



# Testimony of Associated Builders and Contractors

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U.S. Senate Committee on Environment and Public Works

Chairman Barbara Boxer and Ranking Member James Inhofe

Hearing on:

“Oversight of the GSA and Energy Efficiency in Public Buildings”

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April 22, 2009

**The Voice of the Merit Shop®**

Associated Builders and Contractors (ABC) appreciates the opportunity to submit the following testimony for the official record.

We would like to thank the Committee Chairman, Barbara Boxer and Ranking Member, James Inhofe, as well as the members of the Senate Committee on Environment and Public Works for holding today's hearing entitled "Oversight of the GSA and Energy Efficiency in Public Buildings".

ABC is a national construction industry trade association representing more than 25,000 merit shop contractors, subcontractors, materials suppliers and construction-related firms within a network of 79 chapters throughout the United States and Guam. ABC member contractors employ more than 2.5 million skilled construction workers, whose training, skills, and experience span all of the twenty-plus skilled trades that comprise the construction industry. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. This philosophy is based on the principles of full and open competition unfettered by the government, nondiscrimination based on labor affiliation, and the award of construction contracts to the lowest responsible bidder through open and competitive bidding. This process assures that taxpayers and consumers will receive the most for their construction dollar.

The purpose of our testimony is to bring to the attention of members of the Committee several areas of concern facing the construction industry as it pertains to U.S. General Services Administration (GSA).

### **Green Jobs**

ABC member companies have been leaders in green construction since before this terminology came into fashion. In fact, ABC has been at the forefront of the green building movement since its inception. ABC member SIGAL Construction was a founding member of the U.S. Green Building Council (USGBC) as well as one of the authors of the Leadership in Energy and Environmental Design (LEED) rating system. ABC members continue leading the construction industry by utilizing sustainable construction methods and practices. According to Engineering News-Record in 2008, 53 of the Top 100 Green Contractors were ABC members generating close to \$15 billion in revenue with more than 2,800 LEED APs on staff. (Attachment 1)

ABC chapters and member companies are actively engaged in training workers in a wide variety of skilled occupations and are constantly striving to keep pace with technology and innovation in order to make certain America has the skilled workforce it deserves, and that all American workers, regardless of union affiliation, enjoy equal opportunity of access to critical job training. However, the continued participation of open shop contractors, and the job opportunities for over 84 percent of the construction workforce they employ, in the booming green building market is threatened by the efforts of many in Washington, D.C. to exclude non-union companies and training providers from participating in new government funded green jobs training programs.

The Green Jobs Act, enacted as part of the “Energy Independence and Security Act of 2007” which was signed into law in December 2007, establishes National Energy Training Partnership Grants to fund training programs targeted at creating an efficient energy and renewable energy skilled workforce. Specifically, the Green Jobs Act would require any entity applying for these grants to partner with organized labor. The reality is that this language would bar the numerous open shop training programs from receiving this grant funding.

Organized labor makes up just 15.6 percent of the private construction workforce and likely represents a similar amount of work in the green building market. Given the desire to see a continued increase in the use of green building and green technology, it seems that limiting the ability to participate in green training to such a small percentage of the construction industry would make this growth difficult. If the green building market is going to continue to expand in the coming years as some groups predict, the participation of the open shop will be a crucial factor in ensuring there are enough skilled workers to meet the demand.

To that end, ABC, along with many other construction and business groups, strongly supports the “Green Jobs Improvement Act” soon to be introduced in the U.S. House of Representatives by Congressman John Kline which would amend the Workforce Investment Act to allow both union and open shop training providers access to the federally funded energy efficiency and renewable energy worker training programs. This bill would give all workers the opportunity to train in the ever increasing field of green construction and would not block certain training providers access simply because they choose not to be affiliated with organized labor.

The advances in the technology and skill involved in green building, and the benefits of their use, is indeed a welcome trend for contractors, skilled workers and the end user. It is our view that the most efficient path to encouraging this continued growth of this sector is by giving all training providers, regardless of union affiliation, access to federal training programs so that the greatest numbers of workers can be trained in green jobs. In today’s tough economic times, especially in the construction industry, Members of Congress have a responsibility to provide all workers with training opportunities paid for by their tax dollars.

ABC looks forward to your continued efforts to promote green building opportunities for all contractors.

