



CONSTRUCTION BUSINESS GROUP

Building Wisconsin Together® | buildingwisconsintogether.com



Who Is CBG?

A joint labor-management organization dedicated to enhancing business opportunities and quality of life by ensuring fairness, equity and standards of excellence in the construction industry of Wisconsin.

What Does CBG Do?

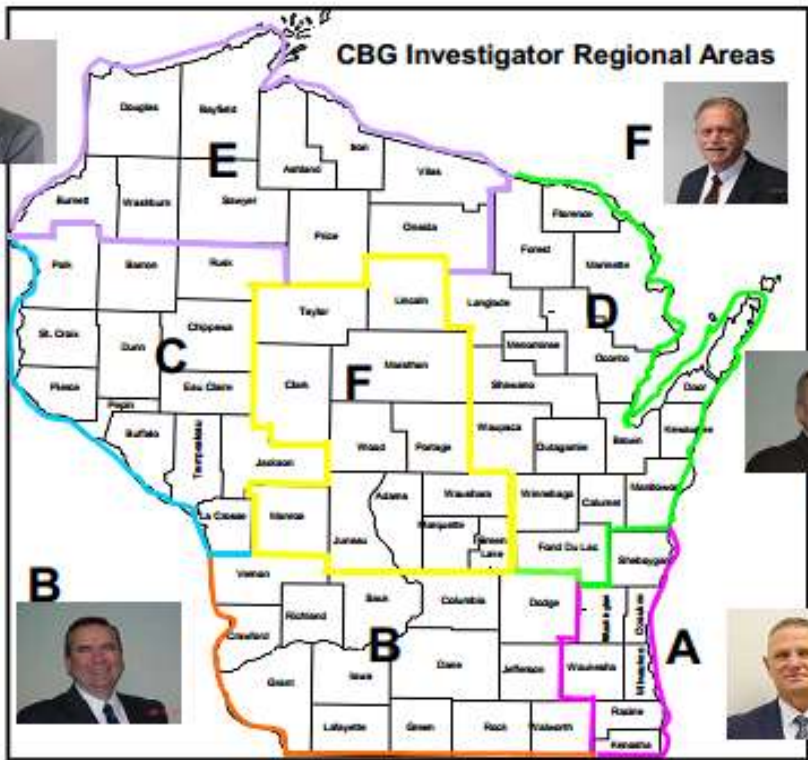
- ▶ Monitor construction projects to ensure prevailing wage, bid, labor standard, workman's compensation and safety laws are followed.
- ▶ Investigate payroll fraud.
- ▶ Assist contracting agencies with procedure and liability protection.

What Does CBG Do?

- ▶ Provide direct assistance to employers and employees on complaints and problem resolution.
- ▶ Provide educational opportunities for contracting agencies, contractors, engineering firms and employees.

CBG Employees

- ▶ Robb Kahl, Executive Director
- ▶ Cindy Buchko, General Counsel
- ▶ Seven Investigators
 - ▶ Edna Baldwin, Statewide
 - ▶ Jeff Hennen, Southeast
 - ▶ Dean Meyer, West Central
 - ▶ John Paitl, Northwest
 - ▶ Neil Strobel, Northeast
 - ▶ Dan Vergin, Central
 - ▶ Doug Wipperfurth, Southcentral and Southeast
- ▶ Marilyn Mau, Project Manager
- ▶ Mindy Mulryan, Project Specialist
- ▶ Cheryl Louis, Paralegal
- ▶ Patty Barlow, Finance Manager



E



F



C



D



Statewide-
Misclassification
Specialist

Construction Business Group Districts are divided by colored lines.

A: Inv. Hennen	C: Inv. Meyer	D: Inv. Strobel
Kenosha	Barron	Brown
Milwaukee	Buffalo	Calumet
Ozaukee	Chippewa	Door
Racine	Dunn	Florence
Sheboygan	Eau Claire	Fond Du Lac
Washington	Jackson	Forest
Waukesha	La Crosse	Kewaunee
	Pepin	Langlade
B: Inv. Wipperfurth	Pierce	Marinotoc
Columbia	Polk	Marinette
Crawford	Rusk	Menominee
Dane	St Croix	Oconto
Dodge	Trempealeau	Outagamie
Grant		Shawano
Green	E: Inv. Vergin	Waupaca
Iowa	Adams	Winnebago
Jefferson	Clark	
Lafayette	Green Lake	E: Inv. Paitl
Richland	Juneau	Ashland
Rock	Lincoln	Bayfield
Sauk	Marathon	Burnett
Vernon	Marquette	Douglas
Walworth	Monroe	Iron
	Portage	Oneida
	Taylor	Priest
	Waushara	Sawyer
	Wood	Vilas
		Washburn

