

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Associated Builders and Contractors, :	:
Inc., Keystone Chapter, :	:
Petitioner :	:
v. :	:
Commonwealth of Pennsylvania :	:
Department of General Services, :	:
Reggie McNeil, individually and in :	:
His capacity as Secretary of the :	:
Department of General Services, and :	:
Greg Kirk, individually and in his :	:
capacity as Deputy Secretary for :	:
Capital Programs of the Department :	:
of General Services, :	No. 189 M.D. 2025
Respondents :	Heard: June 17, 2025

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COVEY

FILED: June 26, 2025

Before this Court in its original jurisdiction is Associated Builders and Contractors, Inc., Keystone Chapter's (ABC)¹ Motion for Preliminary Injunction

¹ ABC is a Pennsylvania association comprised of general contractors and subcontractors, that seeks to advance the interests of its members who frequently bid on public construction projects in Pennsylvania.

“Generally, the doctrine of standing is an inquiry into whether the [potential party] has demonstrated aggrievement, by establishing a substantial, direct[,] and immediate interest in the outcome of the litigation.” *Robinson Twp. v. Commonwealth*, . . . 83 A.3d 901, 917 ([Pa.] 2013) (quotation marks and citation omitted). “[A] ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law[.]” *Pa. Med. Soc’y v. Dep’t of Pub. Welfare* . . .

(Motion) seeking to enjoin the Commonwealth of Pennsylvania (Commonwealth) Department of General Services (DGS), Reggie McNeil (McNeil), individually and in his capacity as DGS Secretary, and Greg Kirk (Kirk), individually and in his capacity as DGS Deputy Secretary for Capital Programs, (collectively, DGS) from requiring selected prime contractors to sign or agree to a project labor agreement (PLA) and all subcontractors to sign or agree to a Letter of Assent for proposed DGS Project C-1050-0001, Pennsylvania Joint Laboratory Facility, Phase 1 (Project). *See* DGS Exs. R-1 (Project Overview) and R-2 (Project Agency Description, Layout, and Systems Slides). The Project entails constructing a new, approximately 300,000 square foot testing laboratory in Susquehanna Township, Dauphin County, for use by the Department of Agriculture (Agriculture), the Department of Environmental Protection (DEP), the Department of Health (DOH), and the Department of Conservation and Natural Resources (DCNR) (collectively, the Agencies).²

, . . . 39 A.3d 267, 278 ([Pa.] 2012). “[A] ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest.” *Id.* An interest is “immediate” if that “causal connection” is not remote or speculative. *Id.* **An association has standing as a representative of its members, even in the absence of injury to itself, if it establishes at least one of its members has standing individually.**

Shirley v. Pa. Legis. Reference Bureau, 318 A.3d 832, 852 (Pa. 2024) (emphasis added); *see also Malt Beverages Distribs. Ass’n v. Pa. Liquor Control Bd.*, 881 A.2d 37, 42 (Pa. Cmwlth. 2005) (“An association need only allege that one member is suffering immediate or threatened injury.”).

Even under the narrowest interpretation of association standing principles, ABC presented evidence in the form of the testimony of The Farfield Company’s President, Robert R. Brewer, and Smucker Company’s Vice President of Sales, Edward Engle, that the instant Project Labor Agreement prevented their ABC member companies from bidding on the Project. Accordingly, ABC has association standing.

² DGS owns Agriculture’s laboratory facility in the Agriculture building in Harrisburg, Pennsylvania, which was built in 1963. *See* DGS Ex. R-4. Agriculture commissioned a study in 2009 about building a stand-alone laboratory complex, but the cost of the construction exceeded Agriculture’s budget. *See id.* Agriculture now has \$10 million planned to retrofit its facility. *See id.*

Background

On March 27, 2024, Governor Josh Shapiro (Governor Shapiro) sent the following letter to all Commonwealth agency heads (Governor's Letter):

The Commonwealth has planned a number of large capital projects in the near future, and I want to ensure that the Commonwealth's public contracting processes for these solicitations are executed in the most efficient and expeditious manner possible. I know that capital projects can be highly complex and are urgently needed to provide critical services to Pennsylvanians, necessitating a steady, consistent, and readily available supply of critical workers with the right skillsets. I also know how critical these projects are to carrying out our GSD approach^[3] in the Shapiro - Davis Administration.

To that end, [PLAs] can be a powerful tool to support capital projects. When deemed appropriate, a Commonwealth-issued and negotiated PLA can ensure the availability of experienced and trained craft labor to help projects meet important timeliness needs while guaranteeing successful completion of capital projects at a fair cost to taxpayers. I strongly support the use of PLAs wherever appropriate. **Effective April 1, 2024, I am charging that, going forward, all agencies under the Governor's jurisdiction examine all contract solicitations to determine if use of a PLA is appropriate and allowed.** Pennsylvania law permits the inclusion of PLAs in certain solicitations, **provided they do not preclude any contractor from bidding on the project,**

DOH has leased its laboratory facility in Exton, Pennsylvania since 1977, and expanded into other portions of the building in 2005. *See* ABC Ex. W; *see also* DGS Ex. R-11. DOH recently extended its lease through 2034, and has spent \$2 million upgrading the facility.

DEP and DCNR currently lease laboratory facilities in Harrisburg, Pennsylvania. DEP has leased its laboratory facility since 2002, and it was renovated in 2004; however, DEP has experienced problems at the facility since it has occupied the building. *See* ABC Ex. W; *see also* DGS Ex. R-5. DCNR executed a 10-year lease for its laboratory facility in 2022. *See id.*

³ The *GSD approach* appears to be a reference to Governor Shapiro's slogan *Getting Stuff Done*. *See* www.pa.gov/governor/newsroom/2025-press-releases/getting-stuff-done--what-people-are-saying-about-gov-shapiro-adm.html (last visited June 26, 2025).

the bidding process is open to both union and nonunion contractors without discrimination, and the use of non[-]union labor is allowed. PLAs are appropriate in situations where the PLA requirement relates to the need for the prompt completion of the project or concerns with the availability of qualified labor.

Moving forward, DGS will partner with your agencies to proactively attach PLAs to solicitations where DGS and your agency jointly establish the need for urgency of the project, recognize the complexity of the project, or validate concerns regarding the availability of qualified labor. . . . Under this direction, **PLAs will be used on future projects in every instance where the requisite urgency, complexity, or concerns regarding the availability of qualified labor workforce are demonstrated.**

ABC Ex. D (emphasis added).

Pursuant to the Governor’s Letter, DGS’s *Internal Process for PLA Determination* (DGS PLA Process) specifies that DGS and its client agencies must “review the project for complexity and common knowledge awareness of any significant changes in the economy and workforce,” and evaluate the “critical need for the project . . . to be completed on time based on extraordinary circumstances.” ABC Ex. Q at 1. Notably, Step 8 of the DGS PLA Process requires the DGS Secretary to issue a memo to the file for Capital Programs “to negotiate a PLA for incorporation into the [p]roject’s procurement documents.” *Id.* at 2. Step 9 of the DGS PLA Process mandates “Capital Programs and DGS Legal negotiate the terms of the PLA with the [t]rade [c]ouncil(s) and [l]ocal [l]abor [u]nion(s) in the project area.” *Id.*; see also DGS’s *Capital Programs Project Labor Agreement Process* (which specifies that DGS shall consider the particular need and urgency (i.e., “[t]ime is of the [e]ssence”) “for the project to be completed on time based on

extraordinary circumstances[,]” plus the complexity and availability of qualified labor. *See* ABC Ex. R at 1.).

On December 11, 2024, McNeil notified Governor Shapiro’s office and the DGS Project team: “Early next week, [DGS] will sign a [PLA] determination, initiating the process to negotiate the PLA with the labor unions. These negotiations typically take 6[to]8 weeks to complete. After I sign the determination[,], I will inform this group so [it] can share with external parties.” ABC Ex. N.

On December 17, 2024, McNeil issued a memorandum to the Project file, in which he stated:⁴

I have decided that using a PLA on this [P]roject is appropriate and serves in the best interest of the Commonwealth. I will instruct the [P]roject team to negotiate a PLA to be incorporated into the [P]roject’s procurement documents.

My determination was based upon the totality of information, with particular attention to the following:

1. The PLA ensures that the [P]roject has a steady and reliable access to uniformly qualified, trained, and experienced labor regardless of the labor demand from other significant projects or any anticipated skill shortages.
2. The PLA provides an increased assurance that the [P]roject will be completed on time.
3. The PLA ensures uniform and standardized work rules, including but not limited to work hours, shifts, holidays, dispute resolution, and apprentice ratios between the local unions.
4. The PLA will likely increase safety and decrease any risk of injury on the [P]roject due to

⁴ Kirk prepared the memorandum for McNeil’s signature.

the safety training received and safety consciousness apprenticeships.

5. The PLA promotes cooperation and communication between the local unions and contractors on the [P]roject.

6. The PLA creates increased opportunities for employment of the local workforce.

ABC Ex. G; *see also* ABC Ex. X at 3.

By December 18, 2024 email, Kirk informed Governor Shapiro’s office and McNeil that DGS estimated signing the PLA determination memorandum that day, PLA negotiations would take 45 to 60 days (to approximately February 5, 2025), incorporating the PLA into a Request for Proposal (RFP) and releasing the RFP would take 7 days (to approximately February 5, 2025), the proposal submission window would be 60 to 75 days (to approximately late April 2025), and proposal review and award notifications would take 60 to 90 days (to approximately summer 2025). *See* ABC Ex. O.

On January 9, 2025, Kirk issued a Determination Decision Memo regarding use of the RFP procurement method for the Project.⁵ He represented therein: “The use of the standard competitive sealed bid process for the General Contract and [Heating, Ventilation, and Air Conditioning ([HVAC])] Contract’s scope of work for the [Joint Laboratory] facility [(Facility)] is not advantageous to the Commonwealth” based on the Project’s complexity, as specified therein. ABC Ex. F at 1. Kirk added: “The [] factors demonstrate unique construction considerations on this [P]roject, which requires specific contractor knowledge, skill, and experience to safely and successfully complete the [Project].” ABC Ex. F at 2.

