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News at Bethay

Bethay Designated SBE in New Jersey

Spurred on by New Jersey's new Small business "set-aside" program, Bethay has been designated a Small Business Enterprise (SBE) by the NJ Department of Commerce. Following the recent decision, GEOD Corp. vs. the State of New Jersey, the state has amended the set-aside program for women and minority owned businesses (M/WBE's). As a result, the 15 to 25% of state contracts previously reserved for M/WBE contractors, is now set aside for SBE's. (See *View Point on page 3.*)

The state's new set-aside provisions along with Bethay's SBE designation create a wealth of opportunities for both new and existing clients. Contractors who have been awarded NJ contracts can engage Bethay's construction management and CPM scheduling expertise while satisfying the set-aside stipulations.

Prime Contractors: \$425M, 85%
SBE Set Aside: \$75M, 15%

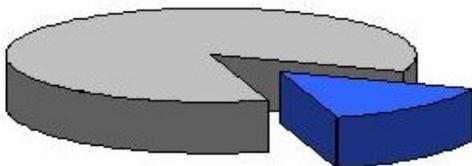


Figure: The NJDOT awarded more than \$500M in contracts in 2002 & 2003. Under the new guidelines, over \$75M would be earmarked for Small Business Enterprises.

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More News at Bethay

Bethay Expands Division of CPM Scheduling

Bethay is excited to announce the expansion of our Division of CPM Scheduling. Bethay President Robert Munster added "Critical-Path project scheduling is a natural outgrowth of our existing business and represents a key component of our overall strategic management plan".

Bethay now offers services covering the entire scope of the construction project; including scheduling, construction management, claims avoidance and preparation, and litigation support and expert testimony.

See Scheduling on Page 2



Scheduling (continued from Page 1)

Bethay has already been awarded the Scheduling subcontracts on several high profile multi-million dollar metropolitan area construction projects. Bethay is preparing the schedules for contracts on:

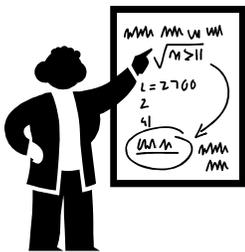
- Queensborough Bridge
- George Washington Bridge
- Tappan Zee Bridge

Our highly trained staff has prepared schedules for construction projects worth more than \$750 million in the last five years alone.

Even More News at Bethay

Kevin Max to Teach at Fairleigh Dickinson University

We are pleased to announce that Bethay Vice President, Kevin Max, P.E., has been hired by Fairleigh Dickinson University as a professor for the Spring 2004 semester.



Kevin will be teaching a beneficial course entitled "Construction Contracts and Specifications" to the senior level students of the University's School of Computer Sciences and Engineering.

Kevin plans to share his practical experience in both engineering and construction with the next generation of engineers and construction managers.

The course is also available as part of the University's Continuing Education Program. (See *Continuing Education at right.*)

Continuing Education



Certificate in Construction Management offered by Fairleigh Dickinson University

Fairleigh Dickinson University in Teaneck, New Jersey is now offering a Certificate Program in Construction Management. The certificate is available to construction managers and engineers as a supplement to their education and practical experience.

The program offers construction professionals access to the University's undergraduate courses in the School of Computer Science and Engineering on a non-matriculated basis. Certificates will be awarded upon the successful completion of six construction management courses and a one credit design project.

Students can begin the program in either the Spring or Fall semester. For the Spring 2004 semester, the program offers ...

Construction Contracts and Specifications

Course No.: EGTC 4620

Schedule: Monday 7:30 PM to 10:00 PM,
1/26/04 to 5/3/04

Topics covered include:

Contract Law, Construction Ethics, Bidding process, Contract Components, Subcontracts, Negotiations, Supplier Contracts, Purchase Orders, Change Orders, Liquidates Damages, Incentive Clauses, Retention, Specification Writing, Insurance, Warranties, Bonds, Delays, Changed conditions, Liens, Claims, Arbitration, Mediation, Litigation.

For more information please call:

Professor Melvin Lewis at 201-692-2347
Professor Kevin Max, P.E. at 201-398-9870



View Point

New Jersey Revamps "Set-Aside" Program

Will New York Follow NJ's Lead?

The recent overhaul of the "set-aside provisions" of New Jersey state contracts inspires a host of questions for New York City metro-area contractors. Although the set-aside programs differ state to state, it is certainly within reason to believe the State of New York may follow suit.

The likelihood of a similar revision of the New York statute can be better understood by a review of the related judicial rulings. Most recently in GEOD Corp. vs. State of New Jersey, July 2003, the plaintiff brought suit to challenge the set-aside statute. GEOD alleged New Jersey's law to be unfairly biased against non-M/WBE contractors.

