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November 8, 1999

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

AOR 1999-35

Nov 9 10 40 AM '99

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request

Dear Sirs and Madam:

On behalf of the Associated Builders and Contractors, Inc. ("ABC"), the Associated Builders and Contractors Political Action Committee ("ABC PAC"), and ABC North Texas and its Chapter nonfederal PAC, ABC PAC North Texas, and pursuant to 2 U.S.C. § 437f and 11 C.F.R. § § 112.1-112.6, we respectfully request an advisory opinion concerning the application of the Federal Election Campaign Act ("FECA"), as amended, to the use by ABC and ABC North Texas of an Automatic Clearing House ("ACH") for the receipt of contributions to each respective PAC through our joint solicitation program.

FACTS

This request builds upon Advisory Opinion 1979-75 which ABC-PAC received from the Federal Election Commission ("FEC" or "Commission") in 1979. As recognized by the Commission at that time, ABC is a national not-for-profit incorporated trade association whose membership is composed primarily of corporate contractors or builders. (Copies of ABC's articles of incorporation and bylaws are attached). ABC has been recognized as an organization exempt from federal income tax under § 501(c)(6) of the Internal Revenue Code. ABC has affiliated with its local chapters and state-level chapters in most states. ABC has affiliated with the ABC North Texas chapter which is also a not-for-profit corporation.

As a trade association, ABC is permitted to and does solicit voluntary contributions from executives of the member companies, provided that ABC has received prior written approval to solicit from its member companies. 11 C.F.R. § 114.5(g)(2). ABC PAC is the separate segregated fund established and administered by ABC.

Office of the General Counsel

November 8, 1999

Page 2

In Advisory Opinion 1979-75, the Commission recognized the ability of ABC-PAC and the ABC Chapter PACs such as ABC PAC North Texas to engage in joint fundraising. As was true in 1979, the joint solicitations are conducted under a written agreement between ABC PAC and the Chapter PAC identifying the amount of each jointly solicited contribution to be distributed to each PAC. All contributions are deposited into an escrow account, and then distributed as appropriate to ABC PAC and the chapter PAC and appropriate reporting made. These facts would not change.

ABC PAC now seeks to utilize an ACH program that would allow ABC PAC to transfer funds from an individual's personal checking account on a monthly basis to an ABC PAC escrow account created solely for the receipt of ACH contributions. The transfers would be preauthorized and take the place of a single contribution made by the contributor through the joint fundraising program.

ACH is a cash management service provided by Bank One, Texas, to meet the needs of its clients. ACH provides the ability to substitute electronic entries for paper generated transactions. The service is designed to be flexible and adaptable to meet the needs of particular clients. ACH is an electronic vehicle for exchanging paperless debit and credit entries and related information among financial institutions, corporations and individuals. The ACH system provided by Bank One follows the National Automated Clearing House Association Rules in structuring its processes and business. In this case the ACH would be used to collect preauthorized contributions from the restricted class.¹

In order to participate in the ACH program, ABC will be charged \$35.00 per month plus \$.14 per transaction. This administrative expense will be paid for by ABC national or ABC North Texas.

The program would operate as follows. After obtaining prior approvals as required pursuant to 11 C.F.R. § 114.8, ABC PAC and the chapter PAC would jointly solicit the restricted class for contributions. Individuals would be informed about their ability to make contributions through the ACH rather than by a single check if they so choose. To participate using the ACH, individuals will be required to fill out and sign a single combined form containing the required information for any contribution and the necessary bank account information to allow funds to be transferred from a personal bank account to the special ABC PAC escrow account set up to

¹ Bank One offers five primary types of ACH services. They are: cash concentration, cash disbursement, direct deposit, preauthorized payment, and electronic data interchange.

Office of the General Counsel

November 8, 1999

Page 3

receive these funds. ABC PAC would file an amendment to its statement of organization with the Federal Election Commission ("FEC") regarding the opening of this escrow account (if at a new depository) and no other funds would be deposited into the ACH escrow account. Pursuant to 11 C.F.R. § 114.8(d)(4) the prior approval forms would be renewed annually, as well as the permission forms authorizing withdrawals. Furthermore, contributors would be notified of their ability to revoke their authorization at any time.²

Minimum contributions of \$10.00 per month will be required to use ACH. If the individual contribution does not exceed \$50.00 per month, the account would be cleared every 2-3 weeks. A total of 40% of the funds would be transferred to ABC PAC, with the remaining 60% would be transferred to ABC PAC North Texas' individual contribution account, as permitted by state and local law, and as authorized by the contributor. If there is a monthly individual contribution of \$50.00 or more, the transfer from the escrow account to ABC PAC and ABC PAC North Texas would be made in less than 10 days after receipt to comply with the applicable FEC regulations. A copy of each permission form would accompany the funds going to ABC PAC.

QUESTIONS AND DISCUSSION

An advisory opinion is sought with respect to whether ABC PAC North Texas and ABC PAC may utilize and pay to use the ACH payment system for collecting contributions?

ABC PAC and ABC PAC North Texas believe that the ACH payment system is permissible for several reasons. First, the ACH program is not a prohibited payroll deduction or negative checkoff system. FEC regulations state that, with respect to trade associations, "[t]he member corporation may not use a payroll deduction or checkoff system for the executive or administrative personnel contributions to the separate segregated fund of the trade association." 11 C.F.R. § 114.8(e)(3). The ACH program is not a "payroll deduction"—instead, the authorized contributions are made from the individuals' personal bank accounts. In addition, individuals choosing to contribute must affirmatively provide permission on an annual basis.

This finding would be consistent with the Commission's determination in Advisory Opinion 1998-19, Fed. Election Camp. Fin. Guide (CCH) ¶ 6273 (1998). In that opinion, the FEC approved a similar system whereby individuals contributed to the Credit Union Legislative Action Committee ("CULAC") by way of a "Deduct-A-Buck" program. In approving the

² ABC will also meet all banking requirements in order to participate in the ACH system.

Office of the General Counsel

November 8, 1999

Page 4

"Deduct-A-Buck" program, the Commission noted that § 114.8(e)(3) is inapplicable "since the funds involved would not be deducted by means of a payroll deduction system administered by the employer of the contributing member account holders." Similarly, the ACH system does not involve a payroll deduction system. Rather, all contributions will come from the individual's personal checking accounts.

Second, the FEC has already explicitly approved the use of an Automated Clearing House to receive contributions. In Advisory Opinion 1989-26, Fed. Election Camp. Fin. Guide (CCH) ¶ 5974 (1989), the FEC approved a contribution program involving automatic withdrawals from contributors' bank accounts. In that situation, a federal candidate's campaign committee proposed to solicit contributions from individuals and to obtain the individuals' agreements to make contributions on a monthly installment basis by automatic withdrawals from the individuals' bank accounts. As would be the case here, the individuals would sign forms authorizing the committee to "initiate debit entries" to the individuals' checking accounts on a predetermined date each month. Since this was a candidate committee, there was no mention of the possibility that such contributions would be treated as payroll deductions. Rather, the contributions were simply treated as monthly contributions by the contributors with the FEC recognizing that the ACH debits were simply another form of making a contribution. The FEC approved the program noting that a contribution is made each month in the actual amount of the monthly withdrawal.³ The current proposal resembles that approved in Advisory Opinion 1989-26.

