Project Labor Agreement

Due Diligence Impact Study

October 28, 2010

A Feasibility Study for a PLA for the Moran Center Project

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EXECUTIVE SUMMARY

Arace & Company was retained by Burlington's Community Economic Development Office to conduct a Due Diligence Impact Study DDIS) for the Moran Center Project. The purpose of the DDIS is to evaluate whether utilizing a Project Labor Agreement (PLA) for this Project will be economical, legally defensible and serve the best interest of the government owner and its taxpayers.

With this goal in mind, Arace & Company analyzed the key labor cost centers of this Project to assess any potential savings or cost avoidance that would derive from employing a Project Labor Agreement for the Moran Project. As part of our due diligence process, we weighed whether a PLA would facilitate greater employment of local workforce and if a PLA would aid on-time completion of Moran.

In addition, we investigated the urgency of completing the Project in a timely fashion and the local union and open shop record of minority and woman-owned business participation in Vermont's construction projects. Both of these factors have been used as metrics in determining the legality of Project Labor Agreements in the court system.

Because a PLA has never been utilized for any construction project in the State of Vermont, we also researched the capabilities for both union and open shop workforce and the history of both groups working together on the same project.

After conducting our DDIS, we concluded that a PLA is not feasible for the Moran Center Project; it would be of no material benefit to the public owner and the taxpayers of Burlington. Our conclusion is based primarily on the absence of: 1) a compelling need to complete the Project on-time;
2) the potential for cost savings and 3) a deep pool of local, skilled and experienced open-shop workforce.

PROJECT LABOR AGREEMENTS

Project Labor Agreements (PLAs) are unique, single project labor agreements. They are intended to facilitate safe, high-quality, cost-effective construction. To date, there has never been a PLA in the State of Vermont.

PLAs allow for certain concessions on the part of organized labor but still allow compliance with U.S. Department of Labor as required under the City of Burlington ordinance Article V Section 21-73 and the Vermont Labor Department for the Burlington area. PLAs are mandated to include a competitive bidding process which is fair and open to all contractors, union and open shop. PLAs have been used on federal, state, local government and private sector construction projects, including Cape Canaveral, Disneyworld and the Trans-Alaska Pipeline. Recent publicly funded PLAs in the Northeast region include: The Lake Champlain Bridge, City of Albany Schools, the St. Lawrence County jail and the Clifton Park library. As noted elsewhere, Vermont has never had a PLA in the public or private sector. For more about PLA projects, please see Appendices D and E on page 25.

There have been challenges to PLAs in court, mainly based on non-competitive bidding practices, lack of urgency of completion and failure to demonstrate economic and other benefits of the PLA. For more about invalidated PLAs, see Appendix B, page 24. For a review of PLA case law, see Appendix A, page 23.

SCOPE OF THIS REPORT

The purpose of this due diligence analysis is to evaluate whether utilizing a PLA for the Moran Project will be economical, legally defensible and serve the best interest of the government owner and its taxpayers.

With this goal in mind, Arace & Company analyzed the key labor cost centers of this Project to assess any potential savings or cost avoidance that would derive from employing a Project Labor Agreement for the Project's construction. We calculated an average hourly wage for this report based on the applicable Federal Davis-Bacon wage schedules which will be used as a metric in estimating possible cost savings for all phases of this Project. For more about Davis-Bacon, see pages 32-34. A summary of our assessment of potential cost savings resulting from utilizing a PLA on this project can be found on page 22.

As part of our due diligence process, we weighed whether a PLA would facilitate greater employment of local workforce and if a PLA would aid on-time completion of the Moran Center.

In conducting our DDIS, we spoke with Kirsten Merriman Shapiro, Special projects manager at Burlington's Community Economic Development Office, and met with Richard Haesler, Jr., the Assistant City Attorney. We also met with the Vermont (Union) Building and Construction Trades Council as

well as (open shop) Associated Builders and Contractors NH/VT Chapter and Associated General Contractors of Vermont. Both the Union and open shop meetings were attended by many members of the respective associations.

Our thanks to Jeff Potvin, President of BCTC, Cathy Voyer, Executive VP of AGC, and Mark Holden, President of ABC's NH/VT Chapter, for their help in organizing the group meetings and providing information and opinion for this report. We also met with Alex Halpern, project manager for Freeman French Freeman, the Moran Center's architects, and David White, of White + Burke, concerning the Moran Center's financing plan. We spoke with David Hoyne, Construction Engineer for the Vermont Agency of Transportation, regarding on-time construction data in the State. Renderings of the Moran Project used in our report were taken from a presentation prepared by Freeman French Freeman.

PROJECT DESCRIPTION

The Moran Center Development Project is an adaptive re-use of the Burlington Electric generating facility, located on a parcel at the north end of the City of Burlington, VT's popular recreational shoreline on Lake Champlain. The Project has been developed by Burlington's Community and Economic Development Office (CEDO). The waterfront area in downtown Burlington is an important recreational resource for the local community, an economic engine and a tourist attraction. The Moran Project seeks to extend the already popular developed portion of the lakefront and provide public additional public amenities.

The Moran building is a 43,000 sf steel frame and masonry structure constructed in 1954 by the Burlington Electric Department. Built on fill that was deposited between the 1850s and 1950s, the site was previously used as both a rail yard and for lumber processing and storage. The current site has been tested and remediated under the auspices of the EPA and Vermont's DEC.

The Moran site has remained vacant since the BED plant, owned by the city, was decommissioned in 1986. The Moran Center project is the result of an extensive public engagement process initiated and managed by the applicants, the Community and Economic Development Office (CEDO) and Burlington's Department of Public Works. The lead architects for the project, Freeman French Freeman, Inc., were actively engaged in evolving the design of the Moran Center throughout its various iterations during the public process. The project has been developed to respond to community needs expressed through public meetings and discussions. Both for-profit and not-for profit entities have agreed to become tenants in the Moran Center.

One of the goals of the Project is to create a year-round, financially sustainable, family-oriented recreational facility which adds no tax burden to

City of Burlington residents. Plans for the Moran Center include:

- A family adventure center with indoor rock and ice climbing
- A community sailing center with classrooms, offices, boat storage and programming space.
- Community space: meeting rooms, observation decks and common areas for general public use.

The proposal includes public observation decks, café and restaurant, bathrooms, outdoor ice rink, children's splash area and a skateboard park.

PROJECT CONSIDERATIONS

- Extensive environmental review of the site during feasibility planning identified hazardous materials in the building such as asbestos. There was also environmental pollution caused by massive accumulations of pigeon droppings. The site's prior usage history as a lumber processing and storage facility has left contaminants in the soil surrounding the building. At present, the site has been successfully remediated except for lead-based paint applied to structural steel in several areas. These remaining contaminants are scheduled to be removed before construction begins.

- The Moran building has intake and outflow sluiceways that allow water from Lake Champlain to occupy the sub-basement chambers that were part of the cooling process for the former power generating operations. The sluiceways were left open when the plant was decommissioned in 1986. Construction plans call for The sluiceways were left open when the plant was decommissioned in 1986. Construction plans call for the sluiceways to be filled with anti-washout flowable cementitious materials and capped to seal out water and any potential contaminants that still exist in the sluiceways.

- The City hired Engineering Ventures, a local engineering firm, to assess the structural integrity of the Moran building. They found that "the condition of the reinforced concrete material of the building's base structure is essentially at or near its so-called original, as-built design capacity and use."

- Construction plans for the interior shell of the building call for upgrading all mechanical systems and installing modern foundations and fittings.

- Site improvements include leveling and grading the grounds, constructing earth work and berms, installing pavers and building storm water treatment facilities.

SCHEDULE CONSIDERATIONS

- The proposed 10 month construction schedule for the Moran Center begins in May 2011 and runs through completion in June 2012. This schedule is reasonable and appropriate for the modest scope of work. At the present time, there does not appear to be a time-dated or state-mandated urgency to deliver the Project beyond the normal exigencies of completing any project. This is noted because urgency is one of the key criteria established for evaluating whether a PLA would be in the best interests of the public owner and the taxpayers. Please see pages 23-24 for more about the legal criteria for establishing PLAs.

