

# news letter

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## P&A Marks 25 Years of Serving the Construction Industry

**T**wenty-five years ago, on April 1, 1978, we formed Peckar & Abramson. In those early years, the firm had three lawyers, the two of us and Bruce Meller (now the most senior partner in the firm), in a small office in Hackensack, New Jersey. Since then, we have had the good fortune to benefit from the talents of wonderful lawyers who have served our clients with professionalism and vigor.

Some of those lawyers have been with us for virtually their entire careers including partners Rob Drucker, Charles Kenny and Pat Greene.

We have also had the privilege of representing distinguished clients who have rewarded us with their loyalty as we have grown to a firm of nearly 60 lawyers, with offices in New Jersey, New York, San Francisco, Los Angeles and Miami—and a practice that serves clients literally all over the world.

As we reach this important milestone, we are focused on the future—indeed, the new world of global relationships, enlightened attitudes concerning dispute resolution, challenging economic times and the ever-evolving needs of the construction industry. Fortunately, we are able to respond to these new opportunities and challenges with renewed energy as some of our younger partners, including Steve Charney (New York), Steve Reisman (Florida) and Ray Buddie (California) lead tal-

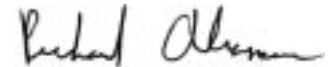
ented teams of lawyers who understand and practice our unique approach to serving our construction clientele. That approach starts and ends with our clients' best interests as the sole focus of our practice.

The law business is about professional service—the quality of it, the availability of it and the responsiveness of it. After a quarter century of service to our clients, we rededicate ourselves and our firm to continue to provide the best professional service we can to our clients, to continue to serve the construction industry and to create value in all that we do.

So here's an anniversary toast to our clients, our partners, our associates, our support staff and our colleagues in the legal profession who serve the construction industry: To health and prosperity! Cheers! 🍷



Bob Peckar



Rich Abramson

# Peckar & Abramson

## Forms International Construction Practice Group

**B**uilding on substantial experience in the representation of contractors involved in the international construction arena, Peckar & Abramson is pleased to announce the formation of its International Construction Practice Group.

George J. Pierson, who until recently was Executive Vice President and Legal Director of Kvaerner E&C, has joined P&A as a partner and has been named the Director of the International Construction Practice Group.

The practice of international construction law, just as the business of international construction contracting, presents unique issues and challenges. Once an international contractor crosses a simple line on a map, that contractor is suddenly faced with different legal, cultural, financial and, in many cases, technical environments within which to construct what might otherwise be a very familiar project. By virtue of working in a different country, contracts do not mean what they mean elsewhere, multiple laws may apply, and getting paid can come with unanticipated tax consequences. The legal structuring of project—and understanding the environment within which a contractor is operating—is critical to success.

While the structuring of international projects presents unique challenges, so, too, does the management of these projects. Typical solutions to seemingly simple issues can be blocked by unanticipated legal or administrative hurdles. Cultural differences and the absence of long-established relationships, often

relied upon to solve project issues, may result in more project disputes. The disputes resolution procedures themselves can differ widely between jurisdictions and, on some occasions, within the same project. To the uninitiated (and even the long-initiated), these challenges can be daunting.

Rapidly evolving legal structures, as well as the increasing rate of global business and political developments, demand a concerted concentration in international construction law. Thus,

notwithstanding the fact that P&A has long served its clients' needs on international projects, whether in contract negotiations or dispute resolution, the firm has formed its International Construction Practice Group for the purpose of having a sharp focus on this growing and increasingly complicated practice area.

P&A's International Construction Practice Group is the next logical step in the firm's continued service to its clients in the international construction market. In 2000, P&A was a founding member of the International Construction

Law Alliance (ICLA). The ICLA is an alliance of firms around the globe that specialize in construction law practice. By limiting its membership to only one firm in each jurisdiction, the highest standard of construction law practitioners is ensured. Through this international network of local expert practitioners, P&A clients can be certain that the best local legal advice is available wherever they work.

