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abcmetrowashington.org

TO: The Honorable Muriel Bowser, Mayor
District of Columbia City Council Members

FROM: Associated Builders and Contractors (ABC) of Metro Washington

RE: BILL 21-334- PLA Amendment

Dear Mayor Bowser and D.C.
Council Members:

On behalf of Associated Builders and Contractors (ABC)¹ of Metro Washington's 550 merit shop contractors, sub-contractors, suppliers and associate members and their experienced employees who live in and build this city, I am writing to express our opposition to language in section 14 of The Procurement Integrity, Transparency and Accountability Amendment Act of 2015 (Bill 21-334) that would require the mayor to mandate a controversial project labor agreement (PLA) on contracts to build District of Columbia construction projects greater than \$50 million.

In addition to harming District taxpayers and construction businesses and serving as a barrier to new jobs for the District's existing construction workforce, I am confident PLA mandates will needlessly increase construction costs between 12 percent and 18 percent because responsible contractors that do quality work at the best price refuse to bid when lawmakers require them to sign union agreements as a condition of winning public construction contracts.

¹ Associated Builders and Contractors (ABC) is a national trade association representing 21,000 members from more than 19,000 construction and industry-related firms. Founded on the merit shop philosophy, ABC Metro Washington is one of its 70 chapters that help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which they work. Conservatively, ABC's members employ more than 1 million skilled construction workers whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. The majority of ABC member companies, known as *merit shop contractors* in the industry, are not signatory to a construction trade union and they have a core workforce of experienced and qualified employees that do not belong to a construction trade union. The Bureau of Labor Statistics' (BLS) January 2016 report states that nonunion employees in the U.S. construction industry comprise 86.8 percent of the total construction industry workforce. In Washington, D.C., 91.1 percent of the private construction workforce does not belong to a union. In the D.C., Maryland, Virginia region, 92.3 percent of the private construction workforce does not belong to a union.

Because the PLA provision was inserted into the bill June 21 without an opportunity for public comment or debate, I suspect the public and D.C. Council members have not been properly informed about the negative aspects of anti-competitive and costly PLA mandates on the community.

The most recent project in the District subject to a government-mandated PLA is the D.C. United Soccer stadium, which Mayor Gray signed in September of 2013. I have enclosed the stadium PLA and use it as a reference point to illustrate the problematic provisions in typical PLAs as you consider the negative impact of this legislation.²

Areas of Concern in the D.C. United PLA

Eight provisions in the D.C. United PLA are objectionable to quality merit shop companies and their skilled employees.

1. Article XIII, Section 1, forces craft employees to “become members of the Union within seven (7) days after the date of their employment and shall remain members of the Union during the term of their employer on this Agreement” and be in “good standing” with the union as a condition of employment on the stadium. Becoming a member of a union and remaining in “good standing” includes paying union dues and union fees and following work rules contained in respective union collective bargaining agreements during the life of the project.
2. Article IV, Section 3, requires contractors to obtain most, or all, of their trade employees from union hiring halls. This means a merit shop company is prevented from using its own workforce and/or has limits on the number of existing employees it can use. New and unfamiliar union tradespeople dispatched from union hiring halls are of unknown quality and may delay time and cost-sensitive construction schedules dependent on the efficient use of familiar labor trained and skilled in multiple crafts. It would be similar to asking D.C. United to play a soccer game with a new roster of players supplied by the L.A. Galaxy for one game. These new employees may have skills, but do not possess the team chemistry and cohesion to deliver a quality, on-time and on-budget construction project to D.C. United and the District.

While we appreciate the efforts to ensure local hiring, the district’s First Source Act already applies to this project and requires District residents to be hired. Contractors have been able to ensure the hiring of local residents without involving union hiring halls or a PLA, demonstrating the employment of local residents is not dependent on a PLA.

Article IV, Section 8, describes how a contractor can request up to five existing “core employees” to be hired through union hiring halls. However, this token number of “core employees” would still have to join a union, pay union dues and follow union collective bargaining agreements.

