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Inside: WHITE CAP IS A ONE-STOP SHOP
FOR ROAD & BRIDGE CONTRACTORS



CLAIMS AGAINST LICENSED PROFESSIONALS: OBTAIN AN AFFIDAVIT OF MERIT OR RISK BEING LEFT HOLDING THE BILL

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The New Jersey Prompt Pay Act (“PPA”) requires a governmental entity to make timely payment under a contract when the prime contractor has performed its duties in accordance with the provisions of the contract. A prime contractor is defined as a person who contracts with the owner to improve real property. The PPA requires the owner to pay the amount due to the prime contractor not more than thirty calendar days after the billing date. The PPA defines “improve” to mean “to build, alter, report or demolish any structure upon, connected with, on or beneath the surface of any real property; to excavate, clear, grade, fill or landscape any real property; . . . to furnish construction related materials.” All of these understandings of the PPA were recently explored by the Appellate Division.

Recently, the Appellate Division affirmed the decision of the Superior Court, Law Division of Morris County determining whether an emergent contract to repair a municipal owned sewer pipe was subject to the PPA in an unpublished opinion, *Jo-Med Contractor Corp. v. City of Linden*, A-0408-22 (N.J. Sup. Ct. App. Div. Oct. 16, 2023). In *Jo-Med Contractor Corp.*, the trial court in Union County found the City of Linden (the “City”) violated the PPA by failing to pay Jo-Med Contractor Corp. (“Jo-Med”) for work completed pursuant to an emergency contract for sewer repairs. The Appellate Division affirmed the decision of the trial court awarding Jo-Med damages, interest, fees and costs under the PPA.

In December 2019, the City became aware of the need for an emergency sewer repair on City property and requested a quote from Jo-Med. The requested work sought the repair of terra-cotta pipe, curb replacement, trench and road restoration, and asphalt replacement. The quote submitted by Jo-Med for the repairs requested by the City was for \$25,000.00, with a disclaimer that the proposal was an estimate and did not include costs for increases in labor, materials, or unforeseen problems. Subsequently, when Jo-Med commenced the project, three feet of water covering the sewer main was discovered, which required pumping of the water and a delay in completing the work. After the work was completed, the City realized it had an additional blockage in the sewer line further away from the work performed by Jo-Med. Jo-Med submitted an itemized invoice for \$119,970.95, which the City believed was excessive, but the City did not notify Jo-Med of any dispute with the invoice.

After the City did not remit payment, Jo-Med filed a complaint against the City in the Superior Court of New Jersey. After discovery was completed, Jo-Med moved for summary judgment arguing it was owed payment for the contract and additional work performed and the City never objected to such work or invoice under the PPA. The City argued the additional amount invoiced by Jo-Med was excessive and the repair work did not involve “improvement to real property” or a “structure” under the PPA. The Appellate Division affirmed the trial court’s findings that the PPA applied to the City’s work as the sewer system repairs were improvements to real property under the PPA. Further, the trial court found the dispositive issue was whether the sewer constituted real property, or alternatively, if it connected with, or beneath the surface of real property. The trial court found that a sewer system constituted real property because it was an integral part of the City’s wastewater disposal system and because, by its nature, the sewer system had multiple connections to real property. Finally, the trial court determined the City failed to timely object to Jo-Med’s invoice and to dispute the work performed. After reviewing the record of the trial court, the Appellate Division affirmed the trial court’s decision for substantially the same reasons.

A crucial takeaway for contractors from *Jo-Med Contractor Corp.* is that the PPA is designed to apply to all applicable improvements related to real property, including property underground. Further, unless a government entity timely objects to an invoice or the work completed, the contractor is required to receive payment under the PPA. By failing to timely object to the work performed, the City waived the ability to dispute the amount billed pursuant to the PPA. Importantly, the Appellate Division noted that the PPA does not contemplate, or have different requirements, for a situation where a public entity seeks contracts for emergent work to be completed. The PPA specifically provides for contracts entered by public entities and does not have an exception for emergent contracts.

Moving forward, it is critical for contractors to review timeframes for receiving payments from public entities, recognize that emergency contracts do not negate the PPA, familiarize the contractor’s employees with the type of work covered under the PPA, and to remain proactive in receiving payment under the PPA.