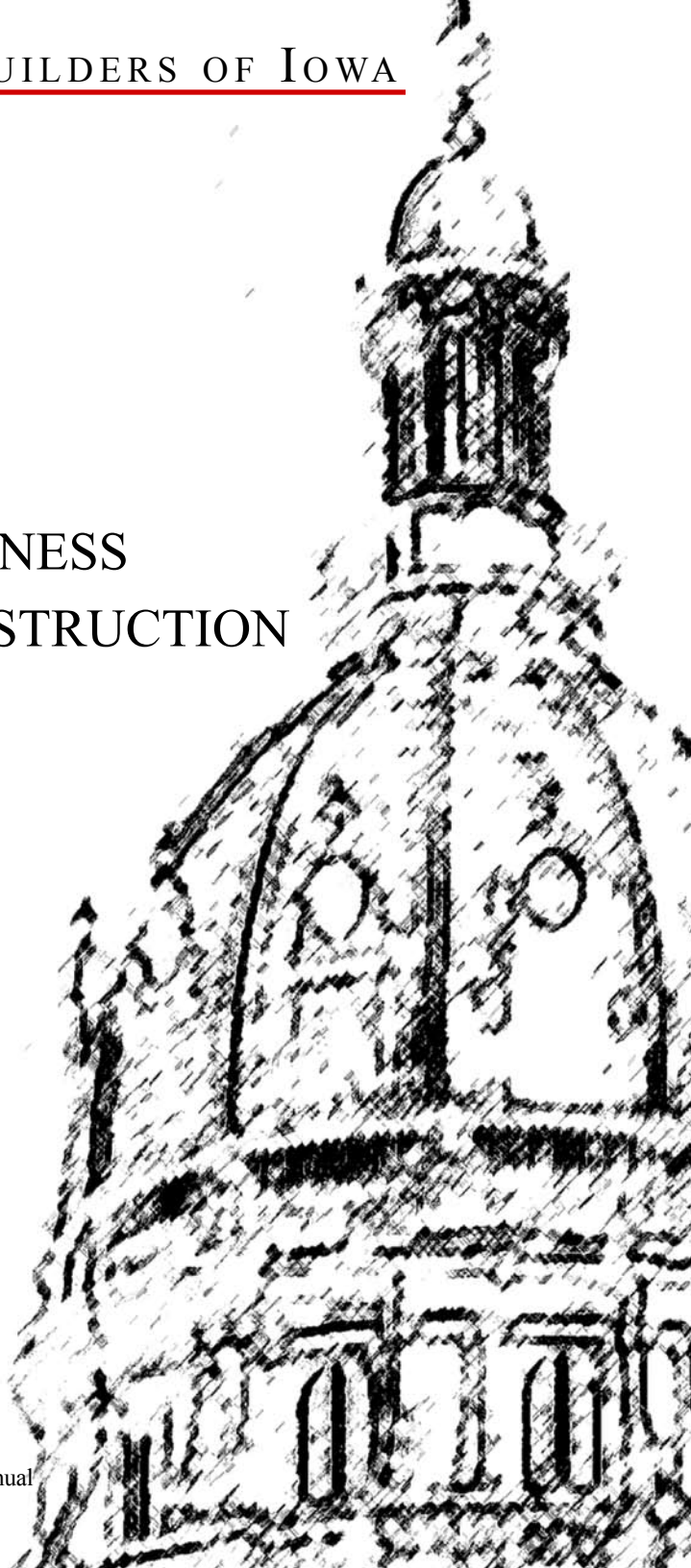


MASTER BUILDERS OF IOWA

PRO BUSINESS PRO CONSTRUCTION

Public Policy Reference Manual
Revised - January, 2009



Master Builders of Iowa

MISSION Statement

MBI's mission is to develop and disseminate information to our members and their employees, to promote the construction industry and to facilitate owner, architect, engineer and contractor cohesion in the delivery of services by doing the following: Promote Industry Image, Promote Ethical Practices, Educate for Success, Be Member-Driven, Be a Valuable Investment (Time, Energy, Dollars), Be Proactive in Developing Alliances, Stay ahead of the Industry and Communicate Effectively.

VISION Statement

To be the essential resource and uniting voice in leading our members and the industry in a dynamic marketplace.

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INDUSTRY RELATIONS

AFFORDABLE HOUSING PROGRAMS

MBI POSITION: Iowa, as is the case in many other states, continues to have a shortage of affordable housing. The lack of affordable housing is a negative from the standpoint of economic development and is a roadblock to investment in new business. MBI favors policies offering incentives for affordable housing and encourages review of the development of cost effective financing methods. However, the use of designated infrastructure funds to pay for these programs is vigorously opposed.

HOW IT AFFECTS YOUR BUSINESS: Affordable housing programs can expand business opportunities from a construction standpoint. But more importantly, such programs can help spur further economic growth locally.

APPRENTICESHIP AND TRAINING PROGRAM

MBI POSITION: Iowa's construction industry is always looking for qualified employees. MBI members also recognize the attraction and retention of employees is essential to eliminating any such shortages. Therefore, MBI opposes any efforts to restrict the establishment of apprenticeship and training programs in Iowa.

HOW IT AFFECTS YOUR BUSINESS: All member firms benefit from the availability of qualified and trained personnel to fill positions in the industry.

CONTRACTOR QUALIFICATION

The construction industry and public owners have long recognized that the payment and performance bond requirements for public projects provide an effective process for insuring that only qualified contractors bid on those projects. MBI also recognizes that some public owners may wish to limit prospective bidders to those contractors who possess certain expertise or experience; however, MBI is not in favor of any process that would allow only "prequalified" contractors to bid on a public project. Prequalification based on arbitrary standards will shrink the bidding pool, and as public owners know, a smaller pool of bidders usually means a higher price for the project. MBI disfavors including any prequalification criteria in the Invitation to Bid or the project specifications. The Invitation to Bid should state that the contract will be awarded to the lowest responsive, responsible bidder.