- However, we discovered several time-sensitive variables which might have negative consequences for the project and its owner if the project is not delivered on-time:

- Some of the grants and other funding secured for this project must be spent within two to five years; failure to do so may have an impact on cash flow and subsequently the construction schedule.

- At least one of the currently committed tenants, Ice Factor, must purchase or lease and install expensive equipment in order to do business in the Moran Center. Failure to deliver the space for fit-up by a scheduled date may result in penalties or even financial hardship for Ice Factor, the project's largest for-profit tenant. It is possible, though unlikely, that their participation in Moran Center may be jeopardized by late delivery, potentially compromising the financial viability of the entire project.

- Developing support for the Moran Center has been a long and difficult process, encompassing several proposed designs over more than a decade. The good will and excitement that now exists in support of the Project will inevitably begin to erode in proportion to unreasonable delays in opening the Center for public use and enjoyment.

The exact likelihood of the public developing a negative perception of the Moran Center due to late delivery is impossible to predict, as is the impact such a perception would have on the acceptance, use and success of the facility. We note these issues as part of our due diligence concerning on-time delivery of the Project.

LABOR CONSIDERATIONS

It is noted at the outset that, to date, there have been no PLA projects in the State of Vermont. This does not mean that there should not be a PLA for the Moran Center Project or that one cannot be negotiated; it only signifies that there is no clear precedent for their use. Also, if it is decided to utilize a PLA for Moran there are no Vermont-based PLA Agreements to use as a guideline in negotiating the PLA with local unions. There are, of course, many successful models that can be adapted for use on Moran.

- VDOL identifies 625 certified journeymen in Vermont at the current time who are dues paying members of labor unions. The following unions are the only trades which have an active presence in the Greater Burlington Area (GBA): plumbers, electricians, carpenters, sprinkler fitters. It is estimated that 90% of the members of these four unions live in Chittenden, Franklin, Washington and Grand Isle counties.

- The Vermont Building and Construction Trades Council (VBCTC) unions have earned a reputation for quality work and high levels of cooperation with open shop contractors and general contractors. It is reasonable to assume that the VBCTC could provide adequate labor force for the Moran Center if it were organized as a PLA.

- It is noted that 'local' union iron workers, teamsters, operators, laborers and masons would have to be drawn from union halls in Albany, Pottsdam and Plattsburgh; these unions do not have a physical presence in GBA although these trades regularly work in the area. Logistically, one-way commutes of an hour or more are not considered unusual for Vermont construction workers, so this circumstance poses no extreme barrier to the unions' ability to supply adequate workforce for the Project. However, the commutes to Burlington from Albany and Potsdam are three hours one-way which would necessitate some workers staying in the Burlington area during the work week. This circumstance is also not considered particularly unusual in the current economy. Both union plumbers and electricians report 30-40% of their members are currently employed on jobs out-of-state. For union iron workers, the percentage is 100%; for sprinkler fitters it's 80%.

- Consistent with the relatively small number of union members in Vermont, union contractors have not been awarded a high percentage of construction work in Vermont. However, there have been several high profile projects in the State which have been predominantly union. These projects include the $40M Stowe Mountain, Phase One (90% union) and the $350M Fletcher Allen Health Care facility (80%). Vermont Yankee Nuclear Power Plant has also had high union participation through its various construction phases. Based on available evidence, we observe that VBCTC members and the union contractors they coordinate with have the requisite skill and experience to deliver the Moran Project on-time and on-budget.

LABOR CONSIDERATIONS (continued)

- Bryan Bouchard, business manager, New England Regional Council of Carpenter's, Burlington office, has stated that his union would not participate in this project under Davis-Bacon rules as the stated wage and benefits are less than his union's current prevailing wage schedule.

- In August 2010, total union unemployment in Vermont is estimated to be 25-40%, depending on the trade. An uptick in unemployment is expected after September when intensive summer work schedules on school projects have been completed.

- Vermont's Department of Labor reports (2009) that 94.5% of the construction workforce is non-union or open shop. Using VDOL's statistics, we estimate that there are 14,500 open shop construction workers in the State. It is noted that the open shop workforce is not categorized by skill and training like union members. Open shop workforce is often cross-trained in multiple skill sets which may span several union trades.

- Not surprisingly, Vermont's open shop contractors win bids for 90%+ of construction in the State and provide the majority of the workforce for these projects. Information was not readily available to determine what percentage of Vermont's open shop workforce lives in Chittenden County and elsewhere, including New York State. Unemployment figures among Vermont's open shop contractors were also not available.

- Research compiled by Cathy Voyer, Executive Vice-President, Associated General Contractors of Vermont, and Mark Holden, President, Associated Builders and Contractors New Hampshire/Vermont Chapter, details the 'on time, on budget' delivery of construction projects in or near Chittenden County over a multi-year period by Chittenden County-based open shop contractors DEW, Engelberth and Pizzagalli, and Washington County-based EF Wall. Representative projects similar in scope to Moran include: Heritage Aviation addition and renovation ($18.6M); Middlebury College Axinn Center ($24.4M); and UVM University Heights Student Housing ($53M). Based on a strong record of experience, and a good reputation for delivering quality work, we conclude that Vermont's open shop contractors have ample capacity to deliver a quality-built Moran Project on-time and on-budget.

- It is noted for the record that basic research did not identify any direct contractor experience, open shop or union, with an adaptive re-use project like the Moran Center.

- We confirm, based on anonymous information provided by 85 local open shop contractors and sub-contractors, that the average wages and benefits paid to open shop construction workers currently exceeds the livable wage standards of the City of Burlington and are within reach of union contracts for certain trades.

ECONOMIC ANALYSIS

The criteria for this report and the economic calculations employed within it have been derived from an extensive study of Project Labor Agreements and careful review of PLA case law. Our research into current construction trends and operations included informal interviews with union and open shop labor leaders and contractors in the Burlington area, the Greater Capitol Region and the North Country; Burlington's economic development team; and the project's architects.

Percentage Estimates

The percentages used in this report to estimate potential cost savings through employing a PLA are conservative averages derived from review of actual construction costs in Vermont and nationally over the last five years.

Davis-Bacon Wage

We calculated an average hourly labor wage plus payroll burden for this report using the prevailing wage and fringe benefits from the Davis-Bacon determinations as set by the U.S. Department of Labor as required under the City of Burlington ordinance Article V Section 21-73 and the Vermont Labor Department for the Burlington area. This metric is based on the schedule for the primary trades Involved in this project: Electrician, Ironworker, Cement Mason, Plumber, Carpenter, Laborer and Operators.

Using these parameters, the average wage is $31.31 per hour + a 30% overburden of $9.39 = aggregate average hourly rate of $40.70 for the Moran Project. This wage applies to all workers on this project, union and open shop, whether or not a PLA is utilized in the construction of the Moran Center.

ASSUMPTIONS

The estimated hard costs plus contingencies of the Moran project are $13,192,862.00; labor is expected to be 42% of the total Project cost or $5,540,090. Over the ten month duration of the Moran Project there will be 216 work days and 136,120 man hours worked, or 630 hours a day. Labor costs will be approximately $25,641 per day.

AVOIDANCE OF STRIKES, LOCKOUTS AND PICKETING

PLAs are designed to eliminate impediments to completing construction projects by including clear, mandated provisions to quickly resolve disputes. All prime contractors, union and open shop, must abide by the decisions made to resolve disputes.

To address the question of whether a PLA reduced or eliminated the risk of labor unrest, we researched labor disharmony in Vermont over the last five years and discovered that there were a total of seven actions and no work stoppages. (See Appendix F on page 25 for full details). To put these numbers in context, in the Greater Albany area in the same time period we confirmed 21 work stoppages resulting from picketing incidents and an additional 19 picketing incidents which did not result in work stoppage. (The full inventory is on page 26).

