have union agreements are able to agree and bid)

Key concept is that all of the provisions in the PLA apply to all contractors and all subcontractors—on those City projects subject to a PLA

PLAs: Key Concepts

Key concept is that under PLAs, contractors and subcontractors use union labor referred by the building trades (open shop and M/WBE contractors have “bring-along” provisions)

All benefits for trade workers will be paid to union benefit funds on a timely basis—where workers are not union members, they are ‘agency shop fee payers’ and will acquire union benefits without becoming union members per se.

PLAs and Wicks Law Reform

In 2008, the NYS Legislature amended the Wicks Law to allow for an exemption to its requirements where PLAs are utilized. This is advantageous to the City because:

The City no longer must bid the “Wicks trades” separately (leading to more subcontracting opportunities, savings and flexibility)

Negotiating the PLAs

Brings together all the affiliated and historically related trades necessary for building construction with the City (public owner)

- **These trades are prevailing unions for virtually all Labor Law 220 classifications**

Bargaining with Building Trades allows for changes in overtime, holiday and shift pay within Labor Law 220, thus reducing labor costs for the City (public owner)

Key Reasons for Negotiating PLAs

Direct labor cost savings

Avoid delays

Permit flexibility in work schedules

Ensuring reliable source of skilled and experienced labor

Wicks exemption

Work Covered by the NYC PLAs

Specified new construction

DEP buildings/plants within New York City

DEP Rondout Water Bypass Tunnel

Work Covered by the NYC PLAs

Programmatic PLA for building rehabilitation, renovation & repair: DDC, DCAS, DSNY, DPR, ACS, DFTA, DHS, DOC, DOHMH, HRA, FDNY, NYPD

- **Includes any construction or standardized services bids that involve City-owned structures**
- **Includes repair and maintenance bids where repair work dominates the contract**

Contracts NOT covered under the NYC PLAs

Site work

Street/subsurface work

Small Purchase-Building Repair

Predominately maintenance work

Format of PLAs by New York City

Provisions ‘adjust’ existing prevailing local agreements – work rules issues

Local collective bargaining agreements (CBAs) referenced as ‘Schedule A’ in the PLAs (govern where PLA does not override)

Adjustments DO NOT cut regular hourly pay/benefits rate or freeze pay/benefits

Common Features in the NYC PLAs-- other than Adjustments

No strike provision

Union recognition

Administrative provisions

Dispute resolution

**Special provision for M/WBE contractors not otherwise
union signatories (the “bring-along” provision)**

Adjustments in the NYC Renovation PLAs

Small premium for shift work

4 days by 10 hour schedule available

Saturday 'weather make-up' available at straight time

Management rights

Maximum apprentice/journeyperson ratio authorized

Adjustments in the NYC Renovation PLAs

Standard 40 hour week

Common start time

½ hour unpaid lunch period

8 common holidays**

Overtime capped at time and a half from Monday – Saturday

****This provision is specific to the 2009 PLAs. There are 9 common holidays in the 2015 PLAs**

How are the New Construction PLAs different from the Renovation PLAs?

Shift work at regular rates

No 4 by 10 hour shift availability

No Saturday 'make-up' at straight time

Key differences between the 2015 PLAs and the 2009 PLAs

The dollar threshold for PLA applicability on prime contracts was raised from \$100,000 to \$250,000 for work covered by the 2015 PLAs

An M/WBE PLA carve out was created in the 2015 PLAs, exempting prime contracts valued under \$1 million if such work is bid out to an M/WBE Pre-qualified list (which some agencies already have and limits competition to firms that are: 1. M/WBE; 2. Non-M/WBE but agree to subcontract 50% of the work to M/WBEs or joint venture with MWBEs.)

Key differences between the 2015 PLAs and the 2009 PLAs

The 2015 Renovation PLAs do not apply to Task Orders or Work Orders issued under JOCS or Requirements Contracts that do not exceed \$10,000, and JOCS or Requirements Contracts where the monetary value of such contracts predominantly involves such Task Orders or Work Orders

There are 9 recognized holidays under the 2015 PLAs, including Veteran's Day

Key differences between the 2015 PLAs and the 2009 PLAs

Non-union contractors with bona fide private benefit plans which satisfy the requirements of Labor Law 220 will not be required to pay into union benefit funds for their bring-along employees already covered under their bona fide private benefit plans for contracts subject to the 2015 PLAs.

