

FALL/WINTER 2013

# The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

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# The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY



The **Monitor** is a free biannual publication of the Indiana, Illinois, Iowa Foundation for Fair Contracting, 6170 Joliet Road, Suite 200, Countryside, IL 60525  
Phone: 815.254.3332  
[www.iiifc.org](http://www.iiifc.org)

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LETTER  
FROM THE  
**Executive  
Director**

Marc R. Poulos

**Since Congress  
has not enacted  
a similar water  
resources bill  
since 2007,  
this legislation is  
long overdue.**



*Olmsted Lock and Dam project  
on the Illinois/Kentucky border.*

## Water Resources Reform and Development Act

**A**t the end of October, the House passed the Water Resources Reform and Development Act (WRRDA) by a 417-3 vote. Amidst the overwhelming stories of roadblocks in Congress, it is encouraging to report on broad bipartisan action that will strengthen the economy.

The WRRDA is an \$8.2 billion infrastructure bill that authorizes the U.S. Army Corp of Engineers to develop and maintain waterways across the nation. Since Congress has not enacted a similar water resources bill since 2007, this legislation is long overdue.

The American Society of Civil Engineers (ASCE) 2013 Report Card for America's Infrastructure gives the nation's dams a D, and levees a D-. Levees are found in all 50 states. Originally built to protect farmland, the ASCE notes that many levees now protect developed communities. Further, updating inland waterways (also receiving a D- from the ASCE) is critical to improving trade, as daily service interruptions ultimately increase costs on the huge amounts of freight transported by barge.

The bill covers projects across the country, including some to address flood protection, port expansion and shoreline improvements. In Illinois, the bill increases federal funding for the Olmsted Lock and

Dam project on the Illinois/Kentucky border.

The WRRDA also streamlines environmental reviews, argued to have slowed down many projects for years. While some members of Congress are concerned that quicker reviews will weaken environmental protections, it is anticipated that this will be addressed when the House and Senate work on a compromise version together. The Senate passed a water bill in May, also with broad bipartisan support.

It appears that both parties can agree that funding infrastructure improvements is worth the investment. The layers of benefits include job creation, improved trade, protecting our communities, and economic growth.

As the bill moves to a conference committee, we look forward to comprehensive water resource legislation passed by both houses in early 2014.



# Indiana's "Right-to-Work" Law Found Unconstitutional

In a hard fought battle against the Indiana "right-to-work" law, the International Union of Operating Engineers, Local 150 ("Local 150") scored a victory in September when Lake County Superior Court Judge Sedia ruled the law unconstitutional.

Local 150 filed the case in Lake County, Indiana Superior Court in February 2013 bringing five state constitutional claims against the controversial right-to-work law. Those claims ranged from equal protection to free speech arguments. All but one of those arguments were dismissed by Judge Sedia.

The Indiana constitutional clause that was not dismissed is unique to only three states in the country. Specifically, Article I, Section 21 of the Indiana Constitution states that "No person's particular services shall be demanded, without just compensation. No person's property shall be taken by law, without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered." It is the first sentence in the clause that makes Indiana a unique state.

The crux of Local 150's argument was that because the Indiana right-to-work law makes it illegal for a labor organization to collect any kind of dues or fees from an employee, coupled with the fact that federal law requires labor organizations to provide services and representation for all employees in a bargaining unit, Local 150 is essentially being demanded to provide particular services without just compensation.

Case law makes clear that "particular services" are services not required by the citizenry as a whole (such as a civic duty to serve on a jury or as an

eyewitness at a trial). Rather, they are services that not every citizen can perform and are worthy of compensation (such as a lawyer providing legal services or an expert witness providing testimony at a trial). Local 150 argued that contract negotiation, alternative dispute resolution, and other such services are particular services that are not required of the citizenry as a whole.

Judge Sedia agreed. "Put simply," Judge Sedia wrote, the right-to-work law means that "it becomes a criminal offense for a union to receive just compensation for particular services federal law demands it provide to employees."

Judge Sedia also wrote that "there is no court which is more loathe to declare any state statute unconstitutional than this one," but that he had "no choice but to find" the law violates Article I, Section 21 of the Indiana Constitution.

When a law is ruled unconstitutional in Indiana, it is directly appealable to the Indiana Supreme Court. As of publication of this issue, the case was

appealed to the Indiana Supreme Court and briefs are being written.