Historical facts do not, of course, guarantee that a non-PLA Project will be free of labor unrest. Given high national unemployment rates in the construction industry, the Moran Project is likely to attract bidders and work crews from out of state, increasing the potential for on-site labor disharmony and jurisdictional disputes. Employing a PLA on this Project would provide a tool for quickly resolving these incidents with little or no impact on work flow and productivity.

However, given the existing relationships in Vermont's construction industry, it is very likely that the same results can be attained without a PLA. Even though resolution of disputes is not legally mandated and binding for all trades in non-PLA projects, Vermont's local open shop contractors have a good record of managing such incidents when they occur and of delivering projects on-time. Simply put, unemployment is high at the present time, and people want to work.

In the period we reviewed, Vermont unions have not demonstrated a strong commitment to utilize the tool of labor unrest. It is not likely that constructing Moran without a PLA will significantly alter this dynamic.

It is noted that the Collective Bargaining Agreements of the iron workers, carpenters, electricians and operators will all expire during the Moran construction period. If these CBA's are not renewed, it may result in collective labor actions among any or all of these trades. This could potentially slow or stop the construction schedule. Under a PLA, such actions are prohibited for the duration of the project. In our opinion, given the Vermont union's long-established manner of doing business, we do not think it probable that any job actions would occur if the aforementioned contracts were not renewed.

Considering all factors, we conclude that the probability of labor unrest on the Moran Project from any cause is extremely low.

No cost savings at this time

NO PREMIUM WAGE RATE FOR SECOND SHIFT

Project Labor Agreements include the opportunity to negotiate special agreements for second shifts and extended working hours when they are required. In conversation with union leaders in the Vermont Building Trades, we have discovered a willingness to discuss such an arrangement. However, no second shift is currently planned for the Moran Project.

No cost savings at this time

NO PREMIUM RATE FOR SATURDAY MAKE UPS

When inclement weather or other factors causes missed work days during the week, there are provisions that can be incorporated into a Project Labor Agreement where a Saturday work schedule will make up for a missed week day and be done at a straight time wage rate. In conversation with Union leaders in the Vermont Building Trades, we discovered a willingness to discuss such an arrangement. However, it is noted that open shop contractors have a great deal of flexibility with their workforce on this issue as it is not part of the Vermont Prevailing Wage Law. This gives open shop contractors a competitive advantage over union contractors which a PLA would potentially neutralize but still not result in a cost saving.

No cost savings at this time

WORKING AND NON-WORKING FOREMAN

Project Labor Agreements typically have provisions for working foremen, thus eliminating any non-working foremen that open shop contractors may employ. But non-working foremen are very rare on contemporary projects like the Moran Center and we do not assign an advantage to this provision in a PLA.

No cost savings at this time

STANDARDIZED WORK WEEK

Standardizing the work day for all trades increases productivity on the job site by providing a predictable framework for coordinating the times different trades use for breaks, lunch, set-up and close-down time. Construction projects routinely incur overtime hours (and over-time hours), due to the inevitable slippages in coordinating work hours so one trade can keep pace complementary trades.

Research shows that all members of the Vermont Building and Construction Trades Council, the union workforce, have the same standard 40 hour week and the same times for breaks, meals and other non-work elements of the work day. It should be noted that open shop contractors have a great deal of flexibility with their workforce on this issue as it is not part of Vermont's Prevailing Wage Law.

No cost savings at this time

USE OF APPENTICE WORKERS

Every union in Vermont has a state-approved apprenticeship program where those learning their trade are employed on jobs at a lower scale than the journeymen's rate. Vermont State Labor Law requires that only apprentices individually registered in a program registered with the Vermont State Commissioner of Labor may be paid apprenticeship rates on a public works project such as the Moran Center.

Nationally, unions tend to have a larger number of apprentices in certified programs than their open shop counterparts; open shop contractor-sponsored programs typically produce 10% the number of union apprentices. Research shows that allowable apprentices, union and open shop, typically comprise 14-33% of the total workforce on construction projects, depending on the trades involved, according to the allowable ratio of apprentices to journeyworkers published by the Department of Labor. Higher unemployment conditions do not seem to materially reduce the number of working apprentices.

In Vermont, there are currently 649 active apprentices in Vermont's state-certified program, down since the recession began from 1000. 212 Apprentices are in electrical and 167 in plumbing (58% of all apprentices). Twenty-five of the electrical apprentices are union (11.8% of the total) and 15 of the plumbing apprentices (5.9%); the rest are open shop. There are also small union programs in sheet-metal, HVAC, carpentry and construction craft laboring with minor non-union participation in sheet-metal and HVAC.

We conclude that there are likely to be adequate numbers of apprentices available for the Moran Project from both union and open shop sources. However, the PLA's apprentice provision provides negligible economic advantage to the project owner as the vast majority are sponsored by open shop contractors and would still be available for the Project if it were not a PLA.

No cost savings at this time

UNIFORM WORK RULES FOR HOLIDAY SCHEDULES

Different trades have different holiday schedules in their prevailing wage rate in most states, and this often leads to work flow problems and additional costs. However, this is not the case in Vermont as holidays are not part of Vermont's prevailing wage rate. Further, in Vermont, no trades have paid holidays; workers do not get paid unless they actually work and no holiday work schedules are planned.

No cost savings at this time

ACCESS TO LABOR SUPPLY

PLAs guarantee preferred access to all union workers in the job site area and to the expanded pool of labor provided by other unions in the surrounding region. This provision ensures that a project will never experience delays for lack of skilled craftspersons. Our research indicates that the pool of available union workforce in Vermont is adequate for the construction needs of the Moran Project. This is only true, however, if the workforce is drawn from the entire State and, in the extreme, from the North Country and Capitol regions of New York. Assuming that employing "local" labor is an important social criteria for the Moran Center construction, we note that VBCTC membership in totals 625 while open shop workforce is approximately 14,000.

We identified five competing projects in Vermont which will be under construction at some point during the Moran Center's construction, including Vermont Yankee and Merrimack Station. In New York State, competing projects include the $100M Lake Champlain Bridge, the $800M General Foundries chip-fab project in Malta and GE's on-going $500M dredging of PCB spoils from the Hudson River. For more details, please see Appendix J on page 26.

Despite these existing, big-budget construction projects and others, we discovered no labor shortages in Vermont's construction industry. As of June 2010, Vermont Department of Labor reports that approximately 5,000 construction workers are unemployed in the state, a increase of 28% since 2007.

According Alex Halpern, the Project Manager, the Project does not require workforce with special skills (such as superflat flooring) that might be in limited supply due to the existence of fewer certified practitioners.

In sum, there is more than an adequate supply of labor available for all aspects of the Moran Center Project for the duration. We therefore calculate no probable dollar savings or management advantage in this category.

No cost savings at this time

INCREASED LABOR PRODUCTIVITY

In times of reduced employment such as the present, both union and open shop workers tend to be more highly motivated and productive. On a national basis, our research shows that union workers are more frequently graduates of rigorous state-certified apprentice programs than non-union workers and therefore are more likely to be productive than open shop workers. In most trades, the number of hours of training required to be certified is roughly equivalent to earning a bachelor's degree in the arts and sciences.

In Vermont, as discussed on page 13, there is a significantly higher percentage of non-union workers graduating from certified training and education programs than union workers. Therefore, we see no evidence to suggest greater worker productivity through utilizing a PLA for construction of the Moran Center. We did not review union and open shop worker safety records for this Study.

We note a frequently cited open shop objection to PLAs which relates to the issue of productivity: the provision that open shop contractors are typically allowed 10-20% (the so-called 'tag-along') of their regular crew on a PLA job. In effect, this means that 80-90% of the open shop contractor's crew is new to him and his core team. Such an arrangement, according to the open shop contractors associations, results in less overall productivity because the hybrid team has never worked together.

In actual practice, this arrangement may, or may not, reduce the efficiency of a contractor's work crew. Clearly, a crew that has worked together regularly will be able to coordinate their efforts more easily than a crew which has no prior working experience. However, both union and open shop workers are often part of mixed crews and, especially on public works projects, have a long history of accommodating diverse working rules and procedures. It is reasonable to assume that any initial loss of efficiency would be reduced as work proceeded on a ten month job and routines became clear.

