

# The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY



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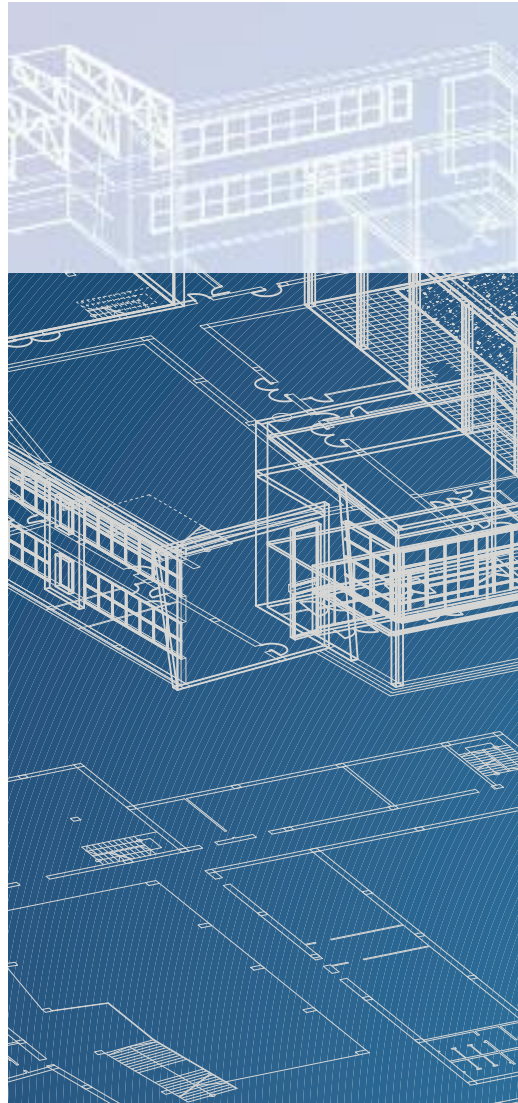
# The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY



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“Federal transportation and infrastructure spending is a **top priority in 2011** for the III FFC.”

# Infrastructure/Transportation

## Legislators debate proposals to spur economic growth

The deep decline in nonresidential construction spending has finally ended. While most sources agree that spending will rise by an anticipated 5.5 percent in 2011, the outlook is still bleak as 2011 construction spending will likely be a quarter less than 2008 levels.

2012 will likely be a good year for privately financed construction as credit conditions improve, however, the Associated General Contractors of America reports that construction segments closely linked to state and local government will decline in 2011.

Although this forecast is rather dismal, a major transportation and infrastructure bill has become a much discussed issue at the Federal level and is a key component of economic growth. Make no mistake, a massive

transportation bill would boost the economy across the country by creating jobs while fixing our nation's roadways.

III FFC Executive Director Marc Poulos was recently elected Vice-Chairman of the Federal Affairs Committee for the Transportation

for Illinois Committee, a conglomeration of labor, management, Trade Associations, the chamber of commerce, and local government.

“Federal transportation and infrastructure spending is a top priority in 2011 for the III FFC,” Poulos said.

There are a number of concerns being raised regarding how to fund such a massive transportation bill. To that end, many proposals have been debated. A motor fuel tax increase is emerging as one proposal. The current Federal motor fuel tax is 2.86 cents per gallon of gas and has not been raised since 1993.

Proposals have come from associations, law makers, as well as the Obama Administration. These proposals include increases between

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## WE HAVE ISSUES

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



# Leveling the playing field

Making it fair for taxpayers, workers, and contractors requires labor-management cooperation. The Indiana, Illinois, Iowa Foundation for Fair Contracting (III FFC), funded solely through participating contractors, aims to do just that.

We are a labor-management organization established to support, promote, and encourage fair contracting by providing a “level playing field” in public construction for workers and contractors.

What began in 1999 as a small experiment in labor-management relations has since grown into an organization that demands cooperation between labor and management through its use of dedicated attorneys, knowledgeable office staff, and over a dozen compliance monitors, many of whom are retired law enforcement officers. When the III FFC began, we primarily focused on enforcing prevailing wage requirements and ensuring that public bodies adhere to laws covering public construction projects.

In fact, our success regarding prevailing wage compliance is seen by the violations assessed by the various Departments of Labor we interact with. In 2008, prevailing wage violations based on III FFC complaints totaled nearly \$1 million: \$759,151.30 in unpaid wages and \$130,211.77 in penalties. In 2009, the amounts were \$780,886.90 in unpaid wages and \$130,330.92 in penalties assessed. And in 2010, the amounts were nearly \$500,000.

Due to our success, we have built relationships that allow us to expand our monitoring beyond prevailing wage compliance to pre-construction issues as well. Our goal is to ensure that it isn't just the lowest cost contractor who is awarded a public works contract, but the lowest responsible contractor. When the III FFC began tracking pre-construction results in 2009, our involvement in turning contract awards from low bidders to the lowest responsible bidder resulted in \$14 million in public works construction for responsible contractors. In 2010, that number nearly quadrupled when we turned \$52 million of public works construction projects around for responsible contractors.

There are many tools the III FFC utilizes to get the job done and get it done right. We begin by tracking projects to determine who is bidding. If a questionable

contractor is the apparent low bidder, we discuss responsible bidder issues with the public body. If a problem contractor is awarded the contract, we monitor that project to ensure compliance with applicable laws.

