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The question presented is whether language in Scott County bid documents can contain the requirement that employers “offer wages at or above the prevailing rate”.

Conclusion: The requirement that employers “offer wages at or above the prevailing rate” has been found by the Supreme Court of Iowa to be inconsistent with the competitive bidding statute and is preempted under ERISA.

In *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702 (Iowa 1993), the City of Des Moines brought an action to have an ordinance establishing prevailing wage requirement for public improvement projects declared valid. According to the ordinance, the “prevailing wage” is determined by the United States department of labor pursuant to the federal Davis-Bacon Act.

The Court found that the ordinance exceeded home rule power granted by the Iowa Constitution, as it was inconsistent with competitive bidding statute. See Iowa Code Section 26.9, which requires that a contract for public improvement be awarded to the lowest responsive, responsible bidder. The Court further found that, even though all bidders would be required to pay the prevailing wage, that the “competitive bidding statute is thwarted as much by a scheme that artificially elevates low bids as it is by the elimination of or rejection of low bids. Either way the taxpayers are denied the advantage of obtaining the lowest responsible bid”.

Finally, the Court found that the ordinance implicated benefit plans set up for prospective contractors, bringing the process within the ERISA preemption – an area reserved for federal authorities.

Of note is that the SLFRF Final Rule does not require wages at or above the prevailing rate, although it does encourage it.

Because “prevailing wage rate” language has been found by the Iowa Supreme Court to be inconsistent with the competitive bidding statute and is preempted under ERISA, including such language in Scott County bid documents would be in contravention of Iowa law.

Respectfully submitted,

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