

SUMMER 2011



The Monitor

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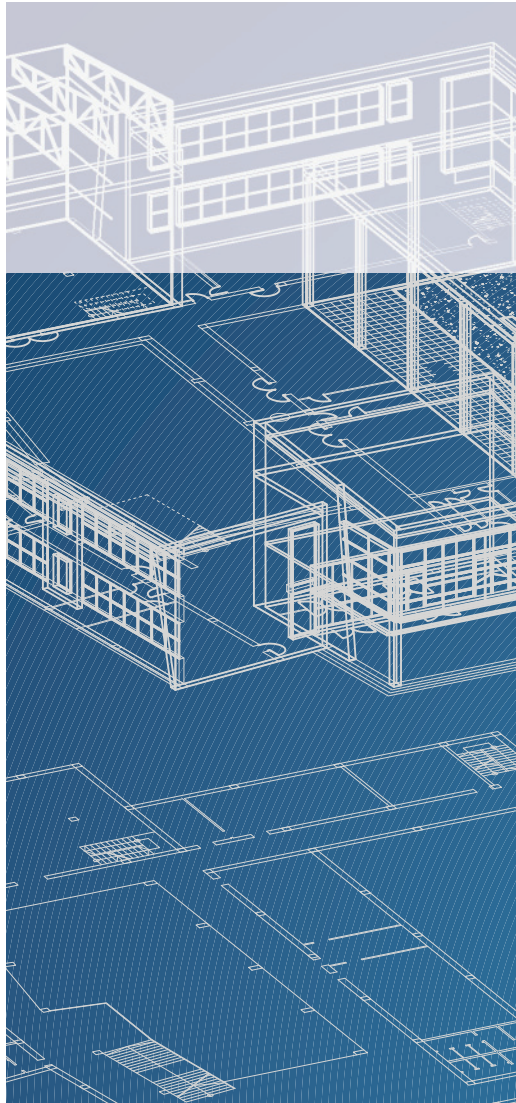
The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY



The **Monitor** is a free quarterly publication of the Indiana, Illinois, Iowa Foundation for Fair Contracting, 6170 Joliet Road, Suite 200, Countryside, IL 60525
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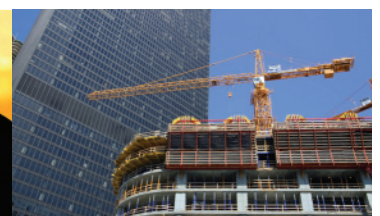
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"Congress must enact a meaningful surface transportation reauthorization measure."

America's crumbling infrastructure

KICKING THE CAN DOWN THE ROAD

While it seems like ground hog day every time federal transportation funding comes up, sadly that day, that month, and soon that year passed. However, different days have simply produced the same results. The need for a comprehensive, long-term highway reauthorization bill before the end of the current extension of the law this year cannot be understated. The series of short-term extensions since September 2009 made it impossible for American businesses to plan for the future. But, there continues to be no rush on the part of Congress to enact a meaningful surface transportation reauthorization measure.

Although the industry has held strong on the need for a multi-year program above current spending levels, there appears to be a move toward accepting a two-year plan at current levels. However, this concession will do nothing for the economy or the construction industry, which still remains plagued with the loss of over 2 million jobs since employment in the industry peaked in 2006. This is because for every \$1 billion in spending on transportation and infrastructure 28,000 middle-class American jobs are created.

Recently, the failure to enact a meaningful surface transportation reauthorization measure was studied by the Economic Research Group of Boston. The American Society of Civil Engineers released the Economic Research study entitled: "Failure to Act." In its first ever report, highlighting the effects of



Congress' failure to properly fund surface transportation improvements, the report notes that within ten years 877,000 jobs will be lost, and America's GDP growth will be depressed by \$3.1 trillion, exports will fall an estimated \$28 billion, and average American household

income would fall by more than \$7,000. The complete report can be found at: <http://www.asce.org/reportcard>.

Today, we remain at a crossroad. The House proposal of \$230 billion over six years remains. However, under the House proposal, Illinois faces a 36% cut from current levels and a loss of 17,000 jobs; Indiana faces a 35% cut and a loss of 11,000 jobs, and; Iowa faces a 37% cut and the loss of 11,000 jobs. Recently, Senate Democrats stated that a two-year, \$109 billion, reauthorization Bill could hit the Senate floor by September. However, with a 60 vote requirement, Republicans will be needed to pass the Bill. This seems unlikely since House Transportation and Infrastructure Committee Chairman John Mica already unveiled a six-year \$230 billion proposal. One thing remains constant; continuing with short-term extensions is not a viable option. Congress must enact a meaningful surface transportation reauthorization measure. ■

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. **The Monitor** is a publication of 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.iiifc.org. You can't afford to miss an issue.



