

client ALERT

Waiver of Multi-Prime School Construction Contracts in Pennsylvania Upheld

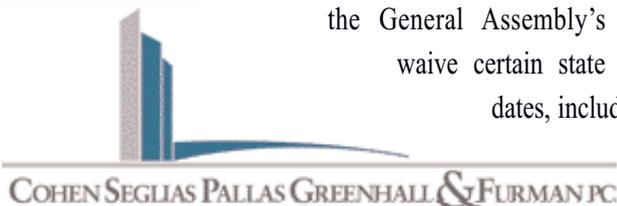
The Supreme Court of Pennsylvania recently paved the way for the use of a single-prime contract on public school projects, rather than the traditional multi-prime structure that has been in use for decades. On November 21, 2007, the Supreme Court held in *Mechanical Contractors Association of Eastern Pennsylvania, Inc. v. Commonwealth of Pennsylvania et al.* that the Separations Act, Section 751(a) of the School Code, is subject to waiver under the Mandate Waiver Program of the School Code. The Court's holding will substantially impact the traditional relationships on public school projects.

The Supreme Court's opinion focused upon the Separations Act and the Mandate Waiver Program of the School Code. Under the Mandate Waiver Program, a school board may apply to the Department of Education for a waiver of a multi-prime contract structure if it will enable the school district to operate in a more effective, efficient or economical manner. The Court ruled that the granting of a waiver does not run afoul of the Separations Act because the waiver program evidenced the General Assembly's intent to waive certain state law mandates, including those

in the Separations Act that require, at a minimum, separate prime contracts for general construction, electrical, plumbing and mechanical.

In the future, expect many public school projects to have only one prime contractor, with other traditional primes acting as subcontractors. In addition, bid requests will begin to reflect these new single prime contracting structures. The new contractual chain will also alter the coordination and scheduling responsibilities on the projects and, therefore, areas of potential liability.

If you have any questions about this recent case or want to discuss its implications on your business, please contact Lane Kelman via e-mail lkelman@cohenseglias.com or call 215 564 1700.



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