

MINUTES OF THE CBOC MEETING:

April 15, 2013
135 Van Ness Avenue, Room 210

Facilitator: Jim Quadra, Chair

Committee Members Present: Yakuh Askew Nancy Mayeda
Craig Issod Nan McGuire
Lourdes Garcia Jim Quadra, Chair
Walter Haub

Committee Members Not Present: Brian Liles Monica Pressley
Mike Theriault, Vice Chair

Interested Parties Present: Leonard Tom Donald Davis
David Goldin

Minutes prepared by: Susan Ortega-Resurreccion

1. Jim Quadra presided over the meeting.

2. Roll call. A quorum is present for this meeting.

3. Approval of Minutes of February 14, 2013 meeting.

The minutes were unanimously approved by the CBOC members present in the meeting.

4. Public Comment – None.

5. Discussion of Local Hire Policy.

Jim introduced Don Davis, District General Counsel to give light to the resolution on local hire policy passed by the Board members and to give some guidance on the legal issues that have arisen as a result of this action, in particular on how it may affect the role of the oversight committee in watching out for the bond dollars pursuant to the state statute.

Jim pointed out the major concern of the committee that the local hire policy will take dollars approved under the Bond program by voters and divert them away from the goal of improving schools and fulfilling the educational mission. Don spoke about his review of Prop A and Prop 39 with consultation from outside legal counsel. He stated that the basic limitation for expenditure of bond dollars are on bricks and mortar, or certain select categories of additional things, like furniture and others that go along with the bricks and mortar. Append to that administrative costs which result from execution of bond projects, those administrative costs can be covered. The real issue is can project labor agreement administration be Bond funded, and his conclusion is yes. Don related his experience with LA Unified for 12 years, with LAUSD'S \$19B new construction program plus \$10B rehab bond program and their project labor agreement, called the Project Stabilization Agreement. The PSA has had mandatory local hire in place since 2001 and they are hitting about 49% local hire in their program on bond projects with not a single piece of litigation emanating from this agreement.

Craig expressed his concerns that voters in SF voted for this bond without knowing that further restrictions would be placed on contracting and that the costs of projects would increase. Don replied that he does not

have the data on if cost of projects would increase. At the very least, another layer of administrative cost would have to be put in place.

Don explained to the committee that Prop A language clearly guides District into the highest and best use of funds. He added that he advised the Board as to that; whether it is an appropriate policy is up to the policymakers. There is no comparison between LA and SF, as the demographics and geographic situations are dramatically different. There are legal risks with certain classes given favor over other classes of workers and his read of the law is if this is part of the project labor agreement, then it passes legal muster in this state as a neutral construct.

Don added that he had done an extensive amount of research and consultation with his colleagues from LA Unified on the question that the Board asked "can this be legally done". His answer is "if it is done correctly, it is put in legally permissible language and the code, that there is a way to do this". It is all in the details and execution and ultimate policy coming out of the Board.

David heard the committee's concerns regarding legality within Prop 39. He praised Don for doing a great job with reviewing and consulting with other lawyers and sided with him that the District cannot be compared with what the City does. The City is chartered and we are a school district. Craig asked if the school board could be adopting a policy that could potentially be restrictive in nature. Don replied that the more restrictive you get the more you run into federal issues, federal constitutional commerce clause issues and possibly Prop 209 issues. Encouraging outreach to local contractor groups, having seminars for minority bidders that show them how to do a contract and what a sufficient contract looks like is permissible, but bottom line is contracts still have to go to the lowest responsible bidder.

Jim questioned if there were any problems with local hire policy in other cities aside from LA and SF, say Fresno. He added that the City and LA programs, the money are not necessarily tied directly to a bond approved by voters. This is not the situation we are facing. If the Bond is restrictive on the scope of how the money can be used, how will we tell the voters by entering into a project labor agreement? Don replied that the argument for the project labor agreement is that it provides whatever marginal or not so marginal economic administrative overhead cost to having that is going to in the long run, give you labor peace and the ability to get your projects done on time. That is the basis for using the bond designated and permissible administrative overhead funds for that kind of prophylactic purpose and local hire fits in there to a degree. Jim came back and implied that there would be no dispute if you don't do local hire. His concern is we have a project plan that is in place to minimize issues. No issue, no constitutional right is violated by not having local hire. Don acknowledged Jim as very logical and he understands the argument.

Craig questioned that the District has not conducted a 3rd party economic assessment. He implied that the City did back when it was a favorable climate, plenty of competition. He questioned the supply vs. demand of local labor and how our projects would avail of local labor. Don replied that if the PLA doesn't exist, then you can hire anybody you want. Craig came back and added that as an economist himself, he can talk to the economic dynamics that would serve to increase the price and reduce competition. Without the economic assessment, we can only assume it would cost more. The City's economic assessment said that it would be 1% more, which out of \$340M would be \$3.4M, enough to make him think twice and where does the line draw? Don replied to Craig that he cannot tell definitively where the line would be drawn. The Board's first passage of this policy is legally permissible and the answer is affirmative, but the universe is either vast or narrow depending on the fact situations. The CBOC domain is very strict. Code 15278, concern is with legality as it pertains to Prop 39 and use of funds.

