

**LABOR FEASIBILITY STUDY RE: CONSTRUCTION  
OF A NEW 2,000 CELL L-3 MEDIUM SECURITY PRISON**

**"SCI BENNER TWP."**

Prepared for  
**Pennsylvania Department of General Services**

**DGS Project 571-31**

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## **I. EXECUTIVE SUMMARY**

- DGS intends to construct a 2,000 bed medium security prison in Benner Twp. Centre County, using Design-Build contracting and Best-Value Practices to select the contractor on this \$200M project. Project schedule contemplates construction beginning in Fall 2009, and spanning 24 to 29 months to substantial completion.
- DGS engaged author through Gilbane Building Company to conduct a Labor Feasibility Study to assess, among other things, whether it would be necessary for DGS to include a Project Labor Agreement ("PLA") as part of the project specifications.
- **Summary Conclusion: A PLA is not necessary for the Project.**
- The present recession's effect on the construction industry has resulted in less capital construction spending by both government and private owners, immediately and during the corresponding time period of the Project.
- Contractors report high levels of unemployment among their ranks, and decreased new hires in the industry.
- Increasing numbers of bidders on government contracting projects from greater distances has increased the number of bidders and the geographic scope of the available skilled labor pool.
- Project Owners in the Region have rarely, if at all, used PLA's, despite the size, scope and temporal issues associated with large construction projects.
- There appears to be sufficient skilled labor among both union and non-union contractors for the Project.

## II. PROJECT DESCRIPTION

### A. PROJECT ORIGINS

The construction of a new 2,000 cell L-3 medium security prison in Benner Township, Centre County on the property of the existing SCI Rockview ("Project") is one of several prison expansion projects to be undertaken by the Pennsylvania Department of General Services ("DGS") as authorized through Act 41 of 2008, the Capital Project Itemization Act ("Act"). The Act specifically authorized DGS to enter into Design/Build ("DB") Contracts for the package of seven (7) prison construction/expansion projects.

### B. PROJECT DESCRIPTION

The facility, which will be known as SCI Benner Township, will be constructed just outside the footprint of the existing SCI Rockview Prison in Centre County. The facility will consist of a 2,000 cell L-3 medium security correctional facility. The Project will include a specifically pre-designed series of buildings including, but not limited to, Administration, Security, Health Services, Dietary Services, Maintenance Shops, Industrial Laundry, Chapel/Treatment, Learning Resources, Inmate Activities/Recreation, Guard Stations, Field Houses, Warehouses, Sally Port, Central Plant, L2, L3, L4, L5 Housing Units, and Transportation Hub. The site work on the project and site improvements will include, but not be limited to, Security, Perimeter Detection Systems, Fencing, Fields, Parking Lots, Sidewalks, Access Roadways, Perimeter Roadways, Utilities and Modifications to Site Entrances and Highways.<sup>1</sup>

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<sup>1</sup> DGS Project No. DGS 571-31 Part IV-1 ("RFP").

### C. DESIGN/BUILD CONTRACT

The nature of the contract for this project is a Design/Build for a firm fixed price.<sup>2</sup> The approved Design/Build Contractor ("DBC") will be considered the prime or general contractor. DBC will assume full responsibility for the delivery of all services to the project as specified in the DB Contract. DBC will let separate subcontracts for plumbing, electrical, HVAC, and general,<sup>3</sup> along with security and detention equipment suppliers. DGS will consider and score technical qualifications and disadvantaged business participation in awarding the contract.<sup>4</sup> The Project will be subject to the conditions of the Pennsylvania Prevailing Wage Act.<sup>5</sup>

### D. PROJECT TIMETABLE

DGS expects to award contracts on or about July 17, 2009. Site work construction is expected to begin in the Fall of 2009 and be completed on an estimated 24-29 month construction schedule.<sup>6</sup>

### E. PROJECT COST

The Project has a total allocation of approximately \$200,000,000.00. The Design/Build approach, according to DGS, allows the DBC to take the design documents issued by DGS (which will be approximately 30% complete) and complete the full design while beginning the early stages of construction. The Project, of course, will be bonded. Although a Construction Manager ("CM") may be appointed to the Project, it is expected the DBC will be the sole source of information and decision making once the Project is underway.<sup>7</sup>

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<sup>2</sup> *Id.* nt I-6.

<sup>3</sup> *Id.* at I-20.

<sup>4</sup> DGS Prison Expansion Project FAQ.

<sup>5</sup> 43 P.S. §165-6 et. seq.

<sup>6</sup> DGS RFP.

<sup>7</sup> Gilbane Building Company is the CM on this project. DGS Prison Expansion Project FAQ.

### III. PROJECT LABOR AGREEMENTS: HISTORY AND LEGAL PRECEDENT.

A Project Labor Agreement ("PLA") is a pre-hire contractual agreement which provides negotiated conditions and terms by and between a construction project owner, developer, contractors, subcontractors and the labor force. These agreements actually become part of the contract specifications for all bidders. As part of the contract specifications, PLAs require that all contractors, whether unionized or not, utilize union skilled labor according to the particular terms contained within the PLA in order to work on a given construction project. PLAs vary with each applicable project, but typically contain "standardized terms" that guarantee uniformity as to wages, work rules, grievance procedures, benefits, and include no-strike and no-lockout provisions. The "hiring methodology" component of the PLA requires the successful bidder to utilize union skilled labor once that contractor exceeds a certain threshold of its own "core" employees for the project.

PLAs are regarded very differently by those in favor and those opposed to labor unions. Those who argue against PLAs claim that the agreements limit competition, raise costs of the project, favor union over non-union contractors and workers and greatly diminish the control of the project manager. Proponents of PLAs, on the other hand, believe that the agreements are a cost effective way of achieving results and that they result in savings of time, money, disputes, etc.<sup>8</sup> Political positions are well known on the topic, but from a purely statistical analysis point of view, researchers have struggled to accurately quantify the direct financial benefits or excessive costs that are attributable to PLAs by supporting or opposing interests.<sup>9</sup>

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<sup>8</sup> See, generally, "Project Labor Agreements on Public Construction Projects: The Case For and Against", Worcester Municipal Research Bureau, Rep. No. 01-4, May 21, 2001.

<sup>9</sup> Stephen Herzenberg and Mark Price, Keystone Research Center, "Assessment of the Potential Need for a Craft Labor Quality Assurance Agreement Covering the Pennsylvania Convention Center Project". March 2008. ("KRC Report").

PLAs have been in use in the construction industry since the 1930's and 1940's on large public and private projects.<sup>10</sup> According to the Federal General Accounting Office, PLAs have been utilized in all 50 states and the District of Columbia.<sup>11</sup> In 1993, the United States Supreme Court decided the landmark case, *Building & Constr. Trades Counsel of the Metro. Dist. v. Ass'd Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 231 (1993) (the 'Boston Harbor' case). Therein, the Court ruled in favor of the government project owner and affirmed that private and public owners can decide whether a construction project should utilize a PLA.

At the federal government level, the use of PLAs has been somewhat political. Even before the Supreme Court's decision in *Boston Harbor* was issued, President George H.W. Bush issued an Executive Order limiting PLAs. That Executive Order was revoked by President Clinton in his first year in office in 1993. In 1997, President Clinton signed an Executive Memo requiring federal agencies to consider PLAs if a project was a certain size – over \$5 million. In 2001, President George W. Bush revoked President Clinton's memo and issued an Executive Order prohibiting PLAs on federally funded construction projects.

Most recently, on February 6, 2009, President Obama signed an Executive Order encouraging executive agencies to consider requiring the use of PLAs in connection with large-scale construction projects (\$25 million or more) in order to promote economy and efficiency in federal procurement. Thus, from a political standpoint, the propriety (or popularity) of PLA's at the federal government level seems to depend on which political party occupies the White House.

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<sup>10</sup> Henry H. Perritt, Jr., "Keeping the Government Out of the Way: Project Labor Agreements Under the Supreme Court's Boston Harbor Decisions," *The Labor Lawyer* 12:1 (1996) p. 69, Government Accounting Office, "Project Labor Agreements: The Extent of Their Use and Related Information." *GAO Report to Congressional Requesters* GAO/GGD-98-82 (1998), p.4

<sup>11</sup> Government Accounting Office, "Project Labor Agreements," p. 6.

In the courts, however, the legal analysis has not changed much over time. In Pennsylvania in particular, Courts have been guided by the decision rendered in *A. Pickett Construction Inc. v. Luzerne County Construction Center Authority*, 138 A.2d 20 (Pa.Cmwlth.1999), wherein the Commonwealth Court held that PLAs are consistent with the competitive bidding requirements of Pennsylvania law.

