



## CONSTRUCTION LAW

## Prime Contracts & Subcontracts

Contractors and subcontractors know all too well that litigation to trial is expensive – financially, emotionally, and physically. Achieving productive collaborative partnerships supported by sound contractual agreements is what clients really want. We get it. Which is why it is so important that prime contracts, and the underlying subcontracts, accurately reflect all parties' shared agreement of the scope of work, roles and responsibilities, risk allocation, and clear avenues for dispute resolution. Finch, Thornton & Baird, LLP attorneys are expert in all of the commonly used organizational forms including American Institute of Architecture (AIA), the Associated General Contractors of America (AGC), ConsensusDocs, and Engineers Joint Contract Documents Committee (EJCDC) documents.

### SETTING THE STAGE FOR SUCCESS.

Most construction disputes stem from disagreement over what is and what is not included in the projects' scope of work. Therefore, ensuring scope-of-work provisions are accurate and complete – i.e., free of scope gaps – may be the single most important aspect of a well-drafted construction agreement. Care must also be given to clearly define expectations for quality, completeness, and which party is responsible for every aspect of the work required, including the risks that each party shall bear. Of course, this is all more easily said than done. Getting it right from the outset, however, contributes mightily toward successful project outcomes.

### INNOVATIVE CONTRACT METHODS ARE EVOLVING WITH THE INDUSTRY.

While traditional lump-sum/fixed-price or cost-plus contracts remain viable for both public and private delivery methods, the construction industry is shifting toward newer alternative contract options. For example, lease-leaseback, construction management, and design-build agreements are now favored for many types of public works projects in California. The Integrated Project Delivery (IPD) method that seeks to achieve best-in-class collaborative alliances of people, systems, business structures, and practices has also gained traction. Bottom line, the attorneys at Finch, Thornton & Baird are knowledgeable in every kind of contract your project needs.

#### CONSTRUCTION LAW

- Claims & Disputes
- Local Agency, Municipal & State Contracts
- Federal Procurement & Claims
- **Prime Contracts & Subcontracts**
- Labor & Employment
- Workplace Safety & Health
- Project Counsel
- Corporate
- Real Estate
- Collections
- Insurance Defense
- Wealth Preservation

#### OTHER PRACTICES

- Labor & Employment
- Business & Commercial Litigation
- Business & Commercial Transactions
- Real Estate
- Liability Defense
- Wealth Preservation

Finch, Thornton & Baird, LLP  
4747 Executive Drive, Suite 700  
San Diego, CA 92121

e concierge@ftblaw.com  
p 858-737-3100  
f 858-737-3101

**SUBCONTRACTS MUST ACCURATELY ALIGN WITH PRIME CONTRACTS.**

When drafting the contracts for prime contractors, attention to detail must be given to ensure that each subcontractor's scope of work is tied to explicit specification sections in the prime contract. Similarly, contracts for subcontractors should be consistent with the exact scope that the subcontractor bid.

In conclusion, painstaking attention to detail is imperative when drafting and negotiating prime contracts, as well as the subcontracts for general contractors and subcontractors. It is work we do almost daily. And because we continually represent clients in a wide range of contractual litigation matters, it is the kind of legal expertise which Finch, Thornton & Baird performs very well.

**SERVICES**

- Drafting and negotiation of prime contracts:
  - Public works – both federal and state
  - Private works
- Navigation and interpretation of key contractual requirements
- Alternative project delivery system

**Alternative Project Delivery Systems**

- Construction management agreements:
  - Agency ("Pure" CM)
  - Multiple Prime
  - Single Prime
  - At Risk
  - Lease-Leaseback
- Design-Build agreements

**Traditional Project Delivery Systems**

- Design-Bid-Build agreements
- Fee-Based agreements:
  - Cost-Plus agreements
  - Cost-Plus with GMAX or GMP (Guaranteed Maximum Price)
- Lump-Sum/Fixed-Price agreements
- Guaranteed Maximum Price agreements

**Specialty Project Delivery Systems**

- Purchase orders
- Home improvement contracts (residential)
- Unit price agreements
- Development agreements
- Public/private partnerships