COMMONWEALTH *of* VIRGINIA

Office of the

SECRETARY *of* TRANSPORTATION

Recommendation for CTB Policy: Project Labor Agreements

October 14, 2025

Project Labor Agreements (PLA)

- **What is a PLA?**
  - A pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific project

- **What is the Purpose of a PLA?**
  - Generally, intended to ensure a stable and qualified labor supply for a project at predictable costs

- **What is the History of PLAs?**
  - First used in the US in the 1930s on major infrastructure projects such as the Hoover Dam
  - Use in World War II served as foundation for modern PLAs -high demand for skilled labor, increased government spending on construction and unionization of a majority of labor
  - In later years use subsided as construction industry sought more open competition
  - Presidential Executive Orders (EO) have addressed use of PLAs on federal or federally funded construction contracts
    - Earlier Presidential EOs restricted or prohibited use of PLAs by federal agencies or on federally funded projects
    - More recent Presidential EOs have encouraged or required use of PLAs on federal or federally funded construction projects

Project Labor Agreements

- **History of PLAs (cont'd)**
  - In 2012 Virginia Law was enacted that prohibited state agencies from requiring or prohibiting bidders or contractors to enter into agreements with labor organizations for state funded projects
  - In 2020 Virginia law was amended to authorize public bodies to require bidders or contractors to enter into project labor agreements for public works projects

- **Why Address PLAs?**
  - Increasing discussion around use by localities and industry
  - Potential for impacts on projects—warrants policy for use of PLAs on projects funded by the CTB

Status of PLAs Under Federal Law

- **National Labor Relations Act allows for PLAs in Construction**
- **Presidential EO (2022) and federal regulations:**
  - **Require federal agencies to use PLAs on large scale projects ($35M or more) unless:**
    - **PLA would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement because a project:**
      - has short duration, is not complex
      - will involve only one craft or trade
      - involves specialized construction work performed by a limited number of contractors or subcontractors
      - has unusual and compelling urgency such that a project labor agreement would be impracticable
      - could not achieve adequate competition at a fair and reasonable price based on market research

Status of PLAs Under Federal Law

- **FHWA established Interim Guidance on the use of Project Labor Agreements (05/07/2010)**
  - Requires approval of FHWA before a state DOT may use a PLA on federally funded project
  - FHWA may approve/state DOT may require use of a PLA by a contractor on a project if they are able to present evidence that the use of a PLA will:
    - advance the government's interest in
      - reducing construction costs and achieving economy and efficiency;
      - producing labor-management stability;
      - ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters as appropriate
    - be consistent with law.

Status of PLAs Under Federal Law

- **FHWA Interim Guidance on the Use of Project Labor Agreements (Cont'd)**
  - **Use of a PLA may be approved if the State DOT has made a reasonable showing that the use of a PLA on the project will advance the interests of the government. Factors to be considered:**
    - Size and complexity of the project;
    - Importance of the project and need to adhere to a certain timeline;
    - Risk of labor unrest on the project and present circumstances that may lead to a heightened risk of labor disruption, includes history of labor unrest in the area, the anticipated working conditions of the project relating to the environment or work schedules, and expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;
    - Impacts of a labor disruption to the users, the operation of the facility, and the region;
    - Costs of a delay should a labor disruption occur; and
    - Available labor pool relative to the particular skills required to complete the project.

Status of PLAs Under Federal Law

- **FHWA Interim Guidance on the Use of Project Labor Agreements (Cont'd)**
  - **To Apply --a State DOT must provide a written statement to the Division Office:**
    - asserting that a PLA advances the interest of the government, describing the basis for that determination and providing documentation with supporting facts
  - **Division Office may accept or deny the use of a PLA on a particular project based on the supporting information submitted.**
  - **Division Offices also review terms of PLAs to ensure they:**
    - bind all contractors and subcontractors and include appropriate specifications
    - allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
    - contain guarantees against strikes, lockouts, and similar job disruptions;
    - include effective, prompt, and mutually binding procedures for resolving labor disputes during the PLA;
    - provide other mechanisms for labor-management cooperation on key matters, including productivity, quality of work, safety, and health; and
    - fully conform to all statutes, regulations, and Executive Orders.
  - **PLAs must be approved by FHWA Headquarters**

Status of PLAs Under Virginia Law

- **Public bodies when procuring or letting contracts for construction or maintenance, *may,* require bidders, offerors, contractors, or subcontractors to enter into and/or adhere to project labor agreements with one or more labor organizations.**

- **Virginia is a right to work state—based on Virginia's Right to Work statutes:**
  - **it is the policy of Virginia that a person's right to work must not be denied based on membership or non-membership in any labor union/organization**
  - **any agreement between an employer and labor union/organization that**
    - denies a person's right to work for the employer because they are not a member of the labor union
    - requires membership in a labor union as a condition of employment
    - establishes a labor monopoly

    is against public policy and is an illegal conspiracy.