In *Pickett*, the Luzerne County Convention Center Authority planned to build a civic/convention center, and commissioned a labor feasibility study on the use of a PLA for the project. James O'Neill, Esq. of Hill International, a large construction management firm, conducted an investigation and issued a report. The report cited a number of factors that justified the use of a PLA: 1) avoidance of costly delays occasioned by labor disruption in that heavily unionized community; 2) overall labor harmony; 3) a tight, inflexible construction deadline that included the loss of an anchor tenant and state funding if not met; 4) cost savings and management flexibility; and 5) the assurance of a large pool of skilled and experienced labor. Ultimately, O'Neill emphasized the "absolute requirement that there be no work interruptions, disruptions or stoppages makes a PLA more appropriate than in other settings, where timely, uninterrupted completion is not as critical."

Non-union open shop<sup>12</sup> contractors sought an injunction to strike the PLA from the project, asserting its use violated the public bidding laws of Pennsylvania. The trial court rejected the request, and on appeal, the Commonwealth Court affirmed the trial court, noting that because timing was critical, a PLA was indeed permissible and consistent with competitive

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<sup>12</sup> Also known as "merit shop".



bidding laws, and a public owner's choice to use a PLA under such circumstances is not an abuse of its discretion.<sup>13</sup>

The *Pickett* decision has been the "law of the land" in Pennsylvania, and any analysis of a government owner's use of a PLA under our public bidding laws must result in a determination of whether the government owner engaged in an "abuse of discretion" in reaching that decision.

A PLA has been stricken once as an "abuse of discretion" by the public project owner. In 2005, a preliminary injunction was sought and granted against a municipal golf course clubhouse renovation project in *Jeffrey S. Will v. City of Erie*<sup>14</sup>. Therein, a PLA was adopted by the City of Erie for the course clubhouse renovation project. The PLA was challenged, and the Erie County Court of Common Pleas Judge, applying *A. Pickett*, found that none of the factors which led to the warranting of a PLA in *A. Pickett* existed, and struck the PLA as an abuse of discretion by the City of Erie.

Most recently in Pennsylvania, in 2008, the Commonwealth Court upheld the denial of a preliminary injunction seeking to enjoin the Shaler Area School District from awarding a construction project containing a PLA.<sup>15</sup> Sossong argued that the terms of the PLA violated the lowest responsible bidder laws. The School Board's decision to include a PLA in the bids was based upon a report recommending a PLA to a neighboring school district in the same labor market. Sossong challenged the PLA, in part by asserting it had no bearing on whether the lowest "responsible" bidder was in fact responsible. The challenge was denied, and on appeal, the Commonwealth Court affirmed, since the record demonstrated that timing was critical, and

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<sup>13</sup> See also, *Keystone Chapter, ABC, et al. v. Berks County Convention Center Authority*, 92 Berks L.J. 17 (C.P. Berks 1999).

<sup>14</sup> Erie C.P. 2005. It is to be noted that because that decision was not officially published, it has no precedential value, but is instructive for practitioners.

<sup>15</sup> *Sossong v. Shaler Area School Dist.*, 945 A.2d 788 (Pa.Cmwltth.2008)

that the project was to be completed "with optimum productivity and no delays,"<sup>16</sup> a PLA was indeed permissible and consistent with competitive bidding laws, and therefore not an abuse of discretion.

Indeed, the Commonwealth Court panel, citing *A. Pickett*, espoused that bidder "responsibility" includes much more than who the lowest bidder is in dollar figure alone. Such competitive bidding includes the need for financial responsibility, integrity, efficiency, industry experience, promptness and the ability to successfully carry out the undertaking.<sup>17</sup> Accordingly, the panel concluded that a PLA requirement does not violate the lowest responsible bidder laws where it is related to the need for prompt completion of a project.<sup>18</sup>

The governing legal standard remains whether a given public project owner abuses its discretion under the law when including a PLA as part of the project specifications. What is not clear is whether the public project owner is required to, at the very least, study the matter before reaching the conclusion to use a PLA. For example, in an unpublished opinion, our Commonwealth Court in *North Central Mechanical, Inc. v. DGS*<sup>19</sup>, upheld DGS' decision to use a PLA, even though a formal study had not been conducted. In that case, the government official who made the decision had many years experience in public contracting and construction. The Court held in that case, and on those particular facts, that DGS did not engage in an abuse of discretion by choosing a PLA based on the recommendation of its own experienced professional staff.

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<sup>16</sup> *Id.* at 791.

<sup>17</sup> *Id.* at 793.

<sup>18</sup> *Id.* at 795.

<sup>19</sup> Commonwealth Ct. of PA, No. 122 M.D. 2001, June 21 2001. The decision itself is not precedential, because it is unpublished. See, Pa. Commw. Ct. IOP 414 (2008). However, it has persuasive value, given the fact that public bidding challenges ultimately would proceed through to the Commonwealth Court.

The prevailing wisdom drawn from *A. Pickett*, and its progeny is that a public project owner enjoys a strong presumption in the courts that its decisions have been made in a legal way and after investigation. The threshold of evidence to support that presumption and therefore justification for PLAs is minimal, and challengers to the use of a PLA must overcome the high burden of proving "abuse of discretion".

#### IV. CONSTRUCTION LABOR ANALYSIS

##### A. ECONOMIC OUTLOOK IN REGIONAL CONSTRUCTION INDUSTRY

The Project involves the construction of a 2,000 bed medium security prison facility using the Design/Build ("DB") method. The DB method refers to a range of alternatives to the traditional construction project delivery system. Traditional "design-bid-build" is a sequential process in which the owner first contracts with a design professional to prepare detailed, suitable-for-construction plans and specifications (or does so in-house), then uses the plans and specs to solicit competitive bids for construction, awarding the contract to the low bidder.<sup>20</sup> In DB, typically one entity performs both design and construction under a single contract.<sup>21</sup> DB may result in earlier completion and occupancy of the project because there is no dead time between completion of design and start of construction, allowing the DBC to begin early phase site work before design of latter phases is 100% completed.<sup>22</sup>

Here, the bid package values estimated by the CM reflect total labor man hours of 1,100,518 at a total cost of \$68,232,111 representing approximately 1/3 of the total project cost of \$200,000,000. Most, if not all major trade crafts will be required on the Project. Materials are

<sup>20</sup> W. Samuel Nieco, Howrey LLP "Design-Build Contracts as an Alternative Method for Public Construction by California Cities" August 30, 2004.

<sup>21</sup> Lawrence A. Borda, Esq., Powell Trachman, Logan, Carle, & Lombardo P.C. "Design/Build in Pennsylvania: Are You Ready?" Attorney Borda's article suggests that within the next five to ten years, more than one-half of all construction nationwide will be design/build.

<sup>22</sup> *Id.*, §II B.

estimated at \$109,480,239, accounting for over ½ the total project cost.<sup>23</sup> For the Region<sup>24</sup>, this project is substantial both in size and value. A review of other projects in the Region is necessary to examine their impact on the skilled labor workforce for the Project.

Interviews were conducted with the Gilbane Building Company, CM on the Project, and DGS, project owner, to assess the bridging documents, project schedule, and unique features of the project. State, county and municipal government representatives, as well as affiliated economic and industrial development authorities were interviewed for this study. Finally, regional public and private project owners, construction managers, general and subcontractors, as well as representatives of construction industry organizations were interviewed. All provided both statistical and anecdotal information used this study.

#### 1. State Agencies:

At the state level, DGS, the project owner on this project, is the primary state agency responsible for capital construction projects. DGS, reports seven (7) projects totaling \$219M were completed in the last two years statewide, two (2) of which were in the Region, including several prison addition projects.<sup>25</sup> Within the Region, between May 2004 and May 2009, DGS awarded contracts on a total of \$248M.<sup>26</sup> Looking forward, the DGS project and spending profile changes dramatically within the Region, with a total of twenty (20) projects starting, within the Region, ranging in values from \$25K to \$200M, for an aggregate spending profile of

<sup>23</sup> Gilbane Building Company: Benner Township SCI Bid Package Values Summary for Labor, Material and Equipment, May 4, 2009. See, Appx. A.

<sup>24</sup> See, FN56 for definition of "Region".

<sup>25</sup> DGS Completed Construction Projects 2007-09 over \$10,000,000 as of May 1, 2009. None included a PLA.

<sup>26</sup> DGS Public Works Construction Project Awards May 2004 thru May 2009 by County. These figures include the projects completed in the Region in the last two years. The two prison projects, SCI Muncy and SCI Cresson cost approximately \$10M each.

\$271M (\$200M of which is the Project). Thus, but for the Project, the DGS spending profile drops off considerably.<sup>27</sup>

The Pennsylvania Department of Education ("PDE") monitors the status of all public school construction projects statewide. School construction projects often run in the tens of millions of dollars and represent significant work for contractors. When a school district undertakes a major project and seeks reimbursement from the Commonwealth, a process known as PlanCon is initiated.<sup>28</sup> When a project reaches the PlanCon F stage and gets approved by PDE, the school district may then take bids and enter into construction contracts.<sup>29</sup>

In 2008, eight (8) projects reached PlanCon F approval in the twenty-county Region. In 2009, that figure dropped by more than half to three (3).<sup>30</sup> Because public school buildings are in constant need of upgrades, additions, renovations and replacement, this one-year drop in projects moving forward is a strong indicator of the overall slowdown of the construction segment of the state economy.