LETTER
FROM THE
**Executive
Director**

Marc R. Poulos

Right Rx For IL Workers' Comp Reform

Workers' compensation in Illinois has long been criticized as a corrupt system in need of a major overhaul. That overhaul arrived this year after a much debated and tedious journey. After many failed compromises, a bill was introduced that

would have completely abolished workers' compensation in its entirety. This bill was seen as a statement to lawmakers to begin negotiations once again and, this time, make them work. Negotiations did begin again and a new compromise bill passed the Senate yet failed in the House. Any advancement made seemed in vain. Finally, on the last day of the legislative session, the bill was recalled just before the midnight deadline. The recalled bill passed by a slim margin with 62 of the 60 votes necessary.

The bill had many changes to the existing workers' comp system, including a 30 percent cut in medical payments to doctors and hospitals that treat workers' compensation claims, an age cap on how long an employee may receive benefits, and a program in which employers approve of certain doctors of their choosing and from which an employee may choose a doctor from the panel.

More significant to the construction industry, a Collective Bargaining Pilot Program was formed as an alternative dispute resolution distinct from the traditional workers' compensation system. This program allows the Illinois Department of Labor to select two unions to participate in an alternative dispute resolution program with employers, instead of having members file claims with the Illinois Workers' Compensation Commission. The two unions will be construction unions and the alternative dispute resolution must be part of their collective bargaining agreements (CBAs). The agreements may also include an agreed list of medical treatment providers and doctors, a light duty program in which certain injuries may still require light work, safety procedures and a



joint labor-management safety committee. Agreements made between the union and bargaining employers must last two years and any benefits that employees are entitled to under this program cannot be less than what the Act provides for.

While workers' compensation in Illinois may be an imperfect system, the reforms made this year have addressed major concerns with its past counterpart. If successful, the Collective Bargaining Pilot Program will play an important role in any labor organization's CBA as it helps to further drive the costs of the Illinois workers' compensation system down and reduce wasteful spending. With some of these changes already having taken effect, and more taking effect September 2011, we have yet to know the real impacts of the new law. However, in the words of Frederick Douglass: "If there is no struggle, there is no progress."



IL Supreme Court Upholds Cap Bill

On July 11, 2011, the Supreme Court of Illinois upheld the State's 2009 legislation creating a \$31 billion capital projects plan. The main issue in this case was whether the legislation violated the single subject clause of the Illinois Constitution ("single subject rule").

You may recall that the III FFC submitted an Amicus brief in support of Governor Quinn and the State, arguing that the single subject of the legislation was Capital Projects Budget Implementation. The Court unanimously agreed with the State's and III FFC's position, finding that the substantive provisions of the law "clearly are connected to capital projects in that they establish increased revenue sources to be deposited into the Capital Projects Fund. The few provisions that do not directly raise revenue are still

"...Substantive provisions of the law clearly are connected to capital projects in that they establish increased revenue sources to be deposited into the Capital Projects Fund."

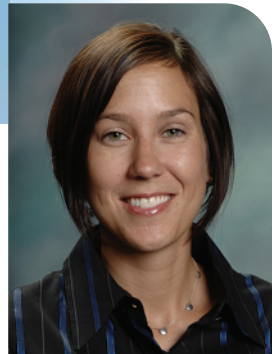
related to the overall subject of the Act in that they help to implement the other provisions." Because the various provisions related to the overall subject of a "capital projects" plan, the legislation did not violate the single subject rule

The Court also looked at the "extensive" legislative debate to support its decision, and observed that

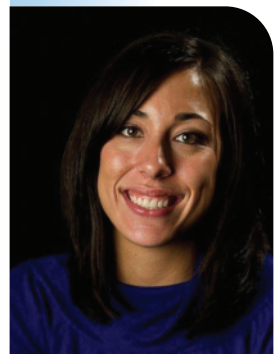
"there is a difference between impermissible logrolling and the normal compromise which is inherent in the legislative process.... A diverse and complex enactment such as Public Act 96-34 is likely to result from compromise and negotiation among the members of the General Assembly."

This legal success is just one step in the right direction. A significant funding source in the capital plan is taxes from video gaming. However, a number of public bodies have voted to ban video gaming in their communities. How these bans will impact the projected revenue to fund the Capital Projects remains to be seen.