Once the lowest responsive bidder has been determined, the public owner can then apply the standards set forth by the Iowa Supreme Court as to whether that contractor is "responsible." As defined by the

Supreme Court, a responsible contractor is one that can perform and complete the work required by the contract documents, demonstrated to the satisfaction of the owner. A responsible contractor must possess the necessary financial and technical capability to perform the work as well as the tenacity to do so, usually demonstrated by the contractor's past performance record. A responsible contractor must have the equipment, materials and workforce – or the ability to obtain them – sufficient to complete the work. This usually is demonstrated by ownership of equipment or “suitable arrangements to rent equipment,” and the ability to purchase materials and hire a workforce.

Contractors should not be disqualified or be given special preference on the basis of race, gender, national origin, religion, union or non-union status. Furthermore, contractors should not be disqualified based upon mandated requirements to purchase pre-selected or proprietary health insurance, death or disability or retirement programs for their employees or mandates that require contractors to recruit, select, take referrals or hire from an exclusive source. Disqualifying a contractor because of unfounded and/or undocumented charges, including inconclusive or incomplete legal actions, should never be considered in the qualification process.

These standards, if applied properly, insure that the public owner will have a contractor who is qualified to do the work, and the owner will have the further assurance that the contractor has the backing of a bonding company. These considerations eliminate the need for any form of prequalification, and the result should be a lower price for the public owner.

MBI POSITION: Public owners have the right and responsibility to ensure the successful bidder has the financial and performance qualifications to perform the work as per plan specifications, and in compliance with state and federal regulations. Disqualification should not be made or based upon special preference, political favoritism, or a contractor's union or non-union status.

HOW IT AFFECTS YOUR BUSINESS: Prudent owner discretion in the selection of qualified contractors serves everyone's interest. Abuse of the public trust by disqualifying prospective bidders through political initiatives or other special preference is costly to the industry and unfair to legitimate bidders.

ECONOMIC DEVELOPMENT PROGRAMS

MBI POSITION: Economic development is critical to the future growth of Iowa and the construction industry. In turn, a strong viable construction industry is a critical factor in Iowa's economy. Thousands of jobs depend

on construction, and the construction industry depends on strong economic development. The state of Iowa needs to continually evaluate and improve the effectiveness of its economic development programs and retain only those which return the best results.

HOW IT AFFECTS YOUR BUSINESS: Business persons often agree that “Rising tides raise all boats,” and that the establishment of sound economic development policies will lay the foundation for expanding our economy to the benefit of all.

ELECTRONIC REVERSE AUCTION BIDDING

MBI POSITION: Electronic Reverse Auction Bidding (ERAB) is a process in which a buyer of goods and services continues to solicit bids from sellers until the buyer is satisfied it has received an acceptably low price (In a reverse auction, bids go down rather than up). ERAB is conducted on a designated website, which allows all bids to be witnessed immediately. This process runs counter to the traditional sealed bidding process, in which sealed bids are received and opened at a specific time and place, resulting in an award of the contract to the lowest, responsible bidder. MBI opposes ERAB due in part that the process does not elicit the lowest responsible and qualified bid. Rather, the process encourages bidders to inflate initial bids and only reduce the bid if forced to do so by competition. This results in the owner being left with an often inflated price tag for a project.

HOW IT AFFECTS YOUR BUSINESS: This system replaces the competitive selection process with a procurement process that is incomplete, focuses primarily on price and treats the procurement of construction services as a commodity. Risks are elevated because bidders are forced to make assumptions and often bid from incomplete plans and specifications.

FAIR UTILITY CONSTRUCTION COMPETITION

MBI POSITION: Iowa’s current laws regarding fair utility competition in the area of construction are regarded as some of the best in the nation. As the utility industry in Iowa continues to evolve, it is important that the current laws governing the use of ratepayer dollars for non-generation and transmission activities be preserved. MBI supports the continuation of rules governing utility competition in both a rate regulated and deregulated environment.

HOW IT AFFECTS YOUR BUSINESS: The Association believes that owners and the industry are served well by healthy and qualified competition. Great care needs to be exercised to assume a level playing

field in the utility construction sector.

GOVERNMENT MANDATED PROJECT LABOR AGREEMENTS (PLAs)

MBI POSITION: MBI is opposed to any public-sector measure that would give a preference to either open-shop or union contractors, or disrupt the collective bargaining process. This includes any measure that would mandate project labor agreements on publicly-assisted projects. PLA's violate the Manual of Recommended Procedure for Competitive Bidding and Award of Building Contracts.

HOW IT AFFECTS YOUR BUSINESS: A government-mandated project labor agreement (PLA) is an agreement that the public-owner has negotiated with organized labor and then imposes on contractors and subcontractors on a publicly funded construction project. PLAs typically restrict the majority of employment on the project to only those workers whom unions are willing to refer to the project. The negative impact of PLAs falls on union contractors, nonunion companies, small companies, and disadvantaged businesses. For instance, in 1998, Congress heard testimony from women and minority-owned businesses that were excluded from contracting opportunities by PLAs. But mostly, the taxpayer takes the brunt of the impact of a PLA.

PLAs typically require that all employees are referred through the union, designate the union as the sole representative of the employees, and require contractors to contribute to union fringe benefit funds. PLAs effectively force open-shop contractors and their employees to unionize without regard to their preferences or an opportunity to vote. Furthermore, PLAs force union contractors to work under different work rules and other contract terms that government bureaucrats have negotiated, rather than under the existing labor contracts that they or their agents have negotiated.

Organized labor will argue that PLAs are a legitimate and proper use of governmental power. In return for a government mandated PLA, unions typically agree to "labor peace" and to complete the work in a timely manner without union "strikes" or illegal work stoppages. While the Iowa Supreme Court ruled in *MBI v. Polk County* that the Iowa Events Center PLA is legal, PLA's on federal projects remain illegal.

IMMIGRATION

MBI POSITION: Studies have shown that Iowa will face a substantial worker shortage over the next decade. Iowa's construction workforce will not be immune from this shortage. MBI supports policies that enable a legal workforce to enter the state to meet future worker demands.

Furthermore, MBI believes that the federal government should address the issue of immigration, rather than forcing each state to establish a “patchwork” of differing laws.

HOW IT IMPACTS YOUR BUSINESS: A shortage of trained workers can quickly handcuff the most vibrant economies and an inadequate number of trained workers will adversely impact your ability to compete and grow.