## 2. Regional Project Review

Telephone interviews of officials familiar with large capital construction projects in the Region were conducted. Based on the information provided, a number of large-scale construction projects have been identified that may be in process during the time-period.

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<sup>27</sup> Because the DGS spending is inextricably intertwined with the annual budget process, accurate long-term projections are difficult to establish at best.

<sup>28</sup> PDE School Construction Policies and Procedures, April 2008. "PlanCon" is an acronym for Planning and Construction Workbook.

<sup>29</sup> *Id.*, p.3.

<sup>30</sup> PDE, Division of School Facilities. PlanCon Projects by County, May 11, 2009.

COUNTY	PROJECT DESCRIPTION	ESTIMATED COST	STATUS/EST'D COMPLETION
Centre	Pi Hotel	\$60M	HOLD
	Heim Retail	\$15M	Zoning
	Fraser Centre	\$40M	HOLD
	State College Area School District - Elementary Schools	\$25M	4Q 2011
Penn State University	Moore Building Addition	\$25M	4Q 2011
	Millennium Science Complex	\$200M	3Q 2011
	Henderson - Phase 1	\$45M	1Q 2012
	Day Care	\$10M	4Q 2011
	Biological Research Lab.	\$10M	2Q 2011
Clearfield	Bionol Ethanol Prod	\$270M	Sept. 2010
	Sunnyside Ethanol	\$350M	HOLD
	Riverhill Cogen	\$900M	HOLD
Clinton	Maintenance Garage	\$10M	Start - September 2009
Huntington	Huntington Middle School	\$23M	
Indiana	New Prison Facility	\$14M	Start - June 2009
Lycoming	Susquehanna Health/ Williamsport Hospital	\$150M	3Q 2011
Mifflin	Indian Valley High School	\$64M	Dec 2010
Northumberland	New Prison Facility	\$14M	Start - June 2009
Snyder	Susquehanna University	\$27M	Jan. 2010
	Selinsgrove School District	\$17M	Dec. 2009

Comments: \$ Value of identified projects: \$2,339,000,000  
 \$ Value of projects on hold: (\$1,350,000,000)  
 \$ Value of projects moving forward: \$989,000,000

Many county officials reported absolutely no vertical construction projects over \$10M were planned or approved in their counties over the next two years.<sup>31</sup> Of the projects listed, several are worth noting. Presently, in Clearfield County, the Bionol Ethanol Production Facility, a \$270M project, is nearing major construction completion, which should be concluded by late Fall 2009 with project substantial completion listed for Spring, 2010<sup>32</sup>. A separate ethanol production facility, known as Sunnyside Ethanol, is a private project that is estimated to cost \$350M. However, the project has been stalled for the last 18-24 months, and the project owners are continuing to seek funding. Finally, the Riverhill Power Cogeneration Plant, a private \$900M, four-year project, began construction in the last year, but has also been placed on hold by its owners due to a loss of financing.

In Centre County, normally a thriving market for large scale construction, several large private projects have been placed on hold, or remain pending municipal approval. The Pi Hotel, a \$40M private project, is on hold. The Heim Retail Center, a \$15M private project remains pending in planning and zoning. The Frazier Center a \$40M private project is also on hold.<sup>33</sup>

The projects identified above were selected as large projects that, if running together at the same time, might create a strain on the available skilled labor force at SCI Benner Township. Too little is known about the viability of any of the projects going forward, and their stagnation in planning and/or financing reduces the likelihood that they will proceed or have any material impact on the availability of skilled labor on the Project.

### 3. The Penn State Effect

The Pennsylvania State University ("Penn State"/"PSU") located in State College, Centre County, is the single largest consumer of construction services in the region. At its University

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<sup>31</sup> Telephonic interviews. Most did not even have projects exceeding \$1M.

<sup>32</sup> Telephonic interviews.

<sup>33</sup> John Coleman, Executive Director, Centre County Chamber of Commerce.

Park ("UP") campus alone, it has not been uncommon for PSU to spend *on average* \$100M per year on capital construction projects.<sup>34</sup> Penn State utilizes a five year Capital Plan as approved by its Board of Trustees to prioritize its major campus construction projects.<sup>35</sup> A sample review of sixteen (16) recent bid profiles and project reports reflects a mix of union and open shop contractors bidding on major construction projects at UP.<sup>36</sup>

More significantly, the bid profiles for active projects reflect that the contractors are coming from far beyond the twenty (20) county radius defined for this study. Bidders came from not only the four corners of Pennsylvania (Erie, Pittsburgh, Philadelphia, Bloomsburg), but from at least four (4) other states (Ohio, New York, New Jersey and Michigan).<sup>37</sup> From August 2006 through October 2009, PSU has, or is completing approximately \$230M in capital projects at UP, using a variety of contracting methods.<sup>38</sup>

PSU has projected in its Capital Plan to spend approximately \$290M on education and general construction projects at UP, thru FY 2011/12<sup>39</sup>. However, PSU is not immune from the recession. At the moment, PSU has placed two (2) major capital projects on hold, and it is expected with further review and revision to its Capital Plan, more projects may also be impacted by the recession.<sup>40</sup>

Although PSU has been relatively aggressive in the past ten years with capital construction projects at UP, it has never had significant problems with labor shortages, disputes among contractors (union or open shop) or delays. Notably, PSU has no record of using a PLA

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<sup>34</sup> PSU Dept. of Design and Construction, Office of Physical Plant ("OPP"), May 2009.

<sup>35</sup> PSU Capital Plan 2007/08 to 2011/12, September 2007.

<sup>36</sup> PSU OPP Bid Tabulations, active projects UP.

<sup>37</sup> *Id.*

<sup>38</sup> PSU Dept. of Design and Construction, OPP Schedule of Prior Major Projects (over \$1M) completed in past 3 years.

<sup>39</sup> PSU Capital Plan Candidate Projects thru FY 2011/12.

<sup>40</sup> Interview and survey; John R. Bechtel, P.E. Asst. Dir. PSU Department of Design and Construction, OPP, May 2009. The projects on hold are its Children's Hospital and Parking Facility in Hershey.



on its major construction projects, despite the fact that often several projects were overlapping at UP and competing against the same general deadline.<sup>41</sup>

It has been the experience at PSU that the University has enjoyed working with both union and open shop contractors, whose labor was equally skilled.<sup>42</sup> PSU, as a project owner, keeps projects on schedule and within budget by utilizing pre-qualified contractors and its own experienced in-house Project Leaders and representatives. On larger, more complex projects, PSU will engage a CM to assist with scheduling, quality assurance and budget control. On projects that have an aggressive schedule and critical deadline, PSU utilizes the liquidated damages in their construction contracts to keep contractors on schedule.<sup>43</sup>

As it relates to union and open shop contractors, PSU has enjoyed the benefit of "solid workers on both sides". The University as a project owner has no preference as between union and open shop contractors. It has been noted that to the extent projects fall into delays or suffer labor shortages from time to time, that circumstance, in PSU's experience, has been no different between union and open shop contractors.<sup>44</sup>

#### 4. American Recovery and Reinvestment Act impact

The federal stimulus package, collectively known as the American Recovery and Reinvestment Act ("ARRA") was signed into law February 17, 2009, and federal funds have already started flowing into Pennsylvania for "shovel-ready" projects. One of the main goals of the legislation is to provide quick economic relief to families, invest in public works projects that will create immediate jobs.<sup>45</sup> In Pennsylvania, funds will be allocated into four major sectors: Transportation, Housing and Community Development, Water and Wastewater Infrastructure,

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Recovery.Gov, May 4, 2009.

and Energy.<sup>46</sup> As it relates to "bricks and mortar" type construction, the impact appears minimal. Transportation is expected to receive \$1.026B for highways and bridges, and infrastructure will get \$220M. A review of county by county ARRA allocation reports reflects that some transportation and infrastructure money should flow into the Region<sup>47</sup>, and create some construction jobs unique to roadwork, bridges and infrastructure improvements. Interviews with contractors and industry representatives, however, reflect the common acknowledgement that these projects will have very little, if any, impact on the availability of skilled labor of the kind necessary for SCI Benner Twp.

#### **B. THE CONTRACTING COMMUNITY PERSPECTIVE**

It is obvious that the current economic climate has hurt the contracting community hard, both nationwide and in Pennsylvania. Although specific statistics are not available, contractors of various sizes and trades were interviewed, and report business being off as much as 40-60% over the last year.<sup>48</sup>

Most contractors interviewed commented on the significant drop-off in private projects and a concomitant spiking increase in public contract bidding. In addition, the recession's impact on the residential construction market seems to have driven both skilled labor to apply for work in the commercial construction industry, and increased competition from contractors who were historically "residential" contractors, whether it be site development and excavation, or electricians and HVAC installers. Contractors have commented that they not only have a

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<sup>46</sup> Pennsylvania Stimulus Oversight Committee, "American Recovery and Reinvestment Act", March 31, 2009.

