

GOVERNMENT- MANDATED PROJECT LABOR AGREEMENTS

THE PUBLIC RECORD
OF POOR PERFORMANCE

2011 Edition

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GOVERNMENT-MANDATED PROJECT LABOR AGREEMENTS: THE PUBLIC RECORD OF POOR PERFORMANCE

I. Introduction

Government-mandated project labor agreements (PLAs) are agreements that some public entities require construction contractors and subcontractors to enter into with labor unions as a condition of being allowed to perform work on public construction projects.¹ Government-mandated PLAs should be distinguished from voluntary, private sector PLAs, which are authorized by Sections 8(e) and 8(f) of the National Labor Relations Act solely when entered into by “employers in the construction industry” in an atmosphere free of union or government coercion.² The government-mandated PLAs described in this report are “union-only,” meaning they require all contractors and subcontractors on a covered project to sign an agreement with a labor organization, regardless of whether their employees have previously authorized any union to represent them, as a condition of performing work on a public construction project.³ In this sense, most government-mandated PLAs, and all of the PLAs described in this report, are “union-only.”

Proponents of government-mandated PLAs claim the agreements reduce labor strife and increase efficiency in construction of large projects.⁴ Opponents of PLAs assert they discriminate against the majority of the construction industry that is nonunion, reduce the number of potential

¹ As defined in FAR 52.222-34, a “PLA” is “a collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.”

² 29 U.S.C. § 158(e) and (f).

³ While most PLAs allow nonunion contractors to bid to perform on covered projects, they typically require all successful bidders/offerors to enter into union agreements in order to actually be *awarded and perform the work*. In other words, contractors (and subcontractors) must become unionized in order to perform work under the PLA.

⁴ *See, e.g.*, Section 1 of Executive Order No. 13502, asserting that PLAs may promote the efficient and expeditious completion of large construction projects by “providing structure and stability.”

bidders for the work, increase costs to taxpayers and delay construction—with no improvements in quality, safety or diversity.⁵

The purpose of this report is to fill the gap in public knowledge about the true impact of government-mandated PLAs. To achieve this goal, the report examines the actual results of government-mandated PLA construction projects across the country. By engaging in this review, it is possible to see whether government-mandated PLAs have achieved the efficiency goals claimed by their supporters, or whether such PLAs have been associated with increased costs, reduced competition, delayed construction timetables, unsafe work practices, problems for minorities and other construction defects. To the maximum extent possible, the report relies on published sources, particularly news media accounts and academic studies that have examined the actual progress of projects built under PLAs.

As shown below, the public record of government-mandated PLA construction reflects a persistent pattern of increased construction costs on public works projects, along with negative impacts on competition for such projects, numerous delays in construction, construction defects, safety problems and diversity issues. Each of these problems has been confirmed by numerous published reports on specific government-mandated PLAs.

This report is not intended to be a legal treatise; rather, it focuses on the practical outcomes of PLAs. It is nevertheless important to briefly review the legal controversy underlying the debate over government-mandated PLAs, beginning with the 1993 decision of the U.S. Supreme Court in the *Boston Harbor* case.⁶ For the first time, the court held that a government-

⁵ See public comments filed by Associated Builders and Contractors, Inc. in the notice and comment proceeding on the proposed rule of the Federal Acquisition Regulations (FAR) Council in 2009 implementing President Obama's Executive Order No. 13502. FAR Case No. 2009-005. Available at www.thetruthaboutplas.com.

⁶ *Building and Construction Trades Council of the Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.* (“*Boston Harbor*”), 507 U.S. 218 (1993).

mandated PLA that was tailored to an individual construction project was not automatically preempted by the National Labor Relations Act (NLRA). The court did not address the legality of multi-project PLAs, however,⁷ nor did the *Boston Harbor* opinion deal at all with the legality of PLAs under state or federal competitive bidding laws or the U.S. Constitution. During the past two decades, a number of state courts have reviewed challenges to union-only PLAs on government projects, with mixed results.⁸

Three states—Missouri, Montana and Utah—have enacted laws (currently in effect) that prohibit government agencies from imposing union-only PLAs.⁹ A fourth state, Idaho, recently passed legislation prohibiting state agencies from imposing government-mandated PLAs, effective July 1, 2011.¹⁰ Several state governors have issued executive orders prohibiting or restricting the use of PLAs on state projects, while other governors have issued orders encouraging the use of PLAs.¹¹ New Jersey has enacted a law that encourages state government

⁷ See *Chamber of Commerce v. Brown*, 522 U.S. ___, 128 S. Ct. 2408 (2008) (“In finding that the state agency had acted as a market participant, we stressed [in *Boston Harbor*] that the challenged action “was specifically tailored to one particular job,” and aimed “to ensure an efficient project that would be completed as quickly and effectively as possible at the lowest cost.”).

⁸ Compare *Tormee Const., Inc. v. Mercer County*, 669 A. 2d 1369 (NJ 1995) (government-mandated union-only PLAs generally not permitted under state competitive bidding law); with *New York State Chapter, Inc., Associated General Contractors of America v. New York Thruway Authority*, 88 N.Y. 2d 56 (1996) (PLAs permitted only upon proof of cost savings and demonstrable need to meet unusual construction circumstances); and with *Associated Builders and Contractors, Inc., Golden Gate Chapter v. San Francisco Airports Commission*, 87 Cal. Rptr. 2d 654 (1999) (upholding PLA absent proof of injury to competition in order to “prevent costly delays”); See also *ABC of Rhode Island, Inc. v. City of Providence*, 108 F. Supp. 2d 73 (D. R.I. 2002) (government's conditioning of tax incentives on developer's acceptance of PLA held preempted by NLRA); *Callahan & Sons v. City of Malden, Mass.*, 713 N.E. 2d 955 (1999) (PLAs neither “absolutely prohibited nor absolutely permitted.”).

⁹ Missouri RS § 34.209 (2007); Utah Code Ann. § 34-30-14(2) (1995); Mont. Code Anno., § 18-2-425 (1999).

¹⁰ *Idaho Becomes 7th State to Ban Government-Mandated PLAs on State and Local Projects*, March 4, 2011, available at www.TheTruthAboutPLAs.com (Senate Bill 1006).

¹¹ Most recently, the governor of Iowa revoked his predecessor's pro-PLA executive order and substituted a new order prohibiting PLA mandates on any state-funded construction projects. See Iowa EO 69 (Jan. 14, 2011). Other state executive orders relating to PLAs include: Ark. EO 05-09 (2005) (prohibiting PLAs); Minn. EO 05-17 (2005) (same); Nev. EO (2008) (repealing previous order in favor of PLAs); 9 NY CRR § 5.49 (2006) (declaring that “no project labor agreement shall be approved by an agency unless the decision to enter into the project labor agreement has, both as its purpose and likely effect, the advancement of the interests of the state's competitive bidding statutes.”); Ill. EO 2003-13 (2003) (encouraging PLAs); NJ EO (2002) (same).

agencies to adopt PLAs on large construction projects.¹² In 2010, a series of ballot initiatives filed by the citizens of several southern California counties resulted in overwhelming votes to prohibit their local governments from imposing PLAs.¹³

In 2001, President Bush issued executive orders prohibiting federal agencies and recipients of federal funds from imposing union-only requirements on federally funded construction projects.¹⁴ The Bush orders remained in effect until 2009, during which time there were no significant labor disputes reported on federal construction that caused delays or cost increases.¹⁵ Nevertheless, on Feb. 6, 2009, President Obama issued Executive Order No. 13502, which revoked the Bush orders and “encouraged” federal executive agencies to “consider, on a project-by-project basis,” whether PLAs should be required on all projects whose costs exceed \$25 million.¹⁶ Opponents of the new executive order have successfully challenged its implementation through a series of bid protests filed at the Government Accountability Office (GAO), arguing that PLA mandates unlawfully restrict competition in violation of the federal Competition in Contracting Act (CICA).¹⁷

¹² NJ Stat. 52:38-1, et seq. (2002).

¹³ *Proposition A Wins Big*, www.KPBS.org (Nov. 3, 2010) (reporting 75 percent of all votes cast in favor of ballot initiative prohibiting government-mandated PLAs in San Diego County; and referencing previous votes prohibiting PLAs in Oceanside and Chula Vista, Calif.).

¹⁴ Executive Order 13202 (Feb. 17, 2001), *as amended*, Executive Order 13208 (April 6, 2001). President Bush's executive order was upheld against claims of labor law preemption in *Building & Const. Trades Dept., AFL-CIO v. Allbaugh*, 295 F. 3d 28 (D.C. Cir. 2002).

¹⁵ See Tuerck, Glassman and Bachman, *Project Labor Agreements on Federal Construction Projects: A Costly Solution In Search of A Problem* (2009), <http://www.beaconhill.org/BHISudies>. From 2001 to 2009, the federal government entered into construction contracts valued in excess of \$147 billion. See usaspending.gov.

¹⁶ Executive Order No. 13502 (Feb. 6, 2009).

