



Vol. 44, No. 3

(518) 869-9800

September 2026

SED Issues Memorandum on “Piggybacking”

As NESCA members may now know, on May 21, 2026 the Appellate Division 3rd Department affirmed a NYS Supreme Court (Broome County) ruling that “Piggybacking” violates New York State’s competitive bidding laws. Piggybacking is a means of awarding public contracts without competitive bidding via a cooperative purchasing model. In recent years there has been an alarming increase in the use of piggybacking, particularly among school districts, as a means of awarding public works contracts.

Some school districts have attempted to justify skirting New York’s competitive bidding statutes by citing a section of the NYS General Municipal Law as the authority to engage in this procurement method. This has been done under the misconception that the piggybacking provisions for purchasing products and services found in Section 103(16) of the General Municipal Law apply to public works construction. Subdivision 16 of Section 103 of the General Municipal Law was added as a new subdivision in 2012 and applies to purchases of “apparatus, materials, equipment and supplies” or to services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies. The fact that the term “public work” is not present in Subdivision 16 is not by accident. That specific exclusion was made during the legislative process. To make matters worse, school districts have utilized the piggybacking scheme to avoid awarding separate prime contracts for plumbing, electrical and HVAC work under New York’s Wicks Law (Section 101 General Municipal Law).

In upholding the lower court’s decision, the Appellate Division found that “Although the Legislature could have explicitly identified public works contracts as being subject to the piggybacking provision of subsection (16), it chose not to do so....Thus, it appears that the Legislature contemplated that the piggybacking provision would be used to facilitate procurement in the context of purchase contracts, as opposed to construction and renovation projects.

Following the Appellate Division decision, on July 17, 2026, the NYS Department of Education (SED) issued a memorandum to all NYS school districts as well as design professionals and other interested parties, that in light of the

recent Appellate Division decision regarding the use of “Piggybacking” on public works projects, the piggybacking framework may not be utilized for future public works contracts. **SED advised school districts that it will no longer provide state aid to school districts for new public works contracts procured via the GML Section 103(16) piggybacking mechanism. And for all future project submissions, the Office of Facilities Planning at SED will no longer accept project documents that rely on piggybacking for public works projects.** This is great news for the construction industry and for competitive bidding, and very important because SED must approve all plans for school district projects. The SED memo should put an end to the utilization of piggybacking by school districts in NYS. If you would like a copy of the SED memo, please contact the NESCA office.

Mark Your Calendar!!

***NESCA’s 45th Annual
Trade Show
Sponsored by Marshall & Sterling Upstate***

***Thursday, October 1, 2026
Albany Marriott
189 Wolf Road, Albany
5:00 – 8:30 p.m.***

***See the latest in construction industry
technology, equipment, products, and
services while networking with
construction industry peers!***

More information to come!



PRESIDENT'S MESSAGE

And just like that, summer is winding down. Hopefully everyone was able to get out and enjoy the warm weather, create some lasting memories and stay safe. NESCA's Young Professionals took advantage of one of this summer's final days and held a mixer at Lionheart on the Green where young professionals affiliated with the Associated General Contractors of NYS were also invited to attend. I'm sure everyone had a good time.

Fall is on the way, and that means soon NESCA will be starting the 2026-27 slate of programs.

First up is the popular September 14th NESCA Golf Outing at Shaker Ridge Country Club. Both morning and afternoon flights sold out very quickly and should be a great time for all who attend. Thanks again to the participants and sponsors for continuing to make this outing a success.

Then on October 1st one of NESCA's most anticipated and well-attended events, our annual Trade Show sponsored by Marshall & Sterling Upstate, Inc., will be held at a new location, the Albany

Marriott Hotel. This will be our 45th Annual Trade Show, which every year attracts 500 or more construction industry professionals including general contractors, subcontractors, architects, engineers, and others. Exhibitor registration forms were mailed, and all exhibit space was sold out in one day! The Trade Show is always one of the year's best networking opportunities, and we can assure you a relaxed atmosphere, great food, door prizes and a chance to win our Super 50/50 drawing. This is truly an event you don't want to miss.

The program committee has continued their hard work on this season's events. Next up after the Trade Show, will be our November 12th membership meeting at the Italian American Community Center with Greg Chanese, Assistant Director at NY Small Business Development Corporation, who will discuss AI in construction.

