



The Quarterly Challenge

Public Works Contractor Registration Act Applicability to Subcontractors

The legislature has set forth strict registration requirements for contractors and subcontractors that bid on or engage in Public Work. The Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. was enacted to establish a registration system for contractors and subcontractors engaged in public works projects in order to better enforce existing labor laws and regulations in the public works industry. N.J.S.A. 34:11-56.49. Specifically N.J.S.A. 34:11-56.51 precludes a contractor from bidding on or engaging in public work unless the contractor is registered with the Department of Labor.

But what about the listed subcontractor? Is it a material defect to list a subcontractor that is not registered as the subcontractor to whom the bidder will subcontract the work if that bidder is awarded the public contract? The Courts are split on this issue. The Superior Court in Monmouth County held that listing a subcontractor that is not registered is a material non-waivable defect and that bidder's bid was rejected. The Superior Court in Burlington County held that listing unregistered subcontractor was a waivable defect and so long as the bidder could produce proof of registration after the bids were opened but

before the contract was signed, the defect was "curable." The Law Offices of Steven A. Berkowitz has brought the issue before the Appellate Division, but right now there is no binding authority.

In the mean time, we suggest that bidders confirm that their subcontractors are registered with the Department of Labor.

Appellate Division recognizes failure to comply with The State Plumbing License Law of 1968 as a material, non-waivable bid defect

A plumbing contractor that was recently bought out by a utility company bid on a plumbing contract and was the apparent low bidder. The second low bidder challenged the award to the apparent low bidder under the State Plumbing License Law of 1968 alleging that the apparent low bidder was not a plumbing contractor because a master plumber did not own 10% of the

company's stock (the utility owned 100% of the company's stock). The Superior Court, Appellate Division, Carchman, J.A.D., held that: (1) failure of lowest bidder to comply with statutory requirement of submitting with the bid a statement showing that a licensed master plumber owned at least 10 percent of the bidding entity's stock was a "material defect" in the

bid, and (2) the material defect was not curable after the bids had been opened. Muirfield Const. Co., Inc. v. Essex County Improvement Authority, 336 N.J.Super. 126 (Appl Div.2000)

Prudent bidders will verify that they, or their plumbing subcontractors are at least 10% owned by a licensed master plumber.

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Don't Lose a Bid Due to Defective Specifications

What do you do if the bid form does not have a space to list the name or names of the subcontractors to whom you intend to subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the heating and ventilating systems and equipment, and electrical work, structural steel and ornamental iron work? You list your subcontractors anyway.

The law takes precedence over the specifications. In fact such was true even where information in the bidding package failed to mention that a list of subcontractors was to be provided with the bid and included reference to general document of American Institution of Architects requiring that bidder name subcontractors as soon as practicable after the award of the contract. The Court reasoned that since bidding documents emphasized that state laws applied to the bid and state statute

clearly required list of subcontractors with bid, the bid that failed to list its subcontractors was materially defective and the City could not accept the defective bid.

Gaglioti Contracting, Inc. v. City of Hoboken, 307 N.J.Super. 421 (App. Div. 1997)

The purpose for listing subcontractors was stated by Governor Kean when he conditionally vetoed Senate Bill No. 1029, later enacted as amended as N.J.S.A. 40A:11-16:

If a general contractor could wait to name subcontractors until after he has submitted his bid to the local unit of government, then the local unit of government would be unlikely to benefit from any bid shopping undertaken by the general contractor in securing the performance of subcontractors. The purpose of public bidding is to secure

performance of high quality for the lowest possible price, and I believe that this objective is furthered by retention of the current statutory scheme whereby subcontractors must be named by general contractors at the time of their bids are submitted.

[Governor's Reconsideration and Recommendation Statement, S. 1029—L. 1987. C. 48]

In the case of single overall bid to a public body, list the subcontractors to whom you intend to subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the heating and ventilating systems and equipment, and electrical work, structural steel and ornamental iron work where applicable.