

Labor Legislation Disguised as Wicks Reform

Joint op-ed piece by

Jeffrey J. Zogg, Executive Director – General Building Contractors of New York State

and

Michael Misenhimer, Executive Director – Northeastern Subcontractors Association

During the 2007 legislative session, Governor Spitzer and the Legislature gave every indication that they had gotten serious about amending and updating New York's so-called Wicks Law, an 80-year-old statute that requires state agencies, municipalities and school districts on building projects valued over \$50,000 to separately bid plumbing, HVAC and electrical work rather than utilize one general contractor to bid the entire project.

Unfortunately, what could have been a simple effort to raise the dollar threshold while addressing (for the mechanical and electrical contractors) certain legitimate issues involving contractor-subcontractor procurement practices and payment has been subjugated by a series of anti-competitive and costly labor provisions that will cancel out any real or perceived advantages to the public that an increase in the Wicks threshold would provide. Indeed, the latest proposal, which the Assembly has passed, will cost the public greatly.

There is a perception within the political world and the media that Wicks is a labor/employment issue. This perception is incorrect. The Wicks Law entails a historical economic struggle between the contractor and subcontractor communities over how we do business with one another. It involves the procedure by which public projects in New York are bid and awarded to construction businesses, and applies to all companies bidding public work, whether union or open shop. It has nothing to do with traditional labor subjects like project labor agreements (PLAs), apprenticeship programs, prevailing wages, and other such issues. And yet, in this latest version of "Wicks Reform" legislation, the Wicks Law threshold increases have become but a minor component of the bill.

We write this jointly to emphasize just how far off the track this whole debate has moved. We represent two different sides in the Wicks debate -- general contractors who often favor a single contract on public projects and subcontractors who favor multiple prime contracts. Both organizations include union and open shop contractors as members. To be completely accurate, the majority of the members of our two organizations are union, so one might wonder why we're not particularly keen on what would seem to be pro-labor attachments to the Wicks legislation. The answer is simple. We both believe in a competitive construction industry with a level playing field where all are invited to compete openly without discrimination and where a contractor's labor relations policy is not a factor.

As noted, there is much more to the "Wicks Reform" bill than simply the threshold increases. The labor issues are the real rub. For projects over the new thresholds, public owners would have the option of waiving the Wicks Law if they adopt a PLA.

What is a PLA? It is a technique designed to apply the terms of union labor agreements to all the work by requiring every contractor and subcontractor on the project to sign on. The NYS Court of Appeals has said that PLAs on public projects are legal, despite their anti-competitive nature, **IF** there is economic benefit. Our ten-year observation of the use of PLAs tells us there is seldom any economic benefit. PLAs simply provide the union contractor with an advantage and discourage the open shop contractor from bidding. The economic law of supply and demand will tell you where the prices will go when there is less competition.

In addition, the bill is ambiguously drafted and can be read to mandate that on all work over the thresholds, all contractors and subcontractors must have had for at least three years a Department of Labor-approved apprenticeship program in each trade they employ. One might think that sounds reasonable. But the sad truth is the requirements for establishing a DOL-approved apprenticeship program in this state are heavily skewed in favor of the union template and many open shop, small and minority contractors do not have the resources to set up and manage their own apprenticeship programs. The effect of this requirement will again be to discourage competition and drive up prices.

Interestingly, existing law already allows public owners the option to utilize PLAs and require apprenticeship programs. If these two requirements would be so beneficial for a given project, they can and should be considered on their own. They don't need to be applied across the board or linked to modifications of the Wicks Law. The proposed legislation strongly favors organized labor at the expense of taxpayers. Government should be neutral in labor-management relations.

The "Wicks reform" bill that now sits in the State Senate needs to be simplified to address the real issues involving the Wicks Law, and all these extraneous subjects need to be considered separately and on their own. To pass this current proposal is to give the impression that great reform has been achieved in the public contracting system, when just the opposite will have happened.