



By now most SBE members have seen reports of the New York State budget, which included Wicks Law “Reform.” There was discussion about Wicks reform earlier in the legislative session, and the sense from many members of the Legislature was that it would not see action this year. The unique budget process in Albany often leads to unexpected results, and this reform package is one of them.

Essentially, the budget included Wicks “Reform” that was pushed last year by then Governor Eliot Spitzer. What does this mean for the construction industry employers and contractors? Below is a summary of the “Reform” measure in the budget:

Project Thresholds

The thresholds at which Wicks applies were increased to:

- \$500,000 Upstate;
- \$1.5 million in Nassau, Suffolk and Westchester counties;
- \$3 million in New York City.

Naming of Subcontractors: On projects which Wicks is not required, the general contractor must name the subcontractors for (a) plumbing and gas fitting, (b) steam heating, water heating, ventilation and air conditioning apparatus, and (c) electric wiring and standard illuminating fixtures. This includes the price of the contract and a provision that the contractor not be changed unless there is a “legitimate construction need.” The bill goes on to say that legitimate needs could include changes in specifications, material costs, subcontractor status, and unwillingness of the subcontractor to do the work.

Establishment of guidelines and qualifications for bidders: The bill allows for school districts and any political subdivision with a population of over 50,000 to create unique standards. The board or agency must maintain lists of qualified bidders, and bidding shall be restricted to pre-qualified bidders. Alternatively, the board or agency could use the county’s list if one is maintained by the county.

Qualifications “shall” include; the prospective bidder’s ability to undertake the particular type and complexity of the work, financial capability, reliability, record in complying with existing labor standards, maintaining “harmonious” labor relations, compliance with EEO requirements and a demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships, and a safety record as demonstrated by experience modification rating for the last three years.

Payment: Payment by contractors to subcontractors changes from 15 days to 7 days of receipt of any payment the public owner.

Project Labor Agreements (PLA): The bill allows a public owner to waive Wicks if a PLA is used. The qualifications and naming of subcontractors would apply. Prior to this change, a public owner could have chosen to enter into a PLA. The real effect of this change is to allow

the waiving of Wicks to be part of the cost analysis. This could work to the benefit or detriment of the supporters of the PLA.

Apprenticeship: On projects that meet the Wick's thresholds, apprenticeship programs are required. The program must have been in place for three years and must also have graduated someone from the program in the three year period. The contractor must demonstrate that "the program has made significant efforts to attract and retain minority apprentices, as determined by affirmative action goals established for such program by the department."

The collective effect of these changes is a very substantial reworking of the competitive bidding law in New York. Depending on the type of contractor that you happen to be (or represent), union or non-union status, and Wicks or non-Wicks, each of these items may be positive or negative.

Construction industry employers have a number of broad concerns, especially in the qualification areas. Many of the "qualifications" need to be defined with substantial input on the definitions in order to make sure the changes make sense for the industry. Items like "safety modification rating" and "harmonious labor relations" seem simple until you step back and look at the details.

The apprenticeship area also poses a number of problems. Without making a judgment on the merit of the existing programs or the requirement itself, there are many areas of the state and many trades that simply do not have programs covering all aspects of a construction project. A good example is landscaping. There is a NYS program for "Landscape Nursery Manager," but we do not know of any program for the workers that install shrubs and plantings. Taken more broadly, there are areas of the state that are not well covered by the existing basic and specialty trades programs. In the short term, especially with the current moratorium, EEO goals (assuming that reaching EEO goals is a strict standard) and three year requirement, it is highly unlikely that the industry can meet the requirement.

The Builders Exchange has a diverse membership of 950 construction industry-related employers. The above is a very good summary of the "reform" changes included in this year's state budget.