⁵ Section 513(a) of the Commonwealth Procurement Code, 62 Pa. C.S. § 513(a), allows DGS to use the competitive sealed *proposals* method of procurement when sealed *bidding* is either not practicable or advantageous to the Commonwealth.

On March 26, 2025, DGS issued the RFP, therein seeking 9 prime contractors for the General Contract and HVAC Contract portions of the Project.⁶ *See* ABC Ex. C. The RFP’s Scoring Matrix for Technical Submissions allows DGS to award proposers up to 3 points for their *Quality Control Plan* (“Proposer demonstrated an understanding of the complexities of this [P]roject and possesses the capabilities to accomplish, coordinate and manage the [P]roject tasks, to monitor and report [P]roject tasks and deliverables, to control [P]roject.”), up to 3 points for *Staffing Resources* (i.e., “Proposer’s knowledge and understanding of the capabilities of all skills, trades, and subcontractors and their corresponding on-site safety requirements and also compliance with [the federal Occupational Safety and Health Administration (OSHA)] and applicable state safety requirements.”), up to 3 points for *Skill Training* (i.e., “Proposer has explained the steps taken to provide a work force that has been properly trained and prepared to perform the [w]ork on the contract.”), and up to 3 points for *Workforce Safety* (“Proposer has explained their firm’s workforce safety training program(s) and/or safety certification programs including but not limited to their worker’s compensation risk factor.”). ABC Ex. E. DGS’s RFP timeline was as follows:

Notice to Proposers/Issue RFP - March 26, 2025

Pre-Proposal Conference - April 7, 2025

Deadline to Submit Questions - April 30, 2025

Deadline to Issue Addendums Amending the RFP - May 7, 2025

⁶ DGS separately issued Invitations for Bid (IFB) for the Project’s site work, interiors, sheet metal, plumbing, electrical, site electrical, and fire protection scopes of work. DGS’s January 9, 2025, Determination Decision Memo, declared why the IFB process was not suitable for the General Contract and the HVAC Contract. *See* ABC Ex. F. The RFP was included as a bid document for the contracts subject to the IFB process.

Proposal Submission Deadline - June 3, 2025⁷

See RFP at 3. DGS estimated that the Project would be completed in 1,084 days.

See *id.*

RFP Part I, Section 1.1. also specified, in pertinent part:

A. [PLA]: The timely completion of this [P]roject is a critical element in the efficient and effective operation of the new joint laboratory facility The Central Pennsylvania Building and Construction Trades Council [(Trades Council)] and [19 of the Trades Council's respective affiliates and members, referred to as] Affiliated Local Unions [(Unions),⁸] have executed a [PLA] for the work to be performed on this Project. This PLA and the contact information for obtaining the [c]ollective [b]argaining [a]greements [(CBAs)] and other agreements are mentioned in [RFP] Appendix P and Appendix Q^[9] and provided in [RFP] Addendum No. 1. **By submission of a proposal for this [P]roject, [p]roposers acknowledge that their agreement to sign and abide by the provisions of the attached PLA is a condition precedent to receiving an award or a contract from DGS for this Project.** Proposers shall provide the PLA with their signature to DGS within three (3) days after receipt of notice to provide it. Failure or refusal of the apparent successful [p]roposer to sign the PLA and return it will be considered a refusal to comply with the proposal requirements and result in rejection of the proposal as non-responsive.

RFP at 6 (bold emphasis added). By RFP Addendum No. 1, DGS incorporated the PLA into the RFP.¹⁰ See ABC Ex. B (Addendum No. 1).

⁷ Proposals responsive to the RFP were initially due by May 13, 2025; however, in RFP Addendum No. 5, DGS extended the submission date to June 3, 2025.

⁸ See ABC Ex. A (PLA) at 2 (complete list of participating Unions).

⁹ DGS did not attach the Unions' 19 previously negotiated CBAs to the PLA or the RFP. Rather, DGS provided the contact information for each Union so that prospective proposers could request copies of the CBAs. See RFP Appendix Q.

¹⁰ On March 20, 2025, United Association Plumbers and Pipefitters Local Union 520 Business Manager and Trades Council President Jim Enders notified DGS's Assistant Chief

The PLA represented:

The **timely, safe, cost-effective delivery of [C]raft [L]abor [S]ervices^[11] is critical** to the overall success of this Project and utilization of this [PLA] is essential to these goals. The [p]arties [(i.e., the Trades Council, the Unions, and the Contractors)^{12]} further understand and agree that this Project should provide a means for **promoting workforce development efforts** in the local construction industry, insofar as such efforts can be channeled through this [PLA] to generate a substantial number of good apprenticeship employment opportunities for central Pennsylvania residents.

ABC Ex. A (PLA) at 6 (emphasis added). To that end, the PLA was “binding on the Trades Council and . . . Unions . . . and the Contractor[s] . . . , . . . and [] cover[ed] all Craft Labor Services . . . performed on [the Project’s] Covered Work.”¹³ PLA at

Counsel for Capital Programs, Edward Olivieri, that North America’s Building Trades Unions approved the PLA. See ABC Ex. V at 3. On March 24, 2025, the Trades Council and the Unions signed the PLA. See ABC Ex. A.

¹¹ The PLA defines *Craft Labor Services* as “all work performed for Covered Work on the Project, including work traditionally and typically performed by workers represented by the . . . Unions identified in this [PLA].” PLA at 7.

¹² The PLA defines *Contractor* as

the entity that signs a contract for the work with DGS (i.e., DGS’s nine [p]rime [c]ontractors). The term “subcontractors” means all construction firms with subcontracts of every tier with the Contractor that are performing Craft Labor Services performed on Covered Work on the Project. The term “subcontractors” shall not include employees, agents[,], or consultants of DGS, DGS’[s] Commissioning Agent or DGS’ Construction Management team, as further described in this [PLA].

PLA at 3. “The Contractors shall assure compliance with this [PLA] by the subcontractors.” *Id.*

¹³ The PLA defines *Covered Work* as follows:

This [PLA] shall only apply to all construction, demolition[,], and renovation work to be performed within the physical limits of the contract as set forth on the Contract Documents for the [Project] which will be awarded to multiple Contractors by [DGS] in accordance with the [law commonly known as the] Separations

2; *see also* PLA at 3 (“The Trades Council and the . . . Unions agree that this [PLA] . . . will fully apply to the successful Contractors on this Project.”); PLA at 7 (“[T]he Contractors procured directly by [DGS] shall execute and be bound by this [PLA].”). The PLA also mandated:

The Contractors that execute this [PLA] shall only enter subcontracts with subcontractors that have executed the Letter of Assent to this [PLA] (*see* [PLA] Appendix[x A])[] binding the subcontractor to the terms of this [PLA]. The Contractors that execute this [PLA] shall also include in any subcontract used to procure subcontractors a provision specifically requiring the subcontractor to execute the Letter of Assent to this [PLA].

PLA at 7 (*italics and emphasis added*). Therefore, in order to *submit* proposals in response to the RFP, prospective Contractors must agree to bind themselves and their subcontractors to the PLA. *See* PLA at 3.

In addition, the PLA required that the Contractors and subcontractors “**shall employ [] persons [to perform Craft Labor Services on Covered Work] pursuant to the terms and conditions of this [PLA] and applicable [CBAs] provided in [PLA] Appendix B . . . [,]**” PLA at 7-8 (*emphasis added*), **and any**

Act[, Act of May 1, 1913, P.L. 155, *as amended*, 53 P.S. § 1003 (relating to separate specifications for plumbing, heating, ventilating, and electrical work)]. The nature and scope of the work of the Project is described in detail in the Competitive Sealed Bidding (i.e., low bid) and [RFPs] issued for this Project, including the contract documents as defined in Article 1 of the Standard Construction Contract, which is incorporated by reference. This scope of the work may be amended from time to time by DGS by change order to the Contractor. A change order to the Contractor will not require a fully executed amendment to this [PLA]. This paragraph should be construed in conjunction with Section 5 of this Article that describes Work that is not covered by this [PLA].

PLA at 7.

successor agreements or amendments thereto. *See* PLA at 2; *see also* PLA Appendix A. The Contractors and subcontractors must also “**recognize the . . . Unions as the sole and exclusive bargaining representatives of all workers performing Craft Labor Services on Covered Work within their respective jurisdictions working on the Project within the scope of this [PLA].**”¹⁴ PLA at 8 (emphasis added); *see also* PLA at 12 (“The Contractor and subcontractors of any tier recognize the Trades Council and the . . . Unions . . . as sole and exclusive bargaining representatives of all workers performing Craft Labor Services on this Project.”). Thus, despite that each Contractor retains the “general authority for the management of the Project,” the prime [C]ontractor cannot enforce Project work rules that are “**in conflict or at variance with the terms and conditions of the appropriate [CBA].**” PLA at 14.

Although the PLA affords the selected Contractors “the right to determine the required number of employees” for the Project,¹⁵ *see* PLA at 12, to use their existing employees as Project Managers and Superintendents, *see* PLA at 10, and to hire or transfer 3 additional workers as core employees of which the Unions must approve, *see* PLA at 12, the PLA commands that

the remaining workers employed to perform Craft Labor Services on Covered Work, whether employed by the Contractor or subcontractors of any tier, **shall be employed through the appropriate [] Union identified in this [PLA] and hired and deployed in accordance with the hiring hall rules, referral systems[,] or other hiring procedures established in the [CBAs]**

¹⁴ The PLA prohibits labor strikes and Contractor lockouts during the Project’s pendency. *See* PLA at 18-19. Thus, the Contractors and the Unions must abide by a conflict resolution process prescribed in the PLA. *See* PLA at 19-20.

¹⁵ The PLA requires “[t]he ratios of journeymen/apprentices shall comply with those set forth by the Commonwealth’s Department of Labor & Industry and the [CBAs].” PLA at 12.

