

**PENDING LEGISLATION AMENDING THE PREVAILING WAGE ACT TO INCLUDE A RESPONSIBLE BIDDER REQUIREMENT CONTINUES MOVING THROUGH THE GENERAL ASSEMBLY DESPITE STRONG OPPOSITION FROM THE ILLINOIS MUNICIPAL LEAGUE**

Legislation amending the Prevailing Wage Act to include a “responsible bidder” provision is pending in the Illinois General Assembly.

If passed, House Bill 924 will require contractors submitting bids and performing work on public works projects covered under the Prevailing Wage Act to qualify as a responsible bidder. In order to qualify as a responsible bidder, contractors will have to meet a series of requirements set forth in Section 30-22 of the Illinois Procurement Code (30 ILCS 500/30-22), including a requirement that contractors and subcontractors participate in applicable apprenticeship and training programs approved by the United States Department of Labor. The apprenticeship and training program requirement is of particular concern to opponents of the legislation, including the Illinois Municipal League. Because small, non-union construction companies are unlikely to have the financial resources to administer apprentice and training programs, they will not qualify as “responsible bidders” under the Act and will be ineligible to participate on public works projects. The Illinois Municipal League is concerned that the apprenticeship and training program requirement will thus result in fewer eligible bidders, less competition and higher costs to local governments and taxpayers for public works projects. Large construction companies will be in a better position to absorb the additional costs associated with such apprenticeship and training programs while union construction companies already sponsor such programs.

Section 30-22 of the Illinois Procurement Code defines the term “responsible bidder” to mean an individual or firm that meets the following requirements:

- (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.

For more information about matters discussed in this issue, please feel free to contact Klein, Thorpe and Jenkins.



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- (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.
- (7) For contracts with the Illinois Power Agency, the Director of the Illinois Power Agency may establish additional requirements for responsible bidders. These additional requirements, if established, shall be set forth together with the other criteria contained in the invitation for bids, and shall appear in the appropriate volume of the Illinois Procurement Bulletin.
- (8) The bidder must submit a signed affidavit stating that the bidder will maintain an Illinois office as the primary place of employment for persons employed in the construction authorized by the contract.



Other groups that have expressed opposition to the bill include the Illinois Chamber of Commerce, the Illinois Black Chamber of Commerce and the National Federation of Independent Businesses.

The bill is one step closer to becoming law after the Illinois Senate's Labor and Commerce Committee approved the bill by a 10 - 5 vote on November 6, 2013. The bill will likely be presented to the full Senate early next year. The Illinois House approved the bill on April 18, 2013.

Municipal officials concerned about the financial impact that the amendment may have on the cost of public works projects should continue to monitor the legislation and let their elected representatives know of their opposition to the bill.

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