



Internal Audit Report

Project Labor Agreement Audit

Report Number: 2019 - 02 | Report Date: June 11, 2019

Executive Summary

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WE AUDITED the Project Labor Agreement to assess controls in place over the administration of workforce development program, substance abuse prevention program, and grievance resolution program.

AUDIT OBJECTIVE was to determine whether the agency has effective controls in place to ensure:

- Proper administration of the workforce development program
- Proper monitoring of the substance abuse program in compliance with the agency Labor Compliance Manual
- Timely addressing of grievances in compliance with the agency Project Labor Agreement

The audit examined management controls in place as of December 31, 2018.

WHAT DID WE FIND?

The agency, under the Board adopted Resolution No. R99-21, has been utilizing Project Labor Agreements (PLAs) for Link light rail and Sounder commuter rail station construction projects.

PLAs are collective bargaining agreements between building trade unions and contractors. The agency PLA is designed to promote agency commitment to, among many, workforce diversity and the maximum use of local/small/minority/DBE businesses without discrimination.

The Project Labor Compliance division has the following major roles to ensure that all parties are in compliance with the PLA.

- ✓ Manage workforce development program funds
- ✓ Monitor substance abuse testing for construction workers
- ✓ Monitor grievances in compliance with the PLA

The audit noted the agency has effective controls to address grievances; however, controls over the workforce development and the substance abuse program are not adequate.



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Background

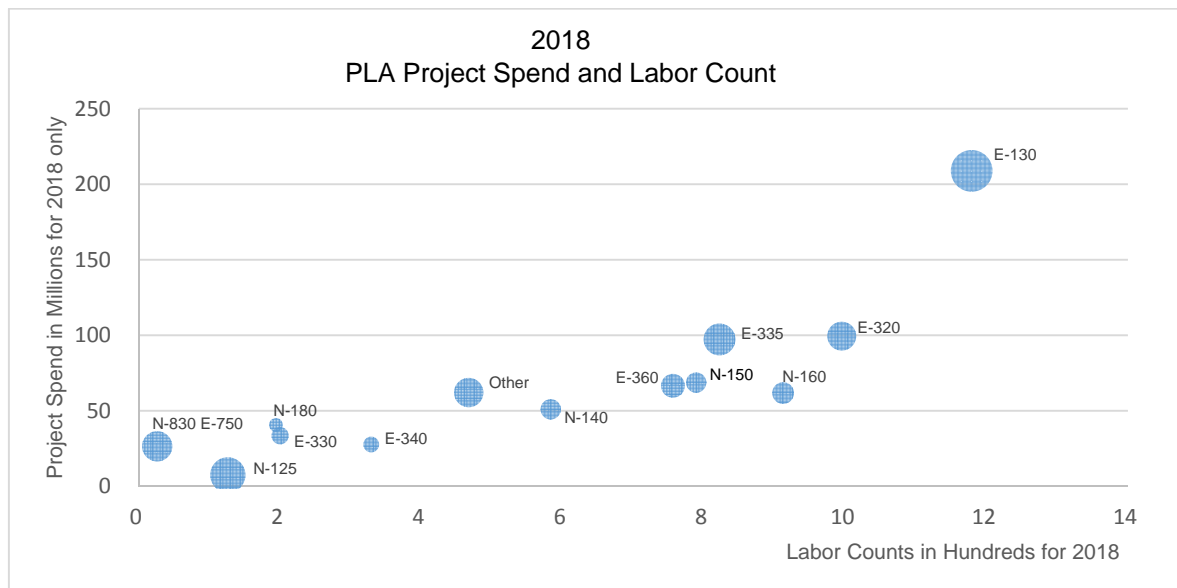
The agency, under the Board adopted Resolution No. R99-21, has been utilizing Project Labor Agreements (PLAs) for Link light rail and Sounder commuter rail station construction projects.

PLAs are collective bargaining agreements between building trade unions and contractors. They govern terms and conditions of employment for all craft workers and are typically used on large-scale, long-duration projects with design complexity. The agency PLA is designed to promote agency commitment to, among many, workforce diversity and the maximum use of local/small/minority/DBE businesses without discrimination. It supersedes any existing union agreements and prevents strikes, lockouts, and other obstacles that could delay construction.

