



The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

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The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

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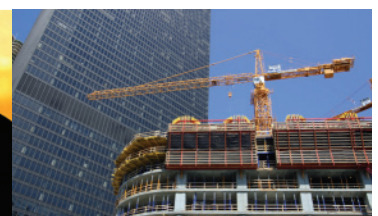
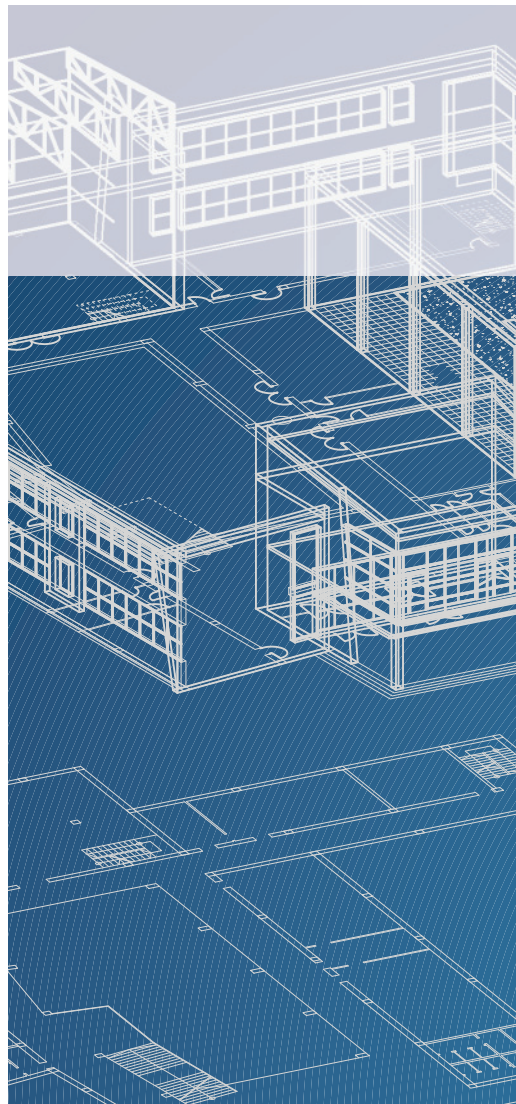
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THE CLOCK IS TICKING ON U.S. INFRASTRUCTURE

Feds: “\$1.3 trillion needed now.”

The multi-year, \$286 billion federally funded authorization for highways and transit known as SAFETEA-LU expired in September 2009. Since that time, federal funding has continued through a series of eight extensions. The last extension runs through the end of March 2012. To continue the use of federal extensions will not only negatively impact the whole nation, it will hurt Illinois.

The federal fuel tax has remained unchanged since 1993. Inflation has eroded the tax's value by more than 55%. Existing revenues from the federal fuel tax will only support a program in the \$230 billion range, a 30% decrease from SAFETEA-LU. If a new program were enacted that kept pace with inflation since the passage of SAFETEA-LU, the funding level would be in the \$339 billion range. More frightening is the Federal Highway Administration's estimation that \$1.3 trillion is needed to bring the nation's surface transportation infrastructure to a state of good repair. The lack of job growth and congestion in our transportation system costs the United States more than \$100 billion annually.

While Congress has yet to pass a robust, multi-year transportation bill since SAFETEA-LU, there is still hope. The Environment and Public Works Committee in the Senate unanimously passed a \$109 billion, two-year surface transportation reauthorization bill in early November. The bill has strong bipartisan support and holds spending at current levels plus inflation. More recently, Speaker Boehner unveiled a five-year plan worth \$50 billion per year that uses Highway Trust fund dollars and revenues from domestic energy production to provide a new source of funding for America's infrastructure. Text of the Republican Bill (HR 7) will be released in late November. This

evidences the necessity of a reauthorization bill.

The need for a federal transportation bill can especially be seen on a state level in Illinois. The statewide highway construction program and transit capital program in northeast Illinois relies on federal monies for 60% of its funding. Illinois state roads are wearing out 33% faster than they are being repaired. The Illinois Department of Transportation (“IDOT”) predicts that one out of every four miles of roads will be in an unacceptable condition by 2017. IDOT further projects there will be sufficient revenue to maintain an average of 541 miles of roads per year between 2012 and 2017. Unfortunately, IDOT needs to repair 800 to 900 miles per year to keep road maintenance up to date.

Illinois' Interstate system is one of the most extensive and oldest in the nation. These roads need more than simple resurfacing. In fact, since 2005, Illinois has only been able to fund 15% of the miles projected to need reconstruction. With nearly 2,240 structurally deficient bridges, Illinois has the tenth highest total in the nation in need of desperate repair. Local governments receive 20% of the state's federal highway funding and 54.4% of the state's motor fuel tax revenue. With 124,000 miles of roads to be responsible for, and construction costs on local roads growing nine times faster than revenues, local governments face a daunting task.

According to the Texas Transportation Institute, congestion in the Chicago area cost more than \$8.2 billion in 2010 alone; the third highest cost in the nation. According to the American Transportation Research Institute, three of the ten worst U.S. truck bottlenecks are

See **INFRASTRUCTURE** on page 8



LETTER
FROM THE
**Executive
Director**

Marc R. Poulos

**The Illinois
Tollway is a user-
funded system.
It receives no
state or federal
tax dollars for
maintenance and
operations.**

No Tollway? No Way!

