

RHODE ISLAND HEALTH AND EDUCATIONAL

BUILDING CORPORATION

REGULATORY ANALYSIS

Of the proposed

RESPONSIBLE CONTRACTOR REGULATION

Purpose

The purpose of this regulatory analysis is to determine whether the proposed Responsible Contractor Regulation meets the desired goals while minimizing compliance burdens.

The Problem

Responsible construction contractors (referred to herein as “Responsible Contractors”) doing work in Rhode Island assure that they and their employees have all required licenses, registrations and certificates required by federal, state, or local law to do business in Rhode Island and perform the contract work they engage in.

Unfortunately, not all who offer their services as contractors are responsible as described above. In Rhode Island alone, there are over 2200 contractors whose licenses have been suspended, revoked, or held invalid for reasons such as failure to register, negligence, inadequate insurance, or violations. (Data source: Contractors’ Registration and Licensing Board.) In a two-week period of 2015, not less than 13 contractors were caught for contracting without a valid registration or subcontracting to a person not validly registered. (Data source: National Association of State Contractors Licensing Agencies, News Release (July 1, 2015) <http://www.azroc.gov/rocnews/releases/NASCLA%20Press%20Release%20National%20Sting.pdf>)

The Goal

The goal of the Responsible Contractor Regulation is to permanently reduce the Corporation’s borrowers’ contracts with irresponsible contractors thereby increasing the probability that financed projects will be completed as scheduled, with better construction techniques, leading to superior constructed facilities and greater worker health and safety. RIHEBC finances projects, most of which involve construction. However, RIHEBC is never party to any of the construction contracts. Rather, it lends money to governmental and non-profit institutions who will use the resulting facilities. By requiring borrowers to use a clause requiring contractors to abide by all federal, state, and local laws applicable to carrying out the contract, the borrowers will be in a position to enforce the contractors’ legal obligations, thus discouraging the use of irresponsible contractors and encouraging responsible contractors to remain responsible.

Baseline

By statute, contractors are already required to meet various standards relating to registration, licensing, construction techniques, and worker employment. These standards are enforced by a variety of federal, state, and local agencies, such as the Occupational Health and Safety Administration, the Contractors' Registration and Licensing Board, and building inspectors.

We assume that the resources available to such enforcement agencies in the future will be neither greater nor less than their current resources, and consequently they will equally effective in enforcing the laws as the currently are.

Proposal

The proposed regulation would insert an additional person with enforcement authority by virtue of its contract with the person acting as contractor. Furthermore, that person (the borrower) would have that authority specifically with respect to the contracts to construct facilities financed by RIHEBC.

Borrowers that do not already use language satisfying the proposed regulation in their contracts for construction would probably incur modest legal fees to draft the necessary language. Once the language had been included in one contract, it could simply be brought forward into any subsequent contracts. Thus, the direct cost to borrowers would be a one-time cost of approximately \$100.

Borrowers might prefer in some instances to take a risk to save money by engaging known but irresponsible contractors. The proposed regulation does not prevent this for projects budgeted at \$5,000,000 or less.

Alternatives

RIHEBC had considered requiring that borrowers use only certified responsible contractors. This alternative would involve extensive scrutiny of contractors proposed to be used by borrowers. RIHEBC elected not to impose such a requirement, because it would (1) require additional RIHEBC staff, trained in the requirements contractors are required to meet and (2) limit borrowers' ability to choose their contractor to a pre-existing list or delay borrowers' entry into contracts until the contractors had been approved, which RIHEBC deemed as contrary to its mission of helping nonprofit organization's finance their facilities projects. Variations on this theme were also not pursued.

Stakeholders

RIHEBC has identified the following stakeholders:

RIHEBC

RIHEBC finances the construction and renovation of facilities for nonprofit and governmental organizations. While RIHEBC occasionally lends funds it has on hand, it generally lends in a so-called conduit borrowing, for which RIHEBC issues to investors bonds specific to the facility being financed and lends the proceeds to the specific borrower. The bonds are then repaid specifically from the money derived from the

borrower loan repayments. Virtually all of the bonds are tax-exempt (or otherwise tax-advantaged), and the bonds may also be offered to the public. Tax-exempt bonds are subject to oversight by the Internal Revenue Service while bonds offered to the public are subject to the federal securities laws.

