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April 2026

Meet the Estimators/ Purchasing Team Event

Sponsored by Marshall & Sterling Upstate

Thirty of Northeastern New York's leading commercial general contractors will be represented at NESCA's April 9th "Meet the Estimators/Purchasing Team" event at the Duo at the Dunes, Italian American Community Center, 257 Washington Avenue Extension, Albany. Each contractor will have its own well-identified table manned by several representatives for NESCA members to meet, visit with and learn more about the type of work they do, project delivery systems they use, current projects in the pipeline, and how they bid their work. This year's event will again include both the general contractors' estimators and the people responsible for "buying the project out". The event will be a fantastic networking opportunity for everyone involved and will provide NESCA members with a chance to "put a face to the name" of people you may periodically interact with but rarely see in person!

Food stations and bar service will be available throughout the evening. After a registration/reception period (6:00-6:30), food stations will open at 6:30, so members may have a drink, help themselves to some food, and begin your visits with the contractor representatives. Members are encouraged to bring brochures and other information about your company along with business cards to leave with the general contractor representatives. Members are also encouraged to speak with the representatives from all 30 contractors. If possible, bring multiple people from your company to the event to "spread out" and visit with all the general contractors.

NESCA will be selling 50/50 tickets to benefit several scholarship funds including the Roger H. Jones NESCA Scholarship and two endowed scholarship funds NESCA maintains with Hudson Valley Community College.

Every year this event continues to grow in popularity, and last year total attendance was nearly 500. The feedback we consistently receive from the participating general contractors as well as from subcontractors and suppliers who attend is overwhelmingly positive. The food is great and it's a lot of fun, so mark your calendars and don't miss out on your opportunity to attend this year!

New NESCA/ESSA Bill Introduced in Senate and Assembly

New legislation being pursued by NESCA and its state affiliate, the Empire State Subcontractors Association, was recently introduced in both houses of the State Legislature. This new bill, sponsored by Senator Chris Ryan (D-Syracuse) and Assembly Member Pam Hunter (D-Syracuse), will prohibit contract provisions conditioning a subcontractor's or supplier's right to commence a lawsuit or arbitration proceeding for breach of contract on the exhaustion of another legal remedy by making such provisions against public policy, void and unenforceable.

This legislation expands on ESSA's 2009 amendment of Section 5-322.1(2) of the NYS General Obligations Law which prohibited contract provisions conditioning a subcontractor's or supplier's right to file a claim or commence an action against a payment bond on the exhaustion of another legal remedy against public policy void and unenforceable. The 2009 amendment was necessary because prime contractors often included language in their subcontracts that required subcontractors and suppliers to exhaust their lien rights, up to and including foreclosure on the lien, before filing a claim or commencing an action against the prime contractor's payment bond. What this often resulted in was by the time a subcontractor had exhausted its lien remedies, the statute of limitations for commencing an action against the prime contractor's payment bond had run.

The absence of explicit statutory language covering direct claims against prime contractors has allowed some parties to argue that these restrictions remain enforceable when applied to breach of contract actions. This legislation closes that loophole and ensures consistent application of public policy protections.

This amendment clarifies and reinforces the Legislature's prior efforts to prevent contractual provisions that effectively condition or waive subcontractor's statutory and common law payment rights. It also ensures that construction contracts cannot be structured to circumvent existing public policy protections through procedural requirements.

This legislation promotes fairness and transparency in the construction industry by preventing contractual provisions that delay or obstruct subcontractors'/suppliers' access to lawful payment remedies. By amending the scope of existing law, it will strengthen industry stability and protect small businesses.



PRESIDENT'S MESSAGE

As we welcome in Spring and hopefully some nice weather to look forward to for golf and other outdoor activities, NESCA continues to offer valuable educational and networking activities and is gearing up for some more good events in the coming months.

