



Northeastern Subcontractors Association

N E W S L E T T E R



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(518) 869-9800

January 2012

Governor Signs Infrastructure Investment Act

On December 9, 2011, Governor Cuomo signed comprehensive legislation that featured a restructuring of the tax code to provide “middle class” tax cuts, but also included the creation of a new infrastructure fund to inject over \$1 billion into targeted and accelerated infrastructure projects across the state. The accelerated state funding will leverage \$10 billion in direct capital investment to rebuild roads and bridges, parks, dams and flood control projects, upgrading water systems and educational facilities, and investing in energy efficient improvements to commercial and residential buildings. The plan will focus on projects that support regional Economic Development Plans in the transportation, energy, environment and public facilities sectors.

To expedite the delivery of projects, the legislation will permit the New York Works Infrastructure Fund to bid the design and construction of infrastructure projects as a single “design-build” contract. The Governor’s Office asserts that the design-build project delivery method will shave 9-12 months from the construction time of major projects. Under the legislation, state agencies and public authorities that will be authorized to utilize design-build contracts for capital projects include the New York State Thruway Authority, the Department of Transportation, the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation and the New York State Bridge Authority. For contracts executed by DOT, Parks, Recreation and Historic Preservation or the Department of Environmental Conservation, the total cost of design-build projects must be at least \$1,200,000.

Single entities or teams comprised of separate entities selected by state agencies and public authorities to enter into design-build contracts will be selected through a two-step process. The first step will entail generating a list of contractors that have demonstrated the general capacity to perform the contract based on their responses to a publicly-advertised request for qualifications. Once the list of qualified contractors has been determined, the second step will involve issuing a request for proposals from such contractors and selecting the proposal which represents the “best value” to the state based on a variety of specified criteria.

Reminder: Labor Law Notices Must be Distributed in January

NESCA members are reminded that during January 2012, and for the first time ever, New York employers must provide all employees with a notice and acknowledgement of pay rate and pay date pursuant to the Wage Theft Prevention Act.

The Wage Theft Prevention Act became effective on April 12, 2011, and requires employers to provide written notices to every employee (1) at the time the employee is hired, and (2) between January 1st and February 1st of each subsequent year of the employee’s employment. This notice must be given during this timeframe in order to satisfy the Act’s requirements, even if none of the information being provided to an employee has changed since he or she last received a notice. The notices must be provided in English and the language identified by the employee as his or her primary language. The employer must obtain a signed and dated written acknowledgement of receipt of these notices from each employee.

The New York State Department of Labor has issued model templates that employers can use to satisfy these notice requirements, which are available on the DOL website at www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm. Members who would like more information about the Wage Theft Prevention Act should contact the NESCA office.

NESCA Membership Meeting

January 12, 2012

Century House – 6:00 p.m.

- 6:00 Open Bar/Registration
- 6:30 Dinner: Delmonico Steak
- 7:10 Business Announcements
- 7:30 Program: A/E Panel Discussion
Projects in the Pipeline for 2012

Join us to hear representatives from CHA, CSArch, Mosaic Associates and CDM discuss the 2012 construction outlook and projects they have in the pipeline for bid in 2012.

Open Bar, Dinner, Tax & Gratuities - \$50



PRESIDENT'S MESSAGE

Happy New Year! I trust that all members had a great holiday season with family and friends. Speaking of the holidays, on December 8th NESCA held our annual holiday reception and dinner at the Century House. The ballroom was packed with nearly 250 members and guests who attended this event and everyone had a great time! We were also treated to some outstanding entertainment from the USO Liberty Bells. The USO was founded in Times Square, New York in 1941 to provide morale and recreation services to uniformed military personnel. Today, the USO continues to serve our troops and their families around the world. The USO Liberty Bells are part of this American tradition that began with the camp shows of the South Pacific during the Second World War and continues to provide troops at home and overseas with opportunities to escape from the burdens of war through entertainment. The Liberty Bells were also a great fit with our annual Toys for Tots campaign with the U.S. Marine Corps. I thank all members who brought toys with you to

the meeting. We collected a large number of toys, and in addition, donated \$2,655 to the Toys for Tots Foundation. A special thank you is extended to Walt Breakell with the Breakell Law Firm, who won over \$600 in our 50/50 drawing and donated all of it to Toys for Tots. I'd also like to extend a special thank you to NESCA's Board of Directors and Past Presidents for co-sponsoring the holiday reception and dinner. Finally, it gives me great pleasure to announce that the "Burt Fisher NESCA Member of the Year" award was presented to Joe Gomez of Gomez Electrical Contractors, Inc. Joe has given a tremendous amount of his time, talent and resources to NESCA over the last 30 years and he is very deserving of this award. Thank you for all you have done for NESCA Joe!

