



IRRESPONSIBILITY OF RESPONSIBLE CONTRACTOR ORDINANCES

BACKGROUND:

Pennsylvania has witnessed school districts, municipalities and counties adopt what are known as Responsible Contractor Ordinances (RCOs) along with a proposed 2023 state legislative bill. These ordinances are purportedly a way to hold construction contractors accountable so that public projects and workers are safe. While safety and responsibility are concepts that both non-union and union organizations can agree to support, the policy itself does not meet expectations and often produces unintended consequences.

Unfortunately, RCOs simply do not have an established history of success and are adopted through anecdotal examples or through flawed application and spurious conclusions of academic papers frequently funded by union organizations. Roughly 34 RCOs have been adopted at the county, school or municipal level since 2006. Of those, 11 had to be amended to address failures in implementation, 2 had to be repealed because of too few bids and being over budget and another 2 are seeking waivers or other means to circumvent the RCO. Any RCO in Pennsylvania can affect millions of dollars and a considerable number of construction jobs. There should be more data available before creating severely new policies and laws.

CURRENT CHALLENGE:

Proponents frame RCOs as setting qualifications and performance standards that bidders must meet to perform public projects safely. In practice, the language of the ordinance sets a number of requirements unrelated to safety that will either prevent or deter any merit shops/non-union contractors from bidding on the project. These standards often include specifying the number of workers that must have completed or are enrolled in a registered apprenticeship program – barring or extremely limiting workers that have experience or any other educational background than the apprenticeship program stated in the RCO. This also compounds an existing problem in Pennsylvania that limits how many apprentices can even be hired due to apprenticeship ratios (see other policy brief on registered apprenticeship ratios). These ordinances more commonly include a local Prevailing Wage that exceeds Pennsylvania's Prevailing Wage Law and applies it towards all suppliers of materials—a policy that the state of New Jersey failed to defend in the 3rd federal circuit court.

RCOs apply to the prime contractor and any subcontractors. The responsibility for enforcing and ensuring that a subcontractor meets the requirements in the RCO varies by local jurisdiction and is very inconsistent. Few, if any, local jurisdictions adopting an RCO can document how those contractors comply with the law on a daily basis let alone show how they made the workplace safer.

SOLUTION:

Any government entity with concerns about safety, quality or improving any processes should engage with all those in the contracting community which includes union and non-union companies. Such a policy conversation should include objective data points to identify any problems and measure how any outcomes can be successful – safety and transparency in best practice for everyone involved should be the ultimate goal.

There should be limited variations in policy from locality to locality. Most of the “responsibility” language in RCOs is already in current law and practice with the exception of the Prevailing Wage expansion and percentage of apprentices in the workforce. Neither of these objectives can create a safer work site and should

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not be included in any procurement as they are also discriminatory to workers that do not have access to apprenticeships and are incredibly inefficient to implement.

Furthermore, few if any RCOs have been enacted by responsible, transparent government entities. ABC Keystone alone has identified several localities that cannot provide the supposedly required documentation of how many apprentices worked on a project at any given time. Those same localities also are challenged to share bidding documents (legally required under Freedom of Information Act and Right to Know) but will acknowledge receiving too few bids or excessive costs after the fact.

RCOs need to be shelved. Instead, pull all union and non-union stakeholders together on a local level to understand best practices if better and safer quality is the goal for construction bids.



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