Summary of Virginia Law and PLAs

- **Virginia law authorizes a public body to require use of a PLA on a project, but does not specify criteria/conditions for use:**
  - **Lack of criteria/conditions for use of PLAs on projects funded in whole or in part with funding allocated by the CTB place these projects at risk of indiscriminate use of PLAs which, among other things, could:**
    - increase project costs
    - inhibit competition
    - conflict with Virginia's Right to Work statutes
- **The CTB is a policy board and has statutory power and duty to:**
  - review and approve, assist in establishing and oversee execution of policies and transportation objectives of the Department of Transportation and the Department of Rail and Public Transportation
  - coordinate planning for and financing of transportation needs
- **Based on the above, it is recommended that the CTB enact a policy on use of PLAs for projects funded in whole or in part with funding allocated by the CTB.**

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Recommended Policy:**
  - **A Project Labor Agreement may be used on a project funded in whole or in part with state and/or federal funding allocated by the CTB only upon a finding by the Board that:**
    - **the use of a PLA on the project will**
      - **clearly and significantly benefit the project and advance the interests of the Public and the Commonwealth from the standpoint of quantifiable cost savings, effectiveness, efficiency, quality, safety and timeliness (*Interests of the Public and the Commonwealth*)**
      - **meet the requirements of the Virginia Right to Work statutes**

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Factors to be used in determining a project's eligibility for use of a PLA:**
  - **Project Size and Complexity:** The PLA's usefulness as it relates to the size and complexity of the project
  - **Impact on Project Cost:** Whether, and the extent to which use of a PLA will increase or decrease the costs of the project, based on:
    - Project cost estimates with use of a PLA, and
    - Project cost estimates without use of a PLA;
  - **Project Criticality and Timeline:** The importance of the project and need to adhere to a certain timeline; whether the project cannot be completed in accord with the timeline needed by the Commonwealth without a PLA and the risks presented by use of a PLA on the timeline;

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Factors, (cont'd)**
  - **Competition:** Impacts (positive/negative) of a PLA on competition, including but not limited to:
    - Impacts (positive/negative) on the number of contractors that would otherwise be willing or able to bid or offer proposals on the project, including but not limited to their union/non-union status or participation /non-participation in collective bargaining agreements;
    - Impacts (positive/negative) on the ability of Virginia-based contractors or Virginia residents to participate in the contract;
  - **Denial of Work based on non-union membership:** Whether use of a PLA will deny work to any Virginia worker based on their union or non-union membership status;

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Factors, (cont'd)**
  - **Labor Shortage:** Whether there is an actual shortage of skilled labor needed for the project, considering the availability of labor inside and outside the project area and whether use of a PLA will resolve/address the labor shortage;
  - **Prequalification:** Whether VDOT's or DRPT's prequalification requirements do not adequately address the Interests of the Commonwealth and the Public;
  - **Labor Disputes:** Whether use of a PLA would impact the risks of labor disputes or unrest affecting the project, to include**;**
    - the circumstances that are present that may lead to a heightened risk of labor disruption, such as the history of labor unrest in the area, the anticipated working conditions of the project relating to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes and evidence that use of a PLA will prevent strikes from occurring during the project;
    - Impacts of a labor disruption to the users, the operation of the facility, and the region and the impact that use of a PLA would have on the potential for labor disruption; and
    - The costs of a delay should a labor disruption occur.

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Finding: The Board shall consider the Project Sponsor's submission and will only approve the use of a PLA for the project, if the Board finds that:**
  - **the Project Sponsor's request and Independent Third-Party Evaluation have, taking into consideration each of the factors, made a clear and compelling case that use of a PLA:**
    - **will have a positive impact; and**
    - **will significantly benefit the project and advance the *Interests of the Public and the Commonwealth.***

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Process:**
  - **A Project Sponsor seeking to utilize a PLA for a project funded with state or federal funds allocated by the CTB must submit to the Commissioner of Highways or Director of DRPT a PLA Request Packet consisting of:**
    - a written request
    - an independent third-party evaluation that addresses each of the eligibility factors and makes a clear and compelling case that the use of a PLA meets the requirements of the Policy
  - **Commissioner or Director, within 60 days of receipt, must assess the PLA Request Packet for completeness;**
    - If complete—packet is presented to CTB at the next (if practicable) but no later than the second regularly scheduled workshop of the Board following completion of the assessment
    - If incomplete—Commissioner or Director notifies Project Sponsor of reasons