### **Union-Only Project Labor Agreements**

President Obama’s Executive Order 13502, signed February 6, 2009, encourages federal agencies and recipients of federal assistance to attach union-only requirements, known as project labor agreements (PLAs), to all construction projects exceeding \$25 million. The order also repealed the Bush Executive Order 13202, which protected hundreds of billions of federal and federally funded construction projects from being subject to government mandated union-only PLA requirements since 2001. This Executive Order effectively forbids the over 84 percent of private construction who is not affiliated with organized labor from working on federal projects. Projects that are funded by their own tax dollars!

Equal opportunity and open competition in federal contracting is a critical issue to consider as the federal government explores various solutions, including significant infrastructure spending, to stimulate our ailing economy. Congress must ensure federal and federally funded infrastructure projects paid for by taxpayers are procured in a manner that is free from favoritism and discrimination while efficiently spending federal tax dollars. These interests would not be served if the Federal government were to require union-only requirements, commonly known as union-only PLAs, on federal construction projects.

A union-only PLA is a contract that requires a construction project to be awarded to contractors and subcontractors that agree to: recognize unions as the representatives of their employees on that jobsite; use the union hiring hall to obtain workers; pay union wages and benefits; obtain apprentices through union apprenticeship programs; and obey the union's restrictive work rules, job classifications and arbitration procedures.

Construction contracts subject to union-only PLAs almost always are awarded exclusively to unionized contractors and their all-union workforces. According to the most recent data from the U.S. Department of Labor's Bureau of Labor Statistics, only 15.6 percent of America's construction workforce belongs to a union. This means union-only PLAs would discriminate against more than eight out of 10 construction workers who otherwise would be eligible to work on construction projects if not for a union-only PLA.

This discrimination is particularly harmful to women and minority-owned construction businesses – whose workers traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs. In fact, the National Black Chamber of Commerce, Women Construction Owners and Executives and National Association of Small Disadvantaged Businesses have all come out in opposition to mandating PLAs on federal projects.

In addition, construction projects subject to union-only PLAs stifle competition from non-union contractors and take away opportunity from their non-union employees unless they agree to the “union friendly” and inefficient terms and conditions of a typical PLA. A union-only PLA is a contract that requires a construction project to be awarded to contractors and subcontractors that agree to: recognize unions as the representatives of their employees on that jobsite; use the union hiring hall to obtain workers; obtain apprentices through union apprenticeship programs; and obey the union's restrictive work rules. While non-union contractors are permitted to bid on PLA projects, the reality is the contracts subject to PLAs end up being awarded almost exclusively to unionized contractors and their all-union workforces.

Moreover, several academic studies by the Beacon Hill Institute indicate PLAs increase the cost of school construction between 10 percent and 20 percent when compared to similar school construction projects not subject to a PLA. America can't afford to waste in excess of \$30 billion in construction spending contained in the stimulus bill to reward special interests. Why should we build four schools, bridges, hospitals and wind farms for the price of five? That money is better served rebuilding America's crumbling infrastructure and putting all construction workers, not just union workers, back to work.

ABC fully supports the “Government Neutrality in Contracting Act,” (S. 90) introduced by Senator David Vitter which would curb waste and end discrimination in the Federal government procurement process while ensuring taxpayer dollars are used responsibly. ABC urges members of the Committee to add their names as cosponsors to this important piece of legislation.

It is the duty of those elected to Congress to ensure taxpayer funded infrastructure projects are cost-effective and administered without favoritism or discrimination. These interests will not be served under President Obama’s Executive Order 13502.

### **Davis-Bacon Act Expansion**

Since the beginning of the 110<sup>th</sup> Congress we have seen a dramatic increase in the expansion of the arcane Davis-Bacon Act into areas of law where it has never before been seen. The Davis-Bacon Act is a Depression-era wage subsidy law enacted in 1931. In the 21st Century, especially in the new competitive global economy, it is essential to allow the free market system to determine wages.

Mandating Davis-Bacon Act prevailing wage requirements adversely affects small business access to construction performed under the program in which it is attached and inflates the costs of projects at the expense of the taxpayer. Moreover, reports consistently indicate Davis-Bacon wage rates are inaccurate and vulnerable to fraud.

Davis-Bacon has a negative impact on equal access to work opportunities. It prevents many qualified small and nonunion businesses from even bidding on publicly funded projects, because the complexities and inefficiencies in the Act make it nearly impossible for them to compete. This has a disproportionate impact on minority-owned businesses, which tend to be smaller and nonunion companies. The toll is real: one study estimates Davis-Bacon reduces the number of minority workers in the construction industry by 25,000 each year.