Additionally, Local 150 filed suit in federal court claiming similar constitutional claims based on the U.S. Constitution and includes the Indiana state constitutional arguments. The case was dismissed at the District Court and were appealed to the U.S. 7th Circuit Court of Appeals where oral arguments took place - also in the busy month of September 2013. A decision from that court is pending.

For more about Indiana's right-to-work law see Focus on Indiana at page 8. ■

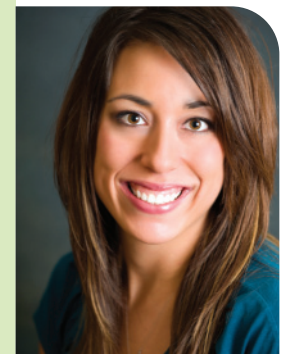


**"The right-to-work law means that it becomes a criminal offense for a union to receive just compensation for particular services federal law demands it provide to employees."**

**—Lake County Superior Court Judge Sedia**



**Melissa Binetti**  
*Counsel for the  
III FFC*



**Kara Principe**  
*Counsel for the  
III FFC*





Michael Lingl  
SUPERVISOR

## FOCUS ON Illinois

# RBOs: There's no place like home

## New credits for contractors with a local workforce

**A**s part of the III FFC's ongoing quest to promote responsible bidding, we recently performed a full review of our responsible bidder ordinance (RBO). Over the last few years, we have received a lot of feedback from public officials who want to promote local contractors and local workforces to complete projects. In using this feedback, we brainstormed to come up with ways to improve our RBO to fit the needs of various public bodies.

The result of our review is a system of credits for local contractors, or for contractors with a local workforce. For the purposes of our ordinance, we defined a "local" contractor as a place of business established in the county where the work will be performed. A "local" workforce means 25% of the contractor's employees reside in the county where the work will be performed, or a contiguous county within the state.

A contractor who meets the requirements of a "local bidder" may receive a credit of 5 percent of the contract amount not to exceed \$50,000.00, whichever is less. For example, if a local contractor bid \$1,000,000.00 on a project, that bidder would receive a \$50,000.00 credit. For the purpose of determining the lowest responsible bidder, this contractor's bid would be \$950,000.00. However, if that contractor were awarded the bid, the actual contract would still be for \$1,000,000.00.

The local workforce credit is for 2 percent or

\$20,000.00 of the amount of the award, whichever is less. This credit is available for any contractor with a "local workforce," regardless of whether the contractor has a place of business in the county. Again, this credit does not alter the award price, just the price of the bid in determining the lowest responsible bidder.

**Defining a responsible bidder gives everyone a clear and objective standard by which to measure contractors prior to awarding construction projects.**

Defining a responsible bidder gives everyone a clear and objective standard by which to measure contractors prior to awarding construction projects. Other criteria for defining a "responsible bidder" include participating in USDOL-approved apprenticeship programs that offer training to new apprentices, as well as ongoing skills development to journeypersons; safety programs in place to comply with OSHA standards; properly classifying workers as employees and not

independent contractors; and applicable insurance, ranging from general liability to workers' compensation coverage.

One of the greatest aspects about our country is that people in a community can take their beliefs and form them into the standards or ordinances that work for their particular community.

We at the III FFC want to have discussions with as many communities as possible to help define and address issues regarding responsible bidding on construction projects. Please feel free to contact me at [mlingl@iiifcc.org](mailto:mlingl@iiifcc.org) for more information about responsible bidding and how to include credits in your ordinances for local contractors and or local workforces.

### Amendments to the Employee Classification Act take effect Jan. 1, 2014

Earlier this year, the Illinois General Assembly passed two bills amending the Employee Classification Act (ECA). 820 ILCS 185/1 *et seq.* Both take effect January 1, 2014.

House Bill 2649 (P.A. 98-106) clarifies certain notice requirements under the Act and creates individual liability where an officer or agent of a corporation knowingly permits an employer to violate the Act.

House Bill 923 (P.A. 98-105) requires contractors to file annual reports with the Illinois Department of Labor concerning independent contractors, i.e. any individual who performs construction services for the employer, who is not an employee. The reports, including payments for services, material and equipment, are confidential; however, the name of the contractor and individual performing the services may be disclosed under the Freedom of Information Act.



