Statement of

The Wisconsin Underground Contractors Association

to the

COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE

For a hearing on LRB08185-3, Community Benefits Ordinance

Monday March 2, 2009, Milwaukee City Hall



The Wisconsin Underground Contractors Association was formed in 1937. It represents about 150 member firms doing water, sewer, tunnel, utility construction and related services. Our member firms have worked for the city for decades.

The Wisconsin Underground Contractors Association is located at 2835 N. Mayfair Road, Suite 22, Milwaukee, WI 53222. Telephone 414/778-1050. Fax 414/778-0647, website www.wuca.org

Statement of Richard W. Wanta WUCA Executive Director March 2, 2009

WUCA appreciates the opportunity to share our thoughts relative to this proposed ordinance that among others things provides a bid preference of 5% for Local Business Enterprise (LBE), increases the residency requirement for public works construction from 25% to 40%, and increases the requirement for Emerging Business Enterprises (EBE) requirement from 18% to 25% of total dollars. In combination, we believe that these three components will discourage contractors from bidding water & sewer construction in the city of Milwaukee.

Representing only the water & sewer segment of the Milwaukee area construction industry, we wanted to make comments as it relates to this proposed ordinance.

Local Business Enterprise Preference

We are *opposed* to the idea for the following reasons:

1. The last time we looked in a Milwaukee telephone book, there was only one major sewer and water contractor domiciled in the city. That firm already gets a great deal of municipal work adding up to tens of thousands of dollars annually under the current competitive bid system of awarding the contract to the lowest responsible bidder. If you allow an additional 5% bid preference, you give an already successful Milwaukee water & sewer contractor a huge bid advantage that is unfair to the others that have consistently met your resident and EBE requirements for the past 10 years.

Plus what is in your proposed ordinance to stop the lone local preferred sole source contractor with all this extra work from becoming a broker and subbing the work to others? He could just sit there at his desk, do no actual construction, and have all the competition go through him for a Milwaukee water & sewer job. How is this in the best interest to the city? And what is the logic behind the bid preference as the preferred contractor has no financial reason to lower their bid?

2. This same city chased major water and sewer contractors out of the city decades ago because aldermen and their constituents did not want to look at our heavy construction equipment (back hoes, front end loaders), concrete pipe, pumps, other construction materials, and shop trailers stored every day in their neighborhoods. They did not want to hear all the noise of heavy equipment starting up at 6 a.m. in the morning, most every morning, to get the equipment to the various

jobsites or deal with all the dirt on neighborhood streets on a daily basis. The larger contractors need a minimum of 10 acres of land for their construction yard.

3. Also does the city recognize that the federal government will not allow you to use this new *federal stimulus money* for bid preferences? This stimulus money came from state and federal taxpayers. And this community is using low-interest federal money under the Clean Water Fund and Drinking Water Fund. We call your attention to U.S. Environmental Protection Agency regulations, Section 40, CFR 31.36, page 362 (vii) (2) that states in part..."prohibits the use of statutorily or administratively imposed State or Local geographic preferences in the evaluation of bids or proposals..."

Did the aldermen get a legal opinion on this section of the EPA bid regulation? This item alone would suggest that you defer this proposed ordinance back to the city attorney for review and additional comment.

We are of the opinion that Milwaukee cannot discriminate against other state contractors when they are helping to pay for your water & sewer projects. We see from the monthly Wisconsin DNR reports that Milwaukee is indeed using state and federal tax dollars on current municipal water & sewer work. Again, you cannot use a dime of this stimulus money to subsidize local domiciled contractors.

4. The industry profit margin is maybe 1% or 2%, too slim to allow anyone a 5% bid preference. It has been that way for many years due to a very competitive market place. Some contractors have no profit margin at all during these tough economic times in order to get a job just to keep their people employed. Over the past 18 months, you have seen 10 bidders on a water & sewer project in various municipalities resulting in great taxpayer savings. This proposed 5% bid preference would far exceed the profit margin on the vast majority of current city water & sewer jobs.

