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## RESPONSIBLE CONTRACTOR ORDINANCES

Responsible Contractor Ordinances (RCOs), also known as Responsible Employer Ordinances (REOs) or Responsible Bidder Ordinances (RBOs), claim to promote the best interests of taxpayers and construction users and maintain a level playing field among contractors bidding on construction contracts. Protecting public and private construction owners from inferior contractors by requesting and obtaining relevant information about a contractor's qualifications is a worthy objective. However, poorly defined or discriminatory provisions within RCOs often arbitrarily exclude qualified contractors, resulting in limited competition and increased construction costs.

Construction unions and related interest groups are driving the recent increase in proposed RCO laws. While portions of some RCOs are reasonable, typical provisions within RCO laws pertaining to workforce training preclude virtually all merit shop contractors from working on construction projects subject to RCOs. The purpose of these ordinances is to ensure only union contractors are permitted to work on public construction projects. These types of RCOs are discriminatory and drive up the cost of public construction by limiting competition and exclude almost nine out of 10 private construction workers in the United States--and their employers--from participating in construction projects subject to RCOs.

**Associated Builders and Contractors strongly opposes the adoption of discriminatory RCOs and related legislative initiatives across the country.**

### RCOs: The Good, The Bad And The Unfair

#### What is a Responsible Contractor Ordinance (RCO)?

Every RCO is different and should be scrutinized carefully. A fair or "good" RCO seeks to maintain a level playing field among competing contractors while protecting the public from inferior contractors. A good RCO requests relevant information about contractors' qualifications, but does not arbitrarily exclude qualified contractors. Click here to request a sample fair and reasonable RCO.

Every RCO is different and should be scrutinized carefully because the devil is in the details. Areas of concern to the public and the merit shop construction community in typical union-sponsored RCOs include, but are not limited to, provisions covering:

- apprenticeship;
- local workforce and local contractor hire/preference;
- expansion of state prevailing wage rates to locally funded construction;
- prohibiting the use of legitimate independent contractors;
- stiff employer penalties and blacklisting;
- unreasonable insurance and benefit mandates; and
- increased paperwork and compliance by the contracting entity responsible for monitoring RCO compliance;

#### Who is promoting discriminatory RCOs?

Gerard Waites, Esq., of O'Donoghue & O'Donoghue, a Washington, D.C. law firm that represents the Building Trades Unions, crafted this ordinance and is traveling around the country promoting various forms of RCOs. Additionally, unions associated with the AFL-CIO and BCTD have created the National Alliance for Fair Contracting, which spawned other "fair contracting" groups that push for RCOs and other initiatives dedicated to preventing merit shop contractors from competing with and winning jobs against union signatory contractors.

#### Why are these groups promoting RCOs?

On the surface, RCOs look like a reasonable effort to protect local communities from contractors and subcontractors that do not perform quality work in a safe manner. Once examined closely, it is clear that the effect and real purpose of RCOs is to guarantee that only union contractors can meet the criteria of RCOs. Unions have drafted this language and stand to benefit from this tactic by reducing competition from merit shop contractors.

**What is the most concerning competition-cutting provision in typical union-sponsored RCOs?**

One example of a provision that reduces competition is requiring contractors to participate in a registered apprenticeship training program. While it makes sense to support a trained workforce, most RCOs limit the source of training to programs offered by unions or those that primarily benefit unions.

Mandating a sole method to train a workforce runs counter to the spirit of innovation that defines our country and the construction industry. Bureaucratic procedures impede and in some cases prevent contractors from participating in registered apprenticeship programs. Some states even refuse to register open shop apprentices or non-union apprenticeship programs. Such impediments deny merit shop contractors the opportunity to pay competitive wages to apprentices on construction projects and deny apprentices much-needed work opportunities on jobs their tax dollars help fund.

Quality alternative training programs such as community colleges, trade and technical schools, and colleges and universities offering craft education are not permitted under registered training requirements in typical RCOs.

Construction users must evaluate RCOs sensibly and determine if they will produce quality and affordable construction projects in the spirit of free and open competition or create a bidding environment susceptible to discrimination, limited opportunity and increased costs.