Third, the Commission has approved other collection methods for voluntary contributions. For instance, in Advisory Opinion 1997-9, Fed. Election Camp. Fin. Guide (CCH) ¶ 6238 (1997) the FEC approved a donation procedure whereby contributions to the Chicago Board of Trade's ("CBOT") PAC were automatically and electronically deducted from the member traders' accounts at trading firms. Thus, CBOT established a fundraising program whereby member traders could use their personal trading accounts maintained at trading firms to make contributions to CBOT's PAC. Both the member traders and their firms were members of CBOT. Based on that opinion, the member firms may electronically deduct voluntary

³ Because that ACH program involved a candidate committee in Advisory Opinion 1989-26, the Commission wished to ensure that there was no corporate contribution in the form of unreimbursed bank fees. Thus, the candidate committee was required to pay the fees of the ACH. That issue does not arise here in the context of a separate segregated fund where the administrative expenses of the separate segregated fund may be paid by the trade association or its state affiliates. See Advisory Opinion 1998-19.

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Office of the General Counsel

November 8, 1999

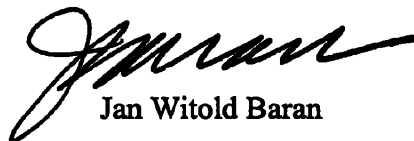
Page 5

contributions from the members' accounts and hold those funds in an account for transmittal to CBOT's PAC each day.

In sum, this proposal adds a single element, the Automatic Clearing House, to the ABC joint solicitations previously approved by the Commission, and that element has been approved by the Commission in other Advisory Opinions.

Our clients respectfully request an advisory opinion confirming the above.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Baran', with a long horizontal flourish extending to the right.

Jan Witold Baran

CERTIFICATE OF INCORPORATION
OF
ASSOCIATED BUILDERS AND CONTRACTORS OF MARYLAND, INC.

* * * * *

THIS IS TO CERTIFY:

FIRST. That we, the subscribers, Frances M. Rouchard, whose postoffice address is 100 Waldron Avenue, Pikesville 8, Maryland; Orville R. Wright, whose postoffice address is 426 Dunkirk Road, Baltimore 12, Maryland; and Edwin J. Eberly, whose postoffice address is 845 West University Parkway, Baltimore 10, Maryland, all being of full age, do, under and by virtue of the General Laws of the State of Maryland, authorizing the formation of corporations, associate ourselves with the intention of forming a corporation.

SECOND. The name of the Corporation (which is hereinafter called the "Corporation") is ASSOCIATED BUILDERS AND CONTRACTORS OF MARYLAND, INC.

THIRD. The purposes for which the Corporation is formed and the business and objects to be carried on and promoted by it are as follows:

- (a) To encourage, develop and protect the building and construction industries in Maryland.
- (b) To promote the good will and confidence among the builders and contractors and between the builders and contractors and the general public.
- (c) To promote the general welfare of the members; to encourage the highest efficiency and adherence to ethical standards of the building and construction industry.
- (d) To bring into one organization the builders, the general contractors, the subcontractors and other members of the building and construction industry in Maryland, as well as members of allied or related business or industries so that by frequent meetings and full and frank interchanging of views, they may secure such intelligent unity and harmony in every phase of their labor as will elevate the opinion of industry in all matters to the end that the industry may receive that respect and support within its own ranks and from the community to which its honorable history and great achievements entitle it.
- (e) To purchase, lease or otherwise acquire, hold, develop, improve, mortgage, sell, exchange, let or in any manner encumber or dispose of real property wherever situated.
- (f) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objects, or the furtherance of any of the powers hereinbefore set forth, either alone or in connection with other corporations, firms or individuals, and either as principals or agents, and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the aforesaid objects, purposes or powers, or any of them.

(g) And generally to exercise and enjoy all other powers, rights and privileges granted to or conferred upon corporations of this character of the General Laws of the State of Maryland, now or hereinafter enforced, the enumeration of certain powers as hereinabove specified not being intended to exclude or to constitute a waiver on such other powers, rights or privileges.

FIFTH. The postoffice address of the place at which the principal office of the Corporation in the State of Maryland will be located is 426 Dunkirk Road, Baltimore 12, Maryland.

The resident agent of the Corporation is Orville R. Wright, whose postoffice address is 426 Dunkirk Road, Baltimore 12, Maryland. Said resident agent is a citizen of the State of Maryland and actually resides therein.

SIXTH. The Corporation shall have seven directors but the Board of Directors may increase this number up to a limit of not more than fifteen directors and the following named persons shall act as such until the first annual meeting or until their successors are duly chosen and have qualified:

Charles Mullan
Charles Knott

Edward Colwill
Edward Dickinson
Clifton K. Wells

Philip W. Cloyes
Ernest W. Schultz

SEVENTH. This Corporation shall have no capital stock and shall have the status of a non-profit organization.

EIGHTH. Membership in the association shall be classified as ACTIVE and ASSOCIATE. Any person, firm or corporation engaged in the building and construction industry may be admitted as an ACTIVE member of this Corporation subject to such rules and regulations and conditions as shall be established by the Board of Directors. Any person, firm or corporation engaged in any line of business allied with or related to the building and construction industry may be admitted to ASSOCIATE membership.

NINTH. The duration of the Corporation shall be perpetual.

IN WITNESS WHEREOF, we have signed this Certificate of Incorporation, on this 8th day of April, 1950.

WITNESS:

Herbert R. O'Connor, Jr.
STATE OF MARYLAND
CITY OF BALTIMORE

Frances M. Rouchard (SEAL)
Orville R. Wright (SEAL)
Edwin J. Eberly (SEAL)

ASSOCIATED BUILDERS AND CONTRACTORS OF MARYLAND, INC.

ARTICLES OF AMENDMENT

The ASSOCIATED BUILDERS AND CONTRACTORS OF MARYLAND, INC., a Maryland corporation having its principal office in Baltimore, Maryland, (hereinafter called the Corporation), hereby certifies to the State Tax Commission of Maryland, that:


FIRST: The amendment to the charter of the Corporation herein made consists only of a change in the name of the Corporation to delete therefrom the words "of Maryland", and the said amendment was approved by vote of a majority of the entire board of directors at a meeting duly convened and held on January 13, 1959.

IN WITNESS WHEREOF, the Associated Builders and Contractors of Maryland, Inc. has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary on *March 24*, 1959.

Attest:


John O. Gillespie
Secretary

ASSOCIATED BUILDERS AND CONTRACTORS
OF MARYLAND, INC.

By 
Larry S. Best
President

Safe Deposit Box

**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION
301 WEST PRESTON STREET
BALTIMORE 1, MARYLAND**

A 262

You are advised that the Articles of Amendment of

**ASSOCIATED BUILDERS AND CONTRACTORS OF MARYLAND, INC.
changing its name to
ASSOCIATED BUILDERS AND CONTRACTORS, INC.**

**have been received and approved by the STATE DEPARTMENT OF ASSESSMENTS AND
TAXATION OF MARYLAND this 28th day of July 1959 at 9:00 A.M.**

and will be recorded.

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND

by *A. W. [Signature]*

NATIONAL BYLAWS

of the

ASSOCIATED BUILDERS AND
CONTRACTORS, INC.