<sup>47</sup> Recovery.pa.gov: Survey of County by County ARRA allocation reports: "Where is Your Money Going", May 4, 2009.

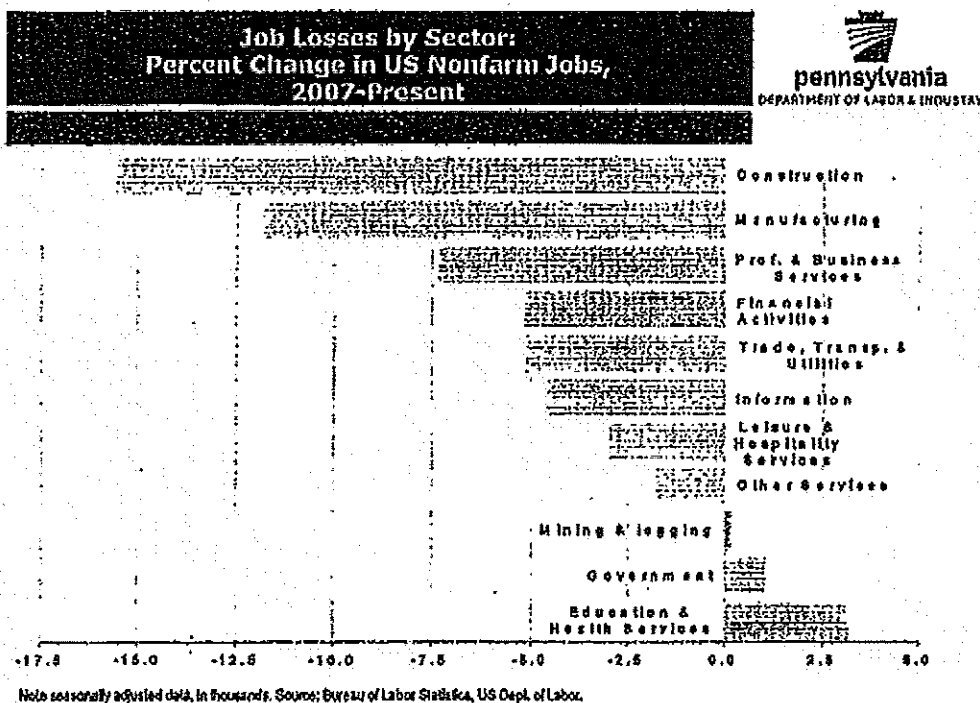
<sup>48</sup> Telephone interviews: J.I. McCrossin, Inc., Glenn O. Hawbaker, Inc. Kinsley Construction, Pat Ionadi Construction, Inc., Penn Installations, Inc. May 2009.

substantial portion of their existing skilled workforce on layoff, but also have increased applications from out-of-work residential construction "refugees."<sup>49</sup>

Finally, contractors have noted, as supported by the PSU bid profiles, more competition now exists in the Region which comes from farther away. Thus, the negative "trickle-down" effect of the recession has a three-fold effect on the bidding for a project such as SCI Benner Twp.: There appears to be more skilled labor available *and* more bidding competition from hungry competitors from farther away *which creates* a greater geographic scope of the available skilled labor workforce.

### C. THE SKILLED LABOR MARKET

Since 2007, the construction industry leads the nation in job losses by sector, with the industry losing in excess of 15% of its jobs over that time period.<sup>50</sup>



<sup>49</sup> *Id.*

<sup>50</sup> Pa.DOL Center for Workforce Development and Analysis ("CWIA"), Pa. Employment Situation, April 2009, May 22, 2009.

In 2006, the Pennsylvania Department of Labor ("DOL") projected that construction employment statewide would flatten out between 2006 and 2008, estimating a very modest 1% growth in construction industry employment over the two year term.<sup>51</sup> A separate long term projection for the construction industry was prepared in 2004 by the DOL. That report reflects a modest growth in the construction industry over the ten year period between 2004 and 2014 at a rate of 2.1% while total non-farm job growth over the same ten year span is projected at 4.8%.<sup>52</sup>

The recent and ongoing recession indicators show nationwide unemployment for the civilian workforce jumping a whopping 68% between March 2008 and March 2009, while in Pennsylvania the unemployment rate increased 60.5%, jumping from 5.0 to 7.8%, with the state economy shedding approximately 182,000 jobs in the process.<sup>53</sup> In February 2009, Pennsylvania seasonally adjusted total non-farm jobs dropped by 41,000 – the single largest single month job loss in Pennsylvania in 13 years.<sup>54</sup> In the construction industry alone, over 18,000 jobs were lost between March 2008 and March 2009, reflecting a 7.3% increase in unemployed construction workers statewide, with 5,200 of those jobs lost in a single month between February and March 2009.<sup>55</sup>

Since October 2008, Pennsylvania has lost at least 20,000 per month in four of the five months between October 2008 and February 2009. The steepness of the job losses had not been

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<sup>51</sup> Pa.DOL Center for Workforce Investment and Analysis ("CWIA") Short Term Industry Forecast (Construction) 2Q 2006-2Q 2008.

<sup>52</sup> Pa.DOL Central WIA Industry Employment (Construction) estimated 2004 and projected 2014.

<sup>53</sup> Pa.DOL "Pennsylvania's Employment Situation" April 2009; May 22, 2009.

<sup>54</sup> Pa.DOL Pennsylvania Employment Situation February 2009; March 19, 2009.

<sup>55</sup> Pa.DOL "Pennsylvania's Employment Situation" March 2009; April 16, 2009. In April 2009, the industry lost another 2.3% for a total loss of 9.6% since April 2008. Id. April 2009, May 22, 2009.

seen since 1981.<sup>56</sup> Necessarily, the leakage of jobs from the economy has been reflected in spiking unemployment both statewide and in the industry.

In order to address how unemployment statistics affect the project, the region from which the project could draw skilled labor must be addressed. In this analysis, based on interviews with project owners, construction managers, contractors and union officials, it was initially concluded that in general, skilled labor for a large project in Centre County, Pennsylvania would readily draw from a radius of one to two hours away. Therefore, data was collected from not only Centre County, but also from a first and second concentric ring of counties contiguous to Centre County (the "Region").<sup>57</sup> A total of twenty (20) counties were reviewed.

The Region was hit hard in 2008 and the first quarter of 2009 with significant spikes in unemployment as reflected below:

UC By County – Not Seasonally Adjusted Labor Force <sup>58</sup> (%)					
County	Ann. 07	Mar. 08	Ann. 08	Mar. 09	Seasonally Adjusted Mar. 09
Centre	3.5	4.2	4.3	5.8	5.6
Blair	4.2	5.2	5.3	7.7	7.3
Cambria	5.3	6.1	6.2	8.9	8.6
Clearfield	5.4	7.1	6.8	10.9	10.0
Clinton	5.2	6.6	6.3	9.4	8.7
Huntingdon	5.1	6.9	6.7	12.4	11.3
Mifflin	5.2	6.6	6.7	11.1	10.4
Union	5.2	6.1	6.3	10.0	9.5
Bedford	5.6	7.3	7.1	12.6	11.5
Cameron	6.0	7.8	9.2	17.1	16.8
Blk	4.7	5.0	6.1	13.8	13.6

<sup>56</sup> Pa.DOL, Pennsylvania Non-Farm Jobs, March 2009 recap.

<sup>57</sup> Ring No. 1 ("R1") consists of Centre County and Blair, Cambria, Clearfield, Clinton, Huntingdon, Mifflin and Union Counties. Ring No. 2 ("R2") consists of Bedford, Cameron, Blk, Fulton, Indiana, Jefferson, Juniata, Lycoming, Northumberland, Potter, Snyder and Somerset Counties. For reasons already mentioned, large scale projects, given the present recession, are in fact drawing bidders from across the state and outside the Commonwealth of Pennsylvania. Telephonic interviews with John Bechtel, P.E., Penn State University Office of Physical Plant, and Stephanie Schmidt, Vice President, Poole Anderson Construction Manager.