This is nothing but a windfall for the preferred contractor. A gravy train perhaps for the Milwaukee domiciled firm at higher cost to the taxpayer. This extraordinary special bid preference proposed significantly reduces municipal contracting opportunities for all area small businesses and creates an environment in which water & sewer contractors cannot compete on a level playing field in this community.

5. One gets the impression from reading this ordinance that suburban contractors should be punished and that a good punishment is a bid preference or advantage for Milwaukee domiciled firms. The city seems to forget that since passage of your original Ordinance 360 many years ago, water & sewer contractors have met or exceeded

your resident preference and EBE programs. Instead of praise, this proposed ordinance wants to chase contractors out of town. This is the same water & sewer contractor group that donated \$400,000 to area charities over 20 years to such charities as the Ronald McDonald House, Child Abuse Prevention Fund, and the Make-A-Wish Foundation. Just last year our industry segment donated over \$30,000 to the Wisconsin MAW Foundation for seriously ill children. No other industry segment has been more generous over the past 20 years to area charities in our effort to help area charities than WUCA member firms.

- 6. When government shows preference to local firms versus suburban, you walk a fine line. What will stop Wauwatosa, West Allis, Glendale, and others from doing the same thing with respect to contractor preference? Should this ordinance pass, other communities could and would pass reciprocal laws. Those suburban aldermen will say, Milwaukee if you discriminate against our people, we will discriminate against yours... by exactly the same bid-preference percentages.
- 7. We believe that this proposal will create more problems than it solves. The majority of contractors will not bid because they are at a disadvantage. The city runs the risk of losing great competitive prices during these slow times and the taxpayers will pay more for water & sewer construction. The lack of competition will financially hurt the city.

How can the city even afford a 5% bid preference? We thought that the city was strapped for cash. If you are paying more than needed for water & sewer construction due to a bid preference, there will be less money for street maintenance, police overtime pay, squad cars, and other items in this community.

Assume that the preference cost the city \$50,000 on one project. That \$50,000 could have purchased two squad cars. Now compound that on all water & sewer jobs awarded with a 5% bid preference and you are talking big money. Just losing one bidder on water & sewer work outweighs any savings with the 5% preference.

8. Also will you be changing the city charter to disregard the low responsive bidder? We believe that the charter currently requires award to the lowest responsible bidder. Your predecessors wrote that policy 100 years ago to avoid craft, corruption, or favoritism in the award of city contracts. If you are now going to show favoritism, you will need to change the city charter.

- 9. This ordinance gives the impression that only Milwaukee residents are unemployed. As of today, there are 1900 unemployed operating engineers throughout the state. There are numerous unemployed journey workers in all trades.
- 10. Does the city recognize that it cost a lot of money to put a bid together for the city? How long do you think contractors will spend their hard earned money bidding your work when someone else has a bid advantage? It may take awhile, but eventually no one will bid your water & sewer work.

The city should encourage competition...to save the taxpayers money. The whole concept of giving a bid preference is a *political* decision versus a practical one. This is truly anti-business and unfair!

- 11. With this proposed ordinance, Milwaukee will be *isolated* when preferential treatment is given to a few. You will be *discriminating* against businesses outside your borders. A bid preference is counter productive as it hurts the community rather the helping it. Milwaukee will get no where with this isolationist attitude.
 - 12. We believe that his proposed ordinance is an unconstitutional restraint of free trade. There is no inherent evil when a suburban or out of state contractor bids your work. The city cannot ignore the fact that over 10 years, our contractor members have had or added a great deal of Milwaukee residents to their payrolls. Consequently, there is no justification for this *remedial* legislation to create a bid preference for Milwaukee domiciled firms.

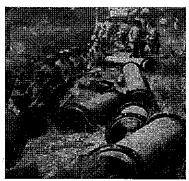
We ask that you delete the bid preference provision of this ordinance!

Resident Preference Program Quota Increase

A typical water & sewer crew is only five or six people (three or four laborers and two operating engineers). Current city of Milwaukee law requires 25% of work hours be done by unemployed Milwaukee residents now. That is two unemployed, *unskilled*, and *untrained* people on the 5 or 6-person crew. Under current law, we cannot add an additional person to a crew because our bid would be too high and we would lose the contract due to the higher price estimate. Currently there is no line item in the specifications for the additional crew member.

