

Bond

TOP 10 TIPS FOR AVOIDING PUBLIC SCHOOL CONSTRUCTION SETBACKS

1. Develop and define the goals, objectives and expectations for the capital improvement project. An initial, well-defined program will help keep the project on track and avoid “scope creep.” Communicate the program early and often to the project stakeholders.
2. Engage a well-qualified design professional early on in the process. The request for proposal process is well suited to identifying well-qualified design professionals and determining market rate for design fees.
3. Consult with and use legal counsel for the drafting of the owner-architect agreement based on the business terms negotiated by the school district and the project architect. Don’t simply accept the AIA contract form proposed by the architect; it should be modified to meet the school district’s requirements and protect its interests.
4. Use legal counsel to review and, if appropriate, revise the contract for construction to protect the interests of the school district. The contract for construction assigns responsibilities, outlines expectations and is legally binding on the parties. It is the provisions of the contract that will be relied upon if claims or disputes arise during the project.
5. Establish in the contract documents a timeframe within which the work is to be completed. Keep informed of the status of the schedule, and deal with schedule slippage as soon as it appears by, among other things, requiring a recovery schedule from the contractor, withholding payment, supplementing the work force, notifying the surety or issuing a default notice.
6. Review contractor insurance requirements with the school district’s insurance professional. Make insurance requirements part of the bid documents, and require proof of the required insurance before permitting the contractors to start work.
7. Ensure that all required project participants are in attendance at project meetings and that minutes are prepared and timely circulated after the conclusion of each meeting. Minutes should identify key issues, the resolution of which should be consistently tracked.
8. Establish and implement a consistent process for the handling of change orders. The general conditions of the contract for construction should be modified to establish the format, substantiation requirements, and applicable mark-ups by prime contractors and lower tier contractors. Keep the construction manager on task with regard to its change order review.
9. Pay attention to notice provisions. Timely written notices are required under construction contracts to preserve certain rights of the parties. Identify notice provisions at the start of the project and track triggering events.
10. Deal with problems when they arise and include the district’s legal counsel early on in the process to mitigate the risks of mistakes. Involving counsel early on may help avoid claims and disputes.

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