Jim asked Don to confirm if there is any single case that has challenge local hire fitting within a project labor agreement in CA. Don replied not to his knowledge. Outside the state there's been tons of litigation in regards to local hire, project labor, etc. Some successful, some not with the assistance of outside counsel and we've tried to take the lessons from those, the federal constitutional lessons, state law and federal law, and

usually federal law trumps state law, but not always. Jim asked if there were any cases identified analogous of our situation where there had been a bond that identified the limitations specifically regarding scope of expenditures and subsequent had a local hire. Don replied not that he knows of.

Walter asked to differentiate about legal counsel between CBOC and the District. David replied that Richard PioRoda was initially assigned to attend the oversight committee in place of a District staff to make sure the Brown Act was okay and procedures are followed. Larger issues were referred to Sidney Austin.

Leonard mentioned that the Board's resolution had a statement to include a committee of community representatives and other definitions that will exclusively oversee the local hire policy adopted by the school board. Our response is that it will be very difficult to have 2 oversight committees on one program, and the recommendation is to fold the responsibility for review for local hire into the existing local committee. Walter agreed with the logic, but pointed out that they have a right to express their views if they will be responsible for its enforcement. He, Craig and Jim pointed out that the oversight committee needs its own counsel to give advice on local hire and other issues to understand their role and how the program works, irrespective of whether the committee takes ownership of the program as an oversight.

Conversation went on between Walter, Jim, Craig and Don with regards to putting language of local hire in future bond in comparison to "ex post facto" on the current proposed local hire for current bond. Walter mentioned about Leonard's calculation of administrative cost of \$300K/year for 5 years which would be \$1.5M compare to what the board says that local hire will not have a cost.

Craig asked if the District ever commissioned an economic analysis. Leonard replied that the proponents have always assumed there is no extra cost. Walter asked why the local waiver participation and apprenticeship program were put together under one policy. Don replied that there was always the option of splitting in order to focus on the issues.

The meeting went on to discuss about what other City departments have local hire policy or required to live in the City, SFPD? Teachers? Leonard pointed out that the definition of a local worker is anyone domiciled in the city of SF seven days prior to starting work.

Don suggested that a helpful outcome from this meeting or a subsequent meeting when the committee is ready would be a strong articulation of their enthusiasm or reservations and the reasons directed at the Superintendent or the President of the Board. David pointed out that the committee will be a valuable voice that hasn't been heard yet and is necessarily part of the larger conversation at the Board.

Jim gave his thoughts as a lawyer that Don has done a great job consulting with lots of people, but he's not satisfied that the committee has heard its concerns voiced to a lawyer that give us an opinion. There's an absence of case authority, meaning it hasn't been litigated. There is not a single case on point that deals with the bond and our issues. There are no clear parameters on how far is too far. There is not a sufficiency of a way of looking at this in the committee's perspective, whether we are concern about the bond itself and whether we are in compliance with the bond from a legal perspective.

Craig, Walter and Jim pointed out their concerns that the Board will finalize and vote on this policy on April 23. Leonard indicated that will not be their last opportunity to comment on this issue. Craig suggested reading on to the proposal. The committee as a whole disagrees with any costs for implementing local hire policy as the voters did not vote to spend money on "local hiring policy". Jim agreed, the issue for the District is going to be if we can lawfully deviate from the bond language, if it is broad enough to encompass the possibility of this change and it's not a material deviation that makes it unlawful, then it's okay. Craig asked about prevailing wage, David said this is a state law. How about PLA? David replied that arguments were made at the time with a different set of board members who were in favor and argued the benefits of PLA. Craig asked if administrative costs for supervising PLA have been paid. David replied very few. The argument

is we are monitoring labor compliance anyway because of state laws. With economy beaten down for the past couple of years, the PLA factor has been minimal.

Walter pointed out that with this information, the school board will follow the direction of the general counsel who has advised that there is enough wiggle room in the administrative cost that is legal or is not illegal. Discussion led to hiring an economic analyst and legal counsel for the committee to see the costs and legal concerns of local hire policy based on the bond program language. Walter asked if Richard PioRoda will be the legal counsel. David replied that Richard is the District's designee, he is not an independent. Craig thought that the code provides that the committee can hire their own lawyer.

Nancy inferred that the committee is supposed to just report. Jim reported that he had a discussion with Richard and he indicated that this is within the scope of what the committee is to be doing. The committee is to take a position whether the money is being spent according to the purpose set forth in the bond. The Bond Oversight committee as a glorified auditor in a sense, should get answers to questions if we feel the money is being used in a way that is not within the constraints on the bond money should be spend and have a duty to take a position to the public.

6. Action item: Approval of Resolution on CBOC position on proposed Local Hire Policy.

The following changes were requested by Walter and Nancy:

- Paragraph "The CBOC stands firmly opposed..." was moved up.
- The word "local hire" policy on the same paragraph was changed to "any" policy.
- On item #1 of the concerns, administrative costs were changed from "\$200,000" annually to "\$300,000" annually.

Craig moved to adopt the resolution as amended. The resolution was approved unanimously by the committee members present in the meeting. Jim suggested posting the resolution on the CBOC website. David will ask the board office on how to present this resolution on the April 23rd board meeting.

7. Adjournment.

Meeting was adjourned.