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## Why PLAs Are Good Public Policy

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### ***Introduction:***

The use of Project Labor Agreements (PLAs) in the construction industry is good public policy. PLAs are entirely consistent with the letter and spirit of N.Y.S. competitive bidding statutes. They protect and promote the public interest by efficiently using public funds for vital construction projects. PLAs are especially useful for larger, longer, and more complicated construction projects because they facilitate on-time, on-budget project completion.

PLAs are uniform collective bargaining agreements that cover all crafts on a construction project. Because they are specifically tailored to the needs of particular projects, PLAs give project owners, building contractors and trade unions a unique opportunity to anticipate and avoid potential problems that might otherwise arise and possibly impede project progress. That's why Project Labor Agreements have long been used in the private and federal sectors, and more recently by state, county and municipal agencies. The evidence is simply overwhelming that PLAs maximize project stability, efficiency and productivity and minimize the risks and inconvenience to the public that often accompany public works projects.

The use of PLAs in the public sector is now a settled question in New York State and other jurisdictions around the country. In its landmark 1993 *Boston Harbor* decision, the U.S. Supreme Court recognized the value of PLAs in serving the public interest and opened the door for their use by state, county and municipal agencies. In its 1996 *Thruway Authority* decision, the New York

Court of Appeals established guidelines for the use of Project Labor Agreements on publicly funded construction throughout the state. The following year, 1997, Governor Pataki issued an Executive Order reaffirming the utility of PLAs and encouraging their use in New York State.

***How Do Project Labor Agreements (PLAs) Work?***

On a typical construction project operating without the benefit of a PLA, there may be fifteen or more different collective bargaining agreements covering work being performed by various crafts. These union contracts are not generally coordinated in any meaningful way. This occasionally leads to unavoidable inefficiencies.

Project Labor Agreements are negotiated to cover all the crafts on a single project. The term of the PLA coincides with the duration of the project. Because PLAs eclipse the expiration dates of various local union agreements, they prevent work delays that might result from individual contract negotiations that ordinarily occur during the life of a project. No-strike and no-lockout provisions are standard in Project Labor Agreements. To further mitigate potential sources for labor-management conflict, PLAs commonly provide alternative dispute resolution procedures for a range of issues.

Because a PLA applies to all the crafts on its covered project, it standardizes otherwise incompatible work schedules, apprentice-journey level ratios, hours, payment arrangements, and other terms and conditions, providing greater cost efficiencies. Some PLAs also include cost saving procedures for workers compensation issues.

Any contractor – union or nonunion, alike – is free to bid on a project covered by a Project Labor Agreement. Because PLAs determine all terms and conditions in advance, they allow contractors to more accurately predict labor costs and schedule production timetables. Contractors who agree to perform under the terms of the PLA get immediate access to a pool of well-trained and highly-skilled workers through union referral procedures during the hiring

phases and throughout the life of the project. A more highly skilled workforce translates into safer job performance with cost reductions due to lower injury rates.

For publicly funded construction, Project Labor Agreements are good policy and practice because they promote a planned approach to labor relations, reduce the risks of shoddy work and costly disruptions, and encourage greater efficiency and productivity.

### ***Are PLAs Fair?***

Because Project Labor Agreements offered demonstrable benefits to construction users in the private sector, many reasoned that they should be available to public agencies when they were acting as owners or users in the construction marketplace. The federal and state courts have embraced that view. PLAs actually reinforce the underlying purpose of New York State's competitive bidding laws: to protect public funds by obtaining the best possible work at the lowest possible price, and to prevent favoritism, improvidence, fraud and corruption in the awarding of public contracts.

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. In fact, awards are frequently made to both union and non-union companies.

Nevertheless, non-union contractors have challenged the fairness and legality of PLAs for many years. But in endorsing their use, the Courts have responded by essentially saying: You're free to participate – or not to participate – in the PLA bidding process. If you play the game, you have to play by its rules. Otherwise seek your business opportunities elsewhere.

The Associated Builders and Contractors, Inc. (ABC), which represents non-union contractors, has long opposed Project Labor Agreements. Directly addressing the ABC, a litigant in the *Boston Harbor* case, the U.S. Supreme Court made clear that

*...those contractors who do not normally enter into such agreements [PLAs] are faced with a choice. They may alter their usual mode of operation to secure the business opportunity at hand, or seek business from purchasers whose perceived needs do not include a project labor agreement.*

The New York Court of Appeals later echoed the U.S. Supreme Court. Answering charges that PLAs are “anti-competitive” – meaning that they unfairly favor the union sector and cut into the business of open shop contractors – the Court of Appeals stated:

*The fact that certain non-union contractors may be disinclined to submit bids does not amount to the preclusion of competition...*

The ABC has chosen not to accept these court endorsed marketplace rules. It has instead conducted a relentless misinformation campaign designed to confuse the general public and government officials about the actual nature and purpose of Project Labor Agreements. The ABC hopes to bring about an ill-conceived retreat from the sound public policy that PLAs represent. No one should be confused. When public entities enter the marketplace as owners, users, and/or purchasers of construction services, they have a responsibility to protect and promote the public interest by spending funds wisely, judiciously and efficiently. Project Labor Agreements are a vital instrument to fulfill that responsibility.