The III FFC will monitor this issue closely to ensure these infrastructure projects are funded and moving forward. ■



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SUPERVISOR

FOCUS ON
Illinois

Employee Classification Act

Misclassification of employees as independent contractors is a problem in many industries. This is especially true in construction, where contractors who misclassify workers as independent contractors can save 15 to 30 percent in payroll costs by avoiding social security taxes, federal unemployment taxes, workers' compensation premiums, and state unemployment insurance contributions. And misclassified workers lose the benefits of worker protection laws such as overtime pay, health and welfare benefits, unemployment and workers' compensation insurance. Finally, it is estimated that Illinois loses close to \$10 million annually in tax revenue due to misclassification.

The State of Illinois addressed this problem through enactment of the Employee Classification Act ("ECA"), effective January 1, 2008 (820 ILCS 185/1 et seq.). Federal and state laws have various tests for determining whether an individual is an employee or independent contractor. The ECA was drafted to be more rigorous than existing laws, with a presumption of employee status. If a contractor determines that an individual is an independent contractor under the ECA, than that individual will likely be an independent contractor under other federal or state laws. The Act applies to both public and private construction projects.

Under the ECA, an individual is presumed to be an employee unless (1) the individual is free from direct control from the contractor for the service provided; (2) the service performed is outside the usual course of services performed by the contractor; and (3) the individual is engaged in an independently established trade or profession. Further, section 10(c) of the ECA sets out 12 conditions a sole proprietor or partnership must meet to be deemed "legitimate" and not just a business formation designed to avoid employer obligations.

The Act also provides penalties including a maximum of \$1,500 for a first violation and \$2,500 for

subsequent violations within a five-year period. Each violation for each person and each day of the act are separate violations. Further, a second violation or subsequent violations within five years of an earlier violation may lead to debarment of the contractor, preventing the contractor from being awarded a state contract for four years from the date of the violation.

Another important aspect of the ECA is information sharing between state agencies, including the Illinois Department of Labor, responsible for enforcing that Act, the Department of Employment Security; the Illinois Workers' Compensation Commission, Office of the State Comptroller, and the Department of

Revenue. These agencies are required to conduct their own investigation to determination whether the contractor is in compliance with the laws and regulations of these agencies.

In addition to enforcement by IDOL, an interested party or person aggrieved by a violation of the act may file a civil action, and is not required to exhaust administrative remedies through IDOL prior to filing a private right of action.

IDOL's Conciliation and Mediation Division is responsible for investigation

and enforcement of the ECA. According to IDOL, there have been 231 claims filed since the Act went into effect in 2008. Of those claims, IDOL has investigated 204 of the claims and assessed a total of \$913,400.00 in penalties. According to IDOL Director Joseph Costigan, "Employee misclassification takes an unfair advantage of workers, imposes more hardship on taxpayers and state government and hurts those employers who play by the rules. Our department is exploring every avenue to increase and improve enforcement of ECA."

The III FFC will continue to monitor construction projects and pursue ECA complaints. ECA enforcement is an important component of protecting workers and making sure contractors compete on a level playing field in the construction arena. ■



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John Freitag
SUPERVISOR

FOCUS ON Iowa

Lowest bidder not always best bidder

As most of us know, the lowest bidder on public improvement projects is not always the best bidder. Chapter 26 of the Iowa Code governs Public Construction Bidding. Section 26.9 directs governmental entities to award public improvement projects to the *lowest responsive, responsible bidder*. However, the State does not define the terms responsive or responsible.

Responsive is an easier term to define and usually means that the bid submitted provides all of the information required in the request for bids, including pricing, completion time, bid bond requirements, acknowledgement of addenda, and signature of the bidder.

The term responsible, however, is more difficult to define and it is up to each governmental entity to define what they believe is “responsible” for their community. A few examples follow.

The City of Davenport defines responsible as follows:

In determining responsibility of bidders pursuant to this chapter, the city may take into account the capacity or skill of the bidder to perform the contract or provide the service required; whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference; the experience of the bidder; the quality of performance of previous contracts or services; the previous and current compliance by the bidder with laws and ordinances relating to bidding or the contract or service or the purchasing process; the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services; the quality, availability of the supplies, or contractual services to the particular use required; the ability of the bidder to provide future maintenance and service for the use of the subject to the contract; quality of the product, goods or services proposed; and the number and scope of conditions attached to the bid.