We also work to educate public bodies to ensure their projects are properly bid and awarded, and we educate workers and contractors so they know the prevailing wage and fringe benefit rates. Public construction projects are monitored by our staff to determine whether any violations are occurring such as misclassification of workers as independent contractors, and safety or wage violations.

The III FFC also files complaints, including referrals from contractors, affected workers, or other sources, with the appropriate enforcement agency. We then follow-up with the agency to make sure all cases are handled timely and appropriately. These activities allow the III FFC to enhance the job market for responsible contractors, ensure the fair payment of wages to employees, and provide greater taxpayer value.

Traditional labor relations often set labor and management at opposite sides of the table. The III FFC brings all parties together to ensure that contracts are awarded in a cost effective and responsible manner. This benefits both contractors and workers.

Having a responsible contractor on the jobsite provides greater assurance the job will be done on time and on budget. This benefits both taxpayers and the public body.

*The Monitor* will provide information and updates on III FFC activities, as well as discuss issues pertaining to public bodies, contractors, workers and taxpayers on public construction projects. If you have questions or ideas about the issues discussed, contact us.

LETTER  
FROM THE  
**Executive  
Director**

Marc R. Poulos

## Non-traditional public works projects

Usually when we think of projects covered under the Illinois Prevailing Wage Act (IPWA), we think of the typical “fixed work constructed by a public body” such as a fire station, public library, street repair or sewer project. But not all public works projects in Illinois are constructed by traditional public bodies such as a municipality, school district or state agency. The IPWA covers “public works” projects and broadly defines “public works” to include “all projects 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 . . .” As a result, a private entity may be a public body for purposes of the IPWA where it receives financing from the state or its political subdivisions for a public works project.

One of the financing mechanisms expressly listed in the IPWA are bonds issued under the Illinois Finance Authority Act. Historically the State of Illinois had several authorities that issued a variety of bonds or loans for economic development. Effective January 1, 2004, seven existing state authorities were combined into the Illinois Finance Authority (IFA) with the enactment of the Illinois Finance Authority Act (20 ILCS 3501). The IFA is a self-funded agency that receives no general revenue funds from the State of Illinois. This allows a variety of public and private entities access to low cost financing through banks and other sources.

The mission of the IFA is “to foster economic development to public and private institutions that create and

retain jobs to improve the quality of life in Illinois by providing access to capital.” The IFA offers products in the areas of Agriculture, Business and Industry, Energy, Education, Health-care and Communities. IFA finances about \$3 billion each year, helping generate economic growth and job creation. Some examples of projects financed include \$14 million in

**While many of these projects are not what we typically think of as “public works,” projects that receive IFA financing are covered under the IPWA, even when the project owner is a private entity.**

bonds to build the Kohl’s Children’s Museum in Glenview and \$80 million in bonds for Alexian Brothers Health System to modernize/ expand existing hospitals. In total the IFA has helped finance at least 976 completed projects at a cost of over \$22 billion since inception.

While many of these projects are not what we typically think of as “public works,” projects that receive IFA financing are covered under the IPWA, even when the project owner is a private entity. Think of it this way—would the project have been possible without the IFA financing? With millions of dollars at stake, probably not.

In 2009, the McKinley Foundation at the University of Illinois, a not-for-profit corporation, raised a legal challenge to the Illinois Department of Labor’s determination that the IPWA covered a student housing project financed in part with tax-free bonds issued by the IFA (*McKinley Foundation v. Illinois Department*

*of Labor*, No. 4-09-0512). Although McKinley agreed that the project was a “public work” as defined under the IPWA, it argued that it was not a “public body,” nor an “institution supported in whole or part with public funds.” The Illinois Department of Labor argued that McKinley was a public body for purposes of the student housing project, since the project was paid for in part with the IFA bonds. Therefore, workers on the project were entitled to be paid the prevailing wage.

Although the trial court agreed with the McKinley Foundation, on appeal, the Fourth District Court of Appeals held that the project was covered under the IPWA. Finding that both IDOL’s and McKinley’s interpretations of the IPWA were reasonable, the Court looked to the legislative history of the statute. Reviewing the House and Senate debates concerning the Act, the Court concluded that “[t]he legislative history makes clear the General Assembly intended to expand the coverage of the Act to projects constructed by entities benefiting from financing under an enumerated public-financing mechanism, even if the entity itself was not a traditional public body.” Accordingly, the student housing project was covered by the Act and required payment of prevailing wages.

The Illinois Supreme Court recently denied McKinley Foundation’s petition for leave to appeal. Additional information about the case is available on the III FFC’s website ([www.iiifcc.org](http://www.iiifcc.org)). ■

### Legal Corner



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



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



Michael Lingl  
SUPERVISOR

FOCUS ON  
**Illinois**

# The importance of RBOs

At its inception, the III FFC focused almost exclusively on prevailing wage compliance. However, over the past few years, the scope of III FFC activities has expanded into a variety of areas including legislative initiatives, litigation, and promoting responsible bidder ordinances.

We all know that “lowest” doesn’t always mean “best.” Lower costs may also mean cutting corners with lower quality, poor performance and a decrease in safety – especially on a construction site. So why do public bodies often presume the “lowest” bidder will be the “best” contractor to perform work on a public construction project? Upfront costs saved on a project are meaningless if a road, bridge or building needs immediate maintenance and repair because it was

constructed with low-quality materials or by inexperienced workers.