NESCA's March 12th membership meeting featured a presentation by Greg Serio from Park Strategies, LLC. Greg serves as the lobbyist for NESCA's state affiliate, the Empire State Subcontractors Association. Greg provided NESCA members with information about ESSA's 2026 legislative program which includes two proposals: (1) Legislation that would provide contractors, subcontractors, and suppliers with a measure of payment security by requiring that a payment bond or an irrevocable letter of credit be posted by the private developer on "hybrid" construction projects costing more than \$250,000. A hybrid project is a project built by a private developer with private funds, but on public land. Contractors, subcontractors, and suppliers have no lien rights on such projects. (2) Legislation

that would prohibit contract provisions conditioning a subcontractor's or supplier's right to commence a lawsuit for breach of contract on the exhaustion of another legal remedy (such as the exhaustion of lien rights up to and including foreclosure on the lien). By the time a subcontractor or supplier exhausts its lien remedies, the time to bring a breach of contract action may have expired. Greg also explained the many hurdles ESSA legislation must overcome to get passed by both houses and ultimately signed into law.

On March 18th, the NESCA/AGC/ECA Educational Partnership held a seminar on "Performing NYS Public Work". Our instructors, NESCA legal counsel Walter Breakell and AGC vice president Joe Hogan provided information on what every contractor and subcontractor need to know when performing public work. General areas that were covered included competitive bid requirements, labor law requirements, payment and non-payment remedies, claims, M/WBE and affirmative action requirements, and miscellaneous issues.

NESCA's very popular "Meet the Estimators/Purchasing Team" event will be held on April 9th at the Italian American Community Center. 30 general contractors will be participating this year, and each contractor will have its own well-identified table manned by their estimating and purchasing staff. This event is a great opportunity for NESCA members to visit with representatives from the most prominent general contractors in Northeast New York, so I hope you plan to attend.

NESCA will hold its spring Mid-Hudson membership meeting at Coppola's in Hyde Park on April 16th, and a Binghamton membership meeting at McGirk's Irish Pub on May 20th. I look

forward to seeing NESCA members from the Mid-Hudson and Binghamton regions at these two meetings.

A series of professional development seminars targeting NESCA's Young Professionals to be held on April 21st, May 5th and May 19th at the Building Industry Center. Seminar topics include the fundamentals of Accounting, Banking, Insurance, Bonding, Human Resources, and Construction Law.

From April 29th to May 1st, several NESCA officers and past presidents will be attending the National Subcontractors Alliance (NSA) annual conference in Boston. NSA brings together the leading subcontractor associations from across the country and provides a forum to exchange ideas and information. In other words, NSA helps NESCA to better serve our members.

As always, regarding any questions or concerns you may have, NESCA is here to help and just a phone call away. Looking forward to seeing many of you at the upcoming events.

Joe Jerkowski, President

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

A significant amount of our membership provide labor and material to prime contractors on public improvement projects. It is important the membership is aware that most public improvement contracts valued in excess of \$200,000.00 require the prime contractor furnish a Labor and Material Payment Bond to insure materialmen as well as first and second tier subcontractors receive payment in the event the prime contractor, or its subcontractor, fails to pay for work performed or material supplied to the project.

It is important that a subcontractor or material supplier secure a copy of the project Labor and Material Payment Bond at the time of contract signing. If the prime contractor will not provide a copy, then a request under FOIL should be made to the public owner for a copy. That document should be read carefully for written notice requirements and time frames within which formal written notice of claim must be submitted to the bonding company and whether it

must be made by Certified Mail Return - Receipt Requested.

A claim against the prime contractor payment bond may be made by the subcontractor or materialman for any amount not paid after 90 days from delivery of materials or furnishing of services to the project. Second tier subcontractors or suppliers must provide written notice of filing a payment bond claim to the prime contractor within 120 days of last furnishment of material or performance of labor on the project. It is good practice to transmit that written notice by Certified Mail Return - Receipt Requested so evidence exists the requisite notice was provided.

The final critical deadline for perfection of a claim against the Labor and Material Payment Bond is the mandate to commence litigation seeking to enforce payment pursuant to the payment bond within one (1) year from the date the project was completed and accepted by the public owner.

