

SPRING 2011



The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

**Wind power has capacity
to generate jobs**

Page 6

**PLA removes
nuke decommissioning
from limbo**

Page 9

**Davenport delivers
best taxpayer value**

Page 15

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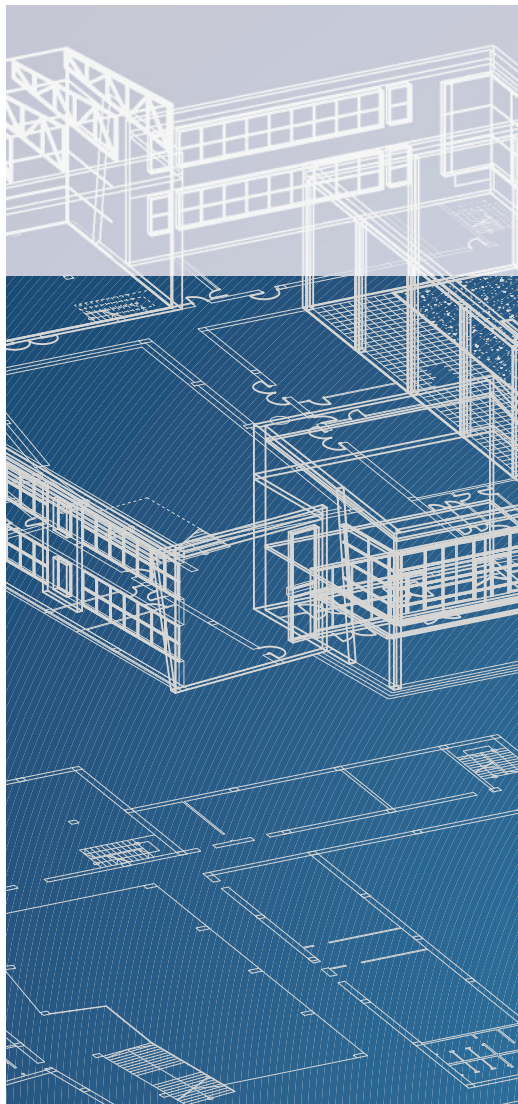


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The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY



IN THIS ISSUE

From the Executive Director

PAGE 4

Legal Corner

PAGE 5

Focus on Illinois

PAGE 6

Focus on Iowa

PAGE 8

Wage Determinations

PAGE 9

Contractor News

PAGE 10

Monitor Profile

PAGE 11

Focus on Indiana


PAGE 12

III FFC Gives Back

PAGE 13

Public Body Spotlight

PAGE 15



At issue are Illinois' deteriorating infrastructure and much needed jobs.

Illinois' Capital Construction Plan:

INFRASTRUCTURE AND JOBS ON THE LINE

In 2009, the Illinois General Assembly passed legislation creating a \$31 billion Capital Construction Plan. It had been a decade since the last capital bill was passed in 1999, and both sides of the aisle in Springfield identified the critical need to address Illinois infrastructure issues.

Further, as workers struggled during the worst economy in decades, legislators recognized that a comprehensive capital plan to build and improve roads, public schools, libraries, colleges and other public facilities would create much needed jobs throughout the state.

Just as these projects were building steam, the capital plan screeched to a halt on January 26, 2011 when an appellate court determined that one of the five statutes creating the capital plan was unconstitutional. These five statutes all connect to the capital plan in some way, for example, authorizing revenues, debt financing, and appropriations for the plan.

One of the statutes, Public Act 96-34, created revenue for the plan by raising taxes on liquor and candy, as well as authorizing video gambling with proceeds going to fund capital projects.

Shortly after passage of the

statutes in 2009, W. Rockwell Wirtz and Wirtz Beverage Illinois, LLC challenged four of the capital plan statutes, arguing that they violated the single subject clause of the Illinois Constitution ("single subject rule"). The First District Appellate Court agreed, declaring Public Act 96-34 unconstitutional, and went on to summarily invalidate three of the other statutes.

The purpose of the single subject rule is to prevent legislators from piggy-backing unpopular measures on popular bills, resulting in legislation containing unrelated matters where the unpopular legislation could not stand on its own. In this case, all of the measures contained in the various bills related to a single subject: the Capital Plan.

Following the Appellate Court decision, Governor Pat Quinn sought and was granted leave to appeal to the Supreme Court of Illinois. Governor Quinn also sought and was granted a stay, in which

See **AT ISSUE** on page 9

WE HAVE ISSUES

OSHA. Contracting compliance. Workers' Compensation. It's difficult to stay current on the latest construction industry issues and still run your day-to-day operations. So, who has the time to monitor it all? We do. Welcome to the debut issue of **The Monitor** from the Indiana, Illinois, Iowa Foundation For Fair Contracting. It's a free, quarterly newsletter designed to keep labor, management and public bodies in stride with the biggest issues facing our industry. If you haven't yet registered to receive our upcoming editions, sign up now at www.iiiffc.org. You can't afford to miss an issue.