Future editions of the newsletter will feature regular articles focusing on the practice of international construction law. Articles will concentrate on contractual issues such as typical international construction contract forms produced by the International Federation of Consulting Engineers (FIDIC) or the

**P&A clients can be certain that the best local legal advice is available *wherever they work.***

Institution of Chemical Engineers (IChemE). Contract structuring issues and language for contract clauses unique to international contracts will be analyzed. U.S. statutory schemes with extraterritorial implications, such as the Patriot Act or the Foreign Corrupt Practices Act, will be highlighted. Topics related to dispute resolution will also be covered, including practice tips on the conduct of international arbitrations. Occasionally, guest articles from other ICLA members will highlight issues of local interest in other countries.

Our International Construction Practice Group is poised to provide support for our clients throughout the world. If an American firm can be allowed the license to borrow a phrase from American Express: "Don't leave home without us." ⚙️



**George J. Pierson is a Partner and Director of Peckar & Abramson's International Construction Practice Group. Mr. Pierson was formerly the Executive Vice President/Legal Director of Kvaerner's E&C division. His expertise includes all aspects of domestic and international construction and contract law. Mr. Pierson's legal expertise is complemented by his engineering experience as a licensed Professional Engineer.**

# The "Pay-if-Paid" Debate Continues

## Federal Appeals Court Decision Regarding Miller Act Claim, Latest in Unfolding Case Law on This Contractor/Subcontractor Key Issue

While courts in some jurisdictions have made significant, if not definitive, rulings on "pay-if-paid" clauses, courts in other jurisdictions continue to grapple with the issue of the clause's validity. Recently, the U.S. Court of Appeals for the Ninth Circuit decided the question of whether the government's failure to pay the general contractor barred a subcontractor's claim for payment under the Miller Act, where the underlying agreement contained such a clause.

The Miller Act was legislated to give subcontractors and suppliers a remedy to secure payment in the place of a lien, which, of course, cannot be filed on U.S. Government property. Therefore, the Miller Act requires general contractors to post a statutory prescribed payment bond for the benefit of subcontractors and suppliers, as well as a performance bond to ensure contract performance. A claim under a Miller Act payment bond resembles a claim against a private payment bond, with certain notice provisions, time periods to initiate a lawsuit and the dollar limits of the bond defined by the statute.

### The Walton Case

The factual setting in the Ninth Circuit case, *Walton Technology, Inc. v. Weststar Engineering, Inc.*, was a project to repaint a crane for the navy. Apparently, the work was more involved than it first appeared. In order to protect the crane and the work as the project proceeded, Weststar rented a fabric and frame shroud from Walton to cover it. The project was delayed, extending the rental period. Additionally, the shroud was damaged due to both an accident and bad weather. In the meantime, Walton had not been paid for the full rental period. All of this resulted in a settlement, under which Weststar paid Walton for part, but not all, of the outstanding rental moneys due, and Weststar agreed to

make further payments to Walton "when and if paid by the Navy." After receiving no further payments, Walton sued Weststar's surety under the Miller Act for the unpaid rentals. Weststar's surety made a motion for summary judgment to dismiss the lawsuit, contending that its liability was no greater than that of its principal, Weststar, and that since Weststar was not responsible to make payment because the

government's failure to pay the general contractor did not preclude the supplier from seeking payment from the general contractor's surety. On the surface, this logic would seem to preclude the "pay-if-paid" defense entirely in a Miller Act case. After all, if the government never paid, or even if it did, but not until more than one year after the subcontractor's completion of its work, the subcontractor would be barred forever from a remedy against the surety. However, the court left an opening for the "pay-if-paid" defense. The court stated that a "pay-if-paid" clause, worded in such a way as to amount to a clear and explicit

**The Miller Act requires general contractors to post a statutory prescribed payment bond for the benefit of subcontractors and suppliers.**

government had not made payment for the extended period, the surety was likewise absolved.