3. Article XIII requires employees to join a union within seven days and remain in good standing with the union. To remain in good standing, employees have to pay nonrefundable union dues and/or fees

² The D.C. United Stadium Project Labor Agreement can also be accessed here: <http://thetruthaboutplas.com/wp-content/uploads/2013/09/DC-United-Stadium-Project-Labor-Agreement.pdf>.

Learn more about the D.C. United stadium PLA here: <http://thetruthaboutplas.com/2013/09/10/mayor-grays-project-labor-agreement-on-new-dc-united-stadium-deserves-a-red-card/>

on a PLA project spelled out in individual union collective bargaining agreements, even though they may have decided to work for a nonunion employer.³

4. Article XI, Section 1, requires nonunion companies to pay their workers' health and welfare benefits to union trust funds designated in appropriate union collective bargaining agreements, even though these companies have their own benefit plans. Workers cannot access any of their union benefits unless they decide to leave their nonunion employer, join a union and remain with the union until vested.⁴ Few nonunion employees will remain with a union after working on a PLA project, so in order to ensure nonunion employees earn contributions to retirement and benefit plans, companies have to pay benefits twice: once to the union plans and once to the existing company plan. This makes merit shop contractors less competitive against union contractors that don't face double benefit costs.

In addition, paying into underfunded and mismanaged union pension plans may expose merit shop contractors to massive pension withdrawal liabilities. Depending on the health of a multi-employer pension plan affiliated with the local trade unions, signing a PLA could bankrupt a contractor or prevent it from qualifying for construction bonds needed to build future projects for the District and other customers.⁵ For example, the U.S. Department of Labor notified participants in the Roofers Union Local 30 Combined Pension Plan (which is signatory to this PLA even though the union hiring hall is in Philadelphia, PA, which defies the intended purpose of hiring a local workforce through a PLA⁶) that they were in critical status in 2011.⁷ That means they had less than 65 percent of assets to meet future funding liabilities. In short, forcing craft employees into union pension plans harms both nonunion employees and employers financially.

5. Article XII and Article II, Section 6 (a) and (b), require contractors to follow union work rules contained in individual union collective bargaining agreements, which typically changes the way they otherwise would assign craft employees to specific job tasks—requiring contractors to abandon an efficient labor utilization practice called “multiskilling” and instead assign work based on inefficient and archaic union jurisdictional boundaries defined in union collective bargaining agreements. Merit shop contractors achieve significant labor cost savings and deliver quality projects through multiskilling, in which workers possess a range of skills that are appropriate for more than one work process and are used flexibly across multiple trades on a project or within an organization.

³ See www.TheTruthAboutPLAs.com, *Understanding PLAs in Right to Work States*, 7/20/09.

⁴ An October 2009 report by Dr. John R. McGowan, "[The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements](#)," finds that employees of nonunion contractors that are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20 percent. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of 25 percent in benefit costs above and beyond existing prevailing wage laws as a result of “double payment” of benefit costs.

See www.TheTruthAboutPLAs.com, *New Report Finds PLA Pension Requirements Steal From Employee Paychecks, Harm Employers and Taxpayers*, 10/24/09.

⁵ See www.TheTruthAboutPLAs.com, *Many Construction Industry Multiemployer Pension Plans Remain Severely Underfunded*, 7/1/13.