LETTER
FROM THE
**Executive
Director**

Marc R. Poulos

Funding infrastructure repairs is heavy lift

As indicated in the Spring 2011 edition of *The Monitor*, increasing federal infrastructure spending is a top priority for III FFC in 2011. With American Recovery and Reinvestment Act stimulus money all but a distant memory, \$556 billion in

pending on federal transportation would be a welcome addition to the \$31 billion Capital program in Illinois and the continued success of Major Moves in Indiana.

In FY 2008, the federal government funded 42% of the transportation investment nationwide, with state and local governments providing the other 58%. However, without new revenue, that percentage will soon drop to 34% from the federal government, the lowest level in the past 50 years.

In light of this, President Obama unveiled his six-year \$556 billion dollar infrastructure proposal to out innovate and out build the rest of the world. However, the release had few details to back the ideas. If approved by Congress, which is questionable this year, the plan would rebuild hundreds of thousands of miles of road, rehabilitate hundreds of miles of runway, and maintain and construct thousands of miles of new railroad.

The current problem: No one has explained how to pay for all of it. Although the Obama Administration continues to state that it will work with Congress in the evolution of ideas for raising infrastructure dollars, neither the Administration nor Congress have solidified any details to make that happen.

In fact, under the Obama proposal, highway and transit spending would exceed projected revenues into the Highway Trust Fund which is almost exclusively funded through the federal motor fuel tax, which around D.C. these days is unlikely to be raised because of the newly elected Congress and House Transportation Committee Chairman John Mica's (R., Fla.) anti-tax mentality.

All in all, the Obama proposal would need an



additional \$231 billion in revenues over the life of the proposal to fully pay for the proposed plan. Although an infrastructure bank, which would provide loans, grants and credit assistance, has been mentioned as a means to close the revenue gap, there are still few details to explain how that program would achieve its goals. In sum, without additional revenue, it is likely that a smaller scale proposal will be initiated.

As a means to continue our effort of increasing federal infrastructure spending, the III FFC attended the Transportation Construction Coalition Fly-In in Washington D.C. in late May. As a member of the Transportation for Illinois Coalition, the III FFC continues its efforts at educating the Indiana, Illinois and Iowa delegation about the need for transportation and infrastructure spending at a federal level in order to promote economic growth, repair our aging infrastructure and improve all modes of transportation in order to remain a world leader.

Changes to the Indiana Common Construction Wage Law

Typically when we think of prevailing wage rates, we think of a list of wages published by the U.S. Department of Labor, or a state department of Labor. In Illinois, for example, the Illinois Department of Labor updates prevailing wage rates on a monthly basis.

In Indiana, the state's law governing the Wage Scale of Contractors' and Subcontractors' Employees (IC 5-16-7) requires the governmental agency awarding a public construction contract to set up a five person committee to determine the common construction wage in the county where the project is located. Under Indiana law, the "common" construction wage is the most frequently paid wage, or "mode," not the average. *Union Township School Corporation v. Joyce*, 706 N.E.2d 183 (Ind. Ct. App. 1998). This means, if the wages reviewed are \$10, \$15, \$18, \$18, \$20, the "common" wage is \$18.

Until recently, common construction wage (CCW) committee meetings were scheduled on a monthly basis and the committee established CCW rates on a project-by-project basis.

Effective July 1, 2011, Senate Bill 418 amends the law, providing that a CCW committee determination will apply to any contract let by the agency for a three (3) month period. Senate Bill 418 also removes the requirement that Indiana's department of workforce development submit a report at each meeting.

Also effective July 1, 2011, House

Bill 1216 provides that the committee shall consider "any reports with respect to wage scales submitted by the Indiana State Building and Construction Trades Council" (BCTC) and "any reports with respect to wage scales submitted by the Associated Builders and Contractors of Indiana" (ABC).

In practice, representatives from the BCTC and ABC attend nearly all common construction wage

It is not difficult to see that a common construction wage hearing is often politically charged.

hearings and present wage information, so this change is simply a reflection of the regular practice.

House Bill 1216 also deletes the governor's appointment to the five person committee, and replaces it with a member to be named by the state president of the ABC. The law already provides that a person representing labor be appointed by the president of the state federation of labor (i.e. BCTC). The remaining 3 committee members are: a person representing industry, to be named by the awarding agency; a taxpayer residing in the county where the project is located appointed by the owner of the project; and a taxpayer appointed by the legislative body for the county where the project is located.

It is not difficult to see that a common construction wage hear-

ing is often politically charged. Depending on the make-up of the committee, the common construction wage scale will reflect Union rates, if the committee is pro-labor, or non-Union rates, if the committee is sympathetic to the ABC. In fact, it is not unheard of for two government agencies located in the same county to adopt two different wage rates (i.e. a committee for a school district project might adopt the union rate while a committee for a Town project adopts a non-union rate on the same day).