### Ron Kurmis COMPLIANCE MONITOR

**R**on Kurmis reflects on his 30-year career in law enforcement and realizes that, although his career was fulfilling, there was seldom a reason to smile. He now smiles often because the work he does for the III FFC helps keep Union brothers working.

Kurmis began his career with the III FFC in 2007 after 30 years in law enforcement in northern Indiana. Prior to his law enforcement career, his union membership was limited to brief periods with the Steelworkers and the Teamsters where he worked summers in the steel mills to help pay for college. Beyond that, Ron worked as a labor/contract negotiator with a local steel company where he argued the company line.

These experiences taught Ron that not all unions are created equal. Since joining the III FFC, Ron states: “I have found that the International Union of Operating Engineers, Local 150 is an exceptional organization and I am proud to be associated with them.”

He continues to reflect on the many members of Local 150 that he has met over the years with whom he has become friends. He found them to be some of the most ethical, hard-working, and family-oriented people he’s ever met. Moreover, as a father it gives him a sense of great pride to know that his son is member of this fine organization.

Ron is a graduate of Indiana Wesleyan University in Marion, Indiana with a B. S. in Business Administration. Ron also attended the Federal Bureau of Investigation National Academy in Quantico, Virginia, the Canadian Police College in Ottawa, Canada, and the National Fire Academy in Emmitsburg, Maryland.

“My degree and other educational experiences have prepared me well for my responsibilities as a Monitor for the III FFC,” Ron said.

His primary duties as a Monitor include educating construction



**“I am here to support labor and management, the worker as well as the contractor.”**

workers about their rights under publicly funded construction laws, educating government awarding agencies as to their oversight responsibilities under the law, and educating contractors and subcontractors about applicable laws.

In short, his responsibilities as a Monitor always revolve around educating and working with all stakeholders. “I am here to support labor and management, the worker as well as the contractor,” said Ron. “Supporting all entities provides the opportunity to interact with public bodies and to educate them as to the benefits of union workers on their public works projects.”

Although Ron enjoys his work, he feels there are times it can be an uphill battle given the negative spin unfairly placed on union

workers. To this end, Ron works diligently to build bridges with contractors, as well as public bodies and elected officials from county, city, and state offices. Maintaining these contacts is vital and results in positive partnerships for all involved.

One example of building bridges was when the U.S. Department of Labor (USDOL) conducted a residential wage survey for Davis-Bacon rates in Indiana. The III FFC was in a position to assist contractors compiling the necessary information and Ron was assigned to work with contractors on this task. Despite the slow economic time period for residential construction, the III FFC was able to successfully encourage contractors to participate in the survey process. This resulted in the addition of new rates for operating engineers on residential projects and positive changes that will last well into the future.

Change often is met with resistance. However, “when the work I do makes the kind of changes that keep union workers working, then going to work each day is a pleasure,” Ron said. As an III FFC Monitor in Indiana, Ron works diligently to communicate effectively about responsible contracting and supports all stakeholders with a smile on his face. ■





Tom Frailey  
SUPERVISOR

## FOCUS ON Indiana



The problem is  
that RTW is a  
nonfactor as an  
economic  
development  
incentive



Since RTW went into effect, 779 more businesses closed than opened in Indiana.

# Right-to-Work's Broken Promises

## Right-to-work has not worked in Indiana

**N**ationwide, the unemployment rate has steadily ticked down and is nearing 7 percent. The total number of Americans with a job is up almost 2 percent since February 2012. And over 40,000 more business establishments opened

than closed across America in 2012. Employers are starting to hire again and consumer demand is slowly rising.

With the passage of a right-to-work (RTW) law on February 1, 2012, the Indiana economy was supposed to be spearheading the economic recovery. That's what proponents said would happen as businesses moved to Indiana and new jobs were created. To the contrary, Indiana is falling behind.

A new study by the Illinois Economic Policy Institute ("ILEPI"), *Broken Promises: Right-to-Work's Early Track Record in Indiana*, assessed RTW's performance in Indiana thus far. Since the law went into effect, 779 more businesses closed than opened in Indiana, the unemployment rate has not fallen, and

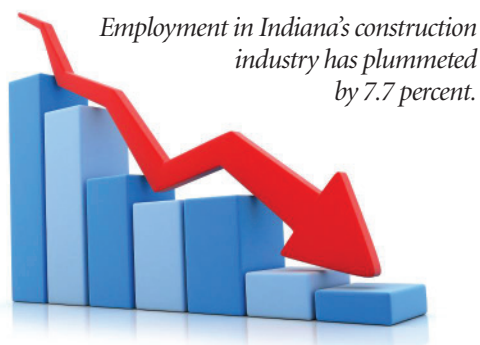


the total number of Indiana residents with a job has declined by 0.4 percent.