January 1999

NATIONAL ABC BYLAWS

CONTENTS

(Detailed index on Page 32)

Article I	Principles of the Merit Shop	Page 1
Article II	Identification and Definitions	Page 2
Article III	Purposes and Objectives	Page 3
Article IV	Organization Structure	Page 4
Article V	Membership & Dues	Page 5
Article VI	Organization	Page 8
Article VII	Executive Vice President and Staff	Page 18
Article VIII	Finance	Page 19
Article IX	Indemnification	Page 21
Article X	Regional Organizations	Page 22
Article XI	State Organizations	Page 23
Article XII	Chapters and Chapters-in-Formation	Page 24
Article XIII	Policy Manual	Page 26
Article XIV	Reports	Page 27
Article XV	Parliamentary Procedures-Services	Page 28
Article XVI	Amendments	Page 29
Article XVII	Dissolution	Page 30
Article XVIII	Supersession and Effective Dates	Page 31

ARTICLE I

PRINCIPLES OF THE MERIT SHOP

The Associated Builders and Contractors, Inc. is the voice of the Merit Shop in the construction industry. We assume the responsibility of making that voice heard.

We believe that the Merit Shop movement is a movement for the betterment of the individual...the industry...the nation.

We believe in the system of Free Enterprise.

We believe that employees and employers should have the right to determine wages and working conditions, through either individual or collective bargaining, as they choose, within the boundaries of the law.

We believe that the employer must have concern for the general welfare of the employee and that there must be a fair compensation for work performed. By the same token, we believe that the employee has an obligation for satisfactory performance of assigned work.

We support sound legislation in the areas of workers' compensation, safety and unemployment compensation. We believe legislation that embraces fair play for both employer and employee is essential to the preservation of our Free Enterprise system. The law should protect the right of employees to work regardless of race, color, creed, age, sex or membership or non-membership in a labor organization.

We oppose violence, coercion, intimidation, and the denial of the rights of the free working person and free management.

We believe that economy is incumbent upon all branches of government and that government should award contracts to the lowest responsible bidder only. We oppose any unjust pressure to violate these principles.

We believe that work opportunities in this nation should be made available to all of our people, regardless of race, color, creed, age, sex or national origin, and we support programs towards this end.

We believe that monopolies or any kind of price or wage fixing in either the public or private sector are detrimental to our system of Free Enterprise.

We believe that the destiny of all Americans can best be served by cooperation, reconciliation and following the tenets of Free Enterprise and democratic government. We believe businessmen can best preserve these tenets by becoming active in politics and civic affairs.

ARTICLE II

IDENTIFICATION AND DEFINITIONS

A. Identification

1. The name of this Association is "Associated Builders and Contractors, Inc." or in short form, "ABC."
2. The Association's seal, name, logo or the abbreviation ABC shall not be used by any chartered unit for the purpose of raising funds outside the chartered unit area.
3. The Association's shield is registered as a service mark with the U.S Department of Commerce, Office of Patents and Trademarks. Members and chartered units may not use or permit use of this shield in the marketing of a product or service provided by outside sources as opposed to a product or service created by the unit itself.

B. Definitions

1. The word "Association" when used in these Bylaws shall mean the "Associated Builders and Contractors, Inc."
2. The term "Board" in these Bylaws shall mean the National Board of Directors of the Association.
3. Reference in these Bylaws to male gender shall also be representative of female gender.
4. Whenever a two-thirds vote of the Board is required, it shall mean two-thirds of the Board present and voting and in no case less than one-half of the total Board.

ARTICLE III

PURPOSES AND OBJECTIVES

- A. The primary objective of this Association is to foster and perpetuate the principles of the Merit Shop as listed in Article I.
- B. In addition to this primary objective, this Association shall pursue and promote the following activities:
1. Encourage, develop and protect the construction industries.
 2. Promote confidence and goodwill within the building and construction industries and between these industries and the general public.
 3. Organize builders, contractors, subcontractors, suppliers and related groups of all kinds into chapters and organizations in order to encourage the free interchange of views and techniques and to facilitate the accomplishment of the primary objectives of the Association.
 4. Organize and promote meetings, seminars, conferences, publications, and other media of all kinds in order to maintain a well-informed industry and general public.
 - * 5. Promote and encourage continuing education, apprenticeship and other training programs within the construction industry.
 - * 6. Promote safety and training within the construction industry.
 7. Promote insurance, hospitalization, pension, training and other programs for the benefit of the general welfare of the employees of the Merit Shop industry.
 8. Promote a "Code of Ethics" for the construction industry.
 9. Promote such other activities or services as may benefit the membership, further the objectives of ABC, and promote the principles of the Merit Shop.

* Rev. 11/91

ARTICLE IV

ORGANIZATION STRUCTURE

The Associated Builders and Contractors, Inc., may be organized into the following units:

- A. National organization, which is the Associated Builders and Contractors, Inc.
- B. State or regional organizations which are incorporated groups of chapters or affiliates within defined geographical boundaries organized for the purpose of performing specific functions of the Association.
- C. Chapters, which are incorporated groups of builders, contractors, subcontractors, suppliers, associates, and related groups and businesses of all kinds, organized for the purpose of furthering the objectives, purposes and programs of the Association.
- D. "Chapters-in-Formation," which are unchartered groups that have not yet met criteria for Chapter status.

Rev. 4/94

ARTICLE V

MEMBERSHIP AND DUES

A. Types of Membership

1. Regular Member, who is a person, a firm or a corporation paying dues to the Association.
2. Member-at-Large, who is a person, a firm or a corporation not located within an area serviced by a Chapter. A Member-at-Large applies for membership and pays dues to the Association or to a Chapter-in-Formation pending chartering of the Chapter-in-Formation.
3. Life Member, who is an individual retired from an active role in the industry and who wishes to continue to participate in furthering the objectives, purposes and programs of the Association. A Life Member must have contributed an outstanding service to the Association and be recommended by the Chapter Board of Directors if a Regular Member or by the Board if a Member-at-Large, and designated a Life Member by the Board.
4. Sustaining Member, who is a person, firm, industry, association, foundation or any other group or individual who agrees to make a voluntary annual contribution, subject to the approval of the Board, to help defray the costs of furthering the objectives, purposes and programs of the Association.

B. Eligibility

1. Any person, firm or corporation, etc., which possesses the qualifications listed in Article V.A. of these Bylaws is eligible to become a member of this Association, except that no labor organization or any officer, employee or agent thereof shall be eligible for membership in the Association. No one shall be excluded from eligibility solely because of his or her membership in a labor organization. *
2. Acceptance of any qualified application shall be automatic with payment of the proper dues and fees, provided, however, that a Chapter Board of Directors, by a two-thirds vote of a quorum at a regular meeting, may reject such applicant for just cause. Just cause for rejection shall include but not be limited to a good faith belief that the applicant will not support the objectives, purposes and/or programs of the Association or will not act in the best interest of the Association. A report of such rejection shall be submitted to the National Office of the Association for review by the legal counsel of the Association. *

C. Applications

1. Application for the various types of membership shall be made on a proper form supplied by the Association or by one of its units.

* Rev. 7/90

Article V.

