



**Responsible Bidder Ordinance  
-- Information Packet --**

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# **An Introduction to Responsible Bidder Ordinances**

## **1. What is a Responsible Bidder Ordinance?**

It is an ordinance that sets minimal requirements for all contractors and subcontractors bidding on publicly funded projects in the political jurisdiction covered by the ordinance. The requirements are then incorporated into all bid documents (similar to other state and local regulations) so that all potential bidders will know what is expected of them.

## **2. What are the specific requirements?**

All bidders must:

- a) Comply with all laws pre-requisite to doing business in Illinois
- b) Produce evidence of a federal employer tax number or social security number
- c) Provide evidence of compliance with Equal Opportunity Employer requirements
- d) Provide evidence of all specified insurance coverages
- e) Comply with all provisions of the Illinois Prevailing Wage Act
- f) Must be participating in a USDOL approved and registered apprenticeship program
- g) Comply with any other additional requirements a community may find beneficial

## **3. Why is a Responsible Bidder Ordinance needed?**

The public construction market has been the scene of an extraordinary amount of legal violations in recent years. Most recently, in Illinois the effects of balancing the State budget have resulted in cuts to every level of government, creating a decline in the effectiveness of the offices charged with the enforcement of prevailing wages and other relevant laws. This combined with a bearish economic climate create competitive pressures that push unscrupulous contractors to cheat in order to submit low bids. Since awarding authorities must award projects to the lowest bidder, those who are willing to cheat, gain an enormous cost advantage, and have the effect of driving legitimate contractors out of the market.

Many people have been hurt by the destruction of standards in the public construction market. Workers have been cheated out of wages, communities have been cheated out of revenue, taxpayers have been subsidizing illegal activities, and the integrity of public officials has been brought into question after awarding contracts to dishonorable contractors who deliver poor quality products over budget and behind schedule.

While enforcement efforts may be bolstered by pending legislation, budgetary restraints will always continue to factor, so with limited resources and personnel these types of violations will most likely be a concern for years to come. What the "Responsible Bidder Ordinance" does is address these issues up front as opposed to chasing the cheaters after the violations have occurred.

## **4. Is this just a pro-union law?**

The word "union" does not appear in any Responsible Bidder Ordinance. The Ordinance simply attempts to create a level playing field for all contractors, union and non-union alike, so that the lowest bids reflect managerial expertise rather than the willingness to subvert the laws of the State. Like the prevailing wage law which was enacted in 1941 in Illinois, the Ordinance is neutral with respect to the union issue. It simply further defines the phrase "responsible bidder" as it relates to the term "lowest responsible bidder" that is referenced in the Illinois Municipal Code (65 ILCS 5/8-9-1) and been incorporated into the majority of procurement regulations around the state.

It does not give an advantage to union contractors; it gives an advantage to responsible contractors. The Ordinance simply asks that contractors who wish to benefit from public dollars play by the rules of fair and honest contracting.

## **5. What is the significance of each provision?**

- a) By requiring contractors to provide evidence that they are in compliance with the laws of doing business in Illinois, it is assuring the contracting agency that a company is legitimate and credible, by for example being current with the Secretary of State, or the Department of Financial and Professional Regulation if necessary, and not classified as “debarred” by the Department of Labor, to mention a few.
- b) By requiring the contractor to produce their Federal Employer Tax Number or Social Security Number, (if they are an individual) it provides an assurance to the contracting agency that they are working with legitimate contractors.
- c) The “Equal Opportunity Employer provisions” Provide for nondiscrimination in employment by government contractors and sub-contractors. This simply restates the existing Federal regulations.
- d) Requiring specific certificates of insurance coverage is a way for the contracting agency to protect itself from the irresponsible actions of a dishonorable contractor. The State of Illinois requires; general liability, professional liability, product liability, worker’s compensation, completed operations, hazardous occupation, and automobile. Other communities have required commercial umbrella policies and even gone so far as to specify dollar amounts in their Ordinances.
- e) By reinforcing that contractors abide by the Illinois Prevailing Wage Act, a contracting agency is not only requiring that the prevailing wage is paid but that employees covered under the act are also provided with medical and hospitalization insurance as well as retirement benefits as mandated by State law.
- f) Participation in a United States Department of Labor’s Bureau of Apprenticeship and Training approved program creates an environment that supports and endorses education. With education such a major part of public policy today, no employer should be subsidized by public funds without some training contribution. If apprentices are on the job but not part of a USDOL-BAT registered program it is most likely a ruse to pay lower wages without offering genuine training.
- g) Other additional requirements could include; weekly certified payrolls, non-compliance penalties such as fines and debarment, policies on harassment, or mandating residency requirements.

## **6. What will the passage of a Responsible Bidder Ordinance Cost?**

Essentially nothing, there will be no need to add enforcement officers because the ordinance is designed to screen out offenders before the contract is awarded instead of pursuing them after the violations have been committed. Enforcement for most of the provisions is provided at the State level. The Responsible Bidder Ordinance simply requires bidders and sub-bidders to demonstrate that they can comply with the specifications written into the bid documents. If they are not able to, their bids will not be considered.

## **7. Is the Responsible Bidder Ordinance Lawful?**

The first Ordinance to “Further Define Responsible Bidder” in Illinois was adopted by Winnebago County, on May 12<sup>th</sup> 1994. From that point it was adopted by numerous other Counties, Villages and Cities until December 31, 2003 when Governor, Rod Blagojevich Signed HB3048, making it Public Act 93-0642 an act that amended the Illinois Procurement Code to include “Responsible Bidder” language on state construction projects.



## **Sample Ordinance Language**

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## SAMPLE RESPONSIBLE BIDDER ORDINANCE

AN ORDINANCE AMENDING \_\_\_\_\_ OF THE \_\_\_\_\_  
CODE TO FURTHER DEFINING RESPONSIBLE BIDDER

WHEREAS, Chapter \_\_\_\_\_ of the \_\_\_\_\_  
County/City/Municipality  
Code regulates purchases and contracts entered into by the \_\_\_\_\_; and

NOW, THEREFORE, BE ORDAINED, by the (Governing Body) of the  
\_\_\_\_\_, Illinois that the following definition be added to section \_\_\_\_\_ of  
County/City/Municipality  
the code.

Responsible bidder for construction contracts means a bidder who meets all of the job  
Specifications, the following applicable criteria, and submits evidence of such compliance:

- (1) All applicable laws prerequisite to doing business in Illinois.
- (2) Evidence of compliance with
  - (a) Federal Employer Tax Identification Number or Social Security Number (for individuals)
  - (b) Provision of Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions).
- (3) Certificates of insurance indicating the following coverage's: general liability, workers' compensation, completed operations, automobile, hazardous occupation and product liability.
- (4) Compliance with all provisions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance and retirement for those trades covered in the act.
- (5) The bidder and all bidder's sub-contractors must participate in active apprenticeship and training programs approved and registered with the United States Department of Labor's Bureau of Apprenticeship and Training for each of the trades of work contemplated under the awarded contract.
- (6) All contractors and sub-contractors are required to turn in certified payrolls as specified in Illinois Public Act 94-0515.

BE IT FURTHER ORDAINED, that nothing herein hereby adopted shall be construed to affect any suit of proceeding now pending in any court of any rights accrued or liability incurred or cause or causes of action accrued of existing under any prior Resolution or Ordinance. Nor shall any right or remedy of any character be lost, impaired, or affected by the Ordinance.