PLA terms and conditions apply to all contractors and subcontractors working on Sound Transit construction projects. Major PLA provisions are:

- ✓ Diverse and low-income community representation
- ✓ Pay prevailing wages
- ✓ Pre-apprentice and Apprenticeship Program
- ✓ Uniform work rules
- ✓ Hiring of women, people of color
- ✓ Dispute resolution
- ✓ Non-discrimination practices and procedures
- ✓ Safe working conditions through drug-testing

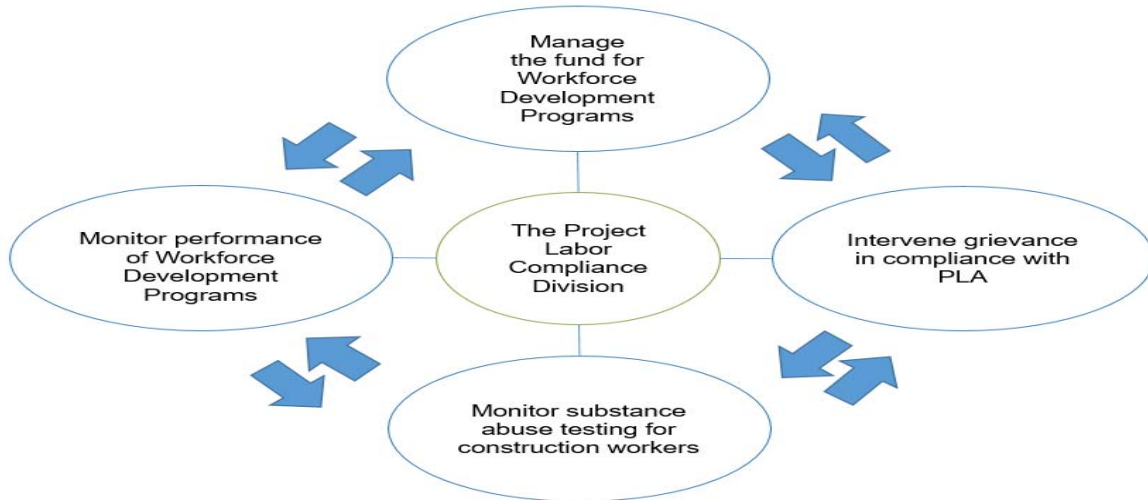
Expenditures, as well as the labor force employed during 2018 for PLA projects are as follows:



* Each bubble is a PLA project, and the size is a relative measure of the total project financial commitment among the 2018 PLA projects as of March 2019.

The Project Labor Compliance division is responsible for oversight. It holds regular Joint Administrative Committee¹ (JAC) meetings, and provides technical support to unions and contractors regarding hiring, issues, complaints, etc. In addition, the division monitors the hiring ratio of women, people of colors, and apprentice by PLA contractors.

The Project Labor Compliance division has the following major roles to ensure that all parties are in compliance with the PLA.



Audit Objectives

To determine whether the agency has effective controls in place to ensure:

- Proper administration of the workforce development initiatives
- Proper monitoring of the substance abuse program in compliance with the agency Labor Compliance Manual
- Timely addressing of grievances in compliance with the agency Project Labor Agreement

Scope and Methodology

We conducted this performance audit in accordance with the International Standards for the Professional Practice of Internal Auditing. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence

¹ It is a monthly meeting, comprised of Sound Transit, Unions and Contractors. The committee implements & amends the PLA, monitors hiring ratios, updates project status & issues.

obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We gained an understanding of Project Labor Agreement at the agency and division level through observations, documentation reviews, and personnel interviews. We identified risks in the processes and assessed management controls in place to mitigate those risks. Based on the assessment of management control effectiveness, we determined to focus on the processes related to workforce development, substance abuse and grievances for the period January 1, 2018 to December 31, 2018.