The problem is that RTW is a nonfactor as an economic development incentive. Despite claims that RTW entices new businesses to open in a particular

state, survey after survey of corporate executives report that the policy is not a prevailing factor in whether a firm will locate to a state. Additionally, RTW has been found to lower worker wages by around 3 percent annually. With lower incomes, workers have less money to spend. Why would a private business want to relocate to a state where consumer demand for its product or service is diminished?

A drop in consumer demand is reflected in the data. Since Indiana adopted the law, average wage growth in the state has not statistically surpassed that of Illinois, Indiana's non-RTW neighbor to the west. Additionally, employment in the construction industry has plummeted by 7.7 percent while total manufacturing labor-hours have declined by 2.3



percent. These figures demonstrate that productive output has fallen in the industries that build roads, homes, new plants, new offices, materials, and products for both consumers and businesses – industries that should be thriving if RTW's impact on demand was actually positive.

The study further found that since RTW's passage in Indiana:

- The growth in private sector jobs has slowed by 0.5 percentage points;
- Private sector hourly wages have not been positively impacted by the law;
- Average hours worked for private sector workers have not been impacted by the law; and
- The average wage of construction workers has increased by \$0.35 per hour compared to \$1.23 per hour in Illinois and \$0.73 per hour nationwide.

It is important to note that all of this data is very short-term. Many collective bargaining agreements remain valid today, so the effect of RTW in Indiana may not yet be fully realized. Nevertheless, the data does not support the notion that RTW has had any positive effect on Indiana to this point.

While the legal and political battles continue over RTW in Indiana, the policy's proponents ought to own up to its poor economic track record. The discussion in Indiana, in Illinois, and across the nation needs to address all of RTW's broken promises. Contact your local legislators and governor's office and notify your elected officials about the poor track record of RTW in Indiana.

Tell them: Right-to-work has not worked in Indiana.

To view the Broken Promises: Right-to-Work's Early Track Record in Indiana study in its entirety, visit: <http://illinoisepi.org/>. ■



**Left to right:** III FFC Monitors Carmela Gonzalez and Marcella Kunstek, with III FFC Counsel Kara Principe at the 2013 NAFC Conference.

## III FFC Attends National Alliance for Fair Contracting Conference in San Diego

**T**he National Alliance for Fair Contracting (NAFC) held its 15th annual conference in San Diego, California this year. III FFC Monitors Carmela Gonzalez, Marcella Kunstek, and Nathan Reichert attended the conference, along with III FFC Executive Director and NAFC Board Member, Marc Poulos and III FFC Counsel Kara Principe. At the conference, various monitoring techniques were discussed as well as relevant legal issues from around the country.

III FFC was honored to be invited to participate in various workshops at this year's NAFC conference. Executive Director Marc Poulos spoke on a panel about the Davis-Bacon survey process with International Union of Operating Engineers, Co-General Counsel Elizabeth Nadeau and of Counsel to Weinberg, Roger & Rosenfeld Patricia Gates.

Moderated by Ironworker Management Progressive Action Cooperative Trust (IMPACT) Wage Compliance Monitor Chris Burger, the panel discussed the importance of working with sister locals and with all trades when collecting wage data to turn into the U.S. Department of Labor during a Davis-Bacon survey period. Also discussed were techniques to help contractors understand the process and how to submit required data for a survey.