Supplemental benefit funds in excess of the annualized value of the private benefit plans will be paid to workers as additional wages in compliance with Labor Law 220

- At the time of contract award, the contractor shall make available to the contracting Agency a complete set of plan documents for each private benefit plan into which contributions will be made and/or coverage provided**
- Contractor shall also provide certification from a certified public accountant as to the annualized hourly value of such benefits consistent with the requirements of Section 220**

Key differences between the 2015 PLAs and the 2009 PLAs

Under the 2015 Renovation PLAs, the standard work week may be reduced to 35 or 37 ½ hours of work at straight time rates, Monday to Friday, 7 or 7 ½ hours per day, plus ½ hour unpaid lunch period in those limited circumstances where the City states in the bid documents that the Contractor will not be given access to the site to accommodate an 8 hour day. The 8 hour, 7 ½ hour or 7 hour work day must be established at the commencement of the project and may not be altered by the Contractor

What will be most different for contractors working under a PLA who ordinarily do public work on an open shop basis?

No 'splitting' of workers between trades

Union referral in hiring [See Article 4]

- **Must get referrals from the union for first seven workers; eighth worker can be contractor/subcontractor's own labor (12%)**
- **Any non-union worker on the job must be registered with the union**
- **Contractor may "send back" unproductive referral (if you send back a shop steward, that can be a grievance)**

Payment of benefits into joint trustee funds [See Article 11]

- **Benefits Funds to be paid by Contractor**
- **Workers not in union subject to 'agency shop fee' in lieu of union dues (equal or less than union member dues—withholding from wages)**

Additional Information for Open Shop Contractors

Forepersons will be union members and will all be experienced as forepersons

Requirements contractors—special provision for less than 48 hour notice in hiring

No boycott permitted [See Article 7]

Union grievance procedures [See Articles 7 and 9]

NYC PLAs and M/WBEs

City certified M/WBE firms receive specific “bring-along” for contracts under \$1M:

- **For contracts at or below \$500k – 2nd, 4th, 6th, 8th workers per trade**
- **For contracts between \$500k and \$999k – 2nd, 5th, 8th workers per trade**

M/WBE firms that become union signatories get to bring all employees for the applicable trade subject to union standards of proficiency

City Record Advertisements

If a contract is covered by the PLA, the City Record ad includes a general statement that the contract is covered by the PLA

Example of a sample statement:

“Bidders are hereby advised that this contract is subject to the PROJECT LABOR AGREEMENT (“PLA”) entered into between the City and the Building and Construction Trades Council of Greater New York (“BCTC”) affiliated local unions. Please refer to the bid documents for further information.”

Notice to Contractors at OTW – Reminders (1 of 2)

All subcontractors, prior to request for agency approval, must sign the PLA Letter of Assent [Article 2, Section 8] and that the Letter of Assent must accompany the request for agency approval.

Contractors and all subcontractors must provide certified payrolls as required by NYS Labor Law 220 and in Article 37 of the Standard Construction Contract using the form issued by the NYC Comptroller. The words ‘Project under [{2009 or 2015} Renovation or New Construction or DEP] PLA’ must be marked at either the top or the bottom of each form to avoid confusion by auditors and/or other compliance oversight agencies.

Pursuant to all NYC PLAs, there is a union referral system related to hiring [Article 4, Section 2].

Notice to Contractors at OTW – Reminders (2 of 2)

Any person working in a trade capacity under a PLA, whether for the contractor or a subcontractor, that is not a member of the affiliated Building Trades Unions, must be registered with the appropriate union benefit fund [Article 11, Section 2]; and are subject to an agency shop fee [Article 4, Section 6].

NYS DOL maximum permitted apprentice ratios apply. Contractors and subcontractors should contact the appropriate unions as to the availability of apprentices [Article 13].

Subcontractor Approval Process

In accordance with PPB Rule Section 4-13(c), all subcontractors must be approved by the contracting agency prior to commencing work under the subcontract

Under a PLA each subcontractor must provide a signed letter of assent to the contracting agency before the subcontract is approved

Quarterly Trade Worker Census

Prime Contractor picks one (1) work day within the first full week of each quarter (weeks of 1/8, 4/8, 7/8 and 10/8) as the 'census day'.

Prime Contractor will submit completed form to contracting agency no later than 3 days after the 'census day'

It is imperative that the PLA Trade Worker Census forms for each active PLA site are completed accurately and on time.

PLA TRADE WORKER CENSUS

- The proper completion of this form by each PLA prime contractor constitutes its participation in the Labor Management process in Article 8 of each PLA entered into by New York City.
- Prime Contractor picks one (1) work day within the first full week of each quarter (weeks of 1/8, 4/8, 7/8 and 10/8) as the 'census day'.
- **DO NOT LEAVE ANY SECTIONS BLANK** If a value is zero (0), indicate a zero rather than leaving the field blank.
- Prime Contractor will submit completed form to contracting agency no later than 3 days after the 'census day'.
- Where a prime contractor has multiple sites under the same contract [such as JOCS] a single consolidated form is submitted for all active sites.
- If the PLA project has no active trade work during a 'census week', the form should be submitted indicating NO ACTIVE TRADE WORK. [A form with all zeros is not needed.]
- Agency field management should check that the # of trade workers listed on a 'census day' is the # of trade workers listed on the project log for that day where a daily project log is kept.
- Each ACCO designated agency collector will check the forms for errors before submitting to MOCS.