In 2010, the III FFC worked with CISCO and LECET to present Responsible Bidder Ordinances (RBOs) to as many public bodies as possible. An RBO is a set of objective criteria for a public body to use in awarding a public works project. In Illinois, Aurora, Belvidere, Bolingbrook, North Aurora, Ottawa, Peru, Tinley Park and Waukegan have adopted RBOs in 2009 or 2010.

The III FFC’s focus on RBOs led to a successful bid protest in Tinley Park involving a drilling project at the Tinley Park Convention Center. The III FFC monitored the bid opening and determined that a non-responsible bidder was the apparent low bidder for the

**An RBO is a set of objective criteria for a public body to use in awarding a public works project.**

## Atkinson breaks ground on new fire station

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**Breaking ground for the new Atkinson Fire Station:** (from left) Steve Swanson of Swanson Construction, fire protection district trustee Ken DeSmith, architect David Henebry, fire protection district trustee Maryclair Gustafson, fire chief Bob Floming, assistant fire chief Bobby Burton, assistant ambulance director Jason Burton, fire protection district trustee Dan DeSmith, ambulance director Noreen White and Rep. Jerry Mitchell.

**The III FFC's focus on RBOs led to a successful bid protest in Tinley Park involving a drilling project at the Tinley Park Convention Center. The III FFC monitored the bid opening and determined that a non-responsible bidder was the apparent low bidder for the project.**

project. Referencing the Tinley Park RBO, the III FFC discussed concerns about the low bidder with the Village and the project was subsequently re-bid. The non-responsible contractor did not re-bid the project, and a responsible contractor, Seeco Construction Company, was awarded the work.

In the Fall of 2010, the III FFC attended a bid opening in Vernon Hills for a project estimated to cost \$1,000,000.00. All the bids presented were relatively close, until one was opened for approximately a third less than all the other bids. This bid was submitted by a non-responsible contractor that the III FFC had received complaints about in the past.

Our office worked with the staff from Vernon Hills and with local business agents from various trades. We

even attempted to work with the non-responsible contractor. The result of these efforts was that the non-responsible contractor withdrew his bid and the contract was awarded to a responsible contractor, Schaeffges Brothers, Inc.

The key to quality construction, completed on time and on budget, means contracting with the lowest *responsible* contractor. Using a well-trained workforce and quality materials does not mean paying top dollar; it means awarding a public construction project to the lowest responsible contractor through the competitive bidding process. This can be accomplished by adopting a Responsible Bidder Ordinance ("RBO") which sets out objective criteria that contractors must meet to be eligible to bid on a project. ■

**Atkinson officials broke ground Oct. 18**

for a new \$1.8 million fire station which is expected to open in late 2011. The new station will be located on Route 6 between State and School streets. "The building will be at the gateway to the community," said architect David Henebry of LZT Associates Inc. who designed the building.

The Atkinson Fire District received a \$1.3 million grant from the federal government for the new station and officials are working to raise the additional \$500,000 needed. When finished, the 11,600-square foot building will include eight apparatus bays, including two for ambulance service. The office area will have a communications room for dispatch and emergency communications. The building also will include four offices, a conference/meeting room and a kitchen. According

to information provided on the project, the conference/meeting room will be "divided by a folding partition to allow for flexibility in accommodating multiple meetings or a larger meeting and on-site training." The kitchen has been designed "for local fund-raising purposes and support for community functions.

"Whenever a community builds a new building, it's a fairly momentous occasion, and we want this to be something the community can take a lot of pride in," said Henebry. A geothermal ground source heat pump system will provide heating and cooling for the building, and nearly all of the materials scheduled to be used in the building "were selected based on recycled content and/or regional availability to reduce the energy required to produce the materials," said Henebry. ■



# III FFC Monitoring Process



John Freitag  
SUPERVISOR

FOCUS ON  
**Iowa**

III FFC Monitors are responsible for ensuring that public works projects are awarded to responsible contractors. To achieve this objective, we divide our monitoring process into three stages: “proactive,” “active” and “reactive.”

The proactive approach requires a constant monitoring of projects from the pre-planning announcement through the date of the bid opening. Once these projects are identified, the Monitor reaches out to the public body and architect/engineer and contractors to insure that everyone understands the importance of awarding the project to a responsible contractor. The III FFC identifies the funding source to insure that the appropriate wage rates are attached to the project, reviews the requirements within the job specification packet to insure that all state and local requirements are identified, and works closely with our contractor base to insure the contractors are aware of each and every bidding opportunity. If the project goes to a non-responsible contractor, we then move to the active stage.

The active stage begins when the bids are opened and it is determined that the low bidder is a non-responsible contractor. The III FFC will then immediately contact the public body and the architect/engineer to address our concerns. This usually requires a formal protest before the public body where we present evidence and work to have the bid awarded to the next low, responsible bidder. Our greatest success with the active stage was with the City of Davenport’s Westside Sewer Diversion Tunnel. A non-responsible contractor from Minnesota was the apparent low bidder, but with support from labor, management and other organizations, the III FFC was able to secure a unanimous vote from the Council awarding the \$10.5 million dollar project to the next lowest responsible contractor, Foley Construction.

