

The Responsible Contractor Ordinance (RCO)

Responsible Contractor Ordinances (RCO), sometimes called Bidder Ordinances, are sweeping across the United States, particularly in communities where state prevailing wage laws don't exist or don't apply. In this issue, Operation Wildfire reviews the RCO.

What is a Responsible Contractor Ordinance?¹

In Centre County, PA, the recently implemented RCO requires that 70% of the craft labor workforce on County projects “over \$250,000 be certified journeypersons, workers who have completed a state- or federally-approved apprenticeship training or those currently enrolled in such an apprenticeship program,” per a StateCollege.com report. The RCO outlines procedures for solicitation and award of some public construction contracts, provides certification requirements for public contractors and subcontractors, procedures for public contract review and assurance that such projects will use properly trained construction personnel.

How is “responsible” defined?

The RCO requires County public works contracts to be performed by contractors and subcontractors that meet criteria such as:

- Satisfactory records of past performances;
- Adequate present performance capabilities, including competency;
- Availability of skilled craft personnel;
- All craft employees on the project are paid the prevailing wage, at minimum;
- At least 70% of the craft labor workforce employed on the project be either a journeyperson – workers who have completed an apprenticeship training program registered with/approved by the federal Department of Labor or state apprenticeship agency – or registered apprentices enrolled in such programs.

Why do people support the RCO?²

John Franek, Centre County Administrator previously told the *Centre Daily Times* the goals of RCO include:

- Informing the County of any potential bidder non-performance issues;
- Encouraging/promoting worker safety and safety training;
- Ensuring quality County projects through recognized training/apprenticeship programs;
- Promoting workforce development and employment of workers within Centre County and Pennsylvania;
- Providing opportunities for smaller contractors to compete for work on County projects costing under \$250,000; and,
- Creating potential cost-savings to the County and County taxpayers.

Why do people oppose the RCO?³

Critics of the RCO believe the Ordinance:

- Discriminates against many County contractors by limiting their ability to bid on jobs due to lack of required journeypersons on payroll and/or employees participating in Department of Labor apprenticeship programs;
- Limits competition, creating an uneven and unfair playing field;
- Establishes an unattainable 70% workforce threshold for many County contractors;
- Lacks clarity and transparency on a number of issues, including the workforce requirement and lack of definitions in the Ordinance;
- Removes the Experience Modification Rate⁴ and, therefore, lacks any measurement status; and,
- Provides the potential to increase County taxes.

¹ The Associated Press, AP.com

² Ibid

³ Ibid

⁴ RCOs enhanced bidding requirements mandate that bidders demonstrate a good track record for safety. A bidder's Experience Modification Rating (EMR) is a ratio that compares a bidder's workers' compensation insurance claims history and those of their particular trade using several years of experience. An EMR of 1.0 indicates an average loss experience relative to the industry, while an EMR greater than 1.0 indicates the employer has a higher-than-average loss experience. An RCP, for example, may designate that an EMR greater than 1.5 would cause a contractor to be ineligible to bid for a project. faircontracting.org/wp-content/uploads/2014/08/WaddoupsMayResponsibleContractorPolicies2014.pdf

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What does the RCO say about unions?⁵

The Ordinance doesn't specifically mention unions, though union leaders support the RCO. In fact, many of those who spoke at the June 27, 2023 Centre County Board of Commissioners Meeting in support of the Ordinance were union representatives from across Pennsylvania.

Many times apprenticeship programs are union, and that raised concerns by some Centre County residents about recent campaign donations that Commissioners Higgins and Concepcion received prior to the RCO vote on June 27, 2023. The period covered by the report below is January 1, 2023 through June 5, 2023.⁶ Draw your own conclusions.

Commission Chair Mark Higgins

\$3,000	Local 0066 PAC Club
\$3,000	Local 0520 Plumbers/pipefitters PAC
\$2,500	Greater PA Carpenters PAC
\$2,000	International Brotherhood of Electrical Workers PAC
\$2,000	International Brotherhood of Electrical Workers PAC
\$2,000	International Brotherhood of Electrical Workers PAC
\$1,000	Cement Masons Local 526 PAC Fund
\$1,000	Cement Masons Local 526 PAC Fund
\$1,000	Cement Masons Local 526 PAC Fund
\$1,000	Sheet Metal Workers Local 19 PA and NJ
\$500	Asbestos Heat & Frost Insulators PAC
\$500	Local 005 Bricklayers & Allied Craftsman PAC
\$500	Local 005 Bricklayers & Allied Craftsman PA PAC
\$500	Local 5, International Brotherhood of Electric Workers PAC
\$500	Local 5, International Brotherhood of Electric Workers PAC
\$500	Local 5, International Brotherhood of Electric Workers PAC
\$500	Local 5, International Brotherhood of Electric Workers PAC
\$500	Teamsters Local 8 PAC

Commissioner Amber Concepcion

\$5,000	Greater PA Regional Council of Carpenters
\$3,000	Local Laborers 0066 PAC Club
\$2,000	International Brotherhood of Electrical Workers PAC
\$1,000	Central Pennsylvania Building and Construction Trades PAC
\$1,000	Local 5, International Brotherhood of Electrical Workers PAC
\$500	Asbestos Heat & Frost Insulators PAC
\$500	Local 0005 Bricklayers & Allied Craftsman PAC
\$500	Teamsters Local 8 PAC

Commissioners Higgins and Concepcion each received a \$230 donation from the Centre County Democratic Committee during this period. Commissioner Steve Dershem did not receive any union donations. He did receive a \$1,000 donation from Build PA PAC. Candidate Marie Librizzi did not receive any union donations; her reported donations are from private individuals.