Your new residency proposal requires contractors to provide names, addresses, and gender information *before* commencing work. All this information must be notarized or employees must submit an affidavit. All these new paperwork requirements are required *before* starting a job.

This is not the 1940's when water & sewer contractors had 20 laborers on a job digging a trench with hand tools. Our small workforce is highly trained and skilled.



1940's construction

Years ago, water & sewer contractors raised safety concerns about the current ordinance because it required two unemployed residents be placed in a deep trench to lay water or sewer pipe with little or no formal training. Your current resident preference requirement puts more untrained and unskilled laborers at risk to their personal safety.

Imagine for a minute if it was you going from the safety of your environment into a deep trench with no skills or proper safety training. Water & sewer construction is very dangerous work. You have to fear a cave-in, methane gas, cars and buses near your work area that vibrate the ground. A water & sewer trench is no place for an unskilled or untrained resident. You saw on TV the other day the big sink hole on Locust Street due to a sewer collapse.



City of Milwaukee sink hole February 2009

Would you want to go from your home into that trench without proper safety training and work skills? We train our workforce at the established training schools in DeForest, Wisconsin and Coloma, Wisconsin. Locations were they cannot hurt themselves or others. We do not put new employees on heavy construction equipment in major intersections.

And don't think for a minute that we would use that unskilled and untrained resident or apprentice on a backhoe or front end loader in a major urban area. They could kill themselves, fellow workers, and the public. Imagine a project outside this city hall. Would you want an unskilled back hoe operator on that machine outside your window?

We believe that the city is already pushing the safety envelope with the current 25% resident requirement. We are of the opinion that you should not raise the resident preference proposal to 40% as water & sewer work is hazardous and dangerous. It would be a tragedy if even one worker afforded employment solely by reason of the residency requirement suffered serious injury or death on the job, which would reflect poorly on both the city and the contractor.

As in the past, we are on record warning the city about our safety concerns when using unemployed and unskilled workers in trenches while working in Milwaukee streets and intersections.

On this issue, we get no credit when we use our existing Milwaukee trained and skilled residents in area suburbs.

We ask that you do not increase the residency requirement.

If the city was serious about employing residents on public works, the city would create a *sustained* program of construction. It would include funding over 10 to 20 years to do partial combined sewer separation to get rain water out of the existing sanitary sewer system, repair and repave streets and alleys, landscaping, and curb and gutter work in the central city. Only then could we provide *long term* employment for central city residents with proper training opportunities of people for work in all area communities. The laborers and operating engineers union have excellent instructors and training facilities to make this all happen. Both training sites in partnership with the city and area water & sewer contractors could provide the skills needed for city residents to perform work. You can view the two schools on the Internet. We have a link to their websites on our website www.wuca.org

But to make this long-term employment opportunity happen, it would require a sustained, properly funded program of public works construction. Not the same miniscule DPW budget that we have seen these past 10 years in Milwaukee.

We asked Milwaukee Congresswoman Gwen Moore twice in the past year to seek a federal demonstration grant of maybe \$20 million for the central city but nothing came of our suggestion.

Emerging Business Enterprise Goal Increase

As stated, we have met or exceeded your EBE requirements for over 10 years since passage of Ordinance 360. Yet instead of praise, we get another increase in hiring more subcontractors. This proposed ordinance increases the requirement from 18% to 25% of total dollars spent on water & sewer construction. Well you have pushed too far with this new proposal for the following reason:

With the existing ordinance we already subcontract the trucking, materials, landscaping, fuel, barricades, temporary lighting, insurance, street reconstruction, and other activities to EBE firms. Now with an EBE increase you are really suggesting that the sub *do our work of digging the trench and placing the pipe*. Already under current law, we have nothing left to subcontract! We are not the building contractors who can hire multiple subcontractors to build a roof, hang windows, or lay carpet. We are digging trenches and laying water & sewer pipe! Are you suggesting that we hire subs to place a tent over the trench?