If the project is awarded to a non-responsible bidder, the III FFC immediately begins communication with that contractor to discuss the importance of hiring responsible subcontractors. An example where this occurred was with a \$38 million dollar Clinton Waste Water Treatment Facility in Clinton, Iowa. It was the

III FFC’s position, during our involvement in the proactive stage, that the wrong Davis-Bacon prevailing wage determination was attached to the job specification packet. The III FFC presented evidence to all interested parties but was unable to secure the necessary changes prior to the bid opening. After our proactive process failed and the apparent low bidder was a non-responsible contractor, we immediately moved to the active stage. Prior to the award, the III FFC met with all interested parties to express our concerns and to discuss

alternative options to insure the most responsible contractor received the award. Sometimes dollars speak louder than words, and in this instance the award went to the lowest non-responsible bidder.

The III FFC continued our communication with the successful contractor and after numerous meetings in which the III FFC and other organizations discussed the importance of hiring responsible subcontractors,

the contractor agreed and subcontracted to three responsible contractors—Treiber Construction Company, Blackhawk Foundation Company, Inc. and Cedar Valley Steel, Inc. Shortly thereafter, the III FFC received a decision from the U.S. Department of Labor that the III FFC was accurate in our assessment regarding the prevailing wage determination and the increased wage and benefit package were attached to the project.

If all else fails, III FFC moves to the “reactive” stage which requires jobsite monitoring on a daily basis. Through this monitoring the III FFC is able to detect violations dealing with wage and hour requirements, as well as violations of state and federal tax laws, unemployment and workers’ compensation issues, safety, environmental, public health, misclassification of employees, and craft licensing issues. Based on its compliance efforts, public agencies have issued an array of violations against non-responsible contractors, such as the failure to be properly registered to do business in Iowa and the failure to properly dispose of demolition debris.

The III FFC will continue to do everything in its power to insure that everyone understands why it is important for responsible communities to hire responsible contractors, and that there is a difference between the *lowest* bidder and the lowest *responsible* bidder. ■

The proactive approach requires a constant monitoring of projects from the pre-planning announcement through the date of the bid opening.



# WAGE DETERMINATIONS

A common question when monitoring projects covered under the Davis-Bacon and Related Acts (DBRA) is: What is the appropriate wage determination? The wage determination is a listing of wage and fringe benefit rates for each class of laborer that the U.S. Department of Labor (USDOL) has determined to be prevailing in a given area for a particular classification of construction. If the wrong wage determination is issued on a project, contractors bidding on the project rely on inaccurate wage information and workers may be paid the wrong rates.

Wage determinations are organized by the following classifications: Building, Residential, Heavy and Highway. Besides the construction type, each wage determination further describes the construction covered, or excluded. For example, Illinois wage determination IL11 states: “Heavy and Highway Construction Projects (does not include landscape projects).” This means that landscape work is covered under a different determination (IL20).

The USDOL has numerous All Agency Memoranda discussing DBRA issues. All Agency Memorandum No. 130 gives a description of Building, Residential, Heavy and Highway classifications and the types of projects covered under each. For example, AAM No. 130 states that the Building classification covers apartment buildings (5 stories and above), while the Residential classification covers apartment buildings (4 stories or less). It also lists runway projects under the Highway classification and major bridge projects under the Heavy classification. So, if you’re not sure what classification a project falls under, AAM No. 130 is a good place to look.

“Heavy” construction is a catch-all classification, covering projects such as bridges, dredging, irrigation or railroad construction. It is common to see multiple “heavy” wage determinations for a particular area, such as specific “Heavy” determinations to cover dredging, sewer or landscape work, as well as a generic “Heavy” determination that is the catch-all determination for other types of work. For example, IL11 covers “Heavy and Highway work” generally, while IL19 is specific to “Heavy (Dredging & Marine)” project.

On some projects, it may be appropriate for the contracting agency to issue multiple wage determinations. All Agency Memorandum No. 131 explains that multiple wage determinations may be issued where the project involves substantial amounts of construction under different classifications. Whether the construction item is “substantial” is typically based on whether it is at least 20% of the construction cost. However, if the construction

is “incidental” to the over-all character of the project, only one wage determination will apply. For example, where there is paving for a parking lot on a building project, the Building wage determination most likely covers both the building construction and the parking lot.

Finally, a wage determination typically covers a particular area by county. However, some determinations are statewide, while others are specific to a particular area. For example, IL18 covers Heavy (Dredging and Marine) projects, specific to certain bodies of water, including the Great Lakes, while IL19 covers Heavy Dredging projects specific to certain rivers, including the Mississippi and Illinois Rivers.

A wage determination is more than just a listing of wage rates. Making sure the contracting agency issued the correct wage determination can have a big impact on contract awards. For example, if contract documents for a building project include a Heavy wage determination, instead of the higher rates on a Building wage determination, workers won’t be paid the appropriate amounts for the work they perform. This also creates problems for union contractors bidding on the project, because they may be placed at a competitive disadvantage where a collective bargaining agreement requires building rates be paid for the work performed, but the contract mistakenly includes the lesser Heavy rates. In sum, whether the correct DBRA wage determination is included in the contract is one of the first things that should be reviewed when reviewing compliance issues on a federal contract.