In addition, Davis-Bacon’s flaws will cost taxpayers more to provide less. Davis-Bacon has been shown to increase public construction costs by anywhere from 5 to 38 percent above what the project would have cost in the private sector. According to the Congressional Budget Office (CBO), the Davis-Bacon Act already costs taxpayers more than \$9.5 billion over the 2002 to 2011 period relative to the 2001 appropriations and \$10.5 billion relative to 2001 appropriations adjusted for inflation. A more recent estimate, from the Beacon Hill Institute at Suffolk University in January, suggests Davis-Bacon costs taxpayers \$8.6 billion per year.

Finally, federal authorities have concluded that Davis-Bacon wage rates are inaccurate. A series of audits by outside agencies, as well as the Department of Labor’s (DOL) own Office of Inspector General (OIG), have revealed substantial inaccuracies in Davis-Bacon Act wage determinations and suggested that they are vulnerable to fraud. In fact, DOL’s OIG released three reports highly critical of the wage determination program, with one report from 2004 finding errors in nearly 100 percent of the wage surveys reviewed. Expanding a wage determination process that has been proven to be flawed is unfair to the American taxpayer and American businesses.

Davis-Bacon's wage determination flaws harm the very employees the law was intended to protect. Research from the Heritage Foundation found that if it were not market forces, Tampa Bay area electricians would be "underpaid" by 38 percent under Davis-Bacon's system when compared to the more statistically sound wage determination method used by the Bureau of Labor Statistics (BLS). Recent academic research found that Davis-Bacon wages were substantially lower than BLS figures in 16 urban areas across the nation.

Moreover, the "American Recovery and Reinvestment Act of 2009" (ARRA) took the unprecedented step of requiring Davis-Bacon Act prevailing wages to be used on the entire project if \$1 or more of ARRA funding is used on the project. This will undoubtedly create havoc on projects funded fully or in part by stimulus monies. In fact, there is a very real possibility that shovel ready projects will become un-shovel ready due to the Davis-Bacon Act being mandated on the project. For example, if a project is bid and the work is set to begin as soon as funding is procured and \$1 dollar or more of project funding comes from the ARRA the entire project would have to be re-bid taking into account Davis-Bacon wage rates for that project. Thus, a shovel ready project would automatically become un-shovel ready because the entire bidding process would have to begin from scratch. This flies in the face of the intended purpose the "American Recovery and Reinvestment Act of 2009", putting workers back to work immediately. Congress acted without taking into account the ramifications of mandating Davis-Bacon Act prevailing wages on stimulus funding.

ABC calls on Congress to reform the Davis-Bacon Act and immediately halt its expansion into areas of the law where it has never before been used.

### **Complex Procurement Regime and "Buy American" Provisions**

GSA, in its role on the Civilian Agency Acquisition Council (Council), is responsible for approving and finalizing changes and additions to the Federal Acquisition Regulation (FAR). On March 31, the Council published interim rules (rules which are issued as final regulations prior to public notice-and-comment procedures) implementing several provisions of the "American Recovery and Reinvestment Act of 2009" (ARRA).

Already a labyrinthine set of procedures, rules and requirements, the complexity of the FAR discourages businesses—especially small businesses—from participating in federal contract work. The interim rules for ARRA have created additional compliance and reporting layers to the federal procurement process. This will naturally be a further disincentive to participation in federal contracting.

For example, the new FAR rules contain "Buy American" provisions, requiring all iron, steel and manufactured goods used in the construction, alteration, maintenance or repair of public buildings or public works projects to be produced in the United States. This provision will add cumbersome restrictions to materials purchases, as well as complex reporting requirements to verify compliance. Granted, some exemptions have been provided—notably with regard to thresholds and unreasonable costs of domestic materials. However, simply trying to determine when these exemptions apply is enough to deter a small business contractor from

participating in federal contracting and bidding on stimulus projects, particularly due to the added time and resources (including staffing needs) this and other provisions necessitate.

### **Unreasonable Executive Compensation Reporting Requirements**

In addition, the new FAR rules require the disclosure of the names and total compensation of a contractor's five most highly compensated officers if the contractor receives 80 percent or more of its annual gross revenues from federal contracts (and/or subcontracts) in the calendar year in which an ARRA-funded project is awarded. Included in reporting requirements are salary, bonus, stock options, change in pension value, earnings for services under non-equity incentive plans, and even severance and termination payments. The fact is that the intrusiveness of this reporting requirement stands to be a significant disincentive for bidding on ARRA-funded projects. Many honest contractors will turn away from federal bidding as a result of this provision, not because they intend to misappropriate federal funds, but because the requirement is unnecessarily invasive, due to the fact that reporting does not necessarily facilitate the tracking of ARRA funds.

