



DECONSTRUCTING WICKS LAW: THE EVOLUTION OF PUBLIC CONSTRUCTION PROJECTS

The American Council of Engineering Companies of New York (ACEC New York), an organization representing over 240 engineering firms totaling more than 15,000 employees in New York State, supports an amended version of the Wick's Law that better reflects today's construction industry needs. The goal is to maximize New York State's tax dollar expenditures while maintaining construction workers' rights to a fair wage/benefits package, a safe work site, and job training.

History: Designed with Protection in Mind

The Wicks Law mandate is a series of laws first enacted in 1912 that require New York State and its local governments to issue multiple construction contracts for most public works projects for which the cost exceeds \$50,000. Under the multiple contract system, the government entity must award separate prime contracts for at least three major components of the work: electrical, plumbing, and HVAC. A fourth contract is awarded to a general contractor for the remainder of the project scope.

These laws were put in place to promote fair competition among bidders (and prevent bid-shopping), as well as to protect workers' rights, which frequently suffered at the hands of contractors who sacrificed safety, fair wages, and training in order to win projects with the lowest bids. Wicks Law forces the owner (public entity) to manage the construction process, coordinate schedules of the separate prime contractors, and resolve disputes. In contrast, the federal government, most other states, and private industry use a single contract method in which the general contractor is assigned these responsibilities.

Deficiencies in the Present Law

When a project owner (public entity) is asked to manage the construction process and coordinate multiple prime contractors, project costs are likely to increase. These increases may be attributed to:

- The public entity's lack of construction management expertise and the resulting lack of proper job coordination, or the need to hire a construction manager to take on this responsibility.
- An inability to effectively and easily coordinate multiple prime contractors, which can result in more disputes and delays than would otherwise exist.
- Increased administrative staff time to review and coordinate four times the project paperwork.
- A tendency for a higher percentage of change orders to be issued.

Previous studies have documented that the Wicks Law provisions result in higher construction costs on public projects. Examples include:

- *Fiscal Implications of the Wicks Law Mandate*, conducted by the New York State Division of Budget in May 1987. The report from this study found that Wicks Law increased construction costs by 24 percent to 30 percent based on an evaluation of diverse projects, including academic buildings, prisons, and fire stations.

- *Impact of Wicks Law – Final Report*, conducted by the New York State School Boards Association in March 1991. This report estimated that the Wicks mandate increased project costs anywhere from 20 percent to 30 percent.

Proponents of Wicks Law sometimes argue that public construction projects have set budgets within which all bids must fall, and that most Wicks Law contracts come in below the projected budget. However, designers often inflate their cost estimates over conventional construction methods when developing budgets for Wicks Law projects to account for the inherent inefficiencies mentioned previously. These cost implications stretch beyond the financial capabilities of the public entities undertaking the projects, since public projects governed by Wicks Law are funded, in whole or in part, by taxpayer dollars.

Scheduling Issues

Timing is a critical element of every project, and the ability to adhere to a schedule and meet deadlines is crucial in the construction industry. However, scheduling becomes an issue in the absence of a general contractor, to whom all subcontractors are responsible for direction and payment. Multiple-prime construction contracts are simply more difficult to manage and lack incentives for individual prime contractors to meet the schedule requirements of their peers. Given the schedule interrelationships that typically exist on any large-scale construction project, coordination and adherence to the project schedule by all trades is paramount to its successful outcome.

An Evolution, Not a Revolution

In the interest of finding a solution that is agreeable to all parties, the New York State School Boards Association is requesting that school boards be exempted from the Wicks Law mandates, but that the general (prime) contractor on public school construction projects be required to submit the names of proposed electrical, mechanical, and plumbing subcontractors, along with their respective subcontract amounts. This proposal is meant to eliminate the coordination problems referred to previously, while ensuring that high-quality subcontractors are utilized and bid shopping is minimized.

Obviously, by establishing a threshold of \$50,000 in 1912, the original sponsors of this legislation intended that the Wicks Law mandates be applied only to very large construction projects. In the year 2004, it is extremely rare for the cost of any public project to fall below a threshold that has remained unchanged for 92 years. In the interest of moving toward meaningful reform, some suggest that, at a minimum, the threshold of \$50,000 be raised to account for reasonable cost-of-living increases. For example, according to ENR's Building Cost Index, a \$50,000 project constructed in 1912 would cost approximately \$2,000,000 in 2004. This change is in keeping with the original intent of the legislation but eliminates smaller projects, for which Wicks Law mandates are most inefficient.

Ultimately, it would seem that all parties in the construction process must come together to develop solutions acceptable to everyone affected by Wicks Law— construction workers, contractors, A/E firms, public entities, and taxpayers.

The American Council of Engineering Companies of New York

ACEC New York is the leading advocate for New York State's consulting engineering community, striving to enhance the business practices of professional engineering companies in the planning, design and construction industry. Founded in 1921, ACEC New York presently consists of over 240 private engineering firms employing more than 100,000 people worldwide. (approved March 2006)