

# NEW YORK STATE UPDATES WICKS

On April 9, 2008 the New York State Legislature passed a Wicks Reform bill. Governor Paterson immediately signed the bill into law. Wicks was enacted as an anti corruption measure in 1921 to protect the public from anti competitive bidding practices and subcontractors from unscrupulous contractors. The Wicks Law requires that on all public construction projects where the total cost of the project was greater than a certain dollar amount, the public agency would have to prepare 4 separate specifications (plumbing, electrical, mechanical and all else) and separately and competitively award each component to the low bidder. The dollar amount was originally set at \$25,000 and raised to \$50,000 in 1964. No significant change has been made in the intervening 43 years.

## *A summary of the provisions of the new law:*

-the dollar threshold is raised to \$3 million in New York City, \$1.5 million in Nassau, Suffolk and Westchester and \$500,000 throughout the rest of the State. In addition, whenever a government entity chooses to use a Project Labor Agreement (see below), the separate specification and bid requirements do not apply, no matter what the dollar value of the project

-whenever the separate specifications and bid requirements do not apply (i.e. below the threshold or use of a PLA) thereby allowing the government entity to bid the entire job to a general contractor, each general contractor must **name** its plumbing, mechanical and electrical contractor and **agreed upon contract price** in its public bid. The named subcontractor or agreed upon contract price **cannot be changed** without a “legitimate construction need” which must be formally approved by the government entity.

-the period during which a general contractor can hold payments from the government entity for the work of a subcontractor has been reduced from fifteen days to seven

-the exemption provided to general contractors working on projects in New York City from paying mandatory statutory interest on late payments (i.e. over seven days after receipt from government entity) has been removed

-almost all government entities will now be able to establish contractor pre-qualification rules (e.g. financial ability, safety record, prior performance, ability to perform the type and complexity of work, EEO/MBE/WBE compliance, etc.) for construction contracts

-authorizes government entities to enter into Project Labor Agreements requiring the use of contractors who sign a pre-negotiated agreement with a bona fide labor organization whenever the entity determines that such a requirement would help obtain the best possible price and reduce delays, fraud and corruption, among other factors.

This is a summary of the law. The actual text (44 pages) will soon be available on New York State’s official website.

[Editor’s Note—In anticipation that there would be a major effort to update the Wicks Law, the Foundation began meeting in November 2006 with, at the time, Governor-elect Spitzer’s staff and legislative leaders. While acknowledging the need to update threshold amounts, our emphasis was on subcontractor and taxpayer protections. We are happy to report that the protections set forth in the law, as summarized in bullet points 2, 3 and 4 above, were the direct result of our efforts. Indeed, 2 important protections (no change in subcontractor or price without agency approval and the elimination of the exemption of interest on late payments to subcontractors in New York City) were included in the bill due to the Foundation’s frequent trips to Albany]