BE IT FURTHER ORDAINED, that this Ordinance amendment shall be in full force and effect immediately upon its adoption.

BE IT FURTHER ORDAINED, that the Clerk of this \_\_\_\_\_ is hereby  
Governing Body  
authorized and directed to prepare and deliver a certified copy of this Ordinance amendment to  
\_\_\_\_\_ Purchasing Director.  
Governing Body

The above and foregoing ordinance amendment was adopted by the \_\_\_\_\_  
Governing Body  
of the County of \_\_\_\_\_, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

## **SAMPLE RESPONSIBLE BIDDER RESOLUTION**

WHEREAS, the \_\_\_\_\_ finds that it is in its best interest to define the term “responsible” as contained in competitive bidding statutes governing its purchases of construction goods and services;

WHEREAS, the \_\_\_\_\_ wishes to ensure that contracts are awarded in an atmosphere that invites competition and guards against favoritism, improvidence, arbitrary conduct, extravagance, fraud and corruption, so as to secure the best work of supplies at the lowest cost practicable;

WHEREAS, the \_\_\_\_\_ possesses great discretion in determining the “lowest responsible bidder” and is entitled to specify the terms of the contract when its solicits bids and the criteria that bidders must meet in order to be considered a “responsible” bidder in the exercise of its proprietary duties and responsibilities;

WHEREAS, the contracting authority of the \_\_\_\_\_ is entrusted with the power to determine whether a respective bidder is the “lowest responsible bidder”; and,

WHEREAS, the \_\_\_\_\_ solicits bids and/or proposals on many different types of construction contracts with varying factors affecting each purchasing decision, and therefore must take into account reasonable benefits to the community’s welfare arising from each bid and in the exercise of its proprietary functions.

THEREFORE, BE IT RESOLVED THAT financial responsibility is an important factor in determining the lowest responsible bidder, and the \_\_\_\_\_, through its contracting authority, shall require an entity that bids on a public contract produce satisfactory evidence that the business entity is properly registered and authorized to conduct the type of work to be performed, including evidence that demonstrates that the entity possesses or complies with the requirements of the Internal Revenue Service, Illinois Departments of Revenue and/or Registration, and Illinois Department of Employment Security registration requirements, as well as complying with the general business license requirements of the \_\_\_\_\_ prior to the award and during the term of the contract.

Additionally, the contracting authority, in order to make its determination as to whether the bidding entity is responsible, shall confirm and substantiate that the contract awardee can reasonably be expected to complete and perform under the contract specifications, and the contracting authority may require the successful bidder to post a bid, performance, wage/fringe benefit and/or material bond(s). The contracting authority shall also determine if the successful bidder can reasonably be expected to complete the project within the time constraints as delineated in the request for bids and/or proposals. The contracting authority shall also determine if the bidding entity maintains a satisfactory level of past performance and integrity as well as possesses the financial, supervisory, personnel, material, equipment, and other resources and expertise to satisfactorily meet its contractual responsibilities and obligations.

BE IT FURTHER RESOLVED THAT social responsibility is a concern in awarding public contracts, and the contracting authority may factor in its determination of whether a bidder is “responsible” such factors as bidder’s record of conformity with environmental, labor, and health and safety laws including compliance with the requirements of the U.S. Department of Labor’s Occupational Safety & Health Administration. Furthermore, the bidder shall be required to provide a certificate of insurance, designating \_\_\_\_\_ as an Additional Insured under all pertinent policies, specifying all required coverages, including general liability, workers’ compensation, completed operations, automobile, hazardous occupation, and product liability at such limits as the contracting authority deems appropriate to protect the interests of \_\_\_\_\_.

ALSO BE IT FURTHER RESOLVED THAT the provision of satisfactory evidence by the bidding entity that it provides or participates in a medical hospitalization program for its employees, an apprenticeship and training program approved and registered with the U.S. Department of Labor’s Bureau of Apprenticeship & Training, a pension or retirement benefit program for its employees, with the premium or cost or contribution rate, as well as benefit configuration for each of the respective aforementioned programs, being no less than required under the Illinois Prevailing Wage Act, is minimally required to demonstrate that a bidding entity is “responsible”.



## **Legal Opinions and Case Law Relevant to RBO's**

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OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

May 14, 2008

Mr. Patrick S. Hosty  
Executive Director  
Laborers-Employers Cooperation and Education Trust  
999 McClintock Drive #302  
Burr Ridge, Illinois 60542

Dear Mr. Hosty:

I have your letter inquiring whether units of local government and school districts have the authority to adopt "responsible bidder" policies such as that proposed by the Chicago Area Laborers-Employers Cooperation and Education Trust. As you are aware, the Attorney General is authorized to advise only State officers and State's Attorneys. I regret, therefore, that we cannot issue an official opinion in response to your request.

We have, however, reviewed the opinion of counsel prepared by Mr. Edward M. Hogan of Hogan Marren, Ltd., Attorneys at Law, and we agree with his analysis. We are aware of no statute or legal principle that would preclude units of local government and school districts, in the exercise of their statutory authority, from adopting, by ordinance or other appropriate procedure, responsible bidder policies such as your organization proposes.

If we may be of further assistance, please advise.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Luke".

MICHAEL J. LUKE  
Senior Assistant Attorney General  
Chief, Public Access & Opinions Division

MJL:an

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November 8, 2005



**VIA OVERNIGHT MAIL**

Mr. Patrick S. Hosty  
Executive Director  
LECET  
999 McClintock Drive, Suite 300  
Burr Ridge, IL 60527

**Re: Responsible Bidder Ordinance**

Dear Mr. Hosty:

This correspondence is written in response to your request for our opinion regarding the legal status of LECET's Responsible Bidder Ordinance, hereto attached. For the reasons set forth below, we believe that such an Ordinance is not only legal for governmental purchasing of construction goods and services, but also advisable for governmental entities in the exercise of their purchasing responsibilities.

**OVERVIEW**

Illinois state courts have not established set standards by which the term "responsible bidder" can necessarily be defined, and federal courts construing Illinois law have likewise refrained from providing a clearly delineated, all-encompassing set of factors that define the term. In fact, in summarizing the relevant case law, one Illinois state court opined, "the term 'responsible bidder' is incapable of any exact definition." *Oscar George Elec. Co. v. Metropolitan Fair & Expo. Auth.*, 104 Ill. App. 3d 957, 963 (1st. Dist. 1982).

The courts have consistently held, however, that statutes requiring the award of contracts to the lowest responsible bidder do not require the award of such contracts to the lowest bidder. Instead, the courts have empowered municipalities and purchasing agents to consider various factors in determining the financial responsibility and practical ability of the Contractors who have bid on a given contract.

To that end, the courts have consistently afforded municipalities and purchasing agents great deference in the award of contracts, and will only disturb a contract award if arbitrary conduct on the part of the municipalities and purchasing agents, such as fraud, lack of authority,

unfair dealing, or favoritism, can be proven. Therefore, in the event that a municipality adopts a “responsible bidder” ordinance, we believe that the courts would defer to the municipality’s definition of “responsible”, assuming the reasonableness of the ordinance’s definition.