¹⁷ 41 U.S.C. § 253. As a result of the bid protests filed with the GAO in 2009 and 2010, numerous federal agencies have been compelled to withdraw solicitations for bids on construction projects that contained PLA mandates. See, e.g., *Contractor Protest Causes VA to Delete PLA Mandate from Research Building Bid Notice*, 56 Const. Lab. Rep. 1366 (BNA), Jan. 12, 2011.

Much of the ongoing legal controversy over government-mandated PLAs is focused on whether they advance governmental interests in economy and efficiency, or whether they have precisely the opposite effect of increasing costs, reducing competition and generally harming the interests of taxpayers. Therefore, it is more important than ever to understand the true impact of government-mandated PLAs.

It is not feasible to report on the results of every PLA mandated by a government agency anywhere in the country during the past two decades. However, this report attempts to bring attention to as many government-mandated PLAs as possible whose actual results have been described in published media or academic reports. Those results frequently contradict PLA proponents' claims of cost savings, avoidance of delays and/or improved performance under proposed PLAs. Rather, the published reports of PLA poor performance strongly support the assertion that government-mandated PLAs, aside from their questionable legality, are a bad bargain for taxpayers.

This report is organized by PLA performance issue, in the following order:

- INCREASED COSTS ON PLA PROJECTS
- REDUCED COMPETITION ON PLA PROJECTS
- CONSTRUCTION DELAYS ON PLA PROJECTS
- CONSTRUCTION DEFECTS ON PLA PROJECTS
- SAFETY PROBLEMS ON PLA PROJECTS
- PLA PROBLEMS FOR MINORITIES AND WOMEN

Published reports on the government-mandated PLAs within each of these categories are organized chronologically under each issue associated with them, with some allowances for the fact that large projects sometimes generate reports during a period of years. The report concludes with an appendix containing an index of the cited reports on PLAs referenced in the text.

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II. Increased Costs on PLA Projects

Proponents of PLAs frequently claim that such agreements will achieve cost savings. To the contrary, the public track record of a significant number of government-mandated PLAs to date has reflected significant cost *overruns*. The following union-only projects have been the subject of published reports of increased costs on PLA projects.

In the mid-1990s, the Roswell Park Cancer Institute in New York was partially constructed under a union-only PLA. Comparisons of bid packages released under the PLA and bid packages undertaken without any union requirement revealed that costs of construction under the government-mandated PLA were 48 percent higher than without the PLA. Projects not subject to the PLA were 13 percent under budget. Projects bid under the PLA were 10 percent over budget.¹⁸

Similarly, in Buffalo, N.Y., a PLA was imposed on the Northwest Academy school project in 1998. Bids were more than 20 percent over budget, and the price tag soared from an estimated cost of \$26 million to \$32.4 million. The school board was forced to cut \$4 million from projects at other schools to make up the deficit.¹⁹

Also in Buffalo, a Democratic legislator proposed naming the new Erie County Courthouse the “Flimflam-50 Percent Courthouse.” Referring to the product of a government-mandated PLA, the legislator stated: “We’ve been flimflammed and now we’re 50 percent over budget.”²⁰

¹⁸ Baskin, *The Case Against Union-Only Project Labor Agreements*, 19 *Construction Lawyer* (ABA) 14, 15 (1999).

¹⁹ *Board to Absorb Extra Costs as Price of New School Soars to \$32.4 Million*, Buffalo Evening News, Oct. 29, 1998.

²⁰ *Calling Courthouse a Spade*, Buffalo News, Jan. 23, 2000.

In Rochester, Minn., bids were opened under a union-only PLA for expansion of the Mayo Civic Center on Sept. 21, 1999. The lowest bid was \$14.9 million, 36 percent higher than the city's budget. On Oct. 5, 1999, the City Board voted to reject all bids, redesign the project and rebid it.²¹ The City Parks Superintendent said: "We don't really know what to do. We were very disappointed with the bids." Significantly, previous work on the center had been performed without any union-only requirements and had been completed within the city's budget.

The Boston Central Artery Project (the "Big Dig") was built under a government-mandated PLA, notwithstanding a court challenge, in the 1990s. Originally projected to cost \$2.2 billion, the Big Dig wound up costing more than \$14 billion, among the biggest cost overruns in the history of American construction projects.²² A July 17, 2008 *Boston Globe Article* stated, "In all, the project will cost an additional \$7 billion in interest, bringing the total to a staggering \$22 billion, according to a *Globe* review of hundreds of pages of state documents. It will not be paid off until 2038."²³ The scope of the overruns was reported on television's "Sixty Minutes" and in numerous newspaper reports, and allegations of fraud and waste on the Big Dig resulted in a Congressional investigation and years of litigation.²⁴ As discussed in later sections of this report, the excessive cost of the Big Dig did not result in higher quality or safety of construction, as there were a number of fatalities among the union workers, massive leakage throughout the tunnel, and ultimately a tunnel collapse that killed a motorist.²⁵

²¹ *Civic Center Bids Exceed the Budget*, Post-Bulletin, Sept. 28, 1999.

²² <http://www.issuesource.org>.

²³ [Big Dig's red ink engulfs state](#), Boston Globe, July 17, 2008

²⁴ *Boston's 'Big Dig' Buried in Cost Overruns*, Washington Post, April 12, 2000; *Low Bid, \$22 Million Over Estimate, Is Approved*, ENR, Jan. 13, 1997 at 5; *Boston Projects Tracking Higher*, ENR, Jan. 20, 1997, at 27.

²⁵ See below for further reports on safety and quality issues on the Big Dig.

The San Francisco Airport, whose PLA was upheld by the California Supreme Court in part on the ground of expected cost savings, subsequently went hundreds of millions of dollars over budget in 1999. Following the court decision in favor of the PLA, published estimates indicated the airport would exceed its \$2.4 billion budget by more than \$400 million.²⁶

The Eastside Reservoir project east of Los Angeles, built under a government-mandated PLA, was the nation's largest earth moving project in the late 1990s. In October 1998, the project reported a \$220 million (11 percent) cost overrun. The increase was attributed to payment of overtime wages under circumstances mandated by the PLA.²⁷

The City of Elyria, Ohio, rejected the low bid of a nonunion construction contractor for its City Hall project because the contractor refused to sign a government-mandated PLA. The project was rebid, and the only bids received by the city were more than \$600,000 higher on a \$10 million project under the PLA. A court intervened and forced the city to rebid and award the work to the low bidder, without the PLA, resulting in more than \$600,000 of cost savings.²⁸

In Washington, D.C., a new convention center was projected to cost \$685 million in 1998.²⁹ After a government-mandated PLA was signed, however, costs ballooned to more than \$840 million by the time the project was completed.³⁰

Another convention center in Boston, again built under a PLA, likewise suffered from cost overruns in 2001. Construction managers were "stunned" at the size of the cost overrun,

²⁶ *SFO Expansion Project Hundreds of Millions Over Budget*, San Francisco Chronicle, Dec. 22, 1999.

²⁷ *Overruns Hit Eastside Project*, ENR, Oct. 19, 1998, at 1, 13.

²⁸ *Elyria Risks \$610,500 To Get A Union Label*, Morning Journal, March 30, 2001.

²⁹ *Convention Center Costs Increase By \$15 million*, Washington Construction News, March 2001.

³⁰ Washington Business Journal (March 2003).

which was deemed “likely to soar nearly \$100 million over the allotted \$750 million for the project.”³¹

The pattern was repeated on the Iowa Events Center, constructed under a government-mandated PLA from 2003 to 2004. Though estimated to cost \$200 million prior to the PLA being imposed, the center was several million dollars over budget by mid-2003.³² The cost rose to \$217 million by 2005.³³

The \$2.4 billion project to replace the Wilson Bridge between suburban Maryland and Virginia was temporarily subjected to a union-only PLA requirement by former Maryland Gov. Parris Glendening in 2000. After the PLA was imposed, only one bidder responded to the RFP for Phase 1 of the project, at a bid price more than \$370 million above the state's engineering estimates—a 78 percent cost overrun.³⁴ After President Bush issued Executive Order 13202 prohibiting union-only PLAs on federally assisted projects like this one,³⁵ Phase 1 of the Wilson Bridge project was rebid without a government-mandated PLA. This time, multiple bids were received and the winning bids came in significantly *below* the engineering estimates.³⁶ The

³¹ *Huge Overrun Looms at Convention Center*, Boston Globe, Jan. 9, 2001.

³² *Troubled Center Moves Ahead*, Des Moines Register, July 12, 2003; *Say No to Project Labor Agreement*, Des Moines Register, July 23, 2003.

³³ Frantz, et al., *The PLA for the Iowa Events Center: An Unnecessary Burden on the Workers, Businesses and Taxpayers of Iowa*, Policy Study 06-3, Public Interest Inst. At Iowa Wesleyan College (April, 2009), www.limitedgovernment.org/publications/pubs/studies/ps-06-3.pdf.

³⁴ *Lone Wilson Bridge Bid Comes in 70 percent Above Estimate*, Engineering News Record, Dec. 24, 2001; *see also* Baltimore Sun, March 2, 2002.

³⁵ *See* discussion above at page 2.