**Will union-backed RCOs result in increased construction costs and unnecessary delay?**

Yes, for a variety of reasons:

- Reduced competition on public construction projects equals increased construction costs
- Having state prevailing wage laws apply to a project not normally subject to prevailing wage laws will increase labor costs
- RCOs tend to limit construction bids to only union contractors. Studies investigating union-only project labor agreements (PLAs) – another tactic used by organized labor to cut competition and monopolize construction work – have demonstrated that work assigned to a union-only workforce increases the cost of construction between 15 percent and 20 percent when compared to similar projects bid in a free and open environment
- Additional administrative costs may be incurred by the contracting entity responsible for monitoring RCO compliance
- Contractor selection will take much longer, which could lead to increased construction costs

**What can I do to oppose existing or proposed RCOs in my community?**

Contact government officials responsible for implementing RCO policies in your community and tell them you oppose RCOs because they are costly to taxpayers and discriminate against the majority of contractors and their employees who do not belong to a union. Tell them RCOs are just plain un-American. Also, alert ABC National and your local ABC chapter about proposed RCOs.

**Why is ABC fighting RCOs?**

ABC is committed to free enterprise, merit construction and open competition, regardless of union affiliation. Union-sponsored RCOs offend ABC's core principles because they are designed to drive ABC contractors out of business.

**How Can ABC Help My Community With Existing or Proposed RCOs?**

- Individual ABC chapters and ABC National staff can collaborate with trade associations, building contractors, construction users, municipalities and school districts to craft fair and effective RCOs
- ABC serves as a resource for information on the commercial and industrial construction industry
- ABC can provide credible and knowledgeable speakers who will educate groups or government officials about RCOs
- ABC will monitor RCOs across the country and plan to measure and record their negative impact on communities

Please visit this webpage often for updated studies, talking points, news and other information about RCOs

Your tips and feedback are always welcome. Write to [stateaffairs@abc.org](mailto:stateaffairs@abc.org) to ask questions or request help fighting RCOs in your community. All emails will receive a timely response and may be added to this website as examples of frequently asked questions.

*Below are some questions we have already received.*

**Q. Is this a union versus non-union issue?**

A. No. ABC's mission is the advancement of the merit shop construction philosophy, which encourages open competition and a free enterprise approach that awards contracts based solely on merit, regardless of labor affiliation. ABC members would benefit from provisions in RCOs that weed out unqualified contractors, as long as the criteria and process is fair and not manipulated to give preference to union contractors.

**Q. Are there existing alternatives to RCOs that ensure responsible contractors are selected to perform public construction work?**

A. Contractors typically must secure bonding as a prerequisite to performing work on a public construction project. In order to secure bonding, a contractor must demonstrate they are financially sound, operate safely and have a proven track record of performing construction work. Also, additional safeguards regarding contractor performance that do not discriminate against a company based on labor affiliation can be inserted into bid requirements and often are codified in existing local or state contracting laws. Many communities have existing prequalification standards for contractors that do not discriminate against merit shop contractors and have produced on time, on budget and quality construction projects.

**Q. Is ABC opposed to RCOs because ABC does not offer registered apprenticeship training?**

A. No. ABC provides formal apprenticeship training programs that are registered with the United States Department of Labor, Bureau of Apprenticeship and Training (BAT). These programs meet all federal and state requirements for formal apprenticeship and prevailing wage work including employer-sponsored classroom instruction and on-the-job training. Upon successful completion, craft professionals are recognized at the journey level in their trade and are awarded their BAT certificate. Learn more about ABC Craft Training and Apprenticeship.

## **RCO Resources**

### **Public Relations and Educational Materials**

- ABC MA RCO Position Paper
- Merit Construction Alliance RCO Website
- ABC Southeast Pennsylvania's RCO Website
- ABC Southeast Pennsylvania's one-page informational leave behind for public officials and construction users
- ABC Southeast Pennsylvania's My Daddy Can't Work in Falls, Lower Makefield and Middletown Townships ad.

### **Studies, Articles and Editorials**

- Worcester, MA Regional Research Bureau's Feb. 2008 paper, *Where Have All The Builders Gone?: The Impact of "Responsibility" on Public Construction* and March 2008 testimony to the Worcester City Council and related article
- *Worcester Telegram* Feb. 26, 2008 editorial opposing Worcester, MA RCO policy
- *Patriot Ledger* Dec. 1, 2008 Op-Ed, "Union Pressure on City Officials Costing Quincy Taxpayers" by Merit Construction Alliance Director Ron Cogliano opposing Quincy, MA RCO Policy. Op-Ed pdf.