It will be interesting to see how the new reporting requirements play out. It appears that this provision was a response to a decision issued by the Allen Superior Court in August 2010. In *Northeastern Indiana Building & Construction Trades Council v. The Board of Commissioners of Allen County* (No. 02D01-0902-PL-58), the Northeastern Indiana Building & Construction Trades Council (NIBCTC) complained that evidence presented by the ABC at a common construction wage hearing lacked supporting documentation. The ABC presented information to the Committee summarizing the results of a survey conducted by the ABC of its contractor members, purporting to represent the most "common" wage rate in Allen County for various trades. Because there was no supporting documentation, the

See **Legal** on page 11



Melissa Binetti
Counsel for the
III FFC



Mike Lingl
SUPERVISOR

FOCUS ON
Illinois



WIND FARMs



Creating Jobs and Local Revenue

While many of our local economies continue to struggle, an area of expected growth is construction in the renewable energy field. Specifically, the construction of wind energy farms in Illinois.

With the first wind farm in Illinois constructed in 2003, this industry is still in its infancy.

Currently, operational wind farms in Illinois have over 2,000 megawatts of wind generation capacity, which is enough to power about 600,000 homes with clean, emissions-free electricity.

Given that Illinois has some of the most consistent wind resources in the country and a great need for renewable energy resources, it is essential that we continue to develop this source of energy.

Under Illinois law, power companies are required to purchase 5% of energy from renewable resources. These requirements rise to 25% by the year 2025. This policy creates a tremendous opportunity in the construction industry with approximately 12,000 megawatts of new wind power projects in some stage of planning in Illinois. And currently, there are about 3,200 megawatts of capacity that have received permits for wind energy project implementation.

The United States Department of Energy has

developed the Job and Economic Development Impacts (JEDI) mode which helps determine the potential economic impact in Illinois if all 3,200 megawatts of capacity are developed. It is believed that at the full 3,200 megawatts, over 19,000 short-term jobs would be created for the construction, manufacturing and maintenance of these wind farms. These projects would generate approximately \$930 million in construction wages, as well as over \$9 million in lease payments to landowners. Finally, it is estimated an additional \$32 million in local tax revenue could be generated annually.¹

These estimates seem very realistic given research performed by the Center for Renewable Energy at Illinois State University.²

According to analysis of the first 1,848 megawatts of capacity in Illinois, total economic benefits of \$3.2 billion dollars are estimated over the life of the projects. The current capacity is generating about \$18 million dollars in property taxes and \$8.3 million in lease payments to landowners leasing to wind farm developers.

The construction of the current capacity created approximately 9,968 full-time jobs during construction with a total payroll of over \$509 million. This initial capacity also created about 494 permanent jobs with

1. Investing in Illinois (May 2011), released by the *Illinois Wind Energy Association* (IEWA), *American Wind Energy Association* (AWEA), and *Wind on the Wires* (WOW) in May 2011, available online at: <http://www.windforillinois.org/storage/JEDI%20Report.pdf>

2. *Wind Energy Development in Illinois* (June 2010), available online at <http://renewableenergy.illinoisstate.edu/>.



an annual payroll of over \$25 million per year.

With the vast amount of research available showing a positive impact on local economies, the number of communities resistant to wind energy is alarming. Many people adopt a “Not In My Backyard” or “NIMBY” attitude. They cite wind turbines as ugly, noisy and unhealthy. However, often times, this is not based on credible research.

Fortunately, many communities are open and enthusiastic about wind energy. Those that are open to wind energy often adopt standardized ordinances already tested in other communities. These standardized ordinances have set levels at which a given wind turbine should extend from property lines, buildings, and roads for safety concerns. They also contain levels at which turbine noise should be set for various times during the day. These ordinances are especially useful for communities newly invested in wind energy.

These communities recognize that wind farms create a vast amount of construction industry jobs, and set the stage for long term economic recovery. For example, wind energy projects provide jobs for a wide variety of trades and industries, including jobs for Engineers, Electricians, Laborers, Operating Engineers and Truck Drivers.

Simply stated, wind energy creates a positive impact on Illinois’ economy, resources, and workers. We should no longer ignore or delay the development of this renewable energy resource. ■



WHY CORRECT WAGE RATES MATTER

In our [Winter 2011 issue](#), the III FFC discussed the importance of ensuring contract specifications include the correct prevailing wage rates.

In February 2011, around the time that issue of the Monitor was being mailed out, the III FFC received a call from an IUOE Local 150 Business Agent about a project along I-94 at the Illinois/Wisconsin boarder. Although the project was going to be let through the Wisconsin Department of Transportation, approximately 90% of the project was located in Illinois.

The Business Agent had been contacted by Walsh Construction, who was concerned that Illinois contractors would not be able to compete when bidding on the job with Wisconsin prevailing wage rates in the contract.

