



## **BIDS vs. CONTRACTS** **WARNINGS AND LEGAL LIABILITY**

We have previously addressed the importance of Associations having proper, legal contracts that protect the Association and how proposals are not to be signed in lieu of contracts, etc. Unfortunately, we are seeing more and more issues with bids & contracts that produce liability for the Association and at times managers. Please note the following important information:

**BIDS** - Associations often obtain proposals/bids for various projects throughout the community. Proposals/bids are meant to show the scope of work of a project and price for that project. While a proposal/bid can be signed in order to start the process of retaining a contractor, **a proposal alone is not a proper contract because it doesn't include all the elements of a contract.**

Unfortunately, we have seen multiple instances where proposals are signed in lieu of contracts. This practice has created legal issues for Associations and even contractors as proposals normally lack the required terms and conditions that would make it a contract. It is extremely important that an Association has clarity and protection in the contract as this legal document protects the Board of Directors and the entire Association.

**CONTRACTS** - If the Board of Directors accepts a proposal/bid, always ask for an actual contract to be signed by both parties before the project is started. In Colorado under C.R.S. §38-22-101(3), "All such contracts shall be in writing when the amount to be paid thereunder **exceeds five hundred dollars**, and shall be subscribed by the parties thereto."

It is also important that the contract be reviewed by legal counsel **prior** to the contract being signed. The Association's legal counsel needs to review the contract and make recommendations, changes or clarifications in order to make sure that the Board of Directors' and the Association's rights are properly protected. We do understand that Board of Directors may be hesitant to spend money for the review of the contract, however, if for whatever reason the contract is breached, the monetary liability that an Association will have far outweigh the cost of the contract review prior to execution of the contract.

**Please remember that contracts are to be signed by the Board of Directors unless the Board gives express authority to the manager to sign the contract on behalf of the Board. If there is no express authority provided, managers may be exposed to liability. Authority should be provided in writing.**

Lastly, **do not pay** the full fee of a contract upfront. If the contract does not provide payment terms, please ask your attorney to add that clause to the contract. Prepayment of a contract in full is not a standard practice of reputable contractors.

In conclusion, we recommend and advise the following:

- Please ensure to **never sign a proposal in lieu of a contract**
- Please **insist that a contract be drafted** if the project will cost in excess of \$500 and
- Please **ensure that the Association's legal counsel reviews the contract PRIOR** to the execution of the same

**Have questions about contracts, proposals & bid processes?**

**Contact us at: [info@westernlawgroup.com](mailto:info@westernlawgroup.com)**

**THIS IS NOT LEGAL ADVICE. FOR INFORMATIONAL PURPOSES ONLY.**