A complaint filed in Cook County this fall takes issue with the Illinois Tollway. The complaint alleges that because the Tollway was intended to be temporary in 1953, it should now be dissolved.

You've probably heard that the Illinois Tollway Board of Directors approved a \$12 billion capital plan in late August—*Move Illinois: The Illinois Tollway Driving the Future*. The 15-year plan establishes a guide for infrastructure investments for 2010–2026 and sets a new toll rate for passenger vehicles effective January 1, 2012. The complaint also takes issue with this plan, claiming that it extends the life of the Tollway in violation of the temporary nature it was given in the 1950s.

Eliminating the Tollway at a time when Illinois' infrastructure is in desperate need of funding for improvements is irresponsible and unrealistic. Illinois' road funds are drastically diminishing. Special funds are being swept by the Illinois legislature into the General Revenue Fund. Congress' lack of action on a multi-year, multi-billion dollar federally funded infrastructure bill has been felt around the nation. With bridges collapsing, roads deteriorating, and employment plummeting, we cannot afford to turn our Tollways into freeways just yet.

The Illinois Tollway is a user-funded system. It receives no state or federal tax dollars for maintenance and operations. By increasing the toll rate to fund critical improvements, users of the Tollway system will realize time and money decreases in the form of lower vehicle maintenance costs, safer traveling conditions and less congestion. The same is true for commercial users—shorter travel times will result in lower maintenance and repair costs for trucks hauling goods. As it costs less to ship goods, these savings will be passed on to consumers.

Move Illinois will also benefit the state with job creation and a needed boost to the economy.

According to Illinois Tollway Executive Director Kristi Lafleur: "Now is the time to move forward with these critical infrastructure improvements to provide congestion relief on the Tollway and coordination with the other transportation and transit agencies to do



something new and innovative with an eye to the region's future transportation needs."

From reconstruction and widening of the Jane Addams Memorial Tollway (I-90) to planning for the Illinois Route 53 Extension and Illiana Expressway, the plan is estimated to create more than 120,000 permanent jobs and add \$21 billion to the economy. And every \$1 billion of annual construction is estimated to generate more than 13,000 short-term construction jobs over the next decade.

The cost and time savings the plan will provide is substantial. According to the Illinois Tollway, the Elgin O'Hare West Bypass will accommodate three times as many vehicles per day. Additional capacity on I-90 will accommodate 30,000 more vehicles per day and save drivers up to 25 minutes on the average trip from Elgin to the Kennedy Expressway. Tri-State Tollway commuters using I-80 and I-57 will save 25 hours a year in travel time. The Chicago Metropolitan Agency for Planning estimates that, collectively, these major projects will reduce vehicle miles traveled in congestion by one million miles daily and result in savings of more than \$775 million annually due to reduced congestion and delays.

Turning the Tollway into a freeway system would require a new source of funding for these critical improvements. Current road funds barely cover our existing freeway system, and an increase in the gas tax is unpopular. Further, many who shoulder the burden of a gas tax do not necessarily use the state's freeways.

In order to keep Illinois' infrastructure safe, competitive, and affordable, we need the Tollway. Improvements would not be possible without the recently approved \$12 billion capital plan. Those who want the Tollway dissolved should not encumber our present-day infrastructure needs because of the legislature's short-sightedness half a century ago.

Amendments to the Illinois Prevailing Wage Act

In the last few years there have been numerous amendments and clarifications through case law to the Illinois Prevailing Wage Act. The III FFC has had a hand in some of these changes and would like to discuss their importance and applicability.

One major change is the requirement that public bodies provide written notification to contractors that a project is subject to prevailing wage. While prevailing wage stipulations in bid specifications were already required, this amendment holds a public body responsible for interest, penalty, or fines if written notice is not provided. This is true even if there are no bid documents or a formal contract; even a purchase order for work covered under the Act must include the written notification.

The same notification requirement also applies to contractors for their subcontractors. However, back wages owed to workers entitled to prevailing wage rates are still the responsibility of the contractor that failed to pay those wages, regardless of proper notice.

Additionally, the broad definition of a “public body” for purposes of the Prevailing Wage Act has been affirmed by the courts. Besides traditional governmental agencies, a private entity may be considered a

“public body” for purposes of the Act if a project is financed in whole or in part with bonds, grants, loans or other funds made available by or through the State or any of its political subdivisions. *McKinley Foundation v. Illinois Department of Labor*, 404 Ill App. 2d 708 (4th Dist. 2010).

In addition, the General Assembly amended the “public works” definition to clarify that it includes all projects funded in whole or in part with bonds, grants, loans or other funds made available by or through the State or any of its political subdivisions.

Criminal sanctions for contractors and public bodies will increase, effective January 1, 2012.

The “public works” definition was also amended to explicitly cover demolition regardless of whether it is in conjunction with new construction.

Most recently, criminal sanctions for contractors and public bodies will increase, effective January 1, 2012, from a Class B to Class A misdemeanor for filing a false certified payroll record. Violations, however, must be willful; innocent mistakes will not rise to the level of criminal sanctions.