Reasoning that unpaid subcontractors and suppliers have a relatively narrow window of opportunity to pursue a Miller Act claim (no earlier than 90 days from the completion of its part of the work and not later than one year after the last of the labor or materials have been furnished), which time period could elapse due solely to a "pay-if-paid clause," the court held the

waiver of the supplier's Miller Act payment rights, could exonerate the surety.

There was a dissent in the case, arguing that the court's ruling conflicted with the fundamental concept that a surety may avail itself of any defense the principal may have to the claim. The dissenting judge was of the belief that this fundamental concept was violated by the majority's ruling because the surety was found liable for a debt that its principal, the general contractor,

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# Defective Sprinklers May Bite

## **Tyco Issues Recall on Sprinklers: Contractors Should Investigate and Provide Notice on Past Projects**

**C**entral Sprinkler Company (“Central”), an affiliate of Tyco Fire Products, LP, announced a voluntary program on July 19, 2001, to replace 35 million fire sprinklers manufactured with defective O-ring seals between 1989 and 2000. The program also includes a limited number of O-ring models sold by Gem Sprinkler Company and Star Sprinkler, Inc.

According to the press release, the program was initiated because “the sprinkler heads can corrode, or minerals, salts and other contaminants in the water can affect the rubber O-ring seals. These factors could cause the sprinkler heads not to activate in a fire.” Central will provide free parts and labor to replace any sprinklers with defective O-ring seals. Additional information concerning the replacement program is available online at [www.sprinklerreplacement.com](http://www.sprinklerreplacement.com) and includes all necessary information to contact Central and arrange for replacement.

Contractors on projects where these sprinklers have been installed are at risk of being sued. Therefore, in order to reduce the risk of liability for any further sprinkler malfunction, contractors must determine in which of their projects these potentially defective sprinklers were used. This is a time-consuming task, to be sure, but an absolutely necessary one. Contractors are targets of claims, even if the sprinklers were installed by a subcontractor. To avoid the risk of being sued, contractors should take all reasonable and necessary steps to notify the current owners of the projects,

and assist them in participating in the replacement program.

Potential claimants are not only limited to the project owners and developers. They may be the building’s current users, occupants and/or any third parties

injured as a result of the malfunctioning sprinklers. Generally, a contractor is not liable to third parties for injuries that occur after a building is completed and accepted by the owner for “patent” defects or those that could have been discovered or remedied by the owner. However, the defective O-rings are not obvious, or are what is known as “latent” defects, and, as a result, the owner’s acceptance of the work will not preclude future liability to third parties. A contractor could face liability on the basis of breach of contract, breach of the implied warranty of habitability (residential construction) or negligence.

An action for negligence, especially the negligent failure to warn of the defect, provides the largest number of potential claimants. A contractor has a duty to the owner as well as to the



future occupants of the building/project to exercise all ordinary and reasonable care and diligence in the performance of its work. To recover in an action based on negligence, a claimant must prove the breach of this duty. This duty typically includes taking reasonable steps, including inspection, to ensure that defective products are not used during construction. Since the defects in the O-rings would likely not have been discovered upon investigation before installation, merely incorporating the sprinklers into the construction of a building should not be a breach of duty of reasonable care. However, there may be a duty to warn of the potential defects now that Central has notified the public of the recall. Thus, contractors should expend the time and expense to identify projects constructed with the defective O-rings in order to notify and potentially assist the proper parties in participating in the replacement program.