The Ankeny Community School District’s Board Policies provides the following guidance:

The award of construction contracts will, generally, be made to the lowest responsible bidder. The board, in its discretion, after considering factors relating to the construction, including, but not limited to, the cost of the construction, availability of service and/or repair,

completion date, and any other factors deemed relevant by the board, may choose a bid other than the lowest bid.

Windsor Heights, Iowa also provides the following guidance:

In determining responsibility of bidders the purchasing agent may take into account in addition to financial responsibility, the past record of transactions and experience with the bidder, adequacy of bidder’s equipment, and his or her ability to complete performance within the specified time limit. Any and all bids received in response to an advertisement may be rejected by the City Administrator or his or her designee if the bidder is not deemed responsible.

Finally, the Johnson County Conservation Board has determined that, in addition to securing the necessary bid security, it is in the best interests of the residents to seek certain relevant information from all bidders on public improvement project, including, but not limited to, information on the organization of the bidder’s business, the jurisdictions in which the bidder is licensed, the bidder’s experience, and the bidder’s references.

As discussed by the Supreme Court of Iowa, “the inclusion of the word *responsible* in the standard for awarding contracts implies a measure of discretion on the part of a political subdivision in its consideration of what bid to ultimately accept for a project.” *Master Builders of Iowa, Inc. v. Polk Co.*, 653 N.W.2d, 382, 394 (Iowa 2002). The Court previously recognized that the competitive bidding statute operates to “provide a [political subdivision] with the best results at the lowest possible price for a specific project.” *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702, 704 (Iowa 1993).

Finding the lowest possible price between bids is a simplistic and mechanical process limited to unsealing and comparing submitted bids. Determining the bid that will provide the best results requires greater discretion.

Iowa courts give governmental entities considerable latitude to determine whether a bidder is responsible. In *Istari Construction, Inc. v. City of Muscatine*, the Department of Housing and Urban Development (HUD) determined a contractor was responsible and

eligible to perform work on a HUD-funded city project. Despite this determination, the City rejected the contractor's bid based on a determination that the contractor was not responsible. 330 N.W.2d 798 (Iowa 1983). The Supreme Court of Iowa held that the City was not prevented from determining that the contractor was not responsible, even though HUD had determined otherwise.

It is important for governmental entities to keep in mind that the determination must be based on objective criteria; decisions deemed to be arbitrary or based on favoritism will likely be voided by a court.

Accordingly, it is important for elected officials to define "responsible bidder" for their community, thereby establishing objective criteria to rely on when determining who should be awarded a contract. Examples of criteria may include:

- A. A valid federal employer tax identification number or, if an individual, a valid social security number;
- B. A statement of compliance with all provisions of the Federal Davis Bacon Act (40 U.S.C. § 3141 *et seq.*) and all related Acts, and all rules and regulations therein;
- C. Evidence of participation in apprenticeship and training programs applicable to the work to be performed on the project which are approved by and registered with the United States Department of Labor's Office of Apprenticeship. The required evidence includes a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project;
- D. A copy of a written plan for employee drug testing;
- E. A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under applicable state and federal laws and local ordinances;
- F. A statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy;
- G. A statement listing all employees who will perform work

on the public works project and evidence that all listed employees are covered by a health and welfare plan and a retirement plan;

- H. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company;
- I. Any determinations by a court or governmental agency for violations of federal, state, or local laws including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), or federal Davis-Bacon and related Acts.



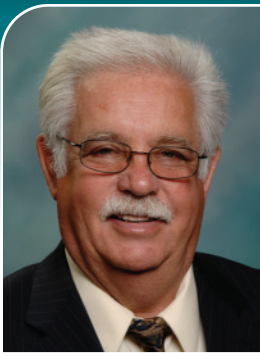
One exception to establishing responsible bidder criteria exists where the governmental entity is using State funds for a public improvement. On January 14, 2011, Governor Branstad issued Executive Order 69, limiting the ability of a governmental entity to establish criteria to determine the lowest responsive and responsible contractor for their project. The Executive Order states, in part:

The State, its Departments, its Agencies, its Political Subdivisions, and any Public Owner shall also not enter

into or utilize any sort of agreement that attempts to impose any of the following requirements as a condition of submitting a bid or entering into a construction contract for or relating to a Public Works Project:

- a. Controls or puts limitations on staffing.
- b. Serves as a single source of employee referrals.
- c. Designates assignment of work.
- d. Stipulates a specific source of insurance and benefits including health, life and disability insurance and retirement pensions.
- e. Requires proprietary training programs or standards.
- f. Mandates wage levels, except in those instances of federal Davis-Bacon wage requirements.