### BACKGROUND

The Illinois Supreme Court has historically held that statutes requiring the award of contracts to the lowest responsible bidder do not require that such contracts be awarded to the Contractor offering the lowest bid. *People ex rel. Assyrian Asphalt Co. v. Kent*, 160 Ill. 655, 660-62 (1896); *Hallett v. City of Elgin*, 254 Ill. 343, 346-47 (1912); *People ex rel. Peterson v. Omen*, 290 Ill. 59, 67 (1919); *S.N. Nielsen v. Public Building Comm’n of Chicago, et. al.*, 81 Ill. 2d 290, 299 (1980); *Court Street Steak House Inc. v. County of Tazewell*, 163 Ill 2d 159, 165 (1994). Moreover, the Court has repeatedly noted that the term responsible refers to more than just the pecuniary ability and financial responsibility of a bidder. *Assyrian Asphalt*, 160 Ill. at 661-62; *Hallett v. City of Elgin*, 254 Ill. at 346-47; *Peterson*, 290 Ill. at 67; *S.N. Nielsen*, 81 Ill. 2d at 299; *Court Street Steak House*, 163 Ill 2d at 165. To that end, the Court has consistently recognized that, when determining whether given contracts have been properly awarded to the “lowest responsible bidder”, the word “responsible” should mean “financially responsible and able to discharge one’s obligations ‘in accordance with what may be expected or demanded under the terms of the contract.’” *S.N. Nielsen*, 81 Ill. 2d at 299 quoting *People ex rel. Peterson v. Omen*, 290 Ill. 59, 67 (1919), citing *Hallett v. City of Elgin*, 254 Ill. 343, 346-47 (1912), *People ex rel. Assyrian Asphalt Co. v. Kent*, 160 Ill. 655, 661-62 (1896).

The Illinois Supreme Court has always afforded municipalities and purchasing agents substantial deference in making such determinations. *Court Street Steak House*, 163 Ill 2d at 165 citing *Hallett v. City of Elgin*, 254 Ill. 343. Accordingly, courts interpreting Illinois law at the state and federal level have refused to interfere with the exercise of such discretion so long as it is “judicial in nature” and devoid of fraud. *Callaghan Paving Inc. v. City of Chicago*, 1992 WL 159313, \*5-6 (N.D. Ill. 1992) citing *Stanley Magic-Door, Inc. v. City of Chicago*, 74 Ill. App. 3d 595, 598-99 (1st. Dist. 1979), *Oscar George*, 104 Ill. App. 3d at 962-63; see also *Best Bus Joint Venture v. Bd. of Ed. of the City of Chicago*, 288 Ill. App. 3d 770, 777-79 (1997).

Therefore, not only are municipalities entitled to pass ordinances or resolutions that establish a comprehensive set of objective factors by which they will make their subjective, “judicial” determination of which Contractor constitutes the “lowest responsible bidder” on a contract, municipalities are better off taking such measures, as such actions will enable a prospective court of review to justify the substantial deference it is required to give those determinations. A municipality’s use of an ordinance or resolution, such as the draft ordinance hereto attached, would not only incorporate factors municipalities are permitted to consider when selecting the lowest responsible bidder, it would enable a municipality to later defend itself against any claim of wrongdoing in its award of a contract.

### PERMISSIBLE FACTORS FOR CONSIDERATION

In *S.N. Nielsen*, the court noted that while Contractors’ financial responsibility and ability to perform are the two important factors in determining the lowest responsible bidder, social

responsibility should also be a concern in awarding public contracts. *S.N. Nielsen*, 81 Ill. 2d at 299. In support of this proposition, the *S.N. Nielsen* court stated:

In proper circumstances a contract may be awarded to one who is not the lowest bidder, where this is done in the public interest, in the exercise of discretionary power granted under the law, without fraud, unfair dealing, or favoritism, and where there is a sound and reasonable basis for the award as made.

(*Id.*, quoting 10 E. McQuillin, Municipal Corporations § 29.73.10, 429-30 (3d ed. 1966).)

In *S.N. Nielsen*, the plaintiff Contractor sought declaratory and injunctive relief and a writ of mandamus against the Public Building Commission for the award of a building contract. *S.N. Nielsen*, 81 Ill. 2d at 295. The plaintiff Contractor asked the court for a determination that it was entitled to the building contract in question under the Public Building Commission Act, which provided that building contracts were to be awarded to the lowest responsible bidder. *Id.* The court ruled in favor of the Building Commission, holding that it had properly considered the affirmative action efforts of the respective bidders in determining which one was the lowest responsible bidder. *S.N. Nielsen*, 81 Ill. 2d at 299.

Social responsibility and, specifically, “[m]aintaining the public’s confidence” in a project funded by public money, were also deemed to be legitimate considerations in the award of a contract by the court in *Joseph J. Henderson & Son, Inc. v. City of Crystal Lake*, 318 Ill.App.3d 880, 885 (2<sup>nd</sup> Dist. 2001). The *Henderson* court held that the appearance of impropriety was an appropriate factor for a municipality to consider when determining which bidding Contractor was the lowest responsible bidder. *Id.* at 884-85.

Moreover, the broad discretion of a purchasing agent to determine whether a bidder is “responsible” under the Illinois Municipal Purchasing Act was examined by the U.S. District Court for the Northern District of Illinois in *Callaghan Paving*, 1992 WL 159313 (N.D. Ill. 1992). In discussing the agent’s ability to reject the bid of any bidder not deemed “responsible,” *Callaghan* court relied on section 8-10-12, which provides:

Any and all bids received in response to an advertisement may be rejected by the purchasing agent if the bidder is not deemed responsible, or the character or quality of the services, supplies, materials, equipment or labor does to conform to the requirements or if the public interest may otherwise be served thereby.

(Ill. Rev. Stat., ch. 24, § 8-10-12.) The court also noted that a purchasing agent may consider broad range of factors when determining a bidder’s responsibility, citing section 8-10-11, which states:

In determining the responsibility of any bidder the purchasing agent may take into account other factors in addition to financial responsibility, such as records of transactions with the bidder,

experience, adequacy of equipment, ability to complete performance within a specified time limit and other pertinent considerations.

(Ill. Rev. Stat., ch. 24, § 8-10-11.)

The *Callaghan* court reiterated the fact that, “[c]ourts have consistently held that statutes requiring the award of contracts to the lowest responsible bidder do not require the award of such contracts to the lowest bidder.” *Callaghan*, 1992 WL 159313, \*5 (N.D. Ill. 1992) citing *Oscar George*, 104 Ill. App. 3d at 963. The court noted that, while such discretion must be “judicial in nature,” in the absence of fraud, courts will not interfere with the exercise of such discretion. *Callaghan*, 1992 WL 159313, \*5-6 (N.D. Ill. 1992) citing *Stanley Magic-Door, Inc. v. City of Chicago*, 74 Ill. App. 3d 595, 598-99 (1st. Dist. 1979), *Oscar George*, 104 Ill. App. 3d at 962-63.

The defendants in *Callaghan*, the city, its Department of Purchases, Contracts and Supplies, and the purchasing agent, required the plaintiff-bidder, a joint venture of two companies, to submit various documents as proof of compliance with the project’s bid requirements. *Callaghan*, 1992 WL 159313, \*1-3 (N.D. Ill. 1992). The project bid requirements mandated that bidders, if requested, had to present within a reasonable time, as determined by the purchasing agent, evidence satisfactory to the purchasing agent, of the bidder’s “performance ability and possession of necessary facilities, pecuniary resources and adequate insurance to comply with the terms of these specifications and contract documents.” *Id.* at \*5. The project bid specifications also required bidders to fully comply at all times “with all laws, ordinances, regulations and codes of the Federal, State, City and other government agencies, which may in any manner affect the . . . performance of the contract.” *Id.* at \*6. Despite repeated requests by the purchasing agent, the plaintiff-bidder did not supply the defendants with a copy of the joint venture agreement or written documentation of the joint venture’s structure, which the defendants deemed necessary to determine the respective roles, responsibilities, and financial obligations of the respective companies in the joint venture, and whether each of them was capable of fulfilling their respective obligations under their agreement. *Id.* at \*1-2. The purchasing agent rejected the bid of the joint venture because of its nonresponsiveness to these documentation requests as well as the fact that there was litigation pending against one of the joint venture’s corporate members regarding environmental and public nuisance allegations. *Id.* at \*6.