⁶ See <https://www.unionfacts.com/lu/32653/RWAW/30/#basic-tab>

⁷ See <https://www.dol.gov/ebsa/pdf/c-notice071811053.pdf>

This practice has tremendous labor productivity advantages, but is forbidden by typical union work rules and, by extension, PLAs.⁸

6. Article X requires nonunion companies to obtain apprentices exclusively from union apprenticeship programs. Participants in federal and state-approved nonunion apprenticeship programs and community or employer training programs cannot work on a job covered by a PLA. This means young people enrolled in qualified apprenticeship programs in the District of Columbia could be excluded from work in their community because these training programs are not run by unions.⁹ This undermines a significant source of construction industry training for District residents.
7. Article IV, Section 1, requires contractors to “recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions” working on the project. The decision to participate in a PLA project is also the decision to agree to union representation, but it is made by the employer rather than the employees.¹⁰ Nonunion construction employees often argue forced unionization and/or representation—even for one project—is an infringement of their workplace rights and runs contrary to their intentional decision not to join a union.
8. This specific PLA defers to individual union collective bargaining agreements, which often require contractors to pay fees to unions for a variety of tactics and programs designed to put merit shop contractors out of business and to help create jobs for union contractors and employees. Merit shop contractors object to being forced to subsidize their competitors and support programs that may lead to less work and opportunity for their company and employees as a condition of winning a D.C. United stadium contract.

In addition, Article II of the PLA allows businesses certified by the District of Columbia Department of Small and Local Business Development as a Local, Small and Disadvantaged Business Enterprises (LSDBE) from signing the PLA if the contract entered into by the LSDBE is less than \$6 million. While the merit shop contracting community appreciates any exemptions from the onerous terms of a PLA, this exemption is an admission that a PLA mandate serves as a barrier to participation from local and qualified contractors and is bad public policy on this project and others.

All of these provisions in this particular PLA and similar PLAs mandated by the D.C. Council will increase costs or reduce the number of qualified merit shop contractors and subcontractors interested in bidding on taxpayer-funded construction contracts, resulting in waste, discrimination and special interest favoritism taxpayers cannot afford.

Provisions in this PLA and other typical PLAs related to veteran hiring, safety, drug testing, scheduling, strike prohibitions, and wage and benefit rates¹¹ already are standard practice in most

⁸ See www.TheTruthAboutPLAs.com, *Understanding the Merit Shop Contractor Cost Advantage*, 5/17/10.

⁹ See www.thetruthaboutplas.com/tag/training-apprenticeship

¹⁰ Workers normally are permitted to choose union representation through a card check process or a federally supervised private ballot election. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The [National Labor Relations Act](#) generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the opportunity for construction workers to choose a federally supervised private ballot election or a card check process when deciding whether union representation is right for them.

¹¹ For example, all District of Columbia construction projects are subject to the federal Davis-Bacon Act, which requires mechanics and laborers engaged in construction activity construction projects greater than \$2,000 to be paid “prevailing” hourly wage and benefit rates determined by the U.S. Department of Labor. All such construction

construction contracts. These can be included in contracting documents without the anti-competitive and costly provisions of a PLA that is adamantly opposed by merit shop contractors.

So why not eliminate these provisions and therefore eliminate the controversy? The answer: Without these anti-competitive and discriminatory provisions that discourage nonunion contractors from competing for public projects, unions rarely agree to concessions regarding labor peace, work schedules and other provisions that are the cornerstones of the alleged benefits of a PLA. Union PLA proponents require these provisions because they are crucial to cutting competition and ensuring union contractors have an unfair advantage over nonunion contractors, resulting in jobs exclusively for union members at the expense of everyone else.

ABC is willing to work with stakeholders to develop fair contracting provisions to include in legislation that will ensure fair and open competition from all qualified contractors and their skilled local employees and help build a quality, on-time and on-budget project.

Costs

Unfortunately, if Request for Proposals (RFPs) for large-scale D.C. projects include a PLA mandate containing these provisions, the project will experience increased costs District taxpayers cannot afford. Studies of public works projects (already subject to government-determined uniform prevailing wage and benefit rates) indicate PLAs increase the cost of construction between 12 percent and 18 percent compared to similar non-PLA projects.¹² Can the District really afford to build four schools, roads and metro stations for the price of five because of a special-interest PLA mandate?

In addition, the federal government has refused to require PLAs on any large-scale federal contracts in the District of Columbia or surrounding region since it experienced increased costs and delays following problematic PLA mandates on federal contracts.