III FFC Research Analyst Nancy Garbrecht contacted the Wisconsin Department of Transportation and asked that the prevailing wage issue be reviewed. Garbrecht also contacted the Illinois Department of Labor (IDOL) for information about the letting and whether it was being paid for with any Illinois funds. If the project had any Illinois funding, it was the III FFC’s position that the Illinois Prevailing Wage Act (IPWA) applied.

Shortly thereafter, IDOL followed-up with Garbrecht to inform her that the Department agreed the project was covered under the IPWA. The Wisconsin Department of Transportation subsequently issued an addendum to the contract, requiring compliance with the IPWA. And, ultimately, Walsh Construction was the low bidder on this nearly \$6 million project. ■



John Freitag
SUPERVISOR

FOCUS ON Iowa

All politics 'is local' opportunity

While national and state politics receive a lot of attention, the III FFC recognizes that many of the issues impacting the construction industry occur at the local level. This is one of the reasons why the III FFC encourages local government participation—by attending and speaking at public meetings—as well as running for local office.

Of interest in Iowa in 2011 are the upcoming City and School Board elections in Cedar, Clinton, Des Moines, Lee, Louisa, Muscatine, and Scott counties.

In the city primary election, candidates must file their nomination petitions between August 15 and September 1, with primary elections taking place on October 11, 2011.

In the city regular election, candidates must file their nomination petitions between August 20 and September 22, with elections taking place on November 8, 2011.

In School Board elections, candidates must file their nomination petitions between July 11 and August 4, with elections taking place on September 13, 2011.

A candidate must be an eligible elector in the city and city ward (if any) at the time of the election (school district and director district for school election). An eligible elector meets all of the requirements to register to vote, but does not have to be registered to vote.

An eligible elector must:

- ▶ Be a citizen of the United States
- ▶ Be a resident of Iowa
- ▶ Be at least 18 years old

An eligible elector may not:

- ▶ Be a convicted felon (unless voting rights have been restored by the president or governor)
- ▶ Be currently judged incompetent to vote by a court
- ▶ Claim the right to vote in any other place

City race candidates must collect signatures on nomination petitions and file the petitions at the same time the affidavit of candidacy is filed. The minimum number of signatures needed is at least 10, or two



The III FFC recognizes that many of the issues impacting the construction industry occur at the local level.

percent of the people who voted for the office at the last regular city election, whichever is greater.

Signature requirements for candidates who are elected only by the voters of a ward are based on the number of registered voters in the ward, and signatures must be collected from ward residents.

Each School Board candidate must file an affidavit of candidacy and nomination petitions with the school secretary or community college board secretary. The minimum number of signatures needed depends on the number of registered voters in the school district as of May 1, 2011; however, the minimum number of signatures is at least 50.

If you are interested in getting involved in the electoral process, more information is available online at the Iowa Secretary of State's website at <http://www.sos.state.ia.us/elections/index.html>. ■



PLA removes nuclear plant decommissioning from limbo

By Michael Lingl

The Zion Nuclear Power Station sits along the shores of Lake Michigan. Originally opened in 1973, it was the largest nuclear plant in the world at that time and was designed with a new generation of larger and safer reactors.

Even then the owner of the plant, Commonwealth Edison (ComEd), knew the plant would eventually need to be decommissioned. Starting in the late 1970s, ComEd began collecting fees specifically for that purpose.

In 1998 the Zion Nuclear Power Station was no longer profitable and the facility was shut down. The dilemma was what to do with the nuclear material and the contaminated material at the facility. While the decommissioning fund had grown to approximately \$900 million, the estimates for dismantling the facility and dealing with contaminated material easily exceeded \$1 billion.

The facility sat in limbo until 2010, when

the U.S. Nuclear Regulatory Commission gave a deadline regarding the license for the facility. Given a deadline, Exelon Nuclear (formerly ComEd) transferred the facility license to EnergySolutions, a company based in Salt Lake City, Utah. This was the first time that a license was transferred for the demolition of a nuclear reactor.

EnergySolutions is one of the few companies licensed in the United States to dismantle nuclear reactors. They also own a licensed nuclear dump.

One of the large issues involved in the demolition of a reactor is the separating of material with low levels of radioactive contamination and uncontaminated material. To address this, instead of sorting the material, any material that could be contaminated with radioactive material will be treated as contaminated material. All of this material will then be removed to a licensed facility. This makes the process faster, simpler and substantially cheaper. The

approach taken on this project should allow the project to be completed for less than the amount in decommissioning fund, a wonderful development given the initial estimates for decommissioning of the facility.

Dave Brown is a Vice President for D & D Construction and Waste Management (a subsidiary of EnergySolutions) and involved with the work being performed currently at the Zion Nuclear Power Station. He also helped draft a project labor agreement (PLA) for the project. While we typically think of PLAs on public works projects, a PLA made sense for this complex project.

Even though “it’s really hard to write a PLA that covers a 10 year project,” Dave said, “The PLA was necessary to establish a certain work schedule, for the ability to pick a crew foreman, and to ensure there would be no jurisdictional issues, grievances or strikes.”

