CONTRACTORS' PROBLEMS

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This occasion, when linked with the subject assigned, affords me an excellent opportunity to acquaint public officials and some of our state educators with the contractors' viewpoint of the construction industry, the second largest industry in America, ranked only after agriculture. I shall not burden you with a detailed statement of the contractors' problems, for they are many and varied, but rather I shall confine myself to a review of problems which appear to me to be paramount with Indiana contractors in general.

The responsibility of the contractor as gaged by the surety bond, the present cumbersome method of appeal to the Indiana State Tax Commission on proposed bond issues, and the evils of day labor or force account work, are vitally important subjects, and are of such nature as to warrant our joint consideration.

With the advent of large road building programs in this country there came gradually and quite naturally a corresponding increase in public lettings and an equal, if not proportionately greater, increase in the number of contractors desirous of doing public contract work. Consequently the contractor is today engaged in a highly competitive business—competitive, gentlemen, without the slightest degree of regulation. The bidders' field is a melting pot. The experienced, the responsible, the well-equipped contractor is competing with the inexperienced, the irresponsible and the ill-equipped contractor without any recourse whatever. Unfortunately public officials in general seldom have the privilege, without statutory restraint, of selecting a contractor from among competitive bidders, even though previous defaults on the part of irresponsible contractors and delays experienced by public officials through such defaults, create a decided preference for a contractor of skill, integrity and responsibility. "The lowest responsible bidder" is the statutory restraint, and, although some of our courts have liberally construed this phrase, the prevailing idea among officials, taxpayers and others is that the lowest responsible bidder is the one who submits the lowest bid and can provide a bond. "And can provide a bond" brings us to a consideration of the surety companies and their attitude toward this most important problem.
At the fifth annual meeting of the Associated General Contractors of America in Chicago, January 24, 1924, the relation of surety companies to the construction industry was discussed at length, and the following resolution adopted:

"WHEREAS, Bond agents are writing bonds for contractors, who are obviously incapable of performing their contracts, or who have obviously demonstrated that they can not be relied upon to carry out their obligations in good faith; and

WHEREAS, The bonding of these irresponsible contractors gives them an unwarranted credit rating, and in the eyes of the public, stamps them as responsible bidders; and

WHEREAS, Once this false stamp of responsibility is given by the bonding company to an irresponsible bidder, the engineer or architect is often obliged by a misguided public opinion to award him the contract; and

WHEREAS, The ease with which the surety bond may be obtained by almost any agency designating itself as a general contractor, enables innumerable persons to embark upon extensive construction projects which they can not carry through to successful completion.

WHEREAS, Numerous defaults of these irresponsible companies who can obtain surety bond bring public censure upon the engineer, dissipate engineering funds, produce an inferior quality of workmanship and keep public construction in a demoralized condition; and

WHEREAS, These numerous defaults have greatly increased the rate of bond premiums, thereby adding to the cost of construction paid by the public; and

WHEREAS, Operations of these injudiciously bonded bidders react injuriously upon these contractors who faithfully perform their obligations, create suspicion and distrust of all contractors and retard the development of companies that are willing and able to render satisfactory construction service; and

WHEREAS, The bonding of bidders unqualified by either experience, personal integrity, or financial soundness, to assume their contracts is preventing the development of constructive service, and the adoption of ethical practices which are essential to the establishment of construction as an orderly industry; therefore, be it

RESOLVED, That the Associated General Contractors join with the American Association of Highway Officials and representatives of the surety companies for a complete and impartial analysis of the bonding situation, seeking to find a proper solution for the issues confronting both the bonding companies and contractors."

