



The FAIR CONTRACTOR

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LAW REFORM RAISES BAR



This summer saw the enactment of a series of state public construction law reforms. And according to the Division of Capital Asset Management (DCAM), the changes are some of the most significant in twenty five years. But what do the reforms mean for you?

The Best vs. the Cheapest

If you're a regular reader of these pages, you know that the Foundation for Fair Contracting (FFCM) has long been critical of a public construction system that awards bids strictly on the basis of lowest price. At times cities and towns were forced to accept bids so low that the contractor couldn't possibly do the job and pay his or her workers the wages required by Massachusetts law.

Under the new law, public agencies will be able to hire the best contractor, not just the one with the lowest bid. That distinction will enable Massachusetts municipalities to look at the history of a contractor, in addition to the bottom line--something that should help cities and towns avoid

Avoiding Substandard Subcontractors

costly change orders down the road. Subcontractors will undergo a state certification process as well as job-specific prequalification prior to bidding. This, we hope, will help weed out unqualified subcontractors who submit artificially low bids and disregard Massachusetts wage and employment laws.

A Carrot and a Stick

The reforms also provide awarding authorities plenty of assistance in navigating the state's public construction system, but those who choose to ignore the law, refusing to bid public contracts, etc., will be subjected to stronger penalties. "There is more oversight in place now as a result of the changes," says FFCM executive director Karen G. Courtney. "But the penalties for disregarding the law are higher, whether you're a contractor or an awarding authority."



PLYMOUTH ADOPTS RESPONSIBLE EMPLOYER ORDINANCE

The town of Plymouth, MA recently joined a growing list of Massachusetts communities to adopt ordinances requiring that contractors who do public construction work meet certain standards. Members of the Plymouth Town Meeting approved the measure earlier this year.

Responsible Employer Ordinances, known as REO's, are now on the books in eighteen communities throughout the state. Cities and towns with such

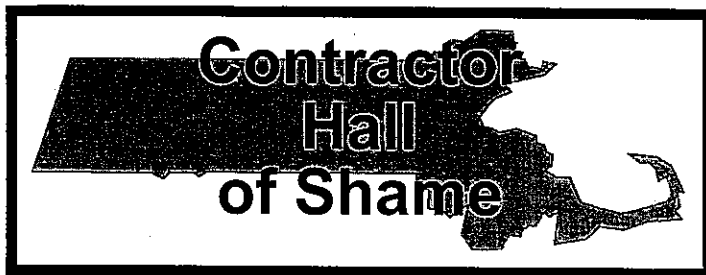
standards in place, notes FFCM Executive Director Karen G. Courtney, can use them to ensure town projects are built by responsible contractors. "Plymouth and other REO cities and towns are basically saying that contractors must meet a set of standards and comply with the law or they can't do business in their communities."

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Three Cites & you're out
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Drywall contractor sentenced to jail



Don't let your name appear on this list! The following contractors have been cited by the Massachusetts Attorney General's Office for violating the state's Wage and Hour laws. If you have questions about the law, contact the FFCM at 1-800-224-FAIR. All calls are free and confidential.

Cameron Painting and its owner, **Donald E. Cameron, III** of Amherst, MA, must pay a total of \$8,100 after failing to pay two workers the prevailing wage on the New Belchertown High School public works project. FFCM Western Massachusetts monitor, Art Butler, transmitted the case to the AG's office after being contacted by an employee of the company who reported that he was being paid more than \$10 less than the prevailing wage. Joseph Drzyzga investigated the case for the AG's office.

Northern Site Contractors and its owner, **Arthur Mercure III**, must pay eight public construction workers a total of \$9,850 after failing to pay them the legally required wage on two different public works projects: the Wrentham Elementary School project and the Memorial Elementary School project in Medford, MA. The AG's office issued two different citations to the company, both of which fined Northern Site Contractors for failing to submit certified payroll records while working on the school projects. A third citation will result in debarment for the company. The FFCM monitors asked to see the company's certified payrolls after being alerted by an employee to possible underpayment of workers. Jeffrey Ambrose investigated the case for the Attorney General's office.