1. To determine whether the agency has effective controls to ensure proper administration of the workforce development initiatives.
 - a) Calculated an expected fund collection amount for each contractor and agreed to agency revenue reports.
 - b) Reviewed quarterly and monthly performance reports from external providers and verified whether the providers had met the goals in accordance with contract terms and conditions.
 - c) Verified that all contractors were included in the billing.
2. To determine whether the agency has effective controls to ensure proper monitoring of the substance abuse program in compliance with the agency Project Labor Agreement and the Labor Compliance Manual.
 - a) Compared over 7,000 employee names by project to pre-employment drug testing reports to ensure all employees had completed the testing prior to commencing work.
 - b) Reviewed random test results, and verified whether all employees were subject to the random testing.
 - c) Reviewed ineligible employees to determine whether they were discharged for the required 90-day period and met all re-testing requirements before returning to duty.
3. To determine whether the agency has effective controls to ensure timely resolution of grievances in compliance with the agency Project Labor Agreement.
 - a) Reviewed grievance resolution procedures as a control, and tested grievances to determine whether they were timely identified and resolved.

Conclusion

The agency has effective controls to address grievances in compliance with the agency Project Labor Agreement. However, controls over the workforce development and the substance abuse program are not adequate. See Finding #1.

Findings and Recommendations

1. Oversight Should be Strengthened

Project Labor Agreements (PLAs) have established and promoted a number of programs to realize the full benefits of steady labor supply from a diverse and community-reflective workforce that utilizes local, small and other disadvantaged businesses. Key programs are:

- Workforce Programs
 - Regional Apprenticeship Preparation Integrated Delivery System (RAPID) Program funded through PLA member contributions
 - Workforce Development Program, established separately from PLAs in 2018 and funded by the agency
- Substance Abuse Prevention program

In order to ensure program effectiveness, the Project Labor Compliance division monitors various performance measures and indicators as part of its oversight responsibility. While these management functions are performed regularly, the audit noted certain deficiencies in how the functions are structured and performed, resulting in the following exceptions.

Agency Funded Workforce Program

In 2018, the agency provided additional funds - separate from PLAs - for workforce development programs. The Project Labor Compliance division utilized this fund to procure seven contracts with workforce development programs providers.

Three (of the seven) contracts, each with a \$150,000 contract amount, are structured to disburse the amount prior to the receipt of the service. Specifically, the three contracts stipulate a payment of \$60,000 at execution, followed by another for the remainder at the first student enrollment. In essence, the entire contract amount is released before the agency can confirm the full delivery of the services required in the contract. Generally, public entities are not allowed to make payments before services are rendered, although there are a few exceptions such as software maintenance fees and insurance premiums.

In addition to being noncompliant, pre-payments pose risk to the agency. If contractors are unable to meet required deliverables, the recovery of pre-payments could become uncertain, and the program - more importantly its intended benefits - could be delayed.

Substance Abuse Prevention Program

The program establishes a “drug- and alcohol- free workplace in order to assure safe and productive working conditions.” Construction contractors’ employees are subject to a

substance test at different times while working under PLAs: pre-employment, random, post-accident, to name a few. A number of agency-approved administrators conducts the test and provides the result to both the agency and the contractor.

The Project Labor Compliance division reviews/monitors testing results and performs necessary follow-ups to ensure compliance. The audit, however, noted that the management oversight efforts are not effective.

a. Annual Testing

The annual testing requirement is currently defined at the project level (i.e., each construction contract). Thus, every time an employee moves or transfers from one project to another, the pre-employment testing is required even if the employee has been recently tested in the previous project.

Compliance tests based on the current program structure indicate that approximately 32% of PLA laborers did not complete the pre-employment testing. In addition, 496 laborers had a testing date after their first payroll, an indication that the testing was not conducted before employment as required.

2018 Pre-Employment Substance Abuse Testing Results				
Project	Prime Contractor	Emp. Count Subject To Testing ²	Not Tested ³	
E-130	Kiewit-Hoffman Constructors	1,179	327	28%
E-320	Shimmick Parson JV	995	405	41%
E-330	Guy F Atkinson Construction	200	72	36%
E-335	Stacy & Witbeck / Atkinson	822	259	32%
E-340	Max J. Kuney	329	97	29%
E-360	Kiewit-Hoffman Constructors	756	230	30%
L-115	Dickson Company	45	12	27%
M-200	Hensel Pehlp	317	134	42%
N-125	JCM Northlink LLC	126	53	42%
N-140	Hoffman Construction	583	160	27%
N-150	Hoffman Construction	789	239	30%
N-160	Absher Construction	912	295	32%
N-180	Stacy & Witbeck, Inc	194	41	21%
N-830 E-750	Mass Electric Construction	26	3	12%
T-100	Walsh Construction Company	105	22	21%
Total		7,378	2,349	32%

² A certain number of employees are counted multiple times as they worked on multiple projects during 2018.