It is noted that open shop contractors also feel that union work rules, such as jurisdictions, tend to decrease productivity because they inhibit normal work flow and flexible deployment of labor. In the view of open shop contractors, complying with a PLA's administrative requirements adds unnecessary work to the construction process, further reducing productivity. Researching the validity of these assertions is beyond the scope of this report. They are included here because these commonly cited non-union beliefs about PLAs may have a negative impact on open shop contractors' willingness to participate in a PLA for the Moran Center.

Considering all factors, worker productivity would not be increased by utilizing a PLA on this Project and we calculate no cost savings.

No cost savings at this time

MORE COMPETITIVE BIDDING

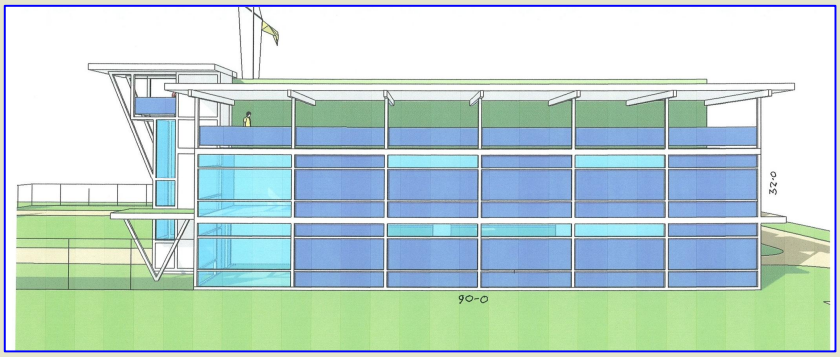
PLAs are designed to better predict labor costs. Creating a level playing field for all contractors, both union and open shop, encourages a more competitive bidding process as labor costs are known in advance. Because of the unlikelihood of work delays or stoppages, contractors do not have to estimate some portion of contingency costs. The net result of a PLA is to force contractors to be more precise in their bidding.

Our research shows that the current economy, not surprisingly, stimulates more aggressive bidding in all areas of construction. While it is not unreasonable to assume that a PLA might encourage even more competitive bidding, it is also not unreasonable to expect highly competitive bidding for the Moran Project contracts without a PLA. Therefore, we do not calculate any potential savings to the Project from this aspect of a PLA.

The two major open shop contractor associations in Vermont, Associated Building Contractors and Associated General Contractors, claim that the majority of their members do not usually bid PLA projects. In their view, open shop contractors must bid higher on PLAs in order to compensate for union work rules and administrative procedures, and therefore do not win bids when they do submit them. We have spoken with open shop contractors who add as much as 40% to their bids for PLAs. We address both these assertions in detail on pages 18-19 because they may impact the bidding process if a PLA is utilized on the Moran Center Project.

We note that there has been a great deal of controversy over this issue over the last two decades and many authoritative, heavily foot-noted studies have been produced on both sides. Almost all are financed, directly or indirectly, by either labor or open shop interests and thus have little objective value. For reference, we have appended an impartial assessment of the situation prepared by the Cornell University School of Labor and Industrial Relations. It can be found in Appendix J on pages 28-29.

No cost savings at this time



OTHER FACTORS

Urgent Need for Completion

The U.S. court system has repeatedly cited the urgency of completing a project as one of the factors in determining the validity of PLAs. At present, there does not appear to be a time-dated or state-mandated urgency to completing construction of the Moran Center beyond the normal exigencies of completing any project.

The Moran Center project has none of the traditional ear-marks of time-urgent construction. The Project will not provide a crucial community service, the late delivery of which would create hardship, such as replacing a sewer treatment plant that has reached the end of its service life. It's proposed construction schedule from spring 2011 to summer 2012 is reasonable, not aggressive. At present, according to Alex Halpern, the Project manager for FFF, and David White, whose consulting firm is managing the Project's financing arrangements, there has been no discussion of assessing penalties if the General Contractor or individual contractors do not complete planned construction on schedule. Incentives for early completion have not been discussed either. We note that both Mr. Halpern and Mr. White independently opined that such arrangements might at some undetermined point become part of the construction contracts.

For the purposes of this DDIS, we conclude that the Moran Center does not require an urgent construction schedule. The absence of mechanisms to accelerate the construction process, even at this pre-bid phase, reinforces the apparent lack of urgency.

For reference, we cite a project with a well-defined, time-dated urgency: the project currently underway to build the new Lake Champlain Bridge from Chimney Point, VT to Crown Point, NY. When the bridge was demolished in December 2009, it effectively eliminated a major transportation artery between Vermont and New York which serves more than one million people annually. LCB's absence negatively impacts the flow of commerce and tourism in both states. Despite emergency ferry service provided jointly by both states, the absence of the bridge adds hardship to the lives of tens of thousands of people. Additionally, ferry service costs taxpayers approximately $30,000 per day or almost $11 million per year. Construction plans call for completing the new bridge in 18-24 months, about half the time it would normally take to complete a project of this type and scope. Urgent completion of the new LCB was an important factor in recommending a PLA for this project.

NYSDOT has provisions in its agreements with contractors that assess penalties for late delivery of Lake Champlain Bridge contracts and incentives for completing work ahead of schedule. Nothing of this sort is currently being considered for the Moran Center construction. Based on our current understanding of the Project, there is no compelling need for accelerated completion. To the extent that this is true, it will not meet one of the three primary legal tests for a PLA and it would likely be challenged in court by open shop associations, a process both time-consuming and expensive.

Non-Union Participation in PLAs

In our discussions with open shop Vermont contractors we were told repeatedly that contractors were not planning to bid on the Moran Project if it is a PLA. We also heard this said in conversations with architects, attorneys and others who had no direct involvement in the construction industry. It is unknown whether this position is deeply-held or if it is one of a series of tactics for defeating adoption of the first PLA in Vermont. Perhaps both are true. We investigated this issue for its possible impacts on the Moran Center Project.

As we understand it, there are three main open shop objections to PLAs.

- 1) The PLA provision that contractors may typically bring 8-12% of their normal crew onto a PLA job. Open shop contractors believe that working largely with a crew hired through the union hall reduces their ability to deliver a timely, high-quality job. (It is noted that this 'tag-along' is sometimes negotiable.)

- 2) Contractors say that the PLA administrative requirements are complex and burdensome, adding more paperwork to the construction management process than normal. Open shop advocates believe that union work rules take away their flexibility in scheduling and making cross-trade work assignments.

- 3) The requirement that all workers must contribute to union pension funds while employed on a PLA project is considered unfair by open shop proponents, and an additional, unnecessary expense for the workforce. These contributions can never be recovered if the individual does not join the union and become vested in the union plan.

Open shop contractors we spoke with in Vermont stated that they must raise their bids on PLA projects in order to compensate for the aforementioned provisions, thus making them less competitive with union contractors. (We did not speak with open shop craftsworkers about their objection to paying into pension funds from which they will never benefit.) In researching this assertion, we discovered that open shop contractors regularly win bids on PLAs in adjacent regions.

As there is no Vermont data to draw from because there has never been a PLA in Vermont, we researched PLAs in the Greater Albany Capitol Region, where many Vermont contractors and workers regularly participate in construction projects. We conclude that there is no evidence to support the assertion that open shop contractors do not bid on PLA projects or win bids. Please see pages 30-31 for more details.

In fact, in New York State, our research discovered that many open shop contractors do regularly bid on PLAs, typically the larger projects with longer duration and greater profit potential. These projects are, of course, in areas where the union collective bargaining agreements for each trade is part of the prevailing wage law. In our limited sample, the threshold for open shop
(continued next page)

Non-Union Participation in PLAs (continued)
consideration of a PLA bid starts over $30M. In the Greater Albany area, the majority of PLA projects with budgets higher than $30 million (more than double the current budget proposed for the Moran Project) had higher percentages of open shop participation. This makes business sense, as there is more work for a longer duration in larger contracts, and more profit. Whatever the validity of the objections open shop contractors raise to PLAs, they apparently find ways to make the terms and conditions of PLA projects work for themselves. We did not investigate open shop contractors participation in projects smaller than $30 million but it is not unreasonable to assume that as the scope of work is reduced, the background differences between union and open shop work rules and procedures will become more prominent . This may discourage open shop contractors from bidding on a project which would require them to change their normal and preferred work procedures and style. It is also reasonable to assume that smaller contracts may be more sought after during down economic times when fewer projects are being built and competition for those projects is intensified.