Wage determinations are available online at [www.wdol.gov](http://www.wdol.gov). This website not only links to current wage determinations, but it provides an archive of past determinations and information about wage determinations scheduled to be revised. If you have questions about finding a particular determination, please contact our office for more information. ■





# The Swanson Construction Company

By Steven A. Swanson  
*President*

In the fall of 2010, the Swanson Construction Company submitted the second low bid for a new fire station in Atkinson, Illinois. The estimated cost of the project was \$2 million and the difference in the two low bids was only \$24,100. After the bid opening, III FFC Compliance Monitor Michael Siciliano immediately looked into “responsible bidder” issues concerning the low bidder, and presented a detailed 110-page packet to the Atkinson Fire Protection District Trustees and the project architect, LZT Associates, Inc. addressing responsible bidder concerns. After a thorough review, the Trustees concluded that the low bidder was not the best value for the tax payer’s dollars and the project was awarded to Swanson Construction Company.

It is good to know that there is an organization like the III FFC that works with public entities to insure the most responsible contractors are awarded public work projects. Far too often we see the low bidder being awarded the project when the low bidder is not the most responsible contractor.

On the fire station project, the III FFC explained to the Trustees that a public body may award projects to the lowest responsive and responsible bidder. When you really look into past performance issues of each bidder, it is easy to determine whether a contractor has a record of being responsible. Unfortunately, far too many public bodies don’t do their research and simply accept the low bid.

The III FFC was very thorough and presented objective third-party information supported with documentation. They were insistent that the evidence submitted to the Trustees be substantiated. In the end, we believe the Trustees did the right thing to insure

taxpayers receive the best value for their tax dollars.

Since 1967 the Swanson Construction Company has prided itself on building excellence. When Donald W. Swanson founded the company in 1967 he began to deliver quality craftsmanship through personal skills, ingenuity, hard work, and dedication to the customer.

The Swanson Construction Company offers superior general contracting, construction management and design-build services to owners of commercial, educational, institutional, industrial, and healthcare facilities. We deliver value to our customers by providing proficient professional services to deliver on time and under budget construction projects. With these goals in mind, our mission to our customers is as follows:

The Swanson Construction Company’s primary mission is to create and/or discover value for our customers based upon their individual needs. Our philosophy is that “if it is good for the customer, it is good for us”. We embrace this philosophy. This is the root of good business practice that causes our customers to call upon the Swanson Construction Company time and time again.

Now in our 43rd year of business, we are confident in saying that we understand our customer’s construction needs. We are even more confident saying we can fulfill their needs beyond expectations. Everyone at the Swanson Construction Company is excited about our valuable building products and services, and about the prospect of becoming an integral part of our customer’s construction team.

For those considering expanding or renovating their facilities, we welcome your call at (563)332-4859 to discuss your building needs. ■



## INFRASTRUCTURE *continued from page 3*

15 to 25 cents per gallon. The most popular proposals are those in which part of the tax increase is paid toward our deficit.

A vehicle miles traveled (VMT) tax is also being considered. This is a tax based on how many miles a motorist travels, and could be implemented by a self-reporting system in which the motorist reports how many annual miles traveled, or through a GPS system which tracks the number of miles driven. The range in tax for VMT has been from one cent to 2.3 cents per mile traveled.

Another concept gaining popularity is a national infrastructure bank (NIB). The NIB is a bank – owned by and run by the government – with various powers and duties spelled out by law. The bank would grant loans to State or local governments as well as private investors to qualified projects. A qualified project is one that meets various criteria that the bank believes is worthy of funds. This proposal has much bi-partisan appeal making it a popular proposal.

One final, major proposal is a public-private partnership in which the public sector and private sector enter into contractual agreements in funding projects. Ownership, assets, responsibilities, risks, revenues and costs are allocated among the parties.

There are many forms of public-private partnerships. This idea has been gaining much popularity since it is already a widespread mechanism in Europe and has been done on smaller scales in local governments, such as the City of Chicago Skyway.

One such recent public-private partnership is the Illiana Expressway in which the IUOE Local 150 is actively involved in.

Public-private partnerships also fit in nicely with an NIB. As a proposal with bi-partisan appeal, it appears public-private partnerships would definitely be a part of any major public transportation bill.

While the outlook for 2011 remains bleak, there are developments to be hopeful for such as a Federal transportation bill. There are ways in which jobs can be created, and we continue to look forward with optimism. ■

**“I believe it is just an extension of my law enforcement career. I still get to work with people and every day is different. I meet new people almost every day, ranging from public body officials and contractors, to people on the street asking who we are and what we do.”**



## MONITOR PROFILE **Michael Siciliano**

**M**ichael Siciliano joined the III FFC in May of 2005 after 35 years in law enforcement. Last fall, Mike compiled information for the Atkinson Fire Protection District to review pertaining to whether the low bid contractor was the most responsible contractor bidding on a \$2 million building project. After reviewing the information, the Fire Protection District Trustees determined that the low bidder was not the most responsible contractor and awarded the project to the second-low bidder, Swanson Construction Company.

According to Mike, “Working with Swanson Construction was a pleasure, especially knowing that they are a responsible contractor.”

From 1975 to 2002 Mike worked with the Chicago Police Department. Mike served as a Watch Commander with the Detective Division during his last 14 years with the Department. He is also a graduate of the Police Staff and Command School at Northwestern University, and holds a BA in Social Criminal Justice from Lewis University.

