

# Construction Law & Dispute Resolution

“It can be done, though many public entities ultimately request a limited waiver of strict competitive bidding in favor of competitive negotiation,” says Firstman. “Success in the project overall often depends on the agency’s discipline in controlling changes toward the end of a job.”

## The Color of Construction

Even before the Obama administration took office, the construction industry had begun to make a significant shift to green-and-sustainable construction, primarily guided by the quest to reduce greenhouse-gas emissions. President Obama’s economic stimulus package further energizes the green movement, dedicating about \$50 billion to energy programs.

David Blake, partner at Seyfarth Shaw, says his firm is seeing a definite increase in legal work involving green construction as local governments continue to implement regulations that either require, or provide incentives for, sustainable building practices. Blake adds, “It’s up to the legal profession to help make this transition by adjusting contracts to account for certain risks and issues unique to green projects, counseling to ensure compliance with green building laws, helping obtain green incentives, such as valuable tax deductions and density



bonuses for energy efficient buildings, and offering advice about specialty insurance products available for green buildings.”

Will it be enough? Looking at the investment in sustainability to-date, Sean Ivery, director for Navigant Consulting, says,

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“We’ve reached a tipping point. The green building movement is proceeding at such a rapid rate of acceleration that the industry will likely have some troubles down the road from a dispute standpoint. There simply aren’t enough qualified experts in the industry who understand the necessary specifications of new processes and materials.”

Added to this issue is the growing number of standards and rating systems such as the new ICC 70 National Green Building Standard, U.S. Environmental Protection Agency Energy Star program, U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) and Green Building Initiative’s Green Globes. As well, progressive states continue to advance individual regulatory directions, such as the new California Title 24 (also known as the California Green Building Standards Code) which goes into effect Aug. 1, 2009, with ever-tightening greenhouse-gas-emission requirements and other energy legislation.

“Inconsistency of standards could create challenges down the road,” says Ivery. “One municipality might require a LEED standard while the lender might seek an Energy Star or Green Globe rating. Architects, engineers and contractors must understand their clients’ green vision, the code and stakeholder constraints before they enter into a contract.”

Is the client’s goal simply to reduce energy on one project or is it part of a top-down corporate social responsibility program?

Ivery explains, “Knowing the answer could reduce many headaches down the road and help deliver a successful green project. Keep in mind, LEED is not a company strategy; it’s primarily an asset-specific strategy. Understand your client’s sustainable strategy so that you can provide the best possible solution.”

MBP’s Peck adds, “There is a great need to properly evaluate different approaches taken regarding reuse of materials, reduced energy, green products, and where the cost may be increased to accommodate that goal versus the budget considerations. It’s a challenge to work those in with the design and construction management approach taken.”

In an effort to define a standardized green construction contract document, ConsensusDOCS expects to release the Green Addendum later this year that will outline legal risks and ramifications among project parties using green and sustainable technology. ■