Employing Local Labor
The threat of losing local jobs to out-of-state bidders has increased sharply due to the increased number of bids from out-of-state general contractors winning bids in Vermont (and elsewhere) during the recent economic contraction. These non-local contractors, often from Southern or Western right-to-work states, have a reputation for significantly underbidding local contractors. We did not discover enough evidence to support this claim. But it is unquestionably true that the recessionary economy in the United States has increased the competition among contractors and craftsworkers seeking employment in the construction industry. It is also true that there is strong and not unreasonable support for publicly funded construction projects to provide jobs for local people who will spend their wages in the local economy and thereby provide greater stimulus for the community. We note this issue here because it has surfaced in other communities where we have recently conducted DDIS, including the North Country regions of New York State concerning the Lake Champlain Bridge Project.

As part of the overall decision making-process, the project owner may want to consider the impact of hiring or not hiring appropriate numbers of local workers on the Moran Center Project.

The Vermont Building and Construction Trades Council (a union membership organization) reports a total of 625 members and a current unemployment rate of 25-40%. A PLA has the potential to provide a mechanism for local
(continued next page)

Employing Local Labor (continued)

hiring because all hiring would be done through the local union hall in South Burlington where the VBCTC is headquartered. The union representatives we met and spoke with all affirm an eagerness to participate in Moran and a willingness to make some concessions to get the work. It is noted, however, that 'local labor' might not be able to meet all the Project's labor needs; the Vermont union labor pool is very small and lacks a full complement of trades. If Moran were constructed under a PLA it would very likely necessitate drawing workforce from other unions (iron workers, masons and other key skills) outside the area which are not precisely local. Generally speaking, for both union and open shop workforce in Vermont, local often means the entire state. For comparison, "local" for the Lake Champlain Bridge in Essex Country, NY included the Greater Capitol Region, 90 miles away, but not the Mid-Hudson Valley 180 miles away.

By contrast, according to statistics provided by Vermont's Department of Labor, the open shop labor pool in Chittenden County is more than nine times the union workforce. This workforce should be sufficiently deep to supply all needed labor for the duration of the Project without drawing substantially on labor from other parts of the State or region.

We did not assess the full range of economic impacts of hiring practices for the Moran Center Project as it is beyond the scope of our Study. But we note here that the greater the number of non-local workers participating in the job, whether out-of-State or out-of-Burlington, the less economic value the construction of the Project will have in the area where it is being built . The economic value of this or any project is the total of public and private benefits resulting from the construction, and includes the direct, indirect and induced economic benefits to the local community.

For reference, we provide the following definitions:

- **The Direct impact** is the actual value of the project reflecting the additional income and expenditures generated by or through the City of Burlington in creating the Moran Center Project.

- **The Indirect impact** is the total additional payroll and expenditures paid by businesses providing professional services to the Project, including workers and materials.

- **The Induced Economic impact** is the changes in regional household spending patterns caused by changes in household income generated from the direct and indirect effects of the project.

CONCLUSION

After conducting our due diligence analysis of the feasibility of utilizing a Project Labor Agreement for construction of the Moran Center Project, Arace & Company has concluded that a PLA would be of no material benefit to the public owner and the taxpayers of Burlington. Our conclusion is based primarily on our evaluation of the three mission critical parameters for determining the validity of a PLA.

1) We did not identify a compelling need to complete the Project on-time, although, of course, on-time delivery is always the goal. Building a water treatment plant to replace an existing plant that has exceeded its service life is an example of a project with an urgent need for completion.

2) We did not calculate a potential for cost savings on the Moran Center Project through using a PLA. The areas where a PLA can typically induce cost savings, including standardizing work schedules and providing apprentice labor, do not add up to cost savings in Vermont where union and open shop workforces have all long observed the same schedules and where open shops operate robust apprentice training programs, generally an area of union dominance.

3) We did not discover any evidence that the bidding process for a PLA would not be fair and open, an important legal requirement for validating PLAs. However, we identified a trend among open shop contractors not to bid "smaller" PLA projects, typically those under $30M like Moran. While not a certainty, it is reasonable to assume that a PLA for the Moran Center would have few open shop contractors as bidders, and this circumstance may inhibit participation from the open shop sector which accounts for 95.5% of Vermont's construction labor force.

Almost all the traditional benefits of using a PLA are rendered moot by the nature of Moran's relatively simple construction plans. **We therefore conclude that a PLA is not feasible for the Moran Center Project.** PLAs are designed to facilitate complex projects, such as the Lake Champlain Bridge, involving many trades over an extended period of time. Likewise, the abiding cooperation and collaboration among union and open shop workforce which PLAs seek to establish is already the standard way of doing business in Vermont.

We note in closing that where PLAs are utilized on projects in other areas of the country it is because they provide a economic benefit to the project owner. Effective PLAs are based on strong local or state prevailing wage laws that include many key aspects of each building trade local Union's Collective Bargaining Agreements such as wages, benefits, overtime, holidays and work rules.

ECONOMIC SUMMARY

Potential Cost Savings and Cost Avoidances

Avoidance of work stoppage (Strikes, Lockouts and Picketing)	0
No premium wage rate for second shift work Premium rate for Saturdays	0 0
Use of apprentice workers	n/a
Standardized work week	0
Working foremen in lieu of non-working foremen	n/a
Uniform work rules and holiday schedules	0
Access to labor supply	0
Increased labor productivity	0
More competitive bidding	0
TOTAL	$0

APPENDICES

APPENDIX A: NEW YORK STATE CASE LAW ON PLAs

New York State Chapter, ABC v. New York State Thruway Authority, and General Building Contractors of New York State v. Dormitory Authority of the State of New York, 666 N.E.2d 185, 151 L.R.R.M. 2891 (N.Y. Ct. App., 1996) - PLAs "neither absolutely prohibited nor absolutely permitted" under NY law. PLA requirement for Tappan Zee Bridge renovation project sustained, similar requirement for Roswell Park Cancer Research Center invalidated, based on whether record supporting respective agency's determination "was justified by the interests underlying the competitive bidding laws". Case sets forth the criteria NY state agencies must meet to justify PLA requirement.

Albany Specialties, Inc. v. County of Sullivan, 662 N.Y.S.2d 773, 155 L.R.R.M. 2856 (N.Y. App. Div., June 30, 1997) (Albany Specialties II) - Courthouse construction; recommendation to use
a PLA "in order to avoid potential labor unrest does not suggest a 'capitulation to extortion.' Rather, the avoidance of delays and work stoppages occasioned by labor strife has been recognized as a valid and legitimate consideration in determining whether to enter into a PLA."

Flex Electrical Contractors, Inc. v. County of Sullivan, Case No. 4256-97 (N.Y.S. Ct., Sullivan Co., Sept. 30, 1997) - Jail facility; petitioner's disagreement with county's cost savings projections was not a valid basis for challenging PLA.

Albanv Specialties, Inc. v. County of Sullivan, Case No. 7351-96 (N.Y.S. Ct., Sullivan Co., Feb. 6, 1997) (Albany Specialties D - Jail facility; PLA upheld even though consultant's report was "less extensive" than in Thruway Authority case.

Rondout Electric, et al. v. County of Sullivan, 151 L.R.R.M. 2254, (N.Y.S. Ct., Sullivan Co., Dec. 22, 1995) (residential health care facility) - PLA violates neither competitive bidding laws nor NYS Constitution.

