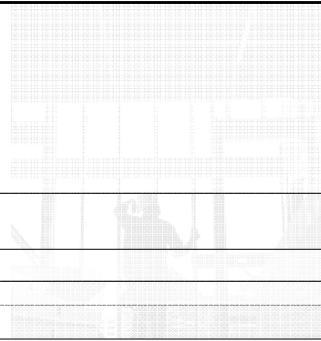




CALIFORNIA'S
COALITION
for ADEQUATE
SCHOOL HOUSING



MANAGING YOUR NEW CONSTRUCTION AND MODERNIZATION PROJECTS

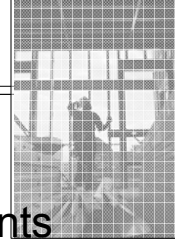
**Friday, January 26, 2007
Ontario Airport Marriott**

THE LEA PERSPECTIVE: TERMINATING A CONTRACTOR

- **Don Yamagata**
Montebello Unified School District

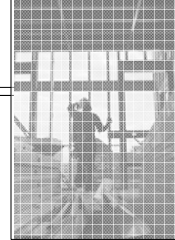


THE WARNING SIGNS



- Extremely Low Bid
- Difficulty returning contract documents
- Failure to mobilize in a timely manner
- Difficulty providing schedule and schedule of values
- Failure to provide subcontractor information
- Tone and content of correspondence and RFI's

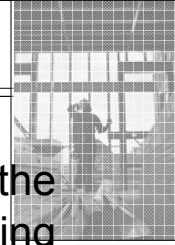
THE WARNING SIGNS



- Insufficient manpower
- Missing schedule milestones
- Request for payment not submitted in a timely manner
- High turnover of the contractor's Project Manager or supervision staff

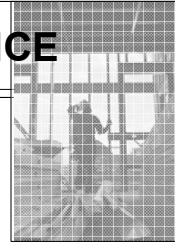
THE WARNING SIGNS

- Complaints from subcontractors to the District's Construction Team regarding payment or supervision
- Stop Notices
- Claims

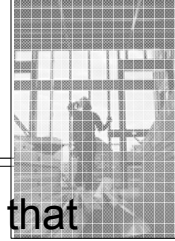


SPECIALIZED LEGAL ASSISTANCE

- Recommend a legal firm with vast experience in construction issues
- Establish a preliminary budget for legal issues
- Get proper authorizations and agreements in place so that the Legal Team is funded and accessible

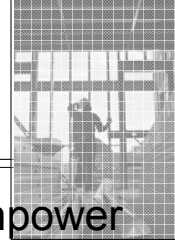


INCREASE MONITORING AND COMMUNICATION



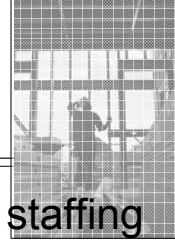
- Define roles and responsibilities so that they are in alignment with the construction documents
- Establish and agree upon a method and procedure for document filing
- Identify and agree upon issues that the Legal Team should be made aware of

INCREASE MONITORING AND COMMUNICATION



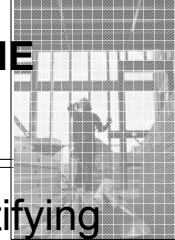
- Keep accurate records of daily manpower and progress
- Keep detailed and up-to-date notes on “as-builts”
- Identify and budget for additional services and fees from Architect, Inspector, etc.