Along with criminal sanctions, civil sanctions in the form of debar-

ment will apply for any criminal violations under the statute. Specifically, a contractor will be debarred from public work projects for four years with no right to a hearing if found criminally guilty under the statute.

Additionally, the variety of agencies that may obtain relevant prevailing wage documents has expanded to allow more law enforcement and prosecuting agencies access to documents.

Recent case law clarified that financing a project through a tax increment finance (“TIF”) program will not subject the entire project to prevailing wage. *Town of Normal v. Hafner*, 396 Ill.App.3d 589 (4th Dist. 2009). Projects, other than public infrastructure, in TIF zones are subject to the Illinois Prevailing Wage Act only if there is another source of public funding or other financing covered under the Act, or if a public body is undertaking its own work within a TIF zone.

Overall, these changes affirm the broad scope of the Prevailing Wage Act. It is important that public bodies, contractors and workers understand their responsibilities and rights under the law. If you have questions about any of these changes, please contact the III FFC at 815.254.3332. ■



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FOCUS ON Illinois

Illinois Supreme Court Takes on Fund Sweeping

In an opinion issued in late October, the Illinois Supreme Court upheld the transfer of funds from the Cycle Rider Safety Training Fund (“CRSTF”) to the General Revenue Fund (“GRF”). The case, *A.B.A.T.E. of Illinois v. Quinn*, analyzed whether the authorization of the sweep of funds from the CRSTF to the GRF was constitutional.

Plaintiffs, A.B.A.T.E. of Illinois, argued that while the legislature has general authority to divert funds, the funds in the CRSTF were private, not public, and therefore the legislature lacked authority to sweep funds from it.

The Court held that the monies in the CRSTF were a percentage of the fees collected by the state for the registration and licensing of motorcycles, thereby, concluding that the funds were state revenue and public monies.

As public funds, the Illinois General Assembly had the authority to use the monies for public purposes, such as the GRF. In addition, the Court held that while the General Assembly’s plenary power is expansive, it does not include the ability to bind future General Assemblies.

Chief Justice Kilbride wrote a dissenting opinion observing that it was unclear whether any monies swept from the CRSTF included federal grants or private money, because the law creating the CRSTF permitted commingling of license and registration fees, private donations, and federal grants.

Based on the case record, there was no way to know whether the CRSTF contained any private donations or federal monies. The Chief Justice further noted that federal monies are not “public funds” under Illinois case law.

Justice Kilbride stated that the legislature has swept monies from various other funds comprised of public funds, private donations and federal monies

and opined that the Court had an obligation to address the implications of such fund sweeps where private donations and federal monies are also involved. The dissent left the door open to future cases when private or federal monies are involved. However, the majority’s decision forecloses restrictions on the use of funds for a specific purpose. Put another way, legislative drafting cannot be used to avert the sweeping of public funds. ■



Prevailing Wage Conference a Success

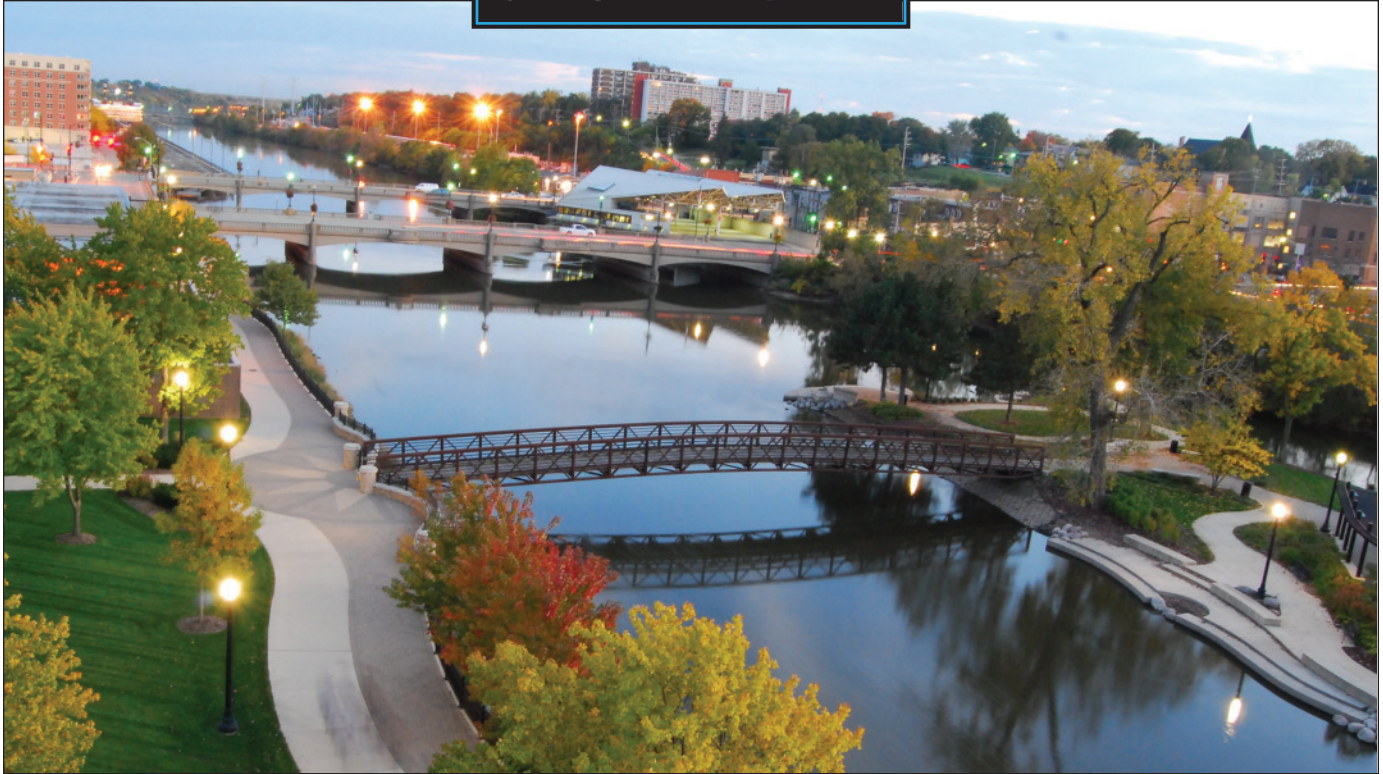
On November 9, 2011, the III FFC hosted its first annual Prevailing Wage Seminar. Designed to appeal to a broad audience by offering a labor-management perspective on prevailing wage issues, the III FFC achieved this goal with over 150 attendees, including public officials, contractors, and labor representatives.