These limited restrictions should not deter a governmental entity's desire to institute objective criteria to insure taxpayers are getting the best value for their money. If you would like to know more about how to define "responsible" for your community please contact the III FFC.



Tom Frailey
SUPERVISOR

FOCUS ON Indiana



2011 CHANGES

Indiana Public Work Projects Law

This year, the Indiana legislature saw fit to amend portions of the law governing Public Work Projects (IC 36-1-12). These changes are of particular interest to the construction industry and to the III FFC.

Effective July 1, 2011, one of the amendments requires that public works projects be competitively bid if the estimated cost is \$150,000, an increase from the previous \$100,000 threshold. The estimated cost of the public work project as described in the statute include: the actual cost of materials, labor, equipment and rental; a reasonable rate for use of trucks and heavy equipment owned; and all other expenses incidental to the performance of the project (IC 36-1-12-3(a)). When calculating costs, the public body should approach the estimate just as a private contractor would. Labor costs include hourly wage rates, as well as fringe benefits (health insurance, vacation, etc.), and equipment costs include fuel, maintenance and depreciation.

In addition, a new section specific to a municipality or county sets forth additional requirements. Indiana Code 36-1-12-3(b) states that the municipality or county may perform its own public works project if its board determines the workforce is sufficiently skilled and capable of performing the work. Further, if a project is estimated to cost more than \$100,000, the public body's board must publish notice that describes the work the board intends to perform with its own workforce, details a breakdown of costs, and determines at a public meeting that it is in the public's interest to perform the work with its own workforce. Similar requirements apply to public work projects performed by the state (IC 4-13.6-5-4) and state educational institutions (IC 5-16-1-1.5).

In addition, amendments to Indiana Code 5-11-1-26 requires the Indiana State Board of Accounts to audit projects that a municipality or county performs

with its own workforce, and to issue an opinion as to whether the public body is in compliance with applicable portions of the Public Work Project law. As part of this review, the State Board of Accounts must provide descriptions of each public work a public body has performed with its own workforce and an opinion as to whether the public body has complied with requirements for calculating the actual cost of performing the project with its own workforce. Similar requirements



apply to projects performed by the state and by state educational institutions.

These changes have the potential to make a big impact on the construction industry. However, with that potential also comes the possibility of abuse. Not all public bodies will immediately comply with these new changes. Past issues with some public bodies have included miscalculations of total project costs, particularly concerning labor and equipment, to avoid competitive bidding.

You can count on the III FFC to continue to monitor projects for compliance with the new Indiana public work requirements. By attending public meetings, going to construction sites, and meeting with public officials, our Monitors will determine if projects are being performed according to the law and in the best interest of taxpayers.



HIGHLAND, INDIANA

BY MELISSA BINETTI

In the Spring of 2010, the Town Council in Highland, Indiana began discussing a responsible bidder ordinance (RBO). Generally supportive of a RBO, the Town Council wanted to be sure that the ordinance would be fair to workers and contractors, and be consistent with state law. This led to a meeting between contractor members of the Northwestern Indiana Building & Construction Trades Council, NWI Contractors Association, Inc., and the III FFC to discuss the “likes” and “dislikes” of a draft ordinance.

The contractors recognized that any “responsible” bidder would already have much of the information required to comply with the RBO on file. However, they were concerned with criteria that required subcontractors to also show compliance with the RBO criteria at the time of the bid opening. To address these concerns, this provision was changed to require subcontractor compliance by the time of the contract award. This way, once the bids were opened and a contractor knew that it was the low bidder and would likely be awarded the project, it would proceed with collecting subcontractors’ information to submit to the public body.

Ultimately, labor and management reached agreement on revisions and brought a draft ordinance back to the Town Council.