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Process: (cont'd)**
  - **The Board, by resolution, renders its determination at the next month's regularly scheduled action meeting (if practicable) but no later than the second month's regularly scheduled action meeting following presentation of the PLA Request Packet by the Commissioner or Director.**
    - **Determination:** Whether or not it has been shown that a PLA will significantly benefit the project and advance the *Interests of the Commonwealth and the Public.*
      - **Negative Determination-**PLA may not be used on the project so long as state and/or federal funds are used on the project.
      - **Affirmative Determination—**PLA may be used on the project
        - **Commissioner or Director works with Project Sponsor to ensure the PLA complies with state and federal laws**
        - **If project is federally funded in whole or in part, Commissioner or Director works with Project Sponsor to ensure that all requirements for submission/review/approval at the federal level are satisfied prior to implementation of the PLA**

Recommended/Draft Policy for Use of PLAs in Transportation Projects

- **Reporting Requirements—for projects using PLAs**
  - **Project Sponsor to report to the Board, by January 31 of each year and no later than 60 days after project closeout, information substantiating benefits of PLA to the project and:**
    - General Project Information (Name/Letting Date/Award Date/Type of Procurement)
    - Original Contract cost
    - Number of responsive bidders
    - Total project costs inclusive of change orders issued since contract award.
    - Unapproved or pending change order value since contract award.
    - Original contract completion date
    - Actual or anticipated completion date, including approved/pending/unapproved extensions
    - Project Workforce – Total number of workers and number of Virginia workers
    - All occurrences and details of labor disruptions, regardless of the impact to the project experienced by any contractor or subcontractors on the project.
  - **To be posted on CTB Website**

Next Steps

- **CTB will be requested to approve/adopt the PLA Policy at its next Action meeting. (see Attachment A)**

- **If approved/adopted, the Policy will become effective immediately.**

ATTACHMENT A

Commonwealth Transportation Board
Policy on Use of Project Labor Agreements for State-Funded Projects
October 2025 Draft

Whereas the Commonwealth Transportation Board (Board) recognizes that Va. Code § 2.2-4321.2 authorizes public bodies procuring products or services, and/or letting contracts for construction, manufacture, maintenance, or operation of public works to require bidders, offerors, contractors, or subcontractors to enter into or adhere to Project Labor Agreements (PLA) with one or more labor organizations, on the same or related public works projects; and

Whereas the Commonwealth Transportation Board recognizes that Virginia's Right to Work law under Va. Code § 40.1-59 establishes that any agreement between an employer and any labor union or labor organization whereby persons not members of such union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy in the Commonwealth of Virginia; and

Whereas under Va. Code § 33.2-214 the Commonwealth Transportation Board shall have the power and duty to coordinate the planning for and financing of transportation needs, including needs for highways, railways, seaports, airports, public transportation and spaceports, and set aside funds pursuant to a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year; and

Whereas under Va. Code § § 33.2-214 and 33.2-209 the Commonwealth Transportation Board shall have the power and duty to enter into contracts with the local districts, commissions, agencies, or other entities created for transportation purposes. Furthermore, the Commonwealth Transportation board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways compromising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of $5 million.

Therefore, considering Va. Code § 2.2-4321.2 and pursuant to the Board's status as a "Policy Board", the Commonwealth Transportation Board believes that it is necessary to provide guidance on the use of Project Labor Agreements and the development of such agreements to carefully follow and/or reconcile with the laws of the Commonwealth of Virginia.

It is the belief of the Commonwealth Transportation Board that the use of a Project Labor Agreement may be considered when such an agreement would clearly and significantly benefit the project and advance the interests of the Public and the Commonwealth. The Commonwealth Transportation Board will require entities seeking Board funded use of a PLA to demonstrate: (1) quantifiable cost savings through the use of such an agreement, (2) evidence of increased effectiveness and efficiency of the project, and (3) quality, safety and timeliness benefits to the project. Accordingly, a Project Labor Agreement may be used on a project funded in whole or in part with state or federal funding allocated by the Board pursuant to the six-year improvement program, upon a finding by the Board that a Project Labor Agreement satisfies the requirements of this Policy.

