Legislation Details (With Text)

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Title: Ordinance amending and supplementing the Pittsburgh Code of Ordinances, Title I: Administrative, Article VII: Procedures, Chapter 161: Contracts, by amending Section 161.34 (b)(5) Project Labor Agreement Review and Recommendation Process; Section 161.34 (c)(1) Procedures for Use of Project Labor Agreements; and Section 161.34 (c)(2) Procedures for Use of Project Labor Agreements by replacing Chief Financial Officer with the Director of the Office of Management and Budget.

Sponsors:

Indexes: PGH. CODE ORDINANCES TITLE 01 - ADMINISTRATIVE

Code sections:

Attachments: 1. Summary 2018-1163.docx

Date	Ver.	Action By	Action	Result
12/18/2018	2	City Council	Passed Finally	Pass
12/12/2018	2	Standing Committee	Affirmatively Recommended as Amended	Pass
12/12/2018	2	Standing Committee	AMENDED	Pass
12/4/2018	1	City Council	Read and referred	

Ordinance amending and supplementing the Pittsburgh Code of Ordinances, Title I: Administrative, Article VII: Procedures, Chapter 161: Contracts, by amending Section 161.34 (b)(5) Project Labor Agreement Review and Recommendation Process; Section 161.34 (c)(1) Procedures for Use of Project Labor Agreements; and Section 161.34 (c)(2) Procedures for Use of Project Labor Agreements by replacing Chief Financial Officer with the Director of the Office of Management and Budget.

WHEREAS, contracts for erection, construction, demolition, renovation and alteration of City of Pittsburgh (the "City")-owned or controlled buildings, facilities or infrastructure ("Public Works") projects are critically important to the City because such projects are vital to essential government functions and the City's ability to provide needed service to its citizens; and

WHEREAS, the City is currently planning numerous major Public Works projects and has a compelling proprietary objective in awarding contracts for this work in a manner that will yield successful project delivery in terms of work that is performed safely, at the lowest responsible cost, and in accordance with the highest possible standards of quality and efficiency; and

WHEREAS, a project labor agreement ("Project Labor Agreement") is a form of pre-hire collective bargaining agreement covering all terms and conditions of a specific project; and

WHEREAS, the use of Project Labor Agreements in appropriate circumstances can ensure the highest standards of quality and efficiency when selecting the lowest responsible bidder for appropriate City Public Works projects; and

WHEREAS, Pennsylvania courts have held that the use of Project Labor Agreements does not violate lowest responsible bidding requirements where the Project Labor Agreement requirement relates to the "responsibility" of the bidders within the meaning of the applicable legislative provision; see e.g. A. Pickett Const. Inc. v. Luzerne County Convention Center Authority, 738 A.2d 20, 24 (Pa. Commw. 1999); and

WHEREAS, securing successful delivery of Public Works projects presents significant challenges due to the complex, unpredictable and inherently dangerous nature of the construction industry, wherein errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities; and

WHEREAS, additional challenges arise in the execution of Public Works because such projects typically involve multiple employers at a single location; consequently, a labor dispute involving one employer can delay the entire project; and, in the absence of an agreed-upon resolution mechanism, a lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes, which threaten the efficient, timely delivery of projects; and

WHEREAS, Public Works pose further project delivery challenges because construction employers typically do not have a permanent workforce, which makes it difficult for them to ensure a steady supply of sufficient numbers of qualified craft labor in various trades and specialty areas needed for projects and also undermines their ability to predict labor costs when bidding contracts and ensure quality control over craft labor used on such projects; and

WHEREAS, while Project Labor Agreements are beneficial to securing successful project delivery under normal economic conditions, they are particularly useful during times of tight labor markets; and the national construction industry is currently is facing serious skill shortages across the country due to mass retirement of baby boomers, shifting demographics, and other factors; and such shortages, which are expected to continue for several years, present additional compelling challenges to Public Works projects; and