³ There is a possibility that some of the not-tested may have been pre-employment tested prior to 2017. However, the audit could not corroborate the possibility because pre-2017 test results weren't available during the audit.

b. Random Testing

Contractors are required to conduct a random substance test with at least 50% of the PLA workforce annually, with no less than 20% and no more than 40% tested quarterly. The audit noted that the annual and quarterly random testing requirements were not met in 2018.

2018 Random Substance Abuse Testing Results			
Quarter	Total Employee by Quarter	Total Pool for random testing	Randomly tested construction workers
1Q	2,864	1,389	155 (5%)
2Q	1,517	1,417	196 (13%)
3Q	1,596	1,511	175 (11%)
4Q	1,401	1,965	349 (25%)
Total	7,378	6,282	875 (12%)

A number of factors have contributed to the observed exceptions. First, the PLA does not provide guidance as to how contractor employees working on multiple projects should be tested. The pre-employment test could be redundant if an employee was tested (under another agency PLA project) shortly before joining a project. Second, the PLA does not require sharing new employee information, because of which the agency program staff is unaware of a list of employees that should have been tested. Test results from the administrator, in the absence of the new employee information, provide no basis for further control steps to ensure compliance with the testing requirements.

Construction is one of the most inherently dangerous activities. A labor force, regardless of its size, under the influence of controlled substances at construction sites magnifies the inherent hazard by many folds. The substance testing program is designed to eliminate (if at all possible) this very risk, and management monitoring is to ensure the program is working as designed. However, the inadequate structure of the program, as evidenced by the audit, could pose serious risk to the safety of workers and others at agency construction sites. If not addressed promptly and completely, the risk could result in serious harm.

Recommendations:

We recommend the agency:

1. Improve monitoring of workforce development programs

The following should be considered for the improvement.

- Reconcile pre-payments with services provided thus far for the previously mentioned three contracts. Additionally, consider an amendment to the contracts to clarify that they are a fee-for-services contract and should be

billed as such with sufficient support.

- In addition to Joint Administrative Committee meetings, consider separate and regular meetings with external workforce program staff to review detail (e.g., projected vs. actual on enrollment data) and progress.

2. Improve monitoring of the substance abuse prevention program

The following should be considered for the improvement.

- A testing procedure should be defined regarding contractor employees working on multiple agency PLA projects.
- Require sharing of new employee information from each contractor with the same unique employee ID structure, as provided for in the Labor Compliance Manual.
- Review the reasonableness of the degree to which the testing is required, and formally revise the requirements if an adjustment is considered necessary.

Management Response:

WORKFORCE FUNDING:

The audit noted that three Workforce funding contracts were structured to disburse payment prior to receiving services.

WORKFORCE FUNDING RESPONSE:

The Office of Business and Labor Compliance (BLC) acknowledges the Audit Finding and has eliminated all “pre-payment” language from its future RFPs/Contracts. BLC has also revised the language in its RFPs to clarify that these Contracts are fee for services Contracts and invoices will be paid upon sufficient support that the deliverables have been met. Monthly reports will be due from each provider to ensure that they are on track to meet the Contract deliverables.

These agreements were completed in compliance with Sound Transit’s agreement development processes. The intent was to provide payments similar to a mobilization cost, which would allow pre-apprenticeship programs to recruit, purchase materials and prepare for their upcoming cohorts. It is not uncommon for non-profit or public benefit corporations to not have their own funds/staff available to finance new work like a for profit vendor would. The payments were set up in this manner in an effort to kick start the workforce development initiative, and to fund the pre-apprenticeship service providers as quickly as possible. It is worth noting that 2 of the three contracts are with government entities to whom advance payments are permissible.