There are five trades involved in this PLA: Electricians, Iron Workers, Laborers, Operating Engineers and Truck Drivers. While working with these trade unions, Dave visited the various apprenticeship training sites in our region and was very impressed with the facilities and the level of the skills exhibited by all the trades.

Prep work is currently underway at the site prior to major demolition. There will be an estimated 65 trade workers on the project this year and about 250 workers from all five trades at its peak.

Given the intricacies of the project and the time line, the PLA was a major component to move this project forward.

Now that the agreement is in place and the work has started, the facility is no longer in limbo. ■



Tom Frailey
SUPERVISOR

FOCUS ON
Indiana



OSHA Training Key to Compliance Monitoring

When the III FFC began in July of 1999, placing monitors in the field to detect prevailing wage violations and file complaints with the Illinois Department of Labor (IDOL) was the majority of our work. The monitors were newly retired police officers and their background in investigations gave them an edge in organizing case files and presenting valid complaints to IDOL.

In July of 2000, the III FFC expanded its scope and began monitoring projects in northern Indiana, hiring two new monitors to ensure compliance with federal, state and local laws in Indiana.

It did not take long to discover that public construction compliance in Indiana would require a different approach. Unlike IDOL, which accepts third party complaints, the Indiana Department of Labor only accepts complaints filed directly by a worker. Because many employees legitimately fear they will lose their job if their employer finds out they filed a wage complaint, finding a worker to come forward and sign a complaint is often difficult.

The monitors at the III FFC work hard to address these obstacles and develop different approaches to ensure compliance on public construction projects.

For example, the Indiana monitors have successfully promoted responsible bidder ordinances in many counties and towns throughout Indiana. Monitors have also had success with Occupational Safety and Health Administration (OSHA) compliance issues.

In 2007, all III FFC monitors completed the 10-hour OSHA training at the Apprenticeship and Skill Improvement Program, Local 150's training center.

Indiana monitors subsequently completed 30-hour OSHA training through the Construction Advancement Foundation. They came out of these trainings with much needed knowledge about safety issues within the construction industry, discovering that many of the non-responsible contractors they monitored were in violation of OSHA regulations, some even life threatening.

Two Indiana monitors went on to complete the OSHA 500 trainer course, allowing them to train others on OSHA standards in construction. One monitor has even completed the newest OSHA 510 training.

Indiana Monitors also attended a one-day course on electrical hazards and meet regularly to discuss OSHA issues such as trench safety and fall protection. Through the III FFC's in-house training, all III FFC

monitors receive training to increase their knowledge of the most common OSHA violations in the construction industry.

This knowledge is regularly put to use in the field. When a monitor observes an OSHA violation, it is forwarded to OSHA and documented in a case file. Because OSHA complaints are best received when the violation is current, monitors are equipped to send digital photos to OSHA within minutes of any violation observed. This is a common practice in Indiana, and investigators from Indiana OSHA (IOSHA) are usually on the jobsite within a day.

After sending a digital copy of the perceived violation, monitors print photographs and make hard copies of each complaint to follow-up with OSHA. These complaints may also be used in the future to protest a non-responsible contractor as the low bidder on another public project.

The III FFC believes that responsible contractors provide the best results in the construction industry because they follow the rules, including those put in place by OSHA to ensure a safer jobsite.

Just as a construction worker cannot be expected to do his job correctly without training, nor can an III FFC monitor. To this end, the III FFC conducts regular in-house training.

Besides learning about OSHA regulations, training includes state and federal prevailing wage issues, public speaking, preparing for bid protests, and case file preparation. With this training we bring documented concerns about non-responsible contractors to the attention of enforcement agencies and public bodies awarding public works projects. All this is done to ensure responsible contractors are performing work on these projects.

Public agencies are faced with difficult budget issues in the current economy, including how much to spend on construction. Non-responsible contractors are more likely to break the rules and have workers on the job without proper training. This is dangerous, irresponsible and costs taxpayers more in the long run.

We all know training within a given field of work begets safety and professionalism. Just as with a responsible contractor, the III FFC strives to be a professional labor-management organization through continuous and thorough training. ■



“While these changes are certainly not labor-friendly, ultimately common construction wage determinations are made at the local level.

Legal *continued from page 5*

NIBCTC argued that the ABC’s information could not serve as the basis for establishing the common wage.

The Court observed that the survey given to ABC members did not define “commonly paid wage,” thus there was no way to determine whether the survey respondent accurately provided the “mode” wage.

Ultimately, the Court determined the ABC information was based on hearsay; because the summary lacked underlying documentation, the common construction wage committee’s decision to adopt the ABC wage rates did not meet the substantial evidence test required of administrative decisions.

House Bill 1216, states that the committee shall consider “any reports,” perhaps this means even a report lacking underlying documentation such as the ABC summary presented in Allen County.

