

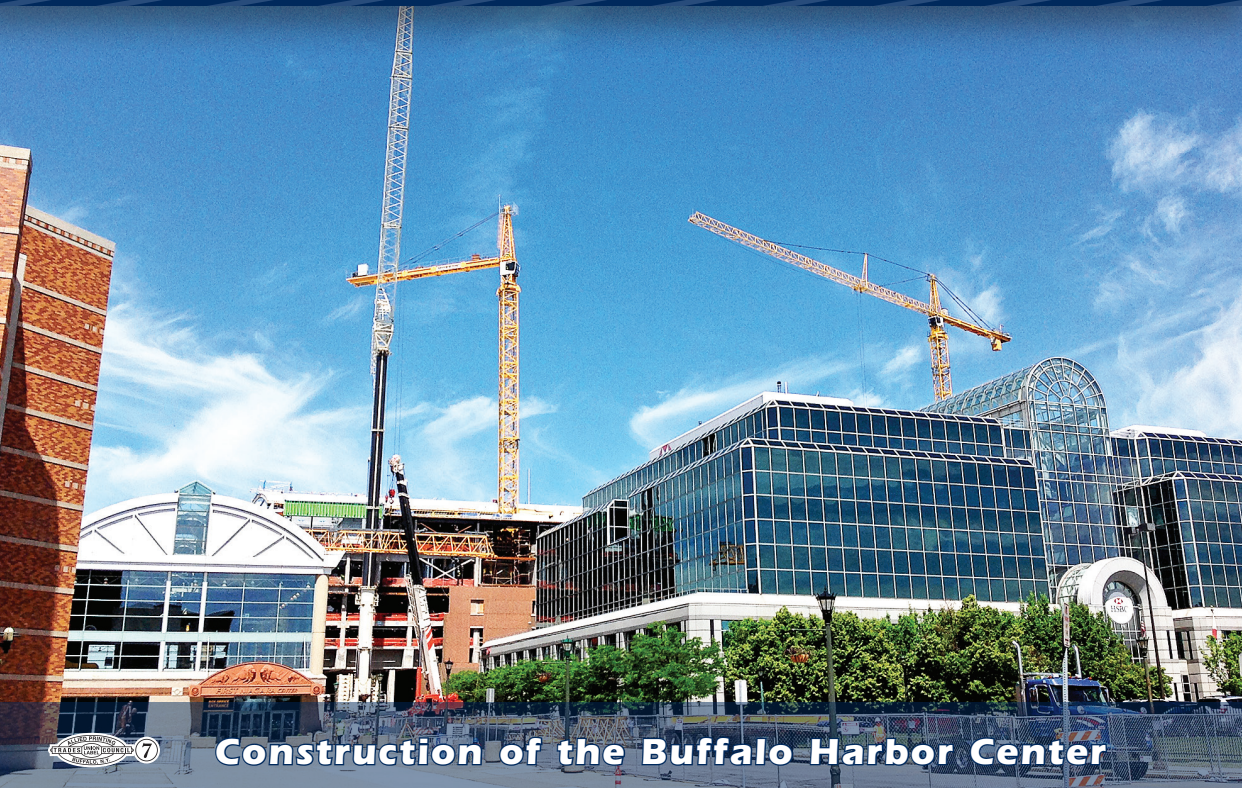


NEW YORK FOUNDATION FOR FAIR CONTRACTING

WINTER 2015 NEWSLETTER

Ph: (716) 627-4383 ■ Email: info@nyfaircontracting.org

Check out our website: www.nyfaircontracting.org



Construction of the Buffalo Harbor Center

RESPONSIBLE BIDDER LAWS: A WINNING PROPOSITION

New York has been competitively bidding public works projects since 1953 when General Municipal Law §103, was first enacted. The purpose of the law is to avoid fraud, corruption and favoritism in the competitive bidding process while ensuring best value for the taxpayer.

Under General Municipal Law §103, public owners are required to select the “lowest *responsible* bidder,” and not just the least expensive bid. Lawmakers determined that public owners should have discretion to evaluate the responsibility factors of a contractor prior to entrusting that contractor with public dollars to perform public work. Unfortunately, however, the law does not define “responsible,” leaving it up

to the public owner to define the term, or, as often happens, bypass the law’s requirements entirely and simply award to the low bidder.

