

Advancing Equity in Project Labor Agreements

Equity Action Plan and Phase II Report

November 2022

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Introduction

Purpose

In 2019, San Francisco Foundation (SFF) engaged Estolano Advisors (EA) and the Law Office of Julian Gross to work with an advisory committee of local public agency representatives, building trades unions, and community-based organizations to identify strategies for diversifying the construction workforce through project labor agreements (PLAs). Phase I of *Advancing Equity in Project Labor Agreements* culminated in a set of recommendations that identified innovative policies and programs, best practices, and exemplary language to strengthen PLAs as tools for workforce equity.

While racial and gender justice advocates have worked for decades to increase diversity in the building trades, construction job access for Black, Indigenous, and People Color (BIPOC) and women workers remains disproportionately low. In Alameda County, the overwhelming majority of construction workers are Latinx or white. Only 6% of construction workers in Alameda County are Black and only 2% are women¹. As owners and managers of major infrastructure projects, public agencies hold a unique ability to create a diverse and sustainable pipeline of union construction workers from historically underrepresented backgrounds. If thoughtfully crafted, regularly monitored, and supported by a robust workforce development ecosystem, project labor agreements (PLAs) can be a tool to drive better outcomes for Black, women, and other underrepresented workers. Public agencies can further maximize impact by aligning efforts to drive investments to low-income and BIPOC

communities to create a more equitable region where workers and their families can thrive.

Access Phase I's [Improving the Effectiveness of Project Labor Agreements](#) report for additional information.

Summary

In Phase II of the initiative, EA worked with Advisory Committee members to develop an action plan to begin to implement Phase I recommendations. Over the course of seven meetings the Advisory Committee discussed strategies to implement Phase I recommendations, opportunities for greater equity, and the challenges of “on the ground” policy implementation. Based on early interviews with Advisory Committee members, their top three priorities were: data tracking and sharing, workforce funding alignment, and retention along the pipeline.

Drawing on the recommendations developed in Phase I of the initiative, Phase II has culminated in a regional Action Plan and concrete commitments from public agencies and the Alameda County Building Trades Council. The Action Plan was informed by members’ own experience, research of past PLA success and shortcomings, and holistic perceptions of career pathways from education to retirement. It describes goals, strategies, tactics, roles and responsibilities, key stakeholders and model provisions for both PLAs and local/disadvantaged hire policies that can serve as regional “gold standards.”

¹Estolano Advisors and San Francisco Foundation. [Improving the Effectiveness of Project Labor Agreements Report](#). 2020.

Now that the Advisory Committee has developed an Action Plan and model provisions, public agencies must take the lead on implementing recommendations listed in the following sections. This includes:

- Presenting the contents of this report to agency leadership;
- Incorporating the recommendations of this report into relevant programs, policies, and contract language;
- Continuing to meet as an Advisory Committee to learn from implementation and build on this work.

Advisory Committee Members – Phase II

Beli Acharya, Executive Director, Construction Trades Workforce Initiative

Julina Bonilla, Workforce Development Manager, Port of Oakland

Andreas Cluver, Secretary-Treasurer, Building and Construction Trades Council of Alameda County

Darlene Flynn, Executive Director, Race & Equity Department, City of Oakland

Kurry Foley, Administrative Services Manager, City of San Leandro

Jason Gumataotao, Organizer/ Business Representative, International Brotherhood of Electrical Workers 595

Phillip Halley, Program Manager, AC Transit

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Joan Quillio, Contract Compliance Officer, Office of Acquisition Policy, Alameda County General Services Agency

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Project Team

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Overview: Equity Action Plan

The strategies and actions laid out in the sections that follow were designed to respond to the recommendations developed in Phase I of this project. Those recommendations can be found on pages 36-49 of *Improving the Effectiveness of Project Labor Agreements*.

Strategy	Action	Committed Agencies
I. Set Workforce Diversity Goals	1. Apply targeted hire goals to all contractors and all trades.	AC Transit City of Oakland County of Alameda Port of Oakland
	2. Use a shared definition of “disadvantaged” worker.	AC Transit City of Oakland Port of Oakland
	3. Narrow the definition of “local” worker to specify those living in low-income areas.	City of Oakland
II. Track and Share Data	1. For PLA-covered projects, collect and make available on an agency web page information on the project, its contractor, and the racial and gender diversity of workforce and subcontractors, to be updated on a quarterly basis.	AC Transit Alameda County City of Oakland Oakland Unified School District Port of Oakland
	2. Work to secure state funding to build the capacity of unions and community-based workforce providers to contribute to data tracking efforts.	Port of Oakland

III. Establish Clear Responsibilities and Improve Enforcement	1. Ensure PLAs outline the specific roles and responsibilities of contractors, unions, and public agencies in meeting and reporting on workforce diversity goals.	AC Transit Alameda County City of Oakland Port of Oakland Oakland Unified School District
	2. Ensure workforce diversity goals are legally enforceable terms of prime contracts in PLA-covered projects.	AC Transit Alameda County City of Oakland Port of Oakland
IV. Support Recruitment, Retention, and Advancement of Diverse Workers	1. Require contractors to sponsor new-hire local and disadvantaged workers into apprenticeship programs and employ them on covered projects.	AC Transit Alameda County City of Oakland Oakland Unified School District Port of Oakland
	2. Require participating unions to prioritize recruitment and referral of local and disadvantaged workers to covered projects.	AC Transit Alameda County City of Oakland Oakland Unified School District Port of Oakland
	3. Require prime contractors to contribute funding for workforce development, whether as a portion of their hard costs, a specified amount for each labor hour on the project, or another method.	AC Transit City of Oakland Oakland Unified School District Port of Oakland
	4. Explore the feasibility, costs, and benefits of pooling workforce development funds across the region to streamline efforts for both agencies and community providers.	AC Transit Port of Oakland