The court held that, despite the fact that that the two joint venture corporate members were jointly and severally liable and one corporate member by itself had sufficient financial capacity to either complete the project or compensate the city should the other corporate member fail to fulfill its responsibilities, “whether the existence of a guarantor converts a potentially irresponsible bidder into a responsible one is a discretionary determination to be made by the purchasing agent.” *Id.*

The notions that a public body exercises a great deal of discretion in determining the lowest responsible bidder, and that the phrase “lowest responsible bidder” does not require the public body to award a contract to the lowest bidder, were the bases for the court’s decision in *Court Street Steak House. Court Street Steak House Inc. v. County of Tazewell*, 163 Ill 2d 159, 165 (1994) citing *S.N. Nielsen*, 81 Ill. 2d at 299; *Hallett*, 254 Ill. at 346-47 (1912). The *Court Street Steak House* court decided the case under the Competitive Bidding Statute of Section 5-

1022 of the Counties Code, which mandated that any purchase of services, materials, equipment, or supplies in excess of \$10,000 by a county with fewer than 2,000,000 inhabitants be awarded to the lowest responsible bidder. *Court Street Steak House*, 163 Ill. 2d at 162-63.

The *Court Street Steak House* court acknowledged that, “competitive bidding statutes are enacted ‘for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud corruption and to secure the best work or supplies at the lowest price practicable.’” *Id.* at 165 quoting 10 E. McQuillin, Municipal Corporations § 29.29, at 375 citing *Compass Health Care Plans v. Bd. of Ed.* 246 Ill. App. 3d 746, 751; *O’Hare Express, Inc. v. City of Chicago*, 235 Ill. App. 3d 202, 208 (1992). Therefore, the purchasing agent of the public body exceeds the permissible scope of its discretion, and mandamus will subsequently issue if a plaintiff alleges and proves fraud, lack of authority, unfair dealing, favoritism, or similarly arbitrary conduct by a county. *Court Street Steak House*, 163 Ill. 2d at 165 citing *S. N. Nielsen*, 81 Ill. 2d at 299; *Hallett*, 254 Ill. at 348-50.

#### IMPERMISSIBLE FACTORS FOR CONSIDERATION

The court, in *Court Street Steak House*, examined the criteria in the Counties Code’s Competitive Bidding Statute, which included: the quality of the articles to be supplied, conformity with bid specifications, suitability to the requirements of the county, and delivery terms. *Court Street Steak House*, 163 Ill. 2d at 166 citing Ill. Rev. Stat. 191, ch. 34, Par. 5-1022. The court recognized that, “a county solicits bids on many different types of contracts with many different factors affecting each purchasing decision,” and therefore, “under this criterion, the County can take into account reasonable benefits to the County arising from each bid.” *Court Street Steak House*, 163 Ill. 2d at 166. The *Court Street Steak House* court ruled that the additional food service training for the mentally handicapped, which would cost the defendant county an additional \$1,400 per year and was a component of the successful bid but not that of the plaintiff, was a reasonable basis on which the county awarded a food service contract to a bidder other than the plaintiff. *Id.* at 166-68. Support for a mentally handicapped for service training program is the type of county welfare concern upon which a municipality can properly base its decision regarding to whom it will award a public contract, as it does not indicate an arbitrary preference for one bidder over another. *Id.* at 168.

The *Court Street Steak House* court distinguished the consideration of a food service program for the mentally handicapped, as a proper concern for the welfare of the County, from an impermissible situation in which the sole basis of to whom a public contract is awarded is the county board’s desire to keep money in the community. *Id.* citing *Cardinal Glass Co. v. Bd. of Ed. of Mendota Community Consolidated School District No. 289*, 113 Ill. App. 3d 442 (1983). In *Cardinal Glass*, the plaintiff brought a mandamus action against the board of education to compel the board to award it the contract in question, claiming that the defendant school board violated the School Code, which required that public contracts be awarded to the lowest responsible bidder. *Cardinal Glass*, 113 Ill. App. 3d at 443-44. The *Cardinal Glass* court remanded the case, finding that the facts alleged in the complaint, taken as true, indicated that the sole reason the board did not award the contract to the plaintiff was because the board wished to keep the money in the community. *Court Street Steak House*, 163 Ill. 2d at 168. The *Cardinal Glass* court found that such conduct constituted clear favoritism, and therefore violated the

“lowest responsible bidder” requirement. *Id.* In *Court Street Steak House*, the Illinois Supreme Court clarified the rationale it used in *Cardinal Glass* stating, “A desire to keep money in the community indicates prejudice, not reasoned decisionmaking.” *Id.* The *Court Street Steak House* court also stated that such favoritism might be suggested if a board relies *solely* on the past performance of a bidder. *Id.*

The inclusion of *any* local preference factor when determining who is the lowest responsible bidder, in the context of contracts created under the Illinois School Code, was examined in *Best Bus Joint Venture v. Bd. of Ed. of the City of Chicago*, 288 Ill. App. 3d 770, 779 (1997). In *Best Bus*, the defendant board used a 2% local preference in the determination of the lowest responsible bidder.

The *Best Bus* court reiterated that the purposes for requiring public bodies to engage in competitive bidding are to invite competition, to guard against favoritism, improvidence, extravagance, fraud and corruption and to secure the best work or supplies at the lowest price practicable. *Id.* at 776-77 citing *Compass Health Care Plans v. Bd. of Ed.*, 246 Ill. App. 3d 746, 751 (1992); *O’Hare Express Inc. v. City of Chicago*, 235 Ill. App. 3d 202, 208 (1992). The court cited *S.N. Nielsen* and *Court Street Steak House* in its acknowledgement that, while the contracts must be awarded to the “lowest responsible bidder” after due advertisement, the statute did not automatically compel the Board to award a contract solely on the basis of lowest cost. *Id.* at 778. The *Best Bus* court also noted that the public body is entitled to specify the terms of the contract for which it solicits bids and the criteria that bidders must meet in order to be considered a responsible bidder. *Best Bus*, 288 Ill. App. 3d at 778 citing *Compass Health*, 246 Ill. App. 3d at 751. Therefore, the court recognized, “the law is clear that a public body possesses great discretion in determining the lowest responsible bidder,” and that, “[f]inancial responsibility and ability to perform are not the only relevant factors.” *Best Bus*, 288 Ill. App. 3d at 778.

However, the *Best Bus* court held that a local business preference has no proper legislative authority and is an arbitrary and capricious delegation of power to a municipal unit and is therefore unconstitutional. *Id.* at 779. The court reasoned that the board’s broad range of powers to implement policies relating to education was limited to those powers expressly granted by law. *Id.* at 778. Including a local business preference was not a question of whether it was *prohibited* by the School Code, but rather, whether the ability to use such a criterion was *granted* by the School Code.