However, the issue of “substantial evidence” remains. If both the BCTC and ABC submit a wage report, it is the committee’s respon-

sibility to make a determination based on whether there is substantial evidence supporting the rates reported.

Finally, House Bill 1216 increases the common construction wage threshold from \$150,000 to \$250,000 effective January 1, 2012, and to \$350,000 effective January 1, 2013. It also expressly states that a public work project may not be artificially divided to avoid the common construction wage requirements.

While these changes are certainly not labor-friendly, ultimately common construction wage determinations are made at the local level. While some committee members will be concerned with costs, and others concerned with ensuring workers are paid prevailing wage rates, the committee’s statutory responsibility is to determine the most “common” wage in the county.

While this may appear to be a straightforward task, because of the inherent politics in the wage setting process, this rarely the case. Unfortunately, it is unlikely that the recent amendments made this task any easier. ■



CITY HALL

Being a Responsible Municipality

By Kara Principe

Two heads are better than one” goes the old adage. This is especially true in the public bidding arena where small details can often go overlooked, and why it is especially important to be actively involved in the competitive bidding process.

Whether intentionally or accidentally, there are many ways that a public body may circumvent the bidding process. Even when unintentional, it is unfair to taxpayers, workers, and contractors.

One way a public body may evade the public bidding process is to rely on incorrect provisions in state statute. For instance, certain provisions in the Illinois Municipal Code specifically pertain to cities with a population of 500,000 or more (“Division 10”) while others pertain to cities of less than 500,000 (“Division 9”). 65 ILCS 5/8-9-1 and 8-10-1.

The two statutes have very different public bidding procedures. Division 10 allows a city to bypass public bidding altogether if the work to be performed is such that a high degree of professional skill is required and it would not be suited for the bidding process.

Division 9 does not contain this exception. Under the guise of Division 10 authority, a smaller city may award a contract for services requiring professional skill without following Division 9 requirements.

Whether scrivener’s error or intentional, using the Division 10 exception when the public body is not a municipality of 500,000 or more is unlawful. Without the watchful eyes of taxpayers, workers, or contractors, a contract could be given away without competitive bidding.

Another way in which a municipality may attempt to circumvent the public bidding process is to misinterpret statutes. For example, under Division 9, there is an exception to advertising and letting bids if 2/3 of the city officials approve. City officials must vote on the approval before awarding the contract. The purpose of this

requirement is to notify the residents of the possibility of letting a contract without bidding, so that residents may publically voice their concerns to city officials.

A city may not, however, bypass this voting procedure by simply unanimously approving a contract that has already been awarded.

Finally, under Illinois law, any city may designate itself a “home rule” municipality. This procedure is in place so that a city may have wide latitude in how it runs government within its own borders. However, more power brings more responsibility. A home rule municipality may bypass existing, yet conflicting, Illinois municipal statutes under strict procedures.

Yet, some municipalities do not follow these procedures as closely as they should. A municipality oversteps its home rule authority when it tries to control issues that are outside of its local purview. For example, if a home rule municipality has an ordinance in place that affects issues of statewide concern, the ordinance would be invalid.

Examples of statewide concerns are citizens’ access to courts or certain taxing schemes.

Another example is when a city exerts its home rule authority to bypass an Illinois statute without first having a city ordinance in place making the state law ineffective, essentially, replacing existing statutory requirements. These and other procedural mistakes can have big consequences for workers, contractors, and taxpayers.

Whether you are a taxpayer that has never participated in the competitive bidding process, or a contractor who has worked extensively with municipalities, one thing is certain: it is beneficial for all to be aware of public bidding requirements in your area.

Time, money, fairness, and overall efficiency are saved when municipalities play by the rules. ■



At Issue *continued from page 3*

taxes will continue to be in effect as the statutes dictate until a ruling by the Illinois Supreme Court is made.

In its appeal, the State argued that Public Act 96-34 does not violate the single subject rule because all its provisions are connected to the subject of the Capital Projects Initiative.

After speaking with the Illinois Attorney General's office, which represents the State and Governor Quinn, the III FFC decided to write an Amicus brief in support of the State's position.

The III FFC has a unique stake in the litigation since we represent the interests of workers and contractors who would perform work on the infrastructure projects to be funded by the capital plan.

In its brief to the Illinois Supreme Court, the III FFC's argued that the single subject of Public Act 96-34 was Capital Projects Budget Implementation. Further, all of the Acts relate to that single subject as evidenced by the plain language of the Acts as well as the legislative debate.

By press time of this publication, the Illinois Supreme Court may have reached a decision. Hopefully it will be a decision reversing the lower court and upholding the capital plan statutes as constitutional. At issue are Illinois' deteriorating infrastructure and much needed jobs.

In the meantime, there is some positive news to report.