#### Legal Defenses May Not Be Available

Unfortunately, the legal theories that generally protect contractors from liability, or at least can minimize it, may not apply in the event of sprinkler malfunction. Statutes of limitations are unlikely to provide any relief or protection from potential liability since the statutory period does not even begin to run until the latent defects are discovered, or should have been discovered. The defective O-rings probably could not have been discovered prior to the notification by Central, unless there had already been a malfunction such that the claimant was on notice. Further, statutes of repose, which cut off all claims within a certain number of years after substantial completion of a project, will bar some claims, but the time limitations vary from state to state. In Florida, for example, it is 15 years, and the voluntary replacement program includes sprinklers manufactured from 1989 to 2000. Therefore, under Florida law, the statute of repose is not a bar to lawsuits. Thus, businesses should take all reasonable and necessary steps to warn owners about the voluntary replacement program and hopefully avoid liability. ❁

# California State Legislature Passes New Law Governing Construction Defect Litigation

Last fall, SB 800 passed both houses of the California legislature without opposition, completely overhauling the law governing construction defect litigation. The purpose of the new law is to, among other things, cut down on the number of frivolous lawsuits filed against builders, while still protecting a homeowner from shoddy construction. *The Recorder*, “Defining Defects,” Sept. 23, 2002. California builders that supported the bill hope that the new law will encourage insurers to come back to California, revitalizing residential construction there.

meet code regardless of resulting property damage. Thus, the new law may not be as favorable to contractors as anticipated and may actually encourage more litigation.

The new law attempts to statutorily define what constitutes a “construction defect.” “The standards set forth in the definition section are intended to address every function or component of a structure.” The drafting approach taken by the California legislature is different from the more traditional approach in that it lays out the performance expected from the finished product rather than defining the materials or

**... the new law may not be as favorable to contractors as anticipated and may actually encourage more litigation.**

However, it is questionable whether either goal will be accomplished by the new law, which is complicated and lengthy. Moreover, the new law supersedes the *Aas* case—the California Supreme Court decision that held that construction defects must cause actual property damage before contractors are subject to claims from condominium owners. The *Aas* case, reported in the fall 2001 newsletter, Volume XII, Issue 1, was favorable to contractors and likely to cut down on costly claims that did not trigger insurance coverage. In other words, under *Aas*, a contractor could not be held accountable in tort for costly safety issues and/or code violations that had not caused property damage (e.g., incorrect nailing patterns, improper shear wall construction and connections, fire protection issues). Now, under the recently enacted legislation, a list of construction defects has been established for which contractors, designers and manufacturers are legally responsible, including recovery for building components that do not

components of the structure. *The Recorder*, “Defining Defects.” For example, under the new law, a fire protection device or component is considered defective unless it “materially complies with the design criteria of the applicable government building codes, regulations and ordinances for fire protection... in effect at the time of the original construction.” Again, it will no longer matter whether the violation has caused or is likely to cause property damage: The mere fact that the component does not meet code is enough. Such legislation may have a chilling effect on professionals in the construction industry—as government officials responsible for plan check and inspections are unlikely to be held accountable for missing such violations.

Other highlights are as follows: (1) sets forth a pretrial procedure that allows builders the opportunity to cure the alleged defect(s) before a suit can be filed; (2) establishes builder requirements regarding

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**California (continued from page 5)**

a minimum one-year express warranty period covering the “fit and finish” of certain building components; (3) nullifies procedural rules previously governing the statute of limitations for construction defects, for all actions that fit under the new title; and (4) sets forth recoverable damages and affirmative defenses. Damages are limited to recovery for reasonable value of repairing any violation of the standards set forth in the code; the reasonable cost of repairing any damages caused by repair efforts; damages caused by failure of the home to meet the

standards, relocation and storage expenses; lost business income; investigative costs; and all other costs or fees recoverable by contract or statute.

Finally, the new law attempts to set forth the contractor’s affirmative defenses. In other words, the contractor may be excused from liability, in whole or in part, if it can demonstrate that the lawsuit is time barred, that its repair was successful in correcting the problem, and/or that the “defect” was caused by: (1) an “unforeseen act of nature”; (2) “homeowner’s unreasonable failure” to timely “minimize or prevent” the damages; (3) “the homeowner,

or his or her agent, employee, subcontractor, ... by virtue of their failure to follow the [contractor’s] or manufacturer’s recommendations”; and (4) “homeowner’s alterations, ordinary wear and tear and/or misuse.”