In 2010, the General Services Administration (GSA) awarded a \$52.3 million contract to a general contractor to build the Lafayette federal building in Washington, D.C., but then forced the contractor to sign a change order and build it with a union-favoring PLA that cost taxpayers an additional \$3.3 million.¹³ Another GSA project, the GSA Headquarters at 1800 F St. in Washington, D.C., suffered a 107-day delay and millions of dollars in cost increases as a result of failed PLA negotiations by labor unions.¹⁴

Stakeholders concerned about the anti-competitive and costly impact of the government-mandated PLA should look at the anecdotal results and controversy surrounding these federal projects and other government-mandated PLAs in the Washington, D.C., area, including the Nationals Baseball

workers are required to receive Davis-Bacon rates with or without a PLA agreement, which can be reviewed at <http://www.wdol.gov/wdol/scafiles/davisbacon/DC2.dvb?v=7>.

¹² See numerous PLA studies by the Beacon Hill Institute, as well as other studies, available at www.TheTruthAboutPLAs.com, [Research on Government-Mandated PLAs](http://www.TheTruthAboutPLAs.com), 12/28/12.

¹³ See <http://thetruthaboutplas.com/2012/04/10/gsa-wasted-millions-on-union-handout-wheres-the-outrage/>

¹⁴ See <http://thetruthaboutplas.com/2013/03/05/delays-and-increased-costs-the-truth-about-the-failed-pla-on-the-gsas-1800-f-street-federal-building/>

Stadium, the D.C. Convention Center, the Wilson Bridge project and the Prince George's County Laurel, Md. Library.¹⁵

In contrast, fair and open competition (free from PLA mandates) worked on the \$376 million 11th Street Bridge, the Wilson Bridge, the Pentagon renovations, Fed Ex Field, Phase 1 of the Dulles Corridor Silver Line Metrorail Project and hundreds of other projects in the region.

Are PLA Mandates a Pathway to Local Hire?

PLA proponents will likely claim government-mandated PLAs create a pathway to jobs for D.C. residents. For example, the D.C. United PLA drew comparisons to the controversial Nationals Stadium PLA mandated by the D.C. City Council.¹⁶ This comparison ought to cause the city and taxpayers concern as the Nationals Stadium PLA failed to deliver on its local hire promises.

According to the November 2009 DC Progress report, *The True Cost of the Washington Nationals Ballpark Project Labor Agreement*:¹⁷

“The Nationals Park PLA created a huge barrier for the District’s non-union workforce: 85 percent of construction workers and 95 percent of minority-owned contractors were left out of the work.”

In addition, the study found reduced competition in bidding and other problems needlessly increased construction costs:

“The cost of the ballpark may reach \$800 million,¹⁸ more than double the initial cost estimate of \$395 million. The union-only PLA increased costs by reducing the pool of potential bidders. Future PLAs will do the same.”

The Nationals Baseball Stadium PLA established three main goals to track and measure the PLA’s success in local job creation. However, the PLA only met one goal. For example, the PLA was supposed to ensure D.C. workers performed 50 percent of journeyman hours, but the report found that goal was not met:

“For the journeyman goal of the stadium PLA to have been met, the project needed to increase the number of DC journeymen hours by 93 percent. A whopping 74 percent of the higher paid journeymen hours went to non-residents.”

Data used in the DC Progress report is from a September 2008 report from the Clark/Hunt/Smoot JV to the DC Sports and Entertainment Commission (DCEC),¹⁹ which indicates contractors missed multiple hiring goals set by the PLA.²⁰

¹⁵ See www.TheTruthAboutPLAs.com [New Report Says Anti-Competitive PLAs Won't Help District of Columbia Economy](#), 3/31/10, and [Prince George's County Abandons Anti-Competitive, Budget-Busting Project Labor Agreement on Laurel Library](#), 10/09/14.