### **RCO Examples**

- Falls Township Ordinance
- Lower Makefield Township Ordinance
- Middletown Township Ordinance
- Delaware County Ordinance

## **Where Have Union-sponsored RCOs Been Implemented?**

### **California**

- City of Los Angeles (LAAC 10.40.5) (2002)
- Sacramento

**Connecticut**

- City of Danbury (Sec. 2-149)
- City of Hartford (1999)
- City of Middletown (Sec. 7-5, 7-6) (1999)
- City of Norwalk
- City of New Haven (Sec. 12.5-33, 12.5-19, 12.5-20 (1999)

**Deleware**

- New Castle County (Ord. No. 06-117 07) (2006)

**Illinois**

- City of Anna (Ordinance No. 97-6) (1997)
- City of Aurora
- City of Blomington (Resolution 2000-54)
- County of Bond (2001)
- County of Bureau (Amends 55 ILCS 5/5-1022) (2002)
- City of Chicago Heights (Ordinance No. 01-13) (2001)
- Village of Coal City (Resolution No. 00-07) (2000)
- County of Cumberland (Resolution 2-14) (2002)
- Town of Decatur (Section 85-30) (2001)
- Village of Downs (Ordinance No. 98-05) (1998)
- Village of Gardner (Resolution No. R99-227) (1999)
- County of Kane (Resolution No. 04-223) (2004)
- Kankakee County (Amendment to Chapter 5) (2000)
- Knox County (Resolution No. 2004-016) (2004)
- LaSalle County (1997)
- Macon County (Resolution No. G-1942-5-00) (2000)
- Marion County (Resolution No. 2001-121) (2001)
- Village of Mark (Ordinance No. 99-5-20) (1999)
- City of Marseilles (Ordinance No. 922) (1997)
- City of Mendola (Ordinance No. 5-3-99) (1999)
- New Lenox School District
- City of Oak Forest (Ordinance No. 2659) (2002)
- Village of Orleans (Ordinance No. 04-13) (2004)
- Village of Orland Park (Ordinance No. 4017 2005-0233) (2005)
- City of Ottawa (Ordinance No. 09-97) (1998)
- City of Palos Hills
- Richland Community College (Resolution No. 01-19) (2001)
- Rock Island County (Ordinance 2004-723) (2004)
- City of Rockford (Art. X, Div. 6, Sec. 2-284 (b)(16)
- County of Sangamon (Ordinance 18-1) (2004)
- City of Springfield (Ch. 38, Art. IV, 38.35) (2003)
- Springfield Park District (Ordinance #940-03) (2003)
- City of Streator (Ordinance 1999-2000) (2000)
- Will County (Part B, 1-201 (2000)
- Winnebago County (Ch. 2, Art. IV, Div. 3, Sec 2-332)

**Indiana**

- Hendricks County (Contractors Listing Ordinance 1996-43) (1996)

**Massachusetts**

- Town of Amherst
- City of Boston (Section 8-9.1) (1998)
- City of Brockton (Chapter 13) (1997)
- City of Cambridge (2.66.010-2.66.070) 1995)
- City of Everett (Everett Residents Construction Employment Ord.) (Section 4.3) (1997)
- City of Fall River (Section 2-294) (2000)
- City of Lawrence (28C-1, 29C-2)
- City of Malden (Section 3.5A)

- City of New Bedford (Chapter 10, Article II, Sec. 10-77) (1997)
- County of Plymouth (2003)
- City of Quincy (Section 15.26.1-15.26.6 (2000)
- City of Springfield (Chapter 4.14) (1998)
- Somerville
- City of Waltham (Chapter 2)
- Town of Weymouth
- City of Woburn (Title 17)
- City of Worcester (Suspended 2011)

**Michigan**

- Public Schools of the City of Muskegon (2003)

**New Hampshire**

- City of Manchester (2002)
- City of Manchester (Airport Construction Projects) (2002)