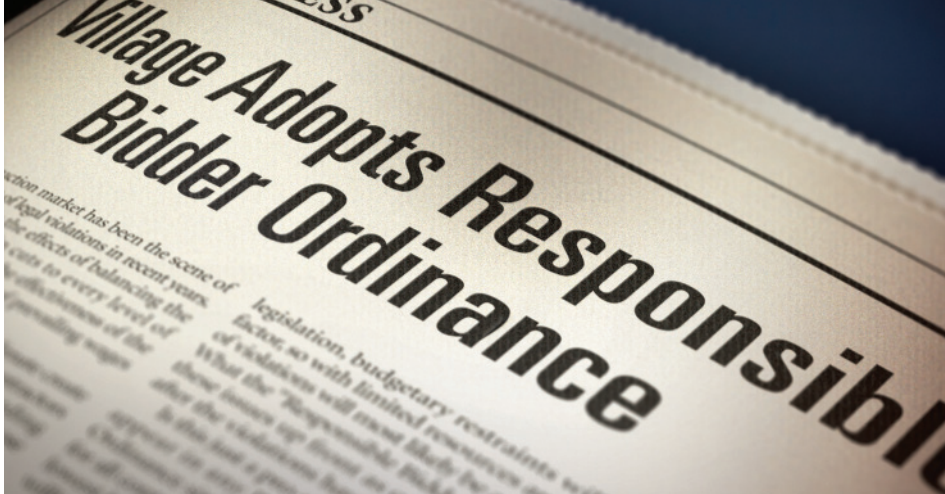
The proposed RBO was discussed and reviewed at a series of public meetings, which representatives from the Building Trades, Contractors Association and III FFC attended these meeting to answer any questions or concerns from Council members. Ultimately, the RBO passed unanimously on July 19, 2011.

Since its adoption, there has been one more amendment to the RBO. Contractors were initially required to provide documentation of compliance each time they bid on a public work project. Contractors may now submit the information annually instead.

A few of the projects bid with the new RBO requirements include a \$600,000 reconstruction project on Idlewild Avenue, an \$800,000 sewer improvement project, and a \$279,000 water main and sanitary sewer project along Parrish Avenue.

All in all, the discussion, review and adoption of a RBO in Highland exemplify the strengths of labor and management cooperation. The shared goal is ensuring public bodies contract with responsible contractors to ensure projects are completed safely, on time and on budget.

Contact the III FFC for more information about adopting an RBO in your community.



Tailoring a Responsible Bidder Ordinance for your Community

By Michael Lingl & Melissa Binetti

Responsible bidder ordinances (RBOs) are not a one size fits all document. RBOs differ among public bodies depending on their experiences (good and bad) on public construction projects, as well as local politics. The similarities and differences in RBOs are seen in the ordinances adopted throughout Illinois and

Indiana the last two years.

In Illinois, Elgin, Aurora, North Aurora, Mercer County and New Lenox School District 122 are a few of the public bodies that passed an RBO in the last year or so. While similar in many respects, one difference is the dollar threshold determining whether the ordinance applies to a particular project.

Mercer County has the lowest threshold, covering public works projects estimated to cost at least \$20,000.00; the City of Elgin has the highest threshold at \$50,000.00. New Lenox School District 122, Aurora and North Aurora all cover public works projects estimated to cost at least \$25,000.00.

Typically, public bodies set a threshold to allow performance of small public works projects without requiring contractors to meet each of the RBO criteria. This is based on administrative considerations for the public body. It also gives smaller contractors, who might not be able to compete for work on larger contracts, an opportunity to gain valuable experience on smaller public works projects.

A couple of the criteria that are common in RBOs are experience and training. Some RBOs specifically require evidence of "relevant" experience, as well as references for work performed on past projects. To address training, Elgin, Aurora and North Aurora RBOs require contractors to participate in applicable apprenticeship or training programs approved by and registered with the United States Department of Labor Bureau of Apprenticeship and Training (USDOL BAT).

Indiana communities adopt RBOs

A number of communities have adopted an RBO in Indiana in recent years. Like Illinois, RBOs in Indiana establish minimum bidding standards that contractors must meet to be eligible to bid on a public construction project.

In Indiana, the ILL FFC worked with the Northwestern Indiana Building & Construction Trades Council and the NWI Contractors Association, Inc. to draft a form RBO for public bodies. These representatives of labor and management agree that the draft ordinance is consistent with Indiana law and offers a practical approach for defining a "responsible bidder" on public construction projects.

A few of the public bodies that have adopted an RBO in Indiana within the past year or so include the Towns of Highland, North Judson, and Schneider, the City of Kokomo, and Monroe County.

One of the requirements in each of these ordinances is that contractors confirm individuals performing work on the project are properly classified as an employee or an independent contractor under state and federal laws. This is an important consideration because misclassification of employees as independent contractors is a common way for an unscrupulous contractor to underbid a project. This is because the contractor

does not pay social security taxes, unemployment contributions or workers' compensation premiums for misclassified workers. And the workers may be denied the benefits of unemployment if they are laid off, denied workers' compensation if they are hurt on the job, and denied the safeguards of many other laws that protect employees.