Our January membership meeting will be held on January 12th, and the program will be a panel discussion featuring representatives from four A/E firms: Dick Bove with CHA; Randy Collins with CSArch; Martin Weber with Mosaic Associates and Matt Goss with CDM. Our four panelists will be addressing the construction outlook for the spring/summer of 2012, specifically, projects their firms have in the pipeline that will be out on the street for bid during the coming year. The January meeting will also be NESCA's annual joint meeting with the National Association of Women in Construction (NAWIC). Between our four panelists and NAWIC, it's going to be a great networking opportunity for NESCA members, so I hope you'll make plans to attend.

On January 24th and 25th NESCA will be holding an 8-hour "Qualified Rigger" course at the Building Industry Center, from 3-7 pm (both days). OSHA

recently modified its standards to include the requirement that construction employers must use qualified riggers during hoisting activities. Since rigging and lifting operations affect virtually all construction trades, this course is a must! The course will be instructed by NESCA member Steve Dewey with All-Lifts, Inc. Steve has over 35 years experience in the rigging equipment business, and has trained hundreds of employees for both construction and manufacturing businesses in safe rigging practices. Registration forms for this course were recently sent to all NESCA members.

Mike O'Connor, President

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

Court Holds Town's Award to "More Responsible Bidder" Violates Competitive Bidding

On June 9, 2011, the New York State Court of Appeals decided in the *Matter of AAA Carting and Rubbish Removal, Inc. v. Town of Southeast, et. al.*

In this case, the Town of Southeast's existing contract for residential refuse removal services was due to expire and the Town Board sought competitive bids from qualified contractors to handle the Town's waste removal needs. The Town set forth in its bid request the qualifications the Town required from the respective contractor. The Town Board received three bids, AAA Carting & Rubbish Removal, Inc. ("AAA") submitted a bid for \$1,210,500 per year, Sani-Pro Disposal Services Corp., d/b/a Suburban Carting ("Suburban") submitted a bid for \$1,496,205 per year and Advanced Waste Systems submitted a bid for \$1,692,306.80 per

year. The Town Board, in performing its due diligence concerning the bids by AAA and Suburban considered qualitative factors such as safety, professionalism, and the availability of spare vehicles, none of which were listed in the bid request and found that on the basis of those qualitative factors, Suburban was the more responsible bidder.

The Court of Appeals concluded that the Town Board, in awarding the bid to Suburban, based on qualitative factors not contained in the bid proposal and not having found that AAA was not a responsible bidder was in violation of the competitive bidding statutes of the General Municipal Law Section 103(1) and Town Law Section 122. The Court, in conclusion, stated "Here, the record before the Town Board was devoid of good reason for rejecting the low bid from AAA. The disapproval, as stated by the Town Board, was based on criteria not contained in the bidding proposal. Inclusion of those criteria would have ensured that every bidder had the information necessary to make an intelligent evaluation and bid. In this instance, none of the qualitative factors that the Town Board identified were in the bid request. Accordingly, it was improper for the Town Board to award the contract based on these qualitative factors. A contract subject to the competitive bidding statutes must be awarded to the lowest responsible bidder who fulfills the specifications contained in the proposal. In this case, it was AAA."

What the Town did in essence was to award a contract to a vendor they believed to be more responsible. However, nowhere was it stated, prior to AAA filing its petition, that AAA was not a responsible bidder. In fact, the contrary was true. Absent a finding of lack of responsibility, there was no authority to support the Town Board's rejection of AAA's bid for one that is considered more responsible.