Many of ABC's members are currently active in federal contracting, and many more would like to begin bidding federal work, particularly given the current private construction market. However, in order for this to occur, the procurement process needs to be easier for small businesses, rather than increasingly burdensome and confusing. To date, guidance documents for compliance with the new FAR rules have only been produced for contracting officers of federal agencies, and not for the actual contractors and businesses. Our national office has been inundated with calls and emails asking for additional guidance documents geared specifically to contractors. However, without further information from the administration, any attempt to create such resources for our members would be interpretations at best, and guesses at worst.

To be sure, the FAR rules, of which we have only touched on in this testimony, will create significant obstacles to the acquisition process, especially for small business contractors with no prior experience in federal contracting.

Again, thank you for holding today's hearing and we hope that by raising these concerns your Committee will work to alleviate the issues outlined above so that the construction industry can continue building America.

Attachment 1



**According to Engineering News-Record in 2008, 53 of the Top 100 Green Contractors were ABC members generating close to \$15 billion in revenue with more than 2,800 LEED APs on staff -**

[http://enr.construction.com/people/topLists/GreenCont/topGreenCont\\_1-50.asp](http://enr.construction.com/people/topLists/GreenCont/topGreenCont_1-50.asp).

Highlighted firms are ABC member companies:

RANK 2008	FIRM	APs on staff	07 GREEN REV	
			\$MIL	% REV
1	<i>ABC Members highlighted</i> The Turner Corp., New York, N.Y.	429	1805.05	19
2	Webcor Builders, San Mateo, Calif.			
3	Skanska USA Inc., Whitestone, N.Y.	164	1242.34	22
4	Bovis Lend Lease, New York, N.Y.	201	1075.5	20
5	Swinerton Inc., San Francisco, Calif.	195	1046	52
6	PCL Construction Enterprises Inc., Denver, Colo.	18	936.71	19
7	Clark Group, Bethesda, Md.	85	752.97	18
8	Hensel Phelps Construction Co., Greeley, Colo.	68	747.68	30
9	Gilbane Building Co., Providence, R.I.	186	651.87	22
10	The Haskell Co., Jacksonville, Fla.	17	562	79
11	Hunt Construction Group Inc., Scottsdale, Ariz.	25	527.32	26
12	L.F. Driscoll Co., Bala Cynwyd, Pa.			
13	Hoffman Corp., Portland, Ore.			
14	The Whiting-Turner Contracting Co., Baltimore, Md.			
15	Sundt Construction Inc., Tempe, Ariz.	74	440.3	49
16	Clayco Inc., St. Louis, Mo.			
17	The Weitz Co. LLC, Des Moines, Iowa	58	349.33	22
18	Austin Industries, Dallas, Texas	47	345.9	2
19	David E. Harvey Builders Inc., Houston, Texas	13	337	47
20	Holder Construction Co., Atlanta, Ga.			
21	Balfour Beatty Construction, Dallas, Texas	50	273.58	12
22	The Facility Group, Smyrna, Ga.			
23	B.L. Harbert International LLC, Birmingham, Ala.	5	267.1	63
24	JE Dunn Construction Group, Kansas City, Mo.	133	266.5	10
25	William A. Berry & Son Inc., Danvers, Mass.			
26	Caddell Construction Co. Inc., Montgomery, Ala.	4	256.54	74
27	Structure Tone, New York, N.Y.	140	248.43	7
28	Opus Group, Minnetonka, Minn.	92	225.3	12
29	FTR International Inc., Irvine, Calif.			
30	Stellar, Jacksonville, Fla.	25	199.9	36
31	HITT Contracting Inc., Fairfax, Va.	17	199.04	22
32	James G. Davis Construction Corp., Rockville, Md.			
33	Pepper Construction Group, Chicago, Ill.			
34	M.A. Mortenson Co., Minneapolis, Minn.			
35	Suffolk Construction Co. Inc., Boston, Mass.	56	170.06	15
36	DPR Construction Inc., Redwood City, Calif.	211	167.22	11
37	Linbeck, Houston, Texas			
38	Hathaway Dinwiddie Construction, San Francisco, Calif.			
39	Messer Construction, Cincinnati, Ohio	11	146.5	22
40	TLT Construction Corp., Wakefield, Mass.			
41	The Walsh Group, Portland, Ore.	20	136.5	52
42	The Walsh Group Ltd., Chicago, Ill.	44	135.47	4
43	Barton Malow Co., Southfield, Mich.	40	133.24	9
44	Okland Construction Co. Inc., Salt Lake City, Utah			
45	McCarthy Holdings Inc., St. Louis, Mo.			
46	Power Construction Co. LLC, Schaumburg, Ill.			