PLA at 10 (emphasis added); *see also* PLA at 12 (“Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from Union referrals . . .”). While the PLA allows the Contractors to “hire or transfer more than three (3) [c]ore [e]mployees[,]” the Trades Council and the Unions must agree. PLA at 12.

However, the PLA assures that

[s]uch **job referral system will be operated in a non-discriminatory manner** and in full compliance with federal, state[,] and local laws and regulations requiring equal employment opportunities and nondiscrimination, and referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions[,] or any other aspects or obligations of union membership, policies[,] or requirements.

PLA at 10-11 (emphasis added). The PLA adds that the selected Contractors have “the right to reject any applicant referred by the . . . Union, subject to applicable show-up payments required in the [CBAs].” PLA at 12. Moreover, “no workers performing Craft Labor Services on Covered Work shall be required to join any Union or pay any agency fees or dues as a condition of being employed, or remaining employed, on the Project.” PLA at 11.

The PLA further represents:

The . . . Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft workers to fulfill the manpower requirements of the Contractor, including calls to local unions in other geographic areas when its referral lists have been exhausted. In the event that any Union is unable to fill any requisition for qualified employees at least twenty-four (24) hours, or in the allotted time in the applicable [CBA] (whichever is longer), prior to the requested report time made by the Contractor (Saturdays, Sundays and Holidays excepted), the Contractor may solicit and employ applicants from any other available

source. The Contractor shall inform the Union and DGS of employees hired by any source other than by referral by the . . . Unions.

PLA at 13.

DGS conducted an RFP pre-proposal conference on April 7, 2025, at which some proposers questioned why the PLA was included with the RFP and whether it could be removed, but DGS refused to discuss the PLA. *See ABC Ex. J.*

On May 19, 2025, ABC filed a Petition for Review in this Court's original jurisdiction on behalf of its numerous non-union contractor (NUC) and subcontractor members seeking to enjoin DGS from applying the PLA to the Project because it discriminates against NUCs in violation of the Pennsylvania Constitution and the Commonwealth's competitive bidding laws.¹⁶ ABC argues that, because a significant percentage of the Commonwealth's workforce is either non-union or represented by unions that are not signatories to the PLA, by requiring the PLA for the Project, DGS precluded qualified firms and individuals from bidding and working on the Project.

Also on May 19, 2025, ABC filed the Motion, therein requesting a preliminary injunction pending this Court's review of the merits of ABC's Petition for Review. ABC specifically asks this Court to: (1) preliminarily enjoin DGS from requiring the selected prime contractors to sign or agree to the PLA (and from requiring the subcontractors to sign or agree to the Letter of Assent) for the Project; (2) stay the procurement for the Project until this Court decides the merits of ABC's

¹⁶ DGS challenges ABC's choice to file this taxpayer/association action rather than filing a bid protest. However, because ABC is not itself a contractor qualified to bid on the Project, it could not file a bid protest. *See* Section 1711.1(a) of the Procurement Code, 62 Pa.C.S. § 1711.1(a) ("A bidder or offeror, a prospective bidder or offeror[,], or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract, . . . may protest to the head of the purchasing agency in writing.").

Petition for Review (i.e., a permanent injunction request); (3) direct DGS to stop any further action regarding the proposals and stay the procurement until this Court rules on ABC's permanent injunction; and (4) if DGS removes the PLA requirement and reissues the RFP, order DGS to allow a minimum of four weeks for offerors to submit proposals.

Proposers submitted responsive proposals to DGS by June 3, 2025. On June 9, 2025, DGS filed an answer opposing the Motion. This Court conducted a hearing on the Motion on June 17, 2025, at which ABC and DGS presented witnesses and exhibits.¹⁷ DGS filed an answer to the Petition for Review on June 18, 2025.

Discussion

Preliminarily,

[t]here are six essential prerequisites a party must establish before obtaining preliminary injunctive relief:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and[] (6) the preliminary

¹⁷ With the exception of the hearsay portions of an August 19, 2024 email from Gary Warren (Skanska USA) to DGS regarding market outreach, *see* ABC Ex. M, the parties stipulated to the admissibility of the exhibits.

injunction will not adversely affect the public interest.

SEIU Healthcare P[a.] v. Commonwealth, . . . 104 A.3d 495, 502 ([Pa.] 2014) (citing *Warehime v. Warehime*, . . . 860 A.2d 41, 46-47 ([Pa.] 2004)). Because the grant of a preliminary injunction is an extraordinary remedy, the failure to establish a single prerequisite requires the denial of the request for injunction. *Summit Towne [Centre Inc. v. Shoe Show of Rocky Mount, Inc.]*, 828 A.2d [995,] 1000 [(Pa. 2003)].

SPTR, Inc. v. City of Phila., 150 A.3d 160, 166 (Pa. Cmwlth. 2016). The burden of proving each prerequisite rests on the moving party. *See Weeks v. Dep’t of Hum. Servs.*, 222 A.3d 722 (Pa. 2019); *see also SEIU Healthcare; Summit Towne*.

1. The party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits.

The Pennsylvania Supreme Court has ruled that, “[t]o establish a clear right to relief, the party seeking an injunction need not prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties.” *SEIU Healthcare*, 104 A.3d at 506.

ABC argues that it and its members’ right to relief is clear because, as outlined in its Petition for Review, DGS’s inclusion of the PLA for this Project violated the Pennsylvania Constitution¹⁸ and the Commonwealth’s competitive

¹⁸ ABC relies on article III, section 22 of the Pennsylvania Constitution, *see* Motion ¶ 68, which declares, in relevant part: “The General Assembly shall maintain by law a system of competitive bidding under which all purchases of materials, printing, supplies[,] or other personal property used by the government of this Commonwealth shall so far as practicable be made.” PA. CONST. art. III, § 22. However, this Court has held:

[B]ecause that constitutional provision is limited to “purchases of materials, printing, supplies or other personal property used by the government[,]” Pa. Const. art. III, § 22, Pennsylvania courts have ruled that it does not apply to service or real property contracts. *See Pa. Indus. for the Blind & Handicapped v. Larson*, . . . , 436 A.2d

bidding laws as discriminatory against NUCs. ABC asserts that no PLA was warranted and, by including the PLA in this case, DGS created uncertainty for NUCs in preparing proposals that do not exist for union contractors, thereby precluding NUCs from participating in the RFP process and binding them to CBAs that they do not have access to and cannot renegotiate upon expiration. Further, ABC claims that DGS has failed to establish extraordinary circumstances that would require the use of a PLA for the Project. To the extent DGS wishes to prevent alleged delays to the Project, ABC argues that the RFP and the resultant contract have adequate safeguards to ensure prompt completion in ways that do not discriminate against NUCs, such as bonding requirements and liquidated damages.

DGS retorts that its inclusion of the PLA in this RFP does not violate the Pennsylvania Constitution or competitive bidding laws, and the Project has obvious extraordinary circumstances - a critical deadline and workforce availability issues - which necessitated the use of a PLA here.

Relevant here, the General Assembly enacted the Commonwealth Procurement Code (Procurement Code),¹⁹ which sets forth a system of competitive

122, 124 ([Pa.] 1981) (Article III, [s]ection 22 of the Pennsylvania Constitution “has no applicability to contracts for services[.]”); *see also Pa. Associated Builders & Contractors, Inc. v. Commonwealth, Dep’t of Gen. Servs.*, 996 A.2d 576 (Pa. Cmwlth. 2010) (holding that an agency’s use of a competitive sealed proposal, rather than competitive bidding, for a contract for real property construction/renovation did not violate [a]rticle III, [s]ection 22 of the Pennsylvania Constitution).

Reading Blue Mountain & N. R.R. v. Seda-Cog Joint Rail Auth., 235 A.3d 438, 453 n.24 (Pa. Cmwlth. 2020); *but see Allan Myers, L.P. v. Dep’t of Transp.*, 202 A.3d 205, 211 (Pa. Cmwlth. 2019) (this Court generally stated relative to a Commonwealth construction project proposal challenge: “Competitive bidding in public contracts is mandated by [article III, section 22 of] the Pennsylvania Constitution.”).

¹⁹ 62 Pa. C.S. §§ 101-2311.

bidding required on all public construction projects and requires that all Commonwealth agency contracts be awarded by competitive sealed *bidding*, except in limited circumstances. *See* Section 512(c) of the Procurement Code, 62 Pa.C.S. § 512(c). One of these circumstances is when, as in this case, the agency determines that competitive sealed bidding would not be practical or advantageous to the Commonwealth and, thus, competitive sealed *proposals* are warranted. *See* Section 513(a) of the Procurement Code, 62 Pa. C.S. § 513(a).

This Court has observed that “competitive sealed proposals **assure price and product competition[.]**” *Pa. Associated Builders & Contractors, Inc. v. Dep’t of Gen. Servs.*, 996 A.2d 576, 585 (Pa. Cmwlth. 2010) (emphasis added). In addition,

[c]ompetitive bidding requirements “guard against favoritism, improvidence, extravagance, fraud[.] and corruption in the awarding of . . . contracts . . . and are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders.” *Yohe v. City of Lower Burrell*, . . . 208 A.2d 847, 850 ([Pa.] 1965) (citation omitted). The intent of competitive bidding statutes is “to ‘close, as far as possible, every avenue to favoritism and fraud in its varied forms.’” *Premier Comp Solutions, LLC v. Dep[’t] of Gen[.] Ser[s.]*, 949 A.2d 381, 382 n.1 (Pa. Cmwlth. 2008) (quoting *Louchheim v. Phila[.]*, . . . 66 A. 1121, 1122 ([Pa.] 1907)). **Bidders for a public contract must be “on an equal footing” and enjoy the same opportunity for open and fair competition.** *Phila[.] Warehousing [&] Cold Storage v. Hallowell*, . . . 490 A.2d 955, 957 ([Pa. Cmwlth.] 1985). **Where there is no common standard on which bids are based, “[t]he integrity of the competitive bidding process is violated and the purpose of competitive bidding is frustrated.”** *Ezy Parks [v. Larson]*, 454 A.2d [928,] 932 [(Pa. 1982)]. Thus, **when the actual “procedures followed emasculate the benefits of [competitive] bidding, judicial intervention is proper.”** *Id.[; s]ee also Conduit [&] Found[.] Corp[.]*

v. City of Phila[.], . . . 401 A.2d 376, 379 ([Pa. Cmwlth.] 1979) (“[T]he courts will not condone a situation that reveals a clear potential to become a means of favoritism, regardless of the fact that the . . . officials may have acted in good faith in the particular case.”).