<sup>58</sup> Pa.DOL – CWIA, UC by County – Not Seasonally Adjusted and Seasonally Adjusted Labor Force, March 2009

Fulton	5.5	7.4	8.0	15.6	14.8
Indiana	4.6	5.2	5.3	7.3	6.9
Jefferson	4.6	5.9	5.6	9.8	9.0
Juniata	4.2	5.7	5.4	8.9	8.1
Lycoming	4.9	6.2	6.0	9.4	8.7
Northumberland	5.0	6.6	6.7	10.7	9.8
Potter	7.2	7.8	7.4	12.7	11.9
Snyder	4.6	6.3	6.2	9.9	9.2
Somerset	5.5	6.8	6.5	9.2	8.4
	Region Ave.	6.3		Region Ave.	10.0
	Pennsylvania	5.2		Pennsylvania	7.8

The construction industry in the Region had already seen a drop off in new hires between 2007 and 2008, reflecting a reduction of 155 new hires in the industry, mirroring the projections of slow growth.<sup>59</sup>

2008-2007 Year over Year of New Hires for Construction <sup>50</sup>										
COUNTY	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.
Centre	15	-8	-30	-48	-31	14	1	-33	9	-24
Blair	-11	2	19	12	14	7	35	24	9	29
Cambria	23	-7	-3	-17	-7	5	-5	12	1	-30
Clearfield	5	19	10	0	17	20	1	-7	4	8
Clinton	-1	-5	-1	9	3	3	-3	2	-3	-5
Huntingdon	-7	-6	3	-27	-12	-3	-7	3	6	-3
Mifflin	-4	-3	-9	-9	-3	-3	-6	1	2	6
Union	2	-14	-9	-8	-3	4	-9	-3	0	-3
Bedford	-3	3	-14	-2	-18	1	-3	-9	-9	0
Cameron	-2	0	0	0	-1	1	1	0	0	0
Elk	0	3	-5	4	-4	-8	-7	6	-8	-10
Fulton	-1	1	-1	-1	-6	2	-1	-4	1	2
Indiana	4	7	-13	-14	-13	-25	-21	15	-24	-9
Jefferson	1	-4	-5	-13	2	6	-4	-8	9	-3
Juniata	-6	0	0	3	-9	1	-3	8	1	1
Lycoming	17	3	-26	-16	0	4	-11	-20	-8	-17
Northumberland	17	8	-2	10	-9	9	6	9	2	-10
Potter	7	4	16	16	9	11	14	5	8	8
Snyder	-2	1	10	2	7	3	6	-3	-4	-5
Somerset	18	8	-15	22	5	23	-14	-3	36	-1
<b>Sun</b>	<b>38</b>	<b>12</b>	<b>-75</b>	<b>-77</b>	<b>-59</b>	<b>75</b>	<b>-30</b>	<b>-5</b>	<b>32</b>	<b>-66</b>

Total: -155

<sup>59</sup> Pa.DOL CWIA 2008-2007 Year Over Year Comparison of New Hires.

Some counties saw the most significant spikes in unemployment compensation in decades. Centre County, for example, has historically enjoyed the lowest unemployment comp rates in the entire state. It saw its unemployment comp rates jump from 4.3% to 5.6%, the single largest increase in unemployment compensation in that county in 26 years.<sup>60</sup>

As was referred to above, interviews were conducted with numerous information sources including, without limitation, county government officials, industrial and economic development representatives, work force development agencies, union and open shop contractors, and public and private project owners. Uniformly, it was reported that there was "plenty" skilled labor in the Region presently unemployed. Two of the largest contractors in Centre County, Glenn O. Hawbaker (open shop contractor) and J.I. McCrossin (union contractor) reported labor available for a project of the size and scope of SCI Benner Twp. Pat Ionadi, President of Pat Ionadi Concrete from Pittsburgh, a union contractor, reported that his work force is 30% smaller than a year ago. Dan Hawbaker, President of Glenn O. Hawbaker, Inc., reported having approximately 100 skilled labor employees in lay off status, a reduction of 25% of his company's full strength work force.

Stephanie Schmidt, Vice President of Poole-Anderson, Construction Manager/General Contractor, reports that evidence of the increased availability of skilled labor is reflected in the dramatic increases in the number of bidders on large scale projects. This statistic is amplified by geographic distance from which those bidders hail to bid on the work. Ms. Schmidt reports that this year it is not uncommon to see bidders from all over Pennsylvania bidding on jobs in the region. Mr. Mark McCracken, County Commissioner of Clearfield County, notes that there appears to be plenty of available skilled labor for both the union and open shops in his county.

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<sup>60</sup> Pa. DOL CWIA - State College MSA (Centre County) March 2009.

The interview results confirm the statistically available information relative to the skilled labor work force in the region. Moreover, all contractors concluded that the recession has significantly reduced the prospects for available projects over the next few years. Accordingly, there appears to be sufficient skilled labor from both union and open shop contractors available to perform construction on the Project.<sup>61</sup>

**V. QUESTION PRESENTED: WHETHER IT WOULD BE NECESSARY FOR DGS TO IMPLEMENT A PLA INTO THE PROJECT GENERAL CONDITIONS FOR SCI BENNER TWP.?**

**Summary Answer: It is NOT necessary for DGS to implement a PLA on the Project.**

**A. ANALYSIS**

Although PLA's have had a relatively long history on public works projects, there is little empirical data that directly connects the use of a PLA to the goals espoused to be achieved by their use.<sup>62</sup> That is not to say that a PLA is not effective, but rather, there are so many other factors that could contribute to a given project's success or failure (however those terms are defined), that an owner's use of a PLA, cannot in and of itself be the basis for concluding that project success or failure is attributed to the PLA itself.

Notwithstanding the foregoing, it is important to note that the governing legal standard for the use of a PLA under our public bidding statutes and jurisprudence is not whether it would be "advantageous" or "necessary" to the government to use a PLA, but rather, whether the

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<sup>61</sup> An additional element of this study, the inclusion of minority and women owned business enterprises, was considered. The racial and gender makeup of the Region was reviewed based on census data. Contractors and MWBE officials and industry representatives were contacted, such as the National Association of Minority Contractors ("NAMC"). There is a scarcity of MWBE's in the Region, and those that exist, tend to be far too small to take on a project of this size. This creates practical difficulties for contractors, given the DOL "requirements" and the best value scoring system. Although NAMC's official position is that it opposes PLA's on the basis that its members have been subject to historic under-representation in unions due to "artificial barriers to membership and training programs." NAMC is also a member of the ABC, whose opposition to PLA's is well known. There does not appear to be any evidence that would suggest a PLA would help this problem. Its solutions lie elsewhere and are beyond the scope of this study.

<sup>62</sup> Herzenberg & Price, *supra*.



decision to use a PLA constitutes an "abuse of discretion". Generally speaking, the need to avoid prison overcrowding, and to ensure the availability of skilled labor for a prison construction project is certainly well within DGS' discretion. The impetus of this multi-prison capital construction program by DGS has its roots in a prison overcrowding problem becoming more serious in the recent past.<sup>63</sup> Although projecting skilled labor shortages over the course of 25-29 months in a given region on a given project is less than a precise science, it remains within the government's discretion to insure against that prospect. However, that prospect should have some degree of possibility, based in fact.<sup>64</sup>

Here, the Project appears to be one of only a few major construction projects in the Region to kick-off in Fall 2009. Skilled labor appears to be available from both union and open shop contractors. This availability is due to several factors: increased statewide and regional unemployment in the construction industry; decreased new hire data in the construction industry in the region; reduced capital project spending by both the government and private industry in large-scale vertical construction projects, and the cross-over of available skilled labor from the stagnant residential building sector.

Coupled with the inherent availability of skilled labor is the enlarged geographic scope of the labor market. Owners and Contractors alike report additional competition in bidding from a greater geographic radius than in the recent past. Bidders are coming to the Region from all over Pennsylvania and beyond its borders. Recently, a \$270M private ethanol production facility was constructed in Clearfield County. The General Contractor was from Michigan, and, much to the disappointment of the local contracting community and government officials, it imported a

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<sup>63</sup> Interview, Elizabeth O'Reilly, Deputy Secretary, DGS. May 2009.

<sup>64</sup> In *North Central Mechanical, Inc., supra.*, the Commonwealth Court specifically noted the "tight" labor market in the relevant region at the time, along with the number of competing projects. Neither elements appear present based on the data collected in this study.

significant majority of its own workforce from another job in the Midwest that cancelled unexpectedly. Accordingly, there does not appear to be any existing or projected tightening of the available skilled labor market that would warrant the necessity of a PLA.

There is one project that is of significant scale that if it went into construction, could impact the availability of skilled labor on the Benner Twp. SCI project. The Riverhill Power Cogen Plant in Clearfield County is close to the border of Centre County. The project is run by Sithe Global Power, a large firm from NY that specializes in building power plants. The project scope is a \$900M, 4- year construction cycle. Sithe Global is neutral as to the use of PLA's, but tries to use them, due to the specialized nature of the trades involved, including mining licenses and boilermakers. It has been Sithe's experience in the heavy industrial business of power plants, the overwhelming majority of contractors are union, which drives it to establish standardized conditions, etc., which typically appear in PLA's.<sup>65</sup> A PLA is in place on the Riverhill Project.

The Riverhill Project remains on hold since its owners lost their financing in the private financing market. Site work has begun and an access road constructed to the site. Without more information on how the project schedule, if immediately implemented, would parallel the schedule in this Project, both as to bid packages and trades, it's frankly too speculative to determine any meaningful impact.

What is known about Riverhill is that it is on hold. What is not known is a) whether it has any reasonable prospect of resurrecting its financing; b) whether skilled labor would be "imported" from New York where Sithe Global is based; or c) whether the construction schedule

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<sup>65</sup> Telephone Interview, Steven Poje, Engineered Solutions/Sithe Global Power, May 2009.

itself would create drain on the skilled labor workforce at SCI Benner Township.<sup>66</sup> Nonetheless, the existence of the possibility of Riverhill going forward does not, in and of itself, render a PLA on the Project a necessity for DGS.