Empire State Chapter of Associated Builders and Contractors, Inc., et al. v. Board of Education of the City of Buffalo, 269 A.D.2d 801, 703 NYS2d 418 (N.Y. App. Div., Feb. 16,2000) - The Court held that the Board of Education met its burden of showing that the decision to enter into the PLA satisfied the New York State competitive bidding statute and was supported by an outside consultant's report. The time constraints inherent in the project were deemed significant in determining the advisability of a PLA. The Court particularly noted the detailed projection of cost savings as a result of using a PLA prepared by an engineering and architectural firm hired by the Board as a consultant. The record also demonstrated that labor unrest occurred during Phase I of the project as a result of a union and non-union contractor being on the job.

Empire State Chapter of the Associated Builders and Contractors, Inc. v. City of Oswego, No. 96-1370 (N.Y.S. Ct., Oswego Co., Aug. 1, 1996).

Associated Builders and Contractors v. Onondaga County, et al., 160 L.R.R.M. 2905 (N.Y.S. Ct., Onondaga Co., March 16, 1999) - Court upheld PLA based on the record which demonstrated more than rational basis for PLA, including an in depth due diligence evaluation of need for PLA and cost savings resulting from negotiated PLA.

APPENDIX B: CASES INVALIDATING PUBLICLY-FUNDED PLAs

New Jersey

Tormee Construction v. MCIA, 669 A.2d 1369, 151 L.R.R.M. 2440 (N.J. Sup. Ct., 1996) - Bid specification requiring agreement to PLA for county library construction invalidated as anti-competitive, and inconsistent with New Jersey competitive bidding statute.

George Harms Construction Co. v. New Jersev Turnpike Authoritv. 137 N.J. 8, 146 L.R.R.M. 3037 (N.J. Sup. Ct.,1994)-Bid specification requiring PLA on turnpike work held inconsistent with state competitive bidding law.

New York

NY State Chapter, ABC v. NY Thruwav Authoritv, 666 N.E.2d 185, 151 L.R.R.M. 2891 (N.Y. Ct. App., 1996) (see above re: validation of Tappan Zee PLA) - PLA requirement for Dormitory Authority's Roswell Park Cancer Research Center invalidated due to inadequate documentation of need.

Empire State Chapter of Associated Builders and Contractors. Inc. v. City of Oswego, 659 NYS2d 672 (N.Y. App. Div., May 30, 1997) - Record lacked detailed projection of cost savings or identification of features of project that necessitated a PLA.

Pennsylvania

Crossing Construction Co., Inc. v. S.B. Penn. Transportation Authority, Case No. 97-759116-5 (Bucks Co. Ct. of Common Pleas, 1997).

APPENDIX C: FACTS ABOUT PLAs

1. The validity of PLA's was established under federal law in the Supreme Court case, Boston Harbor. Challenges by open shop contractors have been dismissed in 12 states.

2. PLAs are pre-hire agreements reached between construction unions and employers in the construction industry before any employees are hired. They are expressly authorized by Section 8(f) of the National Labor Relations Act, 29, Section I58(f). This legislative was an effort to accommodate the National Labor Relations Act to long-standing construction employment practices resulting from the specific need of building contractors to know their labor costs before making an estimate upon which their bid would be based or to have available a supply of skilled craftsmen ready for quick referral.

3. Neither open shop contractors or open shop employees are precluded from working under a PLA; however, they must agree to be bound by the terms of the PLA. As Boston Harbor recognizes, any contractor, whether union or open shop, can agree to bid on a PLA or choose not to bid on it.

On the Boston Harbor project, 100 of the 257 successful subcontractors were open shop and a review of 81 prime contractors employed on the project revealed that 16 were reportedly "open shop," despite the fact that the local market area is approximately 75% union.

On the Central Artery project, also in Boston, 13 of the 55 contracts let went to open shop contractors, a number right in line with the local market. On the East River Reservoir project in Southern California, 75% of all successful bidders were non-union. In the Southern Nevada Water Authority case, there was a finding that competition increased under the PLA and six of 16 contracts were awarded to open shop bidders.

APPENDIX D: COMPLETED PLA PROJECTS

PLAs have been used on federal projects such as the Hoover Dam, the St. Lawrence Seaway, the Hanford Site in Washington State, the Cape Canaveral Space Center in Florida, the Oak Ridge Reservation in Tennessee and the Rocky Flats Environmental Technology Site in Colorado.

State and local governments have used PLAs in construction of publicly financed bridges and other projects. See Appendix E below for an inventory of Greater Capital Region PLAs, the most proximate area to Vermont where PLAs have been utilized in public works construction .projects.

APPENDIX E: PLAs IN THE NY's CAPITOL REGION **2000 - Current**

Empire Generating	Rensselaer	$700M	in progress; expected completion July 2010
City School District of Albany	Albany, NY	185M	Completed June 2009
Albany County	Albany, NY	70M+	On-going, many phases; latest bid July 2009
Global Foundries	Malta, NY	800M	In progress; expected completion 2011
South Glens Falls School District	S. Glens Falls, NY	36.8M	Completed Dec. 1998
St. Lawrence County	Canton, NY	30M	Completed January 2009
Clifton Park-Halfmoon Library	Clifton Park, NY	11.5M	Completed December 2006

APPENDIX F: PROFILE OF VERMONT'S LABOR UNREST

	Teamsters Local 597	Ironworkers Local 7	Operating Engineers Local 98	Laborers Local 688	Carpenters Local 1996	Bricklayers Local 2
# of JY Workers Available	20-30	200	25-30	150	150	Use NY info
# of Apprentices	None	25	10	20	16	Use NY info
Incidents of Labor Unrest in Last 3-5 Yrs	None	• Fletcher Allen • 2 Lowe's Projects • Richmond Bridge • Demonstrated at UVM Trustees Meeting • Burlington International Airport • University of VT Davis Center	• Fletcher Allen • 2 Lowe's Projects • Richmond Bridge • Demonstrated at UVM Trustees Meeting • Burlington International Airport • University of VT Davis Center	• 2 Lowe's Projects • Richmond Bridge • Burlington International Airport • University of VT Davis Center • Demonstrated at UVM Trustees Meeting	• Currently Picketing Stowe Mtn. Resort & Fletcher Allen Projects • 2 Lowe's Projects • Richmond Bridge • Burlington International Airport • Demonstrated at UVM Trustees Meeting • University of VT Davis Center	Use NY info

APPENDIX G: LABOR UNREST GREATER ALBANY AREA 2004 – Present

Project	Date	Event	Union
YMCA, North Albany	March 2005	Picket	BAC
Farnsworth Middle School	June 2006	Picket	BAC
Lowe's, Colonie	September 2007	Picket	BAC
Krank Park	2008	Picket	Carpenters
70 State Street, Albany	Nov 2005- Jan 2006	Picket	Carpenters
Albany Medical College	May 2009	Picket	Carpenters
Clifton Park Mall, Clifton Park	September 2006	Picket	Carpenters
Hampton Inn, Albany	January 2005	Picket	Carpenters
800 North Pearl, Albany	August 2007	Picket	Carpenters
Hampton Inn, Schenectady	April 2006	Picket	Electricians
Metroplex Authority, Schenectady	June 2006	Handbill	Electricians
Troy Housing Authority, Troy	April 2006	Picket	Electricians
NONE	NONE	NONE	Elevator Constructors
Beechnut	June _ 2006	Picket	Insulators
Hampton Inn, Schenectady	Late 2006	Handbill	Insulators
Starfire, Malta	2007	Picket	Ironworkers
KETCO @ the Albany Airport	October 2006	Picket	Operating Engineers
SUNY East Campus, Rensselaer	August 2004	Picket	Sheetmetal Workers
NYS Capitol Roof, Albany	September 2005	Picket	Sheetmetal Workers
JC Penney's, Wilton Mall, Saratoga	February 2007	Picket	Sheetmetalworkers

