

AN OWNER'S GUIDE TO PUBLIC CONSTRUCTION: PITFALLS AND PROTECTION



Wisconsin Wastewater Operators Association
2017 Annual Conference

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SMS

OVERVIEW

- BACKGROUND and OBJECTIVES
- CHALLENGES
- STRATEGIC TOOLS

OVERVIEW

- **BACKGROUND and OBJECTIVES**
 - COMMON PROBLEMS and PITFALLS
 - HIGHLIGHT BASIC TOPICS
- **CHALLENGES**
 - PROCEDURES
 - CONFLICTS
 - PEOPLE / COMMUNICATION
- **STRATEGIC TOOLS**
 - CONTRACT DOCUMENTS = 'RULES of the GAME' (read the fine print ...)
 - COMMUNICATION, COLLABORATION and FAIRNESS

BACKGROUND

- **CONSTRUCTION**

- is for a PURPOSE and USE
- SIGNIFICANT INVESTMENT for at LEAST 20-50 YEARS

- **COMMON PROBLEMS and PITFALLS**

- SUCCESSFUL CONSTRUCTION = MANAGES RISK ✓
- DEFECTIVE and NON-COMPLYING WORK
- CLAIMS / CHANGES
- SCHEDULES / DELAYS

CHALLENGES

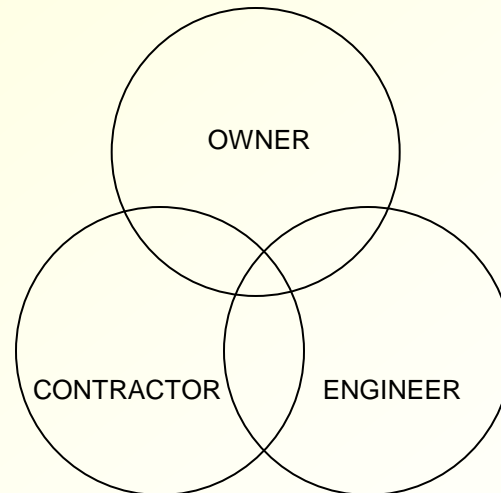
- **PROCEDURES**
- **CONFLICTS**
- **PEOPLE / COMMUNICATION**

CHALLENGES

- **PROCEDURES**
 - CONTRACT DEFINED ROLES / RESPONSIBILITIES
 - OVERALL PROCESS
 - OWNER PROCURED EQUIPMENT
 - PAYMENT, RETAINAGE, WITHHOLDING
 - CLAIMS / CHANGES
 - DEFECTIVE / NON-COMPLYING WORK

CHALLENGES

- **PROCEDURES - CONTRACT DEFINED ROLES / RESPONSIBILITIES**
- ✓ • **CONTRACTOR (GC Article 6)**
 - MEANS, METHODS, TECHNIQUES, SEQUENCES
 - SAFETY
 - DO NOT DIRECT the CONTRACTOR HOW to DO THEIR JOB ✓
- **OWNER (Art 8)**
- **ENGINEER (Art 9)**



CHALLENGES

- **PROCEDURES - OVERALL PROCESS**
 - **PUBLIC BIDDING**
 - PREQUALIFICATION **STAT'S § 66.0901 and .0903**
 - BIDDER'S PROOF of RESPONSIBILITY
 - PRE-BID CONFERENCE
 - RIGHT to REJECT ANY and ALL BIDS
 - 'GRACE REVIEW PERIOD', WITHDRAWAL and SECURITIES ✓
 - CONTRACT AWARD
 - **CONSTRUCTION**
 - SUBMITTALS TIMING
 - **CLOSURE and WARRANTY PERIOD**
 - STARTUP, TESTING, TRAINING, O&M, DOCUMENTATION
 - WALK-THROUGH and 'PUNCHLIST' ✓

CHALLENGES

- **PROCEDURES - OWNER PROCURED EQUIPMENT**
 - **COMMON PURPOSES**
 - TAX EXEMPT STATUS
 - MANUFACTURE LEAD TIMES / SCHEDULES
 - **RISKS**
 - COORDINATION
 - TIMING / SCHEDULES and CHANGES
 - MAY SHIFT RESPONSIBILITIES to OWNER

CHALLENGES

- **CONFLICTS**
 - SCHEDULES, DUE DATES and DAMAGES
 - CLAIMS - DO NOT MEAN 'STOP the WORK'
 - CONTRACT DOCUMENTS

CHALLENGES

- **PEOPLE / COMMUNICATION**
 - CONFLICTS - PERSONALITIES
 - STATE, CLARIFY and DOCUMENT FACTS ✓
 - 'POSTURING'