D. Dues

1. National dues for membership in the Association shall be set by the Board and collected by the various Chapters and Chapters-in-Formation and forwarded to the National Office not later than the 15th of the month after received.
2. Dues for Members-at-Large and contributions of Sustaining Members shall be collected directly by the National Office of the Association apart from Chapter dues.
3. Dues are payable on the first of January in advance for the entire year. A member is automatically declared delinquent if dues are not paid by April 30 of the year in which they are due.
4. The dues of members may be prorated by the Board.
5. Chapters and Chapters-in-Formation may, at the discretion of the Board of Directors of the Chapter or Chapter-in-Formation, levy additional dues or fees to insure the financial stability of the unit.
- * 6. Written notice of a proposed dues increase will be given to the Board at least sixty (60) days prior to a vote. The amount of dues shall be fixed by the Board at least four months before such rate becomes effective.
7. That a dues increase vote not occur at the Board meeting held in conjunction with the National convention.

E. Expulsion and Removal from Membership

1. A Regular Member may be expelled from membership in the Association thirty days after receipt of notice of a two-thirds vote of the local Board present and voting of the Chapter or Chapter-in-Formation, but in no case less than one half of the total local Board.
2. The Regular Member subject to expulsion must be provided the following due process rights at least thirty days prior to the vote of the Chapter Board on the proposed expulsion:
 - a. Written notification of the reason(s) for the proposed expulsion.
 - b. An unbiased hearing before members. Place, time and date must be provided to the member in writing.
 - c. The right and opportunity to see and examine all evidence as well as cross-examine witnesses.
 - d. The right to answer and refute all charges.
 - e. A notification in writing of the right to appeal to the National Executive Committee.

* Rev. 4/94

Article V.E.

3. A report of such expulsion (to include verification of the due process rights) shall be forwarded within 48 hours of the local Board vote to the National Office of the Association for review by legal counsel with a copy sent to the member by registered mail.
4. The expelled member shall have the right of appeal to the Executive Committee of the Association. The request for appeal is to be filed in writing to the National president within thirty days of receipt by the member of written notification of expulsion. Such member shall maintain the rights and privileges of membership during such appeal.
5. The Executive Committee shall make a recommendation to the Board to uphold or override the expulsion. A two-thirds vote of the Board (meaning two-thirds of the Board present and voting but in no case less than one half of the total Board; See Article II B.4.) is necessary to pass a motion to override the local expulsion vote.
6. Members-at-Large, Life Members and Sustaining Members may be expelled from membership in the Association at any time by a two-thirds vote of the Board (meaning two-thirds of the Board present and voting, but in no case less than one half of the total Board; See Article II B.4.) for actions it deems harmful to the best interest of the Association, its objectives and purposes, or the programs of the Association. The appeals process listed above is applicable to these members.
7. Delinquency in payment of dues may be sufficient cause for expulsion of a member.

ARTICLE VI
ORGANIZATION

(Board of Directors, Officers (duties), Committees and Elections)

A. Board of Directors

1. **The Board of Directors is the legislative body of the Association. It shall formulate all policies of the Association, approve all budgets of the Association, and settle all disputes within the Association.**

*** 2. Membership on the Board**

a. **Membership on the Board shall include all elected and appointed officers of the Association, the Immediate Past President of the Association and members selected by the Chapters. Membership from the Chapters shall be prorated based on paid chapter membership as of December 31 and reported by January 1st:**

(1) **Chapter membership of less than one hundred (100) members shall be allowed one member on the National Board.**

(2) **Chapter membership of at least one hundred (100) members but less than two hundred (200) members shall be allowed two members.**

(3) **Chapter membership of two hundred (200) members or more shall be allowed three members.**

(4) **No Chapter shall have more than the number of members referred to in (1), (2) and (3) above, except those having a member on the Executive Committee.**

(5) **Nothing in these Bylaws shall prevent any Chapter from selecting any member in good standing as its representative to the Board.**

*** (6) A chapter that becomes 60 days delinquent in the submission of its monthly dues statement shall not be eligible for voting or Board meeting reimbursement until:**

(a) **Reports are current**

(b) **Voting and reimbursement are reinstated by the Executive Committee.**

**** b. A past national president will automatically become a lifetime, non voting, non reimbursed National Board member one year after the term of president is completed.**

*** 7/92**

**** 2/96**

Article VI.A.

3. Election

- a. Directors shall be selected by the various Chapters of the Association prior to September 30th each year, to take office on the following January 1st.
- b. Directors shall serve for one (1) year, but may be selected for succeeding terms.
- c. Employees of the Association or any of its units even though members shall not be eligible for election or appointment to any office or directorship of any unit of the Association.

4. Meetings

- * a. The Board shall meet at places it determines three times during each fiscal year with the first meeting being held at the National Convention. Special meetings of the Board may be called by the President or by one-third of the current members of the Board.
- b. Notices of regular meetings of the Board with the agenda shall be sent at least four weeks before the meetings to members of the Board, Chapter Presidents and Chapter Executive Directors. The same notice shall be given for a special meeting except that the Executive Committee may by a two-thirds vote shorten the time.
- c. A majority of the Board present shall constitute a quorum for the transaction of business. The directors shall act by a majority of votes cast at a meeting at which a quorum is present except as otherwise noted in these Bylaws.
- d. In the event a Director is unable to attend a meeting, another member of that Chapter may be designated by the Chapter President to serve. He shall present a letter of authority from the Chapter President which shall be formal notice to the National Secretary that he is authorized to serve.
- e. With respect to any questions presented to the Board, each Director shall be entitled to cast one vote.
- f. Nothing in the written agenda shall prevent the Board from considering any item of business presented by any Board member.

*Rev. 6/88

Article VI.

B. Officers

1. The appointed and elected officers of the Association shall be as follows:
 - a. Elected
 - (1) President
 - (2) President-elect
 - (3) Region I Vice President
 - (4) Region II Vice President
 - (5) Region III Vice President
 - (6) Region IV Vice President
 - (7) Region V Vice President
 - (8) Region VI Vice President
 - (9) Region VII Vice President
 - * (10) Immediate Past President
 - b. Appointed
 - (1) Secretary/Treasurer
2. Duties of Officers
 - a. The President is the chief executive officer of the Association. He shall serve as Chairman of the Board of the Association, Chairman of the Executive Committee, and shall be the presiding officer at all conventions, conferences and other meetings held for the general membership. He shall appoint committees of the Association except as provided for in these Bylaws and shall carry out those policies as approved by the Board.
 - b. The President-elect of the Association shall succeed to the office of the President when the office becomes vacant. He shall assume the duties of the President in the absence of the President, perform those duties assigned to him by the President, by these Bylaws or at the direction of the Board and the Association.
 - c. Regional Vice-Presidents shall perform the duties assigned to them by the President, by these Bylaws or by the Board.
 - d. The Secretary/Treasurer is the chief fiscal officer of the Association. He shall be responsible for the proper keeping of the fiscal records of the Association and make a report of the financial condition of the Association at all regular meetings of the Board. He shall advise the President, the Board and the various committees of financial matters when requested. He shall perform such additional duties as are assigned to him by the President, these Bylaws or by the Board. He shall be responsible for the recording and safekeeping of all minutes of the Board meetings, Executive Committee and general membership meetings of the Association. He shall be the only appointed officer of the Association and shall be appointed by the President and confirmed by a vote of two-thirds of the Executive Committee.

* Rev. 3/87

Article VI.B.

- e. Should a vacancy occur in either of the two presidential offices and after succession as described in Article VI.B.(2)(b) the Board may elect a member to fill the vacancy. The Executive Committee shall act as a nominating committee and present at least one nominee per vacancy to the Board for election. All nominees must meet the qualifications for office set forth in Article VI.E.(1)(b). Others may be nominated provided they have consented to be nominated and are supported by at least four Board Members.

