

C.A.S.H.30TH ANNUAL CONFERENCE ON SCHOOL FACILITIES

30 YEARS OF SCHOOL FACILITIES LEADERSHIP ADVOCACY ♦ EDUCATION ♦ COLLABORATION

Tuesday, February 24, 2009
8:00 a.m. - 9:40 a.m.
Sacramento Convention Center
Rooms 306/307

Workshop # 1

School Construction 101

Moderator:

Phil Henderson

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(925) 465-6155
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Panelists:

Glenn Gould

Miller Brown & Dannis
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ggould@mbdlaw.com

Bonnie Martin

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C.A.S.H. Construction 101

“How Can I Have All
These Problems
When I Don’t Even
Have Any Money?”



Moderator:

Philip Henderson
Orbach, Huff & Suarez

Panelists:

Bonnie Martin
McCarthy Builders

Mark Quattrocchi
Quattrocchi Kwok Architects

Glenn Gould
Miller Brown & Dannis

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It's Bid Protest Time.

To Whom It May Concern:

Joe's Construction, Inc., with this letter formally contest the bid for the 16th Grade Relocatable Building Move & Install project. This is due to the fact that we feel that Vernori's Construction will not be able to manage the project in adequate form.

Vernon's Construction failed to list a transportation company with the correct specialty license as their subcontractor. Due to this fact Vernori's Construction should be considered a non-responsive bidder and the project should be awarded to the next lowest bidder, Joe's Construction, Inc.

If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

It's Bid Protest Time, cont'd.

- How would you handle this letter?
 - “manage the project in adequate form”
 - “failed to list a transportation company with the correct specialty license”
- Is Vernon responsive?

Architect's Comments

CM's Comments

Lawyer's Comments

Notes

What Budget? Everyone's Bidding So Low.

- It's 45 minutes after your bid opening and your lowest bid is 30% **lower** than your budget?
- What the ...?
- It's all good, right?

Bid Tabulation Worksheet Project: Cost-Too-Little Elementary Modernization
Budget: **\$5,000,000**

Contractor Name	Bid Form	Bid Bond	NCA	Sub List	Base Bid Price	Altern. #1 Price	Total Bid
Really Good Contractor	X	X	X	X	\$4,245,344	\$50,000	\$4,295,344
Oh So Good Contractor	X	X	X	X	\$4,133,467	\$35,000	\$4,168,467
Kinda Good Contractor	X	X	X	No	\$4,156,333	No price	\$4,156,333
Used-To Know Builders	X	X	X	X	\$4,000,000	\$44,000	\$4,044,000
T.I.s-4-U, LLC	X	X	X	X	\$3,800,000	\$20,000	\$3,820,000
Trak-Homes-R-Us, Inc.	X	X	X	X	\$3,500,000	\$45,000	\$3,545,000

Architect's Comments

CM's Comments

Lawyer's Comments

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Fair Warning From Your Neighbor.

- I just got a call from a neighboring district. My low bidder is doing very poorly at that district.
- They are apparently really awful
- Can I reject their bid?



Architect's Comments

CM's Comments

Lawyer's Comments

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I have a “Sole Source” Request from Our Maintenance Department. Do I have to read PCC § 3400?

- Your Maintenance Director has left you a voicemail. There are certain items he wants to be part of the new bids on 2 projects.
- No problem, right?
- How do we pick the item we want on the Project?

Architect’s Comments

CM’s Comments

Lawyer’s Comments

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Suspended Construction Projects

Financial Crisis: Suspended Construction Projects

The State of California faces an approximately \$15 billion General Fund deficit this fiscal year, and that number is estimated to grow to \$42 billion over the next 18 months. Without immediate action, the State will not have sufficient cash to meet its obligations starting in February 2009.

The Department of General Services provides real estate construction services for most of the state's building projects. Some of these are financed using loans from the Pooled Money Investment Board (PMIB), in anticipation of bond sales revenue.

