Amendment to Funding/Authorization Bills Regarding Union-Only PLAS

No project shall be funded/authorized under this title where a government agency or department seeks to require any contractor or subcontractor to sign an agreement with a labor organization as a condition of performing work, unless the agency shall have first conducted an analysis, after advance public notice and comment, which demonstrates that there exists a compelling interest in imposing such a requirement on the particular project in question, and that the requirement will have no adverse impact on the competitive bidding process or on opportunities for small or disadvantaged business enterprises to perform the work. Any decision to impose a labor agreement requirement shall be made and published in the Federal Register no less than 60 days prior to any affected contract award. Any interested party adversely affected by imposition of such a requirement shall be entitled to seek judicial review after publication of the decision, and the standard for review of the decision shall be one of strict scrutiny.

From: "Baskin, Maurice" <mnbaskin@Venable.com>
To: 'Jennifer Boucher' <boucher@abc.org>
Date: 3/10/99 10:29am
Subject: RE: PLA Language

I think I would be comfortable with what you just described, because it would pretty much prohibit all known PLAs and would certainly be a roadblock to more federal PLAs. However, once the bill goes through the committee process like last time, I have a feeling that we may not like the result.

In general, I would say that our legislative position on union set asides should be analogous to minority set asides, i.e., there should be a presumption against them, in the absence of a total ban. They should be subjected to strict scrutiny like minority set asides, and they should only be permitted under extraordinary circumstances where there is a compelling state interest and proven cost savings. In other words, we do not need for all legislation to outright prohibit PLAs, but we should not support any legislation which does not at least discourage them.

-----Original Message-----
From: Jennifer Boucher [mailto:boucher@abc.org]
Sent: Wednesday, March 10, 1999 10:01 AM
To: mnbaskin@venable.com
Cc: herbert@abc.org; maresca@abc.org; spencer@abc.org
Subject: PLA Language

We've been shopping around the idea we discussed earlier for a "baby step" PLA amendment, i.e., to reiterate the federal procurement commitment to full and open competition and require agencies to give congress advanced notice (60 days?) of consideration of a labor stabilization agreement and demonstrate no negative impact on competitive bidding opportunities for small businesses (with judicial review).

Two requests for you: 1) draft language, and 2) are we at a point in our legal situation/political realities that we can be comfortable abandoning our hard-line stance that there should be nothing written into law on PLAs that doesn't expressly indicate they are bad?

(Do not limit "small" to M/WBEs. Unfortunately, no case to date has found that PLAs discriminate against small or M/WBEs and it would be very difficult to challenge a PLA on that ground alone. It would be better to focus on getting faster notice of any PLAs being considered by the federal govt., building on the previous requirement to disclose them to Congress in advance. In the one case we know about, the Cleveland courthouse, Congress did not get notice until long after the PLA was proposed/considered. Indeed, we still do not know where that project stands. Congress should insist on getting notice of any agency's consideration of a PLA immediately upon the issuance of findings, if not

before, so that those findings can be challenged before a bid specification is issued without delaying the project.)