If a vacancy exists in the office of one or more Regional Vice-Presidents, the Executive Committee must nominate a member from that region where the vacancy exists to serve the unexpired term of office of the vacating Regional Vice-President.

Should a vacancy occur in the two presidential offices simultaneously, the Immediate Past President shall assume responsibility of the office of President until the Board chooses to fill the vacancy.

- f. Any National Officer may be removed if six Executive Committee members submit a petition to the Board stating the cause for action. Removal shall require a three-fourths vote of the Board present and voting, but not less than a majority of the total Board.

C. Executive Committee

1. The Executive Committee shall consist of the officers of the Association as listed in Article VI.B. of the Bylaws, plus the Immediate Past President of the Association. The Executive Vice President shall attend all meetings of the Executive Committee.
2. The Executive Committee shall meet at the direction of the President and shall perform the following functions and duties:
 - a. Act as an advisory group to the President.
 - b. Assist the President in decisions of a current or urgent nature not requiring action of the Board.
 - c. Assist in the preparation of agendas for meetings of the Board.
 - d. Assist the President in carrying out the mandates of the Board.
 - e. Act as a Ways and Means Committee for the Association.
3. Minutes shall be kept of all meetings of the Executive Committee and distributed to the Board, Chapter Presidents and Executive Directors of the chapters.
4. Nothing in these Bylaws shall prevent the president with the consent of the Executive Committee with respect to cost from engaging advisers or consultants to assist in special matters.

Article VI.

D. Committees

1. Standing Committees

a. It shall be the duty of the president to appoint the following standing committees:

- (1) Budget & Finance**
- (2) Business Development**
- (3) Bylaws & Policies**
- * (4) Nomination and Certification**
- (5) Compensation**
- (6) Convention**
- (7) Legal Rights & Strategy**
- ** (8) Legislative**
- (9) Member Growth & Involvement**
- *** (10) Membership Diversity**
- (11) Pension**
- (12) Political Action**

b. The purposes of the standing committees shall be:

- (1) The Budget and Finance committee shall consist of the Secretary/Treasurer as chairman and five other members. It shall prepare estimates of income and expenditures, control expenditures, prepare budgets and make other recommendations regarding finances to the Board. It shall also see to proper bonding and accounting.**
- (2) The Business Development committee shall consist of a chairman and those additional members as determined by the President. It shall be the responsibility of this committee to assist chapters in development of new business and promote the use of Merit Shop firms to construction users.**
- (3) The Bylaws & Policies committee shall consist of a chairman and those additional members as determined by the President. It shall be the responsibility of this committee to review the minutes of the meetings of the Executive Committee and the Board of Directors of ABC to see if they are in conformity with the National Association Bylaws and Policy Manual.**
- * (4) The Nominating and Certification committee shall consist of the President, the three immediate past presidents of the Association plus an Immediate Past Chapter President from each of the Association's seven regions to be chosen by each region. The Immediate Past National president shall serve as chairman of the Committee. The Committee shall request and receive from the chapters the names of candidates for office in the Association and consult with current officers regarding their willingness to serve.**

(continued)

*** Rev. 4/94**
**** Rev. 2/96**
***** Rev. 7/96**

Article VI.D.1.b.(4).

* The committee will certify all nominees for elected national office prior to their presentation to the Board of Electors for consideration.

The Association's seven regions shall be apportioned to the extent possible with an equal number of members in each individual region. The Nominating and Certification Committee shall recommend to the Board its proposal for apportioning the initial regions and review them biennially. In the event a member is dissatisfied with the regions approved by the Board, he may appeal this to the President.

- * (5) The Compensation Committee shall consist of the President, the President-elect and the Treasurer of the Association. It shall be the committee's responsibility to meet at least annually with the Executive Vice President for the purpose of reviewing salary adjustments.
- (6) The Convention committee shall consist of a chairman, vice chairman and those additional members as determined by the President. This committee shall be responsible for reservations, scheduling, programming, financing, and exhibits at the annual convention of the association. It is the intent of the Association, where practicable, that the vice chairman of this committee succeed to the chairmanship in the following year.
- (7) The Legal Rights and Strategy committee shall consist of a chairman and those additional members as determined by the President. It shall formulate and recommend Association strategy as to legal and labor matters. It shall act at the direction of the President. It shall administer the legal assistance program in keeping with the Policy Manual directives.
- ** (8) The Legislative Committee shall consist of a chairman and those additional members as determined by the president. This committee shall revise and recommend policy positions to the National Board of Directors on:
 - a. Pending or proposed legislation
 - b. Government and public works construction
 - c. Government proposals or actions affecting labor or human resources related to the construction industry
 - d. Federal tax policy with respect to the construction industry.
- (9) The Member Growth and Involvement committee shall consist of a chairman and those additional members as determined by the President. It shall be the responsibility of this committee to promote membership growth of the association as well as the retention of members through member involvement programs. The Beam Club shall be a responsibility of this committee.

* Rev. 4/94

** Rev. 2/96

- * (10) The Membership Diversity committee shall assist chapters in recruiting and retaining a diverse membership.
 - a. Maintain a proactive role in assisting chapters in developing and improving programs to recruit minority and women owned construction companies by providing educational and other materials for chapter staff and volunteer leadership.
 - b. Develop a generic manual or model program for ABC chapters.
 - (i) The manual would include the various programs chapters are presently employing to recruit and retain a diverse membership.
 - (ii) The manual would be in a modular format to allow the individual chapters to select/manipulate programs to fit the chapter and its political and geographic area.
 - (iii) The manual would be in the form of a binder easily capable of being updated as chapters develop different programs, modify existing programs, etc.
 - (iv) Act as a clearinghouse to secure information from the individual chapters and to disseminate the composite information to all chapters.
 - c. Develop a generic mentoring program for ABC chapters to use to assist all emerging construction companies.
 - (i) Utilize basic business or management programs taught by volunteer associate members such as the Golden Gate Chapter's Management Education Committee's Emerging Business Seminar Series.
 - d. Sponsor a workshop highlighting chapters' efforts in recruiting/retaining minorities and women at the annual ABC Leadership Conference.
- 2. Assist members in recruiting and retaining a diverse workforce.
 - a. Work with the National Center for Construction Education and Research (NCCER) to assist members in understanding and working with an increasingly diverse workforce.
 - (i) Continue to review and comment upon proposed publications of the NCCER such as *Retaining Construction Employees*.
 - (ii) Collect and disseminate member input on proposed legislation/regulation on minority/female construction employment such as OFCCP proposals.

(continued)

* 7/96

Article VI.D.1.b.(10).*

- b. Work with chapters/members to encourage apprenticeship and training programs to provide technical assistance to assure requisite equal opportunity components of apprenticeship and training programs.**
 - c. Work with chapters to develop school-to-work programs and other training programs especially in urban areas with high minority drop-out rates.**
 - (i) Develop a model program based upon the Baltimore Metro Chapter sponsored training program with the Office of Employment Development utilizing the Wheels of Learning curriculum.**
 - d. Sponsor a workshop highlighting chapters' efforts in recruiting/retaining minorities and women at the annual ABC Leadership Conference.**
- (11) The Pension committee shall consist of the National Secretary/Treasurer of the Association, a contractor member of the association, the National Executive Vice President, the National Pension Coordinator, the Executive Director Chairman and a past Executive Director Chairman. The Committee will review ABC's staff pension plan and report to the Executive Committee annually.**
- (12) The ABC-PAC Board of Trustees shall be composed of nine (9) members serving in classes of three for three year terms appointed by the President of ABC.**

Trustees shall serve for a term of three (3) years, except the initial trustees shall be appointed for terms of one, two, and three years. There shall be a Trustee from each of seven balanced regions. The chairperson and vice chairperson shall be designated by the ABC President from among the trustees.

