

May 16, 2012

U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

The diverse group of undersigned construction and business associations writes in strong support of Representative Roscoe Bartlett's amendment ensuring fair and open competition on federal construction contracts authorized by the National Defense Authorization Act (NDAA) for FY 2013 (H.R. 4310).

Specifically, the Bartlett amendment will prevent federal agencies from *requiring* contractors to sign an anti-competitive and costly project labor agreement (PLA) *as a condition of winning a federal construction contract*. It also will prevent federal agencies from implementing a discriminatory PLA preference policy that discourages competition and results in needless waste and favoritism in the federal procurement process.

A *government-mandated PLA* is a contract that typically requires construction projects to be awarded *only* to companies that agree to: recognize unions as the representatives of their employees on that job; use the union hiring hall to obtain workers; follow archaic and inefficient work rules; and pay into union benefit and multi-employer pension plans that nonunion employees will never be able to access—forcing employers to pay “double benefits” into existing plans and union plans—and placing firms opposed to these costly provisions at a significant competitive disadvantage. In addition, PLAs typically force qualified workers to pay union dues or join a union if they want to receive union benefits and work on a PLA project.

As a result of these terms and conditions, government-mandated PLAs can unfairly *discourage competition* from nonunion contractors and their employees, who comprise 86 percent of the U.S. private construction workforce.

President Obama's Feb. 6, 2009, Executive Order 13502 encourages federal agencies to require PLAs on federal construction projects exceeding \$25 million in total cost on a case-by-case basis in order to “advance the economy and efficiency in federal contracting.”

However, studies of construction projects subject to prevailing wage laws found PLA mandates increase the cost of construction between 12 percent and 18 percent compared to similar non-PLA projects. Recent government-mandated PLAs on federal projects have resulted in increased costs, delays and discrimination.

In addition, the executive order and related FAR regulations have exposed agency procurement officials to intense political pressure from special interest groups and politicians to mandate PLAs on federal projects even when they are not appropriate.

The Bartlett amendment counteracts potential special interest favoritism by prohibiting federal agencies building projects authorized by this bill from *mandating* PLAs and implementing PLA preferences. However, it also permits federal agencies to award contracts to businesses that *voluntarily* enter into PLAs in accordance with the National Labor Relations Act.

The Bartlett amendment will curb waste and favoritism in the procurement of federal construction projects and ensure taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate. We ask that you take a stand against discrimination and special interest carve-outs in government contracting and **SUPPORT** Rep. Bartlett's amendment to the NDAA.

The Bartlett amendment will create a level playing field in the procurement of government construction contracts; increase competition; help small businesses grow; curb construction costs; and spread the job-creating benefits of federal contracts throughout the construction industry, which suffers from a 14.5 percent unemployment rate.

Sincerely,

American Council of Engineering Companies (ACEC)
Associated Builders and Contractors (ABC)
Associated General Contractors (AGC)
Business Coalition for Fair Competition (BCFC)
Construction Industry Round Table (CIRT)
Independent Electrical Contractors (IEC)
Merit Elevator Contractors Association of America (MECAA)
National Association of Women in Construction (NAWIC)
National Black Chamber of Commerce (NBCC)
National Federation of Independent Business (NFIB)
Small Business & Entrepreneurship Council (SBEC)
U.S. Chamber of Commerce
Women Construction Owners & Executives, USA (WCOE, USA)

cc: United States House of Representatives



May 16, 2012

U.S. House of Representatives
Washington, D.C. 20515

Representative:

On behalf of Associated Builders and Contractors (ABC), a national association with 74 chapters representing 22,000 merit shop construction and construction-related firms, I am writing in support of Representative Roscoe Bartlett's amendment to the National Defense Authorization Act (NDAA) for FY 2013 (H.R. 4310). **ABC strongly urges House Members to support Representative Bartlett's amendment (#182) ensuring fair and open competition on federal construction contracts authorized by the NDAA and will consider the vote on the Bartlett amendment as a "KEY VOTE" for our 112th Congressional Scorecard.**

Rep. Bartlett's amendment will prevent federal agencies from **requiring** contractors to sign anti-competitive and costly project labor agreements (PLAs) **as a condition of winning federal construction contracts**. It also prohibits federal agencies from implementing discriminatory PLA preference policies that discourage competition and result in needless waste and favoritism in the federal procurement process.

In 2009, President Obama signed Executive Order 13502, which strongly encourages federal agencies to consider mandating anti-competitive PLAs on federal construction projects exceeding \$25 million in total cost. The Obama administration repealed President George W. Bush's Executive Orders 13202 and 13208, which had protected hundreds of billions of dollars' worth of federal and federally funded construction projects from government-mandated PLAs since 2001. President Obama's pro-PLA executive order has led to waste, discrimination, favoritism and delays on federal construction projects.

When a government agency mandates a PLA, it typically forces federal contractors and subcontractors to recognize unions as the representatives of their employees on that jobsite; use the union hiring hall to obtain workers; pay into union pension and benefit plans even if businesses have their own plans; obtain apprentices exclusively through union apprentice programs; and obey restrictive and inefficient union work rules in order to win a federal construction contract. In order to work on a PLA project, construction workers are forced to pay dues to a union and forfeit benefits accrued in union benefit plans during the life of a project unless they join a union.

In short, PLA mandates and PLA preferences discourage competition from the qualified contractors and skilled employees who want to give taxpayers and the government the best possible construction product at the best possible price.