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Edna Baldwin	(262) 200-1359	e.baldwin@cbqwi.com

Today's Objective

Explore the ethical, legal and moral intersection of payroll fraud in the construction industry

- ▶ Review select NSPE ethical provisions
- ▶ Define payroll fraud
- ▶ Identify ways engineering and other professionals can help stop payroll fraud
- ▶ Practical tips

Fundamental Cannons

“Engineers, in the fulfillment of their professional duties, shall:

1. Hold paramount the safety, health, and welfare of the public.
2. Perform services only in areas of their competence.
3. Issue public statements only in an objective and truthful manner.

Fundamental Cannons (cont'd)

4. Act for each employer or client as faithful agents or trustees.
5. Avoid deceptive acts.
6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.”*

*Source National Association of Professional Engineers, Code of Ethics for Engineers

Rule of Practice No. 1

“Engineers shall hold paramount the safety, health, and welfare of the public.

a. If engineers’ judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.

* * *

Rule of Practice No. 1 (cont'd)

d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.”*

*Source National Association of Professional Engineers, Code of Ethics for Engineers

Professional Obligations

1. “Engineers shall be guided in all their relations by the highest standards of honesty and integrity.”
2. “Engineers shall at all times strive to serve the public interest.”

Professional Obligations (cont'd)

“3. Engineers shall avoid all conduct or practice that deceives the public.”

* * *

“7.Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.”

*Source National Association of Professional Engineers, Code of Ethics for Engineers; *see also* Wis. Stat. § 443.01(6);

WI-Specific Provisions

A-E 8.09 Adherence to statutes and rules. An architect, landscape architect, professional engineer, designer or professional land surveyor:

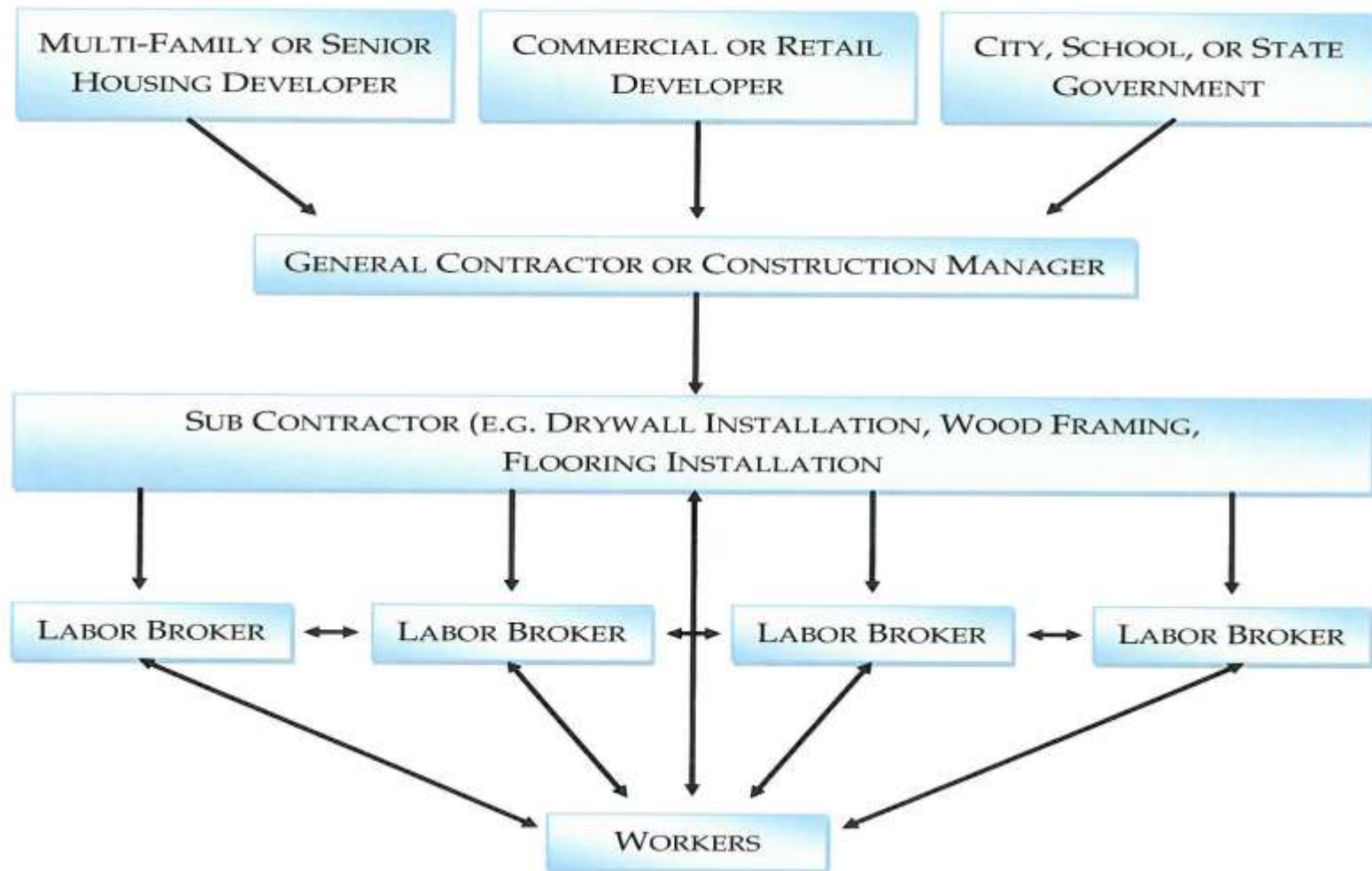
(1) Shall comply with the requirements in ch. [443](#), Stats., rules in this chapter and all other federal, state and local codes which relate to the practice of architecture, landscape architecture, professional engineering, designing and professional land surveying.