The 4-speaker panel discussed a variety of compliance issues and recent amendments to the Illinois Prevailing Wage Act. Besides attorney perspectives, attendees heard directly from the agencies responsible for enforcing the Act. Speakers included: Tom Whalen (Division Manager Conciliation & Mediation, Illinois Department of Labor); Destiny Woods (Assis-

tant Attorney General, Law Bureau, Labor Unit); Michael Duffee with a Contractor/Management perspective (Attorney, Thompson Coburn, LLP); and III FFC Executive Director Marc Poulos with a Labor perspective.

The seminar format encouraged participants to “ask the experts” throughout the presentation. While the first annual conference was scheduled to last just a half-day, next year’s conference may be longer, considering the wealth of questions and discussion that ensued.

The III FFC thanks all the speakers and attendees for their participation and looks forward to next year!



ELGIN, ILLINOIS

BY MICHAEL LINGL

Elgin was charted as a city by the State of Illinois in 1854—and one hundred years later became the first city in Illinois to adopt a Council-Manager form of Government.

Prior to his recent election, Mayor David Kaptain was a City Councilman and a strong proponent of Responsible Bidder Ordinances (“RBO”). With over 100,000 residents, Mayor Kaptain recognizes that awarding contracts to responsible bidders is of utmost importance to taxpayers, especially in today’s economy.

In March of this year, the City of Elgin passed an RBO and an important criterion was added to the ordinance pertaining to city construction. For projects (construction of new city facilities, renovation of existing city facilities or city road construction projects) over \$50,000, contractors must show evidence of participation in an apprentice and training program applicable to the work to be performed on the project. The apprentice and training program must be approved by and registered with the U.S. Department of Labor Bureau of Apprenticeship and Training.

Incorporating this section into the RBO will help ensure that highly skilled employees are working on city projects. This should result in a safer, more efficient, work environment to lower completion time and costs.

The City of Elgin has benefited from having a riverboat casino

for many years; however, this revenue has decreased recently. Spending tax money on public works projects is being closely scrutinized. Adopting an RBO gives taxpayers the benefit of awarding public works contracts to responsible contractors.

According to Mayor Kaptain, the City Council is considering offering incentives to local contractors to bid on projects. The rationale being that this will spur local economic development and return more tax dollars to the City of Elgin.

Currently there are five major public construction projects underway in Elgin and all are expected to be completed this fall. The five general contractors are all responsible contractors who met the requirements of the RBO.

One major project, Lord Street Sewer Separation, was awarded to Bolder Contractors. The contractor is tying in all of the catch basins and curb inlets to the previously installed storm sewer mainline.

Mr. Robert Gwiasda, company representative, stated, “Any type of Responsible Bidder Ordinance is beneficial to all parties and the industry as a whole.” Bolder Contractors has been a responsible construction contractor for years and has been recently awarded several other contracts in the area.

To learn more about the City of Elgin, visit their website at <http://www.cityofelgin.org/>.



John Freitag
SUPERVISOR

FOCUS ON Iowa

The 113th Annual Iowa League of Cities Conference and Exhibit

The III FFC recently participated in the 113th Annual Iowa League of Cities Conference and Exhibit. This is our second year participating as a vendor at this conference and the experience was spectacular. Drawing approximately 450 mayors, city council members, city attorneys and city administrators, the conference provided the III FFC an opportunity to have direct communication with these stake holders to discuss issues that are important for fair contracting.

At the conference, we presented each attendee with a professionally developed and produced, high quality packet that addresses the importance of passing responsible bidder ordinances in their community. As you are aware, Chapter 26.9 of the Iowa Code states that a contract for a public improvement must be awarded to the lowest responsive, responsible bidder. However, the state does not define the word responsible and far too often communities are contracting with the lowest bidder, which is not always a responsible bidder.