Governor Quinn's budget manager announced in April that Illinois has a \$2 billion surplus for use on construction projects and another \$5 billion in construction bonds to sell. While this ensures a promising construction for the immediate future, we hope an Illinois Supreme Court decision upholding the capital plan statutes will ensure many years of construction projects to come. ■

MONITOR PROFILE Garland Rose



Garland "Butch" Rose joined the FFC in March of 2008, after 29 years in law enforcement. Last fall, Butch monitored a \$704,389.00 project located in Northwest Indiana.

The contractor on this project was notorious for not paying proper prevailing wage rates and not following OSHA regulations. Based on information Butch compiled while monitoring the project, the United States Department of Labor (USDOL) initiated a prevailing wage investigation. This on-site investigation is ongoing with initial findings of prevailing wage violations.

Monitoring a project site is especially satisfying and exciting for Butch because of on-site investigation of violations as they occur, particularly on OSHA issues.

"I feel that being a Monitor with the III FFC is very challenging due to the expansiveness of the construction industry," Rose said. "We can follow a construction project from the planning stages all the way through final construction. We also get involved in Common Construction Wage hearings, bid lettings, bid protests and Responsible Bidder Ordinances. All of our monitoring efforts help ensure a responsible contractor is awarded a project over non-responsible contractors." ■

From 1978 to December of 2007 Butch worked with the Chesterton Indiana and Portage Indiana Police Departments. He served as a patrolman in Chesterton prior to joining the Portage Police Department in 1980. While with the Portage Police Department, he worked his way through the ranks all the way up to Captain. Butch served 13 out of his 29 years in law enforcement as an investigator.

Butch likes playing golf, going hunting and riding his Harley. He enjoys spending time with his children and grandchildren. Butch has been married to his wife, Sharon, since 2000. He has two sons, a stepdaughter and three grandchildren.

Butch thoroughly enjoys his work as an III FFC Monitor.

"I especially like the monitoring of a project," Rose said. "I put a case together in the same manner that I did when I was a detective. It's a similar process, however, now I deal with the construction industry and the laws that govern construction workers rather than criminals. My investigations have led to the filing of complaints with the USDOL, IOSHA, and public bodies. All of this comes with many hours of training provided by the III FFC." ■

COMPLIANCE MONITORING

Contractors, the USDOL and III FFC working together to create a level playing field and protect workers

Don Parker, Compliance Monitor

The Davis-Bacon and Related Acts (DBRA) require contractors performing work on federally funded or federally assisted projects to pay workers not less than the prevailing wage rates. On federally assisted projects, where a federal agency does not directly contract for the construction, the state or local agency that received federal funds is responsible for prevailing wage compliance.

However, we are well aware that government agencies often have limited staff and resources to thoroughly monitor prevailing wage compliance. Or, the agencies may not fully understand their compliance responsibilities. In these cases, fair contracting organizations like the III FFC are ready to step in.

In February 2008, the Chicago Housing Authority (CHA) awarded an \$8 million-plus contract for the renovation of several low rise family housing units. This was a federally-assisted project funded in part by American Recovery & Reinvestment Act (ARRA) appropriations, so Davis-Bacon prevailing wage requirements applied. This meant that workers on the project were to be paid the prevailing hourly wage rate and fringe benefit rates established in the applicable wage determination. The project was scheduled for completion in December 2009.

An IUOE Local 150 signatory contractor was awarded a subcontract for work on the project. While working at various locations around the project, this subcontractor and his employees spoke with workers from other trades and repeatedly heard that workers were not being paid prevailing wage rates. In September 2009, the subcontractor contacted a Local 150 Business Agent (BA). The BA visited project sites to observe work being performed. Shortly thereafter, the BA contacted the III FFC and provided valuable information about jobsite locations and asked the III FFC to look into the prevailing wage issues.

In response to a Freedom of Information Act (FOIA) request sent by III FFC Research Analyst Nancy Garbrecht, the CHA provided copies of documents including contracts, contractor information and certified payroll records for the project. III FFC Compliance Monitor Don Parker reviewed the information and noticed numerous discrepancies in the certified payroll records; many of the records were incomplete and did not list a wage rate or withholdings for the workers.

Among other inconsistencies, the number of hours reported varied for workers on the same jobsite. Parker also met with the BA to obtain names of companies working on the project. Further research revealed that several of the companies did not have Certificates of Good Standing on file with the Illinois Secretary of State and, therefore, were not authorized to do business in Illinois.

The III FFC Monitors next met with the subcontractor who initially raised the prevailing wage concerns. The subcontractor and his employees described how they ate lunch on the site with others trades and would often discuss the wages that they were earning. Many of the workers acknowledged that they were making \$12.00 per hour, or less, with no fringes.

With information provided by the Local 150 subcontractor, III FFC Monitors Don Parker, Mike Lingl, Dave Sokolnicki and Sam Greco visited various jobsites and spoke with workers at over the next several weeks. At one location, when the III FFC arrived, the workers immediately packed up their tools and equipment left the site. Obviously, they did not want to have to discuss the prevailing wage problems there. This was not the only time workers left a jobsite or tried to evade III FFC Monitors.

