

Contract Considerations – It's Not Only About Price

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In its enthusiasm to negotiate the best contract price for an association, the board of directors often fails to consider other equally important issues which can result in costs that exceed the contract price! Over the years, certain issues are repeatedly present when an association seeks legal advice about work that was not completed in a workmanlike manner.

Architects and Engineers.

It is essential for associations to retain the services of either an architect or engineer for large or technical projects. An architect or engineer, like other professionals who advise the board, should work extensively with associations. By preparing specifications that define the scope of the work and the methods and materials to use in its completion, an architect or engineer can save an association both money and time. For example, an expensive roof replacement project will not result in a leak-free building if the project does not address underlying or related problems which can be identified by an engineer or architect. During the course of the work, he will also determine whether the work complies with the specifications and determine whether the work is complete before approving the contractor's invoice. As fiduciaries, directors must make informed business decisions. One of the best ways a board can gather this information is by seeking the advice of professionals who can help the board evaluate its options.

Choosing a Contractor.

HEED THE WARNING SIGNS.

Consider the following as examples of warning signs: (i) the contractor does not work with condominium associations on a regular basis; (ii) he does not provide a business telephone number or street address for his business; (iii) he cannot provide references from at least three associations; (iv) he cannot provide addresses of similar properties as references (e.g. high rise buildings, vintage buildings, flat roofs); (v) he is not licensed by the municipality where the property is located; (vi) he operates under a business name but is not registered with the Illinois Secretary of State; or (vii) he is not insured. Any one of these situations can, on its own, be a reason to seek a different contractor.

Do Not Contract with Relatives or Friends of Directors.

Just say NO. Though the Condo Act sets forth a disclosure mechanism that can be used if a contractor is the director or a member of a director's immediate family, the potential for problems, misunderstandings, incomplete, inappropriate or defective work is limitless. Though it may not technically be a conflict to contract with a director's friend or more distant relatives, in these situations, issues invariably arise between directors, owners and the contractor that will cost money and create long term dissension and dissatisfaction among owners.

INTERVIEW THE CONTRACTOR.

After a contractor submits his bid, the board should meet with him and ask questions. The directors should not rely only on the proposal that he submitted. Ask him to tell you about his business and his employees and ask questions about the project. Does he have a foreman who will be assigned to your project on a full time basis? Does he operate in a professional manner or is he just a guy with a cell phone? Consider whether he was referred to the board by a professional such as an architect or engineer.

Negotiating the Contract Insurance.

No matter how small the job, NEVER permit an uninsured contractor to work on the property. Before the work commences, obtain a certificate of insurance that names the association, its board of directors, managing agent and their officers, directors, employees and agents, as additional insured parties. The association's insurance will not cover the contractor or his employees. The contract should also require proof of workers compensation insurance.

Notice/Address Provisions.

Never contract with a person or entity that will not provide the full street address of the company and the name of its registered agent. The association cannot send a notice by messenger, federal express or process server to a post office box. When it comes time to demand completion, exercise a guarantee or serve a summons, you will need to have, at the very least, a street address.

Warranty.

Insist on a warranty and review its provisions. Consider the length and scope of the warranty. Does it cover both material and workmanship? If a roof leaks, a piece of roofing membrane will have limited benefit to the association if a qualified roofer doesn't perform the repair. Before issuing a final payment for the work, require the contractor to deliver a written and signed warranty.

Payments.

Payments should be made on a monthly basis. If a contractor requests more frequent payments it is likely that he is not financially stable and cannot meet his weekly payroll. If problems arise, he may not have the financial strength to finish the project.

All requests for payment must be accompanied by a sworn contractor's statement and a waiver of lien. The statement lists the names of all subcontractors and material suppliers. The waiver states that payment has been made and the contractor has waived its right to file a mechanic's lien for the work. These documents are essential in the defense of a mechanic's lien whether it is filed by the contractor or a subcontractor. If an architect or engineer is involved in the project, he should review the forms before he authorizes the association to make a payment to the contractor.

Read the Contract.

It's not 'just a form'. Read the contract thoroughly. The cost to remediate a poorly performed project is greater than the initial cost. Also remember, it will cost the association less to obtain legal counsel to review the contract and address problems than it will cost to retain counsel to resolve problems.

Conclusion

In conclusion, directors must exercise their fiduciary duty to the unit owners by making informed decisions. They should not hesitate to seek the advice of professionals who can assist them in this process.