INCREASE MONITORING AND COMMUNICATION



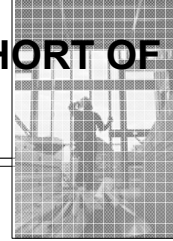
- Identify and address any additional staffing issues
- Identify and address issues due to delays in the completion of the project

TRY TO WORK IT OUT WITH THE CONTRACTOR



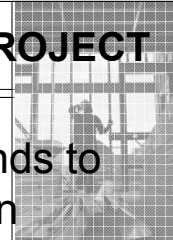
- Send a letter to the contractor identifying deficiencies
- Request that contractor address each deficiency in writing
- Offer whatever assistance the District and/or its Team can offer to the Contractor

GETTING THE SURETY INVOLVED SHORT OF TERMINATION



- Notify the Surety of the problems
- State clearly that Termination will be the District's only other option

OPTIONS FOR COMPLETING THE PROJECT



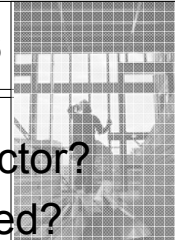
- If the District is holding sufficient funds to complete the project, the District can terminate the contractor without demanding that the Surety perform and take over the completion of the project
- Demand that the Surety perform and complete the project

DECIDING WHEN TO TERMINATE THE CONTRACTOR



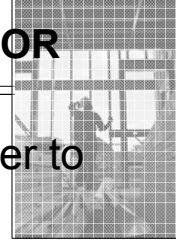
- The District's construction team has gathered sufficient evidence and documentation to determine that the contractor is in default of the contract
- The Board has been briefed and informed as to the process, issues and challenges involved in terminating the Contractor
- The stakeholders have been briefed on the pending termination

STAKEHOLDER QUESTIONS



- How did we end up with this Contractor?
- How much of the project is completed?
- How much extra will it cost the District?
- What will be the public reaction?
- When will the project be restarted?
- When will the project be completed?
- What do we do in the meantime?

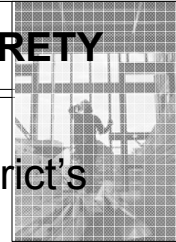
TERMINATING THE CONTRACTOR



Address a “Notice of Termination” letter to the Contractor and Surety that:

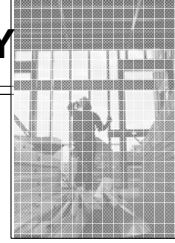
- Demands performance from the Surety
- States all pending timelines, approaching milestones and past milestones
- Cites contract provisions on termination and failures of the Contractor
- States that the District will recommend Termination

WHAT TO EXPECT FROM THE SURETY



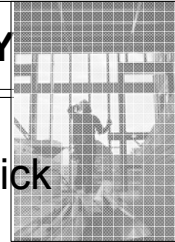
- Requests for clarification of the District’s “Notice of Termination” letter
- Requests for preliminary documents
- Initiation of the Surety’s independent investigation

WORKING WITH THE SURETY



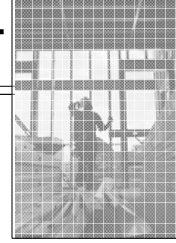
- Surety's Team:
 - The Surety's Representative
 - The Surety's Legal Counsel
 - A Construction Management firm usually hired by the Surety for this project
- Remember that the Surety's goal is to minimize their loss
- Remind the Surety that time is of the essence to complete the project per the contract

WORKING WITH THE SURETY



- Keep pressure on the Surety for quick action
- Working cooperatively with the Surety will benefit the District

PROTECTING THE PROJECT



- The Surety is responsible for the protection of the project
- Identify areas of concern and demand that they be addressed immediately to avoid damage to the project
- Establish who will be the Surety's "Go to" person responsible for site protection issues

GETTING THE PROJECT RESTARTED AS SOON AS POSSIBLE



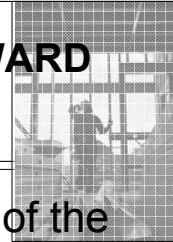
- Cooperate with the Surety's independent investigation
- The District's submittal of documents should be coordinated by the District's Legal Team
- Assist the Surety's Construction Manager in the drafting of the Request For Proposal

GETTING THE PROJECT RESTARTED AS SOON AS POSSIBLE



- Keep the pressure on the Surety for a Takeover Agreement to complete the project

CONTINUING THE PROJECT TOWARD COMPLETION



- Inform the Board and stakeholders of the revised schedule and the anticipated completion date for the project
- Estimate anticipated additional costs
- Work with the Surety towards a negotiated settlement