	<ol style="list-style-type: none"> 5. Select and pilot a tested worksite harassment prevention program that provides all employees with concrete tools to step up and intervene when harassment and discrimination occurs on a jobsite. 	<p>City of Oakland</p>
<p>V. Sustain Regional Collaboration to Create a Diverse Workforce</p>	<ol style="list-style-type: none"> 1. Continue meeting quarterly to implement and build on Phase II work. Engage key agency departments, community organizations, local schools, and the building trades in tailoring the implementation of this plan to the needs of the jurisdiction. 	<p>AC Transit Alameda County City of Oakland Oakland Unified School District Port of Oakland</p>

Equity Action Plan

STRATEGY I: Set Workforce Diversity Goals

For all projects covered by PLAs, Advisory Committee agencies will prioritize the hire of **local residents who live in low-income zip codes, disadvantaged workers using the shared definition below, and new apprentices**. Advisory Committee agencies will set aggressive hire goals for workers in these categories. To ensure diversity goals are not achieved merely by placing BIPOC and women workers in lower paid crafts, agencies will apply targeted hire goals to each contractor and each trade on a given project.

A **disadvantaged worker** is defined as someone for whom at least two of the following are true:

- Is currently experiencing homelessness;
- Has been incarcerated;
- Has been emancipated from the foster care system;
- Is a single, custodial parent;
- Has received public assistance in the past year;
- Has been unemployed for at least six (6) months,

A **local resident** is defined as someone who lives in a low-income zip code within the agency's jurisdiction. A **low-income zip code** is defined as one that contains a census tract for which the average household income is at or below 30-50%² of the average household income for the given Metropolitan Statistical Area.

² Exact percentage will be determined by each jurisdiction.

STRATEGY II: Track and Share Data

To track the performance of PLAs against workforce diversity goals, Advisory Committee agencies will collect and make publicly available the following metrics:

- a. **Project Information:** Name and Type of Project, Total Project cost, Estimated Construction Start and End Dates
- b. **Contractor Information:** Name of Prime Contractor and Subcontractors
- c. **Workforce Diversity:**
 - i. Apprenticeship Utilization (number of workers and percentage of work hours): By trade, by contractor, and by referral source
 - ii. Disadvantaged Worker Utilization (disaggregated by race and ethnicity): apprentice, journey-level, by trade, by contractor, and by referral source
 - iii. BIPOC and Women Utilization (disaggregated by race and ethnicity): apprentice, journey-level, by trade, by contractor, and by referral source
 - iv. Subcontractor Utilization – BIPOC, Women, Veteran, and Disadvantaged Business Enterprises

To ensure accessibility and accountability for improvement, agencies will make this data available to the public on an agency web page, to be maintained and updated on a quarterly basis. As this regional collaboration grows, agencies will work toward the development of an online dashboard that aggregates data across agencies to provide regionwide picture.

To support partners in the trades and community-based, pre-apprenticeship programs in building their capacity to collect this data, agencies will work to secure state funding for data tracking needs.

STRATEGY III: Establish Clear Responsibilities and Improve Enforcement

Advisory Committee agencies will ensure PLAs include procedures that facilitate the achievement of this Equity Action Plan, with clear roles, responsibilities, and reporting requirements for all parties.

Contractors will be responsible for:

- Reporting workforce diversity data, as described in Section II.C, above;
- Reporting data regarding staffing, recruitment, and hiring processes and decisions, to enable a compliance determination regarding goals and procedures for utilization of local residents, disadvantaged workers, and new apprentices;
- Complying with equity hiring requirements of the PLA and the prime contract;
- Compliance with any additional labor or anti-discrimination requirements of prime contracts or applicable law, such as prevailing wage requirements, affirmative action requirements of U.S. Executive Order 11246 (for federally-funded projects), etc.;
- Implementation of anti-harassment and worksite culture programs required by prime contractors or PLAs, to help ensure an inclusive and non-discriminatory job site; and
- Executing the Letter of Assent, indicating agreement to comply with the PLA;

Each contractor working on a PLA job – including the *prime contractor, and subcontractors of any tier* – must implement the steps listed above. These steps are crucial to enforcement of a PLA, and to ensuring equity and diversity in public construction.

The ***prime contractor*** on a PLA project is responsible both for implementing the steps listed above and for *ensuring compliance by all subcontractors*.

Unions will be responsible for:

- Prioritizing referrals of local residents, disadvantaged workers, and new apprentices, as needed for contractors to satisfy targeted hiring goals;
- Providing data requested by public agencies regarding referrals to contractors, in order to assist public agencies in monitoring and enforcing the PLA, including goals and procedures for utilization of local residents, disadvantaged workers, and new apprentices;
- Assisting in developing relationships between contractors, joint labor-management apprenticeship programs, and MC3 pre-apprenticeship programs that primarily serve underrepresented and nontraditional workers;
- Assisting contractors in understanding of and compliance with the PLA and applicable master agreements;
- Protecting workers' rights under the PLA, master agreements, and applicable law regarding workers' rights and prevention of harassment and discrimination; and
- Participating in efforts to ensure an inclusive work environment for all workers.

Public Agencies will be responsible for:

- Ensuring that the PLA is a term of prime contracts, and that bidders are aware of and have access to text of PLA and master agreements;
- Monitoring covered projects to identify and address any incidents or patterns of illegal discrimination;
- Monitoring and enforcing goals and procedures for utilization of local residents, disadvantaged workers, and new apprentices;
- Overseeing general implementation of and compliance with the PLA;
- Initiating and staffing pre-job conferences, which are essential to ensuring that contractors are aware of and prepared to comply with hiring goals;
- Fulfillment of public agencies' responsibilities under prevailing wage law and other applicable legal requirements;
- Supporting efforts to prevent discrimination and ensure inclusivity with regard to workers and contractors on covered projects;
- Assessing and overseeing PLA implementation over time, to enable adjustments as need to promote equity, prevent discrimination, protect and support workers, and advance the public interest as covered projects move forward; and
- Making complete data available to the public (redacted to protect privacy of individuals) to assist in oversight, transparency, and identification of patterns of decision-making, and to inform future public decisions and refinement of policy tools.

