

# Contracting at the Council

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# Values and Guiding Principles of Public Procurement



## ETHICS

Doing the right thing. This value is essential to deserve the public's trust.



## IMPARTIALITY

Unbiased decision making and actions. This value is essential to ensure fairness for the public good.



## ACCOUNTABILITY

Taking ownership and being responsible to all stakeholders for our actions. This value is essential to preserve the public trust and protect the public interest.



## PROFESSIONALISM

Easily accessible and understandable policies and processes. This value is essential to demonstrate responsible use of public funds.



## SERVICE

Obligation to assist stakeholders. This value is essential to support the public good.



## TRANSPARENCY

Easily accessible and understandable policies and processes. This value is essential to demonstrate responsible use of public funds.

# Additional Strategic Goals

- Reduce disparities.
  - Grow MCUB Program
  - Engage with small businesses to increase DBE utilization
- Consistent fair wages paid to employees.

# How each method compares

	Current Council Contract
Remedies for breach	✓
Compliance monitoring	✓
Project oversight	✓
Safe working conditions	✓
Fair wages for workers	✓
Work stoppage (labor disruption)	✓
Disadvantaged vendor inclusion	✓
Hiring skilled labor	✓
Suspension of work and termination	✓
Restrictive contracting opportunities	
Timely project completion	✓

# Prevailing wage rate definition

- Hourly basic rate of pay, plus hourly contribution for:
  - Health insurance benefits
  - Vacation benefits
  - Pension benefits
  - Any other bona fide economic benefit, paid directly or indirectly for a majority of the hours worked in a trade or occupation on projects in an area

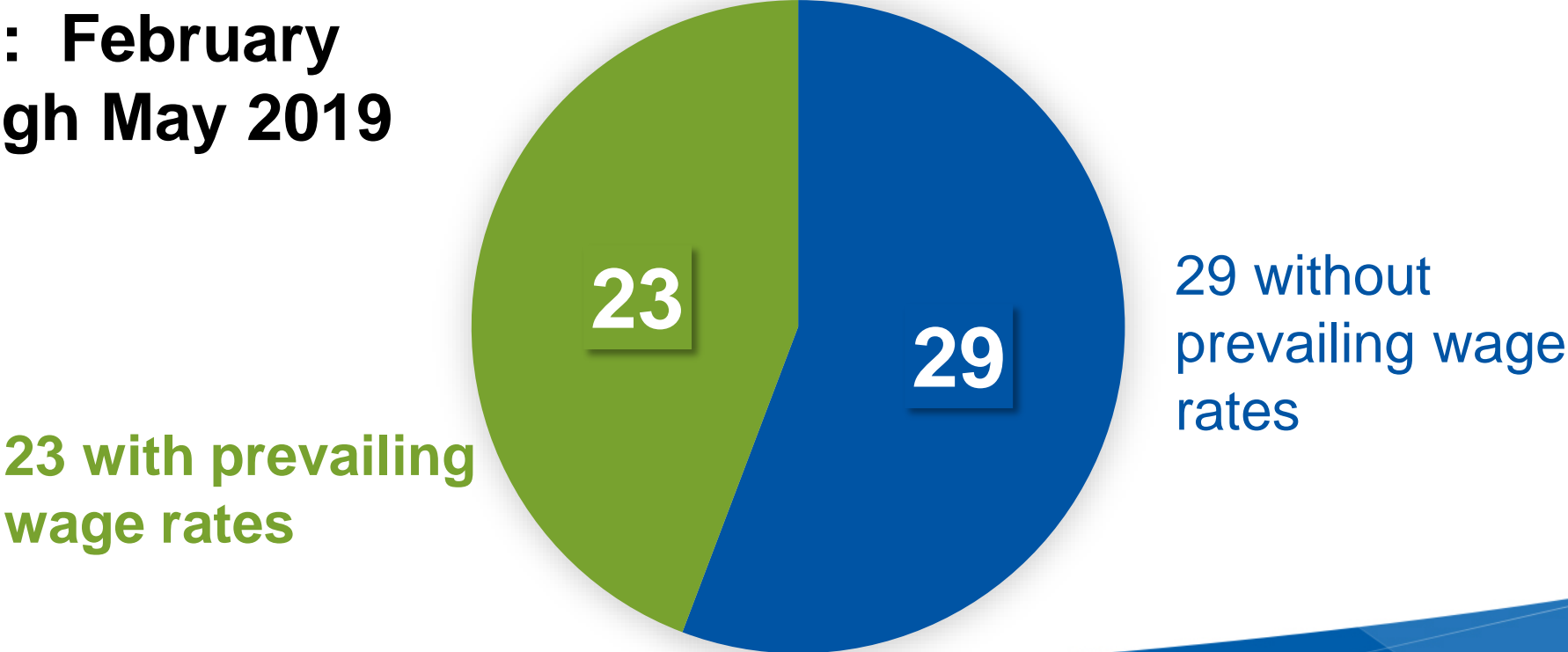
# Prevailing wage rate information

- Required for state and federally funded construction projects
- Department of Labor and Industry sets wage rates by classification
- Wage rates are locked for the contract term
- Prime contractor submits certified payroll records to Council's authorized representative for verification and payment approval