I. Definitions

For the purposes of this Policy, the following terms shall have the meaning set forth below:

Independent Third-Party means an entity with no organizational ties to the Project Sponsor that has a minimum of five years demonstrated experience in performing evaluations and assessing the potential and actual impacts of Project Labor Agreements on projects.

Project Labor Agreement (PLA), as set forth in Va. Code § 2.2-4321.2, means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.

Project Sponsor means the public entity responsible for administration and/or delivery of the project.

II. Requirements

The following requirements shall apply in the determination of whether or not a Project Labor Agreement may be used on a project funded in whole or in part with state or federal funding allocated by the Board pursuant to the six-year improvement program.

1. Commonwealth Transportation Board's Determination of a Project's PLA Eligibility

While the Commonwealth Transportation Board agrees and understands that a public body may (in its bid specifications, project agreements, or other controlling documents) allow or require bidders, offerors, contractors, or subcontractors to enter into PLAs on projects, the Board must work to balance the use of PLAs as it relates to the Public's and Commonwealth's best interest and subsequent use of Board allocated transportation

funds. The Board must weigh a PLA's usefulness based on a declaration of need by the Project Sponsor and evidence that, based on its size and complexity, the project requires predictability in costs, an extended period, timely completion, multiple contractors and trades, and a need to ensure a unified, skilled and trained workforce.

In accordance with the effort to be effective stewards of Commonwealth resources; to balance the right to work policy of the Commonwealth of Virginia embodied in the Right to Work statutes (Va. Code §§ 40.1-58 through 40.1-69); and acknowledging that a PLA may be permitted by public bodies, the Commonwealth Transportation Board finds it necessary to develop a policy with appropriate criteria to determine if the use of a PLA is in the Public's and Commonwealth's best interest.

The Commonwealth Transportation Board shall, on a project-by-project basis, render a determination of PLA eligibility and may approve the use of a PLA on a project only if the Project Sponsor has submitted a written request along with an evaluation prepared by an Independent Third- Party that make a clear and compelling case that the use of a PLA on the project will significantly benefit the project and advance the interests of the Public and the Commonwealth from the standpoint of quantifiable cost savings, effectiveness, efficiency, quality, safety and timeliness and shall meet the requirements of the Virginia Right to Work statutes.

In considering whether the Project Sponsor made a clear and compelling case that use of a PLA will benefit the project and advance the Interests of the Public and the Commonwealth, the Commonwealth Transportation Board shall consider the Project Sponsor's request combined with an Independent Third-Party evaluation that address, at a minimum, each of the following factors:

A. The PLA's usefulness as it relates to the size and complexity of the project;

B. Whether, and the extent to which, use of a PLA will increase or decrease the costs of the project, based on:

    i. Project cost estimates with use of a PLA, and
    ii. Project cost estimates without use of a PLA;

C. The importance of the project and need to adhere to a certain timeline; whether the project cannot be completed in accord with the timeline needed by the Commonwealth without a PLA and the risks presented by use of a PLA on the timeline;

D. Impacts (positive/negative) of a PLA on competition, including but not limited to:
    i. Impacts (positive/negative) on the number of contractors that would otherwise be willing or able to bid or offer proposals on the project, including but not limited to their union/non-union status or participation/non-participation in collective bargaining agreements;
    ii. Impacts (positive/negative) on the ability of Virginia-based contractors or Virginia residents to participate in the contract;

E. Whether use of a PLA will deny work to any Virginia worker based on their union or non-union membership status;

F. Whether there is an actual shortage of skilled labor needed for the project, considering the availability of labor inside and outside the project area and whether use of a PLA will resolve/address the labor shortage;

G. Whether VDOT's or DRPT's prequalification requirements do not adequately address the Interests of the Public and the Commonwealth; and

H. Whether use of a PLA would impact the risks of labor disputes or unrest affecting the project, to include:
    i. the circumstances that are present which may lead to a heightened risk of labor disruption, such as the history of labor unrest in the area, the anticipated working conditions of the project relating to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes and evidence that use of a PLA will prevent strikes from occurring during the project;
    ii. impacts of a labor disruption to the users, the operation of the facility, the region and the impact that use of a PLA would have on the potential for labor disruption; and
    iii. the costs of a delay should a labor disruption occur.

The Board shall consider the Project Sponsor's request and will only approve the use of a PLA for the project, if the Board, by a formal resolution, finds that Project Sponsor's request and the Independent Third-Party Evaluation have, taking into consideration each of the factors above, made a clear and compelling case that use of a PLA will have a positive impact and will benefit the project and advance the Interests of the Public and the Commonwealth.

