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May 6, 2015

United States Department of Transportation
Docket Management Facility
1200 New Jersey Avenue S.E.
W12-140
Washington, D.C.

Re: Docket ID Number DOT-OST-2015-0013; Geographic-Based Hiring Preferences in Administering Federal Awards

The Illinois Road and Transportation Builders Association submits its comments in opposition to the imposition of Geographic-Based Hiring Preferences on federally funded surface transportation projects. As an initial matter, the imposition of additional rules will necessarily impede efficient and cost effective project delivery. This is especially true in the arena of workforce. Adherence to Davis-Bacon requirements is straightforward enough (though cumbersome). Monitoring and enforcing the geographic location of every worker on every particular project (in Illinois and its political subdivisions, the number is several hundred at any given time), however, will strain an already overtaxed Illinois Department of Transportation staff and place additional costs upon the contracting community.

In Illinois, the contracting community has witnessed the imposition of a local hiring preference program in the City of Chicago. In City-funded projects, an ordinance requires that a certain percentage of workforce be hired from the immediate vicinity of the project. The net effect of such a program, however, is to break up efficient and often multi-cultural work crews when the contractor who employs such crews moves on to a project in a different part of the City. In a city as segregated as Chicago remains, the social implications are compounded. Must an African American worker be denied an opportunity because he or she cannot work on a project in a predominantly Hispanic neighborhood? Laying off workers because they are not from the "right neighborhood" harkens to a darker time in American history; that door must remain closed.

Indeed, the proposed geographic-based hiring preferences in administering federal funds may fail to pass constitutional muster. Because of local demographic patterns as noted above, this program would likely lead to disparate impact in employment. In order to avoid disparate impact liability, a governmental entity imposing a local hiring preference must justify that preference requirement. Courts have generally required that a policy that creates a disparate impact must be justified by a legitimate governmental purpose. Courts also require that such a policy be narrowly tailored to serve a legitimate governmental interest, if one exists. Courts have held a dim view that serving local residents is a legitimate governmental purpose.

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In addition to the question of whether a local hiring preference program is discriminatory, it ignores the reality of who and where construction workers are. At its core, a local hiring preference actually treats skilled workers as day laborers. Such a program also does not countenance the lack of skilled workforce who may reside in certain areas. A member of the Ironworkers' union is highly trained, yet are not all located evenly throughout the city or region. A local hiring preference program in such a case could lead to hiring an unskilled individual be hired in that person's place. Safety can be compromised in these circumstances. Inadequate training may lead to tragic results to either the individual, crew or public.

A further complication is found in a unionized area such as northern Illinois. Collective bargaining agreements does not allow a contractor to utilize a non-union member, or a member from another trade, to do certain work. These agreements are binding and the imposition of an outside program regarding who may and may not be hired can easily lead to labor strife. Contrary to the public perception of some, those men and women who build and maintain our roads and bridges are not loafers leaning on a shovel. They are skilled, dedicated, competent, and safe; they deserve the respect that this initiative denies them.

Every additional hoop that the City of Chicago imposes upon the contracting community simply means fewer contractors willing to bid on city projects. The few large and small firms who may have figured it out, and build it into their bid prices, benefit from the limited competition that results from programs such as the local hiring initiative. The taxpayers, obviously, do not.

This program diminishes competition; it threatens safety; it undermines equal opportunity; it ignores sound business practices; it adds costs; it disregards organized labor considerations. Whether well-intentioned or not, a geographic-based hiring preference in administering federal awards does far more harm than good.

Very truly,

A handwritten signature in black ink that reads "Michael J. Sturino". The signature is written in a cursive, flowing style.

Michael J. Sturino
President & CEO