Legal Language and Enforcement Mechanisms

Legal language capturing the above responsibilities will be included in all PLAs, prime contracts, and administrative guidance released by public agencies.

Direct Enforcement of PLAs

PLAs will contain detailed dispute resolution procedures to enable prompt and inexpensive resolution of disputes regarding compliance with the PLA and interpretation of PLA terms. PLAs will also contain special provisions for resolving disputes over craft jurisdiction (*i.e.*, which union's members should perform a certain type of work), and for any disputes regarding labor disruptions.

Enforcement of Prime Contracts

All prime contracts on PLA projects will require compliance with the PLA, including the implementation of targeted hiring goals by contractors. Prime contracts will include a range of enforcement mechanisms, which may include withholding of progress payments, liquidated damages, and debarment from future projects. These mechanisms will be reserved for serious cases of noncompliance and may include notice and opportunity to cure. Exact terms related to monitoring, breach of contract, and remedies, will be vetted by each public agency's legal counsel and will be consistent with applicable laws and practices of each public agency.

STRATEGY IV: Support Recruitment, Retention, and Advancement of Diverse Workers

To build resources and shared responsibility for recruitment, advancement, and retention of BIPOC and women workers, Advisory Committee Agencies will do the following:

1. Require contractors to sponsor new-hire local and disadvantaged workers into apprenticeship programs and employ them on covered projects. Public agencies can consider designating local MC3 programs that primarily serve underrepresented and nontraditional workers as preferred sources for disadvantaged and local apprentices.
2. Require participating unions to prioritize recruitment and referral of local and disadvantaged workers to covered projects.
3. Require prime contractors to contribute funding for workforce development, whether as a portion of their hard costs, a specified amount for each labor hour on the project, or another method. A portion of this will be earmarked for retention supports.
4. Explore the feasibility, costs, and benefits of pooling workforce development funds across the region to streamline efforts for both agencies and community partners.
5. Select and pilot a tested worksite harassment prevention program that provides all employees with concrete tools to step up and intervene when harassment and discrimination occurs on a jobsite.

STRATEGY V: Sustain Regional Collaboration to Create a Diverse Workforce

To monitor progress, address challenges, identify new opportunities for advancing workforce equity, the project Advisory Committee will continue meeting on a quarterly basis. Agencies will designate a primary and secondary representative to the Advisory Committee to ensure attendance. To ensure each agency's implementation of this plan is informed by the unique assets and needs within its jurisdiction, agencies are encouraged to convene a committee to oversee implementation with representatives of key agency departments, community organizations, the local schools, and the building trades.

Recommendations: Phase III Priorities

While many stakeholders in the Bay Area trades workforce ecosystem have worked together for decades to improve outcomes for BIPOC and women workers, the commitments reflected in this Action Plan represent a starting point for real cross-jurisdictional collaboration to advance equity across the ecosystem. Project partners must keep building on this work, both to learn from implementation and to tackle equity challenges the Phase II Advisory Committee was unable to address within our timeframe. In this section, Estolano Advisors, the consultant team on Phases I and II of this project, highlight opportunities both created by and missed in the work to date, laying out a potential framework for Phase III priorities. These recommendations draw heavily on discussions that took place among the Advisory Committee and in one-on-one conversations with individual members.

1. Invest in workforce funding collaborative

As a result of Phase II work, Advisory Committee members Port of Oakland and AC Transit have taken the exciting step to explore pooling the workforce funding contributions their PLAs require of prime contractors. At the jurisdiction level, these pots of funds are small and frequently granted to the same network of community-based workforce providers. Pooling funds across agencies could significantly reduce the application and reporting burden for these nonprofit providers, while enabling larger and more strategic investments in the region. To set up this collaborative for success, resources are needed to investigate the funding landscape surrounding the local trades workforce pipeline and identify the areas of greatest need. There are also administrative and operational questions to be answered for a new or newly restructured fund that draws from multiple public agencies, such as the governance structure of the fund, legal considerations, and organizational development needs. These will require expertise and focused resources in order to shepherd the fund into successful and sustainable operation. Depending on the interest of contributing agencies and the broader regional collaborative, such a joint entity could support the collaborative in other important ways, such as housing the infrastructure for regionally compiled data and serving as a digital home for public-facing information about the *Advancing Equity in PLAs* regional effort.

2. Leverage opportunities and minimize barriers in state and federal policies

In CA, Proposition 209 has long posed a challenge to addressing racial and gender inequity in public education, employment, and contracting. Beyond the letter of the law, Prop 209 has also created a climate of fear and misinformation within both public agencies and unions regarding the collection and reporting of demographic data. As part of implementing the Equity Action Plan, Advisory Committee agencies should work together on a coordinated audit of places where their data collection, reporting, and other practices surrounding information on race, ethnicity, and gender could be improved and still comply with Prop 209 restrictions. Advisory Committee members from both public agencies and the building trades are in a unique position to educate colleagues on how to work with demographic data legally under Prop 209, as well as the critical importance of doing so for equity work to succeed.

One place where public agencies can legally set and pursue targeted racial and gender hire goals is on projects that receive federal funding, where federal policy supersedes Prop 209 restrictions. Importantly, a lesser-known provision of federal law is that any contractor on a publicly funded project is responsible for pursuing race and gender hire goals not only on that project, *but on all other projects under their purview*³. Advisory Committee members and equity advocates have an opportunity to shine a light on this provision and hold public contractors accountable to diversifying their workforce.