Payroll Fraud

- ▶ Worker exploitation is happening in the construction industry on public and private job sites in Wisconsin.
 - ▶ Failure to pay overtime after 40 hours a week.
 - ▶ Employer misclassifies a worker as an independent contractor.
 - ▶ No unemployment or worker's compensation coverage.
 - ▶ Kickbacks.

Payroll Fraud in the Construction Industry

PAYROLL FRAUD IN A CONSTRUCTION PROJECT



What is a labor broker?



“Hey, I am a legitimate contractor!”



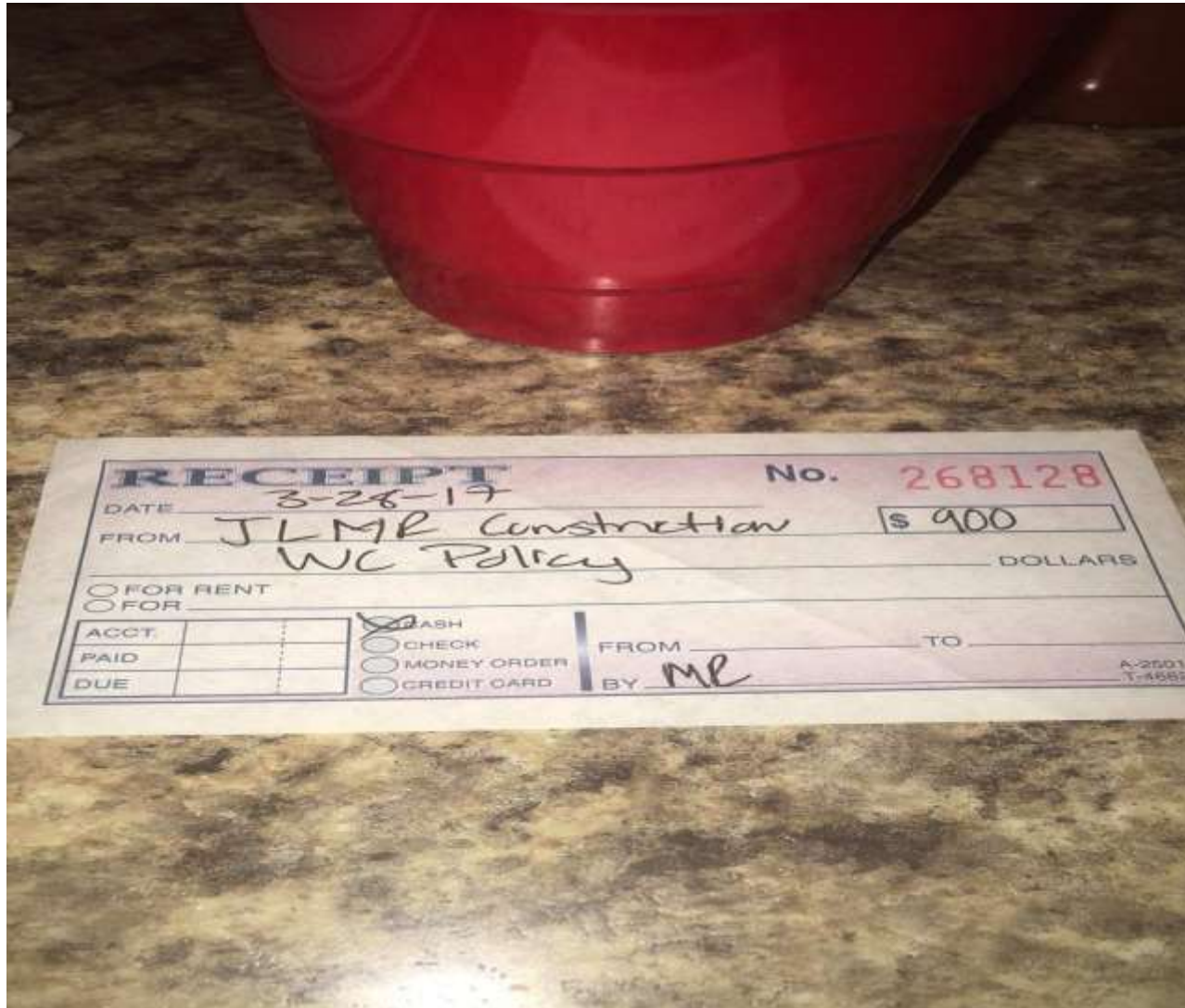
Common Labor Broker Tactics

- ▶ Wage theft
 - ▶ Pay for drywall installation (6 weeks of work) but fail to pay the mudding and taping (18 weeks of work).
 - ▶ Withholding all payment in a week if late for work one day.
 - ▶ Withholding payment on Job A (finished) until agree to work and commence work on Job B.

Common Tactics (cont'd)

- ▶ Wage theft (cont'd)
 - ▶ Deductions from check
 - ▶ Inferior work (even when it's not).
 - ▶ Materials (even though the first tier sub provided the materials).
 - ▶ Insurance.

Common Tactics (cont'd)



Common Tactics (cont'd)

- ▶ Benefits rather than pay, e.g., housing



Common Tactics (cont'd)