Allan Myers, L.P. v. Dep’t of Transp., 202 A.3d 205, 211 (Pa. Cmwlth. 2019) (emphasis added). “[I]t is equally well established that a public agency cannot exercise its discretion contrary to the competitive bidding laws, which **prohibit discrimination between union and non[-]union contractors in the award of public contracts.**” *Id.* at 214 (emphasis added).

To date, this Court has analyzed and decided several PLA challenges. In *A. Pickett Construction, Inc. v. Luzerne County Convention Center Authority*, 738 A.2d 20 (Pa. Cmwlth. 1999), a county convention center authority (the authority) commissioned a professional recommendation regarding whether a PLA was advisable for a civic arena/convention center construction project. The report ultimately recommended the use of a PLA to avoid costly delays occasioned by labor disruption in a heavily unionized labor environment in northeast Pennsylvania, the promotion of labor harmony, the necessity to adhere to a tight and inflexible construction deadline to avoid losing an anchor tenant and state funding if not completed by a date certain, cost savings, and the assurance of a large pool of skilled labor. Several contractors and ABC instituted an action in the trial court challenging the PLA. The trial court upheld the authority’s PLA. On appeal, this Court affirmed, holding that, given “the *undisputed* critical need for timely completion of the [p]roject,” “the [a]uthority acted fully within its discretion by including” the PLA “to assure prompt completion of the [p]roject and in furtherance of that goal to require bidders to agree to sign the PLA.” *Id.* at 24 (emphasis added).

In *Sossong v. Shaler Area School District*, 945 A.2d 788 (Pa. Cmwlth. 2008), a contractor sought a preliminary injunction enjoining a school district from awarding a contract for construction projects, alleging that the terms of an included PLA prevented NUCs from effectively bidding on the projects. The trial court denied the contractor’s preliminary injunction motion. On appeal, this Court affirmed, observing that

it is undisputed that the [s]chool [d]istrict was concerned about the prompt completion of the projects. Indeed, the bid documents state that the PLA is designed to ensure completion of the projects on time. The PLA, itself, provides that ‘time is of the essence’ and requires that there be *no* delays. As in *Pickett*, because the PLA requirement is related to the need for prompt completion of the projects, the [s]chool [d]istrict did not abuse its discretion by requiring that the lowest responsible bidder enter into the PLA.

Id. at 794 (underline emphasis added).

In *Glenn O. Hawbaker, Inc. v. Department of General Services* (Pa. Cmwlth. No. 405 M.D. 2009, filed Dec. 1, 2009) (Pellegrini, J., single-judge op.),²⁰ Hawbaker filed an action in this Court’s original jurisdiction seeking to enjoin DGS from awarding the successful bidder the design/build contract for the construction of a prison. This Court denied the preliminary injunction on the basis that the PLA did not contain provisions on employing individuals based on union affiliation, and that the PLA provisions were very similar to the PLA provisions in *Sossong*. Judge

²⁰ “This Court’s Internal Operating Procedures [(IOPs)] provide that ‘[e]xcept as provided in subsection (d) (relating to single-[j]udge opinion in election law matters), a single-[j]udge opinion of this Court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.’ 210 Pa. Code § 69.414(b).” *Coatesville Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 323 A.3d 61, 74 n.9 (Pa. Cmwlth. 2024). In addition, pursuant to Section 414(a) of the IOPs, unreported decisions of this Court issued after January 15, 2008, are not binding, but may be cited as persuasive authority. See 210 Pa. Code § 69.414(a).

Pellegrini conducted a side-by-side comparison of the PLAs in *Pickett*, *Sossong*, and *Hawbaker* and concluded that the PLA was not illegal. He determined that the petitioners failed to prove a clear right to relief and that greater injury would occur if a preliminary injunction was granted, as the evidence demonstrated that the public interest would be harmed by the crowded prison conditions and by the growing public safety and security concerns for corrections officers and inmates.

In *Allan Myers*, NUC Allan Myers, L.P. (Allan Meyers) appealed from the Pennsylvania Department of Transportation (DOT) Secretary's decision that dismissed its protest to the PLA requirement in a bid solicitation. DOT argued that the PLA was needed because time was of the essence for the project and that labor shortages could cause increased costs and unwarranted traffic congestion. DOT also argued that Section 403 of the State Highway Law²¹ authorized it to prepare and approve specifications for highway construction contracts, which included the discretion to manage project labor. DOT argued that its decision to use a PLA must be upheld absent compelling evidence that it acted in bad faith, capriciously, or abused its power. The Secretary held that the PLA did not violate Pennsylvania's competitive bidding laws. This Court reversed, stating:

Pickett, *Sossong*, and *Hawbaker* are all factually distinguishable. In *Pickett*, the convention center had to be completed by an inflexible date because of demands of the state funding and the need to keep an anchor tenant. In *Sossong*, two school buildings had to be completed in time for the school opening in the fall. In *Hawbaker*, timely completion of a prison was critical because of a growing inmate population and safety concerns. Here, by contrast, **there is no evidence that the Markley Street Project has a critical deadline, notwithstanding the PLA's statement that "[t]ime is of the essence for the [p]roject."** [*Allan Myers* Reproduced Record (JR.R.) at]

²¹ Act of June 1, 1945, P.L. 1242, as amended, 36 P.S. § 670-403.

25a. In *Pickett*, the PLA did not mandate the integration of local [CBAs] and permitted non[-]union contractors to employ their core personnel in ranges of 20% to 50% of the whole workforce. Here, **the PLA integrates the local [CBAs] “and any successor agreements or amendments” and requires that non[-]union contractors hire all craft labor personnel through the [l]ocal [u]nions.** [*Allan Myers*] R.R. [at] 27a. The PLAs in *Pickett*, *Sossong* and *Hawbaker* did not contain an exemption for certain contractors with a specific union affiliation. Here, by contrast, **the PLA** permits United Steelworkers contractors to use their normal workforce but **requires non[-]union contractors to hire through the [l]ocal [u]nions.** In sum, *Pickett*, *Sossong*, and *Hawbaker* are factually distinguishable. Further, our precedent in *Pickett* and *Sossong* did not establish the broad principle that a PLA is appropriate so long as it contains the boilerplate language “time is of the essence” and “non[-]union contractors may bid.” **The use of a PLA is permitted where the contracting agency can establish extraordinary circumstances,** and []DOT did not make that demonstration in this case.

Allan Myers, 202 A.3d at 215 (emphasis added); *see also J.D. Eckman, Inc. v. Dep’t of Transp.*, 202 A.3d 832 (Pa. Cmwlth. 2019).

In *Associated Builders & Contractors, Inc., Keystone Chapter v. Department of General Services* (Pa. Cmwlth. No. 30 M.D. 2023, filed Feb. 27, 2023) (Wojcik, J., single-judge op.) (*Associated Builders*), ABC requested a preliminary injunction in this Court’s original jurisdiction to enjoin the use of a PLA in a case involving the construction of a new DNA lab in Westmoreland County. The new DNA facility was needed to replace an undersized laboratory that was legislatively mandated to increase its workload, and there were strains upon the workforce due to the COVID-19 pandemic and other construction projects in the area. This Court denied the injunction, finding that the PLA was similar to those in *Hawbaker* and *Sossong* that withstood legal challenges. This Court stated that not

all PLAs are impermissible and “disagree[d] with [the p]etitioners’ stance that *Pickett, Sossong*[,] and *Hawbaker* are exceptions to a general rule.” *Associated Builders*, slip op. at 39.

At the hearing in the instant matter, ABC presented Keystone Chapter President, G. David Sload (Sload), who testified that ABC represents 667 members, consisting of union and non-union construction-related contractors, subcontractors, architects, and suppliers and their associates, in 35 Pennsylvania counties.²² He described that ABC is the third largest chapter in the United States and that Pennsylvania has the largest concentration of contractors, 89% of whom are NUCs. Sload explained that members join ABC for its local, state, and federal advocacy, but primarily for its education and training opportunities. He stated that ABC’s members spend nearly \$1.6 million per year to take advantage of its approximately 140 educational offerings for its members and apprentices,²³ ranging from foreman and superintendent training to reading blueprints to OSHA requirements, with the largest emphasis on safety education.

Sload opined that ABC’s member NUCs and subcontractors are equally as qualified to work on the Project as Union laborers.²⁴ Sload represented that ABC’s members handle all manners of complicated projects, and that some of them have completed complex laboratory projects.

²² Sload stated that although ABC has union members, a significant majority of its members are NUCs.

²³ Sload detailed that ABC began with apprentice training in 1969, and graduated its first apprentice class in 1973. He represented that apprentices have graduated from ABC’s training program every year since, with 565 apprentices graduating in the past year.

²⁴ Sload testified, without objection, regarding a safety study ABC conducted 3 years ago of 150 NUCs and 150 union contractors that found little difference in incident rates between the 2 groups. He further recalled that, on a Markley Street project a few years ago, the NUCs had better incident rates, days away rates, and insurance ratings than the union contractors.

Sload testified that most of ABC's member NUCs prefer to work with laborers they have trained and who have experience together as cohesive teams over time. He explained that NUCs do not want to bid on projects based on the work of unknown laborers. Sload recalled that several NUC members who had worked on other DGS projects had heard about the Project and were watching for the RFP, but declined to submit proposals after DGS issued Addendum No. 1 adding the PLA. He acknowledged that some of ABC's members did bid on the Project; primarily those considered *at risk*, meaning that they do not have their own workforces and they bid as project managers.