New Jersey's set-aside program contained the typical stipulations, i.e., at least 15 cents of every dollar of state contracts were reserved for small business enterprises owned and operated by minorities or women (M/WBE contractors). For construction projects, this required prime contractors to subcontract at least 15 % of the contract sum to M/WBE contractors or suppliers.

The judiciary ruled in favor of GEOD, in essence rendering the opinion that New Jersey's set-aside provisions unfairly discriminated against small business enterprises (SBE's) not owned by minorities or women. The state put forth emergency regulations which enact the spirit of the GEOD settlement. The amendments eliminate all references to businesses owned by minorities and women. The definition of a SBE is now based on the gross revenue of the firm.

GEOD is reminiscent of 'Richmond v. J.A. Croson Co., January 1989, in which the contractor lost its contract by failing to meet the set-aside goals. Croson brought suit, alleging the set-aside plan was unconstitutional. On remand, the Court of Appeals held that, "generalized assertions" of past racial discrimination could not justify "rigid" racial quotas for the awarding of public contracts.

The Supreme Court has several times considered the constitutionality of the sub-contracting goals. In Fullilove v. Klutznick, 1980, the court upheld (MBE) provision of the Public Works Employment Act of 1977. Later, in Adarand Constructors v. Peña, 1995, the court ruled otherwise, "the presumptions of disadvantage based on race alone, and consequent allocation of favored treatment, are discriminatory practices that violate the Fifth Amendment's Equal Protection Clause". The future of the federal and New York state set-aside provisions is far from certain.

... favored treatment based on race alone is a discriminatory practice that violates the Fifth Amendment ...

However, in New Jersey, the GEOD decision and the resulting legislation have changed the rules of procurement on public projects. The fundamentals of economics alone should now govern the allocation of subcontracts.

It seems more than likely that contractors across the Hudson will take note and push for similar reform.

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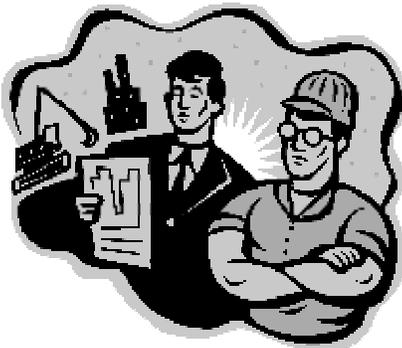
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We're on the Web!

Visit us at:

www.bethay.net

**Did you know?**

The Bethay Perspective is available on the web. Go to [www. Bethay.net](http://www.Bethay.net) and click on 'Newsletters'. Previous editions are also available.

The Back Page: Just for Fun**AND YOU THOUGHT YOU WERE WRONG!***A COLLECTION OF INSIGHTFUL OPINIONS*

"Animals, which move, have limbs and muscles; the earth has no limbs and muscles, hence it does not move."

Scipio Chiaramonti, Prof. of Philosophy and Mathematics, University of Pisa, 1633

"They couldn't hit an elephant at this dist---."

General John Sedgewick, Union Army. His last words. 1864.

"This 'telephone' has too many shortcomings to be seriously considered as a means of communication. The device is inherently of no value to us."

Western Union Internal Memo. 1876

"Man's flight through air is both impossible and contrary to the will of God.

Bishop Wright, ~1880. (Bishop Wright had two sons, Orville & Wilbur)

"Everything that can be invented has been invented."

Charles H Duell, US Commissioner of patents. 1897

"God himself could not sink this ship."

Deckhand on the R.M.S. Titanic. 1912

"Computers in the future may weigh no more than one and a half (1.5) Tons"

Popular Mechanics. 1949

"You ain't goin' nowhere, son. You ought to go back to drivin' a truck."

Jim Denny, Manager of "Grand Ole Opry", to Elvis Presley. 1954

"I was on medication when I made the decision not to burn the tapes."

President Richard Nixon

"There is no reason for any individual to have a computer in their home."

Ken Olsen, President of Digital Equipment Corporation (DEC). 1977

All the waste in a year from a nuclear power plant can be stored under a desk.

Ronald Reagan. 1980

"Smoking Kills. And if you're killed, you've lost a very big part of your life."

Brooke Shields

"It isn't pollution that's harming the environment. It's the impurities in our air and water that are doing it."

U.S. Vice-President Dan Quayle

"Some of our friends are for it. Some of our friends are against it. And we're standing with our friends."

Mike McCurry, the White House Press Secretary, discussing whether or not President Clinton would veto a bill curbing securities lawsuits. 1998