Overall, the NAFC conference was a huge success expanding knowledge through new techniques, new relationships, and new laws. The III FFC is proud to have been a part of it. Special thanks are owed to NAFC Administrator Geoffrey Griffith for putting together a wonderful conference. Praise is also owed to all NAFC Board Members and everyone who makes the organization a learning tool and exceptional resource for all involved. ■

**The NAFC conference was a huge success expanding knowledge through new techniques, new relationships, and new laws.**





John Freitag  
SUPERVISOR

FOCUS ON  
**Iowa**

**When this cheating occurs, honest employers lose the opportunity to participate in the public works arena, which weakens the local economy.**

## Who's watching public works projects?

# Six subcontractors owed and paid \$165,691.11 to 74 workers

**T**he U.S. Department of Labor recently completed an investigation on the \$25,000,000 Housing and Urban Development (HUD) funded Springs of Bettendorf apartment complex in Iowa. Continental Properties Company, Inc. from Wisconsin, the owners of the Springs of Bettendorf property, received a \$25,709,000 mortgage from Berkadia Commercial Mortgage LLC under Federal Housing Administration HUD project no.: 074-35267.

McShane Construction Company LLC, headquartered in Alabama, was the prime contractor for the project and employed three on-site workers to oversee and supervise the project.

McShane had the responsibility to ensure that all subcontractors were in compliance with the Davis-Bacon and Related Acts (DBRA). McShane allowed many of their subcontractors to submit certified transcript of payroll records (CTP) to HUD that were not accurate. Many of the subcontractors listed their workers as "independent contractors" rather than "employees," and McShane failed to require these "independent contractors" to have subcontract agreements notifying them of DBRA requirements.

Because of these inaccurate reports, the U.S. Department of Labor (USDOL) determined the following six subcontractors owed and paid \$165,691.11 to 74 workers for DBRA violations:

1. Edward Stone (Nebraska) owed \$3,325.18
2. R.T. Moore Company, Inc. (Indiana) owed \$14,369.55
3. Trueblue, Inc. DBA Labor Ready, Inc. (Washington) owed \$7,996.37
4. J. Martinez Cornice Contractors (Texas) owed \$8,735.00
5. Hofer Builders (Texas) owed \$61,265.00
6. Smart Construction (N. Carolina) owed \$70,000.00

Additionally, USDOL discovered a number of other issues:

Smart Construction (North Carolina), a 2nd tier contractor to Advanced PT (North Carolina) contracted work totaling \$285,143.36 which included the cost of renting equipment, transportation of equipment and employees from North Carolina and Texas, temporary lodging, per diem, wages, etc. However, Smart Construction submitted CTP reports showing a total of \$412,076.00 in paid wages. Considering only the wage, Smart Construction has paid \$126,932.64 over their contract amount. McShane's daily construction reports show 1,182 worker days for Smart, yet Smart's CTP reports show only 920 worker days. That is an underreporting of 262 days or 22%.

Hofer Builders, Inc. (Texas) and their subcontractors J. Martinez Cornice Contractors (Texas), CJR Framing (Texas), Francisco Banuelos (Texas), and Umanzor Construction Co. (Texas) also appeared to underreport the number of worker days by 489 when compared to McShane's daily construction reports. USDOL determined that twenty-five workers were underpaid a total of \$61,265.00.

When employers misclassify workers, they:

- Avoid paying unemployment tax on wages and fail to withhold state and federal income taxes.
- Fail to withhold and pay Social Security and Medicare taxes.
- Might avoid workers compensation coverage.
- Might fail to follow wage, contractor registration, or other employment and labor laws.
- Underbid honest, law-abiding businesses that pay all taxes owed.

Public bodies are on the front line to detect such fraud.

The III FFC would like to commend the U.S. Department of Labor for their continued effort to eliminate misclassification and ensure workers are paid in accordance with Davis-Bacon wage determinations; and for their commitment to the honest employers and employees of the State of Iowa. ■



# Long-Term Control Plans along the Mississippi River

**P**ublic bodies along the Mississippi River are implementing their long-term control plan for combined sewer overflows (CSOs). The Environmental Protection Agency's CSO control policy, issued April 11, 1994, established a national approach under the National Pollutant Discharge Elimination System (NPDES) permit program for controlling discharge into the nation's waterways from combined sewer systems.

Combined sewer systems are wastewater collection systems designed to carry sanitary sewage (domestic, commercial, and industrial wastewater) and storm water (surface drainage from rainfall and snowmelt) in a single pipe to treatment facilities. During dry weather, the system treats sanitary sewage. However, during periods of heavy storm waters, the systems reach capacity and the overflows are directed into surface waters such as the Mississippi River. These overflows, called combined sewer overflows, can be a major source of water pollution in our waterways.



near schools and community colleges, and in residential neighborhoods, focus should be on ensuring compliance with OSHA trench safety, fencing, and warning mandates.