CONTROLS

In addition to monthly reporting and detailed invoicing, staff members from the Office of Business and Labor Compliance will conduct field reviews at the program location, to ensure that deliverables and services are being met as outlined in their agreements. This includes validating that the information reflected on the organizations reporting is accurate. If monthly reporting or field checks indicate that an organization is not on track to meet the deliverables, BLC will meet with the organization and require an action plan on how the organization plans on meeting its goals.

SUBSTANCE ABUSE PREVENTION PROGRAM (SAPP):

The audit found that the management oversight efforts of the SAPP were not sufficient. The audit indicated that 32% of PLA laborers did not complete pre-employment drug testing. In addition, 496 laborers had a testing date after their first payroll, an indication that the testing was not conducted prior to employment as required. The audit also noted that Contractors were not meeting their random testing requirements.

SUBSTANCE ABUSE PREVENTION PROGRAM (SAPP) RESPONSE:

Pre-employment testing: The methodology used to create the audit finding that 32% of PLA laborers are not being pre-employment tested, we believe produced an inflated result due to incompatible records found in the two databases compared. Based on the variation of how names have been entered into the two databases, coupled with questionable data that populated one of the databases from prior years, it is virtually impossible to conclude that an unmatched name constitutes no pre-employment testing without significant further investigation. For example, "John Jones" could be entered numerous ways such as "Johnathan Jones"; "J Jones"; "J.J. Jones"; John James Jones; etc. Without a unique identifier, Johnathan Jones may have been drug tested, but the audit record will not reflect that J.J. Jones was tested, which in fact is the same person. There are many more complicated name mismatches than this simple example provides. To resolve this issue and provide a means for improved management oversight the Agency will be implementing a "Clean Card" program. A "Clean Card" program is a common type of substance abuse prevention program in the construction industry that allows employees to work for multiple Contractors while participating in one central testing program. This program would replace the use of multiple substance abuse Administrators with one Administrator using a unique identifier to accurately match employees to their pre-employment tests, eliminating the confusion caused by multiple name entries of the same person.

The finding that 496 laborers had a testing date after their first payroll is an interpretation of the pre-employment requirement that differs from the application. The Labor Compliance Manual (LCM) requires that "applicants will be on the clock for all time spent in-processing, including specimen collection, with a minimum of four (4) hours paid show-up time." Contractors may choose to complete other in-processing/onboarding activities before

completing pre-employment drug testing, for which employees must be paid. As long as the employees are not allowed to perform safety-sensitive functions, as defined by the LCM, until tests are received and the employee is eligible for work, submitting certified payrolls for an employee before the pre-employment test date is not inconsistent with the LCM requirements. Additionally, hours may be paid to a potential employee who never ends up performing work on the Project.

Random Testing: The audit noted that the annual and quarterly random testing requirements had not been met in 2018 based on how Audit interpreted the LCM. The interpretation used for the purposes of this audit required that each quarter: no less than 20% and nor more than 40% of the PLA workforce to be tested. Using this interpretation, a minimum of 80% and maximum of 160% of employees would be required to have random tests annually. This amount of random testing at a minimum would far exceed the LCM requirement of annually testing “50% of regular employees”

The LCM interpretation that has historically been applied at Sound Transit is consistent with industry norms for a random testing program where no less than 20% and no more than 40% of the total annually required random tests must be completed each quarter. In other words, no less than 10% (20% of 50% = 10%) of the total annually required random tests will be completed and no more than 20% (40% of 50%=20%) of the total annually required tests will be completed each quarter. The Office of Business and Labor Compliance will revise the LCM language to make the intent clear and remove any ambiguities. Again, a “Clean Card” type program will provide better assurance that not only are pre-employment tests being completed, but also that random testing requirements are met.

CONTROLS

1. BLC will perform quarterly audits of a sample group to ensure the Administrator contracted to facilitate the new “Clean Card” program has correctly listed employees as “eligible” or “ineligible.”
2. Once the “Clean Card” program is implemented, quarterly reviews will be performed to ensure only “eligible” employees included in the “Clean Card” program are used by Contractors to work on the Project.
3. After the “Clean Card” program is implemented, BLC will continue to monitor random testing numbers each quarter to ensure that a level of testing consistent with the LCM is completed.