NESCA also has two regional membership meetings coming up this fall. On October 15th we will hold a Mid-Hudson membership meeting at Coppola's Italian & American Bistro in Hyde Park. Then on November 19th we will hold a Binghamton membership meeting at McGirk's Irish Pub in Binghamton. Meeting notices will soon be sent out to our Mid-Hudson and Binghamton members respectively.

NESCA's 2026-27 Membership Directory is expected to be ready for distribution to NESCA members by mid-September. Not only is this a valuable tool for members, but we also send copies of our Directory to general contractors, design professionals and public contracting agencies. Thank you to all our advertisers for your support.

At this point, around ¾ of NESCA members have already paid their 2026-27 membership dues. Thank you! I

encourage those who have not yet paid your dues to do so as soon as possible so that NESCA may continue to provide our many benefits and services to our members.

I look forward to seeing everyone for golf at Shaker Ridge Country Club in September. Enjoy the rest of your summer!

Jeffrey Orvis, President

NESCA NEWSLETTER

Published monthly by the Northeastern Subcontractors Association, Inc.

6 Airline Drive, Albany, NY 12205

(518) 869-9800 www.nesca.org

JEFF ORVIS, President
RICK OTIS, Vice President
MIKE LOCK, Treasurer
JESSE GORMAN, Secretary

DIRECTORS

BRIAN BELLAMY
ERNIE BURKART
OLIVIA BRADT
PHIL CUDDY
ROBERT GENNETT
EMMA HECK
JOE MICIOTTA
MIKE MUSCOLINO
NATE PANNUCCI
PETE RYAN

JOE JERKOWSKI
1st Immediate Past President

BRYAN BERRY
2nd Immediate Past President

WALTER BREAKELL
Legal Counsel

MICHAEL MISENHIMER
Executive Director

TRUST OUR EXPERIENCE
FOR OVER 50 YEARS!

BURT
crane & rigging

Full Service Warehousing available at our Selkirk Location just minutes from the Ports of Albany and Coeymans

* Crane Service * Riggers * Local and Long Distance Hauling

* Green Island, NY
* Selkirk, NY
* 518-271-6858
* burtcrane.com

NYS Certified WBE

"BUILDING THE FUTURE - TOGETHER"

Kamco
SUPPLY CORP.
OF NEW ENGLAND

Installation of doors, bathroom partitions & accessories

Commercial doors & frames hardware

Drywall, insulation and framing

Acoustical ceilings, walls & isolation products

Millwork

36 Railroad Avenue • Albany, NY 12205
(518) 729-1122 • Fax (518) 453-9527

10 Silver Circle, Queensbury, NY 12804
(518) 798-7245 • Fax (518) 793-8397

PROTECTING YOUR LEGAL RIGHTS

KEVIN LAURILLIARD
ATTORNEY AT LAW

Construction Law • Employment Law
Corporate Law • Dispute Resolution • Litigation

O'CONNELL ARONOWITZ
ATTORNEYS AT LAW

A full service law firm established in 1925.

54 State Street | Albany, NY 12207
www.oalaw.com
518-462-5601

■ *Going beyond your expectations*

Accounting • Auditing
Tax • Consulting
Pension Plan Administration

TBC
Teal, Becker & Chiamonte
CERTIFIED PUBLIC ACCOUNTANTS & ADVISORS

www.tbccpa.com | 518-456-6663



COUNSEL'S MESSAGE

This month's column will address pre-bid and pre-contract procedures which contractors and, more frequently, material suppliers should perform to protect themselves from contract ambiguities and enhance their ability to successfully recover on a changed condition claim or extra work directive.

Once a project is identified as one which a competitive bid is to be submitted, the contractor/materialman should carefully read and follow all the information contained in the invitation to bidders.

It is important that a determination is made whether the location or Owner requires special focus on local rules, permits or variance requirements. If so, identify what difficulties, procedures and cost will be involved in meeting compliance requirements.

A pre-bid procedure which is frequently not provided the attention its importance deserves is the necessity for an on-site inspection of the conditions which will be confronted during performance of the contract. It is at this

stage any obvious site condition or undisclosed field obstacle would be identified and raised in the pre-bid informational conference.

Failure to conduct a site inspection, or raise a contract document concern, during the pre-bid informational conference could result in a denial of a change order for differing site conditions or changes required in the field not disclosed in the contract documents.

If these conditions are readily observable when conducting a site inspection, or thoroughly examining the contract documents, an argument will be made they should have been incorporated in the contractors bid.