# Look Back - Prevailing Wage Inclusion

## 52 Contracts

Timeframe: February 2018 through May 2019



# Process – How we enforce

- What does the contract require?
- Wage rates posted on jobsite
- Other enforcement
- Audit – no contractor fraud
- OEO review – verification with small business
- Council-authorized representative currently spot checks certified payroll



# Prevailing wage example

Classification	Commercial Hennepin County		Highway and Heavy	
	Rate	Fringe	Rate	Fringe
Boilermaker	\$38.33	\$27.43	\$38.33	\$27.43
Carpenter	\$37.18	\$21.45	\$39.96	\$21.08
Piledriver	\$39.01	\$21.08	\$38.01	\$21.08
Millwright	\$35.13	\$24.98	\$35.13	\$24.98
Electrician	\$44.51	\$29.79	\$45.23	\$29.07
Operator	\$37.79	\$20.50	\$38.09	\$20.50
Laborer	\$34.11	\$19.64	\$31.65	\$19.64
Painter	\$36.75	\$21.24	\$38.25	\$21.24
Glazier	\$41.19	\$18.54	\$38.55	\$20.07
Mason	\$38.41	\$19.67	\$49.66	\$23.79
Plumber	\$49.66	\$23.79	\$47.04	\$26.05
Pipefitter	\$45.82	\$27.37	\$40.88	\$25.10
Sheet metal worker	\$45.91	\$27.72		

# How each method compares

	Current Council Contract	Prevailing Wage
Remedies for breach	✓	✓
Compliance monitoring	✓	✓
Project oversight	✓	NA
Safe working conditions	✓	NA
Fair wages for workers	✓	✓
Work stoppage (labor disruption)	✓	NA
Disadvantaged vendor inclusion	✓	NA
Hiring skilled labor	✓	✓
Suspension of work and termination	✓	NA
Restrictive contracting opportunities		NA
Timely project completion	✓	NA

# Project Labor Agreements (PLA)



# What is a Project Labor Agreement?

- Pre-hire agreement between owner and the local building trade unions
- Agreed to before a project is bid; included as part of bid specification
- Prime contractor does not have to be a union contractor
- Prime contractor hires workers through the union referral system
- Non-union contractors and subcontractors who submit the lowest bid cannot work on the project if they don't agree to agreement terms

# How each method compares

	Current Council Contract	PLA
Remedies for breach	✓	✓
Compliance monitoring	✓	✓
Project oversight	✓	✓
Safe working conditions	✓	✓
Fair wages for workers	✓	✓
Work stoppage (labor disruption)	✓	✓
Disadvantaged vendor inclusion	✓	
Hiring skilled labor	✓	✓
Suspension of work and termination	✓	✓
Restrictive contracting opportunities		✓
Timely project completion	✓	✓

# PLA hierarchy



Agreement



Bidding Document



**Contractor incorporates and uses union hall employees**



# PLA background

- 24 states ban PLA's
- In 2001 the federal government issued executive order prohibiting PLA's. Rescinded by the Obama Administration.
- Council currently does not use PLA's

# Small business influence

- Agency determines terms in PLA
- A clear carve out is necessary for small business inclusion
- Specify contractual language within each Project Labor Agreement





# DBE and MCUB efforts

- Disparate study states this Council needs to increase utilization of disadvantaged businesses within Minnesota
- Council commitment to DBE businesses is intended to remove barriers to contracting on Council projects
- MCUB commitment of new way of doing business in conflict

# DBE regulations

- ... “The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.” ...

# Small business experience

- DBE able to work on project
- DBE maintain status as non-union for future projects
- Journey-level employees available



# Potential Unintended Consequences



# Small business experience

- Regulatory administration is a high burden and subject to debarment
- DBE have no choice in employee selection
- DBE must maintain running capital to support union cost
- DBE subject to duplicate business expenses
- Portion of hourly pay for employee remains with union

# Union workforce data

- In 2018, Minnesota union members accounted for 15% of wage and salary workers
  - 395,000 union members
  - 26,000 additional members represented by unions (combined 16%)
- Nationwide comparison was 10.5%
- Minnesota membership rates are above U.S. average since 1989

\* Bureau of Labor Statistics, U.S. Department of Labor, March 22, 2019

# Recommendations

	Current Council Contract	Prevailing Wage	PLA
Remedies for breach	✓	✓	✓
Compliance monitoring	✓	✓	✓
Project oversight	✓	NA	✓
Safe working conditions	✓	NA	✓
Fair wages for workers	✓	✓	✓
Work stoppage (labor disruption)	✓	NA	✓
Disadvantaged vendor inclusion	✓	NA	
Hiring skilled labor	✓	✓	✓
Suspension of work and termination	✓	NA	✓
Restrictive contracting opportunities		NA	✓
Timely project completion	✓	NA	✓