**New York**

- State of New York (Establishment of Responsibility of Contractors and Subcontractors and Construction Contract Lowest Responsible Bidder Registry) (Labor Law Section 220) (2000)

**Oregon**

- (Relating to award of public contracts based on competitive bids; creating new provisions; and amending ORS 279C.375 and 279C.835) (SB 1006) (2005)

**Pennsylvania**

- Bristol Bourough School District (2006)
- Bristol Township (2006)
- Bucks County
  - Falls Township
  - Lower Makefield Township
  - Middletown Township (2006)
  - Lower Southampton Township (2006)
- Delaware County
  - Delaware County Council
  - Tinicum Township (2006)
- Montgomery County
- - Borough of Norristown (Ord. No. 05-07-2005) (2005)
  - Conshohocken
- City of Philadelphia
- Philadelphia County

**Rhode Island**

- City of Cranston (Prevailing Wage Requirements) (Rev. 1999)
- City of Warwick (Section 56-14) (2001)

Please send links to additional RCOs in your state and community to [stateaffairs@abc.org](mailto:stateaffairs@abc.org)

## ABC MODEL RESPONSIBLE CONTRACTOR ORDINANCE

[HISTORY: Adopted by the [governing body and jurisdiction; e.g., Board of Supervisors of the Township of "X"] on [insert date] by [insert citation to adopting law; e.g., Ord. No. 2008-1]. Amendments noted where applicable.]

### § 1. Short title.

This chapter shall be known as the "[insert Jurisdiction's name] Responsible Contractor Ordinance."

### § 2. Definitions.

The following words and phrases as used in this chapter shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning. The masculine shall mean the feminine, the singular includes the plural, and the plural includes the singular.

**CONSTRUCTION WORK** – The performance in and for the Jurisdiction by a contractor or subcontractor of any of the following public works: construction, alteration, repair, service or maintenance, or demolition of or to new or existing [insert specifically what will be covered, e.g., buildings; structures; bridges, tunnels, roads, highways, sidewalks, etc.] (hereinafter referred to as "public construction").

**CONTRACT** — A written agreement contained in one or more documents between a contractor and the Jurisdiction or another contractor for the performance of public construction work, including all labor, services and materials to be furnished and performed thereunder.

**CONTRACTOR** — Any individual or person who undertakes or offers to perform public construction in and for the Jurisdiction, whether as a general contractor, subcontractor, specialty contractor or otherwise.

**JURISDICTION** — The [city, county, township of] XXX

**PERSON** — Any individual, partnership, limited partnership, association, corporation, trust or any other legally recognizable entity.

**SUBCONTRACTOR** — Any individual or person who undertakes a specific part of the public construction work to be performed by the principal contractor or subcontractor in and for the Jurisdiction.

WILFUL VIOLATION – For purpose of a contractor’s certification of responsibility concerning the contractor’s past performance, and work history and current qualifications and performance capabilities, means a violation that has been determined by a final decision of a court or government agency or authority proven to have been committed by the contractor deliberately and purposefully with the intent to injure or cause damage to others.

**§ 3. Purpose.**

The purpose of this chapter is to ensure that all public construction work performed in and for the Jurisdiction is performed by responsible, qualified persons that maintain the capacity, expertise, personnel and other qualifications necessary to perform such contracts in a timely, reliable and cost-effective manner. All contracts for public construction shall be performed in compliance with this chapter.

The requirements of this chapter are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by law, public policy or contracting documents. However, in the event that any of the provisions of this chapter conflict with any other ordinance of the City of XXX, this chapter shall prevail.

**§ 4. Qualified, responsible contractor requirements.**

- A. All contractors of any tier which perform construction work valued at over [insert \$ amount] on any public facility or public work project shall meet the requirements of this chapter.
- B. All persons engaged in contracts covered by this chapter shall be qualified, responsible contractors that have sufficient capabilities in all respects to successfully perform contracts on which they engage and a performance record of complying with the federal and state laws applicable to public construction work and business ethics specified on the Contractor Responsibility Certification form.

**§ 5. Contractor responsibility certifications.**

- A. As a condition of performing work on any public works contract subject to this chapter, each contractor seeking an award of a contract under this law shall submit a “Contractor Responsibility Certification” at the time its bid or proposal is submitted.
- B. The Contractor Responsibility Certification shall be completed on a form provided by the Jurisdiction and shall reference the project for which the bid or proposal is being submitted, either by name and contract or by project number.