Although the new law applies to the sale of new residential units on or after January 1, 2003, commercial contractors are advised to take note. The courts will very likely now look to the definition and damage sections for guidance with respect to claims involving defects on commercial projects as well. ❁

## Design-Build under the New Jersey School Construction Program

**T**he massive New Jersey school facilities construction program has been launched. As with the beginnings of any new voyage, questions have arisen as to how to make the sailing smoother. To that end, some of the traditional restraints that

are imposed on public sector contracting are being given a second look in order to determine if any of the procedural safeguards can be relaxed, or at least tweaked, to streamline the process of getting shovels into the ground and the new facilities opened. Historically, the New Jersey Economic Development Authorities (NJEDA), under whose auspices the new Schools Construction Corporation (SCC) was created, has enjoyed the right to operate in a manner closer in kind to a private developer than a public agency. In fact, that is a large part of the reason that the prior administration of Governor Whitman utilized the NJEDA, rather than the initially targeted New Jersey Building Authority, as the entity to oversee the planning, funding and building program under the Educational Facilities Construction and Finance Act enacted in 2000.

However, notwithstanding the NJEDA’s powers in other areas, the legislation governing school facilities construction mandates that construction contracts be publicly bid in a manner

that is similar to, although not identical to the other state laws that govern construction. The significant difference, however, is that the award of the contract is not required to be made to the lowest responsible bidder, but to the bidder whose bid is most advantageous to the authority, “price and other factors” considered.

constructors are vastly different. Public projects are almost always developed on the basis of the classic model of separate owner-architect and owner-contractor relationships.

The architect is selected by an evaluative process in which price is only one element of a subjective review of the talent and benefits that the architect brings to a project. Contractors, on the other hand, are selected almost exclusively on the basis of competitive bidding. As a result, design-build does not easily fit into this classic model because a public entity cannot be expected to

**The award of the contract is not required to be made to the lowest responsible bidder, but to the bidder whose bid is most advantageous to the authority, “price and other factors” considered.**

The question to be examined here is does the price and other factors language give the SCC sufficient leeway to mandate design-build projects? And the follow-up question is, if it does, does the SCC need or want to have this arrow in its quiver?

The initial problem with the use of design-build in the public sector is that the procurement laws for selection of design professionals and

select a design-build proposal based solely on the lowest price submitted.

Yet the design-build delivery system is not a complete stranger to public sector contracts. The U.S. Army Corps of Engineers and other federal agencies use design-build. However, rather than publicly bidding the contracts, the government uses a two-stage procurement process in which the contractor first presents a design proposal for

evaluation based on general specifications issued by the government. From the contractor's design proposals, the government chooses those that it finds acceptable for further negotiation. The government then negotiates price and other factors. After the contract is awarded, performance is completed in two stages—the design stage and the construction stage. The government reviews the design at several intervals of completion, such as 50 percent, 75 percent and 100 percent. At the end of the design stage, a final design is approved, and the construction stage begins. The construction contractor either hires an architect or engineer, or produces the detailed design on its own.

### Design-Build Projects

In New Jersey, the use of design-build contracts in the public sector has been infrequent. In fact, only New Jersey Transit's procurement law specifically allows for design-build as well as design-build, maintain and operate projects. The procurement law specifies that these "projects shall be bid and contracts awarded, in accordance with applicable regulations that New Jersey Transit promulgates." These regulations appear to be developed on a project-by-project basis.

Nevertheless, despite the absence of statutory language specifically permitting design-build contracts, the New Jersey Building Authority has ventured into this arena on a limited basis for certain types of projects. While the Building Authority's bidding law follows the same pattern as most of the other bidding laws of the state in requiring that the construction contract be awarded to the lowest responsible bidder, the Building Authority has separate statutes for historical renovation projects in the state capital and for correctional facilities. For these projects, the legislation declares that the need for the "unique application of specialized planning, management and operational strategies, skills and techniques," mandates that construction management personnel, engineers, architects and contractors be utilized to protect the buildings' architectural,

cultural and artistic significance. Therefore, in order to complete the projects in an efficient and timely manner, utilizing such skills, the contract is awarded to the responsible bidder "whose bid conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered." Thus, free of the requirement to award the contract in all instances to the lowest responsible bidder, the Building Authority has in the past used design-build, apparently with no questions or challenges to its right to do so.