47	Andersen Construction Co., Portland, Ore.			
48	Duke Construction, Indianapolis, Ind.			
49	Grunley Construction Co. Inc., Rockville, Md.	9	109.06	41
50	Lauth Construction Group LLC, Indianapolis, Ind.			
51	Cox & Schepp Construction Inc., Charlotte, N.C.	8	105	50
52	Barnhart Inc., San Diego, Calif.			
53	Saunders Construction Inc., Centennial, Colo.			
54	Ryan Cos. US Inc., Minneapolis, Minn.	47	101.25	10
55	Pioneer General Contractors, Grand Rapids, Mich.			
56	Sellen Construction Co. Inc., Seattle, Wash.			
57	Bernards, San Fernando, Calif.			
58	BE&K Inc., Birmingham, Ala.	22	79.48	5
59	Kraus-Anderson Construction Co., Minneapolis, Minn.			
60	Lusardi Construction Co., San Marcos, Calif.	0	77	25
61	Consigli Construction Co. Inc., Milford, Mass.			
62	The Yates Cos. Inc., Philadelphia, Miss.	25	75.2	4
63	C.W. Driver, Pasadena, Calif.	18	75.01	13
64	Hall Building Corp., Farmingdale, N.J.			
65	New South Construction Co., Atlanta, Ga.	7	73.8	47
66	McGough Construction, St. Paul, Minn.			
67	Mascaro Construction Co. LP, Pittsburgh, Pa.			
68	Forrester Construction Co., Rockville, Md.	40	70	26
69	Lease Crutcher Lewis, Seattle, Wash.			
70	Reno Contracting Inc., San Diego, Calif.	11	66.16	30
71	Rockford Construction Co., Grand Rapids, Mich.	6	63.73	18
72	The Boldt Co., Appleton, Wis.			
73	P.J. Dick-Trumbull-Lindy, West Mifflin, Pa.			
74	Shawmut Design and Construction, Boston, Mass.			
75	The Korte Co., Highland, Ill.			
76	Brasfield & Gorrie LLC, Birmingham, Ala.	7	49.72	2
77	O & G Industries Inc., Torrington, Conn.			
78	INTECH Construction Inc., Philadelphia, Pa.			
79	CORE Construction Group, Morton, Ill.	20	48.4	9
80	Manhattan Construction Co., Tulsa, Okla.	15	43.7	4
81	Continental Building Systems, Columbus, Ohio			
82	XL Construction Corp., Milpitas, Calif.			
83	Workstage, Grand Rapids, Mich.			
84	Adolfson & Peterson Constr., Minneapolis, Minn.	48	40.4	5
85	Butz Enterprises Inc., Allentown, Pa.			
86	JM Olson Corp., St. Clair Shores, Mich.			
87	Davis Constructors & Engineers Inc., Anchorage, Alaska			
88	IMC Construction, Malvern, Pa.			
89	Hoar Construction LLC, Birmingham, Ala.	15	35.4	7
90	Nabholz Construction Corp., Conway, Ariz.	10	34.2	8
91	Tarlton Corp., St. Louis, Mo.			
92	Harper Construction Co. Inc., San Diego, Calif.	5	31.6	23
93	Creative Contractors Inc., Clearwater, Fla.	4	31.12	
94	F.A. Wilhelm Construction Co. Inc., Indianapolis, Ind.			
95	Moss & Associates LLC, Fort Lauderdale, Fla.	26	28.9	4
96	Coakley & Williams Construction, Gaithersburg, Md.	8	24.5	9
97	Elkins Constructors Inc., Jacksonville, Fla.	6	20.87	9
98	Weis Builders Inc., Minneapolis, Minn.	15	20.79	4
99	Sahara Inc., West Bountiful, Utah	4	20.6	23
100	Gray Construction, Lexington, Ky.	5	19.46	4
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