Judge Pigott dissenting stated "in restricting the duty of a municipal agency in determining whether or not the lowest bidder has promised to fill the bid specifications, the majority has stripped municipalities of their sound discretion to decide whether a lowest bidder's undertaking is based on a real ability to perform. This ruling will mean that contractors will be able to obtain public work simply by bidding low and vowing to comply with bid specifications. The result will be that municipalities will also be forced to accept shoddy work by unprofessional contractors the only virtue of whom is that they are cheap."

Terence J. Burke, NESCA Legal Counsel

Joe Gomez Receives NESCA Member of the Year Award

Joe Gomez of Gomez Electrical Contractors, Inc. was presented the annual "Burt Fisher NESCA Member of the Year" award at NESCA's December 8, 2011 Holiday Reception & Dinner at the Century House.

The Member of the Year Award is a cash prize given in recognition of the recipient's distinguished record of service to NESCA and to the construction industry. The award recipient is selected by a committee consisting of the five most immediate NESCA past presidents along with past award winners who make their selection after reviewing nominations submitted by members of NESCA.

In his presentation of the award, past president Roger Jones praised Joe's years of service to NESCA pointing out his consistently active presence in the association for more than 30 years. Joe served as NESCA's president in 1996-97, and is currently secretary of NESCA's state affiliate, the Empire State Subcontractors Association.

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Calendar of Events

January 10, 2012

Board of Directors Meeting
Century House, Latham, 5 pm

January 10, 2012

NESCA Membership Meeting
Century House, Latham, 6 pm

January 17-20, 2012

OSHA 30-Hour Course
10 Airline Drive, Albany

January 24-25, 2012

Qualified Rigger Course
Building Industry Center, 3-7 pm

Watch for NESCA Safety Award Entry Form

For several years, NESCA has participated in a collaborative relationship with the Albany Area Office of the Occupational Safety and Health Administration (OSHA) to provide members with information, guidance and access to training resources to assist members in protecting employee safety and health. In keeping with these goals, six years ago NESCA developed a program to recognize the exemplary safety records of eligible member subcontractors and suppliers through the presentation of annual Safety Awards which are based on the company lost workday incidence rate. Last year, 69 NESCA members were honored with gold, silver and bronze safety awards. NESCA's sixth annual Safety Awards presentation will be held at the April 12, 2012 membership meeting. Be on the lookout for the Safety Award Entry Form, which will soon be mailed to all members.

Question of the Month

Q. I heard there is a new federal posting requirement for employers taking effect in January. Is this true, and if so, what is nature of this posting requirement?

A. Yes it's true. The National Labor Relations Board (NLRB) has issued a new rule requiring employers to post notices explaining employee rights under the National Labor Relations Act. Employers must comply with the new posting requirement beginning on January 31, 2012 and will be required to post the employee rights notice where other workplace notices are typically posted. The required notice will inform employees that they have the right to bargain collectively with their employer for improved wages and working conditions, to form, join and assist a union and to refrain from any of these activities. Copies of the notice (in English and other languages) are available for download from the NLRB's website at www.nlrb.gov.

Mark Your Calendar!

NESCA's Annual "Meet the Estimators/Purchasing Team" Networking Event

February 9, 2012, 6 pm, Century House

Don't miss this year's event! We will have more than 20 general contractors participating and each contractor will have a table manned by their estimators and purchasing team. Last year more than 450 NESCA members attended this very popular event! Be on the lookout for more information and details coming soon!

Help Wanted

Our long-established commercial painting client is looking for the #2 person to the owner. If you have a least 5 years of proven supervisory experience in commercial painting managing multiple crews (usually 3-5 technicians) coupled with a strong work ethic and leadership skills, we have the career move you've been waiting for. Our client has solid growth and a long history in our area. Customers include major banks and other institutions as well as industrial and commercial property owners. Send resume to Stan Simkins, Management Advisory Group – stan@fambizdoc.com. No calls please.

Member Anniversaries

Avello Brothers Contractors, Inc. – 5 years

Liberty Mutual – 5 years

NBT Bank – 5 years

Sunstream Corporation – 10 years

Adirondack Mechanical Corp. – 25 years

Albany Fire Protection, Inc. – 25 years

Mid-State Industries, Ltd. – 25 years



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