³⁶ *Unexpectedly Low Bid Keeps Wilson Bridge Under Budget*, Washington Post, March 2, 2002.

megaproject ultimately was completed on time and on budget, with no government-mandated PLA.³⁷

In Seattle, the PLA construction of Safeco Field for the Seattle Mariners experienced very high cost overruns in 1998.³⁸ The original estimate for the new stadium was \$320 million. The stadium's final price tag was in excess of \$517 million, a 60 percent increase.

In Cleveland, Ohio, the cost of the Gund Arena originally was estimated at \$118 million. After the governing agency entered into a union-only PLA, the final cost came in at \$148 million—\$30 million (25 percent) more than estimated.³⁹

The cost of the Cleveland Browns' stadium, also constructed pursuant to a government-mandated PLA, was \$21 million over the estimate in 1998. The union-only bids for the stadium were millions of dollars higher than the estimates. The final cost of the stadium was reported to be at least \$61 million more than the original estimate, an increase of 25 percent.⁴⁰

Comerica Park, the Detroit Tigers' baseball stadium, was expected to cost \$260 million in 1999. A PLA was signed and, upon completion of construction, costs were reported to be in excess of \$320 million.⁴¹

Construction of a new baseball stadium for the Washington Nationals in Washington, D.C., under a government-mandated PLA ran significantly over the budgeted \$611 million.⁴² By

³⁷ *Wilson Bridge Bike Path Gets Rolling*, Washington Post, June 7, 2009; *See also Wilson Bridge Span Open Early*, Washington Post, June 12, 2006; *Woodrow Wilson Bridge Beats Obstacles as It Becomes Beltway Savior*, ENR, January 31, 2005.

³⁸ *New Seattle Stadium Battles Massive Cost Overruns*, ENR, July 27/Aug. 3, 1998, at 1, 9.

³⁹ *\$12 Million to pay for Arena Overruns*, Cleveland Plain Dealer, Dec. 14, 1996, at 16-A.

⁴⁰ *Mayor's Final Cost at Stadium 25 percent Over*, Cleveland Plain Dealer, June 24, 2000; *Westbrook says stadium overruns at \$21 million*, Cleveland Plain Dealer, Jan. 21, 1998.

contrast, Baltimore's nearby Camden Yards and Washington's own FedEx Field, among many other stadiums around the country, were built without any PLA requirements, with no cost overruns.

A 2001 study published by the nonpartisan Worcester Regional Research Bureau estimated that PLAs increased costs for a new vocational school by approximately 15 percent. The report expected a PLA to add \$15 million to the school's construction costs.⁴³ City officials in Worcester subsequently admitted that a PLA added to the construction costs of a \$21.5 million parking garage. The city's public works director estimated the additional costs at \$365,000.⁴⁴

A PLA was imposed on the Pasadena, Calif., power plant in 2003 after non-PLA bids had already been submitted. As a result of the PLA, the winning bidder announced its bid would go up \$2.3 million, roughly a 15 percent cost increase.⁴⁵

The Oakland Unified School District put out a call for bids on the Burkhalter Elementary School in 2002 and received a low bid of \$1.8 million (out of seven bidders) for the construction work. Prior to contract award, however, the school district entered into a PLA for all of its school projects, resulting in rebidding the work. This time, only three companies bid on the PLA project, and the low bid exceeded \$2.2 million, more than \$437,000 (24 percent) higher than the original non-PLA bid.⁴⁶

⁴¹ *Stadium On Time, But Costs More*, Detroit News, Oct. 31, 1999, B3; see also *Field of Woes*, Crain's Detroit Business Magazine, June 18, 2001.

⁴² *Nationals Park Costs Rise, Sports Commission Struggles*, Examiner, Oct. 21, 2008

⁴³ Worcester Regional Research Bureau, Project Labor Agreements (www.wrrb.org)

⁴⁴ *Ronald N. Cogliano: Competing for School Construction*, Boston Globe, July 10, 2007

⁴⁵ *Power Plant Costs to Soar*, Pasadena Star-News, March 21, 2003.

⁴⁶ *School Costs Skyrocket After Labor Pact*, San Francisco Chronicle, April 28, 2004.

Hartford Public High School in Connecticut encountered significant cost overruns after the government imposed a PLA in 2004. As reported in the *Hartford Courant*: "Some components of the job received few or no bids. The bids that did arrive were several million dollars more than the \$82 million that voters approved seven years ago."⁴⁷

A 2003 study published by the Beacon Hill Institute examined 126 school construction projects undertaken with and without government-mandated PLAs in the Boston area from 1995 to 2003. The study found that PLAs added \$37.88 per square foot to the cost of building schools.⁴⁸ One of the study's authors observed: "It is puzzling to us why any local official would enter into a PLA in the light of local budget realities, as well as our findings."⁴⁹

A 2004 Beacon Hill study found that union-only PLAs increased the cost of school construction in Connecticut, based upon an analysis of dozens of actual projects built on both a union-only and open competition basis since 1996. According to its Connecticut report, Beacon Hill found that PLAs increase actual project costs by 17.9 percent and that bid costs are raised by 16.6 percent.⁵⁰ "Taken together, PLA projects accounted for 1.32 million square feet of construction with a combined actual cost of \$224.8 million (in 2002 prices), based on the projects that we were able to include in our study. Our estimates show that this cost was \$39.5 million higher than it would have been if PLAs had not been used."⁵¹

⁴⁷ *School Project Back in Limbo*, Hartford Courant, April 7, 2004.

⁴⁸ Beacon Hill Institute, *Project Labor Agreements and the Cost of School Construction in Massachusetts* (Sept. 2003), www.beaconhill.org.

⁴⁹ Boston Business Journal (April 11, 2003).

⁵⁰ Beacon Hill Institute, *Project Labor Agreements and The Cost of School Construction in Connecticut* (Oct. 2004), www.beaconhill.org/BHISTudies.

⁵¹ *Id.*

Finally, a 2006 Beacon Hill study found that the presence of a PLA on New York public schools increased a project's winning base bid by \$26.98 per square foot relative to non-PLA projects, an increase of 20 percent.⁵²

Efforts have been made by PLA proponents to rebut the Beacon Hill studies,⁵³ but such efforts were then refuted in a 2009 report.⁵⁴ As noted by Beacon Hill: "All of our findings are highly robust for the effects of PLAs. The PLA coefficient was positive and significant for Connecticut schools when we considered small projects only, large projects only, elementary schools only or other schools weighted by size. The coefficient was positive and significant for both winning bids and actual construction costs for both Massachusetts and Connecticut schools."⁵⁵

Results similar to the Beacon Hill school studies were independently found in 2010 by New Jersey's Department of Labor and Workforce Development, which is required to issue annual reports on the use of PLAs pursuant to that state's PLA Act of 2002. The October 2010 government report stated: "School projects that used a PLA tended to have higher building costs, as measured on a per square footage and per student basis, than those that do not use a PLA."⁵⁶

⁵² Bachman and Tuerck, *Project Labor Agreements and Public Construction Costs in New York State* (2006), www.beaconhill.org/BHISTudies.

⁵³ See Belman, Bodah and Philips, *Project Labor Agreements* (Electric Int'l 2007), cited in Kotler, *Project Labor Agreements in New York State: In the Public Interest* (Cornell U. 2009).

⁵⁴ See, e.g., Beacon Hill Institute, *An Economic Analysis of Government-Mandated PLAs: A Reply to Professor Kotler* (2009), www.beaconhill.org/BHISTudies. See also, Tuerck, Glassman and Bachman, *Project Labor Agreements on Federal Construction Projects: A Costly Solution In Search of A Problem* (2009), www.beaconhill.org/BHI Studies. See also, Tuerck, *Why Project Labor Agreements Are Not in the Public Interest*, Cato Journal, Volume 30 Number 1, Winter 2010,

⁵⁵ *Id.* at 27.

⁵⁶ Annual Report to the Governor and Legislature, use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008 (NJDOLE Oct. 2010), available at www.thetruthaboutplas.com.

The report indicated that the indexed cost per square foot for all PLA projects was 30.5 percent higher than for all non-PLA projects.⁵⁷

Elsewhere in New Jersey, the Township of Moorestown was forced to reject all construction bids in 2010 under a PLA for a town hall, library and police complex after the lowest bid came in at \$15.7 million, 35 percent higher than the initial construction estimate of \$11.6 million. The township mayor subsequently told a town meeting that the union-only restriction was a “bad call.”⁵⁸

A June 2009 study conducted by property and construction consulting firm Rider Levett Bucknall, prepared for the U.S. Department of Veterans Affairs (VA) Office of Construction and Facilities Management, found that PLAs likely would increase construction costs by as much as 9 percent in three of the five construction markets (Denver, New Orleans and Orlando, Fla.) where the VA was planning to build hospitals. For two other heavily unionized markets, the study predicted mixed results ranging from small project cost increases to small cost savings.⁵⁹

The VA hired the same firm to conduct a similar PLA study for the construction of a \$50 million VA Research Office Building in Pittsburgh. The September 2010 study found “a potential cost risk premium of 3 percent to 5 percent if a PLA is mandated. For a \$40 million project, this could equate to \$1.2 to \$2 million.” The study said, “We see that a mandated PLA will reduce subcontractors and lower the labor pool to the detriment of the project, and

⁵⁷ Previous annual reports from New Jersey’s Department of Labor came to similar conclusions about the poor performance of PLAs. See, *New Jersey Letter to the Editor Tells the Truth About PLAs*, (Nov. 9, 2010). Available at www.TheTruthAboutPLAs.com.