In an effort to preserve the State of California's cash resources during this current budget crisis, the PMIB voted on December 17, 2008, to freeze all disbursements from PMIB loans. Some capital outlay projects are funded in whole or in part by these loans.

Pursuant to the Department of Finance's Budget Letter No. 08-33, dated December 18, 2008 and the Governor's Executive Order S-16-08, the Department of General Services has suspended all work on 54 current projects. As of Tuesday, December 23, 2008 the department has notified all contractors and state agencies that are affected by this action. At the same time the DGS will continue to pursue exemption requests for 10 other projects. A complete list of all the affected projects—both those currently suspended and those still under exemption review—is [at this link](#).

[Click here](#) for additional FAQ's about the suspended work projects.

Updated: 1/20/2009

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CONSTRUCTION 101/201 — CASH ANNUAL CONFERENCE 2009

The State's Not Paying.

- And you have two contracts ongoing with two contractors. What to do?
 - “Suspend” the contract
 - “Terminate” the contract (for convenience)
 - Is the state funding crisis a “force majeure”?
 - Really?
 - How about phasing the work

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CONSTRUCTION 101/201 — CASH ANNUAL CONFERENCE 2009

Architect's Comments

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CONSTRUCTION 101/201 — CASH ANNUAL CONFERENCE 2009

CM's Comments

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Lawyer's Comments

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CONSTRUCTION 101/201 — CASH ANNUAL CONFERENCE 2009

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Schedule Issue #1: Where's My Schedule?

- My contractor is not sending me a schedule.
- I want to send them this letter.
- Can I fire them?
- Really, I want to fire them.



OUR OWN SCHOOL DISTRICT
1234 APPLE AVENUE • OUR TOWN, CA 91234 • (415) 888-1212 • FAX: (415) 888-2121
www.oursd.k12.ca.us

February 24, 2009

Jon Jones
Project Manager
Not So Good Construction Company, Inc.
1234 Dear Drive
Not Our Town, CA 92345

RE: **BIDDER NOTICE**, Our Valley Middle School

Dear Jon,

The District has asked you over 3 times for a project schedule and you have not provided it. It is required, as stated in the General Conditions. You're already on site, with a fence and your trailer and your site subcontractor has started work.

We need your schedule in the next 48 hours or the District will have no choice but to terminate your contract and award this contract to the next lowest bidder.

Thank you for your immediate attention to this matter.

Sincerely,
Mr. Jones
Director of Facilities and Construction

BOARD OF TRUSTEES
BOBBY BROWN
BOB FORTUNE
TERRY DATE
CAROL PARK
GEORGE GREENE
STEVEN BLUE

Architect's Comments

CM's Comments

Lawyer's Comments

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Schedule Issue #2: My Contractor is a Month Behind Its Own Schedule. Can It Catch Up?

- My contractor's schedule shows that it should be 62% complete by now.
 - It is barely 40% done and is about 28 days late.
 - I don't think this contractor can catch up.
 - Is this schedule awful?
 - Is the contractor awful?
 - Do I call the surety?