At the conference we explained that each community has an opportunity to define within their procurement code what they believe to be “responsible” contracting. The packet contained a sample “Cadillac” ordinance listing each element the III FFC believes is beneficial in determining who is a responsible bidder and who is not. It also contained a sample compliance questionnaire for each bidder to complete and submit

with a bid packet. A contractor who fails to respond to any portion of the questionnaire is considered non-responsible and its bid may be thrown out.

Responsible bidder elements can be as simple as asking each contractor to supply their contractor registration certificate to show they are properly registered to do business in Iowa.

Or maybe a community wants to ensure that each worker has graduated from at least a 10-hour Occupational Safety and Health Administration (OSHA) course. The OSHA course is offered, free of charge, by the Iowa Workforce Development to all Iowa contractors. The definition of “responsible” is up to each community, but not having objective criteria in place to define

“responsible” makes it difficult for a community to look past a low bidder, who may not be responsible.

The III FFC would like to thank each attendee that stopped at our booth as well as the Iowa League of Cities Board Members and staff for a job well done.

Finally, we would be remiss if we did not congratulate Rhonda Wempe, Council Member for the City of Breda and the winner of this year’s III FFC give away. We hope you enjoy the prize!

If you would like more information on the responsible bidder concept please feel free to call us or visit our web site at www.iiiffc.org. Our services are free and we welcome the opportunity to assist you throughout the responsible bidder process. ■

INFRASTRUCTURE *continued from page 3*

in northeast Illinois. Beyond dollar cost, motorists in the Chicago area have burned almost 184 million gallons of excess gas due to congestion. Driving on rough roads costs motorists more in terms of vehicle deterioration and depreciation, increased fuel consumption, tire wear and increased vehicle maintenance. In the Chicago area, driving on rough roads is estimated to cost motorists an additional \$340 per year in vehicle operating costs.

To continue with transportation extensions makes it difficult for

states such as Illinois to undertake major projects because of uncertainty in funding. While there is little interest in raising the federal motor fuel tax, other user fees have been suggested. An agreement needs to be reached on Capitol Hill in which sufficient revenues are generated to keep our nation’s and states’ transportation infrastructures reliable, safe, and efficient. Take time to contact your elected officials to ensure a fully funded, multi-year transportation bill becomes a reality. ■

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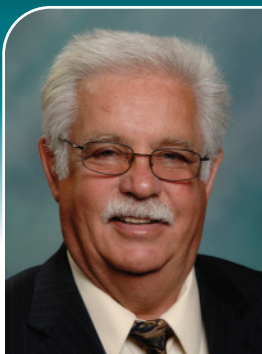
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Tom Frailey
SUPERVISOR

FOCUS ON
Indiana

Indiana Monitors Assist Contractors in USDOL Residential Wage Surveys

A few years ago, Indiana Monitors were asked to look into a U.S. Department of Housing and Urban Development (“HUD”) assisted living project where wages posted for the classification of Operating Engineer were substantially below the prevailing rates in the locality of the project. This project was covered under the Davis-Bacon Act.

Researching this further, we learned that the wage rates were set by conformance. In other words, there was no prevailing wage rate established for the classification of Operating Engineer on the applicable U.S. Department of Labor (“USDOL”) wage determination. This was most likely due to insufficient data being submitted the last time there was a wage survey in the area.

When a classification is not listed on the wage determination, the contractor awarded the project provides wage information to the contracting agency for the unlisted classification. This is known as a conformance process. In this project, the contractor paid wage and fringe benefit rates below that of contractors signed to local collective bargaining agreements. This difference in wage rates illustrates the impossibility for a signatory contractor to submit a competitive bid on the project, even if their wages prevail in the local community.

Upon review of the residential rates for 14 counties in northern Indiana, we found that only three counties had prevailing wage rates set for Operating Engineer and only seven pieces of equipment had rates. This meant that a conformance would be required on a project by project basis to establish a rate for Operating Engineer work in the other 11 counties and on dozens of pieces of equipment.

After much discussion, Executive Director Marc Poulos decided III FFC Monitors would assist contractors with USDOL wage surveys in the future to help fill in these large gaps in the wage determinations and help ensure that the rates that prevail in the local community are recognized by the USDOL.

In 2008, the USDOL held seminars throughout the country and announced that one of their goals was to complete nationwide surveys. In fact, the Indiana residential survey became a reality this year. The last

survey was done twenty years ago.

The USDOL provided training on the wage survey process, which III FFC Monitors attended in Indianapolis and Merrillville, Indiana. After this training, Monitors researched building permits to determine which contractors worked on jobs meeting the residential requirements set by the USDOL. Monitors met with over 80 contractors and reviewed dozens of projects. Some contractors asked us to assist in filling out the forms. Others completed the forms themselves and mailed them in, while others submitted the information online.

In September of this year, Monitors teamed up with Local 150 Business Agents and called contractors to ensure that they sent in the wage reports to the USDOL. This follow-up continued to the very last day of the wage survey. This task required many hours of work by the III FFC and required contractors to commit many hours preparing and submitting forms. Many contractors lamented that this could not have occurred at a worse time as all were busy working on current contracts.

Based on the initial response from contractors, which was to resist or ignore the survey, we believe the III FFC’s involvement was critical in helping ensure accurate rates will be set on the wage determinations in the affected counties. However, once contractors understood the importance of the survey process, they realized it was worth the time and effort. Thanks to the collaboration between contractors and the III FFC, we believe many counties in Indiana will soon have the correct prevailing wages applied to future contracts to help level the playing field.