INDEMNIFICATION

MBI POSITION: Broad form indemnification by its very definition allows a party to assign its sole negligence to another. Due to its potential to promote irresponsibility, broad form indemnification has been found to be against public policy and is now illegal in 37 states. In an effort to promote corporate responsibility, control the long term cost of construction in the state of Iowa, and improve the overall business climate, broad form indemnification must be eliminated.

HOW IT AFFECTS YOUR BUSINESS: When parties to a construction contract are required to be responsible for their own mistakes, not only will the safety and quality of construction improve, but the delivery of projects will become more cost effective.

As the contracting community assumes increased levels of risk in the form of indemnification and additional insured endorsements, individual contractors attempt to cover their increased exposure and liability with insurance coverage. The unsuspecting contractor may find himself/herself in a position where carefully manuscripted language limits coverage, expands contractual liability beyond the available limits of insurance, and places the downstream party in breach of contract, thus compounding their exposure even further.

INDEPENDENT CONTRACTOR / EMPLOYEE MISCLASSIFICATION

MBI POSITION: Employee misclassification most commonly occurs when an employer hires a worker and improperly classifies the worker as an “independent contractor”, rather than as an “employee”. Employee misclassification creates an unfair competitive advantage for employers, prevents misclassified employees from receiving certain benefits and causes government to lose out on tax revenues.

As an aid to determining whether an individual is an employee or an independent contractor under common law, the Internal Revenue Service set forth in Revenue Ruling 87-41, a list of 20 factors to provide guidance for determining whether sufficient control is present to establish an employer-employee relationship. MBI supports adherence to the IRS rules in determining employee / employer status and opposes state efforts

to de-couple from IRS determinations.

HOW IT IMPACTS YOUR BUSINESS: The consequences of being wrong on employee classification are significant and long term, and in the case of immigration violations, may be illegal. Your company's risk of government action, union action, liability for uninsured acts of the independent contractor, liability for back benefits, for being involved in immigration act violations or for workers' compensation payments are high stakes gambles. Adhering to the IRS definitions is the best way to avoid a complicated, and possibly expensive, situation.

LOCAL PREFERENCE

MBI POSITION: MBI opposes local preference in public procurement of construction projects. MBI has long supported equal opportunity for all construction firms to succeed or fail on their individual merits. MBI also continues, however, to oppose special preferences based on race or gender, in the belief that such measures are unfair and unlawful, and have done little to help disadvantaged firms learn how to compete.

HOW IT AFFECTS YOUR BUSINESS: On the surface, a local preference may sound like a good idea. However, for every action there is an equal and opposite reaction, by where a neighboring state or city may take similar or more severe action to give home-state or local contractors an unfair advantage. MBI has long stood for fair and equal competition. The Association supports a business environment where fair and open competition is maintained. An in-state or local preference would adversely impact the construction industry by forcing other political entities to create anti-competitive, protectionist legislation.

LIMITATION OF LIABILITY CLAUSES

MBI POSITION: The fair and equitable allocation of risk in the construction process is in the ultimate best interest of owners and all parties to the construction process. MBI, along with the American Institute of Architects (Iowa Chapter) and the American Council of Engineering Companies of Iowa have formally agreed that the use of Limitation of Liability (LOL) clauses for liability of the design professional should be confined to the contract relationship between the design professional and owner. Any limitation of liability between the design professional and owner should not be passed on to others. Therefore, the use of LOL clauses for liability of the design professional as part of the contract relationship between the owner and contractor or subcontractor is inappropriate and strongly discouraged. The use of LOL clauses for design errors in the owner/contractor relationship should be strictly limited to extraordinary situations such as those involving hazardous materials or

specially negotiated work.

HOW IT AFFECTS YOUR BUSINESS: Construction firms should not be asked to assume the design liability for any design work outside of their work scope. The liability for design should be limited to the design professional. Liability for work performed should apply to the organization responsible and not transferred to other entities.

MILITARY PERSONNEL RECRUITING

MBI POSITION: The personnel preparing to leave or retire from active military duty make up a well-trained and experienced labor pool for Iowa's commercial construction industry. MBI supports the appropriation of state economic development funds for programs that actively recruit military personnel for work in Iowa's commercial construction industry.

HOW IT AFFECTS YOUR BUSINESS: All members firms benefit by the availability of qualified and trained personnel to fill positions in the industry.

FOCUS ON ACCIDENT PREVENTION/OSHA PARTNERSHIP

It is the responsibility of all construction employers to establish and maintain a safe workplace for all of their employees. The establishment of safety standards and ensuring equal enforcement of those standards in the industry is an important function of OSHA and IOSHA. We also believe that the greatest gains in worker safety are produced through cooperative efforts of employers and industry groups in training workers on how to be safe. OSHA's focus should be on safety education and outreach through partnering relationships that offer significant and meaningful incentives for employers and employees alike to practice safe work practices. Industry wide efforts among owners, management, labor and government is the most effective way of safeguarding our construction workforce from accidents and job related injury.

MBI POSITION: Excessive OSHA regulations add unnecessary bureaucracy to a system already overloaded with a complex set of rules and compliance regulations. OSHA focus should be on safety education and productive partnerships with private industry to enhance worker safety.

HOW IT AFFECTS YOUR BUSINESS: Safety does not cost, but pays in worker safety and related costs. Dealing with excessive regulations detracts from safety training which greatly reduces lost time, accident and injury opportunities.

PREVAILING WAGE / MINI-DAVIS BACON

MBI POSITION: MBI has been active both legislatively and in the courts in opposing the establishment of prevailing wages on publicly funded projects that do not include federal dollars. The establishment of a prevailing wage in Iowa or on a local level would disrupt our competitive system and negatively impact Iowa's taxpayers and public owners. Therefore, MBI opposes the imposition of a prevailing wage on projects funded with resources coming from any public entity, with the exception of the federal government.

HOW IT AFFECTS YOUR BUSINESS: A "Mini Davis-Bacon" or prevailing wage law would also have an adverse impact on collective bargaining between union contractors and construction craft unions. The government rates, benefits and jobsite practices would inevitably straightjacket future negotiations. Fearing the future impact on government calculations, such unions would be more than reluctant to accept wage concessions, or changes in jobsite practices, no matter how necessary such measures might be, not only for union contractors, but also the union members who depend on such contractors for gainful employment. This could, in turn, make it more difficult for union contractors to compete for private work. Indeed, their ability to compete for private work would be held hostage to the wages rates, fringe benefits and jobsite rules that the bureaucrats dictated for public work.