- ▶ Benefits other than pay, *e.g.*, vehicles
 - ▶ Floyd, the labor broker, tells workers that he will help them buy a car.
 - ▶ He “co-signs” for a car loan with a used car dealer.
 - ▶ Loan payments--cash from worker paid to Floyd and, supposedly, Floyd pays the used car dealer.
 - ▶ After the loan is fully paid, Floyd refuses to give the worker the title to the car.
 - ▶ Floyd threatens to take car if worker doesn't continue to work for him.

Common Tactics (cont'd)

- ▶ Intimidation, threats and coercion
 - ▶ Sending graphic, violent photos
 - ▶ Threatening texts
 - ▶ Blackballing
 - ▶ Threatening to call ICE

Professional Ethics Implicated?

- ▶ Do you know who is working on your (or your client's) projects?
- ▶ Public Works Responsible Bidder Requirements
 - ▶ Lowest “responsible” bidder, Wis. Stat. § § 59.52(29) [counties], 60.47(1)(b) [towns], 62.15(6) [cities]
 - ▶ State projects too, Wis. Admin. Code § Adm. 21.02(8)(c)

Bid Statutes Give Discretion

“A reviewing court will only interfere with a bidding authority's discretionary act if it is arbitrary or unreasonable.”

PRN Assocs. LLC v. State Dep't of Admin., 313 Wis.2d 263, 268 (Ct. App. 2008).