However, the price and other factors language in the Educational Facilities Construction and Finance Act may not necessarily allow the SCC to do the same, for a number of reasons. First of all, in the act, the price and other factors language is tempered by the requirement that the consideration given to price, be equal to the consideration given to all the other factors. In other words, in the evaluative process, in which the other factors such as

or suggested cost-savings techniques, can and should be part of this process. With the design proposals and prices submitted, the SCC can then evaluate the proposals, not completely restricted by the need to award to the lowest bidder. Of course, detailed regulations would have to be enacted, which carefully tailor and define the selection process to ensure the overall perception of fairness.

### Pros and Cons of Design-Build

Assuming that a program can be developed for design-build that meets the requirements of the bidding laws, we then come to the second question: Are the potential benefits of design-build of such value for school facilities construction that it should be utilized? There is no question that design-build introduces a subjective element to the process, and it is always difficult to remove the perception that the selection is based not on proper considerations, but simply on politics and friendships. Another disadvantage is

**With the design proposals and prices submitted, the authority can then evaluate the proposals, not completely restricted by the need to award to the lowest bidder.**

experience, qualification, specialization, past performance and other similar criteria must be considered, price must count for 50 percent. Can the selection of a design, which by its very nature is subjective, be made if price must be given this much weight in the evaluative process? Probably not.

But there may be exceptions. In those instances in which the SCC has already prepared preliminary design documents, advanced to a level of at least 50 percent of the final design, it could be feasible. The design-builders can then submit proposals for construction based on the preliminary design documents prepared by the SCC. The proposals would include the cost of construction as well as the cost to bring the final design to fruition, consistent with the SCC's design parameters. Value-engineering the design,

the fact that due to the complexity and costliness of preparing a design-build proposal, the number of bidders on a project will be significantly reduced since many potential bidders will be unable and/or unwilling to invest the dollars and time necessary to prepare such a proposal.

These considerations must be weighed against the obvious advantages of design-build which can include a much earlier completion date, and reduction of design and project costs, as well as the elimination of the heavy initial investment by way of architectural and engineering fees prior to obtaining any guaranty that the project is a viable one. If employing design-build means that the ultimate cost of the project is lower, than it should be utilized in those instances where it is appropriate. ☺

**"Pay-if-Paid" (continued from page 3)**

was not obligated to pay by virtue of the operation of the "pay-if-paid" clause. Underlying both the exception noted by the majority and the entire tenor of the dissent is the notion that a "pay-if-paid" clause can be valid. Otherwise, it would not matter if there were a clear and explicit waiver or not. Nor could the dissenting judge argue that the surety's liability was

courts declined to invalidate "pay-if-paid" clauses, although both held that in order to effectuate an absolute "pay-if-paid" arrangement, the clause must contain express language shifting the risk of collection from the general contractor to the subcontractor.

**Florida** takes a hybrid approach. In *DEC Electric, Inc. v. Raphael Construction Corp.*, the Supreme Court of

**Underlying both the exception noted by the majority and the entire tenor of the dissent is the notion that a "pay-if-paid" clause can be valid.**

enlarged beyond that of its principal. Other jurisdictions have been confronted with this issue, but the results have not been uniform.