#### B. STANDARDIZATION OF TERMS

Although this study concludes that a PLA is not necessary based on available data, the "standardization of terms" element of a PLA can and should still be considered by DGS for the Project. As part of the scope of this study, the collective bargaining agreements ("CBA") for some seventeen trades were collected and reviewed. The purpose was to determine where "standardization" could be achieved for the Project. Although specific terms of collective bargaining agreements were reviewed, such as, holidays, overtime, dispute resolution, etc. these topics are equally as pertinent for open shop contractors on the job.

Union officials and contractors were interviewed, and based thereon, it appears very likely that many union contractors will bid on or make themselves available for the Project. This is due in part to the somewhat specialized nature of prison construction. Accordingly, it is important to address standardization of terms to assist in timely completion and help avoid costly delays and disputes.

Of the 17 CBA's reviewed, at least 13 will expire during the term of the Project. This prospect alone is sufficient to warrant the inclusion of specific "no work stoppage/strike" language to be included as part of the General Conditions for the Project. Here, the DBC has, or will be provided with General Conditions from DGS. It is strongly recommended that those General Conditions be reviewed to ensure that they specifically supercede any downstream

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<sup>66</sup> Based on interviews with Sithe Global and contractors who bid on power plant and prior work, there are two additional factors to consider that mitigate against concluding there will be a labor drain – the two year prison construction schedule will, compared to the four year power plant schedule, concentrate trades on site at different times. In addition, the trade crafts involved in power plants vs. prisons can be very different.

subcontractor/supplier/materialmen agreements, and of course any CBA's to which any contractor/subcontractor/supplier/materialman is a signatory to. Attached to this study as Appx. B is the CBA matrix, with brief recommendations for standardization of terms. Some of which are already addressed in the General Conditions.<sup>67</sup>

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<sup>67</sup> In the event DGS decides to include a PLA, these recommendations can also form the basis of initial negotiations on terms of a PLA, which is outside the scope of this engagement.

## VI. CONCLUSION

The Project in question presents a substantial construction project in sheer size and scope. The design-build process will result in teams of skilled labor constructing multiple buildings and facilities at the same time, while design teams plan and implement future phases of the project. In a "normal" construction environment and economy, projects that might be in place at the same time would impact the availability of skilled labor, which could give pause to the project owner as to whether it should ensure the availability of skilled labor by implementing the PLA into the project.

Here, however, in this Region, at this time, there does not appear to be any data that would support the necessity for the PLA. The Regional construction market is incredibly slow, resulting in an overabundance of skilled labor throughout the Region, the Commonwealth and beyond. There is no competitor for DGS for available skilled labor now, or on the 24-29 month horizon. The most direct competitor for skilled labor is Penn State University. Penn State has never used a PLA, even in the most aggressive phases of its capital building campaigns. Federal and state stimulus dollars are more geared toward roadwork and infrastructure, and have little or no bearing on the available skilled labor for a project like SCI Benner Twp., which will use every major skilled trade craft. Accordingly, under the present circumstances and wholly limited to the facts presented, a PLA is not necessary for DGS to complete this project as planned.

**VII. APPENDICES**

Appendix "A"      Benner Township SCI, Bid Package Values, Summary Sheet for Labor,  
Material and Equipment

Appendix "B"      CBA Comparison Matrix

**Benner Township SCI**

**Bid Package Values**

**Summary Sheet for Labor, Material and Equipment**

5/4/2009

Total Labor	\$ 88,232,111	Aver Rate/Hour	\$ 62.00
Total Manhours	1,100,518	Mandays	137,565

BP	Description	% M	% L	% E	% Total	Material	Labor	Equip	Total	Total Manhours
02A	Sitework	15.0%	40.0%	45.0%	100.0%	\$ 2,314,124	\$ 6,170,997	\$ 6,942,372	\$ 15,427,493	99,532
02B	Pilings	29.0%	48.0%	23.0%	100.0%	\$ -	\$ -	\$ -	\$ -	-
02D	Landscaping	60.0%	35.0%	5.0%	100.0%	\$ 385,200	\$ 224,700	\$ 32,100	\$ 642,000	3,624
02E	Site Utilities	50.0%	42.0%	8.0%	100.0%	\$ 5,778,728	\$ 4,854,131	\$ 924,596	\$ 11,557,455	78,292
03A	Concrete Work	53.0%	42.0%	5.0%	100.0%	\$ 3,888,951	\$ 3,081,810	\$ 366,882	\$ 7,337,644	49,707
03D	Structural Precast Concrete	78.0%	14.0%	8.0%	100.0%	\$ 23,473,009	\$ 4,213,104	\$ 2,407,488	\$ 30,093,601	67,953
04A	Masonry	43.0%	54.0%	3.0%	100.0%	\$ 3,116,110	\$ 3,913,255	\$ 217,403	\$ 7,246,768	63,117
05A	Structural Steel/Metal Deck	73.0%	20.0%	7.0%	100.0%	\$ 6,107,784	\$ 1,673,366	\$ 585,678	\$ 8,366,828	26,990
05D	Miscellaneous Metals	63.0%	35.0%	2.0%	100.0%	\$ 1,917,717	\$ 1,065,399	\$ 60,880	\$ 3,043,996	17,184
07A	Moisture Protection	67.0%	30.0%	3.0%	100.0%	\$ 5,440,085	\$ 2,435,859	\$ 243,586	\$ 8,119,530	39,288
08A	Doors, Frames & Hardware	80.0%	20.0%	0.0%	100.0%	\$ 2,463,846	\$ 615,961	\$ -	\$ 3,079,807	9,935
08B	Windows & Curtainwall	79.0%	21.0%	0.0%	100.0%	\$ 1,978,967	\$ 526,054	\$ -	\$ 2,505,021	8,485
09A	General Trades	35.0%	65.0%	0.0%	100.0%	\$ 1,031,407	\$ 1,915,470	\$ -	\$ 2,946,877	30,895
09D	Ceramic Tile	43.0%	57.0%	0.0%	100.0%	\$ 45,956	\$ 60,919	\$ -	\$ 106,875	983
09F	Flooring	77.0%	23.0%	0.0%	100.0%	\$ 330,274	\$ 98,653	\$ -	\$ 428,927	1,591
09G	Painting & Wall Covering	73.0%	27.0%	0.0%	100.0%	\$ 1,875,739	\$ 693,766	\$ -	\$ 2,569,505	11,190
10A	Specialties	67.0%	33.0%	0.0%	100.0%	\$ 1,340,429	\$ 660,212	\$ -	\$ 2,000,641	10,649
11A	Kitchen Equipment	85.0%	15.0%	0.0%	100.0%	\$ 2,380,000	\$ 420,000	\$ -	\$ 2,800,000	6,774
12A	Equipment	80.0%	20.0%	0.0%	100.0%	\$ 16,017,807	\$ 4,004,452	\$ -	\$ 20,022,259	64,588
15A	Mechanical-Building	41.0%	46.0%	13.0%	100.0%	\$ 13,262,488	\$ 14,879,864	\$ 4,205,179	\$ 32,347,531	239,998
15B	Plumbing-Building	54.0%	41.0%	5.0%	100.0%	\$ 6,538,742	\$ 4,964,600	\$ 605,439	\$ 12,108,781	80,074
15C	Fire Protection-Building	26.0%	72.0%	2.0%	100.0%	\$ 652,358	\$ 1,806,529	\$ 50,181	\$ 2,509,068	29,138
16A	Electrical-Building	45.0%	49.0%	6.0%	100.0%	\$ 9,140,519	\$ 9,953,009	\$ 1,218,736	\$ 20,312,264	160,532
	<b>Trades</b>	<b>34.6%</b>	<b>22.3%</b>	<b>3.6%</b>	<b>60.5%</b>	<b>\$109,480,239</b>	<b>\$ 68,232,111</b>	<b>\$ 17,860,521</b>	<b>\$195,572,871</b>	<b>1,100,518</b>



## CBA COMPARISON

LABOR UNION	CONTRACT TERM/ EXPIRATION
Asbestos Workers LU 23	July 1, 2006 – June 28, 2009
Boilermakers LU 13	September 30, 2006 – September 30, 2009
Bricklayers Local 5	December 26, 2008 – December 23, 2011
Carpenters & Millwrights LU 950	June 1, 2007 – May 31, 2012
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 – Glaziers #751	September 1, 2006 – August 31, 2009
I.U.P.A.T. DC #57 – Painters 409	June 1, 2008 – May 31, 2011
IBEW LU 5	December 26, 2008 – December 23, 2011
Iron Workers LU 3	June 1, 2006 – May 31, 2009
IUOE LU 66	June 1, 2007 – May 31, 2010
Laborers LU 824	July 1, 2008 – June 30, 2011
OPCMIA LU 526	Provided some information – No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	April 14, 2007 – March 31, 2010
Roofers & Waterproofers LU 30	April 30, 2009 – April 30, 2011
Sheet Metal Workers LU 19	June 1, 2007 – May 31, 2010
Teamsters LU 764	2008 – December 31, 2010

**Comments/Recommendation:** Because at least 13 of 17 CBA's will expire during term of Project, "no work stoppage/no strike" language is recommended.