In addition, federal Davis-Bacon Act wage rates apply to most of these projects. It is important for public body's to ensure the work is paid accordingly, so as not to reward contractors for paying below the required wage.

If you would like additional information regarding these projects, or would like to learn more about monitoring these projects please give us a call. We are always happy to assist. ■

The Iowa cities of Clinton, Davenport, Muscatine, Burlington, Fort Madison and Keokuk, along with all other public bodies that have runoff into their surface waters, are currently implementing extensive and expensive programs. These are important programs, as they help protect the environment and create job opportunities for the construction industry.

Projects should be awarded to a responsible bidder and, as we know, that is not always the lowest bidder. A review of each contractor's past performance on similar projects can help to identify positives and negatives. Checking with the Iowa Work Force Development to ensure a contractor is properly certified to work in Iowa, or to inquire about any OSHA violations, may be beneficial. Contracting with a responsible bidder helps ensure the work will be performed safely, on time and on budget.

Once a project has begun, ensuring that the contractor is in full compliance with Part 1926 of the Occupational Health and Safety Administration's Safety and Health Regulations for Construction is essential. Portions of the combined sewer system projects will be dangerous, not only for workers, but also for the public. Due to project location, some projects being along major commercial corridors,



## Contractor Spotlight



# Rock Island's Langman Construction, Inc.

## Four Generations of Union Pride

BY MICHAEL SICILIANO AND NATHAN REICHERT



Rock Island, Illinois. Third generation Chuck Langman is the current company Chairman. Originally founded as C.H Langman by Charles Henry Langman in 1902, the company grew with hard work and union employees. Charles Henry counted as one of his greatest accomplishments the building of 52 homes in Rock Island for returning World War II veterans.

Chuck's father, Richard, took over leadership in 1945 and continued the family tradition. During Richard's time, the firm remained C.H Langman and grew at times to over 400 employees. Chuck began leading a well-established and veteran team in 1979 when he re-named the company Langman Construction, Inc.

Tara Blondell, Chuck's daughter, joined the firm after graduating with a B.A. in Business from Notre Dame and a Masters in Civil

**W**e could feel the pride of 111 years of business and four generations of family ownership when we visited Langman Construction in Rock

Engineering from Arizona State in Tempe. Tara is a fourth generation Langman and the Company President. Tara's husband and Chuck's son-in-law, Josh, works with the company and is a member of the International Union of Operating Engineers, Local 150.

Today, Langman Construction has 70 union employees. Brian Gaul, Langman's Senior Civil Engineer and an Iowa State University graduate, credits the company's success to its high quality employees. And Chuck adds, "Without our high quality employees from all the union trades, the company would not be what it is today."

When Chuck is asked what he thinks the benefits are of being union for 111 years, he says it "works for him." Chuck knows a skilled and highly trained workforce benefits the community. Drawing from a local network of skilled labor and quality craftsman, whatever projects Langman employees work on, they will provide high quality work. Chuck also appreciates the stability a union contract brings stating that "an established wage and benefits package allows our employees a better opportunity to raise a family and remain in our Quad Cities area."

LEFT: Greg "Spike" Valentine and Steve Connors, members of IUOE Local 150, at Phase 3 of the Davenport Deep Sewer Project in October 2013.

When Chuck was asked if he preferred working on projects in Illinois or in Iowa, he responded that it really does not matter to him. Chuck pays his employees the same in Illinois and Iowa. The wages Chuck pays his employees are the collective bargaining rates, even if Davis-Bacon rates on federal projects are less. He understands that many contractors in Iowa are not bound by collective bargaining agreements and could have an advantage on certain projects by paying their workers less. But he believes many of these contractors do not have a skilled work force and are at a disadvantage when comparing quality of work.

Langman Construction is able to bid on larger deep sewer projects because there are not many Iowa contractors with the experience and skilled workforce to bid that scope of work. "That is when I can come in with our skilled workforce that is like a well-oiled machine," Chuck says. "We have been lucky in Iowa the past few years bidding and being awarded the larger deep sewer projects because we can bring in the larger excavation equipment such as the #800 excavator which can dig deeper than most area excavators."

In recent years, Langman Construction has concentrated on deep sewer and sewer separation projects. The company is currently working on phase three of the Davenport deep sewer tunnel project. The third phase is the open cut portion of the tunnel and includes a cut in excess of 45 feet deep.