The NY advocates for Responsible Bidder Laws (“RBLs”), which help define the term “responsible” and provide criteria for evaluating bids. A RBL provides disclosure to the public owner about a contractor’s past performance, financial stability, workplace safety record, and history of labor law violations. An RBL can also include a system of credits to assist local contractors obtain public work. For more information on RBLs, please visit our website or give us a call.

OPEN BOOK NEW YORK

Want to know what contractors are obtaining State work in your area? The New York State Comptroller can help. Open Book New York is a website hosted by the Comptroller which provides information on active

construction contracts. The website provides the dollar value of the contract, the name of the contractor awarded the work, and how much has been paid to date. You can search by awarding agency or contractor name. Check it out at www.openbooknewyork.com.



ANNA FALICOV
General Counsel, NYFFC

The Foundation for Fair Contracting goes State-wide!

Earlier this year, we changed our name from the “Western New York Foundation for Fair Contracting” to the “New York State Foundation for Fair Contracting” to reflect our recent state-wide expansion. Although still based in Western New York, our new reach

will enable us to monitor more public works projects, educate more public owners and act as a resource for more individuals with questions about their rights and responsibilities in public works construction.

As always, we are here to assist you with any questions or concerns. Thank you for assisting us in accomplishing our goal of “leveling the playing field” in public works construction!

CONSTRUCTION FAIR PLAY ACT

Some contractors will do whatever it takes to save a buck at the expense of workers and the taxpayer. Employee misclassification is one common scheme: misclassify employees as “independent contractors” and avoid payroll taxes, workers’ compensation insurance, unemployment insurance and other liability. Workers are left unprotected and the State is jilted out of taxes due. The problem of misclassification is particularly acute in the construction industry, where seasonal and temporary employment makes it easier for employers to cheat. Recognizing the problem, New York State passed the Construction Fair Play Act in 2010 which strengthens enforcement and provides greater penalties for violators. Public owners charged with reviewing certified payroll records should keep an eye out for misclassification and report suspicious employer practices to the Department of Labor’s Bureau of Public Work.

dollars circulating in local communities. In economically depressed areas, these dollars are crucial to sustaining working families, local retail establishments and suppliers. For more information, visit www.nyfaircontracting.org.

Legal Corner: Civil Penalties for Late Filing of Certified Payroll

Did you know that contractors can face up to \$1,000 civil penalty a day for willfully failing to submit payroll on time? Labor Law 220 3-a.(iii) requires contractors and subcontractors to submit certified payroll every 30 days not only as a condition of payment on the contract, but also to avoid a heavy civil penalty.

Clean Water, Here We Come

The Western New York region is facing a water quality crisis, with billions of gallons of untreated sewage pouring into the Niagara River and its tributaries every year. These outfalls are in violation of environmental laws, and negatively impact the quality of life for all. The problem rests with our antiquated combined sewer system which results in sewage overflows after rain.

New York State should prioritize water infrastructure projects. The Environmental Bond Act, which is likely to be introduced in 2015, is one smart way to finance this work and is well worth the expense. Not only will these projects create hundreds of good paying jobs, remediate the environment, and leverage local dollars, they’ll set the foundation for sustainable economic development on the region’s waterfront.

A \$5B Question: How Should NY Spend Its Surplus?

Thanks to a multitude of civil and criminal settlements with banks, New York has a multibillion-dollar windfall to spend. A new coalition of citizens, contractors, unions and elected officials called *ReBuild NY Now* is calling on Albany to use the State’s surplus to repair New York’s crumbling infrastructure.

Replacing decaying infrastructure is a pay-now-or-pay-more-later proposition. Delay only makes repair more expensive and pushes the costs to future generations. Investing the surplus in infrastructure also creates good paying jobs, fuels economic growth, increases safety and ensures long term economic growth.

To learn more about ReBuild NY, visit their website www.rebuildnynow.org.

Prevailing Wage Laws: Generating Wealth in the Local Economy

Several new studies confirm that prevailing wage laws promote the hiring of local workers and keep millions of

SAVE THE DATE: The NYFFC is hosting a Seminar entitled “Public Works Contracting: What you need to know” on Wednesday March 11, 11 a.m. – 2 p.m. Lunch provided. For more information visit our website or call **716 627-4383**.



NYFFC

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