⁵⁸ *Council ponders next move on project*, CourierPostOnline.com (May 18, 2010), available at www.courierpostonline.com.

⁵⁹ *Project labor Agreements – Impact Study for the Department of Veterans Affairs*, Rider Levett Bucknall (June 2009), available at www.thetruthaboutplas.com.

potentially add cost; therefore, we believe that a PLA would likely not ‘advance the federal government’s interest in achieving economy and efficiency in federal procurement.’”⁶⁰

Finally, in 2010 the General Services Administration (GSA) announced that a change order to adopt a PLA on the Lafayette Building construction project in Washington, D.C., would increase the cost of the project by more than \$3.3 million. A Congressional oversight committee is looking into the GSA’s reasons for adopting the PLA and its resulting cost increase.⁶¹

III. Reduced Competition on PLA Projects

According to a number of published sources, a contributing factor to the increased costs of government-mandated PLAs is the reduced competition evident on these projects. Published reports about government-mandated PLAs reveal a substantial number of projects in which the competition among bidders has been less than expected. These reports tend to confirm the results of numerous surveys of construction contractors, who overwhelmingly have indicated they are less likely to bid for work that includes a PLA requirement.⁶² When asked, the contractors (and subcontractors) have explained that PLAs injure competition by discriminating against the

⁶⁰ *Project Labor Agreements – Impact Study, Pittsburgh, Pennsylvania*, Rider Levett Bucknall (Sept. 2010), See also, [ABC Wins Another Challenge Against Government-Mandated Project Labor Agreements on Federal Construction Projects](#), (Jan. 6, 2011), available at www.thetruthaboutplas.com

⁶¹ Hemingway, *Mandatory PLAs Put Dollars Into Union Coffers*, Washington Examiner (Dec. 5, 2010).

⁶² A national poll conducted by Associated Builders and Contractors in Jan. 2011 found that an overwhelming 98 percent of the nearly 600 respondents reported being “less likely” to bid for work under a PLA. A similar poll conducted by ABC in 2009 had almost identical results. See www.thetruthaboutplas.com. In a previous study of infrastructure contractors in the Washington, D.C., area conducted by the Weber-Merritt Research Firm, more than 70 percent of the surveyed contractors stated they would be “less likely” to bid on a public construction project containing a union-only PLA. See *The Impact of Union-Only Project Labor Agreements On Bidding By Public Works Contractors in the Washington, D.C. Area* (Weber-Merritt 2000), available at www.thetruthaboutplas.com. In Washington state, another survey of contractors revealed that 86 percent of open shop contractors would decline to bid on a project under a union-only PLA. Lange, *Perceptions and Influence of Project Labor Agreements on Merit Shop Contractors*, Independent Research Report (Winter 1997).

majority of the industry whose employees do not want to be represented by any union.⁶³ As further explained in a 2009 study, PLAs on government projects covered by prevailing wage laws typically discriminate against nonunion contractors and their employees with respect to benefit contributions—in effect reducing the take-home pay of nonunion workers while increasing the fringe benefit costs of nonunion contractors, with no benefit to either group.⁶⁴

Numerous published reports on specific PLA projects have reflected dramatic reductions in the number of bidders/offerors when government agencies have included PLA requirements in their bid solicitations, including the following examples.

In 1995, as noted in Section I, a published study examined the impact of a government-mandated PLA on the bidding for a construction project on the Roswell Park Cancer Institute in New York.⁶⁵ Portions of the project were first bid under a PLA before being re-bid without the PLA. The study found that the number of bidders correlated to whether there was a PLA, and that the number of bidders on the project further correlated to whether the project came in under budget. Thus, projects that were bid without a PLA had 21 percent more bidders and were more than 10 percent under budget. The projects bid with a PLA had fewer bidders and were 10 percent over budget. “Those packages that were bid under budget had 45 percent more bidders than those that were bid over budget.” The study concluded that PLA projects attract fewer bidders, thereby causing a decrease in competition for the construction work and an increase in

⁶³ The Bureau of Labor Statistics’ (BLS) most recent report states that the nonunion private sector workforce in the construction industry comprises more than 84 percent of the total industry workforce. See www.bls.gov, “*Union Members Summary*” (Jan. 2009). See also Comments filed by Associated Builders and Contractors, Inc. in the 2009 FAR Council rulemaking proceeding on Executive Order 13502, FAR Case No. 2009-005, available at www.thetruthaboutplas.com.

⁶⁴ See McGowan, *The Discriminatory Impact of Executive Order 13502 on Non-Union Workers and Contractors* (2009), available at <http://abc.org/plastudies>. According to the study, the take home pay of nonunion workers is reduced by an average of 20 percent, while nonunion contractors’ fringe benefit costs are increased by 25 percent, largely in the form of forced contributions to union trust funds from which the nonunion workers derive no benefits.

costs.⁶⁶ Elsewhere in New York, in 1997 the City of Oswego Sewer project attracted *no* bids after the city imposed a union-only PLA.⁶⁷

In 1995, Boston officials administrating the union-only Central Artery/Tunnel (CA/T) (“Big Dig”) project predicted intense competition for the award of work on the project. The project director, Peter M. Zuk, said: “previous history indicates intense competition for the jobs, with all bids generally coming in below engineers’ estimates.”⁶⁸ Only one year later, however, after a PLA was imposed, Zuk said that, “given the size of the project we are surprised at the relatively small number of bidders to date.”⁶⁹ He also said that, “the bid packages are big enough that they should be attractive.” Zuk eventually was forced to pursue bidders for the remaining \$2 billion in construction work that had not been awarded. As discussed later in the report, all of the Central Artery project bids were awarded at costs higher than the engineers’ estimates.⁷⁰

The San Francisco International Airport experienced a similar adverse impact on competition when the Airport Authority implemented a union-only PLA in 1996. Only four bids were submitted and all of them were higher than the undisclosed estimates.⁷¹ Due to the high bids, the project designers were forced to “backtrack to cut costs.”⁷²

⁶⁵ *Analysis of Bids and costs to Taxpayers in Roswell Park*, New York (ABC 1995), available at <http://abc.org/plastudies>.

⁶⁶ *Id.*

⁶⁷ *Sewer Project Phase Attracts No Bids*, Syracuse Post-Standard, Aug. 20, 1997, E-1.

⁶⁸ *Big Boston bids in 1996*, ENR Nov. 20, 1995 at 26.

⁶⁹ *More Bidders Wanted For Central Artery Project Work*, ENR, Feb 3, 1997, at 1, 18.

⁷⁰ *Boston Project Tracking Higher*, ENR, Jan. 20, 1997, at 27.

⁷¹ *Labor Protests Fly, Bids Are High*, ENR, July 22, 1996, at 16.

⁷² *Id.*

In another similar case in 1998, the town of Middletown, Conn., distributed 72 sets of bid specifications containing a PLA for a local school. Only four responses were received, and the lowest bid submitted by a union contractor for the school renovation was \$9.1 million, \$600,000 over the project's \$8.5 million budget. When the PLA was removed and the project re-bid, 10 responses were received, including a \$7.8 million bid from a nonunion contractor that saved local taxpayers more than \$1.5 million dollars.⁷³

In 2000, the Polk County, Iowa, Board of Supervisors imposed a PLA mandate on construction of the Iowa Events Center in downtown Des Moines. The project suffered from a "lack of bids," which in turn inflated costs.⁷⁴ Though the project was broken up into 22 individual bid packages in order to increase the number of potential bidders, the county received an average of fewer than three bids per package, and four packages received only one bid.

In December 2000, the Wyoming County, W.Va., Board of Education experienced similar reductions in bidders and increased costs from its attempt to impose a union-only PLA. The County Board voted 4-1 to re-bid all PLA contracts, without the union-only requirement, after initial bids came in more than \$1.5 million over estimates and with fewer than half the expected number of bidders. The construction manager stated: "I believe that the labor agreement had a negative impact on the number of bids, as well as the dollar amount of each bid."⁷⁵ Without the PLA, the number of bidders increased by 67 percent and the overall cost of the project decreased by 11 percent.

⁷³ *State's Dubious Labor Policy*, Hartford Courant, Aug. 20, 1998, 3.

⁷⁴ Frantz, et al., *The PLA for the Iowa Events Center: An Unnecessary Burden on the Workers, Businesses and Taxpayers of Iowa*, Policy Study 06-3, Public Interest Inst. At Iowa Wesleyan College (April, 2009), www.limitedgovernment.org/publications/pubs/studies/ps-06-3.pdf.

⁷⁵ *New Wyoming County School to be Rebid*, Associated Press, Dec. 20, 2000.