2. Special Committees

- a. The President of the Association may appoint any additional committees he deems advisable for the purpose of carrying out the objectives of the Association.**
 - b. The Board may direct the President to appoint additional committees for the purpose of carrying out specific duties.**
- 3. The President of the Association shall be a member ex-officio of all standing and special committees. He shall have the power to remove committee members for cause and to appoint replacements in the event of vacancies.**
- 4. The Executive Vice President, in consultation with the President, shall assign a staff member to work with each committee. He shall be responsible for maintaining records of the committee, preparing agendas, and assisting the committee.**

*** 7/96**

Article VI.

*** E. Nomination and Election Procedure**

1. Certification and Candidates

- * a. The Chairman of the Nominating and Certification committee shall notify the Chapter Presidents that ABC is seeking candidates for offices in the Association and that submissions shall be made by the home Chapter of the candidates at least 90 days prior to the election.**
- * b. All submissions must be approved by the Chapter Board of Directors and include the following information:**
 - (1) Candidate's resume, including past services to the Association, the office sought and a statement of willingness to serve.**
 - (2) Certification for the office of President-elect can only be given to members who were elected and have served at least one year on the Executive Committee.**
 - ** (3) Certification to serve as an officer of the Association will be granted by the Nominating and Certification committee to those members of the Association who have been Chapter Presidents or members who have served for at least two years on a Chapter's Board of Directors, one year on the National Board of Directors, or one year on a National Committee, and are members of the Beam Club. The committee shall in its discretion also consider for the office of Regional Vice President all of the members of the Association, including the members-at-large, based on their past service and availability for service to the Association.**
- * c. Current officers of the Association shall be consulted by the Nominating and Certification committee on their willingness to continue to serve as an officer and in what capacity. They may be directly certified.**
- * d. The Nominating and Certification committee shall nominate a candidate for President and a candidate for President-elect and certify candidates for Regional Vice Presidents. Chapters and Board members will be notified of these nominees at least 60 days prior to the election.**
- * e. Other Nominations for President-Elect**

Other nominations may be made for the office of President-Elect by submission of a name with at least 50 written seconds by members in good standing.

- * The Nominating and Certification Committee will verify eligibility for these additional nominees.**

*** Rev. 4/94**

**** Rev. 7/96**

Article VI.E.

2. Election Procedure

- a. The Board of Electors shall be the National Board of Directors. Designated Chapter representatives serving as electors shall be permitted in keeping with Article VI.A.4.d. but no electors shall have more than one (1) vote. A quorum shall consist of 1/2 of the members of the Board of Electors.
- b. The Board of Electors shall meet and elect officers during the last quarter of every year. The President shall preside at the election of the President and the President-elect. The Immediate Past Chapter Presidents who serve on the Certification Committee shall preside over the election of the Regional Vice Presidents.
- c. No candidate shall be chosen for more than one office.
- d. All Electors shall elect the President and President-Elect by a majority vote of those present, with a runoff ballot if necessary. Each Regional Vice President will be elected by a majority vote of those electors present from his region, with a runoff ballot if necessary. The order of elections shall be as follows:

President
President-elect
Regional Vice Presidents

- e. In case of two tie votes, the election will be decided by the flip of a coin.

3. Term of Office

- a. The President and President-elect shall be elected for a term of one (1) year beginning January 1 and ending December 31 of the same year. [To be initiated 1-1-93.]
- ** b. All Regional Vice Presidents shall be elected for a term of two (2) years beginning January 1 and ending December 31 two (2) years later. Regional Vice Presidents shall not be elected to more than two consecutive terms.
- c. Regional Vice Presidents from regions one, three, five and seven (1,3,5,7) shall be elected for odd numbered years. Regional Vice Presidents from regions two, four and six (2,4,6) shall be elected for even numbered years, beginning with the 1991 election cycle.
- d. An elected officer may succeed himself.

** Rev. 2/96

ARTICLE VII

EXECUTIVE VICE PRESIDENT AND STAFF

- A. The President of the Association shall be empowered to employ and to terminate the Executive Vice President with the advice and consent of the Executive Committee, with a two-thirds vote of the total Executive Committee being required for consent of such action.
- B. The Executive Vice President shall determine duties and titles of staff personnel and be responsible for implementation of policy as directed by the Executive Committee.

Rev. 3/87

ARTICLE VIII

FINANCE

A. It shall be the duty of the Board to provide adequate funds for the operation of the Association. It shall direct the prompt payment of all expenditures, require a system of accounting for the Association and the various units within the Association in order to produce proper records for expenditures, audits and government reports.

1. **Income**

a. **Dues**

* (1) All Regular members and Members-at-Large of the Association are required to pay dues in accordance with Article V.D.

* b. **Administrative and Service Fees**

(1) Fees may be received from trusts, other associations, foundations and allied groups or individuals for special services supplied by the Association. The amount of such fees will be determined by the Executive Committee.

c. **Other Income**

(1) Nothing in these Bylaws shall prohibit the Board from acquiring additional income from assessments and other sources consonant with the Association's tax exempt status.

(a) All chapters will be given a minimum of sixty (60) days' notice prior to any National Board action relative to special assessments.

(b) Special assessments are to be based on membership totals using the most recent renewal cutoff dues statement.

(2) **Expenditures**

(a) All proper expenditures, as designated by the Board, shall be paid from the general fund of the Association.

* Rev. 4/94

Article VIII.A.1.

d. Control

- (1) The annual budget of the Association shall be prepared by the Budget and Finance Committee and adjusted semiannually or as directed by the President. It shall be presented to the Executive Committee not later than September 1st for the fiscal year commencing the next January.
- (2) The budget shall be acted upon by the Board at its meeting in the fourth quarter of the fiscal year.
- (3) The budget may be revised upon the recommendation of the Finance and Budget Committee and the approval of the Board.
- (4) The fiscal year of the Association and all units of the Association shall run from January 1 to December 31.
- * (5) An annual certified audit of the fiscal affairs of the Association shall be conducted by an outside accounting firm *within ninety (90) days after the end of the Association's fiscal year and presented to the Board not later than thirty (30) days prior to the summer Board meeting.*
- (6) All income of the Association shall be entered in the books under its proper account and shall become part of the general fund of the Association. The Board may direct certain income to be set aside for a special purpose or fund. Separate records will be kept on such special fund, and a note of such special fund will be made on all financial statements of the Association.
- (7) Books for the Association shall be set up in a style to conform to the budget to produce proper records for government reports and allow for an expeditious audit. A similar system of accounting shall be used by Chapters, Chapters-in Formation, and other units of the Association.
- * (8) An Association financial report shall be submitted to the Executive Committee *and to the Board at each of its scheduled meetings.*

* Rev. 11/96

ARTICLE IX

INDEMNIFICATION

- A. The Board shall determine the policies regarding the indemnification of persons acting in behalf of the Association and shall purchase and maintain the insurance necessary to cover such indemnification.
- * B. The Board shall determine the policies regarding the indemnification of the Association and its members from undue exposure due to any activities offered by any ABC unit.