³ California Workforce Development Board. *Building a Statewide System of High Road Pre-Apprenticeship in California: Lessons from the California Clean Energy Jobs Act*. July 2019. Appendix C: State and Federal Law. https://cwdb.ca.gov/wp-content/uploads/sites/43/2019/10/HRCC_Building-a-Statewide-System-of-High-Road-Pre-Apprenticeship-in-California_ACCESSIBLE.pdf

3. Address harassment and discrimination in the workplace

In the Phase I research, one of the primary barriers to sustained work in the construction industry identified repeatedly by BIPOC and women interviewees was pervasive harassment on the job. Individuals and institutions across the trades workforce ecosystem can work tirelessly to recruit, train, and support BIPOC, women, and LGBTQ workers in securing construction jobs, but if these efforts fail to address workplace culture, we will never achieve workforce equity. Public agencies in the Pacific Northwest have followed branches of the military in adopting evidence-based harassment prevention and intervention programs that train workers to identify racism, sexism, and other forms of harassment in the workplace. Here in the Bay Area, Tradeswomen, Inc has been working locally and at the state level to strengthen anti-harassment provisions and programs and could be a valuable resource to the Advisory Committee in Phase III.

While the Advisory Committee did not reach agreement for collective action on this issue in Phase II, the City of Oakland has an opportunity to lead the region by piloting a harassment prevention program in conjunction with its citywide Community Workforce Agreement (CWA), currently being negotiated. Addressing harassment on the job was a top priority raised by the CWA Taskforce convened to advise the City on important provisions for the new citywide agreement. Should this pilot make it into the CWA, the Advisory Committee can learn from implementation and scale up successful practices to help transform workplace culture on Bay Area construction sites.

4. Double down on Black worker retention

Among Phase I research findings, one of the starkest data points on racial disparities in the East Bay construction trades workforce pipeline was the gap between recruitment and graduation of Black apprentices. The issues of retention and advancement of Black workers specifically is one that deserves additional attention by this collaborative. One idea that Advisory Committee members discussed in Phase II was to earmark a portion – eg. 30% - of workforce funds contributed by prime contractors for retention supports, such as child care, transportation assistance, or other needed services. The workforce funding collaborative described above could be especially useful in doing the research necessary to better understand needs and explore creative ideas to support retention of BIPOC and women workers and of Black workers specifically. Partnering with and learning from the East Bay-based Black Worker Retention project, which was early in its formation at the start of Phase II, represents an important opportunity for Phase III work in this area.

5. Identify supports for small BIPOC- and women-owned contractors

To date, the Advisory Committee’s primary focus for action planning has involved the workforce side of the trades ecosystem. Additionally, leveling the playing field for women-and BIPOC-owned small contractors and supporting them in raising wages and job quality standards represents another important opportunity to strengthen PLAs as tools for equity. The Phase I Advisory Committee had a representative from one of these small contractors. Unfortunately, when that person retired, we were unable to fill that hole in Phase II. Addressing Phase I recommendations regarding women- and BIPOC-owned contractors should be a priority in Phase III.

6. Bring others on board

The conversations that originally seeded this initiative took place among unions, agency representatives, community organizations, and PLA administrators in the East Bay. This Advisory Committee has laid the groundwork for a regional collaborative that will be strengthened by bringing others in the local trades ecosystem on board, and doing so in Phase III should be a priority. This includes other public agencies, but also Joint Apprenticeship Training Committees, the California and Bay Area Apprenticeship Coordinators Associations, and community-based workforce providers and their CBO partners.

Within Advisory Committee organizations - including both public agencies and unions - implementing and expanding on the Equity Action Plan must include raising awareness internally and building new champions for this work. During Phase II, EA and Advisory Committee members themselves made presentations to agency leadership about the project and the value of regional coordination in workforce equity efforts. This awareness building and engagement should continue through Phase III to ensure this work continues to grow and deepen in the region.

Glossary

Project Labor Agreements (PLAs) are complex, multi-party contracts, which contain extensive legal and technical language, and many industry-specific terms and concepts. Individuals working with PLAs for the first time often find them inscrutable. This glossary aims to demystify certain terminology and concepts utilized in PLAs. Statements pertaining to “most PLAs” describe terms and concepts as they are generally used in PLAs in California.

In addition to PLA terms, this glossary includes a list of common terms related to **race and racial equity** that are either used in this report or likely to be used in the context of implementing the Equity Action Plan.

Apprenticeship Programs

- Sometimes referred to as “approved” or “registered” apprenticeship programs, to indicate approval by the State of California’s Division of Apprenticeship Standards.⁴
- Apprenticeship programs can be run either solely by employers (*i.e.*, *unilateral* programs), or by a committee composed of representatives of unions and unionized employers (*i.e.*, *joint labor-management apprenticeship programs (see below)*).
- Apprenticeship programs are heavily regulated by the state and federal governments.⁵ Admissions systems are on file, and must be approved by regulatory authorities.

BIPOC

- A term referring to “Black, Indigenous, and People of Color.” While People of Color or “POC” is often used as well, BIPOC explicitly leads with Black and Indigenous identities, recognizing the unique historical experiences of slavery and genocide in the U.S. context.⁶

Building Trades Council

- An association of construction trade unions. Building trades councils usually cover a county, a set of counties, or a state.
- Building trades councils are separate legal entities from their affiliated unions, and cannot make legal commitments for those unions. However, they generally have close relationships with all their affiliated unions, and usually speak collectively for them in legislative advocacy and PLA negotiations.
- Synonymous with *Trades Council* or *BTC*; often referred to in context as simply “the Trades.”

Collective Bargaining Agreement

⁴ Cal. Dept. of Industrial Relations, Div. of Apprenticeship Standards (2022) available at: <https://www.dir.ca.gov/DAS/das.html>.

⁵ See U.S. Dept. of Labor, Employment and Training Administration, available at: <https://www.dol.gov/agencies/eta/apprenticeship>; see also U.S. Dept. of Labor, “Apprenticeship.gov Fact Sheet” (Sept. 2020) available at: https://www.apprenticeship.gov/sites/default/files/Apprenticeship_Fact_Sheet.pdf.

⁶ *Creating Cultures and Practices for Racial Equity: A Toolbox for Advancing Racial Equity for Arts and Cultural Organizations*, Nayantara Sen & Terry Keleher, Race Forward (2021).