There are also other issues for non-union, double-breasted and quasi-union contractors, and for union contractors working outside of their contract territories. The fringe benefits approved for public work might lead to a suspension of "employer-provided fringe benefits" for the employees working for such contractors, and might limit participation in training programs that are not approved for the purposes of such a new law. Wage differentials that resulted from a "Mini Davis-Bacon" law could also create conflicts among employees, as they received substantially different rates of pay for essentially the same work, depending on whether it is covered.

In addition, there are administrative problems and liabilities associated with such a law. For example, general contractors could find themselves liable for a subcontractors' non-compliance, whether or not fraud or other acts of deception were involved. Davis-Bacon survey instruments are generally considered inadequate and survey results prove to be inconclusive and incomplete. Only certain counties in Iowa have pre-determined rates developed by Department of Labor and owners frequently omit the correct rates from bid specifications, leaving the successful bidder potentially liable for the owner's mistakes. Litigation on these types of issues is not uncommon in Iowa and is very costly to the

industry in terms of time and money.

In addition, there are public owner and taxpayer liabilities with a prevailing wage. MBI has long been leading advocates of prudent investment in vertical infrastructure. As industry leaders, MBI appreciates and accepts the responsibility to ensure that tax dollars are well spent. A “Mini Davis-Bacon” law would shirk that responsibility. Indeed, it would require public owners to substitute unreliable survey results, and calculations based thereon, for the competitive market forces that would otherwise determine the wage rates and fringe benefits paid and provided to construction craft workers. It would also change how construction contractors deploy such workers. And it would leave taxpayers liable for the cost of the resulting inefficiencies.

If such a law applied to **all public construction work**, public owners would be subject to the same burdens (and corresponding legal and financial liabilities) even when they self-performed repair and maintenance, or undertook any other work under Iowa’s competitive bid laws. Litigation based on the new law, and resulting delays, would cost public owners even more, as it wasted significant time and money. The costs of administering the new law would also increase the costs of all publicly funded projects, and reduce the monies available for actual construction projects.

For the reasons noted above, and others, the Master Builders of Iowa opposes a “Mini Davis-Bacon” law. Such a law would be contrary to the best interest of the contracting industry, while also negatively impacting public owners and most importantly...Iowa’s taxpayers.

PRIVATIZATION / SELF-PERFORMANCE / IN-HOUSE

MBI POSITION: MBI maintains the premise that the public owner’s ability to self-perform construction work should be limited and very well defined. Furthermore, privatization lacks efficiency and puts government in direct competition with the private sector.

HOW IT AFFECTS YOUR BUSINESS: Competition in the construction industry is healthy and allows the marketplace to function in a manner that ensures quality products at a reasonable price, which is in the ultimate best interest of the owners and users of our industry’s services. However, this competitive environment is disrupted when the public sector tries to self-perform construction work. Your company is now at a distinct disadvantage as you compete against an entity which your tax dollars supports.

PUBLIC PROJECT ADVERTISEMENT

MBI POSITION: While the information superhighway may be running

through many parts of the state, not everyone has an on-ramp to the information age. While the list of companies that utilize electronic media is growing, many smaller firms, which form the backbone of this state's economy, have not yet made this transition. To use electronic media as the primary source of advertising public projects for bid is unfair at this time. MBI opposes efforts to allow public entities to utilize electronic media, such as the Internet, as the main source of advertising construction projects for bid. It is essential that the current system of advertising for bids in newspapers of general circulation, and in publications such as the Construction Update, continue.

HOW IT AFFECTS YOUR BUSINESS: Access and information are keys to business success. Identifying prospective markets is an important aspect of building your business in the public sector.

RIGHT TO WORK

MBI POSITION: Iowa's Right-To-Work law allows individuals to determine their role in the market place and enjoy the liberty to choose whether or not to affiliate with a labor organization as it concerns their employment. MBI supports the right of an individual to choose whether or not to be represented by a labor union and has taken the position that the judgment should remain vested with each individual.

HOW IT AFFECTS YOUR BUSINESS: Under Iowa's "Right-to-Work" laws, the employees have the right to choose whether or not to belong to a labor organization. This freedom safeguards the rights of the employees to not be forced to join a labor union to keep their job or get a new one.

RISK AND RESPONSIBILITY SHIFTING TO CONSTRUCTORS

MBI POSITION: Parties to the construction process spend millions of dollars each year developing legal strategies. Manufacturers, suppliers, subcontractors, general contractors and design professionals are all affected. The impact of this expanding litigation is costly and extremely disruptive to the construction process. MBI opposes any efforts to shift risk and/or registration responsibility from the owner to the constructor, contractor, installer, repairer or maintenance contractor.

HOW IT AFFECTS YOUR BUSINESS: As risk and responsibilities shift to other parties besides the owner, the cost of doing business increases through insurance premiums and legal costs increase. These increased costs are passed onto the owners and lessen your ability to compete in today's competitive construction market.

SCHOOL-TO-WORK PROGRAMS FOR THE CONSTRUCTION INDUSTRY

MBI POSITION: The effort to provide meaningful on-the-job learning experiences for prospective construction industry employees is made difficult by current insurance and workers' compensation rules. MBI was successful in freeing up the worker compensation regulations so that the establishment of school-to-work learning programs in the construction industry for students can be more easily achieved. MBI will continue to monitor this program to ensure its continued success.

HOW IT AFFECTS YOUR BUSINESS: As stated earlier, all member firms benefit from the availability of qualified and trained personnel to fill positions in the industry.

SOLE-SERVICE PROVIDERS

MBI POSITION: Proponents of this legislation seek to monopolize public sector work with delivery systems that bundle design, long-term finance, equipment, construction, training and maintenance. Sole service provider (often referred to as performance contracting) laws without a competitive bidding requirement exist in only 20 states. Iowa's version of performance contracting and guaranteed energy savings contract, administered by the DNR, allows for all qualified firms to participate and is available through the Iowa Energy Savings Banks.

