

Public Construction Watch

A publication of the Foundation for Fair Contracting of Massachusetts

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From the Executive Director

The Foundation for Fair Contracting of Massachusetts is pleased to publish the first issue of Public Construction Watch, our new semiannual newsletter. Public Construction Watch replaces two former FFCM publications—*The Fair Contractor* and *The Wage Watch*—both suspended in 2010 in the wake of the Massachusetts construction industry's hard hitting downturn .

Our new publication provides updates on FFCM activity and contains stories of interest to workers, contractors, unions and awarding authorities. You'll find information on the latest developments in bidding, prevailing wage compliance and apprenticeship and learn how new legislation and case decisions could impact you. Reports on successful wage complaints and contractors cited by the Attorney General will also be featured. This first issue is devoted to significant news developments since the downturn. You can expect new issues every six months on the new Foundation website at www.ffcm.org.

We hope you find our comprehensive Public Construction Watch newsletter helpful. We welcome your comments and suggestions at info@ffcm.org

Thank you.

Karen G. Courtney, FFCM Executive Director

Sewer Cleaner Cited

National Water Main Cleaning Company must pay more than \$1 million for intentionally violating Massachusetts' prevailing wage laws. The Attorney General's office began investigating National Water Main and its owner, Salvatore F. Perri, after receiving complaints on behalf of workers from the Foundation for Fair Contracting. The AG's investigation, which covered National Water Main's work on sewer cleaning, maintenance and repair projects across the Commonwealth, found that the contractor violated the prevailing wage law by failing to pay the legal rate to employees.

National Water Main must pay \$506,000 in restitution to a total of 84 employees who worked on various public construction projects from March 2008 to January 2011. The company was also ordered to pay \$500,000 in penalties for prevailing wage violations and an additional \$50,000 in penalties for failing to submit true and accurate payroll records as required under state law. According to FFCM executive director, Karen Courtney, "Multiple National Water Main employees on jobs all over the state reported wage violations to the Foundation. Hopefully, this case sends a clear message to contractors that there's a real cost to breaking the law." ■

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Case Closed

The following contractors have been cited, debarred or ordered to pay settlements by the Attorney General's office for violating the state's wage and hour laws. The FFCM was involved in each case.

- **A C & R, Inc.** d/b/a Atlantic Construction & Restoration, Inc. and its owner, George Secchi-
aroli, must pay civil citations in the amount of \$17,000 and \$24,670 in restitution (total \$41,670) for multiple violations of wage and hour laws while working on the Kane Elementary School and the UMASS Amherst public works projects.
- **Advanced Prep Coat Inc.** and its owner, **Robert E. Peltier**, must pay civil citations in the amount of \$2,500 and \$10,064 in restitution (total \$12,564) for failure to pay prevailing wages and failure to pay OT rate while working on various public works projects in MA.
- **All-Tech Electric Inc.** and its owner, **John F Spadafora**, must pay civil citations in the amount of \$8,000 and \$53,713 in restitution (total \$61,713) after failure to pay prevailing wages and failure to submit true and accurate certified payroll records for work performed on various public projects in MA.
- **BSL Construction** has agreed to pay \$80,848 in restitution and \$15,000 in civil penalties (total of \$95,848) for violating various wage and hour laws while working on the District 2 Drainage Reconstruction public works project.
- **Citiworks Inc.** and its owner, **Eugene McGovern**, must pay civil citations in the amount of \$7,000 and \$29,875 in restitution for failure to pay prevailing wages and failure to submit true and accurate certified payroll records for work performed on 28 public works projects in MA.
- **Construction Dynamics/UEL** and its owners, Pamela & Donald R Dobeck, must pay civil citations in the amount of \$10,000 and \$9,010 in restitution (total \$19,010) after failing to pay prevailing wages and failure to submit and keep true and accurate certified payroll records while working on various public works projects in MA.

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Awarding Authorities Play Key Role in Prevailing Wage Compliance

The Foundation for Fair Contracting of Massachusetts announces a new Public Construction Watch column designed to recognize Massachusetts municipal and state awarding authorities who demonstrate accountability for compliance with public construction laws.

Awarding authorities must receive, maintain and review certified payroll records to ensure prevailing wage compliance. Section 28 of the same law provides construction workers with “right of action” against a city or town for debt recovery.

Awarding Authorities can also prevent prevailing wage violations by challenging bids that are significantly below the average bid price. An irresponsibly low bid can trigger a preliminary hearing where the contractor must demonstrate how it will complete the project and comply with state laws. Based on findings of fact, an awarding authority may reject a low bid as long as the determination is not made in an arbitrary, capricious or illegal manner. The process could easily prevent delayed or unfinished projects and save hundreds of thousands of taxpayer dollars.

FFCM assists awarding authorities to identify and correct violations of the law before involving state enforcement agencies and resources. Our staff targets public projects throughout the Commonwealth, monitors bidding, collects and reviews certified payroll records, mails to workers and tracks cases to resolution. Potential bid irregularities or certain types of wage and certified payroll record violations are reported directly to the responsible town, city or state awarding authority for corrective action.

Since 2010, FFCM has transmitted over 200 cases of alleged violations.

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Awarding Authorities

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The Foundation works closely with responsive authorities to ensure that contractors paid with public tax dollars are accountable for compliance. Awarding authorities have required contractors to pay their workers restitution for missed “step” increases, submit certified payroll records weekly, resubmit non-compliant records with requisite complete and accurate information, or make other adjustments. This kind of enforcement by awarding authorities sends a clear message to all stakeholders that cheating workers, shortchanging taxpayers and undercutting law abiding contractors will not be tolerated. ■

The Foundation salutes the following Awarding Authorities for their cooperation and commitment to compliance and fair contracting.