In addition to employee classification, the Highland, North Judson, and Schneider RBOs require contractors to show employees are covered under a health and welfare plan and a retirement plan. This requirement shows that the contractor is invested in its employees, by providing important benefits

A USDOL-approved apprenticeship or training program creates objective and standardized requirements for training in the construction industry. For example, USDOL-approved programs require a minimum of 144 hours of classroom instruction per year and a minimum of 2000 hour of on the job training. Hiring contractors that participate in these programs provides greater assurance that a project will be performed by workers with thorough training, including opportunities to train with new technology, as well as having up to date information on safety regulations.

All of these public bodies also require compliance with applicable laws for doing business in Illinois, equal opportunity employer provisions of the United States Code, the Illinois Prevailing Wage Act, and the Substance Abuse Prevention on Public Works Act. Although such compliance may already be required by state or federal law, the RBO helps ensure a contractor is in compliance prior to bidding on the project, rather than waiting until a contract is awarded and learning later that the contractor does not meet the requirements, which might require a re-bid. ■

to the workers. It also helps prevent employees from become a burden on public resources.

As shown in these examples, there are many ways to tailor a Responsible Bidder Ordinance. The goal is to ensure that responsible contractors are awarded public construction contracts. This, in turn, provides greater assurance that the project will be completed safely, on time, and on budget.

Please contact the III FFC if you would like more information about an RBO for your community.

Contractor News

By Kara Principe



Celebrating 100 years in business in 2011, Berglund Construction is a General Contractor, Construction Manager, Design Builder, Façade Restoration Contractor and Historic Preservation Specialist. With corporate headquarters in Chicago, Berglund also has offices in Chesterton, Indiana and Columbus, Ohio. Recent public works in Illinois and Indiana include projects at hospitals, schools, public works facilities, libraries, and a police department.

The III FFC learned firsthand about Berglund's commitment to safety, efficiency and quality in February 2010. The III FFC received a call from an IUOE Local 150 Business Agent with concerns about the low bidder on a project for the Tri-Creek School Corporation in Lowell, Indiana. The contract covered construction of a multipurpose building, estimated to cost over \$1 million, at Lowell High School's athletic complex.

III FFC Monitors researched the three low bidders on the project and learned that Berglund Construction had the strongest safety record, with no OSHA violations in the preceding five years. Although two other bids were slightly lower, the other bidders

had multiple OSHA violations in the past five years. It is also worth noting that Berglund's bid was less than 5 percent higher than the lowest bid.

Next, the III FFC met with representatives from Tri-Creek School Corporation to discuss the safety concerns. The School Corporation did further research, concluded that the two other bidders were not responsible contractors, and awarded the project to Berglund Construction.

The Lowell High School project is an example where the lowest cost bidder is not always the best contractor to perform the work. For Tri-Creek School Corporation, safety was a primary concern since the contractor awarded the project would be working in close proximity to students.

Berglund's commitment to safety was obvious from its strong record and a proactive approach, including a comprehensive makeover of safety and risk management processes in 2002. With its exceptional safety record and competitive bid, Berglund Construction emerged as the responsible bidder for Lowell High School project.

Learn more about Berglund Construction at berglundco.com/home.asp. ■



WAGE SURVEYS

USDOL's Wage Surveys Play Critical Role In Determining Prevailing Wage Rates

The prevailing wage rates under federal the Davis Bacon and Related Acts (DBRA) are determined by periodic wage surveys conducted by the U.S. Department of Labor (USDOL). The survey process has 3 basic elements.

First, the wage survey will reflect rates based on “projects of a similar character.” The main categories are Building, Heavy, Highway or Residential projects.

Second, the locality for the wage determination is established. Locality is typically based on the county where work is performed.

Third, the prevailing wage rate will include both hourly wage rates and fringe benefits.

When determining the “locality” of a wage determination, if the survey information is insufficient for a particular craft in a particular county, the USDOL will expand the scope of the locality to a larger “Group” of contiguous counties, and expand further to a “Supergroup” of broader counties, if necessary. As a last resort, the USDOL will consider statewide information, but will generally distinguish “rural” and “metro” rates.

For example, the IA1 wage determination has statewide rates for “Heavy” and “Highway” work in Iowa. However, the IA1 wage determination is organized by different zones. For example, Zone 3 covers the cities of Burlington, Clinton, Fort Madison, Keokuk, and Muscatine, “and any abutting municipalities of any such cities,” and Zone 4 covers “Story, Black Hawk, Cedar, Jasper, Jones, Jackson, Louisa, Madison, and Marion Counties; Clinton County (except the City of Clinton), Johnson County, Muscatine County (except the City of Muscatine), the City of Council Bluffs, Lee County and Des Moines County.”