You can find Langman's successful projects all across eastern Iowa and western Illinois. The City of Muscatine, Iowa has a sewer separation



"Langman Construction Day" proclaimed by City of Rock Island.

**"Without our high quality employees from all the union trades, the company would not be what it is today."**

**Chuck Langman**  
*Chairman, Langman Construction, Inc*

project that has been in production for several years with Langman Construction winning and building multiple projects. A crew has been working on separating Muscatine's sewers for over two years and looks to continue the work in the future. Further south in Keokuk, Iowa, Langman is working on a storm sewer project along the Mississippi River bluff that includes nearly a 40-foot drop from the top of the bluff to the river.

When Chuck was asked where he sees Langman Construction in the future, he responded that he can see them right where they are now, in Rock Island, Illinois and serving the Quad Cities area. He is proud of his family's part in the operations and knows that once he decides to step away (not in the near future), his daughter Tara and son Richard will continue to lead the business in years to come. Word is that Chuck's grandchildren already talk about being the fifth generation in the family business.





If your public body answers “No” to any question, or does not know the answer to a question, please contact the IIFFC for a free phone or in-person consultation.

For more information, visit our website at [www.iiifc.org](http://www.iiifc.org).



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Any officer, agent or representative of any public body who willfully violates, or omits to comply with, any of the provisions of the Prevailing Wage Act is guilty of a Class A misdemeanor (820 ILCS 130/1, *et seq.*).

## Are you in compliance?

Does your public body do the following to ensure compliance with the Prevailing Wage Act?

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Pass a resolution or ordinance stating that the prevailing wage rate is the same as determined by the Department of Labor?
<input type="checkbox"/>	<input type="checkbox"/>	File a certified copy of the resolution or ordinance with the Secretary of State and the Department of Labor by July 15 each year?
<input type="checkbox"/>	<input type="checkbox"/>	Publish a notice of the resolution or ordinance in a newspaper of general circulation in the area where it is effective, within 30 days after filing it with the Secretary of State?
<input type="checkbox"/>	<input type="checkbox"/>	Promptly mail a copy of the resolution or ordinance to any employer, person or association who requests a copy?
<input type="checkbox"/>	<input type="checkbox"/>	Insert in the newspaper advertisement calling for bids for a public works project that not less than the prevailing rate of wages will be paid on the project?
<input type="checkbox"/>	<input type="checkbox"/>	List the applicable prevailing rate of wages in the bid specifications for all public works projects?
<input type="checkbox"/>	<input type="checkbox"/>	Stipulate in the project specifications and contract that not less than the prevailing rate of wages will be paid on the public works project?
<input type="checkbox"/>	<input type="checkbox"/>	Notify any contractors and subcontractors performing work on a public works project of any revisions to the prevailing wage rates during the term of the contract?
<input type="checkbox"/>	<input type="checkbox"/>	Require all contractors and subcontractors to include in their bond a provision guaranteeing the faithful performance of the prevailing wage stipulations?
<input type="checkbox"/>	<input type="checkbox"/>	Make certified payroll records available in accordance with the Illinois Freedom of Information Act?



**DAVIS-BACON AND RELATED ACTS****USDOL CONCLUDES THE DAVIS-BACON ACT APPLIES TO A COMPANY PROVIDING PUBLIC AND PRIVATE LAUNCH SERVICES AT CAPE CANAVERAL**

**F**inding a contract between SpaceX and the Air Force reflects a public/private partnership, rather than a privatization of space, the U.S. Department of Labor (USDOL) Wage and Hour Division recently issued a final ruling that the Davis-Bacon Act applies to construction work performed at the launch facilities.

In November 2007, the Air Force entered into a Commercial Space Operations Support Agreement (CSOSA) with Space Exploration Technologies Corp. (SpaceX), along with a license in May 2008 granting SpaceX use of a launch pad facility at Cape Canaveral to further commercial space launches. This agreement was in accordance with the Commercial Space Launch Act (CSLA), 51 U.S.C. §§ 50901-50119.

The express purpose of the license was for “construction, establishment and maintenance of a space launch complex for the Falcon 9 launch vehicle to support commercial and possibly Government space launches.” In fact, of the 32 launches scheduled between 2010 and 2016, 17 are for the Federal Government, including 12 NASA launches to resupply the International Space Station.