Normally the Invitation to Bidders and contract terms and conditions will outline the pre-bid procedures to be followed so the bidder will be informed of the risks which await them.

It is important the bidder protect themselves by conducting a thorough site investigation and evaluation of the contract documents at the pre-bid stage to flush out any questions or potential ambiguities.

Walter G. Breakell, NESCA Legal Counsel

Question of the Month

Q. I'm involved in a public-school project and the general contractor is withholding 10% retainage. When I asked him why he is holding more than 5% he said he's holding 10% because I did not provide performance and payment bonds. Can he do that?

A. Retainage on local public projects (such as school projects) is governed by Section 106-b (2) of the General Municipal Law which reads as follows:

"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 (up to 10%) 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 may not remain silent about requiring bonds, and then simply hold 10% retainage. The only time a general contractor may hold more than 5% retainage is if they first ask the subcontractor to provide bonds (prior to entering into the subcontract) and the subcontractor is not willing or able to provide the bonds. [Fun Fact: NESCA was involved in drafting this retainage law back in 1978]

NESCA Membership Milestone Anniversaries

William M. Larned & Sons, Inc. – 10 Years

A. Treffeisen & Sons, LLC – 10 Years

HH&K

Hinman, Howard & Kattell LLP
ATTORNEYS

*Serving the Capital District
Construction Industry Since 1980*

A full service law firm with emphasis on

Commercial and Residential Real Estate
Contract & Construction Law
Commercial Litigation | Creditors Rights
Arbitration | Mediation | Bond Claims
Appeals (Civil & Criminal) | Criminal Defense
Banking & Financial Services
Health Law | Matrimonial & Arbitration
Personal Injury | Will, Trust & Estates

10 Airline Drive, Suite 205
New York, New York 12205
(518) 869-5552 | www.hhk.com

attorney advertising

Gallagher

Insurance | Risk Management | Consulting

The Gallagher Construction team focuses on developing surety, insurance and risk management programs for contractors and subcontractors.

AJG.com | The Gallagher Way. Since 1927.

© 2022 Arthur J. Gallagher & Co. | 42502

CIS

Construction Information Systems, Inc.

**Unlock Efficiency using
Cloud based Sage Intacct
for Construction!**

Secure Anywhere, Anytime Access
Powerful financial insights

Call Paul Unter 518 373-9005
www.consinfo.com



ABC
Supply | Interiors™

- DRYWALL & WALLBOARD
- STEEL FRAMING
- CEILINGS & ACOUSTICAL
- HOLLOW METAL DOORS & FRAMES
- ARCHITECTURAL WOOD DOORS
- INTERIOR FINISHING • FASTENERS
- INSULATION • TOOLS & ACCESSORIES

SERVING THE CAPITAL DISTRICT
36A GREEN MOUNTAIN DRIVE
COHOES, NY 12047
518.783.6121

Welcome New Members

Weber Enterprise, Inc.

112 Wade Road
Latham, NY 12110
518-903-3594

ecamp@eweberenterprise.com

Contact: Eric Weber

Servpro Team Skov

4 Airport Park Blvd.
Latham, NY 12110
838-301-9571

hlafraniere@servproteamskov.com

Contact: Hope LaFreniere

Manny Topsoil & Gravel

11 Pineview Court
Waterford, NY 12188
518-928-1478

dustin@mannytopsoilandgravel.com

Contact: Dustin Manny

Calendar of Events

September 3, 2026

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

September 14, 2026

42nd Annual Golf Outing
Shaker Ridge Country Club

October 1, 2026

45th Annual Trade Show
Albany Marriott, 5 pm

October 8, 2026

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

October 15, 2026

Mid-Hudson Membership Meeting
Coppola's, Hyde Park, 6 pm

NESCA Thanks Members for Additional Contributions

Thank you to all members who have paid your 2026-27 membership dues. A special thank you is reserved for the following members who have made voluntary Sustaining Dues, NESCA PAC, and Scholarship Fund contributions:

Sustaining Dues Contributions

President's Circle (\$1,000)

Arold Construction Company ★ Dagostino Building Blocks

Leadership Team (\$500)

Ashley Mechanical ★ Competitive Advantage Group ★ Maximum Security Products
Pompa Bros. ★ Rommel Fence
Stone Bridge Iron & Steel ★ Troy Boiler Works

Patron Group (\$250)