Also in 2000, a study conducted on behalf of the Jefferson County, N.Y., Board of Legislators found that there was a statistically significant relationship between the number of bidders and the cost of projects, concluding that the relationship between these two factors does not occur by chance. The study further concluded that a PLA requirement would adversely impact the number of bidders and would thereby increase project costs.⁷⁶ Similar conclusions were reached by the Clark County, Nev., School District, which recommended against adoption of any union-only requirements on Clark County schools.⁷⁷

The \$2.4 billion project to replace the Wilson Bridge between suburban Maryland and Virginia was temporarily subjected to a union-only PLA requirement in 2001. After the PLA was imposed, only one bidder responded to the RFP for Phase 1 of the project, at a bid price more than \$370 million above the state's \$470 million engineering estimate, a 78 percent cost overrun.⁷⁸ After President Bush issued an executive order prohibiting union-only PLAs on federally assisted projects like this one, however,⁷⁹ Phase 1 of the Wilson Bridge project was rebid without the PLA. This time, multiple bids were submitted and the winning bids came in significantly *below* the engineering estimates.⁸⁰

⁷⁶ Carr, *PLA Analysis for the Jefferson County Courthouse Complex* (Submitted to Jefferson County Board of Legislators, Sept. 14, 2000).

⁷⁷ *School District Should Heed Conclusions of Report*, Las Vegas Journal, Sept. 11, 2000.

⁷⁸ *Lone Wilson Bridge Bid Comes in 70 percent Above Estimate*, Engineering News Record, Dec. 24, 2001; *see also* Baltimore Sun, March 2, 2002.

⁷⁹ *See* discussion above at page 2.

⁸⁰ *Unexpectedly Low Bid Keeps Wilson Bridge Under Budget*, Washington Post, March 2, 2002. *See also* Thieblot, *Review of the Guidance for a Union-Only Project Labor Agreement for Construction of the Wilson Bridge* (Md. Foundation for Research and Economic Education Nov. 2000)

As noted above, prior to entering into a PLA the Oakland Unified School District received seven bids on the Burkhalter Elementary School in 2002 and received a low bid of \$1.8 million for the construction work. After re-bidding the work under a newly signed PLA, however, the district received only three bids and the low bid was \$2.2 million, more than \$437,000 (24 percent) higher than the non-PLA bid.⁸¹

In Hartford, Conn., bid results under a union-only PLA for the renovation of Hartford Public High School were characterized as "pitiful" in April 2004. Some components of the job received few or no bids. The bids that did come in were several million dollars more than the \$82 million voters had approved.⁸²

In another example from 2004, the City of Fall River, Mass., initially bid three school construction projects under a PLA. When the projects attracted a low number of bidders, the city cancelled the PLA and reopened bidding without the PLA, which immediately resulted in more bidders and reduced bid prices.⁸³

In 2008, the Lucas Oil Stadium in Indianapolis "blew out" its budget by more than \$75 million under a PLA for the construction project.⁸⁴ A similar result occurred on the Indianapolis Public Library, which exceeded its budget under a PLA by \$50 million.⁸⁵

In 2010, the Ohio School Facilities Commission was forced to rebid a planned PLA project for replacement of the state's schools for the deaf and blind after only two firms bid on the general trades contract work, with the lowest bid exceeding the estimated cost by 44 percent.

⁸¹ *School Costs Skyrocket After Labor Pact*, San Francisco Chronicle, April 28, 2004.

⁸² *School Project Back in Limbo*, Hartford Courant, April 7, 2004.

⁸³ Beacon Hill Institute, *Project Labor Agreements and Financing School Construction in Massachusetts* (Dec. 2006) (www.beaconhill.org).

⁸⁴ *An Ailing Process*, Indianapolis Star, Jan. 24, 2010, available at www.thetruthaboutplas.com.

⁸⁵ *Id.*

After removing the PLA, 12 firms bid for the general trades work, with a low bid 20 percent under the commission's estimate.⁸⁶

Also in 2010, the Carter County School Board in Kentucky was forced to reject all bids on the Tygart High School project after the lowest bid under a PLA came in more than \$1 million over budget.⁸⁷ The PLA also prompted a lawsuit that was settled only after the board voted to withdraw the PLA mandate.

In all, more than a dozen comparisons have been performed on projects on which bids were received for the same work with and without PLAs. *In every instance*, significantly fewer bids were received under the PLAs than without the PLAs (and the PLA projects suffered from more cost overruns).⁸⁸ Finally, it should be noted that there are *no* published reports of PLA projects resulting in an increased number of bidders compared to non-PLA projects.

IV. Construction Delays on PLA Projects

Another argument often made in support of government-mandated PLAs is that they will ensure timely completion of construction projects by, *inter alia*, guaranteeing labor peace. Once again, however, the proponents' claims are belied by the published reports of the completion dates of union-only projects and their significant labor disruptions.

⁸⁶ *New bids drop cost of work on deaf, blind schools* (Nov. 10, 2010), www.dispatch.com.

⁸⁷ *School Board rescinds PLA after latest Tygart bids rejected*, Journal-Times, Oct. 8, 2010, www.journal-times.com.

⁸⁸ *See Examples of Projects Bid With and Without PLAs*, available at <http://abc.org/plastudies>. *See also New Study of Boston Harbor Project Shows How PLA Hurt Competition*, ABC Today, June 4, 1999; Neil Opfer, Jaeho Son, and John Gambatese, "Project Labor Agreements Research Study: Focus On Southern Nevada Water Authority" (UNLV 2000).

In 1999, union carpenters on the San Francisco Airport expansion project struck over wages even though their union had signed a PLA. The union electricians, plumbers and painters also went on strike in support of the union carpenters.⁸⁹ The cost of the strike was \$1 million. The project, which already was a month behind schedule, lost even more time.⁹⁰

The PLA-mandated Safeco field in Seattle also was completed months later than scheduled. The stadium could not be opened in time for the beginning of the 1999 season, as had been promised, and the Seattle Mariners could not begin play at their new home until July 1999.⁹¹

The Miller Park baseball stadium in Milwaukee, built under a government-mandated PLA, was supposed to be completed in time for opening day of the 2000 season. Instead, the new stadium was not completed in time to be used at all during that season due to construction delays, which included a fatal accident involving union workers (discussed above).⁹²

The completion of the Big Dig in Boston, which suffered significant cost overruns, was delayed by more than two years. The project was supposed to be finished in 2002 but was not finished until several years later.⁹³

In 2006, four Los Angeles Unified School District campuses built under a PLA were forced to open their schools one month late because contractors could not find enough skilled labor to complete the project on time.⁹⁴

⁸⁹ *Carpenters at Airport Protest Against Union Leadership*, San Francisco Chronicle, May 21, 1999; see also *Arbitrator Orders California Carpenters To End Wildcat Strike, Return to Work*, Daily Labor Report, June 23, 1999.

⁹⁰ *Carpenters at Airport Protest Against Union Leadership*, San Francisco Chronicle, May 21, 1999.

⁹¹ *New Seattle Stadium Battles Massive Cost Overruns*, ENR, July 27/Aug. 3, 1998 at 1, 9.

⁹² *Crane Accident Kills Three at Unfinished Miller Park*, Washington Time, July 15, 1999.

In 2008, the owner of the Washington Nationals initially refused to pay \$3.5 million in rent because the PLA project was not "substantially complete" on the date the city was required to hand over the stadium.⁹⁵

Union members walked off the job in violation of their no-strike clause under a PLA governing construction of Chicago's Trump International Hotel and Tower in 2006. The development company was forced to sue the Chicago and Cook County Building and Construction Trades Council.⁹⁶

A two-week construction workers strike also halted the resurfacing of Chicago-area expressways and streets, despite a PLA containing a union no-strike clause. The strike forced the Illinois Tollway to suspend its major projects in 2010.⁹⁷

Construction of three state prisons in Pennsylvania was delayed for many months in 2009 and 2010 after state officials announced plans to mandate PLAs on the projects, which were valued between \$200 million and \$400 million each. According to the *Pittsburgh Post-Gazette*, "[A] major reason can be summed up in three words – Project Labor Agreements."⁹⁸

The 2010 report on New Jersey PLA projects by the New Jersey Department of Labor found that the average duration of PLA projects was 100 weeks compared with 78 weeks for non-PLA projects.⁹⁹

⁹³ <http://www.issuesource.org>.

⁹⁴ *Construction Delays Will Force 4 New L.A. Schools to Open Late*, Los Angeles Times, June 17, 2006.

⁹⁵ *Nationals Withhold Rent on Ballpark*, Washington Post, July 11, 2008.

⁹⁶ *401 North Wabash Venture LLC v. Chicago and Cook County Building and Construction Trades Council*, N.D. Ill., No. 06-CV-3077 (N.D. Ill. June 5, 2006).

⁹⁷ *Construction strike now affects tollway work*, www.chicagobreakingnews.com, (July 16, 2010).

⁹⁸ *Dispute between builders delays 3 prisons*, Pittsburgh Post-Gazette, March 14, 2010, available at www.postgazette.com.

Finally, a study of federal construction projects completed between 2001 and 2009, during which time President Bush's Executive Order No. 13208 prohibited any PLAs on federal construction projects, found there were *no* significant labor disputes reported on federal construction that caused delays during that entire period.¹⁰⁰

V. Construction Defects on PLA Projects

Many PLA projects have suffered from serious construction defects, despite claims from PLA supporters that government-mandated improve the quality of construction.