C. The Contractor Responsibility Certification shall confirm the following facts regarding the contractor's past performance and work history and current qualifications and performance capabilities:

(1) The contractor has not been nor currently is debarred by any federal, state or local government agency or authority in the past three (3) years.

(2) The contractor has not defaulted on any project in the past three (3) years.

(3) The contractor has not had any type of business, contracting or trade license revoked or suspended by a government agency or authority in the past three (3) years.

(4) The contractor participates in either an apprenticeship program which is currently registered with the U.S. Department of Labor or a state apprenticeship agency for each apprenticeable craft or trade in which it employs employees, or in an industry-recognized craft training program affiliated with an accredited university or community entity that provides the training appropriate to the specific tasks the employees will perform on the project, and shall continue to participate in such program or programs for the duration of the project. The contractor shall provide proof of this qualification standard by submitting appropriate documentation as an attachment to the Responsible Contractor Certification.

(a) Exception: This provision shall not apply to:

(i) a registered apprenticeship program that provides apprenticeship training for a craft or trade that has not been recognized as an apprenticeable craft or trade by the U.S. Department of Labor; or

(ii) an apprenticeship program whose application for registration with the U.S. Department of Labor or a state apprenticeship agency is pending at the time of the bid or proposal is being submitted.

(5) The contractor has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.

(6) The contractor provides or its employees participate in a pension, 401(k) or other similar benefits program that provides or will otherwise ensure that all contributions paid into the program during the duration of the project by the employees who work on the project, or that are paid by the contractor on such employees' behalf, will be returned to those employees who have not vested in the program.

(7) The contractor maintains all documents necessary to ensure that all employees are United States Citizens or properly documented legal aliens entitled to work under existing federal law.

(8) Job Targeting Market/Market Recovery/Wage subsidies prohibited.

- (a) No contractor or subcontractor may directly or indirectly receive a subsidy, bid supplement, rebate, or other form of payment for use on or in connection with a past, current, or future public works project if such subsidy, bid supplement, rebate, or payment is used for or otherwise has the effect of reducing the wage
- (b) rates paid, or to be paid, by the contractor, subcontractor or any person acting for or on behalf of the contractor or subcontractor on a given occupational title below the applicable prevailing wage rate. All bids submitted by contractors and subcontractors on public works projects shall include in their bid a certification of compliance with this subsection.
- (b). No person, contractor, subcontractor, labor organization, labor management committee or entity may directly or indirectly pay to a contractor or subcontractor, or any person acting for or on behalf of the contractor or subcontractor a subsidy, bid supplement, rebate, or other form of payment for use on a past current, or future public works project if such subsidy, bid supplement, rebate, or payment will effectively enable the contractor or subcontractor to reduce the wage rates paid, or to be paid, by the contractor or subcontractor to their employees below the applicable prevailing wage rate.
- (c) In the event a subsidy, bid supplement, rebate, or other form of payment is lawfully provided or received under subsections (a) or (b) of this section, the contractor or subcontractor receiving, or otherwise benefiting from such subsidy, supplement, rebate, or payment shall report the date and amount of such subsidy, supplement, rebate, or payment, and the name and address of the person paying such subsidy, supplement, rebate or payment to the Jurisdiction within thirty days of receipt of payment. This disclosure report shall be a matter of public record.
- (d) Any contractor or subcontractor in violation of this section shall owe to the public body double the dollar amount per hour that the wage subsidy, bid supplement, rebate, or other form of payment has reduced the wage rate paid by the contractor or subcontractor below the applicable prevailing wage rate for each hour that work was performed. It shall be the duty of the Jurisdiction to calculate and collect the dollar amount owed to the Jurisdiction under this section.
- (e) Contractors in violation of this section shall also be debarred from construction work in Jurisdiction XX for XX months.

## **§ 6. Notice of intent to award contract**

- A. After it has received bids or proposals, the Jurisdiction shall issue a notice of intent to award contract to the contractor offering the lowest responsive responsible bid.
- B. Such notice shall be issued as soon as practicable after bids or proposals are submitted and shall stipulate that the contract award will be conditioned on the issuance of a written contractor responsibility determination, as required by § 9 of this chapter.