Project: _____ [**Include both Project Name and Number]

Agency: _____

General (Prime) Contractor: _____ M/WBE? (Yes / No)

Total Active Subcontractors: _____ Total Active M/WBE Subcontractors: _____

Section A – Total Workers

1 – Trade workers under the prime: _____

2 – Trade workers under subcontractors: _____

3 – Total trade workers: _____ [**Sum of A1 and A2; should equal B3c and C4]

Section B – Demographics of all Trade Workers

1A – Minority Male Trade Workers: _____ 1B – Minority Female Trade Workers: _____

2A – Non-Minority Males: _____ 2B – Non-Minority Females: _____

3A – Total Males: _____ 3B – Total Females: _____

3C – Total trade workers _____ [**Sum of 3A and 3B; should equal A3 and C4]

Section C – Trade Workers by Type

1 – Total Union Journeypersons: _____

2 – Total Apprentices: _____

3 – Total Agency Shop Fee Payers (non-union): _____

4 – Total trade workers: _____ [**Sum of C1, C2, and C3; should equal A3 and B3c]

Section D – Agency Shop Fee Payers (non-union) by Type

1 – Worker under 12% Bring Along: _____

2 – Worker under special M/WBE Bring Along: _____

3 – Worker because there are no available union trade workers: _____

4 – Worker because there are no available union trade workers to fulfill federal goals for women and minority employment: _____

5 – Total Agency Shop Fee Payers: _____ [**Sum of D1, D2, D3, and D4; should equal C3]

Completed By Name (please print): _____ Title: _____

Signature: _____ Date: _____ Phone: _____

For Agency Use Only

Collected and reviewed by: _____ Date: _____ Rev 3/13

Key Duties for Contractors as to PLA compliance

READ YOUR CONTRACT CAREFULLY--know the terms of the PLA that your contract or subcontract is subject to

- **There are many different PLAs and each PLA has its own specific terms and conditions (e.g. 2009 NYC PLAs, 2015 NYC PLAs, SCA PLAs, HHC PLA, etc.)**

Ensure that all certified payroll report submissions for projects under a PLA are marked 'Project under [{2009 or 2015} Renovation or New Construction or DEP] PLA' on each certified payroll form

Key Duties for Contractors as to PLA compliance

Pay all supplemental benefits on a timely basis on behalf of all employees covered by this Agreement to those established jointly trustee employee benefit funds designated in Schedule A

Make sure subcontractors are complying with all PLA requirements

- **This includes timely payment of union benefit funds**
- **Union benefit fund payment non-compliance is a liability to contractors that can grow quickly and can put their business at risk**

Key Duties for Contractors as to PLA compliance

In the event of a grievance under the PLA, contractors should promptly communicate with the grieving Local to address the grievance claims. If the PLA grievance is against a subcontractor, the subcontractor should notify the prime contractor of the grievance. Contractors should facilitate resolving the grievance matter ASAP (ideally before a Step 2 grievance meeting gets scheduled by the BCTC).

- Keep your contracting Agency updated on the status of the grievance resolution (subcontractors should keep the prime contractor updated so that they can update the contracting Agency)

If a Step 2 grievance meeting is scheduled, contractors should RSVP with the BCTC to attend the meeting. If the grievance is against a subcontractor, prime contractors should also attend the grievance meeting.

Key Duties for Contractors as to PLA compliance

If a Step 3 arbitration meeting is scheduled, contractors are expected to participate in the arbitration and bring all documentation/evidence to support their position. If the grievance is against a subcontractor, the prime contractor should also attend the arbitration meeting

- The decision of the Arbitrator shall be final and binding on the involved Contractor, Local Union and employees. The fees and expenses of such arbitrations shall be borne equally by the involved Contractor and Local Union

Contractors Need To Remember

By signing the PLA Letter of Assent, your company is assenting to ALL of the terms of the PLA for your company and ALL your subcontractors and to the local collective bargaining agreements (“CBAs”) that apply for the particular trades on the job (e.g. painters, electricians, etc.).

CBAs are available upon the request of any prospective bidder

M/WBE goals still apply under a PLA

NYC PLAs - Online Resources

MOCS PLA website

<http://www1.nyc.gov/site/mocs/contract/project-labor-agreements.page>

The City Record Online (CROL)

<http://nyc.gov/cityrecord>