APPENDIX H: WORK STOPPAGES GREATER ALBANY AREA 2004 – Present

Project	Date	Event	Union	Notes
Alexander/Patroon Creek, Albany	2008	Picket	Plumbers	resulted in work stoppage
Concrete ReadiMix	June 2008	Strike	Teamsters	resulted in work stoppage
Gideon Putnam, Saratoga Springs	May 2005	Picket	Painters	resulted in work stoppage
Crandall Library. Glens Falls	July 2007	Picket	Painters	resulted in work stoppage
Fage Factory, Johnstown	March+ August 2007	Picket	Painters	resulted in work stoppage
Best Western, Albany	April 2007	Picket	Painters	resulted in work stoppage
Rite Aid, Amsterdam	June 2007	Picket	Painters	resulted in work stoppage
Lia Dealership, Schenectady	October 2007	Picket	Painters	resulted in work stoppage
Michael's, Latham	July 2008	Picket	Painters	resulted in work stoppage
Social Sevies bldg, Schenectady	October 2008	Picket	Painters	resulted in work stoppage
Street Toyota Dealership, Johnstown	July 2006	Picket	Painters	resulted in work stoppage
Racino, Saratoga Springs	June 2005	Picket	Painters	resulted in work stoppage
Cohoes Apartments, Cohoes	April 2006	Picket	Painters	resulted in work stoppage
Omni Hotel	December 2004	Picket	Painters	resulted in work stoppage
CDPHP, Latham	October 2004	Picket	Painters	resulted in work stoppage
Quality Inn, Albany	November 2005	Picket	Painters	resulted in work stoppage
Rotterdam Square Mall, Rotterdam	June 2005	Picket	Painters	resulted in work stoppage
NYSUT HQ, Latham	July 2004	Picket	Painters	resulted in work stoppage
Skidmore College, Saratoga Springs	June 2005	Picket	Painters	resulted in work stoppage
Krispy Kreme, Latham	March 2004	Picket	Painters	resulted in work stoppage
Skidmore College, Saratoga Springs	July 2005	Picket	Painters	resulted in work stoppage

APPENDIX I: CURRENT OR SCHEDULED CONSTRUCTION THAT WILL OVERLAP THE MORAN CENTER PROJECT

VERMONT

Champlain College Welcome Center

State of Vermont Forensic Lab

Mariott Burlington Addition

Army Reserve Center, White River Junction VT

VA Medical Center Addition.

NEW YORK

NYS Ag and Markets Building

Fed-Ex Facility

Convention Center

Albany Medical Center Expansion

University of Albany - Business Center

University of Albany - Campus Center

University of Albany - Dormitory

Harriman Campus Research and Technology Privatization Park

Exit 3 off I-87/Northway

Fuller Rd./Washington Ave. Road Work

GE Dredging of the Hudson

Ausable Valley Schools - Renovations

Indian Lake Waste Water Treatment Plant

Watervliet School - Addition/Alterations

Amsterdam High School - Addition/Alterations

Berne Knox Westerlo Schools - Additions/Reno

Schalmont Central School District - Renovations

APPENDIX J: ANALYSIS OF COMPETITIVE BIDDING PRACTICES ON PLAs

A 2009 study by Fred B. Kotler, J.D., Associate Director of the School of Industrial and Labor Relations at Cornell University finds that there is no evidence to support claims that project labor agreements discriminate against employers and workers, limit the pool of bidders, and raise construction costs. "Such claims by opponents are based on inadequate data and faulty methodology. PLAs in New York City and State and elsewhere have instead proven very successful at saving costs while respecting fair labor standards."

Here are the relevant sections of the Report:

Do PLAs discriminate against non-union contractors and workers?

Under state competitive bidding laws, all bidding must be open and nondiscriminatory. Although union-only agreements are permitted in the private sector, bid awards in the public sector cannot be made on the basis of union status. Because union and non-union contractors are free to bid on projects covered by PLAs, they avoid the favoritism that competitive bidding laws are designed to prevent. Awards are frequently made to both union and non-union companies. Those same contractors are not required to become union contractors, that is, signatories to the respective area craft agreement, but only to become signatories to the PLA.

There is a second layer of protection against favoritism in the job referral procedure: unions cannot lawfully favor their members or discriminate against equally qualified non-members. This is typically restated within the PLA itself. A useful example is the language within *Article 4 Union Recognition and Employment* of the PLA for the New York City School Construction which says "No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicants union membership, or lack thereof."

Do PLAs limit the pool of bidders?

PLA opponents argue that PLAs limit the pool of bidders and that this drives up costs. There is no evidence to support these assertions. While there are many reasons why contractors both union and non-union may choose not to bid on particular projects, there are no studies demonstrating that a PLA in the bid specifications is itself responsible for a decrease in the number or bidders; there is also no analysis showing that fewer bidders translates into higher actual project costs.

Two factors do influence bidding behavior and the number of bidders for particular projects whether or not a PLA is at issue: bidding procedures and market conditions. Market conditions and the business cycle always impact bidding behavior. As the volume of work increases in a construction market, one can expect a decline in the number of bidders per project and an increase when less work is available.

There is a reason why some non-union contractors will choose not to bid on PLAs, a reason that gets to the core of the issue and that PLA opponents might prefer not to publicize: they do not want to operate within or adjacent to the unionized sector what the *Boston Harbor* Court meant by contractors choosing not to "alter their usual mode of business." Non-union contractors may see PLA work as a threat to their workforce control so they choose to avoid having their employees work side-by-side with unionized craft workers and under prevailing wage and collectively bargained terms and conditions.

PLAs require that all successful bidders union and non-union become PLA signatories. This practice of restrictive subcontracting does not make PLAs unfair to non-contractors but, rather, meets an important public interest. Restrictive subcontracting is sanctioned by the National Labor Relations Act, along with pre-hire bargaining, to accommodate the particular conditions of the construction industry and, in particular, to provide contractors with a ready access to skilled labor, help contractors predict costs, and promote labor harmony and productivity on construction job sites.

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APPENDIX J: ANALYSIS OF COMPETITIVE BIDDING PRACTICES ON PLAs (continued)

In a report entitled *Project Labor Agreements*, Professors Dale Belman, of Michigan State University; Matthew M. Bodah of the University of Rhode Island and Peter Philips of the University of Utah found that there is no evidence that PLAs decrease the number of bidders or change the cost of construction projects. Rather than increase cost, the agreements provide benefits to the community. Indeed, the study shows that project cost is directly related to the complexity of a project, not the existence of an agreement. Cost is strongly correlated with size, location, whether the school is an elementary school, and the amenities provided such as cafeterias and swimming pools. *Project Labor Agreements*, is available at: http://massbuildingtrades.org/project-labor-agreements-white-papers. The authors reviewed previous research and conducted a study of bidding on both PLA and non-PLA projects in two adjacent school districts of the San Jose-Sunnyvale-Santa Clara, California construction market. They noted that different bidding methods can influence the number of bidders; in their comparison, one of the districts favors separate prime contracts on specialty work. Since there are more specialty than general contractors in most construction markets, that fact alone may account for more bidding. Their report concluded that . **the only statistically significant variable that predicts bidding behavior is business cycle.** In the period that construction activity increased, the number of bidder per bid opening decreased. Most notably, the results of the study indicate that the presence of a PLA has no statistically significant effect on the number of bidders per bid opening. PLA opponents argue that PLAs restrict bidders thereby reducing competition and raising prices. "The problem with this argument," according to the Belman team, "is that **one need only about half a dozen bidders to get the full effect of bidding competition on prices**. Furthermore, research to date only looks at whether nonunion contractors are discouraged and not whether union or high wage nonunion contractors are attracted by PLAs. In short, we do not know whether or to what extent PLAs discourage bidding."

