

Building the Recovery

Leading construction lawyer Steven B. Lesser offers guidance to owners and developers of construction projects to help ensure on-time completion, cost efficiency and protection of assets.

In his State of the Union address, President Obama proposed creating “thousands of good jobs for the hard-hit construction industry” by “redoubling” efforts to rebuild for the 21st century. While this message was music to the ears of the construction industry, owners and developers of new construction projects must restrain from diving head-first into projects — even those that have been on hold for prolonged periods. Instead, Board Certified Construction Attorney Steven B. Lesser cautions that this is precisely the time to exercise good judgment and engage in careful planning.

“Many times, contracts are thrown together because the owner wants the project to be completed within a compressed time period,” says Lesser, a Becker & Poliakoff shareholder. “Once the contractor gets behind, and the liquidated damages eat into the profit, it becomes less likely the contractor will finish the project.

“Owners need to be mindful that outside forces such as delays resulting from inclement weather, the need to acquire specialty fabricated components, or the availability of skilled labor to install unique aspects of construction could impact the pace of construction,” says Lesser. “Early communication of how these issues will be treated during construction is essential, because if a dispute arises later on, litigation may be the only resort.”

When timelines are unrealistic, owners seeking bids for projects will have two problems, Lesser observes. First, the most competent and responsible contractors will likely not bid, knowing the project is impossible to complete in the stated timeframe. Second, some contractors will “low bid”



Steven B. Lesser (left) and William Cea, attorneys with Becker & Poliakoff, are Board Certified in Florida Construction Law. Lesser was named “Construction Lawyer of the Year” in South Florida in 2011 by Best Lawyers in America™.

just to get the job without carefully considering their capacity to perform.

Lesser warns that another key danger is improperly administering the construction contract. Some techniques to avoid this pitfall include making sure that the contractor provides a detailed construction schedule to enable independent tracking of progress and requiring updated schedules with each pay request. If the owner fails to require these updated schedules, or fails to read them, or to engage someone else that can understand the nuances of project schedules, then a failed project may be on the horizon.

Becker & Poliakoff works with the owners of construction projects such as universities, hospitals, municipalities, school boards and private developers to draft thorough, yet realistic bid requests and contracts. “In the end,

what we do protects all parties — the contractors and sub-contractors as well as the owners and sureties,” says Lesser.

Lesser and his colleagues Daniel Wallach and Michelle Ammendola have developed more detailed articles entitled “The Twelve Deadly Sins: An Owners’ Guide to Avoiding Liability for Implied Obligations during the Construction of a Project” and “Checklist 26: How Owners Can Avoid Litigation on Construction Projects.”

To receive a free copy of these articles, e-mail a request to Steve Lesser at slesser@becker-poliakoff.com or download it at www.becker-poliakoff.com.

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