



New York State Department of Labor
David A. Paterson, *Governor*
Colleen C. Gardner, *Commissioner*

May 18, 2010

[REDACTED]

Re: Request for Opinion
Wicks Law Applicability
Rockland County
Wastewater Treatment Facility
RO-10-0069

Dear [REDACTED]:

This letter is written in response to your letter dated April 30, 2010, in which you request an opinion regarding the applicability of Section 101 of the General Municipal Law (the "Wicks Law") to a construction project at a wastewater treatment facility in Rockland County. Enclosed with your letter were the project's bid specifications and contract documents, as well as other documents related to the project. An investigator for the Department's Bureau of Public Work was able to visit the site and obtain copies of the schematics for the project. The investigator limited the scope of his discussions during that investigation to the proper classification of work under Article 8 of the Labor Law, which requires the payment of the prevailing rate of wages on all public works projects. As part of the Department's investigation into this matter, we also spoke with representatives of Rockland County including the engineer who consulted with Rockland County on the project, the Executive Director of the Sewer District, other individuals familiar with the bids and specifications for the project, and the County's attorney, all of whom provided useful information with regard to the scope of the project.

Rockland County issued a notice to bidders on October 13, 2009 for the general construction and electrical work connected with its Wastewater Treatment Plant Equipment Replacement Project. The project was put out to bid with separate specifications for electrical work, but the remainder of the project was put out to bid as part of the general specifications. The electrical contract was awarded to [REDACTED] for \$119,344 (Rockland County Legislature Resolution No. 636 of 2009), and the general contract was awarded to [REDACTED] for \$2,747,000 (Rockland County Legislature Resolution No. 631

of 2009). The project involves the replacement of equipment at a wastewater treatment facility that includes work that has been described as "process piping." Your letter asks whether the process piping work in the present project is "plumbing work," and whether the project in question is within the coverage of the Wicks Law, thereby subjecting it to the separate bidding requirements contained therein.

As a preliminary matter, it is worth noting that this project is funded by federal American Recovery and Reinvestment Act (ARRA) funds through a grant from the EPA. While certain HUD projects funded through ARRA funds have been exempted from certain state procurement and competitive bidding requirements, no such exception exists for ARRA grants through the EPA.¹ Accordingly, the fact that this project is funded by ARRA does not exempt it from the state procurement and bidding requirements, including, as relevant here, the Wicks Law.

The Wicks Law requires that public contracts for the erection, construction, or alteration of buildings in excess of a threshold amount (\$500,000 in Rockland County) have separate specifications for various types of work. The types of work which the Wicks Law requires to be separately bid are (1) plumbing and gas fitting; (2) steam heating, hot water heating, ventilating and air conditioning apparatus; and (3) electric wiring and standard illuminating fixtures. Those specifications are required to be separately drawn to permit separate and independent bidding for each of these categories of work.

The project at issue clearly involves the alteration of buildings in that it involves the replacement of the equipment and piping within portions of a wastewater treatment facility that constitute a storehouse, factory, or shelter. (*See*, NY Comptroller Opinion No. 58-896, providing that the construction of a sewage plant was within the coverage of the Wicks Law.)

The project also satisfies the monetary threshold for the Wicks Law in Rockland County (\$500,000) since the contracts awarded for the present project total \$2,866,344. Accordingly, the remaining issue is, as your letter asks, whether the process piping in the present project constitutes plumbing for the purposes of the Wicks Law.

The "process piping," as that term is used in your letter and in this opinion, refers to the installation and modification of piping and pumping systems related to the operation of a wastewater treatment facility located within a building. Based upon the information available to the Department with regard to this particular project and the investigation conducted by the Department, it is the opinion of this Department that the process piping in the present project is plumbing work for the purposes of the Wicks Law, as well as Article 8 of the Labor Law. Nothing in the Wicks Law exempts plumbing work located in a building that is performed in connection with an overall industrial process or wastewater treatment facility from the separate bidding requirements.

Our conclusion is consistent with the Court's holding in *In Re Plumbing Contractors Assoc. v. City of Buffalo*, 70 Misc. 2d 412 (Erie County, 1972). In *City of Buffalo* there was a

¹ The fact that the ARRA does not contain an exclusion for EPA funds from state procurement/bidding requirements is based upon a review of the ARRA as well as confirmation from the EPA's Chief Grants and Contracts Officer Roch Baamonde.

separate plumbing "Contract C" for sanitary, water and "storm drainage systems for the interior and immediate contiguous area of the building complexes" that did not cover site work under the general construction "Contract A" for "sanitary, storm sewer and water main work ... to be installed from a defined point outside of the building complexes up to the existing public water and sewer systems at the perimeter of the site premises." (*Id.* at 413.) Under those facts, the Court held that the separate bidding requirements of Wicks, which applied to the plumbing work for the interior and immediate contiguous area of the building complex under Contract C, did not extend out to the site work, which the Court characterized as "not solely for the benefit of or exclusively appurtenant to said structures." (*Id.* at 415.) In this case, the process pipe plumbing work at issue is for the interior and immediate continuous area of the wastewater treatment facility building complex and, as such, our conclusion is entirely constituent with the *City of Buffalo* case.

Accordingly, it is the opinion of this Department that the present project should have been bid pursuant to the requirements contained in the Wicks Law, and pursuant to those requirements, the process piping should have been separately bid to the extent that it is contained in the footprint of the building.

We also note that the Commissioner has the authority under Section 224 of the Labor Law to issue a stop order on this contract should she determine that a violation of the Wicks Law occurred when it was bid. However, the parties are already subject to a Temporary Restraining Order which, for all intents and purposes, accomplishes the same end as the stop order while the parties are litigating and/or otherwise attempting to resolve the matter. The issuance of an opinion letter rather than a stop order under these circumstances should not be construed by the parties as a waiver of the Commissioner's authority to issue such an order relating to this contract should she determine that circumstances warrant such action in the future.

This opinion is based on the materials contained in your letter as well as the information gathered through the Department's internal investigation. Should additional or different information arise that has not been brought to the Department's attention, this opinion may be changed accordingly. I trust this to be responsive to your inquiry. Please let me know if you have any further questions.

Very truly yours,
Maria L. Colavito
Maria L. Colavito, Counsel

CC:



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