

Top Tips for Trouble Free Construction Projects

Randy Parent of Liebert Cassidy Whitmore (Attorney at Law)

- Try to do your bid early so that the project can be done in May-June if possible
- **CECSD is governed by Uniform Law PCC Sec102.** District must go out to bid if project is more the \$25,000. District cannot split projects in order to avoid bidding. If District violates PCC then it voids the contract. See www.lcwlegal.com/84145 Public Works Competitive Bidding
- **Exception from Competitive Bid:** 1) project below \$25,000, 2) professional services (attorney, consultant, engineer, auditor, etc), 3) when bidding would be futile, unavailing, impractical (need Board Resolution of the Futility of Bidding), 4) emergency situations. Emergency situations are very explicit though --the emergency must be an act of nature that could not have been foreseen. In other words, the emergency is not due to failure of the Board to address an issue. 5) Bidding Noticed but no bids received
- **Notice of Calling for Bids**--be clear and specific of work to be done, time & place bids can be obtained, when the bids will be opened, that the bids will be sealed until opened, that there will be a mandatory job walk-through, and that the lowest responsible bid will be accepted.
- **Withdrawal of Bid by Contractor** -must be a mistake or a clerical error, the mistake must make the bid materially different, and the contractor must provide written notice of the mistake within 5 working days. The mistake cannot be due to error in judgment or carelessness.
- **Non-Responsibility of Contractor** is a protest that the bidder is not responsible due to some failure to do the project. A truly non-responsive bid may be summarily denied, but we must have sufficient evidence and fully understand the failure so that the District does not arbitrarily dismiss. Example: contractor forgets to put license number on the bid contract and he does have a license number, District cannot reject bid for that reason. District has discretion to ignore a failure if it does not affect the bid and does not give advantage to be the low bidder.
- **District has option to reject all bids** and start project over or abandon the project and this option needs to be in the contract.
- **Should a Bid be Rejected**--Board needs to determine if the mistake provides the bidder a material advantage although Board can waive a non material error or failure. District though is not required to waive a failure or error. Always consult legal counsel on a Bid Protest.
- **Award of Contract** --must be to the lowest responsible bidder and requires Board approval at a meeting that is noticed.

- **Making The Project Trouble Free**

1. Develop Detailed, Specific and Cohesive Contract --make everything very specific so that there are no disputes or change orders. Documentation is key
2. Have a good Contractor Agreement (including contract amount, Insurance Bond, Indemnification provision, payment bond, performance bond, additionally insured, and Worker's Compensation). Contractors usually have the Performance and the Payment Bond from one insurance carrier and often on one policy.
3. Watch out for Change Orders --try not to have any. If necessary, however it must be in writing --no oral modifications. It must be signed by both parties before work change or modification can begin. Try to use restraint and do not arbitrarily add in work that will increase the price sometimes unfavorably.
4. Subcontractor claims --if District receives a lien then stop any payment to Contractor. Withhold 12.5% of contract so that you have money to pay the subcontractors so that the work can be completed.
5. Promptly Pay
6. Retention Issues --normally 5% is retained and that information must be in contract.
7. Keep the Board informed of all issues or problems. They don't like surprises.
8. Monitor the project well --keep informed