Discretion?

“An arbitrary action is one that is either so unreasonable as to be without rational basis or is the result of an unconsidered, willful, or irrational choice of conduct. An unreasonable action is one that lacks a rational basis.”

PRN Assocs. LLC v. State Dep't of Admin., 313 Wis.2d 263, 268 (Ct. App. 2008)

Discretion?

“The determination of the question of who is the lowest responsible bidder does not rest in the exercise of an arbitrary and unlimited discretion, but upon a bona fide judgment, based upon facts tending to support the determination.. . .”

Aqua-Tech, Inc. v. Como Lake Prot. and Rehab. Dist., 71 Wis. 2d 541, 551 (Wis. 1976) (quoting, 10 McQuillin, Municipal Corporations (3d ed.), pp. 425, 426, sec. 29.73).

Example

Court upheld a Town's determination that the low bidder was not responsible due to "numerous legitimate concerns about D.M.K.'s performance of prior contracts...."

D.M.K., Inc. v. Town of Pittsfield, 290 Wis.2d 474, 476-77 (Ct. App. 2006).

Engineers are Gatekeepers

- ▶ Private jobs not hamstrung by low bid requirements
- ▶ Engineer Project Managers in a position to vet subcontractors for public and private project owners

Engineers are Gatekeepers (cont'd)

- ▶ NSPE Case No. 89-7
 - ▶ Inspect structural integrity of building, found no deficiencies.
 - ▶ Client disclosed electrical and mechanical violations.
 - ▶ Engineer not an electrical or mechanical engineer and did no inspection of these components.
 - ▶ Noted deficiencies in the report but report was to remain confidential and not disclosed to potential buyers.

Engineers are Gatekeepers (cont'd)

- ▶ NSPE Case No. 89-7 (cont'd)

Did the engineer violate any of his ethical obligations?

Engineers are Gatekeepers (cont'd)

- ▶ NSPE Case No. 89-7 (cont' d)
 - ▶ NSPE concluded it was unethical for the engineer not to report the safety violations to the appropriate public authorities.

Engineers are Gatekeepers (cont'd)

- ▶ NSPE Case No. 82-5
 - ▶ Defense contract.
 - ▶ Engineer believed subcontractor had produced inferior work and should be replaced.
 - ▶ Management refused to require the sub to fix the work.
 - ▶ Engineer pressed the issue and was given a letter of reprimand and a three month suspension.

Engineers are Gatekeepers (cont'd)

- ▶ NSPE Case No. 82-5 (cont'd)

Was the engineer ethically obligated to continue to try to pursue a policy change at his employer and/or report the matter to the proper authorities?

Engineers are Gatekeepers (cont'd)

- ▶ NSPE Case No. 82-5 (cont'd)
 - ▶ Engineer “does not have an ethical obligation to continue his effort to secure a change in policy, or to report his concerns to proper authority, but he has an ethical right to do so as a matter of personal conscience.”

Practical Tips

- ▶ Require subcontractors to self-disclose relevant information on a bid form
 - ▶ Verification of a principal place of business
 - ▶ Proof of licensure to do business in Wisconsin
 - ▶ Disclosure of investigations and law violations
 - ▶ Proof of a substance abuse prevention program, required by Wis. Stat. 103.503
 - ▶ Proof of training and safety programs
 - ▶ Proof of financial ability to perform
 - ▶ Examples of previous similar experience

Practical Tips (cont'd)

- ▶ If the bid is 30% lower, ask for backup information
 - ▶ Disclose list of employees
 - ▶ Proof of payroll tax payments
 - ▶ Quarterly reports or
 - ▶ Annual reconciliation
- ▶ Conduct independent basic background research

CBG's Bidder Database

- ▶ 8,300 contractors (generals and subs)
- ▶ Publicly available information
- ▶ Research on over 13 categories of information, including
 - ▶ Debarments
 - ▶ Environmental violations
 - ▶ OSHA violations
 - ▶ Federal and state court judgments and tax liens
 - ▶ DWD actions
 - ▶ Much more
 - ▶ Projects gone bad

Bidder Database (cont'd)

- ▶ Free to registered users
- ▶ Easy to become a registered user
 - ▶ Go to www.cbgwi.com
 - ▶ Complete the registration form

Bidder Database (cont'd)



MISCLASSIFICATION

Worker Misclassification happens when employers improperly classify workers as “independent contractors” instead of “employees.” Worker Misclassification is illegal and may rise to the level of criminal Payroll Fraud.

