

## Contracts for Community Projects

This week we received a note from a trusted construction law attorney reminding us of a very serious and potentially costly issue; that is, putting a vendor to work without first having fully negotiated the terms of the contract under which they are to do the job.

Without the contract, with written terms such as the scope of work to be done, the materials to be used, when the work is to begin, the hours each day the crews are to work and which days they are to work, timely completion of the project and what happens when it is not, where they are to mobilize the equipment or supplies needed, where the workers are to eat lunch and use the facilities (yes, that is important), what are the terms of payment, filing the NOC (in Florida), and providing proof of insurance (worker's comp, general liability). These all are extremely important issues. Without a contract, there is only supposition as to the specific terms of these issues.

It is critical to have the contract terms negotiated and the contract actually signed before any work begins. If the workers start work before all the terms and conditions are determined, sometimes the contract never winds up being signed. Then the question becomes the legal effect of working on a job without enforceable terms.

Our construction lawyer advocates that clear, written contracts increase certainty in relationships and the ability to administer the project with clarity and confidence. In the absence of a written contract, you are deemed to be working under a verbal contract, begging the question as to exactly which terms govern your relationship with the vendor. As long as things are going well, this isn't a problem. But as soon as a hiccup appears (change order, delay, non-payment, unforeseen site conditions - the list goes on and on), your rights are uncertain and a lot of money - yours and your neighbors' money - is on the line. If you were negotiating a written contract and never signed it, but you and your vendor acted in accordance with its terms anyway, you may be deemed to have accepted that written contract even without a signature. Or not. Many factors go into this consideration. Please keep in mind that in larger projects a proposal, even a signed proposal, is not necessarily a contract. A contract has terms and conditions that are favorable to BOTH parties.

# THE COMMUNITY BUILDER

As a Board Member you have a fiduciary duty to ensure that you have considered all of the facts and issues before committing a job to a vendor. Take the necessary steps to ensure the terms of the contract, including payment terms before you sign. If necessary, your manager should have the vendor come to a meeting so you can ask questions prior to the actual start of the job. Your manager should be fully involved to ensure that the contract has been completely negotiated. If a job exceeds \$10,000 the Association's legal counsel should absolutely review it so that you, the board, have "safe harbor". *Review* being the operative word, as this is not an opportunity for your legal counsel to re-open negotiations with the contractor by completely re-writing the contract, but more importantly has done their job in making sure the Association is protected.

The manager should ensure that the vendor has provided all of the necessary information to get them set up as a vendor prior to the job being initiated so they can be paid in accordance with the terms of the contract. It might take a little longer to get the job going, but it is definitely worth it when the job is completed and everyone is satisfied with the outcome.