However, Sections 8-10-11 and 8-10-12 of the Illinois Municipal Purchasing Act may negate the application of such rationale to the use of a local preference factor as a consideration in the award of a contract under its authority in at least two ways. Moreover, with respect to the discretion of the purchasing agent allowed for by the Section 8-10-11, a local business preference factor is arguably something through which “the public interest may otherwise be served thereby.” Section 8-10-12 allowance for “other pertinent considerations” may further justify the use of such a factor. It can be argued that such statutory provisions give the purchasing agency and agent, under the Illinois Municipal Purchasing Act, legal authority to use a local business preference as one of the factors to consider when determining who is the “lowest responsible bidder.” Therefore, so long as the purchasing agent of the public body does not exceed the permissible scope of its discretion, and fraud, lack of authority, unfair dealing,

favoritism, or similarly arbitrary conduct are not present, mandamus will not be issued by a court.

#### CONCLUSION

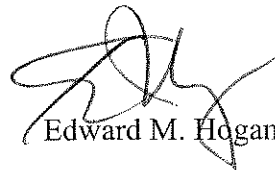
Courts' deference to the broad discretion of the purchasing agent is a strong factor creating an inability to exactly define "responsible bidder." While the *Best Bus* court asserted that a local preference factor was unconstitutional because the ability to use such a consideration was not granted by the School Code, such a consideration limitation is the exception to the jurisprudential norm.

The Illinois Supreme Court has consistently allowed for the inclusion of many factors into a consideration of which bidder is the "lowest responsible bidder." In addition to financial responsibility and ability to perform, the court has also allowed agents and agencies to include social responsibility and reasonable benefits to the given municipality. Most importantly, the court adheres to the deference of the purchasing agent and the factors of responsibility as delineated by the statute in question. Therefore, in the absence of arbitrariness and fraud, any factor used in an ordinance and subsequent bid requirements that is based upon authority granted by the Illinois Purchasing Act would not conflict with jurisprudential precedent regarding "responsible bidders."

Therefore, municipalities requesting bids under that Act, would be wise to adopt a "responsible bidder" ordinance containing a reasonable definition of "responsible", such as that which is hereto attached, as we believe that the courts would defer to a given municipality's definition and its discretion to award a contract thereunder.

If you have any questions regarding this matter, please do not hesitate to contact our office.

Sincerely,



Edward M. Hogan



## **Summary of Illinois Public Act 093-0642**

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## HB3048 93<sup>rd</sup> Illinois General Assembly Public Act 93-0642 Effective Date, June 1, 2004

### Synopsis of Public Act 93-0642

Amends the Illinois Procurement Code. Provides that to be considered a responsible bidder on a construction contract for purposes of the Code, a bidder must comply with certain requirements and must present satisfactory evidence of that compliance to the appropriate construction agency. The requirements include compliance with laws concerning the bidder's entitlement to conduct business in Illinois, compliance with the Prevailing Wage Act, compliance with federal "Equal Employment Opportunities" provisions, having certain insurance coverage, and participation in federally approved apprenticeship and training programs.

### Public Act 93-0642

*AN ACT relating to procurement.*

*Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:*

*Section 5. The Illinois Procurement Code is amended by  
adding Section 30-22 as follows:*

*(30 ILCS 500/30-22 new)*

*Sec. 30-22. Construction contracts; responsible bidder requirements. To be considered a responsible bidder on a construction contract for purposes of this Code, a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:*

*(1) The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.*

*(2) The bidder must comply with all applicable provisions of the Prevailing Wage Act.*

*(3) The bidder must comply with Subchapter VI ("Equal Employment Opportunities") of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.*

*(4) The bidder must have a valid Federal Employer Identification Number or, if an individual, a valid Social Security Number.*

*(5) The bidder must have a valid certificate of insurance showing the following coverages: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.*

*(6) The bidder and all bidder's subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.*

*The provisions of this Section shall not apply to federally funded construction projects if such application would jeopardize the receipt or use of federal funds in support of such a project.*



## NOTICE OF HB 3048 REQUIREMENTS

### NOTICE

### NEW APPRENTICESHIP TRAINING REQUIREMENT

Illinois Governor Rod R. Blagojevich has signed into law amendments to the Illinois Procurement Code that impact all bidders on CDB projects. Effective June 1, 2004, all bidders must participate in apprenticeship and training programs that are both approved by and registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training. The program must be in the same trades that the firm performs. In addition, the requirement also applies to subcontractors.

Applicants for CDB prequalification will be further notified of the requirement, and CDB contract bid forms will require bidders to certify that they, and their subcontractors for the project are, at the time of bid, participating in an approved apprenticeship and training program. The bid form provision and the revised Section 01010 is available online. Proof of compliance may be requested.

See [www.legis.state.il.us](http://www.legis.state.il.us) to read the new law, HB 3048 (Public Act 93-0642). For further information, or to inquire on how to participate or how a program complying with the new requirement can be set up in your area, please call Dave Wyatt at the U.S. Department of Labor at 312/596-5508, or see the U.S. Department of Labor website at [www.doleta.gov/atels\\_bat/](http://www.doleta.gov/atels_bat/).

<i>William G. Stratton Building Third Floor Springfield, IL 62706 PH: 217/782-2864 TDD: 217/524-4449 FAX: 217/524-0565</i>	<i>James R. Thompson Center 14th Floor 100 West Randolph Street Chicago, IL 60601 PH: 312/814-6000 FAX: 312/814-2041</i>	<i>Dunn-Richmond Economic Development Center Room #258 150 Pleasant Hill Road Carbondale, IL 62901 PH: 618/453-8232 FAX: 618/453-8233</i>	<i>LaSalle/Peru Satellite Office 1222 Shooting Park Rd. Peru, IL 61354 PH: 815/220-1360 FAX</i>
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## Excerpt from CDB: Bidding & Contract Requirements Document 00300 – Bid Form

### THE BIDDER MAKES THE FOLLOWING REPRESENTATIONS AND CERTIFICATIONS:

- A. A surety company has agreed to issue Bonds required by the Bid Documents for this work if this bid is accepted by CDB.
  - B. The Bidder is not barred from contracting with any unit of state or local government as a result of violating the bid rigging or bid rotating provisions contained in 720 ILCS 5/33E-3 and 720 ILCS 5/33E-4.
  - C. The Bidder is not barred from contracting with the State of Illinois as a result of a bribery conviction per 30 ILCS 505/10.2.
  - D. The Bidder and its subcontractors are in compliance with the Illinois Procurement Code, 30 ILC 500/30-22, Apprenticeship and Training Program requirement as defined in Project Manual Section 01010.
- 
- 

## Referenced Portion of CDB: Project Manual Section 01010 – Project Summary

### 1. APPRENTICESHIP TRAINING REQUIREMENT

- 1. Effective June 1, 2004, all bidders and all their subcontractors must be participants in apprenticeship and training programs that are both approved by and registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training. The program(s) must be in the same trade(s) in which the firm performs work
- 2. A statement to the above effect has been added to the Representations and Certifications section of the Bid Form (00300). Bidders must be a member of an approved apprenticeship program prior to beginning work on the project.
- 3. CDB, at any time before or after award, may require the production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the contractor and each of its subcontractors. Unless otherwise directed in writing by CDB, applicable apprenticeship and training programs are those that have been approved and registered with the United States Department of Labor
- 4. In order to fulfill this requirement, it shall not be necessary that an applicable program sponsor be currently taking or that it will take applications for apprenticeship, training or employment during the performance of the work of this contract.
- 5. For information on how to participate in or set up a program, contractors may call David Wyatt at the U.S. Department of Labor (312/596-5508) or check the USDOL website: [www.doleta.gov/atels\\_bat/](http://www.doleta.gov/atels_bat/).