[READ MORE](#)



BIDDER DATABASE


To assist state agencies, counties, cities, village, towns and other public entities, CBG has collected publicly available information and documents on over 7,000 businesses known to bid on public works projects.

[LEARN MORE](#)

Bidder Database (cont'd)

← → ↻ <https://www.cbgwi.com/bidder-database/>

Apps Suggested Sites Google Google Calendar Public Service Comm: Wis DFI 94.9 WOLX Wisconsin Court Syst: Eastern District of W

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stat. §§ 16.855(1m), 19.24(29), 60.47(3), 62.13(1), and 66.0901(1m), who is a "responsible" bidder is not well-defined in the whether a bidder is "responsible" is a matter left to the discretion of the public entity. *D.M.K., Inc. v. Town Of Pittsfield*, 201 N.W.2d 672; *Glacier State Distrib. Servs., Inc. v. DOT*, 221 Wis. 2d 359, 367-68 & n.6, 585 N.W.2d 652 (Ct. App. 1998); *Aqua-* Wis. 2d 541, 551, 239 N.W.2d 25 (1976).

To assist state agencies, counties, cities, village, towns and other public entities, CBG has collected publicly available information from businesses. Information and documents have been gathered from state and federal agencies, Wisconsin state courts, federal courts, and other public sources. Is a bidder properly registered with DFI to do business in the State of Wisconsin? Has the bidder been subject to any suspension or employment regulations? Does the bidder have monetary judgments against them in a Wisconsin state or federal court? This database is one convenient location with hyperlinks to downloadable public documents that have been collected by CBG.

While CBG endeavors to provide reliable information and reviews all entries annually, the Bidder Database is not a substitute for legal advice. Furthermore, by giving access to the Bidder Database, CBG is not providing public entities or other users any legal advice as to whether an entity listed in the bidder database is or is not "responsible" or should or should not be used, hired, contracted with, or that must be made by project owners in consultation with their legal counsel.

[LOGIN TO BIDDER DATABASE](#)

[REQUEST ACCESS](#)

Bidder Database (cont'd)



[CBG HOME](#) [REG](#)

Username

Password

Confirm Password

E-mail Address

Confirm E-mail Address

First Name


Last Name

Title

Organization

Organization Street Address

Bidder Database (cont'd)


CBG HOME REQUEST ACCESS TERMS OF USE L

State

Zip Code

Phone Number

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Privacy - Terms

Terms and Conditions

TERMS OF USE AND CONDITIONS

IMPORTANT

BY CLICKING "I ACCEPT" OR BY ACCESSING OR USING ANY PART OF THE CONSTRUCTION BUSINESS GROUP WEBSITE WWW.CBGWL.COM/BIDDER-DATABASE/ OR ANY PROGRAMS, SERVICES, TOOLS, MATERIALS, SHARED GOOGLE SHEETS AND DRIVES, OR OTHER INFORMATION AVAILABLE THROUGH THE CBG WEBSITE (COLLECTIVELY, THE "BIDDER DATABASE"), YOU ACKNOWLEDGE THAT YOU HAVE READ THIS TERMS OF USE AND CONDITIONS AGREEMENT ("AGREEMENT"), THAT YOU UNDERSTAND IT AND ITS TERMS AND CONDITIONS, AND THAT YOU AGREE TO BE BOUND LEGALLY BY IT AND ITS TERMS AND CONDITIONS.

I agree to the Terms and Conditions

Bidder Database (cont'd)

- ▶ Once registration is approved, you can access the database through the website
 - ▶ Search by contractor name, alpha or entire database
 - ▶ Live hyperlinks to public documents (pdfs)
- ▶ Cannot be manipulated by users, only CBG may add, remove or correct entries

Bidder Database (cont'd)



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Search Database

Bidder Database

Use the search box below to search the Bidder Database by Contractor Name or select a letter to view all contractors under that Alphabetical Listing.

[A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [X](#) | [Y](#) | [Z](#)

[View Listing of All Contractors](#)

Search:

Search

Questions?

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