* Rev. 12/87

ARTICLE X

REGIONAL ORGANIZATIONS

- A. The Board may, by a majority vote, set up incorporated or unincorporated regional offices or organizations as may be necessary for the rapid growth or effectiveness of the Association.

Prior to setting up such an office or organization, a study of the service area together with the function and purpose of the proposed regional office or organization shall be made. A written report shall be submitted to the Executive Committee for further study and submission to the Board for action.

- B. It is intended that such regional office or organization will exist and be financed as directed by the Board and will, therefore, become a matter of Association policy. It will, therefore, be incumbent upon the Board prior to authorizing such an office or organization, to have prepared and included in the Policy Manual of the Association such information necessary for the efficient and proper operation of such office or organization. It is intended that the report of the study committee include such policy statement.

ARTICLE XI

STATE ORGANIZATIONS

- A. With the approval of the Board, one or more chapters may form and must incorporate a State Organization. It may represent members in states located elsewhere. The organization, operation and financing of a State Organization shall be as approved by the various Chapters concerned.
- B. The Articles of Incorporation along with its proposed Bylaws shall be forwarded to the Association office and be approved by legal counsel before becoming effective. They shall not conflict with the Bylaws or policies of the Association. All amendments thereto shall be submitted for approval before becoming effective.
- C. Immediately upon incorporation, such State Organization shall prepare Bylaws for the efficient operation and government of the organization. Nothing in these Bylaws and amendments thereto shall conflict with the Bylaws or policy of the Association. All Bylaws and amendments thereto shall be submitted to the Secretary of the Association for study and approval of the Legal Counsel of the Association prior to adoption.

ARTICLE XII

CHAPTERS AND CHAPTERS-IN-FORMATION

A. The Executive Committee or the Board may designate a group of Members-at- Large, part of an existing chapter(s), or an existing organization as a Chapter-in-Formation in order to permit greater participation in the benefits and programs of the Association. Such designation of part of an existing chapter shall be made with the consent of the Chapter.

* 1. A Chapter-in-Formation (C.I.F.) may exist up to three years. Within two years and six months of designation said C.I.F. shall:

- (a.) Apply for charter as a chapter
- (b) Notify the Executive Committee it wishes to return to its former status, or
- (c) Request with cause an additional year's C.I.F. status.

Executive Committee action regarding the request shall be final.

In the absence of notification as stated in (b) or (c) above, the C.I.F. status will be discontinued.

B. The Board by a two-thirds vote (meaning two-thirds of the Board present and voting but in no case less than one-half of the total Board; See Article II.B.4.) following a recommendation of the Executive Committee may grant a chapter charter to a Chapter-In-Formation or other group desiring chapter status.

C. In order to assure the strength and continuity of a Chapter, the Executive Committee may by a two-thirds vote declare a Chapter "in trust." It may rescind the designation upon finding a Chapter in conformity with the Bylaws and policies of the Association.

The Chapter-In-Trust designation is a status describing a chapter whose present situation jeopardizes its financial and corporate stability. A Chapter-In-Trust designation may also result from violation of National Bylaws or Policy.

Factors used to consider such designation shall be made part of the National Policy statements.

D. The Board by a two-thirds vote (meaning two-thirds of the Board present and voting but in no case less than one-half of the total Board; See Article II.B.4.) may revoke the charter of a Chapter or Chapter-In-Trust for actions it deems contrary to the objectives, purposes, programs or welfare of the Association provided that:

1. The President shall first appoint a committee of three members to investigate the alleged action(s). He shall notify the Chapter of the committee's creation by certified mail.

* 2/96

Article XII.B.

2. The Committee shall visit the Chapter being investigated.
3. The Committee shall submit a written report with its findings to the Board and the Executive Committee. A copy of this report shall be forwarded to the Chapter in question by certified mail. A notice of the right to a hearing before the Executive Committee shall be forwarded by certified mail to the chapter in question. Notification of time, place and date shall be provided.
4. If a hearing is requested, the Chapter's representatives have the right to examine evidence, cross-examine witnesses and refute all charges.
5. The Executive Committee's recommendation shall be submitted to the Board. The decision of the Board shall be final.
6. If the Board votes to revoke a charter, those individual members with dues paid will revert to Member-at-Large status.

ARTICLE XIII
POLICY MANUAL

The Executive Vice President shall maintain a Policy Manual. A policy is a brief explanation of an action permissible under the Bylaws as a prescribed cause of action resulting from Board legislation. The file shall be indexed and have coordinating reference to the Bylaws where applicable. Policy shall first be reviewed by the Bylaws Committee before adding, deleting or changing the Policy Manual.

Rev. 4/94

ARTICLE XIV

REPORTS

- A. The President, Executive Committee or the Board may, from time to time, require the reporting of certain information to the National Office. It is the duty of the President of the Chapter or other unit of the Association to insure the proper preparation and submission of such a report.**

- B. Reports that are to be submitted on a continuing basis and are a part of the policy of the Association shall be included in the Policy Manual in accordance with Article XIV of these Bylaws.**

ARTICLE XV

PARLIAMENTARY PROCEDURES - SERVICES

- A. The parliamentary procedures to be used in the activities of the Association shall be in accordance with Robert's Rules of Order, newly revised, except where modified by these Bylaws or the Policy Manual of the Association.**
- B. The Association may provide certain insurance, credit union, legal, bonding and other services to members or units of the Association. These shall be set forth in the Policy Manual of the Association.**

ARTICLE XVI
AMENDMENTS

- A. These Bylaws may be amended in whole or part by a two-thirds vote of the Board (meaning two-thirds of the Board present and voting but in no case less than one half of the total Board; See Article II.B.4.) provided, however, that:**
- 1. The President shall refer each proposed bylaws amendment to the Bylaws Committee for the study and preparation of such amendment.**
 - 2. The Bylaws Committee shall prepare a draft of bylaw changes at the direction of the President, the Executive Committee or Board of Directors.**
 - 3. The draft of the proposed revision shall be read as a committee report at a regular Board meeting.**
 - * 4. Discussion of the report may take place at an informal "breakout" session of the Board.**
 - * 5. The Board shall adopt, amend, table or reject revised language as presented in the committee report.**
 - * 6. The proposed revision as adopted by the Board shall be mailed to the entire Board at least 30 days prior to the next regularly scheduled Board meeting. Such mailing will constitute a first reading.**
 - * 7. At the next regularly scheduled Board meeting, a vote on the amendment(s) will be taken.**

*** Rev. 11/91**

ARTICLE XVII

DISSOLUTION

- A. The Association shall use its funds only according to its Bylaws and no part of said funds shall inure, or be distributed to the members of the Association. On dissolution of the Association, any funds remaining shall be distributed to one or more regularly organized and qualified charitable, educational, scientific, or philanthropic organizations to be selected by the Board.