Mike enjoys his work as an III FFC Monitor. “I believe it is just an extension of my law enforcement career. I still get

*to work with people and every day is different. I meet new people almost every day, ranging from public body officials and contractors, to people on the street asking who we are and what we do.”*

With regard to the compliance work, Mike says, “I still get to do investigations which are very similar to my past law enforcement experiences. The only difference is that now my efforts are focused on helping responsible contractors and trying to keep non-responsible contractors from being part of the bidding process on publicly funded projects. If a non-responsible contractor is awarded a project that is funded by taxpayer dollars, it is still exciting to try and catch them in breaking the state or federal laws by not paying their employees the proper wages and benefits. Just like in law enforcement, no one is above the law.”

Michael is active in many community organizations such as Crime Stoppers, safety committees, and various fundraising projects. Michael has been married to his childhood sweetheart, Susan, for 35 years. They are proud parents of a daughter and son-in-law who are both involved in law enforcement. Michael also has two hockey-loving grandkids and he has a great time watching their games. ■



Tom Frailey  
SUPERVISOR

FOCUS ON  
**Indiana**

## East Chicago Board of School Trustees agrees to comply with Indiana competitive bidding and common construction wage requirements

Last July, III FFC Monitor Marcella Kunstek received a complaint about a 1.4 million dollar track and field project at East Chicago High School. Kunstek visited the jobsite and after speaking with School City of East Chicago officials and the contractor, she learned that School City awarded two track and field projects without competitive bids, totaling over 2.8 million dollars.

Kunstek next checked the Indiana Department of Labor website to determine whether there were common construction wage settings for the projects. There were none. In fact, further review showed that there had been no common construction wage settings by School City for any public work project since 2003. (The Department’s online database is available at [www.in.gov/dol/wagehour.htm](http://www.in.gov/dol/wagehour.htm), click on “Indiana Common Construction Wage Scale Search”).

Based on conversations with School City officials, and after reviewing information obtained through a public records request, the III FFC determined that School City should have held a common construction wage hearing pursuant to Indiana’s Wage Scale of Contractors’ and Subcontractors’ Employees statute (IC 5-16-7) for projects exceeding \$150,000. Further, School City should have competitively bid the project under Indiana’s Public Work Projects statute (IC 36-1-12).

Council for the III FFC contacted School City to discuss the common construction wage and competitive bidding concerns. School City took the position that any bidding requirements were met because the contract was let through The Cooperative Purchasing Network (TCPN). Further, School City relied on the fact that the contract stated “This is a prevailing wage project,” in response to the common construction wage issue. However, School City did not dispute that the contract did not include a common construction wage schedule.

One of the III FFC’s main functions is education

– for public bodies, contractors, workers and taxpayers. In many cases, when the III FFC advises a public body or contractor that there are compliance concerns, the entity corrects the deficiencies and all is well. However, in some cases, legal action is required. As a general practice, the III FFC first contacts public bodies about perceived violations so that they can be resolved without litigation. In this case, the III FFC spoke with School City and sent written correspondence explaining the concerns. However, it became obvious that School City was going to stand its ground and take no action to remedy the competitive bidding and common construction wage issues.

*In many cases, when the III FFC advises a public body or contractor that there are compliance concerns, the entity corrects the deficiencies and all is well.*

After giving School City notice that it would seek a Temporary Restraining

Order and injunction if the City failed to act, the III FFC filed a lawsuit in August 2010 when School City provided no response. School City subsequently held a common construction wage hearing in early September. While the Court took the action under advisement, council for School City contacted the III FFC. The parties quickly reached an agreement in which School City acknowledged the reliance on TCPN to bid the projects in accordance with Indiana law was misplaced. In addition, School City agreed to comply with the common construction wage and competitive bidding requirements on future projects.

The purpose of III FFC monitoring, and legal action when necessary, is to ensure public bodies comply with the various laws governing public construction projects. This assures a level playing field for contractors bidding on the project, and benefits the public body and taxpayers by awarding the project to a responsible contractor.

Monitor Marcella Kunstek joined the III FFC in March 2010 and says she learned a lot from her involvement in this case. “I can assure all involved that School City of East Chicago will be monitored to assure future compliance as per the Agreed Order.” ■

Over 95 percent of contributions made to the Food Bank go straight to the members in need. That is an amazing feat considering a good charity is one that gives 80 percent or more of its contributions to those in need.

# III FFC gives back

**B**eyond promoting and encouraging fair contracting, the III FFC gives back to the community in other ways as well. The III FFC was instrumental in developing a Food Bank that would help feed families who are in need during these tough economic times. Created in May 2009, the Food Bank has come quite a long way in such a short time.

Over 95 percent of contributions made to the Food Bank go straight to the members in need. That is an amazing feat considering a good charity is one that gives 80 percent or more of its contributions to those in need. Thus far, the Food Bank has packaged and distributed over 6,200 food boxes to families and this number grows every month. The III FFC staff donates their time to volunteering and assisting in Food Bank operations in order to ensure that the Food Bank is a sustainable and successful resource for those in need.