Upon execution of your subcontract or purchase order, a written request should be made to the public owner requesting to be notified of the completion and acceptance of the project pursuant to §11-a of the NY Lien Law. This also should be sent by Certified Mail Return - Receipt Requested and a copy maintained in the contract file. The NESCA office can provide a template letter for members to utilize. The legislature mandated the furnishing of labor and material payment bonds to ensure subcontractors and materialmen are paid for services and material provided to a public project. It exists for the protection of subcontractors and materialmen working on public projects. When non-payment on a public project occurs, subcontractor and materialmen members need to carefully follow the required payment bond claim procedure and there is high probability payment will be recovered for contractually compliant work and material provided on the public project.

Walter G. Breakell, NESCA Legal Counsel

Question of the Month

Q. I'm performing work on a public-school project as a subcontractor. The general contractor is holding 10% retainage from my progress payments, and he told me that he can hold 10% because he did not require me to provide performance and payment bonds. Is he correct?

A. Not exactly. Section 106-b of the NYS General Municipal Law states: "The contractor shall retain not more than five per centum of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of five per centum but not more than ten per centum of each payment to the subcontractor provided that prior to entering into a subcontract with the contractor, the subcontractor is unable or unwilling to provide a performance bond and a labor and material bond both in the full amount of the subcontract at the request of the contractor."

What this means is that the contractor may hold more than 5% retainage but only if prior to entering into the subcontract, the contractor asks the subcontractor to provide bonds and the subcontractor can't or won't provide them. The key words are prior to entering into a subcontract. The general contractor cannot remain silent about requiring bonds, and then simply hold 10% retainage. The GC must first ask the subcontractor to provide bonds (prior to entering into the subcontract) and if the subcontractor does not provide the bonds, only then may the general contractor hold up to 10% retainage.

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Calendar of Events

April 2, 2026

Board of Directors Meeting
Italian American Comm. Ctr. 6 pm

April 9, 2026

Meet the Estimators Event
Italian American Comm Ctr., 6 pm

April 16, 2026

Mid-Hudson Membership Meeting
Coppola's Italian and American
Bistro, Hyde Park, 6 pm

April 30, 2026

Young Professionals Mixer
Trick Shots, Clifton Park, 6 pm

NESCA Milestone Anniversaries

AB Construction and Roofing, Inc. – 10 Years

Kivort Steel – 20 Years

Mullally Bros., Inc. – 30 Years

LHV Precast, Inc. – 35 Years

Member Payment Tip

The New York False Claims Act allows the State Attorney General, a local government, or any person to file a lawsuit against a person or a company that obtains funds or property from the state or local government through false or fraudulent conduct. Specifically, the statute says that any person who knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval or knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim shall be liable to the state or a local government, as applicable, for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, plus three times the amount of all damages, including consequential damages, which the state or local government sustains because of the act of that person.

Therefore, if a contractor submits an affidavit to a public owner with its payment requisition, attesting that all subcontractors and suppliers have been paid on previous requisitions when they, in fact, have not been paid, that contractor could very well be committing a violation of the New York False Claims Act. It is likely a subcontractor's payment will be accelerated by the general contractor if it is reminded of the penalties associated with submitting a false claim to the state or locality, in this case a payment requisition that includes a false affidavit of payment of debts and claims related to the project.

Under certain circumstances, the False Claims Act is one more tool available to subcontractors when the contractor has been paid by the public owner but hasn't paid you for your previous requisitions. NESCA has developed a sample letter for use by members to educate contractors about the False Claims Act, and to notify a contractor that it may have violated the False Claims Act through the submission of a false affidavit of payment of debts and claims to a public owner.

Mark Your Calendars!

NESCA Young Professionals Host a Night at the Ballpark

Tuesday, June 23, 2026, 5:30 pm

Rowdy's at the Joe - Joseph L. Bruno Stadium

Hudson Valley Community College

More Information to Come!



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