The Florida State Building and Construction Trades Council (FSBCTC) requested a ruling that the Davis-Bacon Act applies to construction performed at the Cape Canaveral launch facilities. Specifically, the FSBCTC argued that the license is a “contract for construction” and that the Government was “deeply involved” in all construction activity at the site. It further argued the construction is a “public work,” because it is “carried on directly by authority of or with funds of a Federal Agency to serve the interest of the general public.” 29 C.F.R. § 5.2(k).

In response, both SpaceX and the Air Force argued that the construction activities are conducted independently - without the Air Force as a party, and without Government funding.

In a September 10, 2013 ruling, the Wage & Hour Division (WHD) agreed with the Building Trades, finding the Davis-Bacon

Act requirements apply to construction work at the launch pad and requiring compliance on all prospective construction activities.

First, the WHD concluded the license constitutes a “contract for construction,” in part, because the express purpose of the license is for “construction, establishment and maintenance of a space launch complex for the Falcon 9 launch vehicle to support commercial and possibly Government space launches.” The license also requires all plans for construction be consistent with Air Force guidelines and approved by the Government before commencement of any project.

Next, the WHD concluded the construction is a “public work,” finding that it is “carried on directly by authority of the Federal Government.” Citing past decisions of the Administrative Review Board, the WHD concluded that the construction at issue “directly results from, and would not have occurred without, the Federal Government’s exercise of legislative and contractual authority,” namely statutory authorization under the CSLA, as well as the CSOSA and license to construct, establish and maintain a space launch complex at the launch site. The Government also had authority to review and approve or reject designs, as well as a general right to access and inspect the premises “without escort, at all times.”

Finally, the WHD found that the launch facilities “will serve the interest of the general public.” 29 C.F.R. § 5.2(k). Noting that public interest does not have to be the “primary purpose” of the work, WHD observed that there are “myriad public benefits that are expected to be achieved through government promotion of commercial space activities.” Further, the public benefit is evidenced by the numerous missions to the International Space Station.

In sum, because the license was a “contract for construction,” and construction at the launch facility was carried on with the direct authority of the Government and serves the interest of the public, construction by SpaceX at the facility is a public work covered under the Davis-Bacon Act. ■



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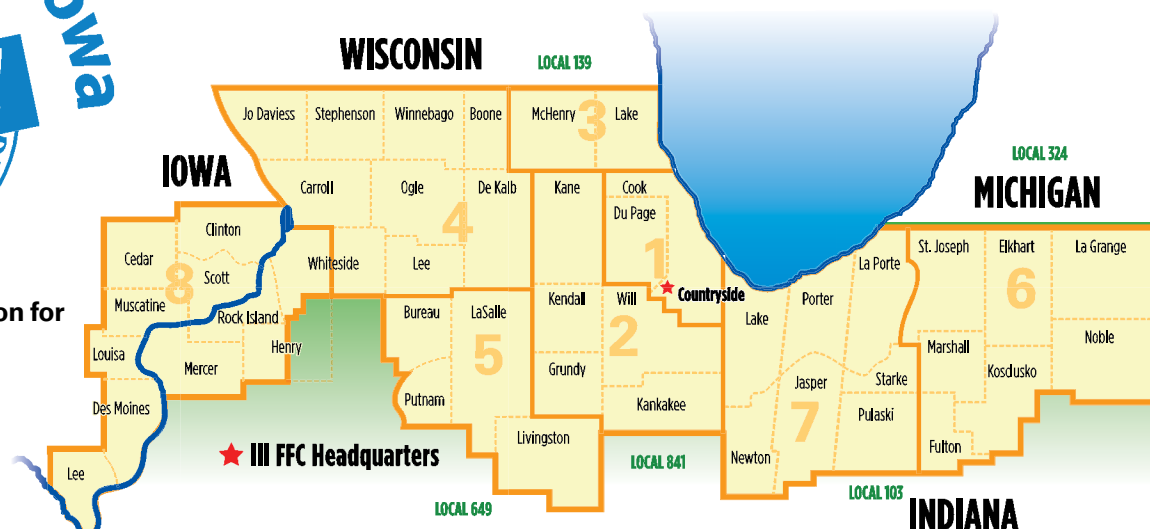
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