The union-only Boston Central Artery / Tunnel project encountered several defects in construction that both delayed and increased the overall cost of the project.¹⁰¹ An auditor reported that "inadequate controls resulted in a serious leak in the sunken tube tunnel, . . . and that inadequate welding and inaccurate measurements generated unnecessary costs."¹⁰² When the tunnel opened, the toll takers were forced to wear respirators because of headaches, nausea, sore throats and itchy eyes. The same auditor previously found \$170 million in waste and other questionable costs. In 2004, after the project was substantially completed, *The Boston Globe* reported that the tunnel had developed more than 400 leaks, as well as "thousands of ceiling fissures, water damaged supports and fireproofing systems, and overloaded drainage

⁹⁹ Annual Report to the Governor and Legislature, use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008 (NJDOLO Oct. 2010), available at www.thetruthaboutplas.com.

¹⁰⁰ See Tuerck, Glassman and Bachman, *Project Labor Agreements on Federal Construction Projects: A Costly Solution In Search of A Problem* (2009), <http://www.beaconhill.org/BHI> Studies. During the 2001-2009 time period, the federal government entered into construction contracts valued in excess of \$140 billion. See [usaspending.gov](http://www.usaspending.gov).

¹⁰¹ *Project under renewed fire*, ENR, Sept. 25, 1995, at 1, 28, see also, *Smell seeps into toll booths*, Feb. 5, 1996, at 1, 22.

¹⁰² *Id.*

equipment."¹⁰³ In 2006, concrete slabs inside the tunnel collapsed, killing a driver.¹⁰⁴

Additionally, the state is conducting an investigation into the safety of tunnel lighting after a 110-pound light fixture crashed from the ceiling onto the road, narrowly missing a vehicle.¹⁰⁵

Meanwhile, even before the opening of the new Convention Center in Washington, D.C., built under a government-mandated PLA, a large section of the roof collapsed during construction of the project. Construction workers and building managers said “fasteners that held the large steel pieces of the roof together were improperly fastened [by union workers].”¹⁰⁶

A section of concrete flooring in the second-floor loading dock of Pittsburgh’s David L. Lawrence Convention Center gave way under the weight of a tractor trailer in 2007. The collapse left a 20-foot by 60-foot hole across the floor of the PLA project, “sending concrete steel, debris and equipment crashing 30 feet down into a walkway and a water feature below.”¹⁰⁷

In 2003, hairline cracks were discovered throughout the PLA-constructed Iowa Events Center’s main concourse floor. An estimated 30 to 40 cracks were found throughout the slab, which an out-of state contractor poured. Local concrete contractors had refused to bid on the work due to the presence of the union-only PLA, according to the county’s construction manager.¹⁰⁸

¹⁰³ Boston Globe, Nov. 11, 2004; See also Powell, *Boston’s Big Dig Awash in Troubles: Leaks, Cost Overruns Plague Project*, Washington Post, Nov. 19, 2004, available at <http://washingtonpost.com>.

¹⁰⁴ See WBZTV: *\$21 Million Settlement In Big Dig Tunnel Collapse*, available at <http://wbztv.com/bigdig>.

¹⁰⁵ *State: Corrosion discovery prompts review of Big Dig lights*. Boston Herald (March 16, 2011)

¹⁰⁶ *Roof Section Collapses at D.C. Convention Center Site*, Washington Construction News (May 2001).

¹⁰⁷ *Convention Center’s Builders Assess Collapse*. Pittsburgh Post Gazette, Feb. 6, 2007.

¹⁰⁸ Des Moines Register, Oct. 3, 2003.

Construction under a PLA on the Indianapolis Public Library had to be halted for more than a year in 2004 after cracks and gaps were discovered in the concrete in its new parking garage. As noted above, the project cost suffered nearly \$50 million in overruns due to required repairs.¹⁰⁹

Finally, the *New York Post* reported in 2009 that the Mets' new Citi Field, built under a PLA at a cost of \$850 million, is "riddled with construction defects." The defects included large chunks of concrete and granite and a neon sign falling from the stadium, as well as numerous problems with elevators, electricity and flooding of various stadium sections.¹¹⁰

VI. Safety Problems on PLA Projects

The public record also does not support claims of increased safety on construction sites as a result of PLAs. To the contrary, during the last several years, union-only construction projects have been cited numerous times for serious safety violations, many of which caused fatalities and serious injuries to workers and bystanders.

On the Boston Harbor PLA clean-up project, the Occupational Safety and Health Administration (OSHA) proposed \$410,900 in fines against four contractors in connection with the fatalities of two workers overcome by insufficient oxygen.¹¹¹ OSHA already had proposed more than \$100,000 in penalties against subcontractors on the project for violations of "safety standards relative to tunneling, cranes, suspended work platforms, electrical grounding and

¹⁰⁹ *Concrete Cracks Halt Construction On Indianapolis Library*, Indianapolis Star, April 22, 2004.

¹¹⁰ *Mets in Foul Territory*, New York Post, September 6, 2009.

¹¹¹ *OSHA Cites Boston Harbor Contractors*, 13 Daily Labor Report (BNA) A-2 (Jan. 20, 2000).

guarding of an open shaft pit.”¹¹² Harbor tunnel work ceased because of an electrical fire; workers were evacuated because of fumes; and an engineer was crushed to death in an accident. Two other fatalities occurred on the project.

In July 1995, 200 Boston Harbor tunnel workers were sickened from a stench in the wastewater tunnel to Deer Island; other incidents indicated a lack of sufficiently diligent management safety practices.¹¹³ In September 1998, OSHA fined a unionized contractor \$158,500 for safety violations on Boston’s Deer Island Wastewater Treatment Plant.¹¹⁴ The violations were for exposing employees to various hazards. The fine also included \$12,500 for it being a second violation.¹¹⁵

Other safety problems plagued the Central Artery Project. The state auditor charged ‘that faulty design work on the cross-harbor portion...jeopardizes workers and increased costs by more than \$1 million...Inadequate controls resulted in a serious leak in the sunken tube tunnel, threatening worker safety.’¹¹⁶ In April 2001, OSHA proposed \$69,000 in fines against a Big Dig contractor for alleged serious health and safety violations.¹¹⁷

Thirty-two safety violations occurred on New York state’s PLA-governed Tappan Zee Bridge project in 1998.¹¹⁸ Citations were issued for failing to comply with fall protection

¹¹² "Boston Harbor"-Type Project Labor Agreements in Construction: Nature, Rationales, and Legal Challenges, 19 J. Lab. Res., Winter 1998, at 1, 14.

¹¹³ *Id.*

¹¹⁴ *Modern Hit With Heavy Fine*, ENR, Sept. 21, 1998, at 9.

¹¹⁵ *Id.*

¹¹⁶ "Boston Harbor"-Type Project Labor Agreements in Construction: Nature, Rationales, and Legal Challenges, 19 J. Lab. Res., Winter 1998, at 1, 14.

¹¹⁷ *OSHA Proposed \$69,000 in Fines Against Big Dig Contractor*, OSHA Regional News Release (April 2, 2001).

¹¹⁸ Cover Story: *Safety*, ENR, June 21, 1999, at 30-31.

standards, safety training programs and exposure to lead. These safety violations led to \$22,530 in penalties.

In August 1999, the PLA-mandated construction of the new Miller Park baseball stadium for the Milwaukee Brewers came to a halt when a crane collapsed onto the stadium, killing three workers and injuring three others.¹¹⁹

The Hanford nuclear site in Washington state, covered by a government-mandated PLA, was fined a record \$330,000 by the Department of Energy for nuclear safety violations under the Price-Anderson Act.¹²⁰ This was the largest penalty issued in the history of the Price-Anderson Enforcement Program. The construction managers failed to see to it that contractors building the site followed safety procedures. They allegedly failed to meet quality assurance requirements in areas such as work process controls, subcontractor qualifications, subcontractor oversight and project design.¹²¹

The PLA-constructed Iowa Events Center also suffered nearly 50 construction accidents during the first six months of construction, including four linked directly to substance abuse by unionized construction workers. One construction worker was killed after being struck by a steel beam. Ironworkers had been working late shifts to catch up due to previous delays on the project.¹²² In another incident, a large crane nearly fell several stories after being compromised by a heavy load. The crane operator was fired for refusing to take a drug test.¹²³

¹¹⁹ *Crane Accident Kills Three at Unfinished Miller Park*, Washington Times, July 15, 1999.

¹²⁰ *Fluor Unit Gets Record Fine Over Nuclear Waste Safety*, ENR, June 7, 1999, at 9.

¹²¹ *DOE Fines Hanford Contractor \$330,000; Secretary Issues First Compliance Order*, CLR Vol. 45, No. 2231, June 2, 1999, at 370.

¹²² Des Moines Register, Sept. 21, 2004.

In 2010, a private audit found violations by 55 contractors working on a \$150 million high school under a PLA mandated by the Los Angeles Unified School District. The violations included inadequate supervision of workers and performing work under expired or suspended licenses.¹²⁴

VII. PLA Problems Involving Minorities and Women

Some recent PLAs have included provisions purporting to increase training and business opportunities for local minorities and women. In part, these clauses have been designed to deflect criticism of unionized construction emanating from minority and women's groups. However, several PLA projects have suffered from problems relating to the employment of local minorities and women.