In summary, performance contracting is a marketing term used to describe a sole service provider bundling scheme designed to eliminate qualified competition and substitute a sole service provider, subjecting public owners to potential abuse and lack of objectivity in project planning and execution.

HOW IT AFFECTS YOUR BUSINESS: If you are not a sole service provider as described above you would be effectively shut-out of competing for any public project using this sole service provider delivery process. Trends in other states indicate that school construction and HVAC upgrades are a prime target for companies who come to the table with financing packages.

TRAINING PROGRAM FUNDING

MBI POSITION: The education and continuing education of employees is essential to the continued success of the construction industry in Iowa. MBI supports the continuation of funding to construction training programs and the accessibility of funding for employers and consortiums of employers, for continuing education for workers.

HOW IT AFFECTS YOUR BUSINESS: All member firms benefit from

the availability of qualified and trained personnel to fill positions in the industry.

STATUTE OF REPOSE

MBI POSITION: MBI supports establishing a more reasonable state statute of repose for latent defect claims. Iowa code contains a number of limitation statutes, which prescribe the time frame during which legal action must be initiated for recovery of damages arising from negligence. For instance, for state health care providers, the limit is 2-4 years. In 1986, the Iowa legislature passed a bill imposing similar time constraints on actions brought against architects, engineers and contractors, setting the statute at 15 years. In 2000, the Iowa Legislature passed a bill further reducing the statute to 10 years. Unfortunately, the bill was vetoed by Governor Tom Vilsack. Currently over 40 states have a statute of limitations with an average time frame of 6 ½ years. MBI supports reducing Iowa's current 15-year statute to 6 years.

HOW IT AFFECTS YOUR BUSINESS: Current law grants a fifteen-year claim against your company for any defects in construction completed. Iowa holds the dubious title of longest statute of repose in the nation. Among the many factors that can adversely impact contractors' liability during this fifteen-year period include reliance on the public owner to keep up with proper building maintenance. In times of tight budgets, routine maintenance can often be delayed or ignored all together. In all, an unreasonable statute of repose can increase the likelihood of expensive, extended, and frivolous construction-defect lawsuits against architects, engineers, contractors, subs and suppliers.

UNEMPLOYMENT COMPENSATION

MBI POSITION: Job creation and retention are critical to the continued growth of Iowa's economy and construction industry. Iowa's economic development efforts and the commercial building construction industry are negatively impacted by high unemployment compensation costs. Therefore, MBI supports a structured unemployment compensation program that favors job growth opportunities.

HOW IT AFFECTS YOUR BUSINESS: In some instances, higher unemployment compensation premiums can negatively impact your opportunity to grow your business.

UNEMPLOYMENT COMPENSATION WAGE BASE

MBI POSITION: In order to receive unemployment compensation benefits under Iowa law, claimants must have received wages in at least two of the four quarter base period. MBI supports increasing eligibility

requirements from the current two quarters to require that at least wages in three quarters of the four quarter base period be considered before benefits can be distributed to claimants.

HOW IT AFFECTS YOUR BUSINESS: Requiring a higher base of three quarters creates a more equitable business environment for employers in regards to unemployment compensation. Because of the seasonality of construction, requiring a three-quarters base limits the potential of abuse, thus limiting the exposure for employers.

WORKER COMPENSATION

MBI POSITION: The Master Builders of Iowa supports changes in workers' compensation laws that will not be a deterrent to development and will make Iowa competitive with other states in offering an environment for retaining and attracting new business, and providing employees with fair and adequate insurance benefits. Worker compensation insurance premiums continue to be one of the larger costs an employer will face. MBI members support efforts to balance adequate employee compensation and coverage to those injured on the job, while trying to minimize costs.

In reference to existing conditions, MBI maintains that the employer should be held responsible only for injuries caused on the current job and not those injuries occurring prior to hiring the employee, thus eliminating the prospects for "double-dipping". In addition, altering the existing law to give employees the choice of doctor would adversely impact the current workers' compensation system. Finally, allowing existing settlements to be re-opened would alter the delicate balance of the system and cause a tremendous increase in premiums.

HOW IT AFFECTS YOUR BUSINESS: Excessive worker compensation premiums impact your firm's bottom line and are just another inhibitor to potential business growth.

WORKER'S COMPENSATION -- COMBATING FRAUD

MBI POSITION: An unfortunate reality of today's business environment is abuse of the workers' compensation insurance system through fraud. MBI supports legislation that provides criminal penalties for workers' compensation fraud. MBI also supports active prosecution through the continued funding of a state fraud investigation bureau.

HOW IT AFFECTS YOUR BUSINESS: Higher insurance costs through

fraudulent claims have a disproportionately negative impact on seasonal and cyclical industries, such as construction.

IOWA'S INFRASTRUCTURE

CHARTER SCHOOL ESTABLISHMENT AND CONSTRUCTION

MBI POSITION: Advancing the goal of making Iowa “first in the nation in education” is a continuing priority of legislative leaders. Allowing for the establishment of charter schools will allow a higher level of education to be offered to many communities. To that end, MBI supports the establishment of a charter school program in Iowa that conforms to all appropriate and applicable state public procurement laws.

HOW IT AFFECTS YOUR BUSINESS: Iowa’s construction industry will be called upon to meet educational infrastructure needs. This will in turn expand business opportunities in the public sector.

DIVERSIONS FROM THE REBUILD IOWA INFRASTRUCTURE FUND (RIIF)

MBI POSITION: Since its inception in 1995, the Rebuild Iowa Infrastructure Fund (RIIF) has effectively provided resources to help Iowa meet its vertical infrastructure needs. However, recent trends threaten the effectiveness of this funding source with diversions increasing at an alarming rate. Millions of dollars designated for vertical infrastructure are being siphoned off for non-vertical uses. This trend must stop. MBI is adamantly opposed to diversions from the RIIF, including gaming receipts and interest earned from specific cash reserve accounts and economic emergency monies.

HOW IT AFFECTS YOUR BUSINESS: With every dollar taken from vertical infrastructure is one less dollar your company will have an opportunity to capture in public sector building procurement. Millions of dollars have been diverted from RIIF to fund such items as digital television upgrades, debt service, environmental programs, teacher pay and other non-vertical uses.