**New York's** highest court has held that a "pay-if-paid" clause does not preclude a subcontractor from pursuing a claim on a private payment bond because the clause, read literally, would amount to an impermissible waiver of the subcontractor's right to file and enforce a mechanic's lien. *West-Fair Electric Contractors v. Aetna Casualty & Surety Co.* In **New Jersey**, on the other hand, only an unpublished appellate division decision, *Avon Brothers, Inc. v. Tom Martin Construction Co.*, and a trial-level federal court decision, *Seal Tite Corp. v. Ebret, Inc.*, have dealt with the issue. Both

Florida ruled that an unambiguous risk-shifting "pay-if-paid" provision is enforceable by a general contractor against a subcontractor's claim for payment. However, by statute, there are two types of payment bonds in Florida: conditional bonds and unconditional bonds. Under a conditional bond, a payment bond surety may avail itself of the general contractor's "pay-if-paid" defense, but the subcontractor may still proceed to enforce a lien claim against the owner's property. On the other hand, a "pay-if-paid" defense cannot be raised against a claim under an unconditional payment bond, but the owner's property is exempt from liens.

**California** follows the New York approach. Courts there have held that a

"pay-if-paid" clause is unenforceable with respect to the setting of a claim for payment for work performed on either a private project, *Wm. R. Clarke Corp. v. Safeco Insurance Co.*, or a public project, *Capitol Steel Fabricators, Inc. v. Mega Construction Co.*, because the clause impermissibly results in a forfeiture of the unpaid subcontractor's mechanic's lien rights.

The states that enforce "pay-if-paid" clauses do so under freedom-of-contract principles. The thinking is that businesses should be free to negotiate their own terms and to assess the risks that they are undertaking. The states that decline to enforce them generally use their lien statutes as justification for according subcontractors and suppliers special protection. It is always important to examine the law in the jurisdiction you are working in to determine if a "pay-if-paid" clause is enforceable. ☼

**Alert****New Jersey Amends Regulations Governing the Classification of Bidders**

The New Jersey Department of Treasury, Division of Property Management and Construction, has issued new regulations, effective immediately, governing the classification of bidders. The regulations apply to contractors bidding, work on all state projects, including school facilities projects managed by the new Schools Construction Corporation under the New Jersey Economic Development Authority. The new regulations can be found at [www.state.nj.us.treasury/dpmc/index.html](http://www.state.nj.us.treasury/dpmc/index.html). The changes streamline the qualification process and remove artificial and obsolete limitations on a contractor's capacity to perform state work. Key changes include:

- Contractor's aggregate rating is based on the firm's working capital rather than on net quick assets.
- The asset multiplier and the performance multiplier have been increased.
- If a contractor's aggregate rating is equal to or greater than 85 percent of the firm's bonding capacity,

then the contractor can be issued an aggregate rating equal to its bonding capacity.

- For purposes of calculating the value of outstanding work, a contractor may deduct 85 percent of the total contract value of the work being performed by the subcontractors named in the bid.

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*Charles F. Kemmy, Esq., Editor*

**Peckar & Abramson, P.C.**  
Attorneys at Law

**New Jersey**  
70 Grand Avenue  
River Edge, NJ 07661  
Telephone: (201) 343-3434  
Facsimile: (201) 343-6306

**New York**  
546 Fifth Avenue, 17th Floor  
New York, NY 10036  
Telephone: (212) 382-0909  
Facsimile: (212) 382-3456

**San Francisco**  
250 Montgomery Street, 16th Floor  
San Francisco, CA 94104  
Telephone: (415) 837-1968  
Facsimile: (415) 837-1320

**Los Angeles**  
555 West Fifth Street, Suite 3000  
Los Angeles, CA 90013  
Telephone: (213) 489-9220  
Facsimile: (213) 489-9215

**Miami**  
One Southeast Third Avenue, Suite 3050  
Miami, FL 33131  
Telephone: (305) 358-2600  
Facsimile: (305) 375-0328

**Fort Lauderdale**  
Telephone: (954) 969-0101  
Facsimile: (954) 696-0328

E-mail: [mail@pecklaw.com](mailto:mail@pecklaw.com)  
Web site: [www.pecklaw.com](http://www.pecklaw.com)

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