On a related topic, we note that there is no measure of success or failure of your existing EBE program as these firms never seem to graduate from their position. Who have you graduated out of the EBE program in the past 25 years? Some of these existing EBE firms have more annual receipts than the prime contractors.

The city never rewards majority firms consistent with their success over 10-years in hiring the firms you require. How do you pass remedial legislation against prime contractors when they met or exceeded your existing EBE goals?

How can you penalize us when area employers and their unions conduct annual career days to bring more people into the construction industry? These annual career days have been conducted over the past 20 years with the next one scheduled for March 24, 2009. Hundreds of students attend that annual event to bring young people in to the construction trades.



Career Day 2008

To date, the city is indifferent to our concerns. If we state that the EBE goals are too high and we fail to meet the numbers, our bid is not opened. There is no flexibility. The goal is a quota.

You do not publicly report your findings about the success of these past residency and EBE programs nor allow time for private industry to respond. Maybe twice in 20 years have we been invited to these committee meetings when this topic is discussed. This is no different today as the suggestion is that this committee vote and forward it Common Council tomorrow for a final vote. No due diligence, no time for all the aldermen to read it.

In summary, we are strongly opposed to a bid preference of any kind. We believe that the current residency ordinance is already unfair, and that we cannot do more in the EBE area as we have nothing more to subcontract. We ask that you vote no on this proposed ordinance.

Thank you for the opportunity to testify.

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Projects in Wisconsin

Below are the "shovel-ready" projects the mayors of this state submitted in the 2008 U.S. Conference of Mayors report. You can click on a project to read (and add to) its description. You can also discuss the project and vote on whether you believe it is crilical or not. For a more local view, you can drill down to projects in a particular city. Just choose a city from the following list.

The total of cost of all the projects submitted by Wisconsin is \$1,234,364,263

View a specific city in Wisconsin: Beloit • Cedarburg • Green Bay • Janesville • Madison • Milwaukee • New Berlin • Racine • Sheboygan • Superior • Waukesha