ENVIRONMENT FIRST FUND

MBI POSITION: MBI respects the need to enhance Iowa’s water quality efforts and environment. However, such funds should not deprive efforts to improve Iowa’s vertical infrastructure. Therefore, MBI believes that future funding for the Environmental First Fund merits a general fund allocation and should not come at the detriment of vertical infrastructure funding (i.e. Rebuild Iowa Infrastructure Fund).

HOW IT AFFECTS YOUR BUSINESS: Every dollar siphoned from public vertical infrastructure accounts limits your business opportunities in the public construction market.

IMPROVING IOWA'S AVIATION SYSTEM

MBI POSITION: Iowa's airports are regional transportation centers. Continued investment in the vertical infrastructure at the 10-commercial airports and the state's general aviation airports is essential to the long-term economic development of the state. MBI supports the continuation of the vertical infrastructure grant program to the state's 10 commercial airports, with a component of the funding formula that recognizes the importance of airfreight. In addition, MBI supports the continuation of the vertical infrastructure program that assists general aviation airports with their vertical infrastructure needs.

HOW IT AFFECTS YOUR BUSINESS: Increasing investment in Iowa's aviation infrastructure will create new business opportunities for MBI members. In addition, a modernized aviation system in Iowa will expand our capacity to market Iowa, while also expanding commerce by creating a business climate more conducive to growth.

VISION IOWA FUNDING

MBI POSITION: The Vision Iowa program is dedicated to improving communities through a formula that leverages matching dollars with state funding. Created in the 2000 legislative session, the Vision Iowa program has directly and/or indirectly created over \$1 billion in construction and community enhancement projects. MBI strongly supports the continuation of the Vision Iowa program, but would favor a caveat that all projects conform both to the spirit and letter of Iowa's Right to Work Law and fair and equal competition among bidders.

HOW IT AFFECTS YOUR BUSINESS: Continuation of the Vision Iowa program will undoubtedly create opportunities for each and every facet of Iowa's construction industry. The importance of this program is made evident in how successfully it has garnered local buy-in, i.e. local matching dollars.

INFRASTRUCTURE FUNDING

MBI POSITION: MBI supports an increased infrastructure investment at a level that provides the necessary funding to meet our state's growing infrastructure needs. The many areas in which critical infrastructure investments are needed include:

- Aviation Infrastructure
- Community Colleges
- Correction Facilities
- Drinking Water Infrastructure
- Flood Control Infrastructure
- Public-Sector Office Space
- Regents Institutions
- School Infrastructure
- Wastewater Infrastructure

HOW IT AFFECTS YOUR BUSINESS: Federal, state, and local governments have invested billions to construct the foundations that enhance our quality of life. Many of these investments have outlasted their design lives. Our schools face a \$3 billion infrastructure deficit and the Department of Administrative Services estimates State buildings require upwards to \$500 million for replacements and upgrades. The public market for infrastructure not only creates jobs for contractors, but it also promotes economic growth. As our state grows, we must maintain adequate infrastructure to ensure both a healthy environment and a healthy economy.

A government survey shows that each \$1 billion spent on new construction creates 42,100 jobs in the construction and construction-related service and supply industries, and generates \$3.61 billion in economic activity. Polls have shown that Americans overwhelmingly regard public infrastructure spending as necessary and important, and that they recognize quality infrastructure improves quality of life.

Opponents believe that infrastructure investments are no more important than social services or other government spending. They also doubt the economic impact of infrastructure expenditures.

LOCAL AND SCHOOL VERTICAL INFRASTRUCTURE INVESTMENT

MBI POSITION: Great steps have been taken to address the vertical infrastructure needs of Iowa's schools. The establishment of a \$50 million school construction fund, the passage of the statewide penny for school infrastructure and the increase in the Physical Plant and Equipment Levy are important advances in repairing school buildings. It is time for the state to include in the school aid formula, monies for the repair, renovation and construction of educational buildings.

HOW IT AFFECTS YOUR BUSINESS: Increasing the State's investment in school infrastructure ensures business opportunities at the local level. But more importantly, such investments fuel economic opportunity for generations to come.

SCHOOL / POOLED TECHNOLOGY

MBI POSITION: MBI shares the belief that the State should provide our children with all the tools necessary to ensure a first-rate education system. Moreover, MBI members are willing to respond to the vertical infrastructure needs of our education systems. However, dedicating RIIF monies to fund computer hardware and software upgrades can hardly be sold as vertical infrastructure.

HOW IT AFFECTS YOUR BUSINESS: Once again, the impact on the construction business is measured in opportunity costs “lost”. It has been estimated that nearly 60 cents of every \$1 expended by the State goes to education. With Iowa’s general fund budget exceeding \$6 billion, certainly there should be areas to identify funding opportunities for school technology needs.

VERTICAL INFRASTRUCTURE DEFINITION

MBI POSITION: The definition, as approved in 1996, includes elements that stretch the true intent of vertical infrastructure. For instance, the inclusion of recreational trails runs counter to the universal opinion of vertical infrastructure. The current vertical infrastructure definition should be improved to include items that focus solely on vertical infrastructure construction.

HOW IT AFFECTS YOUR BUSINESS: With the inclusion of non-traditional elements in the vertical infrastructure definition, a dangerous precedent is set. No longer will every dollar be dedicated to towards “brick and mortar.” Rather, the presence of non-vertical infrastructure terms in the definition lays the groundwork for an increased propensity for diversions from vertical infrastructure accounts. Which, directly and indirectly, affects a contractor’s opportunity to perform public sector construction projects.

PROJECT DELIVERY POLICY

COMPETITIVE BIDDING FOR PUBLIC SECTOR CONSTRUCTION

The Master Builders of Iowa (MBI) recognizes that the lump-sum competitive bid method of procuring construction work serves the public sector well, and remains the recommended method of procurement and delivery approach for well defined projects.