From placing the order to a member's kitchen, there is a lot of work in between. The first step was determining what members need in order to adequately feed their families. This started with meetings at various food banks throughout the area. After our final meeting with the Greater Chicago Food Depository, we created a list of staple items including breakfast, lunch and dinner items as well as snacks for children's school lunches. Every detail was investigated including the fact that many public schools only allow children to bring pre-packaged snacks to school to eat during classroom time because of peanut allergies. This fact was the genesis to providing fruit snacks, pretzels and sometimes goldfish in each box.

Next, the food needed to be purchased at a reasonable price. Volunteers of the Food Bank shopped at five separate locations for the staple items including Jewel, Dominick's, Kroger, Meijer and Costco. Then, we compared costs and determined that bulk purchasing at Costco was the best way to provide larger quantities at lower prices.

After we determined the list of food items, the box size was the next feat. After packaging the food in multiple box sizes we found the perfect fit which took into account proper food packaging, weight, and a suitable size that would allow thirty-two boxes per pallet while still fitting into the transport vans for delivery.

However, the most challenging aspect of the Food Bank operation came in the form of packaging. How do you package a semi-truck load of food into six hundred boxes and deliver the food the next day? Ask our partners, the International Union of Operating Engineers Local 150 training site. What originally took eight hours to package three hundred boxes was transformed, by the training site, into a pick-up of the food and delivery in less than twenty-four hours. The training site picks-up a semi-load of food on Wednesday morning,

delivers the food to the training site, and is ready to pack boxes by 10:30 a.m. With the assistance of food stations and a rolling conveyor system, volunteers package, palletize, and load six hundred boxes of food in less than four hours. Finally, the training site delivers the food the next morning. The III FFC greatly appreciates the countless volunteers and staff who donate their time to make sure families get assistance when it is needed. We could not do it without them.

While connecting people with food is the main objective of the Food Bank, we also need money to pay for it. One way of raising funds is through various

fundraisers. In addition to fundraising, individuals, contractors, and corporate sponsors donate thousands of dollars to the Food Bank each year. Thank you to all of those that contribute to this worthy cause. We are always looking for corporate sponsors. Remember, no act of kindness, no matter how small, is ever wasted. Winston Churchill once said: "You make a living by what you get. You make a life by what you give." For more information regarding the Food Bank, visit [foodbank150.org](http://foodbank150.org).





If your public body answers “no” to any of these compliance questions, or does not know the answers, please contact the III FFC 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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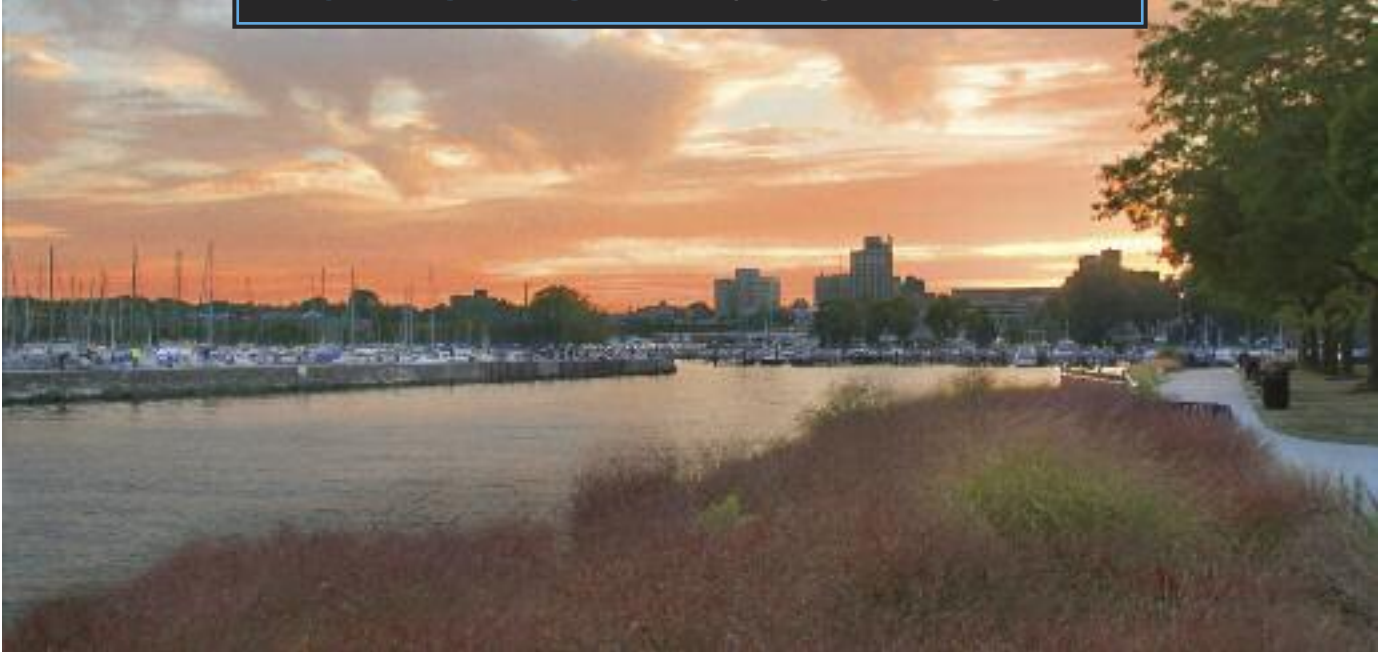
Any officer, agent or representative of any public body who willfully violates, or omits to comply with, any of the provisions of the Prevailing Wage Act is guilty of a Class A misdemeanor (820 ILCS 130/1, et seq.).