Borrowers	Borrowers are nonprofit or governmental organizations. Borrowers use funds borrowed from or through RIHEBC to finance facilities projects.
Responsible contractors	Responsible contractors are construction contractors who can rightly certify that they meet with all federal, state, and local requirements when fulfilling contracts.
Irresponsible contractors	Irresponsible contractors are construction contractors who fail to satisfy some aspect of legal compliance with the federal, state, or local laws affecting construction and construction contracts.
Workers	Workers of contractors rely on unemployment insurance, workers' compensation, and safety procedures and equipment supplied by the contractor they work for.
Licensing and Enforcement agencies	<p>Licensing and enforcement agencies oversee at least some aspect of contractor compliance with federal, state, and local laws. Such agencies would include:</p> <ul style="list-style-type: none">• US Occupational Safety and Health Administration• US Department of Labor, Wage and Hour Division• US National Labor Relations Board• US Internal Revenue Service• US Environmental Protection Agency• RI Contractors' Registration and Licensing Board• RI state registration and licensing boards for various specialties• Surety and insurance companies• RI Division of Taxation• RI Department of Environmental Management• RI Department of Labor and Training
Students and Patients	Students who attend institutions having RIHEBC-financed facilities and patients who are treated at RIHEBC-financed facilities

Costs and Benefits

Stakeholders	Baseline	Proposal
RIHEBC	RIHEBC does not monitor or prescribe the construction contracts borrowers enter into or who may be parties to such contracts. RIHEBC does require a positive feasibility study for proposed borrowings, and also requires that certain spending schedules be met. In addition, borrowers are required to certify that they reasonably do not foresee circumstances that would prevent the facility from being completed with due diligence.	Costs:
		Benefits: The borrowers' using Responsible Contractors makes it more likely that projects will be completed on time and on budget, which are important if RIHEBC issues bonds on a tax-exempt basis or offers the bonds to the public.
Borrowers	Borrowers who enter into contracts with irresponsible contractors risk adverse	Costs: Minimal up-front cost legal cost for borrowers who have not previously entered into construction

	<p>consequences, which may be minimal, moderate, or severe in different cases.</p> <p>Responsible Contractors must continually renew their commitment to responsibility.</p>	<p>contracts requiring that the contractor abide by all federal, state, and local laws. Borrowers faced with a choice between a responsible contractor and an irresponsible contractor will prefer responsible contractor, perhaps leading to higher quoted construction costs.</p>
		<p>Benefits: Reduced risk of entering into contracts with irresponsible contractors. Ability to control risk by enforcing provision that makes irresponsible actions or omissions a default under the contract.</p>
Responsible contractors	No change.	<p>Costs: Borrower has ability to enforce responsibility.</p>
		<p>Benefits: Competition with irresponsible contractors will be reduced</p>
--Workers	<p>Unemployment is insured. On-the-job injury is insured. Proper wages (including overtime) are paid.</p>	<p>Costs: None.</p>
	<p>Taxes are withheld. Working conditions meet safety standards. Increased chance of learning good habits.</p>	
Irresponsible Contractors	<p>Run the risk of:</p> <ul style="list-style-type: none"> • enforcement action by authorities • establishing a bad reputation 	<p>Costs: Decreased chance of being hired. If hired, increased chance of deviations from responsibility</p>

	<ul style="list-style-type: none"> • uninsured accidents • learning bad habits 	leading to enforcement action by borrower.
		<p>Benefits: To the extent irresponsible contractors are foreclosed from getting contracts from borrowers, they may choose to become more responsible or leave the business.</p>
--Workers	The conditions offered by responsible contractors may or may not be present in various degrees	<p>Costs: Wages paid over the table, leading to payroll deductions.</p>
		<p>Benefits: A third party (the borrower) has the power to declare the contract in default if required worker benefits are not provided.</p>
Licensing and enforcement agencies	Assumed to have current responsibilities and resources	<p>Costs: Likely to be a slight additional cost due to borrowers seeking information whether a contractor is responsible, and</p>
		(possibly) acceptance and monitoring of newly responsible contractors.
		<p>Benefits: Borrowers who choose to enforce the responsibility required by their contracts provide an additional enforcement resource.</p>

<p>Students and Patients</p>	<p>Students and patients enjoy facilities built under current conditions. This can include worries whether the borrower's facilities are well-built.</p>	<p>Costs: To the extent the borrower must pay more for the construction of facilities, the cost must be passed through to the students or patients using the facilities, through higher tuition or hospital room rates, for example. To the extent the borrower must defer or cancel construction of facilities, the students or patients must defer or forgo enjoyment of those facilities. In the case of patients, other facilities may be available in the state. In the case of educational institutions, the institution may be able to implement a work-around or the student may be able to transfer to another institution in or out of state.</p>
		<p>Benefits Knowing facilities were built according to all legal requirements can provide reassurance about using facilities. The students or patients also may derive psychic or ethical satisfaction if they are informed that the contractor abided by all federal, state, and local laws in constructing the facility.</p>