## **Bureau of Local Roads and Streets Manual 2005 Edition**

**12-3(4) LETTING AND CONTRACT AWARD - MFT and State Funds**

**July 2005**

### **12-3.03 Lettings**

#### **12-3.03(a) General**

It is important to note that if proposals are issued to contractors with the intent of soliciting bids, eligibility for bidding is generally assumed unless communicated otherwise. If the contractor is a responsible bidder meeting the acceptance criteria of the local agency and IDOT, the award will be made to the contractor with the lowest bid once the bids are opened. It is therefore important to ensure that each contractor is a responsible bidder prior to opening bids, and if practical, prior to issuing proposals.

1. The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.
2. The bidder must comply with all applicable provisions of the Prevailing Wage Act.
3. The bidder must comply with Subchapter VI ("Equal Employment Opportunities") of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.
4. The bidder must have a valid Federal Employer Identification Number or, if an individual, a valid Social Security Number.
5. The bidder must have a valid certificate of insurance showing the following coverage: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.
6. The bidder and all bidders' subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training. The bidder must certify as such when submitting a bid.
7. The bidder is not disqualified from bidding on MFT- and State-funded work by the department.

If a bidder does not comply with these requirements or fails to submit proper certification, the bidder is considered not responsible and the non-responsible bidder's proposal shall not be opened.



## **Information about Apprenticeship and Training Programs**

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## U.S. Department of Labor Employment & Training Administration

### Registered Apprenticeship: What Every Government Official Should Know

***Apprenticeship is a proven training strategy that improves the skills of our workforce and enhances the efficiency and productivity of our industries. Investment in the registered apprenticeship system is a wise use of government dollars, and pays for itself many times over. As the nation faces a critical shortage of skilled workers, expanding apprenticeship opportunities offers an effective approach to meet the needs of industry and our citizens in search of high-quality training and good jobs.***

#### **What is Registered Apprenticeship?**

Apprenticeship, a proven training strategy that prepares skilled workers, helps America compete more effectively in the global economy, and contributes to our economic development, sustained economic growth and national security.

#### **Who Does Registered Apprenticeship Serve?**

Nationwide, 80,000 industries and companies offer registered apprenticeship training to more than 395,000 apprentices. These training programs serve a diverse population, including minorities, women, youths and dislocated workers. Currently, approximately 80% of all apprenticeship training positions are in the construction and manufacturing industries. Experts agree, however, that apprenticeship has the potential to benefit numerous other industries, as well, including the service, retail, and the public sector. With this in mind, the possibilities for expanding apprenticeship -- and meeting the needs of many more American companies and citizens in search of high quality training opportunities -- are virtually unlimited.

#### **Who Operates and Pays for Apprenticeship Training?**

Registered apprenticeship programs are operated by private industry - employer or labor/management sponsors. Registered apprenticeship programs range from one to six or more years in length. For the apprentice, this translates into an "industry scholarship" worth \$40,000 to \$150,000. Since the content of the training program is determined by industry needs, apprenticeship produces workers with high demand skills.

#### **What Role Does Government Play in Apprenticeship?**

As a result of the Federal Apprenticeship Act of 1937, the federal government (specifically the U.S. Department of Labor's Office of Apprenticeship Training, in cooperation with the states) oversees the nation's apprenticeship system. The agency issues Certificates of Completion to apprentices, encourages the development of new programs through marketing and technical assistance, protects the safety and welfare of apprentices, and ensures that all programs provide high-quality training to apprentices.

#### **What is Government's Return on Investment for Apprenticeship?**

The government's return clearly outperforms other types of government-sponsored job training programs. Apprentices "earn as they learn," and wages paid totally by the private sector begin as soon as the apprentice enters training.



**What is an apprentice?** An apprentice is a paid worker who is enrolled in a special training program administered by an employer together with a labor organization or trade association. Most apprentices work in trades related to construction.

Apprenticeship is a formal method of training in a skilled occupation, craft, or trade. During the apprenticeship period, the apprentice receives 2,000 hours or more of structured on-the-job training with at least 144 hours of related classroom instruction. Apprenticeship requires a written agreement between the program sponsor (employer) and the apprentice.

The [U.S. Department of Labor, Bureau of Apprenticeship and Training](#) establishes guidelines, procedures, and standards and assists employers in the development of apprenticeship programs.

## **Interested Illinois employers may contact:**

### **[IDES Apprenticeship Coordinator](#)**

33 South State Street  
Chicago, Illinois 60605

## **Many job opportunities**

During the next 10 to 15 years, the number of construction-related jobs in Illinois is expected to grow at a very healthy pace. The greatest growth will occur in electrical work, masonry and stonework, plastering, and other specialties.

Most apprenticeships take three to five years to complete. The typical program includes 2,000 hours of on-the-job training plus at least 144 hours per year of related classroom instruction.

Apprentices earn about half the going tradesperson's wage to start. Pay is gradually increased over the length of the apprenticeship, until training is completed and the trainee graduates to full trade person status.

## **IDES can help you get started**

Some offices (see list below) of IDES serve as Apprenticeship Information Centers where you can obtain detailed information about apprenticeships. Staff will help you decide which trade would best suit you, and can tell you about entrance requirements and when apprenticeship programs are accepting applications.

**Equal Employment Opportunity.** Apprenticeships provide equal employment opportunity: Women and minorities are encouraged to apply. However, admission is highly competitive. To be selected, you must meet the qualifications of the particular trade and program for which you are applying.



# Apprenticeship Information Centers

The Illinois Department of Employment Security (IDES) recognizes the construction industry's importance in the creation of jobs. Every year, thousands of people get jobs in construction and this number is predicted to increase as employers struggle to meet the demands for skilled trades people. To help individuals get started on a career in the construction trades, the IDES developed the Apprenticeship Information Centers. These centers, located in IDES and Illinois Employment Training Center (IETC) offices, allow you to obtain detailed information about apprenticeship programs and also to find out when specific construction trades are accepting applications for entrance into their program.

**Requirements for Application:** *(Bring the following with you to the IDES office)*

- High School Diploma or G.E.D. certificate
- The name(s) and address(es) of the high school(s) or vocational school(s) you have attended.
- A copy of your birth certificate.
- The names, addresses and telephone numbers of two or three individuals who serve as your personal references.
- A Certificate of Release or Discharge from Active Duty (Form DD-214, Veterans only)

**Chicago**

2550-M W. Addison Street (773) 296.6021	3500 W. Grand Avenue (773) 227.7117
2444 W. Lawrence Avenue (773) 334.6646	4931 W. Diversey Avenue (773) 889.6820
5101 S. Cicero (773) 838.3100	1657 Blue Island Avenue (312) 243.5100
1515 E. 71st Street (773) 947.2512	8750 S. Stony Island (773) 221.3737
837 W. 119th Street (773) 821.1400	3400 N. Austin Avenue (773) 736.5627
715 E. 47th Street (773) 538.9811	7500 S. Pulaski (773) 884/7000

Arlington Heights	Bolingbrook	Burbank
723 W. Algonquin Road (847) 981.7400	321 Quadrangle Drive (630) 759.0647	5608 W. 75th Place (708) 458.0500