Sload understood that the PLA did not prohibit NUCs from submitting Project proposals, but it precluded them from using their own craft laborers. He admitted that, in addition to project managers and superintendents, the PLA allows NUCs to transfer 3 employees *who meet Union hiring hall qualifications and are subject to the Unions' representation based on the CBAs*. He further agreed that the PLA authorizes NUCs to negotiate with the Unions to allow more NUC employees, but *they must still meet Union approval*. Sload opined that DGS's inclusion of the PLA that limits labor on the Project to workers hired through the Union halls (requiring them to bench their own skilled craft laborers), in effect, favors union contractors over NUCs. He proclaimed that ABC challenges *all* PLAs and would like them to be declared illegal because they discriminate against NUCs, who make up a significant majority of its membership. This Court finds Sload's testimony credible.²⁵

²⁵ As the [Motion] is within this Court's original jurisdiction, th[is] Court is the fact[-]finder and "has exclusive authority to weigh the evidence, make credibility determinations[,], and draw reasonable inferences from the evidence presented." *In re Nomination Papers of Amato* (Pa. Cmwlth. No. 1406 C.D. 2017, filed Oct. 23, 2017),

ABC also presented the testimony of The Farfield Company's (Farfield) President Robert R. Brewer (Brewer) who generally testified as to the reasons why requiring the PLA prevented Farfield, an NUC, from bidding on the Project as a prime contractor, and Farfield's successful experience on large-scale, complex public and private mechanical and electrical projects like this one, including the DOT, Merck, and DuPont laboratories. He represented that Farfield has self-performed on several large projects simultaneously without issue, and it has never bid on a project it could not handle. Brewer detailed that Farfield's approximately 50-person labor force, is highly skilled and takes full advantage of ABC's trainings and safety/OSHA workshops. He expressed that Farfield has not had staffing or quality control issues while working on other state or federal construction projects, and it has never been removed from a project for any reason. Brewer added that Farfield is familiar with certified payrolls, prevailing wage, and Internal Revenue Service (IRS) Form 1099 classification. He also stated that Farfield uses BIM modeling and has been a BIM coordinator on other projects.²⁶

Brewer declared that Farfield learned of the RFP by word-of-mouth, and it was in the making for quite some time. He recounted that Farfield did not submit a proposal for the Project because in submitting one, it had to agree to the PLA. He described that Farfield prefers to use its own workforce rather than Union employees because it spends a lot of time training its employees, so it can rely on how they will perform in the field, and it has processes in place to ensure work is

slip op. at 8-9 . . . (alteration in original) (quotation omitted). In doing so, this Court may believe all, part, or none of the evidence presented. [*See id.*]

In re Constitution Party, 323 A.3d 238, 240 n.1 (Pa. Cmwlth. 2024) (Cohn Jubelirer, P.J., single-judge op.).

²⁶ BIM modeling is a 3-dimensional modeling system used to coordinate various trades on a construction project.

completed properly and profitably. Brewer declared that Farfield uses apprentices in the same fashion as the Unions.²⁷ He indicated that the PLA is not necessary for this Project, particularly because the RFP and resulting contracts ensure safety and cost containment. He stated that Farfield would have submitted a proposal for the Project if the PLA was not included. This Court finds Brewer's testimony credible.

ABC member Smucker Company's (Smucker) Vice President of Sales Edward Engle (Engle) testified as to the reasons why the PLA's inclusion in the RFP prevented Smucker, a non-union metalwork and drywall subcontractor with approximately 150 employees including apprentices, from bidding on the Project. He also detailed Smucker's successful experience with complex laboratory projects like this one, including one for GlaxoSmithKline. Engle related that safety is a high priority for Smucker, its workforce participates in ABC's safety training, and, as a result, it has a good safety rating.

Engle also stated that Smucker learned of the RFP by word-of-mouth. He recalled that Smucker intended to bid on 3 Invitations for Bid (IFB) and offered bids to prime contractors for the Project, but declined after seeing that the PLA was included, because it preferred to use its own workforce rather than Union laborers. Engle related that Smucker prefers to use its own workforce, which is equally as skilled as Union laborers. He explained that although the PLA allows it to transfer 3 of its employees for use on the Project, and it could negotiate for the Unions' approval for more, that means it would have to negotiate with the Unions to use another approximately 50 of its own employees on the Project. Engle acknowledged that Smucker is very familiar with certified payrolls, prevailing wage, and IRS Form 1099 classification. He declared that Smucker has never bid on a project it could

²⁷ Brewer graduated from ABC's apprenticeship program.

not complete, nor has it been removed from a project for any reason. Engle expressed that Smucker would have bid on the Project if the PLA was not included. This Court finds Engle's testimony credible.

ABC called Kirk as on cross. Kirk testified that DGS opened the proposals submitted in response to the RFP on June 3, 2025, notified the apparent low bidders on June 4, 2025, and the contracts are pending the winning Contractors' responsible bidder reviews.²⁸ In his December 18, 2024 email to the Governor's office, Kirk represented that DGS could conduct proposal reviews and award notifications in 60 to 90 days (i.e., summer 2025). *See* ABC Ex. O. He testified that he anticipated the Project's construction to commence in fall 2025 and end in late 2028.

Kirk described that DGS opted to include the PLA for the Project in December 2024 because it wanted to ensure that work on the Project was completed safely, with reliable skilled labor, and on time. He acknowledged that ABC offers a highly developed safety program, but opined that DGS can rely on the fact that Union laborers have undergone proper training and are prepared to work, and that laborers would be paid prevailing wages or the wages prescribed by the individual CBAs, whichever is higher. However, he admitted that he has never analyzed whether there is a discernable difference between union and non-union laborers relative to safety and on-time project completion.

Kirk related that he was aware of ABC's objections, but declared that DGS based the PLA on this Court's decision in *Associated Builders*²⁹ and the

²⁸ Kirk added that DGS issued IFBs relative to 7 different trades on the Project.

²⁹ Kirk admitted that DGS's RFP Scoring Matrix for Technical Submissions on this Project placed less emphasis on staffing resources and skill training than in *Associated Builders*, where the Scoring Matrix for Technical Submissions allowed DGS to award proposers up to 10 points for their *Quality Control Plan*, up to 10 points for *Staffing Resources*, 10 points for *Skill Training*,

Governor's Letter. He confirmed that RFP proposers were bound by the PLA by submitting bids and, as successful proposers, they would be bound by the Unions' CBAs and any successor CBAs. He agreed that the PLA requires NUCs to use Union-approved labor beyond the project manager and project superintendent, and they must hire all other labor through the Union halls, all of which operate differently and maintain varying standards, including seniority preference. Kirk acknowledged that DGS did not include the 19 different Union CBAs NUCs would have to consider in proposing on the RFP; rather, it only provided a list of contact names and numbers for NUCs to obtain the CBAs for review.

Kirk admitted that DGS did not consider the Project urgent when it conceived it in approximately 2022. He acknowledged that DGS marked *N* (meaning, *No*) under the Particular Need and Urgency column on line 134 of its 2024-2025 Anticipated Bid Report released in January 2024. *See* ABC Ex. U. Kirk claimed he more closely examined the urgency of the Project after learning of the Agencies' current laboratory facilities' conditions during the February 2024 state budget hearings,³⁰ after which Governor Shapiro issued the March 2024 Governor's Letter, and then Kirk visited DEP's laboratory in summer 2024. He recalled that, in December 2024, DGS decided to use a PLA and thereafter consulted with the Unions. Kirk stated that he was not aware of any changes in the law, nor of any failures of the Agencies due to the state of their facilities. He further acknowledged that DGS can and has renewed the DOH, DEP, and DCNR leases, and has even

and 10 points for *Workforce Safety*, as opposed to only 3 points for each of those categories for the Project's RFP.

³⁰ This Court takes judicial notice that the Agencies' 2024-2025 House Appropriations Committee meetings occurred on February 22, 2024 (Agriculture), February 27, 2024 (DOH), and February 28, 2024 (DEP and DCNR). *See* www.pabudget.com/Display/SiteFiles/426/2024Budget/BudgetHearingSchedule2024-25.pdf (last visited June 26, 2025).

retrofitted some of the Agencies' facilities to meet their needs. Kirk denied that the Project became urgent *because of* the PLA.

Although Kirk expressed that DGS was not concerned with labor strikes occurring during this Project, he stated that it was concerned with workforce availability in light of other DGS projects, in particular, at the Pennsylvania State Police (PSP) Academy and Three Mile Island. He admitted, however, that the projects are sequenced projects (so different trades work at different times), the PSP Academy project is further along than this Project, and he could not state if or how the Three Mile Island project will affect the Project's workforce; so, any projected labor shortage was merely conjecture.

Kirk pronounced that the PLA did not prohibit NUCs from submitting proposals for the Project and, since the PLA affected all proposers alike, the PLA did not discriminate against NUCs. He further maintained that DGS did not evaluate the proposals based on Union affiliation. Kirk offered that at least one ABC NUC submitted a bid on the Project and won, but agreed that the NUC was *at risk*, and did not have a workforce affected by the PLA restrictions. He also acquiesced that despite DGS's claim in *Associated Builders* that the PLA was required because that project was urgent, that project began in August 2023, and was to be completed in August 2025, but it is only 60% to 70% complete.

This Court finds Kirk's testimony regarding DGS's timeline for deciding to use the PLA, and his claims that urgent and complex circumstances and workforce availability concerns were DGS's reasons for including it in the RFP, not credible.

ABC also called DGS's Assistant Chief Counsel for Capital Programs Edward Olivieri (Olivieri) as on cross. Olivieri testified that DGS asked him to

prepare the PLA in accordance with the Governor's Letter. He recalled that he drafted the PLA based on the criteria in *Associated Builders*, because this PLA is substantially similar to the PLA in that case, and presented it to the Trades Council's attorney Irwin Aronson, Esquire (Aronson) and Trades Council President Jim Enders (Enders) for review.³¹ See also ABC Ex. X (DGS Answers to Interrogatories) at 3-4. Olivieri stated that although the Trades Council and the Unions negotiated and signed off on the PLA, DGS controlled the final draft. He admitted that the PLA benefits union contractors because of the Union hiring hall rules.