## CBA COMPARISON

LABOR UNION	HOURS OF WORK
Asbestos Workers LU 23	7 am -- 3:30 pm; 8 hours
Boilermakers LU 13	8 am -- 4:30 pm; 8 hours
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	8 am -- 12 pm; 12:30 pm - 4:30 pm; 8 hours
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 -- Glaziers #751	8 am -- 12 pm; 12:30 pm - 4:30 pm; 8 hours
I.U.P.A.T. DC #57 -- Painters 409	8 am -- 12 pm; 12:30 pm - 4:30 pm; 8 hours
IBEW LU 5	No information provided
Iron Workers LU 3	Btw 7:00 am -- 5:30 pm; 8 hours
IUOE LU 66	Beginning btw 6 am and 8 am; 8 hours
Laborers LU 824	7 am -- 3:30pm, 7:30 am -- 4:00 pm, 8 am -- 4:30 pm; 8 hours
OPCMIA LU 526	Provided some information -- No agreement.
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	Btw 6 am -- 6 pm; 8 hours
Roofers & Waterproofers LU 30	5:00am-4:30pm ; 8hrs
Sheet Metal Workers LU 19	8 am -- 4:30 pm, 7 am -- 3:30 pm, 7:30 am -- 4 pm; 8 hours
Teamsters LU 764	Beginning btw 5 am -- 9 am; 8 hours

**Comments/Recommendation:** The most common hours of work are 8 am- 4:30 pm. Each union requires a full 8 hours of work; with an unpaid 30 minute lunch break. General Conditions already include 8:00 -- 4:30 as workday.

## CBA COMPARISON

LABOR UNION	SHIFTS
Asbestos Workers LU 23	1 <sup>st</sup> : 7-3:30 (8 hrs pay); 2 <sup>nd</sup> : 3:30-12 (7 ½ but 8 hrs pay); 3 <sup>rd</sup> : 12-7:30 (7 but 8 hrs of pay) 2&3 – 8 times straight pay.
Boilermakers LU 13	1 <sup>st</sup> : 8 hrs; 2 <sup>nd</sup> : 7 ½ for 8 hrs pay (+8x reg. rate +10%); 3 <sup>rd</sup> : 7 for 8 hrs pay (+8x reg. rate+10%)
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	1 <sup>st</sup> /2 <sup>nd</sup> : 8 hrs; 3 <sup>rd</sup> : 7 for 8 hrs pay + .25 more per hour.
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 – Glaziers #751	Pay 20% above journeyman rate.
I.U.P.A.T. DC #57 – Painters 409	If starts before 6 am or after 12 pm - \$1 over rate
IBEW LU 5	No information provided
Iron Workers LU 3	1 <sup>st</sup> : 8 hrs; 2 <sup>nd</sup> : 7 ½ (8 hrs pay); 3 <sup>rd</sup> : 7 (8 hrs pay)
IUOE LU 66	1 <sup>st</sup> : 8 hrs; 2 <sup>nd</sup> : 7 ½ (8 hrs pay); 3 <sup>rd</sup> : 7 (8 hrs pay)
Laborers LU 824	1 <sup>st</sup> : 8-4:30; 2 <sup>nd</sup> /3 <sup>rd</sup> : 7 (8 hrs pay)
OPCMIA LU 526	Provided some information – No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	Minimum 5 days straight, 8 hrs per shift, 2 <sup>nd</sup> /3 <sup>rd</sup> rec. 15% above reg. rate
Roofers & Waterproofers LU 30	CBA silent
Sheet Metal Workers LU 19	Night shift wage @ +15%
Teamsters LU 764	1 <sup>st</sup> : 8 hrs; 2 <sup>nd</sup> : 7 ½ (8 hrs pay); 3 <sup>rd</sup> : 7 (8 hrs pay)

**Comments/Recommendation:** Each CBA allows for the implementation of shift work. It is recommended that if shift work must be implemented that there be two, and the right to sequence three shifts and that they consist of 1<sup>st</sup>: 8 hours; 2<sup>nd</sup>: 7 ½ hours (with 8 hour pay) and 3<sup>rd</sup>: 7 hours (with 8 hours pay). Shift differentials would need to be standardized as well.

Although the General Conditions presently contemplate only one (1) shift, the DBC has the right to implement a second shift and it is suggested that this could be an effective recovery tool in the event the project gets into scheduling problems.

## CBA COMPARISON

LABOR UNION	HOLIDAYS
Asbestos Workers LU 23	New Years, July 4 <sup>th</sup> , Thanksgiving, Christmas, Labor Day
Boilermakers LU 13	New Years, Memorial Day, July 4 <sup>th</sup> , Thanksgiving, Christmas, Labor Day, Election
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	New Years, Good Friday, July 4 <sup>th</sup> , Labor Day, Thanksgiving & day after, Christmas
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 – Glaziers #751	New Years, Memorial Day, July 4 <sup>th</sup> , Labor Day, Thanksgiving & day after, Christmas, Veterans Day, Good Friday
I.U.P.A.T. DC #57 – Painters 409	New Years, Good Friday, memorial day, July 4 <sup>th</sup> , Labor Day, Thanksgiving & day after, Christmas
IBEW LU 5	No information provided
Iron Workers LU 3	Good Friday, Memorial Day, July 4 <sup>th</sup> , Labor Day, Thanksgiving & day after, Christmas, New Years
IUOE LU 66	Every Sunday, July 4 <sup>th</sup> , 1 <sup>st</sup> day of Buck season, Veteran's day, Thanksgiving, Good Friday, Christmas, New Years
Laborers LU 824	New Years, Memorial Day, Christmas, Thanksgiving & day after, Veteran's day, Election day, July 4 <sup>th</sup> , Labor day, Good Friday
OPCMIA LU 526	Provided some information – No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	New Years, Memorial Day, July 4 <sup>th</sup> , Labor day, Thanksgiving, Christmas
Roofers & Waterproofers LU 30	New Years, Memorial Day, July 4 <sup>th</sup> , Labor Day, Thanksgiving and Christmas
Sheet Metal Workers LU 19	Sundays, New Years, Good Friday, Memorial day, July 4 <sup>th</sup> , Labor Day, Election day, Thanksgiving, Christmas
Teamsters LU 764	Sundays, Memorial day, July 4 <sup>th</sup> , Labor day, Thanksgiving, Christmas, New Years, 1 <sup>st</sup> day of Buck season

**Comments/Recommendation:** All CBAs recognize the following holidays: New Years Day, Thanksgiving, Christmas, Labor Day, July 4<sup>th</sup>. In addition, a majority of Unions recognize: Memorial Day, Good Friday and the day after Thanksgiving (often a pseudo Veteran's day). Accordingly, all of the preceding holidays are recommended for recognition within the General Conditions

## CBA COMPARISON

LABOR UNION	COMPENSATION (ALL CATEGORIES OF PAY)
Asbestos Workers LU 23	Mechanics: base: \$26.90 Apprentice rates (by year) 1: \$14.50; 2: \$16.50; 3: \$19.52; 4: \$20.72; 5: \$21.82
Boilermakers LU 13	Full: \$38.81. Apprentice rates (by months) 6-8: \$36.87; 6-7: \$34.93; 6-6: \$32.99; 5-6: \$31.05; 4-6: \$29.11; 3-6: \$27.17; 2-6: \$25.23; 1-6: \$23.23
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	Journeyman: 6/1/09: \$24.79. Foreman: 6/1/09: \$26.09 Apprentice: (by year & 2009): 1: \$15.12; 2: \$17.85; 3: \$20.33; 4: \$23.05
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 - Glaziers #751	Straight pay: \$19.98
I.U.P.A.T. DC #57 - Painters 409	Industrial rate: 6/1/08: \$26.64; 09: \$27.53; 10: \$28.42
IBEW LU 5	Journeyman: \$30.61 Apprentice: (by year) 1: \$9.18; 2: \$10.71; 3: \$12.24; 4: \$13.77; 5: \$15.31; 6: \$16.84; 7: \$18.37; 8: \$21.43; 9: \$24.49; 10: \$27.55
Iron Workers LU 3	Journeyman: \$24.53 Foreman: +\$2.50
IUOE LU 66	Party Chief: \$19.49; Instrument man: \$18.40; Rodman/Chainman: \$18.04
Laborers LU 824	Based on 7/1/09 figures - Zone 1&2 Building Laborer: \$18.32/\$18.05 Plaster tender/mason tender: \$18.47/18.20 Asbestos removal laborer: \$18.57/\$18.30 Watchman/Flagman: \$17.32/ \$17.05
OPCMIA LU 526	Provided some information - No agreement - 6/1/08: \$22.73; 09: \$23.65; 10: \$24.60
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	4/1/07: \$31.75; 08: \$32.75; 09: \$33.85 Foreman: 07: +\$2.40; 08: +\$2.55; 09: + \$2.75
Roofers & Waterproofers LU 30	Journeyman base: 39.95; Appr; base: 19.04
Sheet Metal Workers LU 19	No information provided
Teamsters LU 764	

**Comments/Recommendation:** Because Project is Prevailing Wage, there is very little to add here. Moreover, the data collected is suspect as some unions sent CBA's without updated wage sheets and vice versa.