- See *Master Labor Agreement (MLA)*.

Community Benefits Agreement (CBA)

- Occasionally used as an alternate title for a *Community Workforce Agreement*. *Community Benefits Agreement* is more commonly used outside the construction context to describe a contract setting forth a range of community benefits for a large land use development project—such as affordable housing, living wages, and parks and open space.
- CBAs in the non-construction context are often negotiated between coalitions of community-based organizations and private land use developers, against the backdrop of a public approval process for a proposed development project.⁷

Community Workforce Agreement (CWA)

- *Community Workforce Agreement* is generally used to mean a PLA that includes strong diversity or equity provisions. This is not a formal legal definition, but rather describes common usage.
- See also *Project Labor Agreement (PLA)*, since a CWA is a type of PLA.
- Occasionally a CWA will be entitled *Community Benefits Agreement (CBA)*.

Core Employees

- See *Core Workers*.

Core Workers

- Synonymous with *Core Employees*.
- Most PLAs describe a category of Core Workers whom a *non-signatory contractor* can utilize on a PLA job site.⁸ Each PLA describes who can qualify as a contractor's Core Worker, based on how much the employee has worked with that contractor in the recent past. Staffing needs that cannot be met by Core Workers are generally required to be referred from the union hiring hall.
- PLAs that have Core Worker provisions establish an order and ratio of hiring Core Workers vs. hiring workers from the union hiring hall. A typical Northern California Core Worker provision would indicate that for the first ten workers hired by a *non-signatory contractor*, five can be Core Workers and five from the hiring hall, hired on an alternating basis. Under this approach, if a contractor has 10 or fewer workers at the job site, the ratio between Core Workers and hiring hall workers would be close to 50/50 at all times. Typically, all workers hired after the first ten would be from the union hiring hall.
- For PLAs to advance targeted hiring goals, both Core Worker hires by the contractor, and hiring hall referrals by the unions, need to take into account the hiring goals applicable to the contractor.

⁷ See "[Community Benefits Agreements](#)," Julian Gross, chapter in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policymakers*; a publication of the Forum on Affordable Housing & Community Development of the American Bar Association. (2009); see also "CBAs: Definitions, Values, and Legal Enforceability" (2008), Julian Gross, in *Journal of Affordable Housing & Community Economic Development Law*, Volume 17, Issues 1-2, a publication of the Forum on Affordable Housing & Community Development of the American Bar Association.

⁸ See, e.g., City of Los Angeles, Dept. of Pub. Works, Bureau of Contract Admin. "Project Labor Agreement (PLA) Resources," "PLA Frequently Asked Questions" (2015-2020) available at: <https://bca.lacity.org/Uploads/hiring/PLA%20Frequently%20Asked%20Questions%20%28FAQ%29.pdf>.

Craft

- *Craft* is usually used to mean a particular type of construction work, or *trade*, such as ironwork, carpentry, electrical work, etcetera.
- *Prevailing wage* laws described numerous crafts by the type of work they entail, as described in *prevailing wage scopes*.
- Sometimes *craft* is used synonymously with *craft union* to mean a particular construction union, like an International Brotherhood of Electrical Workers (IBEW) or United Brotherhood of Carpenters (UBC) local chapter.

Craft Union

- A particular construction union associated with a particular *craft* or *trade*, like an International Brotherhood of Electrical Workers (IBEW) or United Brotherhood of Carpenters (UBC) local chapter.

Craft Worker

- A construction worker; *i.e.*, a worker performing work in a *construction craft* or *trade*.

Davis-Bacon Requirements

- *Davis-Bacon* requirements refer to the obligation to pay *prevailing wages* on federally-funded public works projects.⁹ *Davis-Bacon* requirements apply *only* to federally-funded projects.¹⁰ They are similar but not identical to California's state prevailing wage requirements, which apply to state and local public works projects.¹¹

Discrimination

- The unequal treatment of members of various groups based on race, gender, social class, sexual orientation, physical ability, religion, and other categories.¹²

Joint Apprenticeship and Training Committee (JATC)

- See *Joint Labor/Management Apprenticeship Program*

Joint Labor/Management Apprenticeship Program

⁹ 40 U.S.C. 3141 et seq.

¹⁰ 40 U.S.C. 3142(a) (applying to every contract in excess of \$2,000).

¹¹ See State of Cal. Dept. of Industrial Relations, "Prevailing Wage Requirements" (Sept. 2019) available at: <https://www.dir.ca.gov/public-works/prevailing-wage.html>.

¹² Institute for Democratic Renewal and Project Change Anti-Racism Initiative, *A Community Builder's Tool Kit*, Appendix I (2000).

- State law describes two kinds of apprenticeship programs: *unilateral programs* and *joint labor-management programs*. Unilateral programs are established and operated by either management or labor representatives.¹³ Joint labor-management programs are established and operated by a committee composed of representatives of both labor and management.¹⁴
- Often used synonymously with *Joint Apprenticeship and Training Committee (JATC)*, which is the name for the committee that controls a joint labor-management apprenticeship program.
- Sometimes described informally as a “Union apprenticeship program.”
- While joint labor/management programs often have a close relationship with unions in their respective crafts, they are separate legal entities. JATCs do not sign PLAs, so PLAs cannot contain commitments regarding the actions of joint labor-management apprenticeship programs.
- See also *apprenticeship program*.

Journey-level Worker

- Usually refers either to (i) a union worker who has graduated from a registered apprenticeship program, or (ii) a worker who has otherwise acquired several years’ worth of working experience in a particular craft, sufficient to possess the full skills and licenses of workers in that craft.¹⁵ Sometimes referred to as a “journey person.”

Letter of Assent

- The Letter of Assent is a one- or two-page document that subcontractors working under a PLA are required to sign. Through the Letter of Assent, subcontractors agree to comply with terms of the PLA, including applicable terms of the Master Labor Agreement for their craft.
- The Letter of Assent is usually attached to a PLA as a form that can be completed by each subcontractor.
- Older PLAs sometimes use the title “Agreement to Be Bound” for this document.