At another location, III FFC Monitors spoke with heating and cooling workers who said that they were paid \$30.00 per hour, but received no fringes. The prevailing wage rate for this work was \$59.63 (\$42.05 per hour and \$17.58 for fringes). During each site visit the Monitors took photographs and made notes documenting what they observed.

In November 2009, the III FFC spoke with Investigators from United States Department of Labor (USDOL) about the prevailing wage concerns. The III FFC also compiled numerous documents to support a written prevailing wage complaint.

Generally, prevailing wage complaints are contractor specific. However, based upon information observed and obtained during the monitoring of this project, the complaint requested that the entire project be reviewed to ensure that all the contractors were in compliance with the Davis-Bacon requirements.

The III FFC has sent complaints to the USDOL on numerous occasions and has developed a good working relationship with the agency. One of the benefits of this relationship is that USDOL

DAVENPORT, IOWA

BY JOHN FREITAG

The City of Davenport's contractor prequalification process on West Side Diversion Tunnel - Contract 2 was a success this spring.

The City's Engineering Division in the Public Works Department worked closely with Stanley Consultants, Inc. of Muscatine, Iowa and their subconsultant, CNA Consulting Engineers of Minneapolis, Minnesota, to identify contractors with previous experience in the successful performance of similar tunneling work.

The City used a two-step process to award the contract.

In the first step, tunneling contractors were invited to submit Prequalification Submittal Documents. Among other things, contractors were required to include references from a minimum of three tunnels successfully completed within the last ten years. Contractors were also required to demonstrate that their project manager and project supervisor had experience on a minimum of three tunnels managed/supervised and completed in the last ten years. During this process, 11 out of the 12 applicants were prequalified to bid on the project.

In the second step, the City issued an Advertisement for Bids for the project. Proposals were only accepted from tunneling contractors that were prequalified by the City. In the end, Jay Dee Contractors from Livonia, Michigan submitted the low bid of \$15,224,727.90.

Rory Washburn with the Tri-City Building and Construction Trades Council stated, "It takes great effort to insure the public is getting the best value for their tax payer dollar." Washburn also said "And Public Works Director Michael Clark, Project Engineer for the City Tom Leabhart, City staff, as well as Mayor Gluba and the City Council, are to be commended for a job well done."

The Davenport West Side Diversion Tunnel Project—Contract 2 is located in Davenport, Iowa. Construction includes providing approximately 7,600 linear feet of 60" diameter sewer by tunneling with associated access shaft structures and a helicoidal ramp drop shafts with the tunnel being located primarily in an established residential neighborhood.

The proposed improvements also include sanitary and storm sewers up to 24 inches, street replacement, landscaping, erosion control, appurtenances and associated work within the City of Davenport, Iowa. ■

Investigators maintain an open line of communication with III FFC Monitors. During one conversation with USDOL, the Monitors learned that there were more subcontractors performing work on the project than the III FFC was initially aware of. The USDOL also reported serious concerns regarding Davis-Bacon compliance on the project. However, the Department was unable to provide many details while the investigation was ongoing.

In January 2011, the Indiana, Illinois & Iowa Foundation for Fair Contracting forwarded a Freedom of Information Act request to the USDOL to obtain the findings from their investigations. In response, the USDOL provided information showing 14 contractors performed work on the project. Four of these contractors, including the Local 150 signatory contractor that initially raised the issue, were in compliance with Davis-Bacon requirements and had no violations. However, the remaining 10 contractors were in violation of prevailing wage requirements, and were fined for back wages and penalties ranging from \$1,519 to \$185,372.

In all, the USDOL recovered over \$389,600 in unpaid wages and penalties on the project.

Workers on public construction projects are the best source to obtain information about prevailing wage compliance. However, as seen in this case, certified payroll records are also an important tool for compliance efforts.

There are a few "red flags" that contracting agencies, as well as compliance organizations, should look for. Obvious problems include listing the incorrect wage rate or failing to report withholdings on certified payroll records. Not so obvious issues include hours reported that just don't seem to add up. For example, none of the employees work a forty-hour work week, each employee works a different number of hours on the same day, or hours are reported in small fractions (like one-sixtieth of an hour). If there appears to be a problem with the certified payroll records, the contracting agency should follow-up with workers if they're willing to talk, or contact the USDOL for guidance.

At the end of the day, contractors who cheat on prevailing wage projects are not responsible contractors. By submitting low bids, with no intention of paying their workers the prevailing wage rates, these contractors have an unfair advantage over responsible contractors who pay the appropriate rates.

Ultimately, the CHA project highlights the importance of responsible contractors reporting prevailing wage concerns and effective collaboration between private organizations like the III FFC and the USDOL to investigate these issues. This collaboration creates a level playing field for responsible contractors performing work on these federally funded projects and helps ensure workers are being paid the appropriate prevailing wage rates. ■

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