Description	City	State	Jobs	Cost	Program Type	
Purchase 5 additional electronic signs to provide real- time route and schedule information for customers at power equipped shelters on State Street, the Square and other locations.	Madison	wt	0	\$65,000	Transit	-44
Street Construction Increase construction to improve stree! condition based on audit of the residential street program.	Milwaukee	WI	0	\$41,600,000	Streets/Roads	35
Redevelopment of former Tower Automotive site Create business park at the site of the former Tower Automotive auto parts plant. Project includes demolition, environmental investigation and remediation, and design and installation of infrastructure (st	Milwaukee	WI	700	\$25,645,000	Streets/Roads	
Alleys Complete 100+ deferred alley construction and mainlenance projects.	Milwaukee	WI	0	\$15,000,000	Streets/Roads	-9
Bridges Maintenance on six vertical lift bridges.	Milwaukee	WI	0	\$13,090,000	Streets/Roads	19
Street Construction Complete 2003-2008 deferred street project list.	Milwaukee	WI	0	\$10,000,000	Streets/Roads	6
Street Lighting Replace series circultry to improve energy efficiency.	Milwaukee	WI	0	\$8,000,000	Streets/Roads	12
Street Maintenance Pavement Joint repair, asphalt sealing, asphalt overlay, pavement crackfilling and sidewalk improvement.	Mllwaukee	WI	30	\$5,000,000	Streets/Roads	22
Street Lighting Accelerate control circuitry replacement.	Milwaukee	WI	0	\$5,000,000	Streets/Roads	-4
140th Air Force Reserve Base redevelopment To accommodate redevelopment of the property previously occupied by the 440th Air Force Reserve Base, closed February 2, 2008 under the Base Realignment and Closure Act of 2005, provide funds to separate prope	Milwaukee	WI		\$4,000,000	Streets/Roads	-44
Grewery Project Build new street system to support he redevelopment of the former Pabst Brewery as nousing, office and retail uses. Streets are desligned to nocoporate bloswales and an innovative storm water nanagement system. First phase of street	Milwaukee	WI	1500	\$3,005,000	Streets/Roads	23
acility grounds Slope stabilization, regrading, idewalks, railings, lighting, road repair/replacement.	Milwaukee	WI	0	\$3,000,000	SIreets/Roads	-8
Street Construction Resurface deteriorating Port oads.	Milwaukee	WI	116	\$3,000,000	Streets/Roads	10
Bulldings Salt Dome at Ruby Garage.	Milwaukee	WI	0	\$1,200,000	Streets/Roads	-15
esidential redevelopment at 31st/Galena Remediate arcels and design and Install Infrastructure for esidential development.	Milwaukee	wı	0	\$550,000	Streets/Roads	-9
ewer Complete 76 sewer projects that reduce sewer verflow.	Mllwaukee	WI	37	\$31,430,000	Water	51
Sewer Complete sanitary sewer rehab, including aterals, for three systems as stipulated by DOJ.	Milwaukee	wı	27	\$23,000,000	Water	14
Vater Business Park Develop a 200-acre business ark and incubator space that serves the growing reshwater research and business sectors in metropolitan tilwaukee. Assemble and remediate land, design and nstall infrastructure. This project supports	Milwaukee	WI	150	\$15,000,000	Water	44
Freat Lakes Research Facility Provide Infrastructure nd facilities support for the recently created School of reshwater Science, the first and only of its kind in the I.S.	Milwaukee	WI	0	\$10,000,000	Water	36
usiness Expansion/Facility Relocation Relocate xisting solid waste transfer station and self-help expelling center at Green Tree and Industrial Road to ccommodate expansion of business.	Milwaukee	W1	500	\$7,000,000	Water	3
Vater Mains Twenty-eight water main replacement rojects, ranging from \$45,000 to \$3.3 million.	Milwaukee	WI	0	\$6,600,000	Water	12
reakwater Rehabilitate deteriorating Lake Michigan reakwater.	Milwaukee	W1	193	\$5,000,000	Water	16
torage Tank Menomonee water storage tanks emolition and decommissioning.	Milwaukee	WI	0	\$4,500,000	Water	-8
lajor Equipment Replace crawler crane to improve	Milwaukee	WI	278	\$4,10Ò,000	Waler	-3
xport capacity.				44 000 000	Malas	
	Milwaukee	WI	D ·	\$4,000,000	Waler	8
xport capacity. Itëring System Replace media fliters at Linnwood	Milwaukee Milwaukee	wi	D -	\$3,000,000	Water	2