Congress must ensure construction projects authorized by the NDAA are cost effective and administered without favoritism or discrimination. According to the U.S. Department of Labor's Bureau of Labor Statistics, only 14 percent of America's construction workforce belongs to a

union. This means government-mandated PLAs and preferences discourage competition from the employers of more than eight out of 10 construction workers who would work on taxpayer-funded construction projects if not for government-mandated PLAs and PLA preferences. The construction industry already faces an unemployment rate of 14.5 percent; everyone deserves a level playing field to compete for this work.

Taxpayers are harmed by government-mandated PLAs and preferences. Several independent and academic studies indicate government-mandated PLAs increase the cost of construction projects in numerous markets between 12 percent and 18 percent compared to similar non-PLA construction projects.

No language in Rep. Bartlett's amendment would prevent a federal contractor from voluntarily entering into a PLA on a federal construction project authorized by the NDAA. Allowing the free market to determine if a PLA is appropriate, instead of federal agencies influenced by powerful special interests, ensures fair and open competition on federal construction contracts.

Rep. Bartlett's amendment will eliminate inefficiencies in the federal procurement process, increase competition, reduce costs and create construction jobs while protecting the public's interests. **ABC urges all House Members to vote in support of the Bartlett Amendment (#182) and will consider this vote as a "KEY VOTE" for our 112th Congressional Scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Burr', written in a cursive style.

Geoff Burr

Vice President, Federal Affairs



Rebutting Misleading and Untrue Statements Union Lobbyists Make about Project Labor Agreements (PLAs)

- **From union talking points circulated to offices on the Hill:** *“If the Department of Defense can NOT [sic] require or prohibit the use of a PLA, then they can’t use them at all.”* This is untrue and misleading. The Bartlett amendment simply creates a scenario in which the firm that wins the bid is allowed to choose if it would prefer to use a PLA or not. The Bartlett amendment removes government bureaucrats and special interests from the equation. When the government elects to use a PLA on a project, they are effectively saying “The eighty-six percent of all U.S. construction industry workers who freely choose not to join a union are not welcome to work on this project.”
- **The language of the Bartlett amendment DOES NOT prohibit the use of a PLA on any project authorized by the National Defense Authorization Act for FY 2013 (NDAA) (H.R. 4310).** It DOES prohibit government bureaucrats from *mandating or prohibiting* the use of a PLA, and instead leaves that decision to the company selected to perform the project. The Bartlett amendment is not anti-union; it is pro-fairness, pro-competition and respects protections guaranteed by the National Labor Relations Act. **There is nothing in current law, Rep. Bartlett’s amendment or H.R. 4310 that would prevent a federal contractor from voluntarily entering into a PLA on a federal construction project authorized by the NDAA.**
- **The assertions made regarding PLAs “upholding security on military installations” would be laughable if they weren’t so offensive and intentionally misleading.** PLAs do not “guarantee” the use of E-verify. E-verify already is mandated on ALL federal construction projects, PLA or not. Union handouts, such as PLA mandates, do nothing to “uphold” security on military installations.
- **PLAs DO effectively require a union-only workforce.** Anyone who says anything to the contrary is being intentionally deceptive. PLAs typically require that workers on projects join a union and/or pay into union benefit programs as a condition of working on the project. In rare instances, nonunion workers are eligible to work on PLA projects, but they must first go to a union hiring hall. In many cases, nonunion workers hired through union halls will never receive benefits from the union programs they were forced to pay into while working on a PLA project.
- **Some Fortune 500 companies have used PLAs on major projects, though most usually choose not to use PLAs.** Private companies often will choose to use a PLA in high union density areas in order to avoid union bannering, pickets and other forms of harassment. Private enterprises have the right to make that choice.
- **Union-scale wages and benefits already are mandated on federal projects authorized by the NDAA via the Davis-Bacon Act with or without a PLA.** Accusations that the effort to prevent government-mandated PLAs is about driving down construction industry wages are completely false. The Bartlett amendment will deliver cost savings as a result of increased competition and reduced waste and inefficiency.
- **The Bartlett amendment attempts to limit cronyism in federal contracting and lets the free market—rather than powerful special interests—pick winners and losers.**

**AMENDMENT TO THE RULES COMMITTEE PRINT
OF H.R. 4310
OFFERED BY MR. BARTLETT OF MARYLAND**

At the end of subtitle A of title XXVIII, add the following new section:

1 **SEC. 28__ . USE OF PROJECT LABOR AGREEMENTS IN**
2 **MILITARY CONSTRUCTION PROJECTS AND**
3 **MILITARY FAMILY HOUSING PROJECTS.**

4 (a) **REQUIREMENTS.**—Section 2852 of title 10,
5 United States Code, is amended by adding at the end the
6 following new subsection:

7 “(d)(1) The Secretary of Defense and the Secretaries
8 of the military departments, **when awarding a construction**
9 **contract on behalf of the Government,** in any solicitations,
10 bid specifications, project agreements, or other controlling
11 documents, **shall not—**

12 “(A) **require or prohibit bidders,** offerors, con-
13 tractors, or subcontractors **to enter into or adhere to**
14 **agreements with one or more labor organizations;**
15 and

16 “(B) **discriminate against or give preference to**
17 bidders, offerors, contractors, or subcontractors

1 based on their entering or refusing to enter into
2 such an agreement.

3 “(2) Nothing in this subsection shall prohibit a con-
4 tractor or subcontractor from voluntarily entering into an
5 agreement with one or more labor organizations, as pro-
6 tected by the National Labor Relations Act (29 U.S.C.
7 151 et seq.).”.

8 (b) APPLICATION OF AMENDMENT.—The amendment
9 made by subsection (a) shall not apply to construction con-
10 tracts awarded before the date of the enactment of this
11 Act.