We wish to thank all the contractors who took time to review their records and submit wage reports for the survey. These efforts should help to eliminate conformance rates and establish accurate prevailing wage rates on residential projects in many Indiana counties.

And keep in mind: the USDOL will soon be conducting wage surveys for Heavy, Highway and Building rates. The III FFC Monitors are now confidently prepared to take on this task as well. ■

National Conference on Fair Contracting

By Michael Lingl

In September, 2011, I had the opportunity to attend the 13th Annual National Alliance for Fair Contracting (“NAFC”) Conference in Seattle, Washington.

This was not my first time attending a NAFC conference, as I had also attended the 2005 conference. The difference in 2005 was that I was still very new to fair contracting and I was unable to actively participate in the conference discussions. While I gathered some great information, I was still learning about fair contracting and what an organization like NAFC provides to its members.

NAFC is a labor-management committee created to promote and encourage fair contracting. The Board of Directors is comprised of 12 members (6 fair contracting organizations, 3 contractor organizations and 3 labor organizations). NAFC’s goal is to encourage the exchange of information among enforcement groups and contractors competing in the public construction arena. The annual conference is in furtherance of this goal, promoting fair contracting and bringing people together to exchange ideas. The conference covers a variety of issues about “leveling the playing field” in public works projects.

The 2011 conference kicked off with the NAFC legal roundtable where participants discussed current legal issues that affect fair contracting at the local, state and federal level. While this was one of the smaller gatherings at the conference, it was very informative and brought to light the ongoing legal issues that arise in fair contracting. NAFC is considering dedicating more time to this portion of the conference in the future.



“The annual conference promotes fair contracting and brings people together to exchange ideas.”

The conference also had numerous speakers and workshops lined up to discuss the variety of issues that arise across the country in the fair contracting arena. In addition to presentations from other fair contracting groups, speakers included representatives from the U.S. Department of Labor and other federal agencies, as well as state legislators from Washington and Ohio.

The III FFC led one of the workshops: “Fair-Contracting Today-A Multi-Faceted Approach,” and I was one of the speakers. Just a few years ago, I was brand new to fair contracting and not even sure what questions to ask. Now I was assisting in the presentation at a national conference! It ended up being a great forum to discuss successes and failures for everyone involved.

By the end of the conference, I had a greater appreciation for NAFC and a firm belief that it is meeting its goals. As a result of the information exchanged, I heard first-hand about some of the attacks against prevailing wage and fair contracting laws across the country. It’s easy to forget that these laws were

drafted in some of the worst economic times this country has known. In fact, our country came out of the Great Depression with a federal prevailing wage law – the Davis-Bacon Act. This and “little Davis-Bacon Acts” at the state-level help make our country a better place for men and women working in the construction industry. Sharing fair contracting experiences and plans for the future at the NAFC conference was a great reminder of the importance of our compliance work at the III FFC.

For more information on NAFC you can visit their website at www.faircontracting.org.



Rodney Urbano (center), Vice President and General Manager for Town & Country Paving in Demotte, Indiana, worked with the III FFC on completing the USDOL residential wage survey. Rodney is pictured here with III FFC Monitors Marci Kunstek and Butch Rose.



III FFC LOOKING BACK: Where We Started and Where We Are Today

From modest beginnings in 1999, to the organization we have grown into today, the III FFC has changed considerably. In the early days, employee training was very informal. According to Field Supervisor Michael Lingl, training consisted of “being handed a Target Construction Research report and a prevailing wage sheet and being told to figure out if workers were being paid right.”

Today, training includes sessions on certified payroll review, as well as OSHA compliance, bid protests, responsible bidder presentations, and public speaking practice. Regular training is a priority to ensure III FFC employees have a comprehensive understanding of public construction issues and are comfortable speaking to public officials and contractors about these issues.

In the beginning, there was also informal supervision and very few guidelines for filing complaints. Monitors didn’t have cell phones or laptops and didn’t keep electronic records of case files. Instead, paper files were kept in the trunk of a Monitor’s car and most work was done from home.

Now, the III FFC has a shared directory of electronic case files that supervisors can review for each Monitor in their area. Monitors also keep weekly “hot lists” of on-going projects before they become formal cases. With this improved organization, III FFC complaints filed with state and federal agencies are increasingly more polished and professional.

In the early days, Monitors did no pre-construction work. By far, the majority of a Monitor’s job was reactive and focused on monitoring construction projects already in progress. Pre-construction, or proactive work, includes speaking with public bodies about responsible bidder ordinances, bid protests of non-responsible contractors and educating public bodies and contracting agencies

about compliance concerns on public construction projects. In fact, our work has evolved from 80 percent reactive monitoring on the job site to 80 percent proactive, pre-construction monitoring.

Because the III FFC did not typically get involved in a project until after construction began, workers were often afraid to talk to Monitors about wages, fearing retaliation if a complaint was filed.

In the last ten years, the III FFC has worked with public bodies, contractors, workers, and taxpayers to help them understand what we do. We are not out to create problems on a job site, we’re working to ensure compliance with public construction laws. This has led to a shift in how the III FFC is perceived. In fact, workers, contractors and public bodies often contact us upon hearing of the help we can offer them.

