

Responsible Bidder Ordinances are Protection Plans for Taxpayers, Providing the Highest Value at the Lowest Cost



Frank Manzo IV, MPP; Policy Director of the Midwest Economic Policy Institute

May 10, 2017

POLICY MEMO

A Responsible Bidder Ordinance (RBO) is a policy that sets minimal requirements for all contractors bidding on publicly-funded projects in a given political jurisdiction. Typically, these requirements include proof of participation in an apprenticeship training program, proof of certificates of insurance, prequalification surveys, and compliance with all local, state, and federal laws. RBOs are a qualifications-based approach to construction contracting for public entities. The policies are a kind of “insurance policy” for taxpayers. The local ordinances establish clear, objective standards that contractors must meet in order to win bids and construct projects funded using taxpayer dollars.

In a true free-market setting, project owners could choose from *any* bidding procedure, from absolute low bids with fixed specifications to design-build, negotiated price, and time-and-materials procedures. However, nearly all governments accept the lowest bidder based on “hard” low bids. This type of public procurement puts downward pressure on contractors to reduce quality, cut wages, and avoid contributing to employee health insurance plans, among other items. Reputation, past performance, workforce quality, and even final costs are not emphasized in the low bid model. As a result, this race-to-the-bottom process tends to result in imperfect design plans, cost overruns, change orders, added safety risks, and low-quality infrastructure.

A Responsible Bidder Ordinance is an acknowledgement that governments should consider *benefits* in addition to costs. RBOs protect taxpayers by setting minimum standards, ensuring that cheating contractors do not win bids, and awarding projects to the lowest responsible and responsive bidder. It is a qualifications-based approach that works within the low-bid system to provide the highest possible quality at the lowest possible cost. Thus, the purpose of the over-200 Responsible Bidder Ordinances across the United States is to ensure that local governments hire only professional, competent contractors that provide the highest-quality work to complete taxpayer-funded projects safely, on time, and on budget.

The most authoritative research on RBOs comes from school districts in Ohio. A peer-reviewed, academic study investigated the bid costs of over 300 elementary schools from 1997 to 2008 and found that responsible contracting policies “exert no discernible statistical impact on construction bid costs” after controlling for geographic location. Thus, there is no evidence that RBO provisions raise construction costs. The study provides evidence that adopting RBOs “may be an effective way to improve employment conditions and living standards of construction workers without significantly raising costs for taxpayers” ([Waddoups & May, 2014](#)).

RBOs ensure that reputable contractors with proven track records complete jobs efficiently and within budget—without the need for additional re-construction later on. Contractors with workplace law violations are more than five times as likely to have a low performance rating as contractors with a clean record of workplace law compliance ([Adler, 2003](#)). A low performance rating indicates that a contractor is costly to a city. By weeding out cut-rate contractors, RBOs encourage successful project delivery and ensure that taxpayers get the quality they pay for. In fact, case studies from across the country have found that RBOs promote higher quality and more reliable services, increased competition among responsible contractors, and reduced back-end reconstruction and litigation costs ([Sonn & Gebreselassie, 2010](#)). In addition, evidence suggests that 98% of construction owners using qualifications-based procurement models—like those in RBOs—report to being satisfied with project quality ([Kashiwagi et al., 2005](#)).

Responsible Bidder Ordinances ultimately drive economic development. RBOs increase the likelihood that local contractors will win bids, keeping tax dollars in the community and supporting the local economy through increased consumer demand. RBOs also ensure that infrastructure projects are completed right, on-time, the first time at high levels of quality. High-quality infrastructure ensures that schools are safe, bridges are durable, and transportation systems are able to efficiently transport goods and people to the global marketplace. Responsible Bidder Ordinances are the best value for taxpayers.

Annotated Sources

C. Jeffrey Waddoups and David May. (April 2014). [“Do Responsible Contractor Policies Increase Construction Bid Costs?”](#) *Industrial Relations*, 53(2). Affiliations: Department of Economics, University of Nevada, Las Vegas; Department of Safety and Occupational Health Applied Sciences, Keene State College.

SUMMARY: Beginning in 2000, some school districts in Ohio required contractors to incorporate health insurance coverage, among other items, into their bids in responsible contractor policies (RCPs). The authors estimate construction bid costs using data on elementary school projects bid in Ohio from 1997 to 2008, some of which were covered by an RCP and others of which were not. The study includes 63 elementary schools covered by an RCP and 256 schools not covered by an RCP and used bid cost information from Dodge Reports by McGraw-Hill Construction & Analytics Corporation. RCPs have no statistical impact on construction bid costs, once geographic location (i.e., cost-of-living) is accounted for. The policies do not raise construction costs.

Paul Sonn and Tsedeye Gebreselassie. (September 2010). [“The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services.”](#) *Berkeley Journal of Employment & Labor Law*, 31(2). Affiliation: National Employment Law Project.

SUMMARY: Using case studies from across the country, the authors find that the advantages of responsibility standards include higher quality and more reliable services, increased competition among responsible contractors, reduce project delays and cost overruns, reduced monitoring and litigation costs, and better jobs for workers.

Marcos Feldman. (August 2006). [“Best Value in Publicly Funded Projects: Contractor Selection in Two GOB Projects.”](#) Affiliation: Research Institute on Social and Economic Policy at Florida International University.

SUMMARY: Construction delays, cost overruns, high injury rates, and poor quality infrastructure are largely the result of low-bid contracting because initial “savings” from price-based competition are erased over the long-term by additional costs from inferior performance. Using new school construction projects in Miami as examples, the author details how the low-bid model has flawed assumptions, encourages cost-cutting, and fails to filter out unscrupulous contractors.

Dean Kashiwagi, John Savicky, Kenneth Sullivan, Jacob Kovel, David Greenwood, and Charles Egbu. (2005). [“Is Performance-Based Procurement a Solution to Construction Performance?”](#) Affiliations: Arizona State University; Central Connecticut State University; Northumbria University; Glasgow Caledonian University.

SUMMARY: The price-based, low-bid procurement model may be the primary cause of construction nonperformance. In both the United States and the United Kingdom, only 60-70% of construction owners are satisfied with their construction performance. In the United States, 33% of projects end over budget. In the United Kingdom, only 62% of projects are completed on time. Best-value contracting is a solution to these problems. There is no evidence that the first cost of performance-based awards is more expensive than the costs of the low-bid award, and 98% of construction owners using performance-based awards report to being satisfied.

Moshe Adler. (May 2003). [“Prequalification of Contractors: The Importance of Responsible Contracting on Public Works Projects.”](#) Affiliation: Fiscal Policy Institute.

SUMMARY: Contractors with workplace law violations were more than five times as likely to have a low performance rating as contractors with clean record of workplace law compliance. Conversely, the New York City Mayor’s Office of Contract Services rated 89.4% of projects completed by 19 contractors with no labor law violations as “excellent” or “satisfactory” (high performance rating) compared to just 46.0% of projects completed by 11 contractors with labor law violations.