## CBA COMPARISON

LABOR UNION	DISPUTE RESOLUTION
Asbestos Workers LU 23	6 member trade board: 3 Employer, 3 Union. American Arbitration Association binding Arbitration if no majority decision.
Boilermakers LU 13	Present to union rep/employer. If not resolved - 7 days submitted to International rep; if not resolved - arbitration committee - panel of 3 (each chooses one) - binding (majority)
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	Grievance to foreman and union steward to discuss within 2 hours; union rep and job supervisor - within 48 hours; union rep/Er rep within 24 hours; Exec director of keystone contractors assn and exec sec of council of carpenters - 48 hours. Binding Arbitration with federal mediation and conciliation in D.C. within 5 days.
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 - Glaziers #751	Grievance submitted in writing - 10 days - written answer. 10 days 2 ER reps meet to resolve - if not - 10 days AAA (binding).
I.U.P.A.T. DC #57 - Painters 409	Joint trade board - 3 members/2 alts. Decision in 48 hours; w/in 7 days - hearing, binding decision
IBEW LU 5	No information provided
Iron Workers LU 3	Labor management committee - 3 union/3 ER - meet within 48 hrs; final - council on industrial regulation - binding decision
IUOE LU 66	Assn & union - elect arbitration committee - 3 members of each - attempt resol. 2 days. Unresolved - Jt. Arbitration committee - impartial arb (binding)
Laborers LU 824	Receipt of grievance - 48 hrs to pick member for 3 person arbitration. W/in 24 hrs arbs meet/add 3 <sup>rd</sup> - 72 hrs. decision final/binding
OPCMIA LU 526	Provided some information - No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	Grievance w/in 15 days. Union rep to discuss with Er. w/in 20 days - ee must reduce grievance to writing. No resolution in 30 days - referred to impartial binding arbitration (3 names/inds.)
Roofers & Waterproofers LU 30	Grievance w/in 15 days; 2 step procedure
Sheet Metal Workers LU 19	No information provided
Teamsters LU 764	1-job foreman & union steward discuss grievance, 2-business manager and job super meet - 24 hrs/decision, 3-3 days - arbitration picked from list by federal mediation and conciliation (binding/final)

**Comments/Recommendation:** While timing certainly varies - a majority of Unions have a 3 member/person panel to resolve disputes/grievances in a timely fashion. It is recommended therefore, that a Union rep and an Employer rep, as well as a "neutral" third party attempt to resolve grievances. If same cannot be accomplished, then the matter should be submitted to binding and final arbitration for resolution. This should be accomplished within 10-15 days.

Art. 17 of the General Conditions already addresses dispute resolution. This is an example of how the General Conditions should specifically supercede all CBAs for this Project.

## CBA COMPARISON

LABOR UNION	MANAGEMENT RIGHTS
Asbestos Workers LU 23	Job foreman
Boilermakers LU 13	Authorize business manager – to be consulted on all matters – international union liable for manager's acts –use judgment
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 – Glaziers #751	
I.U.P.A.T. DC #57 – Painters 409	Employer – full right to direct progress of work; rt to institute drug policy
IBEW LU 5	No restraints on ER – except those in collective bargaining agreement
Iron Workers LU 3	Business manager – permitted to visit all jobs – ot to interfere with progress of work
IUOE LU 66	
Laborers LU 824	
OPCMIA LU 526	Provided some information – No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	
Roofers & Waterproofers LU 30	CBA silent
Sheet Metal Workers LU 19	No information provided
Teamsters LU 764	

**Comments/Recommendations:** To the extent they are included, the management rights clauses are generic. Because this Project will involve "management" rights of DGS – CM –DBC- Contractors, and therefore labor, General Conditions must supercede.

<b>CBA COMPARISON</b>	
<b>LABOR UNION</b>	<b>APPRENTICES</b>
Asbestos Workers LU 23	Ratio 1:4; no apprentice shall execute work unless with a mechanic. Business manager may adjust ratio
Boilermakers LU 13	Ratio 1:5; 12 months – journeyman
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	Joint apprenticeship and training program
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 – Glaziers #751	
I.U.P.A.T. DC #57 – Painters 409	Ratio 1:3; indentured – JATC
IBEW LU 5	Ratio 1:3; Local JATC; supervisor of journeyman at all times. Min 6500 hours.
Iron Workers LU 3	Ratios 1:4 (structural), 1:2 (pre-engineered), 1:1 (Roads), 1:1 (ornamental & fence)
IUOE LU 66	Standard area II independent construction agreement
Laborers LU 824	
OPCMIA LU 526	Provided some information – No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	Ratio 1:1. must be employed with journeyman. Work with JATC
Roofers & Waterproofers LU 30	Ratio 1:3
Sheet Metal Workers LU 19	Ratio 1:3, supervision of JATC
Teamsters LU 764	

**Comments/Recommendations:** General minimum standards already exist. Little comment unless a PLA is implemented. Then a ratio would need to be negotiated.

## CBA COMPARISON

LABOR UNION	EEO
Asbestos Workers LU 23	
Boilermakers LU 13	
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	Agree to comply with Title VII of civil rights act -- non-discrimination
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 - Glaziers #751	No discrimination based on race, color, creed, sex, age or national origin
I.U.P.A.T. DC #57 - Painters 409	No union member may discriminate based on sex, race, color, creed, national origin
IBEW LU 5	No discrimination by ER or union against employee for sex, race, age, color, creed or national origin
Iron Workers LU 3	
IUOE LU 66	Parties to agreement agree not to discriminate against employees -- race, color, creed, age, sex, national origin
Laborers LU 824	Hiring: non-discrimination against workman -- race, color, creed, sex
OPCMIA LU 526	Provided some information -- No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	No discrimination with regard to race, color, religion, sex, age and national origin by union or employer.
Roofers & Waterproofers LU 30	CBA silent
Sheet Metal Workers LU 19	No information provided
Teamsters LU 764	

**Comment/Recommendation:** All Unions, Employers and Employees are prohibited from discrimination with regard to race, color, creed, age, religion, sex and national origin. The reporting obligations of individuals who feel victimized by discrimination are not outlined.

General Conditions should contain not only the EEO Statement, but procedure for investigating and resolving claims thereof.



## CBA COMPARISON

LABOR UNION	WORK RULES
Asbestos Workers LU 23	
Boilermakers LU 13	
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 -- Glaziers #751	
I.U.P.A.T. DC #57 -- Painters 409	
IBEW LU 5	No information provided
Iron Workers LU 3	
IUOE LU 66	
Laborers LU 824	
OPCMIA LU 526	Provided some information -- No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	
Roofers & Waterproofers LU 30	CBA silent
Sheet Metal Workers LU 19	No information provided
Teamsters LU 764	

**Comments/Recommendation:** Work rules for the above Labor Unions were either non-existent or all over the place. Many agreements wholly lacked rules beyond certain cleaning procedures, the supplication of tools, etc. General Conditions should address this topic for sake of uniformity.

## CBA COMPARISON

LABOR UNION	STRIKES/ LOCKOUTS
Asbestos Workers LU 23	No lockouts except when ordered by building trades employers assn. No strike except when order by building and construction trade council w/ approval by int'l assoc. of heat and frost insulators and asbestos workers.
Boilermakers LU 13	
Bricklayers Local 5	No information provided
Carpenters & Millwrights LU 950	
Elevator Constructors LU 59	No information provided
I.U.P.A.T. DC #57 – Glaziers #751	
I.U.P.A.T. DC #57 – Painters 409	Employees – right to respect picket lines
IBEW LU 5	No information provided
Iron Workers LU 3	Mutually agreed – no strikes or lockouts
IUOE LU 66	No lockouts/strikes/stoppages
Laborers LU 824	During a dispute: no cessation of work/lockouts
OPCMIA LU 526	Provided some information – No agreement
Plumbers & Pipefitters LU 520	No information provided
Road Sprinkler Fitters LU 669	During term of agreement – no strikes, lockout, slow downs or work stoppages
Roofers & Waterproofers LU 30	CBA silent
Sheet Metal Workers LU 19	Recognition of picketing
Teamsters LU 764	No lockouts, strikes, work stoppages

**Comments/Recommendation:** No lockouts, strikes or work stoppages. Only one Labor agreement required recognition of the ability to strike. The overwhelming majority of the Labor agreements indicates that no picketing, work stoppages or lockouts of any kind will be permitted (even where a dispute is ongoing).