ARTICLE XVIII

SUPERSESSION AND EFFECTIVE DATES

- A. These Bylaws when adopted supersede all past Bylaws of the Association.**
- B. These Bylaws revised and adopted on August 4 and November 28 are effective as of November 30, 1983.**

DETAILED INDEX

ACCOUNTING		BIDDERS	
Association	19	Lowest Responsible	1
Chapters	19		
(See Policy Manual)		BOARD OF DIRECTORS	
ADMINISTRATIVE FEES	19	As Legislative Body	8
		Defined	8
ADVISERS		Settles Disputes	8
Engaging	11	Membership Prorated	8
		Eligibility	8
AFFILIATES		Selection	9
(See Policy Manual)		Employees (ABC) Barred	9
		Terms of Office	9
ALTERNATES		Meetings:	
Proxies	9	Times and Places	9
Electors	17	Special	9
		Agenda	9
AMENDMENTS		Majority Defined	9
Bylaw Articles - XVI	29	Quorum	9
		Proxies (Alternates)	9
APPEALS		Votes (Limited to one)	9
From Expulsion	7	BUDGET	
APPLICATIONS		Adoption	20
Membership	5	Control	20
		Revisions	20
APPRENTICESHIP		BUILDERS	3
Promotion	3		
Courses	3	BUSINESS DEVELOPMENT	12
ASSESSMENTS			
Board Control	19	BYLAWS	
ASSOCIATES		Amendments - Article XVI	29
Organization Members	4	Chapter Bylaws	
		(See Policy Manual)	
ASSOCIATION		Chapter-in-Formation Bylaws	24
Identification - Article II	2	(See Policy Manual)	
Structure - Article IV	4	Regional Organizations	22
AUDITOR	20	State Organizations	23
		Committee	12
AUDITS	19, 20	CERTIFICATION	
		Committee	12, 13
BARGAINING		Process	16, 17
Collective	1	CHAPTERS - Article XII	24
		Association Unit	4
		Chapter-in-Trust	24, 25

CHAPTERS (continued)		CONFERENCE	
Charter Revocation	24	Promotion	3
Government		Development	3
(See Policy Manual)			
Reports	20	CONSULTANTS	
(See Policy Manual)		Engaging	11
Dues	6, 19		
(See Policy Manual)		CONTRACTORS	
Bylaws (State)	23	Members	3, 4
(See Policy Manual)			
Service Areas		CONTRACTS	
(See Policy Manual)		Awards	1
Operation			
(See Policy Manual)		CONVENTION	12, 13
Chapters-in-Formation			
Operation	24	DATES	
(See Policy Manual)		Election Procedure	16
		Dues Report	6
CODE OF ETHICS		Dues (Notice of)	6, 19
(See Policy Manual)		Budget Process	20
		Fiscal Year	20
COERCION	1		
		DISSOLUTION - Article XVII	30
COMMITTEES			
Appointment	12	DUES	
Duties of:		Acceptance	5
Budget & Finance	12	Delinquency	7
Business Development	12	Reports Due	6
Bylaws & Policies	12	Setting of	6, 19
Nomination/Certification	12		
Compensation	12, 13	ECONOMY	
Convention	12, 13	In Government	1
Executive	11		
Legal Rights & Strategy	12, 13	ELECTION PROCEDURES	16, 17
Legislative	12, 13		
Member Growth/Involve.	12, 14	EMPLOYEES	
Membership Diversity	12, 13	Association	1, 9
Pension (Staff)	12, 15	Merit Shop	1
Political Action	12, 15	Staff	9, 17
Standing (list)	12		
Steering		EMPLOYERS	
(See Policy Manual)		Merit Shop Principles	1
		Concern for Employees	1
COMPENSATION		In Code of Ethics	
Committee	12, 13	(See Policy Manual)	
Fair	1		
Workers	1		

EXECUTIVE VICE PRESIDENT	11, 15, 18	GOVERNMENT	
EXECUTIVE DIRECTORS	9	Economy in	1
(See Policy Manual)		Contract Awards	1
		Democratic	1
ENTERPRISE		GROUPS (Related)	3, 4
Free	1	HEARINGS	
Public	1	Expulsion (Members)	6, 7
Private	1	Revocation:	
ETHICS, Code of	3	Chapter-in-Trust	24
(See Policy Manual)		Chapters	24
EXECUTIVE COMMITTEE		IMMEDIATE PAST PRESIDENT	
Composition	11	Executive Committee	11
Advises President	11	Duties	10, 11
Assists President	11	Certification Committee	12
Assists in Agenda	11	IDENTIFICATION - Article II	2
As Ways & Means	11	INCOME	19
Minutes (Distribution)	11	INDEMNIFICATION	21
EXHIBITS		(See Policy Manual)	
Convention	13	INCORPORATION	
EXPENDITURES		Chapters	
Projection	12, 19, 20	(See Policy Manual)	
EXPULSION		Chapters-in-Formation	
Member	6, 7	(See Policy Manual)	
Chapters	24	State Organizations	23
Chapters-in-Trust	24	INTIMIDATION	1
FEES		LEGAL COUNSEL	
Administrative	19	(See Policy Manual)	
Service	19	Bylaw Approval	23
FINANCE - Article VIII	19	Re: Expulsion	7
Committee	12, 20	Member Rejection	5
Investments		LEGISLATION	1
(See Policy Manual)		LEGISLATIVE COMMITTEE	12, 13
Policy			
(See Policy Manual)			
FISCAL YEAR	20		
FREE ENTERPRISE	1		

LIFE MEMBER	5	ORGANIZATION (Association)	
		Structure - Article IV	4
MANAGEMENT RIGHTS	1	Regional - Article X	4, 22
MANUAL, Policy - Article XIII	26	COMMITTEES	12-15
MEETINGS		State	4
Board	9	Chapters	4
Executive Committee	11	Chapters-in-Formation	4
Promotion	3	PARLIAMENTARY PROCEDURE	
MEMBER GROWTH		(Robert's Rules - Article XV)	28
COMMITTEE	12, 13	POLICY MANUAL - Article XIII	
MEMBER - Article V	5, 6, 7	Additions	26
Eligibility	5	Deletions	26
Approval	5	Relation to Bylaws	26
Rejection	5	Reasons	26
Expulsion Procedure	6, 7	POLITICAL ACTION	
Dues - Article V	6	Committee	12, 15
Regular	5	PROCEDURES	
Member-at-Large	5	Election	16, 17
Life	5	Parliamentary	28
Sustaining	5	PREJUDICE	
MERIT SHOP	1	Race, Color, etc.	1
Principles	1	PRESIDENT	
MONOPOLY		(See Officers)	
Opposition to	1	PRESIDENT-ELECT	
OFFICERS		Duties	10
Executive Committee	11	Succession to President	11
Listed	10	PRESSURES (Unjust)	1
Duties	10	PROGRAMS	
Presidential	10, 15, 16, 17, 27	Work Opportunities	1
Voting Power		PURPOSES (of ABC) - Article III	3
(See Robert's Rules)			
OFFICES			
Employee Ineligible	9		
Candidates for	16		

REGIONAL ORGANIZATIONS	
Article X	22
Board Approval	22
Reports - Article XIV	27
RESUMES	
For Candidates	16
RIGHTS	
Workers	1
Management	1
ROBERT'S RULES OF ORDER	28
SAFETY	1, 3
(See Policy Manual)	
SECRETARY/TREASURER	
Executive Committee	10
Duties	10
TAX EXEMPTION	
Status	19
Chapters	
(See Policy Manual)	
TREASURER	
(See Secretary/Treasurer)	
VACANCIES	
In Offices	11
VICE PRESIDENTS (Regional)	
Executive Committee	10
Duties	10
Election	16, 17
Succession	11
WAYS & MEANS	
Executive Committee	11