Master Labor Agreement (MLA)

- Synonymous with *Collective Bargaining Agreement* and *Schedule A Agreement*.
- A Master Labor Agreement is the collective bargaining agreement between a specific construction trade union and union signatory contractors for that trade. For example, the IBEW (*i.e.*, the electrical workers union) negotiates an MLA with representatives of union-signatory electrical contractors, and then the MLA is signed by the union and those contractors.
- MLAs contain terms and conditions of employment for union construction workers in the craft in question.

¹³ State of Cal., Dept. of Industrial Relations, “Apprenticeship programs information guide – definitions” (2022) available at: <https://www.dir.ca.gov/databases/das/defpage.html>.

¹⁴ State of Cal., Dept. of Industrial Relations, “Apprenticeship programs information guide – definitions” (2022) available at: <https://www.dir.ca.gov/databases/das/defpage.html>.

¹⁵ Office of Fed. Contract Compliance Programs, “Construction Contractors Tech. Assistance Guide” at 65, available at: <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf>.

- PLAs generally require contractors working under the PLA to comply with terms of the MLA for each craft in which work is being performed. If there is a conflict between PLA terms and MLA terms, the PLA governs; but on all other issues, the MLA governs.
- PLAs do not require non-signatory contractors to sign an MLA in order to work under the PLA. They need only sign the Letter of Assent, pertaining to the project covered by the PLA.
- MLAs generally have terms of a few years. PLAs contain provisions indicating what happens when an MLA expires while a project under the PLA is ongoing.

Name Call

- Many *Master Labor Agreements* contain provisions allowing contractors to request that union hiring halls dispatch particular workers who have worked with that contractor before (and/or meet other qualifications). There are often limits on how many “name calls” a contractor can utilize, as opposed to hiring workers referred from the top of hiring hall lists.
- Name call provisions in some MLAs are flexible enough that they can be used by contractors to help satisfy targeted hiring requirements. Specifics of MLAs are important to understand on this point.

Non-Signatory Contractors

- Synonymous with *Non-Union Contractors or Open Shop Contractors*.
- A non-signatory contractor is simply a contractor that has not signed an MLA, and is thus not a union contractor. Its employees are not union members.
- A non-signatory contractor does *not* become a signatory or union contractor simply by signing a Letter of Assent and working under a PLA. Letters of Assent and PLAs apply only to specific projects, and not to all of a contractor’s operations. As described above, a Letter of Assent simply requires non-union contractors to comply with terms of an MLA on a particular project.
- See also *Signatory Contractors*.

OFCCP Requirements

- Federal requirements based on U.S. Executive Order 11246.¹⁶ These requirements apply to all contractors on all federally-funded construction projects, and contain percentage hiring goals for women and people of color. These goals are applicable across a contractor’s workforce but are monitored and enforced primarily through review of employment patterns on federally-funded projects.

¹⁶ U.S. Dep. Of Labor, Office of Fed. Contract Compliance Programs, “Exec. Order 11246 – Equal Employment Opportunity,” available at: <https://www.dol.gov/agencies/ofccp/executive-order-11246/ca-11246>.

- The nationwide percentage goal for utilization of women in construction projects is 6.9%.¹⁷ Percentage goals for utilization of people of color vary by region, but are decades out of date; they were established in the 1970s and have not been updated.¹⁸
- The hiring requirements of E.O. 11246 are monitored and enforced by the U.S. Office of Federal Contract Compliance Programs, an office within the U.S. Department of Labor.
- Details regarding implementation of E.O. 11246 requirements on federally-funded construction projects are detailed in OFCCP's *Construction Contractors Technical Assistance Guide*.¹⁹ Appendix P of this guide includes percentage goals for utilization of people of color in various regions of the country. The goal is 25.6% for the counties of Alameda, Contra Costa, Marin, San Francisco, and San Mateo.
- For a PLA to facilitate contractors' satisfaction of the E.O. 11246 hiring goals, the PLA needs to take these goals into account in setting forth hiring and referral practices of contractors.

Prejudice

- A pre-judgment or unjustifiable, and usually negative, attitude of one type of individual or groups toward another group and its members. Such negative attitudes are typically based on unsupported generalizations (or stereotypes) that deny the right of individual members of certain groups to be recognized and treated as individuals with individual characteristics.²⁰

Pre-apprenticeship Programs

- Pre-apprenticeship programs help prepare workers for a career in the construction trades prior to application to an apprenticeship program. Training in pre-apprenticeship programs often focus both on general skills that are needed on construction job sites, and specific skills that are needed to successfully apply to apprenticeship programs.
- High-quality pre-apprenticeship programs often have a good record of placement of graduates into formal apprenticeship programs.
- Many established pre-apprenticeship programs have strong diversity in enrollment, sometimes with an explicit diversity focus, such as training women for careers in the construction trades.
- Multi-Craft Core Curriculum programs—often called “MC3” programs—utilize a curriculum developed by the national building trades unions, to provide a broad base of training and expose participants to the full spectrum of construction crafts.²¹

¹⁷ U.S. Dept. of Labor, Fed. Contract Compliance manual, 3C00 Exec. Order Goals, (“The current goal for the utilization of women is 6.9 percent of work hours and applies to all of a contractor’s construction sites, regardless of where the federal or federally assisted contract is performed.”) available at <https://www.dol.gov/agencies/ofccp/manual/fccm/3c-general-principles-applicable-construction-industry/3c00-executive>.

¹⁸ Id. (noting that goals were originally published in 1978).

¹⁹ Office of Fed. Contract Compliance Programs, “Construction Contractors Tech. Assistance Guide,” available at: <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf>.

²⁰ Institute for Democratic Renewal and Project Change Anti-Racism Initiative, *A Community Builder's Tool Kit*, Appendix I (2000).