Mass. Department Of Conservation and Recreation

Boston Housing Authority

City of Worcester

Town of Wellesley

Westfield Procurement Office

New FFCM Website to Aid Construction Workers, Contractors

The Foundation for Fair Contracting has a new improved website intended to make it easier than ever for contractors and construction workers to find out about the laws governing public construction in Massachusetts. Visit www.ffcm.org to find out how the FFCM can assist you in navigating state regulations, determining whether you are entitled to back wages or overtime, and helping you to file a claim with the appropriate state agency.

Visit us today at www.ffcm.org

INDUSTRY NEWS WATCH

FFCM Bid Protest Protects Bidding and Prevailing Wage

The Supreme Judicial Court has ruled that an agreement between UMass Lowell and a private developer, Brasi Development, for the development, maintenance and long-term lease of a dormitory constituted a contract for public construction subject to the requirements of the competitive bidding law. In *Brasi Development Corp. v. Attorney General & another*, the SJC reversed a Superior Court finding that the agreement was a lease and not subject to the competitive bidding law. The Attorney General’s office had earlier reached a contrary decision following a bid protest by the Foundation for Fair Contracting of Massachusetts and the lowest bidder. Considering all the provisions of the lease agreement and RFP, the Court held that the competitive bidding statute, G. L. c 149 §§ 44A-44H, applies to UMass Lowell’s agreement with Brasi to develop and maintain a student dormitory near its campus.

FFCM Complaint Prompts Contractor Replacement

The Building Committee for the new high school in Greenfield voted to drop its original contractor for the \$65 million job and begin negotiations with the No. 2 bidder after the FFCM filed a bid protest with the Attorney General’s office. FFCM scrutinized the application submitted by DEW/MacMillin, determined that it was incomplete and notified the Attorney General’s office. The Building Committee accepted the recommendation of the construction manager selection committee, which opted to withdraw its support for DEW/MacMillin Co. of New Hampshire in favor of Shawmut Design and Construction, a Boston company. ■

Case Closed

- **Douglas J. Wooliver and Sons Inc.** and its owner, **Michael P. Wooliver**, must pay a civil penalty in the amount of \$1,500 for failure to pay prevailing wages and \$4,015 in restitution (total \$5,515) after failing to pay prevailing wages for work performed on various public projects in MA.
- **Floor Sanders & Finisher** of MA and its owner, **Vaouj Nersesian**, must pay civil citations in the amount of \$26,000 for multiple willful violations of wage and hour laws while working on the Agawam Senior Center public works project.
- **Glass Installation** and its owner, **James T. Doyle** must pay a civil citation in the amount of \$10,000 for failure to furnish records for inspection while working on the Western Mass Hospital public works project.
- **Hemi Enterprises Inc.** and its owner, **Elizabeth Roberts**, must pay employees more than \$15,000 in restitution and \$3,500 in civil penalties as a result of failing to pay the prevailing wage on several public works projects throughout Massachusetts. Roberts and her company were also fined \$3,500 for failing to submit true and accurate certified payroll records as state law requires.
- **Henkels and McCoy Inc.** and its owner, **Kenneth L. Rose**, agreed to pay \$145,000 in restitution as well as \$15,000 in penalties for violating Massachusetts Prevailing Wage Laws while working on the Interstate 91 project and the Greenbush MBTA public works projects in MA.
- **KJR Commercial Cleaning** and its owner, **Kelly Raleigh**, must pay civil citations in the amount of \$26,000 for multiple violations of wage and hour laws while working on the UMASS New Central Heating Plant & UMASS Recreational Center Facility public works projects in Amherst, MA.
- **NEL Corporation** and its owner **Albert Enos, Jr.**, must pay civil citation in the amount of \$45,000 and \$80,048.80 in restitution (total \$125,048.90) for failure to pay prevailing wages for work performed on various DOT projects.
- **Northeast Interior Inc.** and its owner, **Kevin Fish**, must pay civil citations in the amount of \$20,000 and \$15,989 in restitution (total \$35,989) for failure to pay prevailing wages, failure to submit true and accurate certified payrolls and failure to keep true and accurate payroll records for work performed on various public projects in MA.
- **New England Scaffolding** and its owner, **Glyn West**, must pay civil citations in the amount of \$3,000 and \$15,218 in restitution (total \$18,218) for failure to pay prevailing wages while working on various public works projects in MA.
- **Plumb House** and its owner, **Sarah Badway**, must pay a civil citation in the amount of \$7,500 and \$43,007 in restitution (total \$50,507) for failure to pay prevailing wages for work performed at the Framingham Housing Authority's Ten Handicap Unit Conversion project. This civil penalty was appealed but restitution was paid directly to 13 workers.



Know the Rules

When it comes to Massachusetts construction law, keeping track of the “rules of the road” can be complicated. The Foundation for Fair Contracting can help. Our expert staff are up-to-date on the various latest laws and regulations governing public construction in the state. From bidding requirements to certified payroll reporting, prevailing wage enforcement and apprenticeship, our staff can ensure that you’re in the know. FFCM staff are also available to conduct educational trainings on wage compliance and other public construction-related issues. Visit our website for more information: www.ffcm.org or call 1-877-507-3247.



Public Construction Watch 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. For more information, visit our website at www.ffcm.org or email us at info@ffcm.org.