WHEREAS, Project Labor Agreements help address these challenges by: (a) providing unique access to a reliable supply of well trained, highly skilled construction workers in all trades or crafts needed for Public Works projects; (b) establishing, in advance of bidding, uniform terms and conditions of employment for craft labor employed on these projects; and
(c) providing dispute resolutions procedures applicable to all employers and employees used on the Public Works project that facilitate the timely effective resolution of disputes; and

WHEREAS, Project Labor Agreements have been used extensively for both public and private construction in Pennsylvania and across the U.S. to provide these benefits, and have also demonstrated an ability to promote critical workforce development programs in the construction industry to recruit and train new workers needed to staff future Public Works projects, including those that expand diversity by offering opportunities to in skill training and employment; and

WHEREAS, because the use of Project Labor Agreements on Public Works projects can potentially assist the City in achieving its proprietary goal in promoting successful construction project delivery, the use of Project Labor Agreements shall be considered on a project-by-project basis consistent with goals and requirements of

competitive bidding in the City Charter and City Code.

WHEREAS, in light of the findings set forth above, the Mayor issued Executive Order 2018-03 to promote and encourage the use of Project Labor Agreements on certain public works contracts in appropriate circumstances and City Council concurs in this policy.

The Council of the City of Pittsburgh hereby enacts as follows:

SECTION 1. The City Code is hereby amended at Title I: Administrative, Article VII: Procedures, Chapter 161: Contracts, by repealing Section 161.34 in its entirety as written and supplementing Section 161.34 as follows:

§ 161.34 - Project Labor Agreements.

(a) **Definitions.** The following definitions are applicable to § 161.34:

(1) **Appropriate Labor Organization.** An organization representing, for purposes of collective bargaining, journey persons and apprentices in one or more crafts or trades with a federal or state-approved apprenticeship training program and which:

a. Has entered into a labor agreement with an employer in the building and construction industry;

b. Has represented journey persons and apprentices employed on projects similar to the project for which a Project Labor Agreement is being considered; and

c. Possesses the present ability to refer or provide and represent qualified journey persons and apprentices in the crafts or trades required by the project in sufficient numbers to perform the contracted work involved in the project.

(2) **Project Labor Agreement.** A pre-hire collective bargaining agreement between a contractor or subcontractor, as an employer, and an Appropriate Labor Organization relating to Public Works Projects.

(3) **Project Labor Agreement Review.** The review required to be taken by a designated committee in conjunction with a City department undertaking a Public Works Project with an estimated construction cost of Five Hundred Thousand Dollars ($500,000.00) or more prior to including a requirement to use a Project Labor Agreement.

(4) **Public Works Project.** A project involving the erection, construction, demolition, renovation and alteration of a City-owned or controlled building, facilities or infrastructure, consistent with applicable law.

(b) Project Labor Agreement Review and Recommendation Process.

(1) Each City department planning to enter into a contract on behalf of the City for a Public Works Project with an estimated construction cost of Five Hundred Thousand Dollars ($500,000.00) or more shall refer the Project for a Project Labor Agreement Review consistent with § 161.34 to determine if the particular project would be appropriate for a Project Labor Agreement.

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(2) The Project Labor Agreement Review must include consideration of at least the following criteria to determine the potential cost savings and other benefits to justify the inclusion of a Project Labor Agreement in bid specifications seeking the lowest responsible bidder:

a. If the project requires safe, efficient and timely completion without delay;

b. If the project requires a reliable supply of craft labor for multiple construction crafts or trades;

c. If there competing or multiple projects drawing from the same supply of craft labor occurring at or around the same time in the City or surrounding region;

d. If efficiencies and savings can be achieved by coordination of terms and conditions of providers of skills and crafts for the project;

e. If the project has scheduled milestones that must be achieved such that it will benefit from mechanisms, such as no-strike clause and/or the efficient enforcement of prevailing wage requirements, that assist in the effective and timely resolution of disputes that may arise during project delivery;

f. If the project promotes fulfillment of important City goals in accordance with § 161.34 and applicable law; and

g. If applicable funding sources and corresponding restrictions or requirements affect the use of a Project Labor Agreement for the project.