Builders Installed Products ★ CDE Electric ★ Commercial Interiors
Scaffold Builders Associates ★ Warren W. Fane
John M. Mullins Rigging & Hauling ★ CD Perry ★ Reliable Glass & Door
Star Roofing & Restoration ★ Three D Rigging & Construction ★ E.W. Thompkins

Sustaining Member (\$100)

AFSCO Fence Supply ★ Alliance Masonry ★ Armistead Mechanical
Associated Lightning Rod ★ BMI Supply ★ BPI Piping ★ Crisafulli Mechanical
EMCOR Services New England Mechanical ★ EMI Guide Rail
Patrick DiCerbo/Northwestern Mutual ★ Henderson Johnson Co. ★ JPW Erectors
KHM ★ Chip Kronau Construction ★ Martino Tile ★ Medina Insulation ★ T.P. Monahan
N.E.P Glass ★ RIM Plumbing & Heating Supply ★ Vamco Sheet Metal
Vanguard Organization ★ Wood Pro 2 Installers

PAC & Scholarship Fund Contributions

AFSCO Fence Supply ★ Appolo Heating ★ Absolute Fire Protection
Architectural Glass & Metal ★ Armistead Mechanical ★ Arold Construction Company
Ashley Mechanical ★ B&B Plumbing & Heating ★ BMI Supply
L. Browe Asphalt Services ★ Builders Installed Products ★ CDE Electric
CKM Electrical Services ★ Commercial Interiors ★ Crisafulli Mechanical
Cristo Demolition ★ Curtis Lumber ★ Dagostino Building Blocks
Patrick DiCerbo/Northwestern Mutual ★ EMCOR Services New England Mechanical
Warren W. Fane ★ William Halpin ★ Harbour Roads ★ Henderson-Johnson Co. ★ KHM
Chip Kronau Construction ★ M.V.P. Construction ★ Mackey Electric
Maximum Security Products ★ Medina Insulation ★ Merit Apprenticeship Alliance
N.E.P Glass ★ Noble Gas Solutions ★ Northway Tile ★ OGGI Concrete Forms
Oneonta Block ★ PCC Contracting ★ C.D. Perry ★ Pompa Bros. ★ Rommel Fence
Reliable Glass & Door ★ Reo Welding ★ RIM Plumbing & Heating Supply ★ Rommel Fence
Frank J. Ryan & Sons ★ Stone Bridge Iron & Steel ★ Thorpe Electric Supply
Three D Rigging & Construction ★ E.W. Thompkins ★ Tri-City Scaffold
Troy Boiler Works ★ Valley Sealing and Striping ★ Vanguard Org.



When Construction Problems
Require Legal Solutions

New York - Albany: Tel: 518.300.3213
New York - Hudson Valley: Tel: 845.538.8204

Connecticut:
Tel: 203.363.0081

Construction,
Real Estate,
Labor & Employment
and Commercial Law



www.WBGLLP.com

For All Your WBE Building Material Needs



A New York Certified Woman-Owned Business Enterprise

* SHINGLES * INSULATION *
* EPDM * TPO * PVC * TRUSSES *
* METAL ROOFING *
* CUSTOM METAL FABRICATION *
* SIDING * WINDOWS * DOORS *
* SKYLIGHTS * COATINGS *
* PLYWOOD * LUMBER *
* AIR BARRIERS *
* SNOW RETENTION SYSTEMS *

1329 Amsterdam Rd., Scotia, NY 12302

(518) 346-2395

Secure Your Success

Marshall+Sterling provides customized insurance and employee benefits solutions and private client, retirement and wealth management services.

MARSHALL+STERLING

(845) 454-0800
marshallsterling.com



CRANE & RIGGING SPECIALISTS SINCE 1870

- Crane Service to 350 Ton
- Heavy Hauling to 300 Ton
- Air Dolly Systems
- Warehousing & Storage
- 24 hour Emergency Response
- Boom Lengths to 350 Feet
- Forklifts to 80,000 Pounds
- Hydraulic Gantries to 200 Ton
- Plant Maintenance Services
- Three-Dimensional Lift Plans
- Machinery Moving & Installation
- Millwrighting & Steel Fabrication
- HAZMAT, MSHA, OSHA Certified Operators & Riggers

WOMAN-OWNED SMALL BUSINESS ENTERPRISE

WWW.MULLINSRIGGING.COM



1 Pine Street - Green Island, New York 12183
(518) 273-0771 Phone (518) 273-3780 Fax