Olivieri explained, as confirmed by his email exchanges with Aronson and Enders, see ABC Ex. V, that he presented the PLA to the Trades Council and the Unions in February or March 2025, and sought their input. On March 12, 2025, Olivieri returned the PLA to Aronson and Enders with tracking denoting changes he made at their recommendations. He confirmed his understanding based on prior conversations with Aronson and Enders that the PLA would have to be submitted to North America's Building Trades Unions (NABTU) for approval, he asked how they wished to present the CBAs in the RFP (either by link or contact information), and he informed them that DGS would advertise the Project on March 14, 2025.

After Enders responded that NABTU had denied approval, Olivieri requested Enders' advice regarding NABTU agreements with which he was not familiar and clarified the effect of the NABTU agreements on the PLA. Thereafter, Olivieri made NABTU's suggested changes. He admitted to being copied on a March 13, 2025 email in which Aronson asked Enders:

³¹ Enders is also the business manager of the United Association Plumbers and Pipefitters Local Union 520, which is one of the 19 Unions whose CBAs govern labor on the Project.

May we provide those [CBAs] under the same terms as we have agreed to make our local CBAs available directly to interested bidders so as to remove those documents from the unintended scrutiny of the Pennsylvania Right[-]to[-]Know Law[,]^[32] as well as from discovery in potential litigation over the PLA itself?

Ex. V at 15.

Olivieri confirmed that NABTU approved the PLA on March 20, 2025, and Enders supplied him with the fully executed PLA on March 24, 2025. In his March 24, 2025 email, Enders requested of Olivieri: “If you could let me know when the [P]roject will go out for bid and where it will be posted, I will share that information with the [Unions].” ABC Ex. V at 2. Olivieri stated that he did not meet with or discuss the PLA with the NUCs. This Court finds Oliveri’s testimony credible.

ABC also presented correspondence from various persons who expressed their concerns regarding DGS’s inclusion of the PLA for the Project. By September 17, 2024 email, State Representative Justin Fleming (Fleming) reached out to Agriculture’s Deputy Director of Legislative Affairs Eryn Spangler (Spangler), regarding the PLA. By September 23, 2024 response, Spangler informed Fleming that DGS was “unable to discuss the utilization of the PLA at th[at] time.” ABC Ex. P; *see also* ABC Ex. X at 7.

In an April 3, 2025 email from Vision Mechanical President Barry Unger (Unger) to DGS, Unger declared that his company would not bid on the Project because of what he described as the anti-competitive and discriminatory PLA, which effectively banned 89% of construction workers from competing on the Project at the taxpayers’ expense. *See* ABC Ex. K.

³² Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

In an April 8, 2025 email to Kirk, Brian M. Fitzgerald, Vice President of Jay R. Reynolds, Inc., declared:

A PLA that excludes competition is clearly not in the best interest of the P[ennsylvania] taxpayer. Due to the size of the [P]roject, we have a significant effort to do the necessary take-off and pricing to prepare a bid. If the PLA is removed at the last minute, we hope that the bid timeframe will be extended in order to give all qualified bidders the necessary time to prepare their bids.

ABC Ex. J; *see also* ABC Ex. X at 7.

In another April 8, 2025 email from Lydia Messner, Constituent Services Specialist in State Senator Scott Martin's office, to Spangler asking if a constituent's claim that the PLA requires him (a 40-year non-union construction worker) to join a union or be prohibited from working on the Project is accurate. *See* ABC Ex. L. Spangler responded that the PLA "is aligned with Pennsylvania law and court cases[,] "does not preclude any contractor from bidding on the contract [as] the process is open to both union and non[-]union contractors[,] "and while it does include Union procedures for hiring, staffing, and representation, "it does not preclude the use of non[-]union labor, contractors[,] or subcontractors." *Id.* at 2-3.

In their April 17, 2025 letter to Governor Shapiro, Representatives Bryan Cutler, Mindy Fee, and Steve Mentzer (Representatives) stated that, while PLAs are often presented as a tool to ensure project efficiency and labor harmony, they limit the pool of proposers on public projects to union-only contractors - thereby reducing competition and increasing costs - and exclude a wide range of highly-qualified NUCs that could affordably and efficiently deliver the same projects. *See* ABC Ex. H; *see also* ABC Ex. X at 7. The Representatives added:

PLAs are negotiated by building trade unions who do not submit bids, do not provide bonding, and are not held

accountable for project logistics, timelines, or change orders. Their role is limited to supplying labor, yet they often make assurances regarding on-time and under-budget completion-assurances they are not contractually obligated to fulfill or penalized for breaching. This disconnect undermines the accountability necessary for successful project execution.

The use of PLAs creates an uneven playing field for Pennsylvania's many [NUCs], who are more than capable of providing fiscally responsible and timely services. These firms should not be disadvantaged in the public bidding process due to restrictive agreements that favor one segment of the workforce over another.

Id.

ABC also presented DGS's answers to ABC's Interrogatories, wherein DGS claimed:

Without th[e PLA] condition precedent to receiving an award or contract, DGS could not ensure all bidders and proposers were on equal footing and bidding or proposing on the same Contract Documents.

Additionally, with respect to the conditions in 2024 and 2025 affecting the Project, it was decided that a PLA is appropriate because of the information provided in the Keystone Research Center Study^[33] including that this Project may be the most technically challenging project that DGS has ever constructed along with the urgency to build it as soon as possible given that the lab facilities currently used by the [A]gencies are antiquated, currently contain conditions that affect the [A]gencies' ability to do their work, and [3] of them are housed in leased spaces with leases expiring prior to the anticipated completion date of the Project.

³³ DGS did not offer the Keystone Research Center Study into evidence, and this Court sustained ABC's objections to references thereto as hearsay. In *Hawbaker*, Judge Pellegrini observed: "Keystone Research Center [is] primarily comprised of board members affiliated with various unions[.]" *Id.*, slip op. at 4.

ABC Ex. X at 5.

DGS called Kirk on direct.³⁴ Kirk testified that DGS began designing the Project approximately 2½ years before it issued the RFP. He admitted that the Project was not initially deemed urgent, but after discussing the matter with the Agencies and visiting their current facilities, he realized the need for the Project was beyond a standard sense of public works urgency. Kirk described that he directed Olivieri to draft the PLA based on *Associated Builders* and the Governor's Letter. The Trades Council and the Unions finalized the PLA on March 24, 2025. Kirk reiterated that DGS did not investigate union versus non-union workforce capabilities for completing the Project, and that DGS did not consider union affiliation when determining to whom it would award contracts for the Project. Again, this Court finds Kirk's testimony regarding DGS's timeline for deciding to use the PLA, and his claims that urgent and complex circumstances and workforce availability concerns were DGS's reasons for including it in the RFP, not credible.

DGS also presented the testimony of employees who currently work in the Agencies' laboratories. DOH's Assistant Director of Labs Dr. Wade Aldous, DEP's Director of the Bureau of Laboratories Dr. Pamela J. Higgins, Agriculture's Director of the Bureau of Administrative Services Walter Remmert, and DCNR's Director of the Bureau of Laboratories Rosa Yoo each testified as to his/her lab responsibilities, provided an overview of the Agencies' laboratory services and the poor state of their current facilities. Each of these individuals informed this Court that they prepared their summaries of the need for the Project within the week preceding the June 17, 2025 hearing, not in advance of DGS's determination that the PLA was appropriate for this Project. *See* DGS Exs. R-4 - R-15. They all expressed

³⁴ At the close of ABC's case, DGS moved for a directed verdict, which this Court denied.

their desire for state-of-the-art facilities to permit them to better serve the public's needs, but none offered extraordinary circumstances beyond the *time is of the essence* standard in most public works contracts - particularly when weighed against the number of years their agency has been working in such conditions, the lease extensions, the retrofitting, and the fact that Phase I of the Project would not be completed before 2028 - that warranted the PLA for the Project. This Court finds their testimony credible.

This Court has ruled that “[t]he use of a PLA is permitted where the contracting agency can establish extraordinary circumstances[.]” *Allan Myers*, 202 A.3d at 215 (emphasis added). Pennsylvania law further **prohibits “discrimination between union and non[-]union contractors in the award of public contracts[.]”** *Id.* at 214 (emphasis added). Based on the evidence, this Court finds:

1. Despite years - and, in some cases, decades - of poor laboratory conditions, DGS only began looking at upgrading the Agencies' laboratories 2½ years ago. DGS did not deem the Project urgent until December 2024, which was after it prepared the RFP. DGS included the PLA in the RFP *after* DGS's original estimated RFP issue date.
2. DGS has the option to extend the Agencies' current leases and/or retrofit the facilities pending completion of the Project in approximately 3 years. The Commonwealth has appropriated \$2 to \$10 million dollars to retrofit some of the labs and recently extended lease agreements.
3. The PLA was not warranted for the Project based on DGS's proclaimed urgency.
4. The PLA was not warranted for the Project based on workforce availability concerns.
5. No evidence was presented to show extraordinary circumstances existed for the PLA to be included for the Project.

6. Despite that 89% of the Commonwealth's contractors are NUCs, DGS included the PLA for the Project that requires the use of Union labor and/or Union approval.
7. DGS has never studied or determined that union labor is safer, more skilled, and/or able to timely complete complex construction projects than NUC laborers.
8. In preparing the PLA, DGS sought input only from the Unions who benefit from it, but not from NUCs.
9. Although NUCs could submit proposals to the RFP, they could do so only if they agreed to the PLA.
10. The Unions were privy to the CBAs that would bind the Project's laborers months before DGS issued the RFP, while the NUCs had to obtain applicable CBAs, after DGS issued the RFP which had a limited time-period for submitting a proposal, before determining if/how their workers would be bound.
11. NUCs were not made aware of the varied Union hall hiring rules before the proposals were due, many of which include seniority and other requirements NUC laborers will not be able to satisfy in the same way as union laborers.
12. The RFP does not contain consistent employment terms, particularly where some Project laborers will be subject to successor and amended CBAs that NUCs cannot negotiate.
13. The Unions intended that DGS withhold the CBAs and provide only contact information for NUCs to obtain them in order that the CBAs would not be subject to the Right-to-Know Law and/or future litigation.
14. The Unions were aware before any NUCs that the RFP would be issued for the Project and when it would be made public.
15. NUCs will have to forego using a majority of their workforces and hire labor through the Unions that NUCs have not previously used and whose skill and safety NUCs had no knowledge and could not guarantee.
16. NUCs were not on equal footing in the Project procurement process.