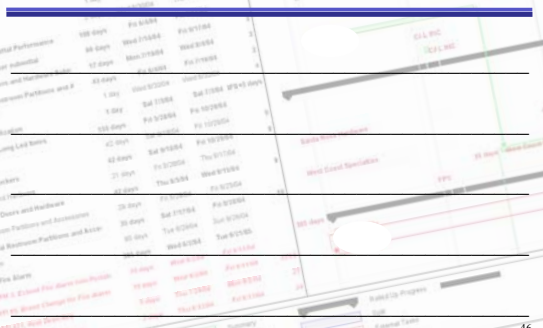
Architect's Comments



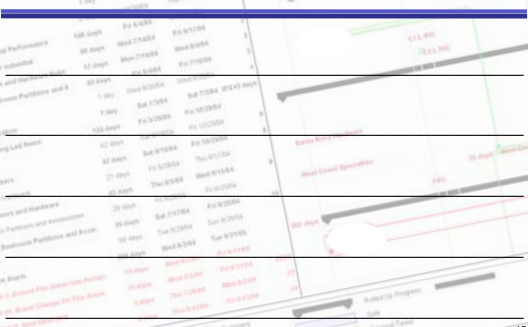
CM's Comments



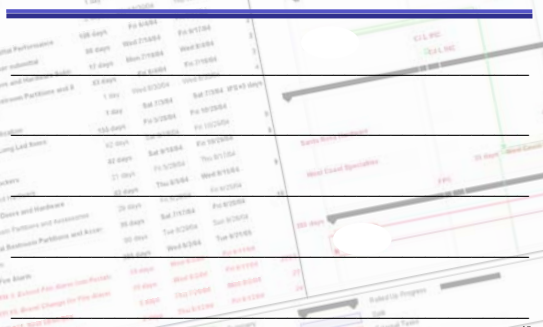
Lawyer's Comments



Notes



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Shepherding Your Contractor To Completion.



Chief Claims Manager
1700 Lantana Lane, Ste. 303
Walnut Creek, CA 94598
(925) 948-4028
(925) 948-4023 Fax

170 Lantana Lane, Ste. 303
Walnut Creek, CA 94598

March 24, 2005

VIA FACSIMILE AND U.S. MAIL

Mr. _____, Esq.

San Francisco, CA 94105

Re: Principal: Construction Corp.
Obligor: Unified School District
Project: Family Early Learning Center, General Contract
Surety: Travelers Casualty and Surety Company of America
Bond No.: 7769 BCM
Claim No.: 06924 NR

Dear Mr. _____:

Please be advised that as of today's date, Travelers Casualty and Surety Company of America ("Travelers") is in receipt of claims, litigation and notices of claims totaling in excess of \$540,000.00 against the referenced payment bond issued on behalf of Construction Corporation. As of today's date, Travelers has paid claims totaling \$19,792.40 against the referenced bond.

Inasmuch as Travelers has received claims against its payment bond, and to the extent of any payments made by Travelers, Travelers is formally putting Unified School District ("District") on notice of Travelers' interests in all remaining contract funds, including retainage. Notice is hereby given pursuant to paragraph 6 of the General Agreement of Indemnity executed by Construction Corporation on or about March 8, 2000, a copy of which is enclosed. In addition, as a result of its payments, Travelers is equitable subrogee to the rights and remedies of the Owner under its contract with _____ including the right to withhold and offset. **Travelers hereby requests that no further disbursements be made directly to _____ Construction Corporation without the express written consent of Travelers.**

- When your contractor needs:
 - A helping hand,
 - A hand up,
 - Hand-holding
 - Some money

Architect's Comments

CM's Comments

Lawyer's Comments

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Here's Text From a Letter From Your Contractor.

“Attached to this letter is our final payment application. We are substantially complete (95%). We are waiting for the architect to review our punchlist completion. We believe we are down to only 4.5 pages. Please process this payment application as soon as possible so we can avoid stop notice filings.”

Architect's Comments

CM's Comments

Lawyer's Comments

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What is still an “Emergency”? I’ve Run Out of Time to Bid. Is That an Emergency?

- You’re 28 days from the start of school and you need to replace the driveway (and parking lot) into the elementary school or no one will be able to drop off their children.
- You have a contractor you know who can do it in 25 days for a pretty good price.
- Is this an emergency?

Architect’s Comments

CM’s Comments

Lawyer’s Comments

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Stump the Chumps

Smart Questions from the Audience

Architect's Comments

CM's Comments

Lawyer's Comments

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Thank You!

Philip Henderson
Orbach, Huff & Suarez

Bonnie Martin
McCarthy Builders

Mark Quattrocchi
Quattrocchi Kwok Architects

Glenn Gould
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