# 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"/> | Retain certified payroll records, submitted monthly by contractors and subcontractors, for at least three years?   |
| <input type="checkbox"/> | <input type="checkbox"/> | Make certified payroll records available in accordance with the Illinois Freedom of Information Act?   |





Jay Stephen

## WAUKEGAN, ILLINOIS

BY MICHAEL LINGL

**W**aukegan is located on the shores of Lake Michigan in Lake County, Illinois. With a population of approximately 90,000 people, it is the largest city in Lake County and the ninth largest city in Illinois. Waukegan has a diverse population that is served by nine aldermen and a mayor.

In July 2009, the elected officials of Waukegan enacted a comprehensive responsible bidder ordinance. City ordinance already contained a definition of a “lowest responsible bidder,” but this group of officials took another step in adopting a very specific definition for Public works contracts in excess of \$150,000.00 in value—“Lowest Responsible Bidder.” The ordinance establishes seven criteria that a contractor must meet to be deemed the lowest responsible bidder for these projects. The seven criteria include, compliance with all applicable laws pre-requisite to doing business in Illinois, providing a federal tax number, certificates of insurance, evidence of participation in an apprenticeship and training program approved by the U.S. Department of Labor Bureau of Apprenticeship and Training, evidence of applicable professional or trade licenses and evidence that employees are covered under a health and welfare plan and a retirement plan. To our knowledge, the City of Waukegan is the first municipality in Lake County, Illinois to pass such an ordinance.

The question going forward is: How is the responsible bidder ordinance working for the City of Waukegan? We recently met with City Clerk, Wayne Motley, to follow-up on his experience with the ordinance in the last year and a half. Wayne told us that

the City of Waukegan could not be happier with the responsible bidder ordinance. It sets forth guidelines for all contractors bidding on large public works contracts, so they all know the rules. Contractors must submit an affidavit of compliance with their bids. If all items on the affidavit of compliance are not provided in the bid package, then the bid is rejected. Wayne felt that these requirements made the contractors “sit up and take notice,” and the City has not received any complaints about the requirements from Contractors bidding these projects. Nor have they experienced a reduction in the number of bids received on these types of projects. Wayne went on to say that the staff at the City of Waukegan thinks the ordinance is great. This is because the City didn’t realize how many items were being left out of bid packages. The City also recognized the lack of uniformity in bid packages before the ordinance was adopted. Staff would spend time trying to locate documents and contacting the contractors for information. Now everything comes in a uniform package and the time taken to award these contracts has been reduced. Overall, Wayne says that the responsible bidder ordinance and affidavit of compliance has streamlined the process for the City of Waukegan.

Wayne Motley is an advocate for responsible bidder ordinances and stated, “I wish we had adopted this years ago, it’s better for everyone.” He went on to say that the two biggest tests of the ordinance are that the City has received no complaints and that no one has tried to amend the ordinance. This means that it is working well for the City of Waukegan. ■

# Successful projects Are built with teamwork.

**It's really quite simple.** Successful projects happen when Labor and Management share the same priorities. And when the highest priority is having a team of safe, well-trained workers on the jobsite, those projects are completed on time and on budget.

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**We're the Indiana, Illinois, Iowa Foundation for Fair Contracting.**

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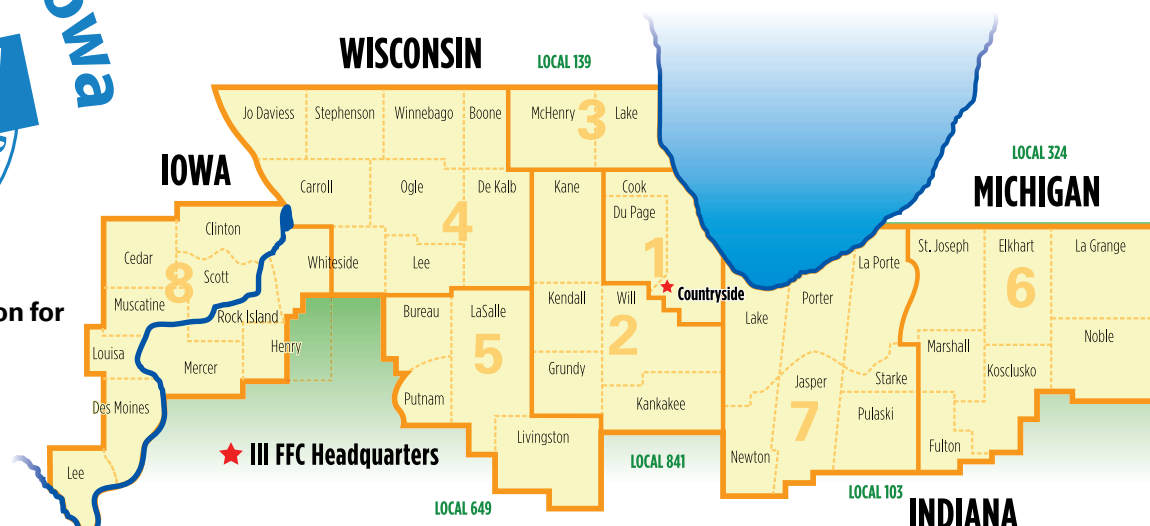
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