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Home Construction Law Recent California Supreme Court Decision Requires Public Entities to Disclose Information to Contractors that Might Impact Bids

Recent California Supreme Court Decision Requires Public Entities to Disclose Information to Contractors that Might Impact Bids







The case, Los Angeles Unified School District v. Great American Insurance Company and Hayward Construction Company (2010) 49 Cal.4th 739, became a key battleground for California public agencies against contractors when the trial court in the case sided with LAUSD against contractor Hayward Construction. The trial court applied the 1979 Court of Appeals holding in Jasper Construction, Inc. v. Foothill Junior College Dist. (1979) 91 Cal.App.3d 1, which had contradicted the federal Spearin Doctrine by holding that a public entity owner is liable for a contractor's extra costs arising from incorrect or incomplete bid documents only where the public entity affirmatively misrepresents or fraudulently conceals the truth.

In United States v. Spearin (1918) 248 U.S. 132, the United States Supreme Court held that a public agency owner impliedly warrants the accuracy and completeness of its bid plans and specifications to the bidding contractors for construction. The Spearin Doctrine has become a staple for determining a contractor's right to reasonably rely upon a public agency's bid documents. However, the trial court's interpretation of the law in the LAUSD case went against the Spearin standard by requiring the contractor to prove either that that the public agency's bid documents affirmatively misrepresented the actual construction conditions or that the agency intentionally concealed the true facts from the bidders.

The Court of Appeals in the LAUSD case reversed the trial court's decision, and the District appealed. The Supreme Court's July 12, 2010, decision in LAUSD settles this major issue in California law and provides much needed clarification for both public entities and contractors.

The case involved a contract to correct construction defects in a partially constructed school and complete the school construction. Bidders were given the plans and specifications for constructing the new school and "punch lists" for correcting items of the partial construction already performed by a terminated contractor. After the low bidder, Hayward Construction, began work under its fixed price contract, it

informed the District that it had significantly underestimated the cost of the remedial

the trial court applied too stringent of a legal standard to the contractor's claim. The

work, which had deficiencies that had not been noted on the punch lists (or the plans and specifications). Hayward sought additional compensation for these "latent" defects. At trial, the District was granted summary adjudication based on the trial court's finding that the District had not affirmatively misrepresented the construction work on the plans and specifications, or fraudulently concealed material information from that provided to the contractor for its bid. The Court of Appeal then reversed that decision, holding that

District appealed the appellate court's decision to the California Supreme Court. Resolving this issue of statewide importance, the California Supreme Court in LAUSD overruled Jasper, holding that fraud is not required for there to be actionable nondisclosure against the public agency. The Supreme Court established a rule entitling a contractor to recover its additional costs for a public entity's bid nondisclosure if: (1) the contractor submitted its bid or began performing the work without material information, (2) the information was in the public entity's possession and the public entity knew or had reason to know a reasonable contractor would be unlikely to discover it on its own, (3) the contract specifications or other information furnished by the public entity misled the contractor or did not put it on notice to inquire, and (4) the public entity failed to

The Supreme Court's decision in LAUSD v. Great American represents a major victory for the Construction Industry in California and restores a fundamental economic balance to the public works bidding process.

William T. Eliopoulos, Esq., is a partner with Rutan & Tucker, LLP, a full-service law firm headquartered in Orange County, Calif., with offices in Costa Mesa and Palo Alto. Primary practice areas include corporate and securities law, business and real estate litigation, labor and employment law, intellectual property, real estate, municipal and rement agency law, land use law, banknintry. condemnation and property valuation environmental law, and taxation and estate planning. For more information concerning this case, contact Eliopoulos by phone, 650-320-1500, or fax 650-320-9905.





disclose the relevant information to the contractor.









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