In Detroit, four black female carpenters sued the Stadium Authority for discrimination and failure to provide promised job opportunities to minorities and women on the PLA Tiger Stadium project.¹²⁵

In Chicago, 100 black and female union construction workers were awarded \$1.33 million under a consent decree arising out of the Robins Incinerator project, built under a PLA. The government was forced to sue both the contractor and the Pipe Fitters Union because of a "gross degree of harassment," including offensive graffiti on portable toilets featuring racial epithets and sexual images.¹²⁶

¹²³ *County Grapples With Substance Abuse On Self-Insured Construction Project*, Workplace Substance Abuse Advisor, Nov. 26, 2003.

¹²⁴ *Failing Grade for PLA School Job?*, Los Angeles Business Journal, Nov. 1, 2010, available at www.labusinessjournal.com.

¹²⁵ *Four Black Female Carpenters Sue*, Detroit News, Oct. 29, 1999, C-1.

The biggest contractor on the union-only San Francisco International Airport PLA project was sued by a Los Angeles transit agency alleging that it used bogus minority subcontractors to get millions in unionized subway work.¹²⁷ Similar allegations were investigated by the FBI in connection with the San Francisco Airport project. The Los Angeles lawsuit and San Francisco investigation both alleged that white-owned unionized firms set up companies that “either were not qualified or in whom the union companies owned an undisclosed interest.” The lawsuit also alleged that the union joint venture joined with its sham minority subcontractors to present false claims on subway work to obtain millions of dollars in additional payments.

On Jan. 10, 2000, an Alameda County jury awarded a black construction worker \$490,000 for racial harassment on the PLA San Francisco Airport jobsite. The case centered on a noose left hanging for two months at the site. For part of the time, the noose contained the effigy of a black man with the worker’s name pinned to it. At trial, the harassment was attributed to someone dispatched from the union hall.¹²⁸

In 2004, the mayor of Buffalo, N.Y., announced that construction trade unions were failing to meet diversity goals established in the PLA covering \$1 billion in school renovation work. The PLA called for at least 35 percent minority participation and 10 percent women participation.¹²⁹

In 2007, the Philadelphia City Council voted to require unions to disclose demographic information and adopt a long-term workforce diversity plan before they would be permitted to

¹²⁶ *Construction Firm to Pay \$1.33 Million to Settle Racial, Sexual Harassment Case*, 45 Construction Labor Report (BNA) 1266 (Jan. 12, 2000).

¹²⁷ *LA Transit Agency Says Sham Minority Firms Were Used to Win Bids*, SF Chronicle, A-9 (Dec. 7, 1999).

¹²⁸ *Jury Awards Construction Worker \$490,000*, 45 Construction Labor Report (BNA) 1290 (Jan. 19, 2000).

¹²⁹ *Buffalo Mayor Says Trades Not Attaining Diversity Goals as Specified in School PLA*, Construction Labor Report (BNA) Sept. 22, 2004.

sign a PLA to expand the city's convention center.¹³⁰ In a city in which 60 percent of its residents are African-American, Latino and Asian,¹³¹ the union data revealed that "the vast majority of Philadelphia's unionized construction workers are male, white and live in the suburbs."¹³²

In Washington, D.C., the PLA to build the Washington Nationals baseball stadium called for half of the journeyman construction hours to be performed by city residents, a high percentage of whom are minorities. A subsequent study revealed, however, that city residents only performed 27 percent of the work. Targets to have all new apprentices be city residents and to have their work constitute at least one-fourth of the hours dedicated to construction also fell short.¹³³

In 2008, the *New York Daily News* reported that the PLA containing a similar "community benefits" agreement on construction of the new Yankee Stadium was a "joke." "The team acknowledges that more than 3,900 people have applied for construction work at the stadium. More than 80 percent didn't belong to any union. Since you must be a union member to work on the site, the Bronx residents most in need of a job have been shut out of the daily workforce of 1,200."¹³⁴

¹³⁰ *Unions Disclose Minority, Female Numbers of Members in Philadelphia Building Trades*, 53 Construction Labor Report (BNA) 1588, (Feb. 13, 2008).

¹³¹ *Tom Ferrick Jr.: City Political Climate is Changing on Union Hiring*, Philadelphia Inquirer, Jan. 20, 2008.

¹³² *Unions Disclose Minority, Female Numbers of Members in Philadelphia Building Trades*, 53 Construction Labor Report (BNA) 1588 (Feb. 13, 2008).

¹³³ *Stadium Project Falling Short of City's Ambitious Hiring Goals*, Washington Post, Feb. 24, 2008; see also *Think Locally, Hire Regionally*, Washington City Paper, Sept. 12, 2007.

¹³⁴ *Bronx officials deal with Yankees on stadium*, New York Daily News, June 19, 2008, available at www.nydailynews.com. The article describes the practice of "checkerboarding," by which unions transferred Bronx residents already working at another site in order to "boost the numbers."

Finally, the 2010 study of PLA school construction projects by the New Jersey Department of Labor concluded that PLA projects fell short of the goals for minority participation by a wider margin than non-PLA construction projects. The study also found that statewide apprenticeship rates were higher on non-PLA projects than on PLA projects.¹³⁵

VIII. Conclusion

Many quality contractors in the construction industry, both union and nonunion, have worked together to build public projects safely, on time and under budget, without any need for government-mandated PLAs. Each of the “problem” projects described above, however, was performed under a government-mandated PLA on a discriminatory union-*only* basis, instead of awarding the work on the basis of merit after full and open competition, regardless of labor affiliation.

As has been shown, PLA construction projects have been plagued by cost overruns, adverse impacts on competition, delays in construction, construction defects, safety problems, and problems related to the local hiring of minorities and women. Meanwhile, the purported benefits of union-only PLAs have not been demonstrated in actual practice. The published track record of union-only construction indicates that union-only PLAs are a bad bargain for taxpayers.

¹³⁵ Annual Report to the Governor and Legislature, use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008 (NJDOl Oct. 2010), available at www.thetruthaboutplas.com.

APPENDIX PLA Problem Projects

Cost Overruns

Project Name	Source	Date
1. Boston Central Artery Project	Boston's Big Dig Buried in Cost Overruns, <i>The Washington Post</i>	4/12/2000
2. Boston Convention Center	Huge Overrun Looms at Convention Center, <i>The Boston Globe</i>	1/ 9/ 2001
3. Boston Schools	<i>Boston Business Journal</i>	4/11/2003
4. Buffalo's Northwest Academy	Board to Absorb Extra Costs as Price of New School Soars to \$32.4 Million, <i>Buffalo Evening News</i>	10/29/1998
5. Cleveland Browns Stadium	Mayor's Final Cost at Stadium 25 Percent Over, <i>Cleveland Plain Dealer</i>	6/24/2000
6. Cleveland Gund Arena	\$12 Million to pay for Arena Overruns, <i>Cleveland Plain Dealer</i> ,	12/14/1996
7. Des Moines, Iowa Events Center	Troubled Center Moves Ahead, <i>Des Moines Register</i>	7/12/2003
8. Detroit Baseball Stadium	Stadium On Time, But Costs More, <i>The Detroit News</i>	10/31/1999
9. Erie County, N.Y. Courthouse	Calling Courthouse a Spade, <i>Buffalo News</i>	1/23/2000
10. Elyria City Hall, Ohio	Elyria Risks \$610,500 To Get A Union Label, <i>Morning Journal</i>	1/30/2001
11. Hartford Public High School	School Project Back in Limbo, <i>Hartford Courant</i>	4/7/2004
12. Los Angeles Eastside Reservoir	Overruns Hit Eastside Project, <i>Engineering News-Record</i>	10/19/1998
13. Moorestown, N.J. Public Projects	Council Ponders Next Move on Project, <i>CourierPostOnline.com</i>	5/18/2010
14. New Jersey Schools	Use of PLAs in Public Works Building Projects in Fiscal Year 2008, <i>NJ DOL Annual Report to the Governor and Legislature</i>	10/1/2010
15. Oakland Unified School District	School Costs Skyrocket After Labor Pact, <i>San Francisco Chronicle</i>	4/28/2004
16. Pasadena Power Plant	Power Plant Costs to Soar, <i>Pasadena Star-News</i>	3/21/2003
17. Pasadena Power Plant	Kevin D. Korenthal: PLAs Cut Bid Competition, Boost Price Tags, <i>Los Angeles Business Journal</i>	2/25/2008
18. Rochester's Mayo Civic Center	Civic Center Bids Exceed the Budget, <i>Post-Bulletin</i>	9/28/1999
19. Roswell Park, N.Y., Cancer Institute	http://abc.org/plastudies	1995
20. San Francisco Airport	SFO Expansion Project Hundreds of Millions Over Budget, <i>San Francisco Chronicle</i>	12/ 22/1999
21. Seattle Mariners Safeco Stadium	New Seattle Stadium Battles Massive Cost Overruns, <i>Engineering News-Record</i>	7/27/1998
22. Washington, D.C., Convention Center	Convention Center Costs Increase by \$15 Million, <i>Washington Construction News</i> <i>Washington Business Journal</i>	3/2001 3/2003
23. Washington, D.C., Lafayette Building	Mandatory PLAs Put Dollars Into Union Coffers, <i>Washington Examiner</i>	12/5/2010
24. Wilson Bridge, Md.-Va.	Lone Wilson Bridge Bid Comes in 70 percent Above Estimate, <i>Engineering News-Record</i> <i>Baltimore Sun</i>	12/24/2001 3/2/2002
	Unexpectedly Low Bid Keeps Wilson Bridge Under Budget, <i>The Washington Post</i>	3/2/2002