²¹ See, e.g., State building and Construction Trades Council of Cal., “Apprenticeship and Pre-Apprenticeship/MC3” (2022), available at: <https://cabuildingtrades.org/issue/apprenticeship-and-pre-apprenticeship-mc3/>.

- It is important to remember that while many students in and graduates of pre-apprenticeship programs may be ready to enroll in apprenticeship programs, they are not actually registered apprentices, and cannot be utilized as such on prevailing wage or PLA jobs.

Pre-job Conference

- PLAs require contractors of all tiers, and unions, to attend a pre-job conference. This conference will be held prior to the start of construction, with possible additional sessions as additional contractors come on board later during project construction.
- At this conference, contractors will disclose intended assignment of work between unions – *i.e.*, a contractor will identify which union or unions it wants to use members of to perform the work in question. This enables early resolution of jurisdictional disputes.
- Pre-job conferences can be used to address other issues of project administration and labor/management coordination.

Prevailing Wages

- State and federal law require payment of *prevailing wages* on all *public works projects*. California’s prevailing wage requirements are established by statute and administered by the Department of Industrial Relations (DIR), a department within the California Department of Labor.²²
- See *Davis-Bacon Requirements* regarding federal prevailing wage law.
- In California, projects for which a public entity hires the prime contractor are always considered to be public works projects. Certain other projects with substantial public involvement may also be considered public works projects.
- Prevailing wage law sets requirements for wages based on the task being performed by the worker, which should fall into a “scope” released by the DIR.²³ For each scope, there is a corresponding wage requirement, generally thought of as the “journey-level” wage. That wage must be paid to all workers performing work within that scope, except for work performed by *registered apprentices*, who may be paid a specified lower wage.
- Prevailing wage requirements in California also generally include a requirement to utilize registered apprentices in performance of public work, in accordance with ratio between apprentices and journey-level workers established by the apprenticeship program or the Division of Apprenticeship Standards.²⁴
- Prevailing wage levels and scopes of work in California are generally set by DIR based on a survey that includes assessment of Master Labor Agreements in the region.

²² See State of Cal. Dept. of Industrial Relations, “Prevailing Wage Requirements” (Sept. 2019) available at: <https://www.dir.ca.gov/public-works/prevailing-wage.html>.

²³ State of Cal. Dept. of Industrial Relations, Director’s Gen. Prevailing Wage Determinations, available at: <https://www.dir.ca.gov/opri/dprevagedetermination.htm>.

²⁴ State of Cal. Dept. of Industrial Relations, Div. of Apprenticeship Standards, available at: <https://www.dir.ca.gov/das/>

Privilege

- Unearned social power accorded by the formal and informal institutions of society to all members of a dominant group (e.g. white privilege, male privilege, etc.). Privilege is usually invisible to those who have it, but nevertheless it puts them at an advantage over those who do not have it.²⁵

Project Labor Agreement (PLA)

- Synonymous with *Project Stabilization Agreement (PSA)*.
- See also *Community Workforce Agreement (CWA)*, which is a type of PLA.
- Legally, a PLA is a “pre-hire collective bargaining agreement,”²⁶ specifically permitted for use in the construction industry by Section 8(f) of the National Labor Relations Act.²⁷ In California, PLAs are specifically permitted for use by public entities under Public Contract Code sec. 2500.
- A PLA is entered into by either a project owner or a prime contractor, and local construction trade unions. The local Building Trades Council is usually a party as well. PLAs require the prime contractor to ensure that all subcontractors of any tier sign a *Letter of Assent*.

Project Stabilization Agreement (PSA)

- See *Project Labor Agreement (PLA)*.

Proposition 209

- Proposition 209 was a ballot measure approved by California voters in 1996, establishing a new provision of the California constitution that prohibits use of race- and gender- based preferences in public employment, contracting, and education. Thus, Proposition 209 would prohibit a local government entity in California from establishing race- or gender- based hiring goals in its PLAs or public construction projects. Note, however, that Proposition 209 does not prohibit all efforts by public entities to identify, avoid, or address discrimination in its operations²⁸. For example, it does not prohibit local government entities from:
 - implementing federally-required affirmative action requirements, like the hiring goals of E.O. 11246 (see OFCCP Requirements, above), or the federal Disadvantaged Business Enterprise program;
 - collecting comprehensive data on demographics of employees and contractor ownership on publicly-funded projects;
 - requiring that hiring and contracting systems be structured so as to minimize the possibility of invidious discrimination;

²⁵ Colours of Resistance Archive, “Privilege” (accessed 28 June 2013).

²⁶ See Cal. Pub. Contract Code § 2500(b)(1) (“Project labor agreement” means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.”).

²⁷ 29 U.S.C. 158(f); see also Executive Order 14063 § 2(e) (Feb. 11, 2022) (““Project labor agreement” means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).”).

²⁸ With regard to public contracting, see “Public Contracting in the Proposition 209 Era: Options for Preventing Discrimination and Supporting Minority-and Women-Owned Businesses,” Julian Gross with Tim Lohrentz, a publication of the Insight Center for Community Economic Development (2012).

- taking other creative and proactive steps to fulfill the government’s affirmative duty to avoid race and gender discrimination, including ensuring that it does not become a “passive participant” in private discrimination by subsidizing it on public projects.²⁹
- While Proposition 209 is an unfortunate limitation on the range of approaches local government has at its disposal to fight discrimination, many tools are still available and should be implemented and further developed.

Racial Equity

- Racial equity is a state in which race can no longer be used to predict life outcomes. According to the Government Alliance on Race and Equity, “equality and equity are sometimes used interchangeably, but actually convey significantly different ideas. Equity is about fairness, while equality is about sameness.”³⁰ Due to the legacy of hundreds of years of institutionalized racism (see definition below), an equity approach acknowledges that achieving fairness over the long term may require differential treatment today.