(3) No Project Labor Agreement shall be recommended pursuant to the Project Labor Agreement Review process unless the decision to use a Project labor Agreement has, as both its purpose and likely effect, the advancement of the interests of the City's competitive bidding requirements, including those set forth in § Section 161.34(b)(2).

(4) The Project Labor Agreement Review for a Public Works Project will be conducted by the following committee: A representative from the City's Department of Public Works, a representative from the City's Department of Mobility and Infrastructure, **~~and the Director of the~~** **a representative from the** City's Office of Management and Budget, a representative from the City's Department of Finance, and a representative from the City's Equal Opportunity Review Commission.

(5) If the Project Labor Agreement Review committee recommends that a Public Works Project is appropriate for a Project Labor Agreement, the committee shall provide the City's ~~Chief Financial Officer~~ Director of the Office of Management and Budget with a written report describing the applicable Public Works Project and its recommendation regarding the use of a Project Labor Agreement to further the proprietary interests of the City on the basis of costs, efficiency, quality, safety and / or timeliness, including consideration of the criteria set forth in § Section 161.34(b)(2).

(c) Procedures for Use of Project Labor Agreements.

(1) If there is written concurrence from the ~~Chief Financial Officer~~ Director of the Office of Management and Budget to use a Project Labor Agreement for a particular Public Works Project based

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on a recommendation from the Project Labor Agreement Review committee, the requirement to use a Project Labor Agreement and the specific terms of such agreement shall be included in the specifications for the invitation to bid on the subject project.

(2) After making the decision to use a Project Labor Agreement for a particular Public Works Project, the ~~Chief Financial Officer or~~ Director of the Office of Management and Budget may direct a City designee to commence discussions with an Appropriate Labor Organization to discuss the proposed Project Labor Agreement for the applicable Public Works Project.

(3) § 161.34 does not require the use of a Project Labor Agreement with respect to any particular Public Works Project.

(4) § 161.34 does not require the selection or participation of any particular union, trade council, or labor organization.

(d) Required Provisions In Project Labor Agreements. Any Project Labor Agreement pertaining to a Public Works Project covered by § 161.34 shall include terms that:

(1) Bind all contractors and subcontractors on the Public Works project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(2) Allow all contractors and subcontractors, at whatever tier, to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Permit the selection of the lowest responsible bidder, without regard to union or non-union status;

(4) Provide that all contractors and subcontractors, at whatever tier, have a reliable supply of construction craft labor by requiring for the project be obtained pursuant to hiring or referral procedures of Appropriate Labor Organizations that are signatories to the Project
Labor Agreement;

(5) Establish certain uniform terms and conditions of employment for construction craft labor to promote stability in the project delivery process;

(6) Contain guarantees against strikes, lockouts, and similar job disruptions;

(7) Set forth effective, prompt and mutually binding procedures for resolving labor disputes arising during the contract for the Public Works project;

(8) Include a diversity goal consistent with the utilization of twelve percent (12%) for minority workers; and

(9) Fully conform to all applicable statutes, regulations, and ordinances.

(e) Procedures When Project Labor Agreements Are Used.

(1) If a Project Labor Agreement is used pursuant to § 161.34, the procedures listed herein shall be followed:

a. The requirement for the Project Labor Agreement shall be made part of the bid specifications in the invitation for bids or other applicable competitive process for the Public Works Project and constitute a material term of the final construction contract;

b. The applicable Project Labor Agreement shall appear in the solicitation's appendix;

c. The invitation to bidders shall provide that the City shall have the absolute right to select the lowest responsible bidder for the award of the contract for the Public Work Project without reference to whether the bidder is a signatory to any other collective bargaining agreements; provided, however, that only a bidder willing to execute and comply with the Project Labor Agreement may be selected as the lowest responsible bidder;

d. The invitation to bidders shall provide that the Project Labor Agreement shall be made binding on all contractors and subcontractors, at whatever tier, on the Public Works Project through inclusion of appropriate bid specifications and related documents in all relevant bid documents;

(2) Following the award of the contract, the Project Labor Agreement shall be executed by the general contractor and/or other prime contractors responsible for the Public Works Project, subject to the review and approval of the City.

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