

C.A.S.H. 26th Annual Conference on School Facilities

Beyond the Bond
Keeping the Promise for School Facilities

Room# 307
Wednesday, March 2, 2005
2:30 p.m. - 4:00 p.m.
Sacramento Convention Center

WORKSHOP #30

**I'VE BEEN SUED! 10 THINGS I SHOULD
HAVE DONE**

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I've Been Sued!

10 Things I Should Have Done

Keeping the Promise for School Facilities
Coalition for Adequate School Housing
CASH Workshop #30 March 2, 2005

Panel Introduction

- **Sean Corrigan, PE, Esq.**
 - Director, Planning/Facilities, Conejo Valley USD
 - 29+ yrs. Naval & Public School Construction
- **Ben Reyes, Esq.**
 - Attorney, Public Works Claims, Northern California
 - Represents over 100 public agencies in California
- **Bill Lacher, CCM, LEED**
 - Construction Manager, Southern California
 - 30+ yrs. general contracting, CM, & claims avoidance

Presentation Outline

- What to do to avoid disputes by phase
 - **Planning Phase**
 - **Design Phase**
 - **Development of the Contract for Construction**
 - **Construction Phase**
 - **Bidding Phase**
 - **Closeout Phase**
- Most Common Claims/Disputes
- What to do if you do get sued

Planning Phase

1. Establish a scope, schedule, and budget before you hire a designer.
 - Include detailed scope and budget for the project in the agreement with the architect.
 - Require a schedule for producing the construction documents.

Design Phase

2. Use the proper Design Contract.

- **Don't** use the industry form contracts for the design agreement.

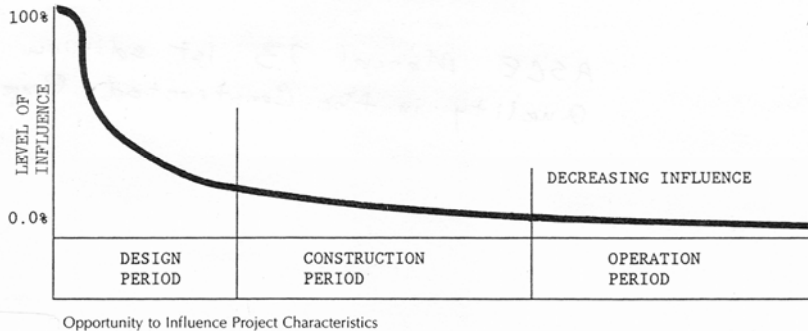
- Make sure to include **all** required specialty sub-consultants.

Design Phase

3. Actively manage the Design Contract

- Seek internal design feedback
 - Designer or Constructor disputes eventually end, whereas internal dissatisfaction never ends!
 - Ensure school site staff has a voice in design
 - Force maintainers to take the time to review the design
 - Otherwise, expect contract impacting change orders late in project to accommodate district stakeholders!

Design Phase



Design Phase

3. (continued)

- Require architect & sub-consultants to spend time documenting site conditions.
- Use potholing, GPR, etc. where precise location of underground infrastructure is critical for the new work.
- Avoid unforeseen conditions.
 - When re-using ductwork.
 - When connecting or re-using plumbing
 - When work is required above the ceilings or in walls.

Design Phase

3. (continued)

- Require independent detailed cost estimates at design phase intervals.
- Consider value engineering or peer reviews to ensure P&S are clean, non-proprietary and cost effective
- Have an independent constructability review on plans and specifications done prior to bidding the job. (best performed while plans are in DSA.)

Consider the Construction Contract

4. Select type of construction contract carefully!

- Schools normally stick with Design-Bid-Build:
 - Firm, Fixed Price, traditional Gen. Contractor
 - Multiple prime or trade contracting
 - Unit price contracts
 - Indefinite quantity contracts
 - Government furnished, contractor installed equipment
 - Or, combinations of above options

Consider the Construction Contract

4. (continued)

- Design Build, Lease-Leaseback, JOC
 - Federal and private sector tools not fully in our tool box.
 - Requires sophisticated District & Partners
- Allocate risk in the contract with full knowledge of how it will affect your bids.
- Make schedules realistic!
- Don't use boiler plate specifications without actually reading them.

Consider the Construction Contract

4. (continued)

- Anticipate "The designer intended...", "What the principal wanted...", "M&O likes...".
If all else fails, read the contract!
- Properly allocate the responsibilities in the contract:
 - Scheduling
 - Construction coordination
- Pre-qualify contractors.

Construction Phase

5. Provide for Adequate Project and Construction Management
 - Whether you manage in-house or use consultants, allow adequate staff for complexities of school construction.
 - Establish a good relationship, based on trust and mutual respect, early with the contractor.
 - Utilize “partnering” to establish & strengthen relationships. (Legal rights/duties remain unchanged)

Bid Phase

6. Aggressively Manage the Bid Process to get the kind of contractor you want!
 - Start with a list preferred contractors.
 - Notify the contractors of upcoming bid by a fax announcement.
 - Follow up the fax with a phone call.

Bid Phase

6. (cont.)

- Have a mandatory pre-bid conference.
- Allow adequate time between the pre-bid & the bid for contractors to ask questions & clarifications to be issued.
- Simplify the bidders' response on bid day.

Construction Phase

7. Actively manage construction.
- Make decisions and provide answers promptly.
 - Enforce the scheduling provisions of the contract.
 - Resolve time extensions fairly & promptly
 - First to the Float gets the float.
 - Agree on Field Office Overhead Rates early
 - Put a value on the schedule in the SOV & make updates condition precedent to payment.

Construction Phase

7. (cont.)

- Expedite the change order process. Avoid contentious issues.
- Expedite the pay application process.
 - Cash flow is important
 - Use only experienced construction people to review schedule of values and progress payment applications.

Construction Phase

8. Actively manage the punchlist.

(It begins with hiring the designer!)

- Require the sub-consultants be present at the Architect's punch list inspection.
- Require that there be a punch list activity in the schedule.
- Require that there be a pay item in the SOV for the punch list.

Construction Phase

8. (cont.)

- Require that the contractor do the first punch list and document the items that he picked up.

- Require that all testing, run-in, and training on equipment be done before the contractor requests a punch list.

- Issue a complete list of items when you do the punch list.

Construction Phase

8. (cont.)

- If the punch list is not done in 30 days or less, take a credit and get it done by someone else.

Construction Phase

9. Adopt an attitude of “claim avoidance” early in the project.
 - Common Claim Subjects
 - Imperfect specifications
 - Multiple plan errors
 - Unforeseen conditions
 - Errors in bid submittals
 - Lack of scheduling and coordination
(on multiple prime contracts.)

Closeout Phase

10. How do you know a claim is coming and how you turn a claim into a settlement?
 - You begin to see threatening letters.
 - Contractor refuses to sign change orders.
 - Contractors modify change order release
 - Multiple RFI's
 - Most disputes arise out of 2 issues!

Closeout Phase

10. (cont.)

- Document & maintain project records.
- Respond to all correspondence.
- Retain public agency construction counsel.
- Invoke Contractual Dispute Resolution
- Require that all claims be in writing and submitted under Oath!

Closeout Phase

10. (cont.)

- After you are Served?
 - Immediately consult with your attorney
 - Hire specialized counsel/consultants
 - Prepare claims binder
 - Government Code Claim
 - Public Contract Code Section 20104

Thank You

Questions?