

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

Mitsubishi Construction Corporation, and John Ray White,
as a shareholder of Mitsubishi Construction Corporation;

Prime Contractor,
and

Asbestos Control Professionals Corp., and Marco Pedone
and Robert Friedl, as officers and/or shareholders of
Asbestos Control Professionals Corp.;

Subcontractor,

for a determination pursuant to Article 8 of the Labor Law
as to whether prevailing wages and supplements were
paid to or provided for the laborers, workers and mechanics
employed on a public work project for the Town of
Orangetown, in Orangeburg, New York.

DEFAULT

REPORT

&

RECOMMENDATION

Prevailing Rate Case
PRC No. 2006007504
Case ID: PW11 2008016557
Rockland County

To: Honorable Mario J. Musolino
Acting Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued on October 16, 2013, a hearing was held on July 22, 2014 in Albany, New York and by videoconference with White Plains, New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Bureau of Public Work ("Bureau") of the New York State Department of Labor ("Department") into whether Asbestos Control Professionals Corp. ("Sub") a subcontractor of Mitsubishi Construction Corporation ("Prime") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving upgrades and improvements at the Orangetown Wastewater Treatment Plant and Hunt Road Pumping Station ("Project") for the Town of Orangetown, in Orangeburg, New York ("Department of Jurisdiction").

HEARING OFFICER

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, Elina Matot, Esq., of counsel.

There was no appearance made by, or on behalf of Sub as the Sub had entered into a Stipulation prior to the hearing (Dept. Ex. A).

There was no appearance made by, or on behalf of Prime.

FINDINGS AND CONCLUSIONS

On November 20, 2013, the Department duly served a copy of the Notice of Hearing on Sub and Prime, via regular and certified mail, return receipt requested. A signed Return Receipt evidencing receipt of the document by both Sub and Prime was entered into evidence as Hearing Officer Exhibit 2. The Notice of Hearing scheduled a January 7, 2014 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

In addition, the Department duly served a copy of the Notice of Hearing on both Sub and Prime, by service on the New York Secretary of State on December 19, 2013 (Hearing Officer Exs. 3, 4).

The hearing was adjourned twice, from January 7, 2014 to April 28-29, 2014 (Hearing Officer Ex. 5) and from April 28-29, 2014 to July 23, 2014 (Hearing Officer Ex. 6).

Sub appeared in the action by filing an Answer dated April 14, 2014 (Hearing Officer Ex. 7).

Prime failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, Prime is in default in this proceeding.

The Notice of Hearing alleges that Sub underpaid wages and supplements to its workers and that Prime is responsible for Sub's underpayment pursuant to Labor Law § 223.

Prior to the hearing, Sub stipulated, *inter alia*, to pay the total sum of \$22,629.19, which includes the total amount of wages and supplements owed to the workers on the Project in the amount of \$12,333.74, interest at 10% in the sum of \$6,523.92, and a civil penalty at the rate of 20% in the sum of \$3,771.53. In the event of a default, the Commissioner is authorized to enter a judgment against Sub in the amount of \$31,560.23, which includes all sums owed to the workers on the project for wages and supplements, with interest calculated at 16% to date and civil penalty at 25%, less any payments already made by Sub. (See, Dept. Ex. A)

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents describing the underpayments, which supported the Bureau's charges that:

The Project was subject to Labor Law article 8; and

Prime entered into a contract for the Project with the Department of Jurisdiction; and

Sub entered into a contract with Prime for work on the Project; and

Sub underpaid \$12,333.74 to its workers for the audit period weeks ending November 4, 2007 to January 20, 2008.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

RECOMMENDATIONS

Based upon the default of Prime in answering or contesting the charges contained in the Department's Notice of Hearing, and upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Sub underpaid its workers \$12,333.74 on the Project, PRC No. 2008016557; and

DETERMINE that, in the event Sub defaults on the Stipulation, Prime is responsible for the underpayment, interest and civil penalty due pursuant to its liability under Labor Law article 8; and

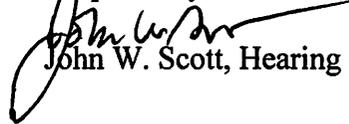
ORDER that upon the Bureau's notification, Prime shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at : The Department of Labor, Attention Edward Dolan, The Maple Building, 3 Washington Center, 4th Floor, Newburgh, NY 12550; and

ORDER that the Bureau compute and pay the appropriate amount due for each employee on the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: March 2, 2015

Albany, New York

Respectfully submitted,


John W. Scott, Hearing Officer