APPENDIX K: NON-UNION CONTRACTORS THAT HAVE WORKED ON PLA PROJECTS IN NEW YORK STATE

Company	Trade	Project
K&K Pools	Bricklayers	Albany Schools
Eastern Contractors	Carpenters	Albany County Courthouse
Workspace Solutions	Carpenters	GlobalFoundries
Pike Co.	Ironworkers	Albany County Courthouse
Solvay Iron	Ironworkers	Albany Schools
AFESCO Fence	Ironworkers	Albany Schools
T&P Lawn and Fence	Ironworkers	Rensselaer Schools
Superior Abatement	Laborers	Albany City Schools
5 Star Construction	Laborers	Albany City Schools
Fiber Tech Asbestos	Laborers	Albany City Schools
Davis Fetch	Laborers	Albany City Schools
V.P. Builders	Laborers	Albany City Schools
Henderson Johnson	Laborers	Albany City Schools
FPI Mechanical	Laborers	Albany City Schools and Empire Generating
Eastern Building Restoration	Laborers	Albany Court House
ATS	Laborers	Albany Courthouse, Albany City Schools
Hunt Electric	Laborers	Empire Generating
Fresh Meadows	Laborers	Empire Generating
GEA	Laborers	Empire Generating
Jupiter Asbestos Contractor	Laborers	Albany Schools
NeoPlanta Asbestos Contractor	Laborers	Albany Schools
Conroy & Conroy	Laborers	Plattsburgh Airbase Redev. Corp PLA
Henderson Johnson	Operating Engineers	Albany Schools
Aquifer Drilling	Operating Engineers	Albany Schools & Besicorp
Azco, Inc.	Operating Engineers	Besicorp
M+J Electric	Operating Engineers	Besicorp
Fisher Tank	Operating Engineers	Besicorp
Admar Equipment	Operating Engineers	Besicorp
Hertz Equipment	Operating Engineers	Besicorp
FPI Mechanical	Operating Engineers	Besicorp
Bonded Concrete	Operating Engineers	GlobalFoundries
Northern Amercian Services Group	Operating Engineers	GlobalFoundries
MLB Construction Services	Operating Engineers	GlobalFoundries
U.W. Marx	Operating Engineers	Rensselaer Schools
CS Architectural	Painters	Albany Schools
BR Johnson	Painters	Albany Schools
LA Painting	Painters	Albany Schools
Zapantanze Painting	Painters	Albany Schools
Niskayuna Glass	Painters	Schenectady Parking Project Agreement
Waterblock Roofing	Sheetmetal Workers	Albany Schools
Ultra Clean Duct Cleaning	Sheetmetal Workers	Albany Schools
Specialty Installations	Sheetmetal Workers	Rensselaer Schools
Quaker Bay	Sheetmetal Workers	Rensselaer Schools

APPENDIX K: NON-UNION CONTRACTORS THAT HAVE WORKED ON PLA PROJECTS IN NEW YORK STATE (continued)

Company	Trade	Project
CS Architectural	Painters	Albany Schools
BR Johnson	Painters	Albany Schools
Niskayuna Glass	Painters	Schenectady Parking Project Agreement
LA Painting	Painters	Albany Schools
Zapantanze Painting	Painters	Albany Schools
T&P Lawn and Fence	Ironworkers	Rensselaer Schools
Solvay Iron	Ironworkers	Albany Schools
Pike Co.	Ironworkers	Albany County Courthouse
AFESCO Fence	Ironworkers	Albany Schools
K&K Pools	Bricklayers	Albany Schools
Waterblock Roofing	Sheetmetal Workers	Albany Schools
Ultra Clean Duct Cleaning	Sheetmetal Workers	Albany Schools
Specialty Installations	Sheetmetal Workers	Rensselaer Schools
Quaker Bay	Sheetmetal Workers	Rensselaer Schools
Eastern Contractors	Carpenters	Albany County Courthouse
Workspace Solutions	Carpenters	GlobalFoundries
Conroy & Conroy	Laborers	Plattsburgh Airbase Redev. Corp PLA
Aquifer Drilling	Operating Engineers	Albany Schools & Besicorp
Azco, Inc.	Operating Engineers	Besicorp
Henderson Johnson	Operating Engineers	Albany Schools
U.W. Marx	Operating Engineers	Rensselaer Schools
M+J Electric	Operating Engineers	Besicorp
Fisher Tank	Operating Engineers	Besicorp
Admar Equipment	Operating Engineers	Besicorp
Hertz Equipment	Operating Engineers	Besicorp
FPI Mechanical	Operating Engineers	Besicorp
Bonded Concrete	Operating Engineers	GlobalFoundries
Northern Amercian Services Group	Operating Engineers	GlobalFoundries
MLB Construction Services	Operating Engineers	GlobalFoundries

APPENDIX L: DAVIS-BACON ACT

The Davis-Bacon Act requires that all contractors and subcontractors performing on federal contracts (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of $2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area. Davis-Bacon labor standards clauses must be included in covered contracts.
Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department.

Contractors and subcontractors on prime contracts in excess of $100,000 are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek. Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.
Under the DBRA, covered contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work and for a period of three years thereafter. Records to be maintained include:

- Name, address, and Social Security number of each employee
- Each employee's work classifications
- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
- Daily and weekly numbers of hours worked
- Deductions made
- Actual wages paid
- If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected
- If applicable, detailed information regarding approved apprenticeship or trainee programs

Each covered contractor and subcontractor must, on a weekly basis, provide the federal agency a copy of all payrolls providing the information listed above under "Recordkeeping" for the preceding weekly payroll period. Each payroll submitted must be accompanied by a "Statement of Compliance." The contractor, subcontractor or the authorized officer or employee of the contractor or subcontractor who supervises the payment of wages must sign the weekly statement. Statements of Compliance are to be made on the form WH-347 "Payroll (For Contractors Optional Use)"*(http://www.dol.gov/whd/forms/wh347instr.htm)* or on any form with identical wording. This must be completed within seven days after the regular pay date for the pay period.

Since 1931, Congress has extended the Davis-Bacon prevailing wage requirements to some 60 related Acts which provide federal assistance for construction through loans, grants, loan guarantees, and insurance. These Acts include by reference the requirements for payment of the prevailing wages in accordance with the Davis-Bacon Act. Examples of the related Acts are the American Recovery and Reinvestment Act of 2009, the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.
The Copeland "Anti-Kickback" Act*(http://www.dol.gov/whd/regs/statutes/copeland.htm)* prohibits

contractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment, and requires contractors to submit a weekly statement of the wages paid to each employee performing DBRA covered work.

Contractors on projects subject to DBRA labor standards may also be subject to additional prevailing wage and overtime pay requirements under State and local laws. Also, overtime work pay requirements under CWHSSA and the Fair Labor Standards Act*(http://www.dol.gov/whd/flsa/index.htm)* may apply.

The wage rate listed on the wage determination is the minimum rate that the contractor can pay its employees working on the project. The wage determination (including any additional classifications and wage rates conformed) and a Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen.

Fringe benefits are: Contributions irrevocably made to a trustee or third party pursuant to a **bona fide fringe** benefit fund plan or program. The rate of costs incurred in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated to the employees in writing.

Examples: life insurance; health insurance; pension; vacation; holidays; sick leave

However, payments required by federal, state or local law are **not** fringe benefit contributions. Such payments required to fund Social Security, unemployment compensation and workers' compensation programs, as required by law, do not count as fringe benefits.

A "wage determination" is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential).

Individuals who meet the following definition may be employed as **apprentices** on DBRA projects:

A) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau,

B) A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been properly certified to be eligible for probationary employment as an apprentice.

Trainees employed must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been so certified by that Administration.

APPENDIX L: DAVIS-BACON ACT (continued))

Information on wage rates paid to apprentices and trainees is not reflected in Davis-Bacon wage determinations. Similarly, their addition through the additional classification procedure (conformance) is neither necessary nor appropriate. On projects funded by the Federal-Aid Highway Act, apprentices and trainees certified by the Secretary of Transportation are not covered by Davis-Bacon labor standards.

The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the Regulations and the contract stipulations, or are utilized at the job site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project performing in the classification of work they actually performed. This applies regardless of work classifications which may be listed on the submitted payrolls and regardless of their level of skill.

Helper classifications may be issued in or added to a wage determination only where the (a) the duties of the helpers are clearly defined and distinct from those of the journeyman classification and from the laborer, (b) the use of such helpers is an established prevailing practice in the area, and (c) the term "helper" is not synonymous with "trainee" in an informal training program.