2. Process

A Project Sponsor seeking to utilize a PLA for a project funded with state or federal funds allocated by the Board pursuant to the six-year improvement program shall submit to the Commissioner of Highways or Director of DRPT a PLA Request Packet consisting of its written request along with an evaluation prepared by an Independent Third-Party that make a clear and compelling case that the use of a PLA will significantly benefit the project and advance the Interests of the Public and the Commonwealth. The Independent Third-Party evaluation shall, at a minimum, address each of the factors set forth in Section II-1(Commonwealth Transportation Board's Determination of a Project's PLA Eligibility)

The Commissioner of Highways or Director of DRPT shall, upon receipt of a PLA Request Packet from the Project Sponsor, assess the packet for completeness, to ensure that all factors required in Section II-1 (Commonwealth Transportation Board's Determination of a Project's PLA Eligibility) have been addressed. The Commissioner or Director shall notify the Project Sponsor of the results of the assessment no later than 60 calendar days after receipt of the PLA Request Packet. Failure by the Commissioner or Director to satisfy the timeline for the assessment set forth herein shall not constitute or be construed as a finding that a PLA Request Packet is complete; the Commissioner or Director shall, however, notify the Project Sponsor of the reasons for the delay. If the submission is determined to be incomplete, the Commissioner or Director shall provide the Project Sponsor with a written assessment advising of the reasons the PLA Request Packet was assessed as being incomplete.

If it is determined that the submission is complete and ready for the Board's consideration, the Commissioner or Director shall coordinate with the Chair of the Commonwealth Transportation Board to include the matter as an agenda item for the Board's consideration at the next, (if practicable), but no later than the second regularly scheduled workshop meeting of the Board following completion of the assessment.

The Board shall by resolution, at the next month's regularly scheduled action meeting, (if practicable), but no later than the second month's regularly scheduled action meeting of the Board following the Commissioner's or Director's presentation of a PLA Request Packet, render its determination on whether or not a request for use of a PLA makes a clear and compelling case that the project will significantly benefit from a PLA and advance the Interests of the Public and the Commonwealth. Failure by the Board to render a

determination in accord with the timeline set forth herein shall not constitute or be construed as an approval for the Project Sponsor to use a PLA on the subject project; the Board shall however notify the Project Sponsor of the reasons for the delay.

Upon a determination by the Board that a PLA may be used on a project, the Commissioner or Director shall work with the Project Sponsor to ensure that the PLA complies with state and federal laws. To the extent that a project is funded in whole or in part with federal funds, in addition to approval by the Board, use of a PLA on the project and possibly terms of the PLA may require federal approval. Accordingly, the Commissioner or Director shall work with the Project Sponsor to ensure that the Project Sponsor has met all requirements for submission, review and approval at the federal level and that the requisite federal entity(ies) has/have approved the PLA for the project.

3. Reporting Requirements

It is in the interest of the Commonwealth and the Commonwealth Transportation Board that information be collected and reported relating to administration of and benefits/disadvantages attributable to the use of Project Labor Agreements in the Commonwealth for projects funded in whole or in part with state or federal funds allocated by the Board pursuant to the six-year improvement program. Accordingly, if the Board makes a determination that a project is eligible for use of a PLA, and the Project Sponsor elects to use a PLA for the project, the Board will require annual reporting of the following information relating to the project for the prior calendar year as well as information substantiating the benefits of such PLA. This information must be submitted by the Project Sponsor to the Board by January 31 of each year.

A. Project Name/Description, Letting Date, Award Date, and Type of Procurement (Low-bid, Design Build Best Value, etc.),
B. Original Contract dollar value, Number of responsive bidders, Total project costs inclusive of change orders issued since contract award,
C. Unapproved or pending change order value since contract award,
D. Original contract completion date,
E. Actual or anticipated contract completion date, including approved, pending or unapproved schedule extensions,
F. Project Workforce – Total number of workers and number of Virginia permanent resident workers[1] participation,

[1] *For this reporting requirement, a Virginia permanent resident is defined as a worker employed on the project who meets the definition of a domiciliary resident as defined in Virginia Code Section 23VAC10-110-30.*

G. Any and all occurrences and details of labor disruptions, regardless of the impact to the project experienced by any contractor or subcontractor on the project.

Further, no later than 60 calendar days after the project closeout, the Project Sponsor shall also submit to the Board a final report bearing the information above as well as information substantiating the overall benefits of the PLA for the entire project period.

The Commonwealth Transportation Board shall post on its website the reports submitted pursuant to this policy.