**§ 7. Subcontractor lists, subcontractor responsibility certifications.**

- A. Within 14 days of receiving such a notice of intent to award contract, a prospective awardee shall submit to the Jurisdiction a subcontractor list containing the names of all subcontractors it will use for the referenced project, their addresses and a description of the work each listed subcontractor will perform on the project.
- B. At the time a prospective awardee submits its subcontractor list, it shall also submit subcontractor responsibility certifications for all listed subcontractors to the Jurisdiction. Subcontractor responsibility certifications shall be executed by the respective subcontractors and shall contain the same information and representations required in contractor responsibility certifications.
- C. A contractor shall not be permitted to use any subcontractor on procurement contracts subject to this section which is not on the subcontractor list, unless it demonstrates compelling reasons for using an unlisted subcontractor and obtains prior written approval from the Jurisdiction.
- D. An unlisted subcontractor shall not be approved by the Jurisdiction unless it executes a subcontractor responsibility certification as required by this chapter at least 30 days prior to commencing work.

**§ 8. Execution of contractor and subcontractor responsibility certifications.**

- A. Contractor and subcontractor responsibility certifications shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.
- B. If it is subsequently determined that a contractor or subcontractor responsibility certification contains false or misleading material information that was provided knowingly or with reckless disregard for the truth, or omits material information knowingly or with reckless disregard for the truth, the contractor for which the certification was submitted shall be prohibited from performing work for the Jurisdiction for a period of three years and shall be further subject to any other penalties and sanctions, including contract termination, available to the Jurisdiction under law. A contract terminated under these circumstances shall further entitle the Jurisdiction to withhold payment of any monies due to the contractor as damages.

**§ 9. Contractor responsibility determinations.**

A. Once a notice of intent to award contract has been issued, the Jurisdiction shall undertake an agency review of not more than thirty (30) days to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this chapter and other applicable laws and regulations.

B. As part of this review, the Jurisdiction shall ensure that the contractor responsibility certification, subcontractor list and subcontractor responsibility certifications, as required by this chapter, have been submitted and properly executed. It shall also ensure, to the extent practicable, that the information provided by subcontractors is truthful and accurate and that such subcontractors are qualified to perform the contract.

C. During the review period, the Jurisdiction shall also examine the qualifications of the contractors on the subcontractor list to ensure that all identified subcontractors have properly executed subcontractor responsibility certifications, that the information contained in such certifications is accurate and that such subcontractors are otherwise qualified, and responsible. In conducting this evaluation, the Jurisdiction may also consider relevant information of any business entities that are found to be related to subcontractors.

D. In the event that the Jurisdiction determines that a prospective subcontractor does not meet the qualification standards included in the subcontractor responsibility certification or does not otherwise qualify as responsible contractor, it shall inform the general or prime contractor and permit it to self-perform the work of the subcontractor or to substitute another subcontractor which meets the requirements of this chapter.

E. If, at the conclusion of its internal review, the Jurisdiction determines that all responsibility certifications have been properly completed and executed and if it concludes that the qualifications, background and responsibility of the prospective awardee and the contractors on the subcontractor list are satisfactory, the Jurisdiction shall issue a written contractor responsibility determination verifying that the prospective awardee is a qualified, responsible contractor. The contractor responsibility determination shall be issued no later than 30 days from the date the notice of intent to award contract is issued, unless extended in writing, signed by the Jurisdiction and contractor.

**§ 10. Severability; effective date.**

CONFIDENTIAL DRAFT. *To be modified and customized by local legislative counsel and political officers. Copy and paste relevant language.*

A. If any provision of this chapter shall be held to be invalid or unenforceable by a court of competent jurisdiction, any such holding shall not invalidate any other provisions of the ordinance and all remaining provisions shall remain in full force and effect.

B. This chapter shall be effective five days after it has been approved by the [insert authorizing body], or in default thereof, five days after it is deemed approved by operation of law.

C. The requirements of this chapter shall not apply to contracts executed prior to the effective date of the ordinance, except that the exercise of an option on a contract covered by this chapter shall be deemed to create a new contract for purposes of this chapter.