

IN THE MATTER OF

TELENTOS CONSTRUCTION CORP.;

TOMMY DEMONERIS

and

MICHAEL MERIS

as among the five largest shareholders of the corporation

Prime Contractor

and

ALLSTATE ENVIRONMENTAL CORP.;

and

JOSÉ MONTAS,

Individually, and as President and one of the five largest  
shareholders of the corporation

Subcontractor

for a determination pursuant to Article 8 of the Labor  
Law as to whether prevailing wages and supplements  
were paid to or provided for the workers employed on a  
public work project known as the Roof Replacement and  
Associated Asbestos Abatement at Coler Memorial  
Hospital, on Roosevelt Island, in the City of New York

**REPORT  
&  
RECOMMENDATION**

**Prevailing Wage Rate  
Case No. 2006004384  
PW11 2010008780**

New York County

To: Honorable Colleen Gardner  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on November 9, 2011 and February 3, 2012 in Albany, New York and by videoconference with White Plains New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Bureau of Public Work ("Bureau") of the New York State Department of Labor ("Department") into whether Allstate

Environmental Corp. (“Sub”) a subcontractor of Telentos Construction Corp. (“Prime”) complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving asbestos abatement at Coler Memorial Hospital (“Project”) for the Dormitory Authority of the State of New York (“Department of Jurisdiction”).

### **HEARING OFFICER**

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

### **APPEARANCES**

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz, (Louise Roback, Senior Attorney, of Counsel)

There was no appearance made by, or on behalf of Sub.

Respondent Tommy Demonaris and Constantine T. Tzifas, Esq. appeared on behalf of Prime.

McElroy, Deutsch, Mulvaney & Carpenter, LLP (Daniel Font, Esq., of Counsel) appeared on behalf of Colonial Surety Corp.

### **FINDINGS AND CONCLUSIONS**

On October 12, 2011, the Department duly served a copy of the Notice of Hearing on Sub, via regular and certified mail, return receipt requested. There was no Return Receipt evidencing receipt of the Notice of Hearing by Sub by certified mail. The attorney for the Department stated on the record that the certified mailings to Sub were returned unclaimed but the regular mailings were not returned to the Department. (T. 6, 8-9) The Notice of Hearing scheduled the hearing for November 8, 9, and 10, 2011 and required all Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

In addition, the Department duly served a copy of the Notice of Hearing on Prime, via regular and certified mail, return receipt requested. Signed Return Receipts evidencing receipt of the document by Prime, Tommy Demonaris, and Michael Meris were entered into evidence as Hearing Officer Ex. 2.

The attorney for Prime timely filed Answers to the charges contained in the Notice of Hearing on behalf of the Prime, Tommy Demoneris, and Michael Meris. (Hearing Officer Exs. 3, 4) Sub failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, Sub is in default in this proceeding.

The Notice of Hearing alleges that Sub underpaid wages and supplements to its workers and that Prime is responsible for Sub's underpayment pursuant to Labor Law § 223.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator, and documents describing the underpayments, which supported the Bureau's charges that:

Sub willfully underpaid \$73,759.22 to its workers for the audit period weeks ending April 29, 2007 to August 12, 2007; and,

Jose Montas is an officer of Sub (Dept. Exs. 19, 20); and Prime is responsible for its Sub's failure to comply with, or evasion of, the provisions of Labor Law article 8, which includes liability for any civil penalty assessed against Sub, regardless of whether Prime knew of Sub's violation. However, I note that Prime offered testimony, unopposed by the Department, in which it requests that, pursuant to 12 NYCRR § 221.1, any penalty assessed against Sub be waived insofar as it would normally apply to Prime under Labor Law § 223. I further note that Prime produced uncontroverted evidence of all six requirements in § 221.1(a)(1) – (6), and, therefore, liability for any civil penalty against Prime may be waived.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

### **RECOMMENDATIONS**

Based upon the default of Sub in answering or contesting the charges contained in the Department's Notice of Hearing, and upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Sub underpaid its workers \$73,759.22 on Project No. 2616209999, PRC No. 11 2010008780; and

DETERMINE that Sub is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that Jose Montas is an officer of Sub; and

DETERMINE that Sub be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due; and

DETERMINE that Prime is responsible for the underpayment and interest pursuant to its liability under Labor Law article 8 but, based upon Prime's adherence to 12 NYCRR § 221.1, Prime is not liable for any civil penalty assessed against Sub; and

ORDER that the Bureau compute the total amount due (underpayment of \$73,759.22, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau's notification, Sub shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at : 120 Bloomingdale Road, Room 204, White Plains, NY 10605; and

ORDER that the Bureau compute and pay the appropriate amount due for each employee on the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: February 16, 2012  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott", with a stylized flourish extending from the end.

John W. Scott, Hearing Officer