Subsequent to the adoption of this resolution and during the year of 1924 several joint conferences were held under the auspices of the Associated General Contractors of America with the Surety Association of America, American Highway Officials' Association and others. The sole and only purpose of these conferences was to find a solution for the present evils in the writing of contract bonds, and in spite of the fact that the evils of present practices were openly aired and frankly admitted, the solution has not yet been established. At one of these joint conferences the latter part of 1924, a rather significant committee report was
made; especially significant when we consider that the committee was representative of the industry. Its chairman was president of one of the leading surety companies, and its membership was made up of the vice-president and the general manager of the Associated General Contractors of America, and the chief engineer of the Pennsylvania State Highway Department. The report in part follows:

"At the outset, this Committee desires to emphasize the fact that in a real and vital sense the interests of the contractors, the surety companies, and the owners who are having work done are identical. When a surety company writes a bond for a contractor, the surety company and the contractor become in effect partners. If there is a default, the owner suffers delay and other consequential losses not covered by the bond. The contractors, the surety companies, and the owners are therefore interested in the establishment of conditions under which defaults are least likely to occur. A default means loss for all three parties concerned.

"This Committee desires further to emphasize the fact that present conditions are not satisfactory. Practically any contractor, whatever his financial standing, whatever his experience or lack of experience, whatever his equipment, sufficient or insufficient, whatever the relation of his liquid assets to the amount of work he has on hand, whatever the extent to which he has become over-extended, can obtain a bond. Some surety company will execute a bond for him, and he goes from one company to another till he gets what he wants. The irresponsible contractor can usually find some company to go surety for him. This is the result of competition."

It was said not long ago by a prominent surety official that there are today $45,000,000 worth of contracts—highway contracts—in default in five states. A condition of this kind has a demoralizing effect on the industry, to say the least, and benefits to the public, however great, can be only transitory, whether the condition obtains here or elsewhere, since the condition itself is decidedly unsound.

At a recent meeting of the National Research Council in Washington, D.C., Mr. Frank Page, chairman of the North Carolina State Highway Commission, reviewed the conditions to which he attributed North Carolina defaults (and there were many). In conclusion he said:

"All losses by defaults and unfinished contracts, whether made good by bond or not, are eventually paid by the State in its continued highway program. These losses are reflected in the higher prices of responsible contractors. It is therefore necessary for the highway officials to reduce their losses. I am therefore contemplating a plan of careful investigation of all bidders by our own department before the contracts are awarded, and the cessation of replying on surety bonds to protect us after the contract has been awarded."

The time must come when a bonding company knows and can prove that its bond is a guarantee of the skill, integrity and responsibility of the assured, and the public will learn then that
a bond accomplishes its object without quibble and subterfuge, which it does not do under present-day practices.

**Appeal to Indiana State Tax Commission**

The present cumbersome method of appeal to the Indiana State Tax Commission on proposed bond issues inflicts a hardship on the contractor over which he has absolutely no control. The Indiana State Tax Law as amended in 1921 and 1923 gives the Indiana State Tax Commission jurisdiction over county and township bond issues. Under the provisions of the law as amended, notice of determination to issue bonds is given by the county commissioners subsequent to the award of a contract under the three-mile road law and the county unit road law, and within twenty-nine days from date of such notice, ten objecting taxpayers may file with the county auditor an objecting petition, it being mandatory on the county commissioners and the county auditor to submit such petition to the Indiana State Tax Commission for a review of the proposed bond issue and the commission’s approval or disapproval of same.

As a result of this method of appeal to the Indiana State Tax Commission, the contractor is frequently without work for a period of from three to five months, and often when the work is advertised in the spring of the year, the greater part of the construction season has passed before the decision of the Indiana State Tax Commission has been made and, consequently, the contractor, with his equipment appropriated for a given project, is deprived of utilizing that season of the year most suitable to rapid progress and resultant profit.

The method of appeal likewise is unnecessarily costly to the taxpayer in that all engineering and legal work required by law is done, at the expense of the taxpayer, prior to the time notice is given of determination to issue bonds, and the project still remains subject to abandonment on disapproval of the Indiana State Tax Commission, if such be the commission’s decision, and, furthermore, a delay resulting from such appeal deprives the taxpayer, not infrequently, from the use of an improved road, which in the absence of an appeal would under normal conditions be built in the same year of contract award.