Racism (Individual)

- Individual racism refers to the beliefs, attitudes, and actions of individuals that support or perpetuate racism. Individual racism can be conscious and intentional, or the individual may act to perpetuate racism without intending to do so.
 - Examples:
 - Telling a racist joke, using a racial epithet, or believing in the inherent superiority of whites over other groups.
 - Treating strangers differently based on their perceived racial identity (e.g., white people crossing the street to avoid a group of Latino/a young people; locking car doors when they see a Black family walking in their direction; or not hiring a person of color because “something doesn’t feel right”).³¹

Racism (Institutional)

- Institutional racism refers specifically to the ways in which institutional policies and practices create different outcomes for different racial groups. The institutional policies may never mention any racial group, but their effect creates advantages for whites and disadvantage for Black, Indigenous, and other People of Color.
 - Examples:
 - Government policies that explicitly restricted the ability of people to get loans to buy or improve their homes in Black neighborhoods (also known as “redlining”).
 - City sanitation department policies that concentrate trash transfer stations and other environmental hazards disproportionately in BIPOC communities.³²

²⁹ “[I]t is...axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.” *Norwood v. Harrison*, 413 U.S. 455, 492 (1973). See also *Croson*, 488 U.S. at 491: “It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”

³⁰ *Advancing Racial Equity and Transforming Government: A Resource Guide to Put Ideas into Action*, Government Alliance on Race and Equity, page 9.

³¹ *Flipping the Script: White Privilege and Community Building* by Maggie Potapchuk, Sally Leiderman, Donna Bivens, and Barbara Major (2005).

³² *ibid.*

Racism (Interpersonal)

- Interpersonal racism occurs between individuals. When individual racism is present in an interaction between two or more people, racism is now in the interpersonal realm.
 - Examples: public expressions of racial prejudice, hate, bias, and bigotry between individuals.³³

Racism (Structural)

- The normalization and legitimization of an array of dynamics – historical, cultural, institutional, and interpersonal – that routinely advantage white people while producing cumulative and chronic adverse outcomes for Black, Indigenous, and other People of Color. Structural racism encompasses the entire system of racial hierarchy, diffused and infused in all aspects of society including its history, culture, politics, economics, and entire social fabric. Structural racism is more difficult to locate in a particular institution because it involves the reinforcing effects of multiple institutions and cultural norms, past and present, continually reproducing old and producing new forms of racism. Structural racism is the most profound and pervasive form of racism – all other forms of racism emerge from structural racism.³⁴
 - For example, structural racism underlies the many institutional, cultural, and other factors that contribute to lower life expectancy for Black and Native American men, compared to white men. These include higher exposure to environmental toxins, dangerous jobs and unhealthy housing stock, higher exposure to and more lethal consequences for reacting to violence, stress, and racism, lower rates of health care coverage, access, and quality of care, and systematic refusal by public and private institutions to fix these things.³⁵

Racism (Systemic)

- This is an interlocking and reciprocal relationship between the individual, institutional and structural levels which function as a system of racism. These various levels of racism operate together in a lockstep model and function together as a whole system.
 - These levels are:
 - Individual (within interactions between people)
 - Institutional (within institutions and systems of power)
 - Structural or societal (among institutions and across society)³⁶
- In many ways “systemic racism” and “structural racism” are synonymous. If there is a difference between the terms, it can be said to exist in the fact that a structural racism analysis pays more attention to the historical, cultural, and social psychological aspects of our currently racialized society.³⁷

³³ *Chronic Disparity: Strong and Pervasive Evidence of Racial Inequalities* by Keith Lawrence and Terry Keleher (2004).

³⁴ *Chronic Disparity: Strong and Pervasive Evidence of Racial Inequalities* by Keith Lawrence, Aspen Institute on Community Change, and Terry Keleher, Applied Research Center, for the Race and Public Policy Conference (2004).

³⁵ *Flipping the Script: White Privilege and Community Building* by Maggie Potapchuk, Sally Leiderman, Donna Bivens, and Barbara Major (2005).

³⁶ Canadian Race Relations Foundation, Glossary of Terms.

³⁷ Aspen Institute, “11 Terms You Should Know to Better Understand Structural Racism” (2016).

Schedule A Agreement

- See *Master Labor Agreement (MLA)*.

Signatory Contractors

- Synonymous with *union contractors* or *union contractors*.
- See also *non-signatory contractors*.
- A signatory contractor is simply a contractor that has signed an MLA, and therefore agreed to become a “union” contractor. Signatory contractors comply with terms of their MLA on all their projects.
- A non-signatory contractor does *not* become a signatory or union contractor simply by signing a Letter of Assent and working under a PLA. Letters of Assent and PLAs apply only to specific projects, and not to all of a contractor’s operations.

Trade

- See *craft*.

Trust Funds

- Union pension plans, and certain other union benefits programs, are structured as *trust funds*. These are legal structures designed to ensure that money contributed can only be used for specific purposes – in this case, providing benefits to qualifying workers.
- Union contractors are required by MLAs to contribute a certain amount to trust funds based on each employee’s hours worked. Non-signatory contractors are usually required by PLAs to make similar contributions.³⁸ This leads to complaints that non-union workers may not benefit from those contributions, because they may not be eligible to participate in union benefits programs funded or administered by trust funds.

Union

- Synonymous with *trade union* and *craft union*.
- In the PLA context, a union (or *trade union* or *craft union*) is a labor organization that directly represents construction workers in negotiation of MLAs.
- Unions operate hiring halls and refer workers to job sites, and also monitor working conditions and job sites to ensure that workers’ rights are not being violated.
- See also *Building Trades Council*.

Union Contractor

- A union contractor (or *signatory contractor*) is a contractor who has signed an MLA.
- Union contractors (who comply with terms of MLAs on all their work) are distinct from *non-signatory contractors* who simply agree through a *letter of assent* to comply with a PLA and an MLA on a single project

³⁸ See, e.g., Port of Seattle, “Project Labor Agreement: Wages and Benefits” (2022) (“Non-signatory contractors should note that payments are required on behalf of each “core” employee into the established Union Trust Funds.”),

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