Thomas Wyman Electrical Contractor and its owner, **Thomas Wyman** of Turners Falls, MA, must pay \$2,958.36 after failing to pay the prevailing wage to two employees who worked on the Town of Amherst's Well Modification project. A routine inspection of payroll records by an FFCM monitor

revealed that the company had falsely classified the workers as apprentices despite having no apprenticeship program registered with the state's Division of Apprentice Training. The company must also pay \$1,900 for failing to pay the prevailing wage to an employee who worked on various projects for the Springfield Housing Authority. A third citation for Wyman and his company will result in debarment. Joseph Drzyzga investigated both cases for the AG's office.

National Water Main Cleaning Company and its owner, **Salvatore Perri** of Newark, NJ, must pay 4 employees a total of \$1,424.28 after underpaying them on the North Quincy Lateral Sewer Improvements project. The AG also determined that the company had failed to submit weekly certified payroll records to the awarding authority as required by law. FFCM monitor, Chris Burger, transmitted the case to the AG's office after determining that the company had failed to submit certified payroll records. Robert Lamarre investigated the case for the AG's office.

Emerald Excavating Co., Inc. and its owner, **Ingeborg Kelleher** of Plymouth, MA, must pay \$910.63 to workers the company underpaid for two months while employed on the Middleboro Fire Station public works project. An inspection of certified payroll records by FFCM monitor, Chris Burger, revealed that the company was paying less than the prevailing wage to laborers and operators employed on the project. Mario Pavio investigated the case for the AG's office.

Marguerite Concrete, Inc. of Franklin, MA, and its owner, **James Marguerite, Jr.**, must pay \$51,208 to 24 current and former employees after the Attorney General's office concluded that the company had regularly failed to pay overtime to its workers. Marguerite worked on publicly-funded and private construction projects between 2001 and 2003. According to the AG's office, Marguerite's employees worked as much as 72 hours a week without receiving overtime pay. Massachusetts law requires that most hourly employees who work more than 40 hours in a week receive time and half for any hours worked above that. The case was investigated by Assistant Attorney General Anita V. Maietta and Supervising Inspector Cecile B. Byrne.



The Fair Contractor is a publication of the non-profit Foundation for Fair Contracting of Massachusetts. The FFCM mailing address is Box 256, State House Station, Boston, MA 02133. The Fair Contractor accepts letters to the editor. For information, call 1-800-224-FAIR or write www.ffcm.org.

Contractor Hall of Shame

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The following contractors were cited by the AG's office for failing to submit certified payroll records while employed on public works projects:

Arthur C. Lamb Company, Inc. and owner, Arthur C. Lamb; Passios High School public works project.

Prime Interior Contractors and owners, Leo G. Carmichael and Eileen Baker; Pentucket Regional High School public works project.

Plymouth Adopts REO

Continued from front page

The Plymouth ordinance requires that contractors who bid on taxpayer-funded projects in the town must pay the legally-mandated wage to construction workers, provide health insurance and industrial accident insurance coverage, maintain a bona fide apprentice training program for each trade represented in their workforce, and maintain a pension plan for all workers employed on the project.

Most important, the ordinance spells out what will happen to employers who fail to meet any of the above standards. Contractors found to be in violation of the REO will be barred from performing work on future Plymouth public projects for six months after the first offense, three years after the second, and permanently after the third violation.