	New Bridge on the Rise, <i>The Washington Post</i>	10/13/2004
	Woodrow Wilson Bridge Beats Obstacles as It Becomes Beltway Savior, <i>Engineering News-Record</i>	1/31/2005
25. Washington, D.C., Baseball Stadium	Nationals Withhold Rent on Ballpark, <i>The Washington Post</i>	7/11/2008
	Nationals Park Costs Rise, Sports Commission Struggles, <i>Washington Examiner</i> ,	8/21/2008
26. Worcester Vocational School	Worcester Regional Research Bureau, Project Labor Agreements (www.wrrb.org)	
27. Worcester Parking Garage	Cogliano: Competing for School Construction, <i>The Boston Globe</i>	7/10/2007

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Project Name	Source	Date
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2. Carter County, K.Y., School	School Board Rescinds PLA After Latest Tygart Bids Rejected, <i>Journal Times</i>	10/8/2010
3. Clark County, N.V., School District	School District Should Heed Conclusions of Report, <i>Las Vegas Journal</i>	9/11/2000
4. Des Moines, Iowa Events Center	The PLA for the Iowa Events Center: An Unnecessary Burden on Workers, Businesses and Taxpayers of Iowa, <i>Public Interest Institute</i>	3/1/2006
5. Fall River Schools	Project Labor Agreements and Financing School Construction in Massachusetts, <i>Beacon Hill Institute</i>	12/1/2006
6. Hartford Public High	School Project Back in Limbo, <i>Hartford Courant</i>	4/7/2004
7. Jefferson County, N.Y. Courthouse	PLA Analysis for the Jefferson County Courthouse Complex, <i>Report to Jefferson County Legislators, Paul Carr</i>	9/14/2000
8. Lucas Oil Stadium	An Ailing Process, <i>Indianapolis Star</i>	1/24/2010
9. Middletown, Conn., School Renovation	State's Dubious Labor Policy, <i>Hartford Courant</i>	8/20/1998
10. New York's Oswego Sewer	Sewer Project Phase Attracts No Bids, <i>Syracuse Post-Standard</i>	8/20/1997
11. Oakland Unified School District	School Costs Skyrocket After Labor Pact, <i>San Francisco Chronicle</i>	4/28/2004
12. Ohio Schools	New Bids Drop Cost of Work on Deaf, Blind School, <i>Columbus Dispatch</i>	11/10/2004
13. Roswell Park, N.Y., Cancer Institute	Analysis of Bids and Costs to Taxpayers in Roswell Park, New York (ABC)	1995
14. San Francisco International Airport	Labor Protests Fly, Bids Are High, <i>Engineering News-Record</i>	7/22/1996
15. Southern Nevada Water District	Opfer, et al, PLA Research Study: Focus on SNWA, (UNLV 2000)	2000
16. Wilson Bridge, Md.-Va.	Lone Bid Comes in 70 percent Above Estimate, <i>Engineering News-Record</i>	12/24/2001
	Unexpectedly Low Bid Keeps Wilson Bridge Under Budget, <i>The Washington Post</i>	3/2/2002
17. Wyoming County, W.Va.	New Wyoming School to be Rebid, Associated Press	12/20/2000

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Project Name	Source	Date
1. Boston Central Artery Project	<i>The Boston Globe</i>	11/11/2004
	Project under renewed fire, <i>Engineering News-Record</i>	9/25/1995
	\$21 Million Settlement In Big Dig Tunnel Collapse, http://wbztv.com/bigdig	2006
2. Citi Field	Mets in Foul Territory, <i>New York Post</i>	9/6/2009
3. Des Moines, Iowa Events Center	<i>Des Moines Register</i>	10/3/2003
4. Indianapolis, Ind., Library	Concrete Cracks Halt Construction on Indianapolis Library, <i>Indy Star</i>	4/22/2004

5. Pittsburgh, Penn., Convention Center	Convention Center's Builders Assess Collapse, <i>Pittsburgh Post-Gazette</i>	2/6/2007
6. Washington, D.C., Convention Center	Roof Section Collapses at Center Site, Washington Construction News	5/2001

Construction Delays

Project Name	Source	Date
1. Boston's Big Dig	http://www.issuesource.org.	11/2004
2. Chicago Union Strike	Laborers Reaping Gains from Union's Timely Risk, <i>The Chicago Tribune</i>	6/6/2006
3. Los Angeles Schools	Construction Delays Will Force 4 New L.A. Schools to Open Late, <i>Los Angeles Times</i>	6/17/2006
4. Milwaukee's Miller Park	Crane Accident Kills Three at Unfinished Miller Park, <i>The Washington Times</i>	7/15/1999
5. New Jersey Schools	NJ DOL Annual Report to the Governor and Legislature, Use of PLAs in Public Works Building Projects in Fiscal Year 2008	10/1/2010
6. San Francisco International Airport	Carpenters at Airport Protest Against Union Leadership, <i>San Francisco Chronicle</i>	5/21/1999
7. Seattle Mariners Safeco Stadium	New Seattle Stadium Battles Massive Cost Overruns, <i>Engineering News-Record</i>	7/27-8/3/98
8. Trump Towers, Chicago	<i>401 North Wabash Venture LLC v. Chicago and Cook County Building and Construction Trades Council</i>	6/5/2006
9. Washington, D.C., Stadium	Nationals Withhold Rent on Ballpark, <i>Washington Post</i>	6/22/2008

Discrimination

Project Name	Source	Date
1. Buffalo Schools	Buffalo Mayor Says Trades Not Attaining Diversity, <i>Construction Labor Report</i>	9/22/2004
2. Chicago Robbins Incinerator	Construction Firm to Pay \$1.33 Million to Settle Racial, Sexual Harassment Case <i>Construction Labor Report</i>	1/12/2000
3. Detroit Baseball Stadium	Four Black Female Carpenters Sue, <i>The Detroit News</i>	10/29/1999
4. New Jersey Schools	NJ DOL Annual Report to the Governor and Legislature, Use of PLAs in Public Works Building Projects in Fiscal Year 2008	10/1/2010
5. San Francisco International Airport	Jury Awards Construction Worker \$490,000 After Company Failed to Prevent Harassment, BNA CLR, Vol. 45, 1290	1/19/2000
6. San Francisco International Airport	LA Transit Agency Says Sham Minority Firms Were Used to Win Bids, <i>San Francisco Chronicle</i>	12/7/1999
7. Philadelphia Unions	Tom Ferrick Jr.: City Climate is Changing on Union Hiring, <i>The Philadelphia Inq.</i>	1/20/2008
	Unions Disclose Minority, Female Numbers of Members in Philadelphia Building Building Trades, <i>Construction Labor Report</i> (BNA)	2/13/2009
8. Washington, D.C., Stadium Local Hiring	Stadium Project Falling Short of City's Ambitious Hiring Goals, <i>The Washington Post</i>	2/24/2008
	Think Locally, Hire Regionally, <i>Washington City Paper</i>	9/12/2007
9. Yankee Stadium	Bronx Officials Deal with Yankees on Stadium, <i>New York Daily News</i>	6/19/2008

Safety Problems

Project Name	Source	Date
1. Boston Central Artery Project	"Boston Harbor"-Type Project Labor Agreements in Construction: Nature, Rationales, and Legal Challenges, 19 J. Lab. Res., Winter 1998, at 1, 14	Winter 1998

2.	Boston Harbor Clean-Up	OSHA Cites Boston Harbor Contractors Following Investigation Into Tunnel Fatalities, <i>BNA DLR</i> , Vol. 13, A-2.	1/20/2000
3.	Boston Harbor Clean-Up	"Boston Harbor"-Type Project Labor Agreements in Construction: Nature, Rationales, and Legal Challenges, 19 <i>J. Lab. Res.</i> , Winter 1998, at 1, 14	Winter 1998
4.	Des Moines, Iowa Events Center	County Grapples with Substance Abs, <i>Workplace Substance Abuse Advisor Des Moines Register</i>	11/26/2003 9/21/2004
5.	Hanford Nuclear Site	Fluor Unit Gets Record Fine Over Nuclear Waste Safety, <i>Engineering News-Record</i>	6/7/1999
6.	Los Angeles Unified School District	Failing Grade for PLA School Job?, <i>Los Angeles Business Journal</i>	11/1/2010
7.	Milwaukee's Miller Park	Crane Accident Kills Three at Unfinished Miller Park, <i>The Washington Times</i>	7/15/1999
8.	New York's Tappan Zee Bridge	Cover Story: Safety, <i>Engineering News-Record</i>	6/21/1999