Chicago Heights	Elgin	Evanston
1010 Dixie Highway (708) 709.3000	30 DuPage Court (847) 888.7900	1572 Maple Avenue (847) 864.3530

Joliet	Kankakee	Lombard
250 N. Chicago Street (815) 740.5101	255 N. Schuyler (815) 932.0035	837 S. Westmore-Meyers Road (630) 495.4345

Maywood	North Aurora	Woodstock
35 S. 19th Avenue (708) 338.6900	2 Smoke Tree Plaza (630) 844.6640	500 Russel Court (815) 338.7100



## **Examples of Responsible Bidder Ordinances**

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# KANE COUNTY BOARD RESOLUTION #04-223

## ESTABLISHING PREVAILING WAGES

WHEREAS, the State of Illinois has enacted "an Act regulating wages of laborers, mechanics and other workers employed in any public works by the State, County, City or any public body or any political subdivision or by anyone under contract for public works," 820 ILCS 130/0.01 et. seq., as amended (hereinafter referred to as "the Act"); and

WHEREAS, the aforesaid Act requires that the County of Kane investigate and ascertain the prevailing rate of wages as defined in said Act for laborers, mechanics and other workers in the locality of said County employed in performing construction of public works, for said County.

NOW, THEREFORE, BE IT RESOLVED by the Kane County Board that:

Section 1: To the extent and as required by "the Act", the general prevailing rate of wages in this locality for laborers, mechanics and other workers engaged in construction of public works coming under the jurisdiction of Kane County is hereby ascertained to be the same as the prevailing rate of wages for construction work in this County as determined by the Department of Labor of the State of Illinois as of June of the current year, a copy of that determination being attached hereto and incorporated herein by reference. As require by said Act, any and all revisions of the prevailing rate of wages by the Department of Labor of the State of Illinois shall supersede the Department's June determination and apply to any and all public works construction undertaken by Kane County. The definition of any terms appearing herein which are also used in aforesaid Act shall be the same as in said Act.

Section 2: Nothing herein shall prohibit the County of Kane from investigating and ascertaining the prevailing rate of wages for categories of workers not expressly covered by the published determination of the Department of Labor, nor prohibit incorporating those rates so ascertained into the published determination of the Department of Labor, provided that those rates ascertained by the County shall be clearly indicated as such.

Section 3: Any contract within the purview of this resolution or of the Illinois Prevailing Wage Act shall provide that any contractor will employ apprentices who are properly indentured in to a Joint Apprenticeship Training Program which is registered and certified with the United States Department of Labor, Bureau of Apprenticeship and Training.

Section 4: Kane County and/or its authorized representatives shall have the power and authority to request and receive any and all information or documentation which would substantiate proper payment under this resolution. The contract recipient shall supply the requested documentation or information to Kane County or its designee within five working days of the receipt of the request. Failure to comply with the request for information or documentation will be construed as a material breach of the contract enabling the County to terminate the contract, seek forfeiture of any performance bond, and proceed with any other remedy against the contractor at law or in equity.

Section 5: Nothing herein contained shall be construed to apply said general prevailing rate of wages as herein ascertained to any work or employment except public works construction of Kane County to the extent required by the aforesaid Act.

Section 6: The County Clerk shall publicly post or keep available for inspection by any interested party in the main office of the County Clerk this determination or any revisions of such prevailing rate of wages. A copy of this determination or of the current revised determination of prevailing rate of wages then in effect shall be attached to all contract specifications.

Section 7: The County Clerk shall mail a copy of this determination to any employer and to any association of employers and to any person or association of employees who have filed their names and addresses, requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates.

Section 8: The County Clerk shall promptly file a certified copy of this Resolution with both the Secretary of State Index Division and the Department of Labor of the State of Illinois.

Section 9: The County Clerk shall cause to be published in a newspaper of general circulation within the area a copy of this Resolution, and such publication shall constitute notice that the determination is effective and this is the determination of this public body.

# VILLAGE OF ORLAND PARK

## Ordinance No: 4017

### ORDINANCE ESTABLISHING CRITERIA FOR THE DETERMINATION OF A RESPONSIBLE BIDDER FOR VILLAGE CONSTRUCTION PROJECTS

WHEREAS, the Illinois Compiled Statutes, including the Illinois Municipal Code, regulate purchases and contracts entered into by the Village of Orland Park; and

WHEREAS, such Statutes grant to the Village the authority and discretion to determine what constitutes a “responsible bidder” and it is deemed necessary and advisable to establish criteria to better enable the corporate authorities of the Village to determine who constitutes a “responsible bidder” for Village public works projects such as construction of new municipal facilities, renovation of existing facilities and road and utility construction projects.

NOW, THEREFORE, BE IT ORDAINED by the president and Board of Trustees of the Village of Orland Park, Cook and Will Counties, Illinois, as follows:

#### SECTION 1:

In determining which bidder is a “responsible bidder” on Village public works projects, the bidder must comply with the following criteria, and submit acceptable evidence of such compliance, in addition to any other requirements as determined from time to time by the Village for the specific type of work to be performed:

- (a) All applicable laws and Village Codes and Ordinances prerequisite to doing business in Illinois and the Village, including required Village licenses;
- (b) Evidence of compliance with:
  - (i) Submittal of Federal Employer Tax Identification Number or Social Security Number (for individual); and
  - (ii) Provisions of Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions).
- (c) Certificates of insurance indicating at least the following coverage’s at minimum limits established by the Village: general liability, worker’s compensation, completed operations, automobile, hazardous occupation, product liability, and professional liability;
- (d) All provisions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance and retirement for those trades as covered in the Act;
- (e) Participation in apprenticeship and training programs approved and registered with the United States Department of Labor’s Bureau of Apprenticeship and Training;
- (f) The applicable provisions of the Illinois Human Rights Act and the rules of the Illinois Human Rights Commission;
- (g) Adoption of a Sexual Harassment Policy pursuant to Illinois Public Act 87-1257;
- (h) Furnishing of required Performance and Payment Bonds;
- (i) Certificate of no delinquency in the payment of any tax administered by the Illinois Department of Review;
- (j) Certificate the bidder is not barred from bidding or contracting as a result of a violation of either Section 33E of 33E-4 of Ch. 720, Article 5 of the Illinois Compiled Statutes; and
- (k) Evidence the bidder has not only the financial responsibility but also the ability to respond by the discharge of the contractor’s obligations in accordance with that is expected or demanded under the terms of the contract.

#### SECTION 2:

This Ordinance shall be in full force and effect from and after its passage and approval as required by law.

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PASSED this 2<sup>nd</sup> day of May, 2005.

**A RESOLUTION EXPANDING ON THE DEFINITION OF WHAT  
CONSTITUTES A RESPONSIBLE BIDDER FOR CONSTRUCTION PROJECTS  
FOR COMMUNITY HIGH SCHOOL DISTRICT 218**

WHEREAS, Illinois Compiled Statutes regulate purchases and contracts entered into by Community High School District 218; and

WHEREAS, such statutes allow Community High School District 218 to determine what constitutes a responsible bidder and that definition needs to be expanded in the case of bidders for construction projects (construction of new facilities, renovation of current facilities or construction projects.)

NOW, THEREFORE, BE IT RESOLVED, by Community High School District 218 that the following requirements be applied by Community High School District 218, in defining who is a "responsible bidder" in addition to any other requirements as determined by Community High School District 218 for the specific type of work to be performed.