Maynard Contractor Indicted For Defrauding Cities and Towns

The AG's office recently obtained indictments against Maynard contractor Milton Marder after determining that he had defrauded seven cities and towns and failed to pay more than 150 employees the prevailing wage. Marder, who obtained sub-contracts on taxpayer funded projects throughout the state, worked through numerous companies, including New England Building Services, Corp., In each case, he claimed to the cities and towns to be paying his employees, many of whom were Brazilian immigrants, the state-mandated prevailing wage. In reality, the workers were receiving a fraction of that wage. The indictments allege that Marder went to great lengths to cover up the underpayment, including designating his employees as corporate officers and submitting fraudulent payrolls to the communities for which he worked. Employees were allegedly underpaid by more than \$800,000. The Brazilian Immigrant Center brought the case to the attention of the AG. Investigators for the AG's office, including Assistant Attorneys General Katharine Klubock, Rosalyn Garbose and James Clark, along with inspectors Greg Reutlinger, Mario Paiva and Jeffrey Ambrose investigated the case, reviewing and analyzing thousands of pages of financial information.

Do you need help sorting out Massachusetts construction law? Let the Foundation For Fair Contracting help. We've been assisting public construction workers, contractors and cities and towns make sense of the law for more than a decade. If you've got a question for the FFCM, call 1-800-224-FAIR.

Three 'Cites' and You're Out

This issue's "Hall of Shame" features two contractors who've been cited twice by the Attorney General's office. That's bad news for them. Not only must they pay back wages and fines after failing to pay the prevailing wages to their employees, but the contractors—Northern Site Contractors, Inc., and its owner, Arthur Mercure III, along with Cameron Painting, Inc, and owner, Donald E. Cameron III also risk facing debarment if they're caught again. That means that they'll be barred from bidding on public construction jobs anywhere in Massachusetts for whatever length of time the state determines. FFCM Western Massachusetts monitor, Art Butler, says that he'll be keeping a close eye on these contractors in the meantime. "The AG has charged them with a serious offense and we'll continue to scrutinize them closely. After two citations you'd better straighten out, or you're going to have to get out of this arena," says Butler.

Brockton Drywall Contractor Sentenced to House of Correction

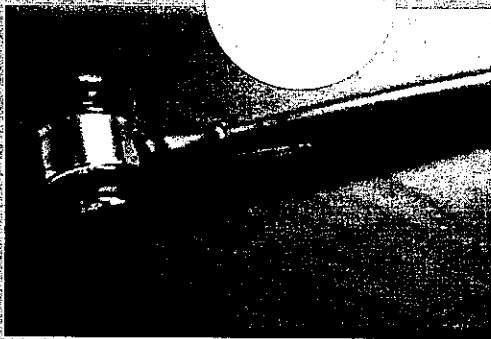
After pleading guilty to prevailing wage, unemployment tax and insurance fraud, Brockton drywall contractor James H. Dormon of Foxborough, MA has been sentenced to 364 days in a Massachusetts jail. Dormon's company, Dormon Construction Co., based in Brockton, pled guilty to 31 similar indictments.

In September, Dormon and his company appeared in Plymouth Superior Court where they pled guilty to failing to pay more than \$82,000 in prevailing wages to numerous employees. The Attorney General's office found that Dormon had failed to pay the required wage to workers who framed, hung and taped drywall on public and private building projects throughout Massachusetts. Projects named in the case included Hamilton-Wenham High School, Marlboro Middle School and Topsfield Public Library.

In addition to failing to pay his workers the state-mandated wage, Dormon and his company were

found guilty of defrauding a workers' compensation insurer and the Massachusetts Division of Employment and Training. In each case, Dormon underreported his payroll in order to get out of paying taxes and workers' compensation insurance premiums.

In addition to his time in jail, Dormon has also been ordered to pay \$150,000 in restitution to the workers and institutions he cheated. "This is a good precedent," said Karen G. Courtney, FFCM executive director. "It sends a strong message to other unscrupulous contractors out there that if they cheat and get caught, they could very well end up behind bars."



The case was jointly investigated by Inspector Greg Reutlinger of the AG's Fair Labor and Business Practices Division and the Insurance Fraud Bureau of Massachusetts. It was prosecuted by Assistant Attorneys General Christopher Buscaglia and Ian McKenny, of the AG's Insurance and Unemployment Fraud Division.

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