The III FFC has also expanded efforts in the legal and legislative realm. In the early years, there were no attorneys on staff. Lawsuits were not filed and there were no legislative initiatives. With three attorneys currently on staff, the III FFC has filed cases in multiple jurisdictions on issues ranging from competitive bidding requirements to prevailing wage classifications.

Attorneys with the III FFC have also filed *amicus* briefs in support of the State of Illinois position on the 2009 Capital Bill and in support of the Illinois Department of Labor in a prevailing wage case. The III FFC has also drafted numerous pieces of legislation, including amendments to the state prevailing wage and workers’ compensation laws.

Over the past 12 years, the III FFC has developed into an organization that is known for innovative ideas and as a leader in fair contracting. We will continue to build on this reputation and look forward to the work ahead. ■

“Over the past 12 years, the III FFC has developed into an organization that is known for innovative ideas and as a leader in fair contracting.”

Contractor News

By John Freitag



John Gayewski started in the construction industry at a young age working on roofs, heating and air conditioning units and demo projects. He eventually began to purchase heavy equipment in order to get into site development, and in 1983, he formed G & B Construction, LLC.

Located at 1808 Osborn Avenue in Burlington, Iowa, G & B now employs 30 workers including numerous union operators and laborers, as well as office support staff. G & B has expertise in all degrees of excavation work, hauling, and dumpster services, as well as specialty construction such as demolition, asbestos removal and site work.

John and his two sons, John Jr. (26) and Zack (25), are members of the Masons of Iowa and frequent church-goers. With John's initiative, the company has performed several projects for a homeless shelter and other charity work around the community. John Jr. also has a 6-year-old daughter named Gracie who may very well be involved in the family business when she grows up.

G & B has been the successful bidder on a number of large projects in the area including the site and utility work for FunCity located on the main drag of Burlington across from the GE plant.

In addition, G & B was contracted for the Maquoketa downtown site clean-up, working with the Department of Natural Resources and Environmental Protection Agency. G & B also worked on the removal of over 150 flood damaged structures for FEMA in Louisa and Des Moines County and in the City of Oakville.

Currently, G & B is working on the \$130 million maximum security prison project north of Fort Madison. John explains, "We are digging trenches for the plumbing and electrical conduits and backfilling the trenches with rock. This work is done at the initial phase of all construction to provide the prison a solid



G&B Owner John Gayewski (center) with his sons Zach (left) and John Jr. (right).

foundation on which to set. The Iowa State Penitentiary has been the biggest project I have worked on. I am very thankful for the job because it has helped us grow as a company, provided steady work for my employees, and helped stimulate the area economy. Everyone we have worked with has been great and I am proud to be a part of the construction. I believe the project will help move our company to the next level, as we now have valuable experience working on long-term contracts."

Talking about his experience with the III FFC, John says, "It's good working with the Indiana, Illinois, Iowa Foundation for Fair Contracting. They provide assistance and they come with a wealth of information and knowledge. They help level the playing field and everyone involved knows that the job must be bid by responsible contractors."

G & B welcomes the opportunity to work with other contractors in addition to local, state and federal agencies. So if you have a project planned and need a contractor that specializes in excavation work, please call John at 319-753-6324 to discuss your needs. ■

"It's good working with the III FFC. They provide assistance and they come with a wealth of information and knowledge."

CALL TO CONTRACTORS

Completing the USDOL wage surveys is worth your time

By Melissa Binetti

Keeping a level playing field on federal Davis-Bacon and Related Act (“DBRA”) projects begins with the wage determination. This is the list of hourly and fringe benefit rates that prevail in the locality where the work will be performed. It is included with contract specifications so bidders on federally funded or federally-assisted projects are aware of the minimum wage rates to be paid on the project.

Identifiers on the wage determination indicate whether the rates listed for a particular classification are Union or Non-Union. Rates based on a collective bargaining agreement (“CBA”) will identify the particular trade and local, for example, “ENGI0150” shows rates based on a CBA with the International Union of Operating Engineers, Local 150.

A non-union rate is typically identified by “SU” indicating “survey data.” But this is not always the case.

For example, wage determination “IL18” covers dredging work on the Great Lakes. However, because the wage determination covers dredging in all of the Great Lakes, it covers multiple jurisdictions. Stated differently, there is no single local that covers this entire region for a particular classification. So, for example, instead of using “ENGI” as the identifier, “SU” is used as a catch-all on the rate for operating engineers. The bottom line—although “SU” usually indicates a non-union rate, it is not conclusive.

When a Union rate is adopted on a wage determination, the rates are modified periodically as they increase under the applicable CBA. On the other hand, there is no process in place to update a non-union rate. Once a non-union rate is adopted for a particular classification, that rate is unlikely to increase until the next survey, years later.

A worst-case scenario is if no rate is adopted for a particular classification on the wage determination. If a rate is missing, a conformance is required each time a project will involve work under that classification. The conformance process requires the contractor, already awarded the work, to submit information to the contracting officer showing that (1) the work is recognized in the construction industry, (2) the work can’t be performed by a classification already

listed on the wage determination, and (3) the proposed rate bears a reasonable relationship to the rates of other classifications on the wage determination.