**Responsible bidder for construction contracts** Means a bidder who meets all of the following applicable criteria, and submits evidence of such compliance:

- (1) All applicable laws prerequisite to doing business in Illinois.
- (2) Evidence of compliance with:
  - (a) Federal Employer Tax Identification Number or Social Security Number (for individual)
  - (b) Provisions of Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions).
- (3) Certificates of insurance indication the following coverage's: general liability, workers' compensation, completed operations, automobile, hazardous occupation, product liability and professional liability.
- (4) Compliance with all provisions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance and retirement for those trades as covered in the Act.
- (5) Participation in an apprenticeship and training programs approved and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.

NOW THEREFORE BE IT RESOLVED, that nothing hereby adopted shall be construed to affect any suit or proceeding now pending in any court or any right accrued or liability incurred or cause or causes of action accrued or existing under any prior Resolution or Ordinance.

NOW THEREFORE BE IT RESOVED, that this resolution shall be in full force and effect immediately upon its adoption.

ADOPTED this 9<sup>th</sup> day of August, 2004 by the following roll call vote:

AYES:     5    

NAYS:     0    

ABSENT:     2



## **Letters of Endorsement for Responsible Bidding**

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ILLINOIS STATE SENATE

CAPITOL OFFICE:

M 118 STATE CAPITOL  
SPRINGFIELD, ILLINOIS 62706  
(217) 782-1607

DISTRICT OFFICE:

1155 WEST 79TH STREET  
CHICAGO, ILLINOIS 60620  
(773) 224-2830  
FAX (773) 224-2855



**COMMITTEES:**

- FINANCIAL INSTITUTIONS  
CHAIRPERSON
- REVENUE  
VICE CHAIRPERSON
- APPROPRIATIONS I
- HOUSING & COMMUNITY AFFAIRS

**COMMISSIONS:**

- LEGISLATIVE REFERENCE BUREAU

*Jacqueline Y. Collins*  
STATE SENATOR • 16TH DISTRICT

December 19, 2005

Michael B. Macellaio  
Director  
Governmental Affairs  
Chicago Area Laborers-Employers Cooperation and Education Trust  
999 McClintock Drive, Suite 302  
Burr Ridge, IL 60527

Dear City Council Member:

It is with great pleasure that I write this letter of endorsement for a Responsible Bidding Ordinance for city construction contracts.

It is my understanding that a responsible bidder ordinance ensures that a contractor who wishes to perform work on behalf of a public body complies by certain standards to avoid legal violations. This ordinance would protect taxpayers and officials and create a fair and level bidding environment for all contractors.

I support and endorse a Responsible Bidding Ordinance, and I am very excited about the opportunities, improvements and safeguards that this ordinance will provide to my constituency. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jacqueline Y. Collins".

Jacqueline Y. Collins  
State Senator, 16<sup>th</sup> District

# STATE OF ILLINOIS

**District Office**

180 South Eastwood Drive  
Woodstock, IL 60098  
(815) 334-0063  
(815) 334-9147 Fax

**Springfield Office**

249-E Stratton Office Building  
Springfield, IL 62706  
(217) 782-1717  
(217) 557-2118 Fax

**Committees****Chairman**

State Government Administration

**Vice Chairman**

International Trade & Commerce

**Member**

Aging  
Electric Utility Oversight

**E-Mail**

jack@jackfranks.org

## JACK D. FRANKS

STATE REPRESENTATIVE • 63RD DISTRICT

March 4, 2005

Mr. Gordon Anderson  
President & Business Manger  
Laborers International Union  
of North America  
Local Union No. 1035  
Boone and McHenry Counties  
P O Box 211  
Marengo, Illinois 60152

Mr. James Connolly  
Construction & General  
Laborers Political League  
999 McClintock Drive, Ste 300  
Burr Ridge, Illinois 60527

Dear Mr. Anderson and  
Mr. Connolly:

As you know, I met with Gordon Anderson on February 22nd, and we discussed the Illinois Procurement Code Responsible Bidder Ordinance for county construction contracts. This law is a common sense approach to insure that tax dollars are well spent while, at the same time, insuring the basic needs of workers. I strongly support this legislation and am willing to meet with any local municipal leaders if they have any questions on how they can better comply with the language of the law. I know that some municipalities are unaware of the change, and I would be happy to meet with any of them to give them a better understanding of this legislation and the requirements contained therein.

Again, I strongly support this legislation and am happy to assist you in any way.

Very truly yours,

  
Jack D. Franks  
State Representative - 63rd District  
JDF/pk

LANE EVANS

17TH DISTRICT, ILLINOIS

RANKING MEMBER

HOUSE COMMITTEE ON  
VETERANS' AFFAIRS

MEMBER

HOUSE COMMITTEE ON  
ARMED SERVICES

# Congress of the United States

House of Representatives

Washington, DC 20515-1517

WASHINGTON OFFICE  
2211 RAYBURN BUILDING  
WASHINGTON, DC 20515-1317  
(202) 225-5905

DISTRICT OFFICES  
1535 47TH AVE., #5  
MOLINE, IL 61285  
(309) 793-5760  
TOLL FREE: 800-322-8210  
261 N. BROAD, #5  
GALESBURG, IL 61401  
(309) 342-4111

August 13, 2002

Dear City Council Member:

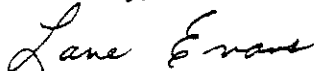
I am writing to you to support a Responsible Bidder Ordinance for city construction contracts.

The concept of responsible bidding is a common-sense idea that ensures that taxpayer dollars are well-spent and that the basic needs of workers are addressed. It helps ensure quality work while addressing the safety and other training requirements of workers. It is my understanding that all construction workers under this program (union and non-union) would have access to training offered by the federal government.

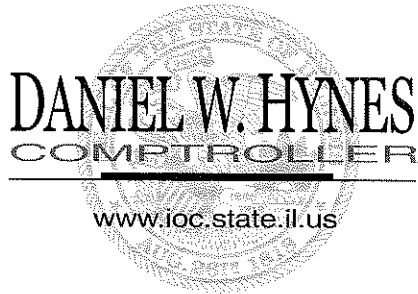
The Illinois House of Representatives recently passed responsible bidder legislation. I support their action and hope that the City Council will take similar action to ensure that it's citizens only have the best-trained workers for its infrastructure projects.

Thank you for considering my request.

Sincerely,



LANE EVANS  
Member of Congress



April 21, 2005

Dear City Council Member:

I am writing to ask you to support the Responsible Bidder Ordinance for all public works construction projects in your municipality.

Our constituents deserve to know that their tax dollars are being used efficiently and responsibly. The Responsible Bidder Ordinance sets clear and reasonable standards for contractors and subcontractors, union and non-union, who benefit from public dollars. These standards reinforce Illinois and federal law regarding prevailing wage, equal opportunity employment, insurance coverage and other accountability measures.

I know you share my belief that the people of Illinois deserve to know their tax dollars are being used responsibly. The Responsible Bidder Ordinance helps to ensure protection for workers, jobsite safety, on-time completion of projects and quality work. Combining these factors leads to the efficient use of public funds.

Thank you for your consideration.

Sincerely yours,

Daniel W. Hynes  
Illinois State Comptroller

Please respond to:

- State House  
Springfield, Illinois 62706-0001  
217/782-6000
- James R. Thompson Center  
100 West Randolph, Suite 15-500  
Chicago, Illinois 60601-3252  
312/814-2451
- 325 West Adams  
Springfield, Illinois 62704-1871