To avoid unnecessary delay and in the interest of the taxpayer, as well as the contractor, we advocate a correction of the present method of appeal so as to have the proposed project appealed to the Indiana State Tax Commission, if the required number of taxpayers desire an appeal, before the work is advertised and on the engineer’s estimate rather than after contract is awarded and on the proposed bond issue.
Technical complications may arise in our effort to correct the present method of appeal, but with the co-operation of the Indiana State Tax Commission (of which we have been assured) and others who are similarly interested in such correction, such complications will be met, and the correction so made as to conform to the law and to permit the Indiana State Tax Commission to handle such appeals with the least possible delay and, consequently, in the interest of the state at large.

The paramount advantage to the contractor in such correction in the method of appeal will be found in the fact that if such appeal be taken in advance of advertising the project, the present delay and doubt as to the contract being awarded will have been eliminated, and the successful contractor will be in a position to commence work immediately upon the sale of bonds, or as soon thereafter as may be deemed advisable.

**Day Labor or Force Account Work**

The evil of day labor or force account work is apparent to those who have been closely identified with public contract work, and, while Indiana has been comparatively free of such evil, it has been prevalent in many other states, and invariably has a tendency to demoralize the construction industry. I shall again call upon the Associated General Contractors of America to show the attitude of that organization toward day labor, as embodied in a resolution, adopted at their fifth annual meeting:

"WHEREAS, There is manifest throughout the country a tendency among public officials to do public construction by the Day Labor Method, and

WHEREAS, This method of expending public funds is generally recognized as being economically unsound as a general practice, in that it provides no foundation of responsibility and offers no assurance that such work will be of proper quality and performed for the amount of money voted or appropriated therefor, and

WHEREAS, Our construction industry is full of notorious instances of the excessive cost of this construction method, and its encouragement to inefficiency, incompetence and sinister political influence, and of a strong tendency towards socialism; and

WHEREAS, The constructors are especially fitted to interpret to the public this menace, and also lay upon us the responsibility of so doing; now therefore, be it

RESOLVED, That the Associated General Contractors urge its membership throughout the country to accept as a major duty a campaign of publicity to show the results of the Day Labor method of doing public construction and to enter upon a vigorous and persistent effort to secure legislation which will require public bodies to do public construction by the sound method of firm contracts guaranteeing completion at a fixed price."

This resolution is self-explanatory and states in no indefinite terms the attitude of the construction industry toward day labor
or force account work. I feel constrained, however, to state that contractors as such have no right to demand that the work be done by contract rather than by day labor. The contractor's major argument, and it is a sound one, is that in the great majority of cases he can save money for the public. This viewpoint is well stated in the following editorial which appeared in the Engineering News Record issue of January 1, 1925:

"Contractors have no inalienable right to the construction work of the world. It has seemed often in the fractious discussions of day-labor construction which are currently being printed as if this truth were being forgotten—as if it were assumed that because the contractor is in the construction business he has sublime right to such construction as is being done. On sober thought no contractor believes this. If any contractor does believe it he is wrong because it is not so. If he talks as if he believes it he is foolish. The building public doesn't believe it and won't believe it. It believes that the contractor has a right only to that work which he can do as well as any other agency at less trouble and cost to the employer. And why should contractors want any greater consideration than this? They can save the owner from a multitude of worries and uncertainties inseparable from day-labor operations. They can do the work as well and in the vast majority of instances they can do it at less cost. There is much accumulated evidence in proof of all these facts and yet they have not been assembled anew in perhaps ten years. This should be done. A well presented brief is badly needed by contractors who have every so often to battle the hydra of force account construction of public works."

These then are some of the problems with which the contractor is confronted. As an association, we stand for a solution of these problems in the best interest of the public, for no other solution would be permanent or lasting. As agents of the public engaged in public work, contractors must keep in mind at all times the interest of the public. The Associated General Contractors of America is an organization representative of the nation's contractors and has for its motto, "Skill, integrity and responsibility." The Indiana Association of Highway and Municipal Contractors is a state organization whose objects are on an equally high plane and, therefore, equally commendable. The betterment of conditions in the construction industry characterizes our work, and we, therefore, feel that the whole scheme of organization effort, from the largest to the smallest unit, may be aptly summarized in stating that the contractors through organization advocate skill, integrity and responsibility in the construction of the nation's public work.