STRATEGIC TOOLS

- ✓ • **COMMUNICATION, COLLABORATION (TRUST) and FAIRNESS**
 - MAINTAIN 'HEALTHY' RELATIONSHIPS
 - THINK 'AHEAD' to ANTICIPATE and 'GUIDE' PARTIES
- ✓ • **CONTRACT DOCUMENTS = 'RULES of the GAME'** (read the fine print ...)
 - EJCDC - ENGINEERING JOINT CONTRACT DOCUMENTS COMMITTEE

STRATEGIC TOOLS

- **CONTRACT DOCUMENTS (Art 3)**
 - **AGREEMENT**
 - SCOPE of WORK SUMMARIZED
 - COMPLETION DATES, TIMING
 - LIQUIDATED DAMAGES
 - ✓ • NOT a 'PENALTY'
 - REASONABLE RELATIONSHIP to ANTICIPATED COSTS
 - **INSURANCE CERTIFICATE (Art 5)**
 - OWNER typically is 'HOLDER'
 - 'ADDITIONAL INSUREDS' at least OWNER and ENGINEER
 - OWNER and PROPERTY INSURANCE
 - SPECIAL NEEDS

STRATEGIC TOOLS

- CONTRACT DOCUMENTS
- ✓ • **PERFORMANCE** and **PAYMENT BONDS** REQUIRED (§ 66, Art 5)
 - OWNER'S 'INSURANCE' PURCHASED by CONTRACTOR for
 - ACCEPTABLY COMPLETING WORK
 - CONTRACTOR PAYING their BILLS
 - COMMON TRIGGERS
 - SCHEDULES
 - DEFECTS, NON-COMPLYING WORK
 - 3rd PARTY CLAIMS (SUBCONTRACTORS, SUPPLIERS)
 - 'PRELIMINARY NOTICE' NORMALLY GETS 'BACK on TRACK'
 - FORM → EJCDC
 - TERMS (the 'fine print') ...
 - BOND COMPANIES (§ 'A' RATING) ≠ NOT ALL are 'EQUAL' ✓

STRATEGIC TOOLS

- CONTRACT DOCUMENTS
 - ✓ • **PAYMENT** (Art's 11 and 14)
 - APPLICATIONS / CERTIFICATES
 - RETAINAGE - TYPICALLY 2.5%
 - ✓ • ADDITIONAL WITHHOLDING based on DEFECTS, NON-COMPLYING and INCOMPLETE WORK
 - COMPENSATE USING 'SCHEDULE of VALUES' or UNIT PRICE WORK
 - LIEN WAIVERS REQUIRED (§ 66)
 - DOCUMENT . . .



STRATEGIC TOOLS

- **CONTRACT DOCUMENTS**
 - **GENERAL CONDITIONS** of the CONSTRUCTION CONTRACT the FINE PRINT . . .
 - TIMING
 - DEFECTS
 - OWNER'S RIGHT to be MADE 'WHOLE'
 - **CONTRACT CLOSURE**
 - WALKTHROUGH and 'PUNCHLIST' of REMAINING / CORRECTIVE WORK
 - CERTIFICATE of SUBSTANTIAL COMPLETION ✓
 - BEGIN WARRANTY PERIOD (1 YEAR TYPICAL)
 - CORRECTED WORK RENEWS their PERIOD
 - OBSERVE / DOCUMENT BEFORE WARRANTY EXPIRES ✓

STRATEGIC TOOLS

- **CONTRACT DOCUMENTS**

- **DEFECTS and RESOLUTION (Art 13)**

- GENERALLY for

- DEFECTS

- NON-COMPLYING WORK

- DOCUMENT CONDITIONS

- ✓ • **CONTRACTOR FIRST RIGHT to CORRECT**



- **CLAIMS / CHANGES (Art's 10 and 12)**

- TIME + / -

- VALUE \$

- the 'GAME' of 'R F I' (REQUESTS for INFORMATION)

STRATEGIC TOOLS

- CONTRACT DOCUMENTS
 - **SUSPENSION, TERMINATION** and **DISPUTES** (Art's 15 and 16)
 - OWNER'S RIGHTS
 - DISPUTE RESOLUTION - generally by
 - NEGOTIATION
 - MEDIATION
 - ARBITRATION
 - LITIGATION - COURT SYSTEM



STRATEGIC TOOLS

- **SUMMARY**
 - **CHALLENGES**
 - PEOPLE / COMMUNICATION
 - DEFECTS
 - CHANGES / CLAIMS
 - **STRATEGIC TOOLS**
 - COMMUNICATION
 - CONTRACT DOCUMENTS

DISCUSSION and QUESTIONS



THANK YOU ...

see

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for UPDATED HANDOUTS

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