If, after reviewing data for a particular locality, there is insufficient data for a particular trade classification, no rate will be recommended.

Surveys are conducted by the USDOL's Regional Offices. The



information is collected from contractors and other interested parties on WD-10 forms which may be submitted on paper or electronically. The surveys are conducted for a certain time period and the information submitted must be from projects where work was performed during that time period. Finally, the surveys must be submitted to the USDOL by a specific deadline.

The USDOL is currently conducting a statewide survey of “residential” rates throughout the State of Indiana. The timeframe of the survey covers work performed from 10/12/2009 through 10/11/2010. Note that the reportable information is not tied to the start or end dates of the project. Rather, the information reported must include work performed during the applicable time period. The deadline for reporting this information to USDOL is September 30, 2011. Thus, information must be postmarked or submitted electronically by this date. (Keep in mind servers can be overwhelmed by last minute submissions, so avoid waiting until the last minute).

Another important nuance of the survey process is that hours reported on the WD-10 form are for the “peak week.” The peak week is the week during a project where the contractor had the most hours of work performed for a key classification. The peak week may be key depending on the craft involved. For example, for a carpenter, where the classification contains no description of work, the peak week will simply be the week in which the most carpenter hours took place on the project. On the other hand, for power equipment operators, there may be several peak weeks. Since the key classification of operator includes descriptions of several different pieces of equipment, there may be circumstances where week one had a crane operated, week two a backhoe operated and week three a bobcat operated. The WD-10 would include three separate peak weeks for each piece of equipment. Finally, the peak week does not

Retirement Celebration and Welcoming New Hires



“...I am extremely grateful for all of the support and friendships that I made during my years at the III FCC, and I am proud to have been involved in their ongoing effort to protect the rights of workers on public works projects.”

—Sam Greco

Sam Greco retired from the III FFC this spring after nearly 10 years of service.

Sam joined the III FFC after a distinguished career with the Chicago Police Department. We thank Sam for his commitment to protecting the rights of workers on public works projects and wish him the best in his retirement!

The III FFC is also pleased to welcome two new employees to the III FFC.

Mark Williams joined the III FFC in May, after 28 years at the Rock Island County Sheriff's Department, including work in the Investigation Division, Warrant Division, Courthouse Security, Civil Process, Mass Transit Authority and Patrol Division. “I have always enjoyed talking to and helping people, and I will have plenty of opportunity to do both at the III FFC. I am excited to work with my fellow Monitors, Contractors and Public Bodies to ensure that Responsible Bidders are working on public construction projects in Iowa.”

Carmela Gonzalez joined the III FFC in July after 7 years with the Illinois Department of Labor (IDOL). Her work with IDOL included outreach and bilingual events regarding labor laws enforced by IDOL, as well as extensive work on Employee Classification Act issues. She will be focusing on projects in Cook County and says, “I am delighted to become part of the III FFC team and look forward to using the experience I obtained at IDOL to ensure that workers and contractors have a level playing field in the public construction industry.”



have to occur within the survey time frame. Rather, the project must simply be active during the survey time frame.

The USDOL analyzes the data submitted to confirm it fits within the timeframe of the survey, occurred in the locality being surveyed, and is applicable to the type of work being surveyed (e.g. residential). USDOL also verifies data by following up directly with contractors.

In order for the survey information to be published for a particular craft, e.g. operating engineer or truck driver, the USDOL requires information from at least 2 contractors for a total of 3 employees. For example, if Contractor A submits information for two employees, and Contractor B submits information for one employee, USDOL deems this sufficient information on which to base the PW rate. However, if each contractor only submits information for 1 employee, or Contractor A submits information for three employees, but Contractor B submits nothing, the data is insufficient and USDOL would not publish a prevailing wage rate for that craft.

After completing a thorough data collection and verification process, the Regional Office submits the survey information and recommended rates to the USDOL's National Office which publishes the wage determination. These official DBRA wage determinations are available online at www.wdol.gov. This site also includes “archived” wage determinations and wage determinations scheduled to be revised. In addition, a survey schedule and the WD-10 form (paper and electronic) is available at: <http://www.dol.gov/whd/programs/dbra/index.htm>.

It's important to participate in the survey process to ensure the USDOL has current and accurate information about the prevailing wage rates in your locality. For DBRA survey questions, contact the USDOL Regional Office for your area. ■

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