MBI POSITION: MBI supports the following policy principles to maintain the integrity of Iowa’s competitive bidding laws:

- MBI should avail itself all opportunities to strengthen Iowa’s competitive bidding laws where applicable and appropriate. This

includes:

- Closing any existing loopholes in current competitive bidding laws, which appear to allow public owners to circumvent the statutes.
- Opposing sole-service provider contracting, including performance contracting and similar, anti-competitive provider-mechanisms.
- Opposing any form of union-only project labor agreements (PLA) in the public sector.
- Opposing any form of public contracting that allows a person, firm or corporation to provide design, construction and/or maintenance services, or combination thereof, for a public project in which that person, firm or corporation holds a financial interest.
- Opposing any interpretation of current law or new legislative initiative, which would allow public corporations the latitude to initiate local preference in contractor selection into the competitive bidding process.
- Opposing pre-qualification efforts designed to artificially disqualify eligible bidders on public construction projects for subjective reasons, including political favoritism and their affiliation or non-affiliation with organized labor.

It is important to note that MBI recognizes other delivery systems where warranted by the size, complexity, or schedule of the project and led by the general contractor, if these other delivery systems fulfill an obligation to the public trust and follow these basic tenants:

- Provide the best product for the least expense to the taxpayers.
- Establish a single point of management and financial responsibility to the owner.
- Mandate open and objective selection procedures.
- Bar political influence in the selection process.
- Safeguard the public in public contracting integrity.
- Base selection upon original proposals.
- Design responsibility remains the charge of the design professional.

PROJECT DELIVERY SYSTEMS FOR DESIGN-BUILD AND CONSTRUCTION MANAGEMENT AT RISK PROJECTS IN THE PUBLIC SECTOR

MBI POSITION: MBI membership maintains the belief that the lump-sum competitive bid method of procuring construction work serves the public sector well, and remains the recommended method of procurement and delivery approach for all well defined projects. However, MBI also recognizes that certain projects, because of size, complexity and schedule requirements may be constructed with higher degree of efficiency utilizing a design-build or construction management at risk process.

An exemption from Iowa's competitive bid laws may be allowed, on a project-by-project basis only. In addition, only Iowa Board of Regents and Iowa Department of Administrative Services' projects in excess of \$10 million are eligible to qualify for this one-time exemption. All other public-building projects will be subject to the traditional competitive bid laws.

In addition to this threshold, the following shall apply:

- A separate commission shall be created to review all projects that meet the specified requirements, as defined above, to be eligible for design-build consideration. This commission will determine if the requests are valid, serve the public trust and provide the best product and value for the taxpayer. The commission's basic structure shall include the following:
 - Comprised of seven members nominated by the Governor and confirmed by the Senate.
 - In order to maintain the integrity of an open and fair competitive selection process, **it is critical that the representatives referred to the commission by the industry maintain majority rule.**
Therefore, the commission shall include:
 - Director of Administrative Services or Board of Regents representative for respective projects from each department
 - Auditor of the State of Iowa or a designated representative from the Office
 - 2 members referred by the Master Builders of Iowa
 - 2 members referred by the AIA and/or a consulting engineer
 - 2 at-large members
 - Terms would be three-years in duration and staggered.
 - The commission shall elect the chairman and co-chairman from amongst its members.
 - The commission will receive no salary, but will be paid a per-diem and all expensed reimbursed.
 - Meetings will be open to the public, with meeting frequency directly proportional to the number of projects submitted for approval.
 - All projects shall be addressed by the commission and its authority cannot be waived in any instance.
- The commission will be required to assure that the competitive selection process is determined to be fair, open to the public, free of political influence and most importantly, objective.

To best facilitate the input of the commission, all of its recommendations

to grant an exemption from competitive bidding laws for a design-build or construction management at risk project, must be completed prior to the Iowa Board of Regents and the Iowa Department of Administrative Services' final submission of a public-construction project request to the Executive Branch for its consideration, and the Legislature's subsequent final appropriation action. Such actions will:

1. Ensure the decision to grant a project-by-project exemption from all competitive bidding laws has been thoroughly reviewed and not entered into without full consideration by the commission.
2. Ensure that the decision to enter into a design-build process for each Iowa Board of Regents and Iowa General Service Agency project in excess of \$10 million, is judged by the commission in a competitive selection process that is determined to be fair, open to the public, free of political influence and most importantly, objective.
3. Provides the Executive Branch, the Legislature and the public the confidence that in each project-by-project case, the exemption from competitive bidding laws is in the best interest of the public owner, the construction industry and most importantly, the Iowa taxpayer.

PUBLIC-SECTOR SELECTION PROCESS FOR CONSTRUCTION MANAGEMENT

MBI POSITION: MBI has determined in the interest of the public owner and to a certain degree, the industry, that it is important to create a public competitive selection process for Construction Management Services. MBI's policy as it pertains to the selection process and selection criteria for Construction Management Services shall be as follows:

- A Construction Manager shall be any person, firm or entity capable of providing responsible Construction Management Services.
- The public-owner shall solicit Construction Management Services when such services are deemed necessary.
- Providers of Construction Management Services will be identified through an open and competitive RFP process.
- The public corporation will be required to engage in a competitive selection process determined to be fair, open to the public, free of political influence and most importantly, objective.

In addition:

- Construction Managers should not be allowed to self-perform construction work on the prospective project.
- Construction Management Services should be bonded for fees-for-service.

- Construction Management Services should be disallowed from providing guarantees, warranties, or otherwise assuming financial responsibility for work of others on the project; or provides the public owner with a guaranteed maximum price for the work of others on a project.
- Notification requirements of request for proposals for Construction Management Services shall mirror that of Iowa's competitive bid statute.

PROMOTE QUALITY, SMART GROWTH POLICIES AND SUSTAINABLE BUILDING PRACTICES

CONSTRUCTION MATERIALS RECYCLING AND REUSE

MBI POSITION: The construction industry as a whole recycles more material than any other industry and MBI encourages members' efforts to recycle construction and demolition debris. MBI supports the reuse of materials in construction only where those materials have known and reliable performance thresholds. Also, MBI realized that in order for contractors' recycling and reuse efforts to be effective, the infrastructure and market to recycle and reuse debris must be in place.

HOW IT AFFECTS YOUR BUSINESS: Recycling and reuse is becoming more prevalent in the industry and as technologies advance, so will the acceptance and utilization of recycled materials and equipment. When feasible, expanding the use of recycled products can match environmental awareness with profitability.