all Water facilities. Linnwood Plant Linnwood water treatment plant	Milwaukee	WI	0	\$750,000	Water	-
fluoride chemical feeds system replacement. Verlous Infrastructure Terminal resurfacing, dock	Milwaukee	WI	45	\$685,000	Water	-
walls, ship aprons, dredging, phytoremediation area. Pipeline Reline the wash water tank pipeline at the	Nilwaukee	WI	0	\$500,000	Water	+
Linnwood Plant. Port Facilities Terminals, demolition of old facilities,	Milwaukee	WI	0	\$475,000	Water	+
tuck pointing. Bulldings New porous parking lots to reduce rain	Milwaukee	WI	0		Water	
runoff.	Milwaukee	Wi	0	\$325,000		
Water Meter Shop Replace acid cleaning area, valves, plping, test benches.		<u></u>		\$175,000	Water	_
Job Training - Dept. of Public Works Environmental Services in partnership with the Milwaukee Area Workforce Investment Board, Inc. and BIG STEP/Wisconsin Regional Training Partnership have developed the Urban Forestry Training Pilot Program - Connecting	Milwaukee	WI	80	\$2,000,000	COBG	
Customized and green collar job training in the 30th Street Industrial Corifdor Provide funds to corridor employers to provide skills-specific training to corridor residents for "traditional" corridor jobs. Oevelop job training program for residents !	Milwaukee	WI	0	\$750,000	COBG	
Bulldings Create three Regional Libraries (\$10 M each).	Milwaukee	WI	0	\$30,000,000	Energy	-:
Milwaukee Energy Efficiency (Me2) — Retrofit much of the clty's building stock by allowing property owners and renters to implement energy efficiency measures with immediate savings and no upfront costs. It saves customers money, helps reduce greenhouse	Milwaukee	WI	300	\$20,000,000	Energy	2
Street Lighting Energy Efficiency Retrofit 10% of existing city street lighting with emerging, energy reducing LEO technology.	Milwaukee	WI	0	\$14,000,000	Energy	
City Building Energy Efficiency Retrofit existing lighting, HVAC, windows, building systems, etc. that reduce energy consumption.	Milwaukee	WI	0	\$5,000,000	Energy	
Bulldings Central Library: Media/Technology Center.	Milwaukee	WI	0	\$2,600,000	Energy	_
Buildings New East 1 ibrary (joint use)	Milwaukee	MI	0	\$2,500,000	· Energy	
Buildings New Villard 1 lbrary (joint use)	Milwaukee	WI	0	\$2,500,000	Energy	3
Bulldings Forestry and Sanitation Lincoln Avenue facility.	Milwaukee	WI	0.	\$2,500,000	Energy	
Operating Systems RFID & Self-Check technology (partially funded in 2009 budget, total project cost \$3.5 million).	Milwaukee	WI	0	\$1,500,000	Energy	-
Buildings HVAC upgrades at two neighborhood libraries.	Milwaukee	WI	0	\$1,000,000	Energy	-
Buildings Install green roof on Central Library.	Milwaukee	WI	0	\$1,000,000	Energy	-1
Buildings Create three Express Center libraries. Urban agriculture project Acquire 3-story, 20,000-SF	Milwaukee Milwaukee	WI WI	0	\$1,000,000 \$772,000	Energy	-1
building and combine with adjacent City-owned 2-acre parcel to create a grower-to-market economic opportunity.	riiiwadkee	***	٠	\$772,000	Energy	1
Buildings Zablocki Library: replace HVAC, carpet, tile installation.	Milwaukee	WI	0	\$750,000	Energy	-:
Develop quality, affordable rental housing Revitalization of over 800 units of affordable housing for seniors, families, and disabled, including the acquisition and rehabilitation of foreclosed properties.	Milwaukee	WI	0	\$56,000,000	Hausing	-1
Security and Energy Provide contracting opportunities to address deferred maintenance needs, which would include painting, landscaping, modernization of elevators for seniors and disabled, enhanced security systems, etc.	Mijwaukee	WI	0	\$7,050,000	Housing	5
Conserve natural resources Replace 15% of our fleet with energy-efficient vehicles, which will also reduce ongoing operating costs. Install passive solar systems and green roofs on high-rises for the elderly and disabled.	Milwaukee	WI	0	\$5,400,000	Housing	
Lead Abatement Provide funding to abate lead in 1,000 housing units including related administrative and laboratory costs.	Milwaukee	WI	0	\$5,000,000	Housing	-1
Redevelopment of former T.C. Esser Paint factory site Remediate and redevelop abandoned, contaminated factory complex into housing.	Mllwaukee	WI	0	\$2,595,000	Housing	7
Riverwalks Finish court ordered ADA Improvement on riverwalks.	Milwaukee	WI	0	\$2,000,000	Housing	4
Employment and Training Provide critical employment and training opportunities for a minimum of 70 youth, young adults and dislocated workers.	Milwaukee	WI	70	\$1,550,000	Housing	7
Repair Shop Replace existing inadequate Fire equipment repair facility with new facility.	Milwaukee	wı	0	\$15,000,000	Public Safety	-2
Bulldings Replace hollow walk and foundation stablilzation/repair of City Hall.	Milwaukee	WI	0	\$11,700,000	Public Safety	1
Engine House Replacement Replace Fire Engine House #8 and #17.	Milwaukee	WI	0	\$8,400,000	Public Safety	3
Buildings City Hall Bth Floor City Attorney Offices	Mihvaukee	WI	0	\$5,700,000	Public Safety	-2
Police Administration Building Upgrade building	Milwaukee	wı	0	\$5,000,000	Public Safely	1