

AMENDMENT TO NEW YORK'S WICKS LAW TAKES EFFECT ON JULY 1, 2008

[July 2008] Since 1964, the monetary threshold for triggering the New York State Wicks Law has been set at \$50,000 for all public works and public housing authority projects. The Wicks Law requires public owners to commission their design professionals to prepare separate specifications for the electrical, plumbing, and HVAC components of public works and public housing authority projects. A fourth specification is also required for the general contractor's work.

The construction industry's sought-after change in this law came on July 1, 2008, and includes the upward modification of the monetary thresholds for triggering the requirements of the law's separate specifications. The amended legislation also includes several provisions which, under certain circumstances, allow avoiding the multi-specifications requirements altogether. Finally, the amended version requires that prevailing wage standards be incorporated into contracts, and that bidders provide advance subcontractor designation.

The new monetary thresholds are \$3 million for New York City's five downstate counties, \$1.5 million for Nassau, Suffolk, and Westchester counties, and \$500,000 for all upstate counties. Beyond the new monetary threshold provisions, the amendment allows local governments and schools to opt out of the requirements on larger-value contracts if they put a project labor agreement ("PLA") in place for contemplated work. This applies only for PLAs with organizations that have approved apprenticeship programs that have been in place for three (3) years. In essence, no entity may bid on a project under the PLA opt-out unless they use qualified union labor with a long-standing apprenticeship program already in existence.

There are two important ramifications of this amendment for design professionals who are targeting the New York public construction industry.

1. Those public owners currently engaged in, or contemplating, projects will likely seek their design professional's advice on how to take advantage of this new procurement flexibility. That advice will present both opportunities and risks for the design professional. A careful consideration of all project factors and a collaborative approach that incorporates outside expertise would benefit the design professional.
2. An inherent risk will stem from the fact that the status quo for all industry participants has been upset. The implementation of the Wicks Law amendment will likely include an economic impact as the subcontractors and general contractors sort out their realigned roles and expectations. The economic effects would also likely reach both the owner and the design professional.

During the next few weeks, we will continue to explore and evaluate the impact of the New York Wicks Law amendment on the design professional, and we will provide followup information and recommendations.

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