GREEN / SUSTAINABLE BUILDING

MBI POSITION: MBI supports sustainable construction practices that optimize building performance and provide measurable, tangible results. In setting sustainable building goals in the public sector, the state of Iowa should not endorse one specific certification standard. Doing so only inhibits competition, creativeness and ingenuity. MBI supports a collaborative effort between the public owner, designers and contractor to determine the appropriate balance between project goals and affordability. Realizing that each project is different, the state of Iowa should encourage the development of sustainability practices in the public sector that are the best fit for owners; specific geographic locations; the people who utilize our structures; the builders; and most importantly... Iowa's taxpayers.

HOW IT AFFECTS YOUR BUSINESS: As owners' needs change and

desire more sustainable structures, contractors should become more adapt to the various sustainable building processes and utilization of new products.

PROTECT CONSTITUTIONAL RIGHTS OF PRIVATE PROPERTY OWNERS

MBI POSITION: Private property owners are capable of developing land while simultaneously protecting sensitive environmental areas without government interference. We promote that all parties engaged in development and construction services need to be environmentally responsible and good stewards of land. We vigorously stand by and support private property protection as guaranteed by the Constitution. Where a government taking has occurred, the property owner should be fully compensated in a timely manner.

HOW IT AFFECTS YOUR BUSINESS: Government regulations are often used to prevent construction projects from going forward. These actions diminish property values and deny property owners use of their land. If the government subsequently acquires the land, there is no guarantee that the government is fully capable of properly managing the land. Recent government policy undermines the concept of multi-use land management.

STATE AND LOCAL GROWTH POLICIES/ THE ENVIRONMENT

MBI POSITION: State and local governments should be the arbiters of growth policy, not the federal government.

HOW IT AFFECTS YOUR BUSINESS: Many cities are being challenged by issues surrounding growth in their communities. Some environmental activists are seeking a moratorium on growth by stopping highway projects, preventing the building of new housing developments, and implementing growth boundaries. These solutions do not improve the environment of our state's quality of life. Communities should look for quality growth that includes planning for new housing and redeveloping older areas to accommodate the population. In addition, state and local governments need to provide the infrastructure such as adequate safe roads and water and wastewater infrastructure to support the population.

Instituting quality growth needs to recognize the following principles:

- Citizens are and should remain free to choose where they live and how they travel, and public policies related to future growth should not limit those choices.
- Economic development and population growth confer benefits on communities if the challenges associated with them are

properly managed.

- Citizens should have an opportunity to participate in decisions affecting future growth in their communities.
- Infrastructure investments should reflect public sentiment and needs.
- As our state continues to grow, environmental improvement and economic development should complement each other to produce healthy, vibrant communities.

Anti-growth activists state that sprawl compromises our pristine environment and should be prevented. Common sense dictates that growth is going to occur. Indeed, the economic vitality and development of our state's economy depends on it. Adequately planning for and managing growth will ensure protection of sensitive environmental areas and improvement of the built environment.

STORM WATER DISCHARGE MANAGEMENT

MBI POSITION: Compliance with local erosion and sediment control laws should satisfy federal National Pollutant Discharge Elimination System (NPDES) permitting requirements and local jurisdictions should not adopt ordinances that go above and beyond NPDES permitting requirements. Federal enforcement of state or local storm water programs should be limited to the terms and conditions of the governing permit and regulations. Storm water management policies should be based on best management practices and not any specific effluent guidelines or other numeric standard.

HOW IT AFFECTS YOUR BUSINESS: Storm water discharge guidelines set the parameters for which those public entities fall under and going above and beyond those parameters only makes compliance more complicated, especially when each regulated community decides to adopt their own non-uniform requirements.

TAXATION

BOND REFERENDUM REFORM

MBI POSITION: Current Iowa law requires a 60% voter approval threshold to approve bonds for vertical infrastructure repair, renovation and replacement projects. This archaic (only seven states maintain super majority thresholds to pass bond referendums) and unfair law creates a situation where "one person does not equal one vote." It also hinders the ability of a majority of local residents to decide their own destiny. Therefore, MBI strongly supports legislation whereby a simple majority of

voters can vote to approve infrastructure related bond issues.

HOW IT AFFECTS YOUR BUSINESS: As mentioned before, well maintained public buildings are good for economic development and growth. The construction industry thrives on growth and viable public construction produces good jobs for Iowa workers.

GREEN BONDS

MBI POSITION: MBI supports tax-exempt financing for green construction projects. Green bonds make it easier for construction project owners to offset the costs of site remediation, sustainable design features and environmentally-friendly technologies or products.

HOW IT AFFECTS YOUR BUSINESS: Making financing options for sustainable building more affordable will help move the “green” construction industry forward. There are additional initial costs associated with sustainable building that will hamper the current growth of the sector. Providing tax incentives now will help make sustainable building price competitive now, which leads to greater market acceptance later.

PROPERTY TAX LIMITATIONS

MBI POSITION: There have been renewed efforts to further limit the growth of property taxes, and tax levies, in Iowa. Past efforts have reportedly had a chilling effect on economic development efforts in several Iowa cities and towns. MBI opposes efforts to put any more limitations on property taxes, or tax levies in Iowa.

HOW IT AFFECTS YOUR BUSINESS: In most instances, property tax limitations will impact the ability of a public owner to finance necessary projects.

STORM WATER UTILITY TAX DIVERSIONS

MBI POSITION: A few years ago the Iowa General Assembly gave municipalities the ability to assess a storm water utility tax on property owners. The proceeds of this tax were to be used for maintenance and construction of storm water utility facilities, not for employee costs. The MBI opposes efforts to divert storm water utility tax revenues for personnel expenditures.

HOW IT AFFECTS YOUR BUSINESS: MBI opposes diversions from construction dedicated tax revenues for purposes other than those for which the funds are intended.

TAX LEVY FOR PUBLIC HOSPITAL IMPROVEMENTS

MBI POSITION: The renovation, repair and construction of public hospitals that serve those who have no alternative for medical care has been neglected for many years. MBI supports an increase in the maximum property tax levy for the county hospital fund in counties having a population of 225,000 or more from \$1.75 per \$1,000 of assessed valuation to \$2.05 per \$1,000 of assessed valuation.

HOW IT AFFECTS YOUR BUSINESS: Well maintained public health buildings are beneficial to the well-being of Iowans and our communities. Likewise, Iowa's construction industry is ready and able to help develop and maintain Iowa's health infrastructure needs.



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