DGS merely declaring the Project urgent did not make it so. And, simply *allowing* NUCs to bid does not overcome discrimination. Although *Pickett*, *Sossong*, *Hawbaker*, and *Associated Builders* established that PLAs can be legal, those cases “did not establish the broad principle that a PLA is appropriate so long as it contains the boilerplate language ‘time is of the essence’ and ‘[NUCs] may bid.’” *Allan Myers*, 202 A.3d at 215. Further, “**when the actual ‘procedures followed emasculate the benefits of [competitive] bidding, judicial intervention is proper.’**” *Id.* at 211 (quoting *Ezy Parks*, 454 A.2d at 932).

Moreover, *Pickett*, *Sossong*, *Hawbaker*, and *Associated Builders* are distinguishable from the instant matter. In *Pickett*, several factors, not present here, provided justification for the PLA. The first was “the avoidance of costly delays occasioned by labor disruption in **a heavily unionized labor environment of Northeastern Pennsylvania**, if the PLA were not included[.]” *Pickett*, 738 A.2d at 22 (emphasis added). Here, there is no such evidence of a “heavily unionized labor environment[.]” *Id.* In fact, Sload’s undisputed testimony demonstrated that Union membership in the Commonwealth constitutes only 11% of the workforce versus 89% unaffiliated workers. Further, in *Pickett*, the “heavily unionized labor environment” necessarily created the second justification - “the promotion of labor harmony for the duration of the [p]roject[.]” *Id.* Again, given the absence of any evidence of a similar labor environment in central Pennsylvania, the justification in *Pickett* is inapplicable to the instant matter. Similarly, the third *Pickett* justification, an inflexible completion date due to state funding demands and the need to keep an anchor tenant, is not present here. The last factor justifying the PLA, the assurance

of a large, available, experienced labor pool is not at issue here given the credible witness testimony of a large, experienced non-unionized labor pool.³⁵

In *Sossong*, the school district's urgent concern was the prompt completion of the construction of two school buildings ahead of the upcoming school year. "Indeed, the bid documents state that the PLA is designed to ensure completion of the projects on time. The PLA, itself, provide[d] that 'time is of the essence' and requires that there be *no* delays." *Sossong*, 945 A.2d at 794. Unlike *Sossong*, here, no firm time-related consequences dictate the completion of the instant project.

Similarly, in *Hawbaker*, timely completion of a prison was critical because of a growing inmate population and safety concerns. Here, the record evidence reflects the availability of sufficient experienced, skilled non-union labor capable of timely completing the Project.

Associated Builders is also distinguishable. In *Associated Builders*, the petitioners presented no witnesses, and here, the testimony alone distinguishes this case from *Associated Builders*.³⁶ The witness testimony in the instant matter reflects the availability of non-union workers and contractors with similar skills/training experience in large critical projects, including lab projects.

Further, despite DGS's protestations of the Project's urgency due to deteriorating existing building conditions, the record reflects that in DGS's own Anticipated Bid Report, DGS characterized the project as having NO "particular need and urgency[.]" ABC Ex. U, Entry No. 134. In addition, in testimony, DGS's

³⁵ Moreover, in *Pickett*, the PLA did not mandate the integration of the local CBAs, as the PLA did herein, and permitted the appellants therein to employ core, i.e., their own previously employed non-union personnel, in ranges of 20% to 50% of the project's workforce. See *Pickett*.

³⁶ Notably, despite the urgency described in *Associated Builders*, DGS acknowledged at the hearing in the instant matter, that the 2023 project still is only 60 to 70% complete for an August 2025 deadline.

witnesses acknowledged that millions of taxpayer dollars have been appropriated and expended to repair the Agencies' current buildings. Consistent with the contrast between the urgency at issue in *Associated Builders* where DGS's scoring matrix assigned 10 points to the proposers' Quality Control Plans, here, DGS's scoring matrix assigned only 3 total points to the Quality Control Plan, described as: "Proposer demonstrated an understanding of the complexities of this [P]roject and possesses the capabilities, to accomplish, coordinate and manage the [P]roject tasks, to monitor and report [P]roject tasks and deliverables, **to control [P]roject costs and to maintain the [P]roject schedule[.]**" ABC Ex. E (Scoring Matrix for Technical Submission) (emphasis added). Finally, unlike in *Associated Builders*, there is no evidence that the COVID-19 pandemic continues to create extraordinary circumstances with respect to the available workforce. Accordingly, this Court concludes that *Pickett*, *Sossong*, *Hawbaker*, and *Associated Builders* do not dictate the outcome here.

Rather, the case at bar is significantly similar to *Allan Myers*, wherein this Court observed:

The use of a PLA is permitted where the contracting agency can establish extraordinary circumstances, and **[the agency] did not make that demonstration in this case.** The [p]roject is a long term road improvement, the first phase of which was completed a year ahead of schedule. **Nor is there any evidence that there is a labor shortage in the greater Philadelphia area.** The [report prepared recommending the PLA] did not justify the PLA because it did not identify any extraordinary circumstance surrounding the [p]roject that warranted its use. All road improvements inconvenience motor vehicle operators. The PLA favored contractors under agreement with United Steelworkers, and for this reason alone, there is no common standard on which bids are based. This violates "[t]he integrity of the competitive bidding process" and

frustrates the “purpose of competitive bidding.” *Ezy Parks*, 454 A.2d at 932.

Allan Myers, 202 A.3d at 215-16 (emphasis added).

Here, DGS claims that it included the PLA for the Project based on *Associated Builders* and the Governor’s Letter. Although the Governor’s Letter clearly favors the PLA process and instructs DGS to consider including PLAs for future complex building projects, Governor Shapiro required that DGS first determine that a PLA is “appropriate and allowed” in each case based on urgency, complexity, and workforce availability. Governor’s Letter at 1. However, the Governor’s Letter is not a legal standard for when a PLA is appropriate. Rather, this Court in *Allan Myers* ruled, “[t]he use of a PLA is permitted where the contracting agency can establish extraordinary circumstances.” *Id.* at 215.

Here, there is no evidence from which this Court could conclude that the Project is so urgent, complex, or that there are valid concerns regarding the availability of a qualified workforce, that a PLA is necessary. Regarding alleged urgency, DGS’s witnesses recounted a parade of horrors related to their current laboratory environments, most of which have been ongoing for years and, in some cases, decades. Some of the Agencies’ facility leases have been extended and millions of taxpayer dollars have been appropriated and expended for renovations to make the spaces workable pending the Project’s completion. The Agencies’ witnesses expressed that the Project will create nicer environments for their employees, and allow for newer and larger equipment in controlled temperatures. However, none of DGS’s witnesses testified that the Project is any more urgent than any other Commonwealth agency construction project or that they cannot continue to work in their current locations.

Moreover, DGS's evidence reflects that the Project was initially raised 2½ years ago, when DGS and the Agencies began to plan the Project. The initial schedule was to issue the RFP in 2024. Although DGS purportedly commissioned a report about whether a PLA was justified in this case, it did not offer the report into evidence. When DGS determined on January 9, 2025, that an RFP was more advantageous than an IFB for the Covered Work, it did not reference either urgency or skilled workforce availability. In the meantime, DGS spent time preparing the RFP and negotiating the PLA with the Trades Council and the Unions. Further, additional time was spent waiting for NABTU to approve the PLA before the RFP was issued. In addition, this Project will take approximately 3 years to complete. Finally, DGS presented no record evidence that NUC workers are any more inclined to strike or otherwise delay the Project and, even if that was the case, the RFP and the resultant contracts have processes in place to deal with such situations. Based on that evidence, this Court concludes that DGS failed to establish that the PLA was necessary because the Project is urgent.

Regarding skilled workforce availability, DGS failed to present any evidence that there will be a lack of available skilled workers for the Project. Although Kirk briefly referenced other projects, including one at Three Mile Island and one at the PSP Academy, that may be ongoing simultaneously with the Project, his testimony was vague and speculative, as none of them knew when the Three Mile Island project would begin or what it entailed, and acknowledged that the PSP Academy project would be at a different stage. There was no evidence that there will not be a sufficiently skilled workforce available for the Project as a result. Moreover, Kirk discussed, at length, that a skilled workforce was necessary for the Project due to its complexity. ABC does not dispute that position. Rather, ABC

offered evidence that its NUC employees are at least as qualified as the Union workers to perform the work, have worked on similar complex construction projects, and would broaden the pool of skilled, available workers for the Project. Notably missing from DGS's evidence is that Union workers are more skilled than NUC workers. Based on that evidence, this Court concludes that DGS failed to establish that the PLA was necessary due to workforce availability.

Given the absence of evidence of the extraordinary circumstances, the lack of evidence to support DGS's stated reasons that the PLA was necessary, combined with ABC's evidence that NUCs were not on equal footing with the Unions because of the PLA, the Project's procurement process appears to be discriminatory and in violation of the law. Therefore, ABC has "demonstrate[d] that substantial legal questions must be resolved to determine the rights of the parties." *SEIU Healthcare*, 104 A.3d at 506. Accordingly, ABC has satisfied this prerequisite for a preliminary injunction.

2. The injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages.

ABC's primary argument is that the PLA violates the Pennsylvania Constitution and the Commonwealth's competitive bidding laws, which is irreparable harm *per se*. Further, any injuries suffered by ABC and its members are not recoverable through monetary damages because DGS enjoys sovereign immunity.

"[A]lthough sovereign immunity does not bar a[n] . . . injunction seeking to *prohibit* . . . state agencies or employees[] from acting, sovereign immunity does apply to an action seeking to *compel* state parties to act or seeking to obtain money damages . . . from the Commonwealth[.]" *Finn v. Rendell*, 990 A.2d

100, 105 (Pa. Cmwlth. 2010). Therefore, ABC cannot seek money damages from the Commonwealth.