¹⁶ See [Nationals Stadium PLA](#) at <http://thetruthaboutplas.com/wp-content/uploads/2013/09/DC-Nationals-Stadium-PLA-As-Issued.pdf>

¹⁷ DC Progress, [The True Cost of the Washington Nationals Ballpark Project Labor Agreement](#), November 2009.

¹⁸ Washington City Paper, [Please Stop Calling It a \\$611 Million Ballpark Please](#), 3/31/08.

¹⁹ Clark/Hunt/Smoot JV, [Setting a New Standard for Economic Inclusion for District Businesses and Workers in the Construction of the New Nationals Ballpark, A Report to the DC Sports & Entertainment Commission](#), 9/10/08.

Another study, *Broken Promises, Big Losses: The Story of DC Workers Watching from the Dugout as the \$611 Million Washington Nationals Ballpark is Built*, found a PLA couldn't deliver on local hiring promises either.²¹

"...non-D.C. residents worked 506,926 journeyman hours (71.1 percent of total journeyman hours), while D.C. resident worked just 206,444 journeyman hours (28.9 percent), far below the PLA requirement that D.C. residents work 50 percent of total journeyman hours."

Additionally, this study found that half of the contractors involved in the project hired no new apprentices; of the companies that hired new trainees, only 17 of 56 met the PLA requirement that 100 percent of new apprenticeships go to D.C. residents.

Incidentally, the September 2008 Clark/Hunt/Smoot JV report to the DCEC appears to be the last public accounting of local hiring on the Nationals Baseball stadium. The D.C. Council has not released any final data despite multiple requests. It would be wise to get this final data and make it available to the public before entering into another PLA or passing this legislation.

Finally, in 2013, data collected by Del. Eleanor Holmes-Norton (D) on federal projects located in the District subject to PLA mandates demonstrated that PLAs delivered worse local hiring outcomes than other large-scale federal project not subject to a PLA mandate.²²

Projects subject to government-mandated PLAs often fail to deliver on local hire promises because 1) local hiring laws are typically illegal on publicly funded jobs; 2) guaranteeing a local workforce is against most union hiring hall rules; and 3) there is usually not enough skilled local union labor to meet local hiring demands so out-of-area union members called "travelers" or "boomers" are given hiring preference over local nonunion construction workers. In addition, union contractors often engage in "checker boarding" to meet local hiring goals, which is the practice of taking local workers off of other projects and using them on PLA projects subject to local hire and replacing their jobs with non-local union workers. So there is no net gain in local employment.²³

Conclusion

ABC respectfully requests that you remove Section 14 of Bill 21-334 and provide us with an opportunity to work with the D.C. City Council and the construction community to ensure all qualified members of the construction industry are encouraged to fairly compete for city construction contracts.

Our organization, and merit shop contracting community prime contractors, subcontractors and their employees appreciate the opportunity to share our perspective and extensive experience with PLA mandates. We believe these anti-competitive and costly agreements have no place on public

²⁰ See <http://thetruthaboutplas.com/wp-content/uploads/2013/09/Nationals-Baseball-Stadium-Cost-and-Local-Hire-Packet.pdf>

²¹ District Economic Empowerment Coalition, *Broken Promises, Big Losses: The Story of DC Workers Watching from the Dugout as the \$611 Million Washington Nationals Ballpark is Built*, 10/2/07.

²² See <http://thetruthaboutplas.com/2013/03/11/data-busts-myth-that-project-labor-agreements-result-in-increased-local-hiring/>

²³ See <http://thetruthaboutplas.com/2010/08/05/project-labor-agreements-and-big-labor-fail-at-local-job-creation/> 08/05/10

construction projects and we encourage stakeholders to proceed with construction procurement free from PLA mandates and in the spirit of fair and open competition. Doing so will help stakeholders deliver the best possible product at the best possible price to D.C. taxpayers.

Respectfully,

Debra D. Livingston, CAE
President and CEO