Usually, “reasonable” simply means the rate can’t be less than the lowest rate on the wage determination. However, this does nothing to ensure that the rate reflects the actual pay practices for a particular craft.

Think missing rates can’t happen in your area? We’ve seen it first hand in Indiana, where there was no rate for “Operating Engineer” on a residential wage determination, requiring a conformance on a HUD project. Read more about this issue in Focus on Indiana.

How does a wage determination fail to include rates for a particular classification? This may occur if the USDOL does not receive sufficient data to establish rates through the survey process. Similarly, non-union rates could be adopted if non-union contractors submit more data during the wage survey than union contractors. This is why it is critical for contractors

to participate in the survey process.

It seems like it’s never a good time to sit down to review and compile the paperwork necessary to complete the WD-10 wage survey form—but it’s time well spent. And the Department has taken steps to make this process simpler, by holding seminars to review the form and survey process, as well as offering an electronic survey form.

Like most new tasks, after you’ve completed the survey once, it’s a quicker and simpler process in the future.

Current wage determinations, along with a list of wage determinations scheduled to be updated, are available online at www.wdol.gov. Take a minute to look-up the wage determinations in your area to see if they reflect the prevailing rates for that locality.

The Department has made wage surveys a priority under the current administration. Considering the negative impact the economy has had on the construction industry the past few years, it is an especially important time for contractors to participate in the survey process and submit their wage information to help keep a level playing field on DBRA projects. ■

“Non-union rates could be adopted if non-union contractors submit more data during the wage survey than union contractors.”

“911 Operator—What is your emergency?”



Retired Chicago Police Officer puts his three decades of investigating experience to work for the construction industry in Lake, McHenry and Kane Counties

For thirty years, Dave Sokolnicki responded to calls from citizens of Chicago as a police officer. Not all the calls he responded to were emergencies. Most of his career he worked in specialized units where he became proficient in developing investigative techniques and procedures to bring a case to its conclusion.

His career varied. He worked as a beat officer in the Patrol Division and in the specialized unit “Task Force.” Upon being promoted to the Detective Division, Dave worked in the Vice Control Division, the Auto Theft Unit, and in the Violent Crimes and Property Crimes Units. He retired from the Chicago Police Department and continued his career as an investigator for the Chicago Board of Education in the Contract Compliance Section.

Dave has been with the III FFC since its inception in 1999 when the job focused on monitoring non-responsible contractors on public construction projects and prevailing wage compliance.

Today, although monitoring non-responsible

contractors is still of major importance, III FFC Monitors have a number of other responsibilities. These responsibilities include educating public officials about the benefits of a responsible bidder ordinance, preparing bid protests, and addressing the misclassification of employees as independent contractors. These are just a few of his daily responsibilities. For Dave, “enforcing all state and federal laws related to construction is as satisfying as enforcing the Chicago Municipal Code and the Criminal Code of our State.”

The calls no longer come from Chicago residents for help, but from workers on public works projects in Lake, McHenry and Kane counties, the counties Dave is assigned to cover. Complaints from workers vary and each call is held in the strictest of confidence.

Dave received one such call from an anonymous worker who indicated he and his fellow workers were from out-of-state working on a federally-funded project and they believed they were not being paid correctly for their work classification. The project was monitored and eventually a complaint was filed with the USDOL.

The USDOL determined the contractor was not paying the prevailing wage rates and the workers received back wages in excess of \$205,000. The contractor was also fined. This was a great success story for the workers who were being paid improperly and most likely would not have received the correct wages without the help of the III FFC.

Dave reunited with his high school sweetheart, Karen, on Classmates.com and they have been married seven years. Together they have nine children and welcomed their 21st grandchild this fall. He and Karen live in Woodstock with their dog Beau who they rescued from a shelter.



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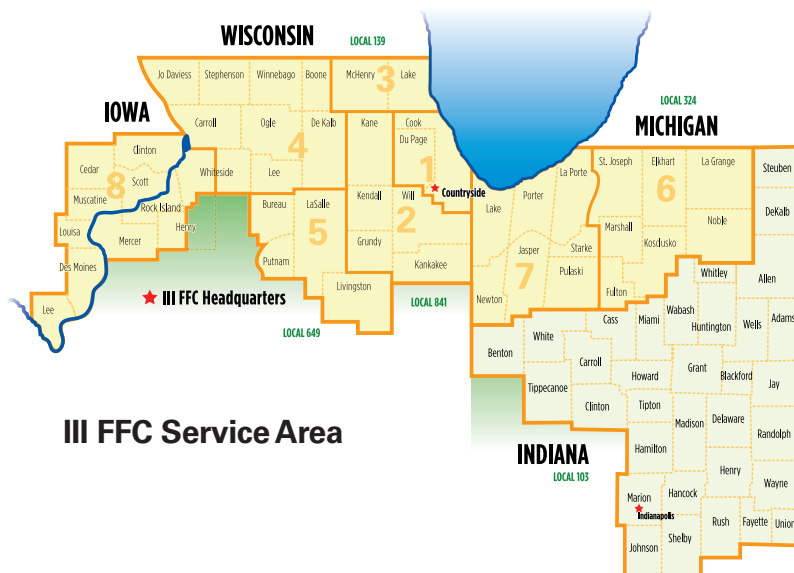
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