Moreover, despite that this litigation is ongoing and could result in this Court cancelling the RFP and declaring any resulting contracts void, DGS intends to proceed with the Project.³⁷ At the hearing, DGS represented that it opened the proposals on June 3, 2025, notified the unofficial winners on June 4, 2025, and is in discussions with the selected winning proposers. DGS intends to execute the necessary contracts that include the PLA soon, so that construction can begin in the fall. Under circumstances where it is possible for this Court to hold that the PLA unlawfully discriminated against NUCs, the harm to ABC’s members is immediate.

Further, the Pennsylvania Supreme Court has declared that “to continue [] unlawful conduct constitutes irreparable injury[,]” and “[s]preading unlawful conduct is irreparable injury of the most serious nature[.]” *Pa. Pub. Util. Comm’n v. Israel*, 52 A.2d 317, 321 (Pa. 1947); *see also Philips Bros. Elec. Contractors, Inc. v. Valley Forge Sewer Auth.*, 999 A.2d 652 (Pa. Cmwlth. 2010). Our Supreme Court has further ruled:

[W]here the offending conduct sought to be restrained through a preliminary injunction violates a statutory mandate, irreparable injury will have been established. *See Commonwealth v. Coward*, . . . 414 A.2d 91 . . . ([Pa.] 1980) (holding that where a statute prescribes certain activity, the court need only make a finding that the illegal activity occurred to conclude that there was irreparable injury for purposes of issuing a preliminary injunction); . . . *Israel* . . . (holding that when the [l]egislature declares certain conduct to be unlawful, it is

³⁷ Under Section 1711.1(j) of the Procurement Code, “if the court determines that the solicitation or award of a contract is contrary to law, then the remedy the court shall order is limited to canceling the solicitation or award and declaring void any resulting contract.” 62 Pa.C.S. § 1711.1(j).

tantamount to calling it injurious to the public, and to continue such unlawful conduct constitutes irreparable injury for purposes of seeking injunctive relief)[.]

SEIU Healthcare, 104 A.3d at 508.

In addition, the law is “well settled that [DGS] has no discretion to waive defects in the bidding process if the result would violate applicable . . . [Commonwealth] competitive bidding requirements.” *Shaeffer v. City of Lancaster*, 754 A.2d 719, 722 (Pa. Cmwlth. 2000); *see also Rainey v. Borough of Derry*, 641 A.2d 698 (Pa. Cmwlth. 1994); *Conduit & Found. Corp.* “When competitive bidding is used and the procedures followed emasculate the benefits of such bidding, . . . judicial intervention is proper.” *Rainey*, 641 A.2d at 702 (quoting *Am. Totalisator Co., Inc. v. Seligman*, 414 A.2d 1037, 1041 (Pa. 1980)). Moreover, “[i]n cases where public contract bidding irregularities are shown, it is proper for a reviewing court to enjoin the contract awarded according to those faulty procedures.” *Stapleton v. Berks Cnty.*, 593 A.2d 1323, 1332 (Pa. Cmwlth. 1991). Here, where DGS’s inclusion of the PLA may have “violated competitive bidding requirements[,]” the “irreparable harm requirement [is] satisfied[.]” *Shaeffer*, 754 A.2d at 723.

Accordingly, the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages.

3. Greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings.

ABC argues that this factor relates to the irreparable harm factor - because the PLA violates the Pennsylvania Constitution and the Commonwealth’s competitive bidding laws, there is *per se* irreparable harm and, therefore, greater injury would result from refusing the preliminary injunction than from granting it. ABC raises that DGS does not plan to complete the Project for 3 years and, as such,

staying the procurement of this Project will cause far less injury than allowing DGS to procure construction services in violation of the law.

Laws that require competitive bidding for public projects seek to apportion awards fairly and economically.^[38] Mandatory compliance with statutory procedures and bid instructions serves this goal in two ways. Initially, clear-cut ground rules for competition guarantee that none of the contractors will gain an undue advantage through better information of the bid solicitor's operation. Second, the strict adherence principle lessens the possibility of fraud and favoritism. In the opinion of the Pennsylvania judiciary, moreover, the appearance of propriety is so important that genuine deviations may not be tolerated even if all available evidence suggests that the parties acted in good faith.

Hanover Area Sch. Dist. v. Sarkisian Bros., Inc., 514 F. Supp. 697, 703 (M.D. Pa. 1981) (citations omitted); *see also Jay Twp. Auth. v. Cummins*, 773 A.2d 828 (Pa. Cmwlth. 2001).

DGS's end run of the procurement process, "which exist[s] to invite competition and to guard against favoritism, improvidence, extravagance, fraud and corruption in the award of municipal contracts[.]" *Shaeffer*, 754 A.2d at 723, as well as not providing critical information to the NUCs that was readily available to the Unions means that NUCs did not "enjoy the same opportunity for open and fair competition." *Hanisco v. Twp. of Warminster*, 41 A.3d 116, 123 (Pa. Cmwlth.

³⁸ This Court has held:

[C]ompetitive bidding serves to enhance competition which, in turn, encourages offering services at the best price. Thus, it is important that the bidding process foster confidence among potential bidders that their bids will be considered fairly and that they will not be denied a substantial benefit afforded to their competitors.

Marx v. Lake Lehman Sch. Dist., 817 A.2d 1242, 1247 (Pa. Cmwlth. 2003) (citation omitted).

2012). Further, denying the preliminary injunction would allow DGS to proceed to award the contracts to the detriment of ABC's NUC members and Pennsylvania taxpayers, thereby creating the appearance of impropriety by DGS, the Trades Council, and the Unions and a chilling effect on NUCs proposing on future DGS projects that include PLAs as the Governor's Letter encourages.

However, in the absence of evidence that the Project is subject to extraordinary circumstances, temporarily granting the injunction pending this Court's review of the merits would not substantially harm DGS. Moreover, by waiting, DGS demonstrates the good faith exalted by competitive bidding laws and maintains an appearance of propriety. Thus, greater injury would result from refusing the preliminary injunction than by granting it.

4. The preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

The Pennsylvania Supreme Court has ruled: "The purpose of a preliminary injunction is to preserve the status quo as it exists or previously existed before the acts complained of, thereby preventing irreparable injury or gross injustice." *Maritrans GP Inc. v. Pepper, Hamilton & Scheetz*, 602 A.2d 1277, 1286 (Pa. 1992) (emphasis omitted); *see also Santoro v. Morse*, 781 A.2d 1220 (Pa. Super. 2001).

Here, ABC argues that enjoining the PLA's implementation and enforcement while this Court reviews the merits of ABC's claims would restore the status quo by placing the parties back in the positions they were in prior to the inclusion of the PLA in the RFP. While that is not exactly true, since ABC's NUC members' challenged the PLA and, thus, could not submit proposals in the first instance unless they agreed to the PLA, halting the procurement process now - at a

point when no contracts have been executed, no work has begun, and it is still possible for DGS to cancel this procurement and re-issue an RFP if this Court ultimately finds in ABC's favor - would, at least, maintain the current status quo pending this Court's review of the merits of ABC's case and "prevent[] irreparable injury or gross injustice." *Maritrans*, 602 A.2d at 1286.

5. The injunction is reasonably suited to abate the offending activity.

ABC argues that preliminarily enjoining the Project's procurement process is narrowly tailored to abate the offending activity pending resolution of the permanent injunction. The purported offending activity in this case was DGS including a potentially discriminatory PLA in the RFP without the proper justification and proceeding to contract in the face of ABC's allegations that DGS's procurement process was discriminatory and in violation of the Commonwealth's competitive bidding laws. Granting a preliminary injunction pending this Court's determination of the merits is reasonably suited to abate the offending activity.

6. The preliminary injunction will not adversely affect the public interest.

ABC argues that the PLA requirement is injurious to the public because it violates the Pennsylvania Constitution and the Commonwealth's competitive bidding laws.

Because the purpose of the RFP process is to guard against favoritism and it is intended to benefit taxpayers, *see Yohe*, granting a preliminary injunction pending a determination of favoritism will promote rather than adversely affect the public interest. It would also avoid a chilling effect that would keep future NUCs and union contractors from bidding on DGS procurements. Conversely, denying the

preliminary injunction would allow DGS to award contracts and proceed with the Project pending this Court's merits review. If this Court ultimately rules in ABC's favor, it would cancel the RFP or award and declare the resulting contracts void, *see* Section 1711.1(j) of the Procurement Code, 62 Pa.C.S. § 1711.1(j), which would increase the Project's costs at taxpayers' expense.

Conclusion

Based on the foregoing, ABC's Motion is granted. DGS is hereby preliminary enjoined from proceeding in any manner with the procurement or any other action concerning the Project pending this Court's resolution of ABC's Petition for Review and any permitted amendments thereto.



ANNE E. COVEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Associated Builders and Contractors, :	:	
Inc., Keystone Chapter, :	:	
Petitioner :	:	
	:	
v. :	:	
	:	
Commonwealth of Pennsylvania :	:	
Department of General Services, :	:	
Reggie McNeil, individually and in :	:	
His capacity as Secretary of the :	:	
Department of General Services, and :	:	
Greg Kirk, individually and in his :	:	
capacity as Deputy Secretary for :	:	
Capital Programs of the Department :	:	
of General Services, :	:	No. 189 M.D. 2025
Respondents :	:	

ORDER

AND NOW, this 26th day of June, 2025, Associated Builders and Contractors, Inc., Keystone Chapter's (ABC) Motion for Preliminary Injunction is hereby GRANTED. The Department of General Services (DGS) is hereby preliminarily ENJOINED from proceeding further and in any manner with the procurement or any other action concerning proposed DGS Project C-1050-0001, Pennsylvania Joint Laboratory Facility, Phase 1, pending this Court's resolution of ABC's Petition for Review and any permitted amendments thereto.



ANNE E. COVEY, Judge

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