The RCO passed on June 27, 2023, along party lines, two votes to one. County Commission Chair Mark Higgins (D) and Commissioner Amber Concepcion (D) voted for the Ordinance, while Commissioner Steve Dershem (R) voted against it.

What projects will be affected by the RCO?⁷

The RCO applies only to public works projects undertaken directly by the Centre County Government with a price tag of \$250,000 or more. This will not impact any private construction projects or public works projects done by another municipality.

What people are saying in opposition to the Ordinance⁸

"I want you to understand I would be vehemently opposed to this even if the tide were turned and it favored nonunion folks against the trade unions," Commissioner Steve Dershem said. "I want the fairest, straightest line we can between getting

⁵ The Associated Press, AP.com

⁶ TransparencyUSA, Report as of June 5, 2023

⁷ The Associated Press, AP.com

⁸ StateCollege.com, Centre County Commissioners Approve Controversial Responsible Contractor Ordinance in Split Vote, 9/10/2023

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a project started and its completion at an economical rate. I want everyone to be able to bid, to be able to think about ‘how can we be part of something going on in Centre County that will be positive for our community?’”

He said he believes the ordinance was “rushed” and seemed to change based on whims. “It stifles competition,” Dershem told the *Philipsburg Journal*. “A lot of local businesses, we’ve had great success with their services, and we’ve had no problem with them, so I’m looking at this saying – ‘What are we trying to solve here?’”

“...the RCO is “a very bad idea for us,” said Alison Kurtz, President of Ameron Construction Company Inc., as her company won’t qualify to bid on larger County projects, such as an upcoming \$30 million Centre Crest renovation project in Bellefonte. Kurtz told the *Philipsburg Journal*, “It’s going to create a monopoly situation, and all the workers who live and pay taxes in Centre County, their labor will flow out of our County. It will also reduce the number of bids the County can get – bidders will be so restricted.”

“What about the people who have worked for me that are 60 years old who have been running dozers their entire life, now they have to go back to an apprenticeship program? Their kids are 40 years old, trained by their fathers. We have this idea today that unless you have an apprenticeship program, you can’t run a safe company. I disagree with that and I think my employees will. (We need to) put more work into how we can include and not drive our local non-union men away from this community,” said Ed Maxwell, owner of Maxwell Trucking and Excavating.⁹

What people are saying in support of the Ordinance¹⁰

“As officials in a position of fiduciary trust for the county, we have a responsibility to do what we can to ensure that taxpayers are getting what they are paying for and that our workplaces are safe,” Commissioner Amber Concepcion said.

“At the end of the day this measure is about safety,” Brian Pomeroy, secretary-treasurer of the Central Pennsylvania Building and Construction Trades Council, said. “Every worker on every job site has the right to be safe, properly trained, respected and have the opportunity to go home at the end of the day to their family. You don’t have to be union; you just have to properly train your workforce. We all should want things done responsibly in Centre County and beyond.”

Connor Lewis, president of Seven Mountains AFL-CIO, said the ordinance also promotes fairness for workers. “We want decent treatment from our employers and we want to be paid a fair wage for a hard day’s work,” Lewis said.

Our Research

Operation Wildfire searched extensively for statistical data that supports the premises in support of and in opposition to the Responsible Contractor Ordinance. We were unable to locate sufficient, independent data for RCO success/failure throughout Pennsylvania.

Commissioner Concepcion said that the “Experience Modification Rating” (EMR) was removed from the RCO because “it can adversely affect smaller contractors for whom one incident has a much more detrimental impact on their rating than larger contractors.” Yet, local contractors appear to believe the EMR should be part of the RCO because it’s a “reliable measure of reportable incidents, accidents, workman’s comps claims and premiums.”¹¹

At no time during the Commissioners Meeting did anyone cite examples of indecent employer treatment, unfair salaries and/or lack of workplace safety measures. In addition, unless we missed it, there was no mention of lack of apprenticeship or other training programs in specific fields that would warrant implementation of an RCO.

Since passage, several people have asked how to repeal the RCO. Our Answer: Use your vote for Centre County Commissioner (you select two candidates) to show your support or opposition to the Responsible Contractor Ordinance.

Coming Next

We cover the November ballot, from statewide judicial races to school board.

⁹ The Express, Centre Adopts RCO, Public Turns Out for Comments, <https://www.lockhaven.com/news/local-news/2023/06/centre-adopts-rco-public-turns-out-for-comments/>, 9/10/2023

¹⁰ StateCollege.com, Centre County Commissioners Approve Controversial Responsible Contractor Ordinance in Split Vote, 9/10/2023

¹¹ Philipsburg Journal, June 23, 2023, Dershem Speaks in Opposition to Proposed Responsible Contractor Ordinance