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WANT TO KNOW MORE ABOUT DIVERSITY, EQUITY AND INCLUSION?

On April 28, Attorney Eric Quinn will be presenting a seminar on Diversity, Equity and Inclusion Programs and their intersection with the laws against discrimination. The seminar will take place at South Sound 911 Headquarters, 3580 Pacific Ave, Tacoma, WA 98418. The seminar takes place from 9:00 AM to 12:00 PM. There will be a virtual attendance option as well, which is currently being processed. **This seminar is sponsored by the Pierce County Fire Commissioners Association and is therefore free to attendees**.

IF IT WALKS LIKE A DUCK…

This month the Washington Supreme Court re-affirmed a concept that is actually well settled: A contractor doing work such as remodeling, construction, and many other types of work on land or property must be registered before advertising, offering to do work, or performing any work that contractors normally perform. *See Dobson v. Archibald, No. 100862-7* (February 9, 2023).

Our conclusion is that if a person or firm does the kind of work that contractors do ("if it walks like a duck") they have to comply with the provisions of chapter 18.27 RCW or they cannot sue to recover for unpaid work. No change in the law here, but this is a good reminder to all of us. Do not deal with unregistered contractors. They probably also are not bonded!

ANOTHER GOOD REMINDER

A question from a client this month also acted to remind us of a basic concept for our lowest responsible bidder column. This is it: assume that you get just one bid. Further assume that you may not have enough evidence to be sure the bidder would be held "not responsible". Finally, assume that the evidence that the bid is nonresponsive is weak. What can you do?

The holding in *Peerless Food Products, Inc v. State,* 119 Wn.2d 584, 835 P.2d 1012 (1992) is that a bid on a publicly bid contract is merely an offer to contract. But the contract is only made when the agency *accepts* the contract. And you are not legally bound to accept an offer just because a contractor offers one by submitting a bid. In that case, the court overruled a leading precedent—*Butler v. Federal Way School District*—because the statute involved in that school district bidding case provided that a bid could only be rejected for good cause. Absent that kind of statute, a bid is only an offer. Without acceptance, no contract need be made.

It is still always a good idea to include the typical language in the specifications, stating that the owner reserves the right to reject any and all bids. Always check what your bid documents say.

ANOTHER CLIENT QUESTION!

What is the law that applies if and when your board approves a motion, but then later it is noticed that the motion was never seconded? The pat lawyer answer might be "it depends."

Many agencies have adopted Roberts' Rules of Order, and many of them have done so but modified those rules in certain particular ways to meet their local needs. Let us assume your agency does require a second on all motions and by practice motions are normally not discussed or voted upon without first being seconded. But this time they just forgot, proceeded to vote with little or no discussion and then someone noticed when drafting minutes that there was no second.

Of course, you could always do it over again as if the motion was null and void. But in our opinion you do not have to. You could just say that the need for a second was waived by the action of the favorable vote on the motion. Why not? We would ask: what is the purpose of requiring a second in the first place? We theorize that the purpose is to ensure that the motion is not totally unsupported, not within the scope or purpose of the board in question, or just not agency business. That is why, we think, the common practice and understanding is that a motion fails or dies for lack of a second. When there is a second, that is evidence that at least two members of the governing body see the motion as legitimate for consideration. But a vote to approve by the majority, in a body for which a legal quorum exists, has the same character, proving that it is adequately supported to be an appropriate motion to make. Our advice: do not worry about it if you need to act on that approved motion before the next meeting. And then at the next meeting, go ahead and do it over just to be sure.

INFLATION RELIEF, ANYONE?

As we all know, inflation throughout the economy took hold in 2022 and continues to this day at above recent historical rates. Meanwhile, taxing districts have been living with—generally speaking—a 1% lid on property tax revenue increases for several years, even as inflation always exceeded that level.

Now relief may be in sight, **if** Senate Bill 5618 passes—it may not, but we are not lobbyists. This legislation would raise the lid on increases, year over year, to 103% for small districts with a population of less than 10,000 persons. For larger districts (population 10,000 or more) that can adopt a "substantial need" resolution the lid will also be 103%. For all other districts, the lid will either be 103% or 100% of the tax revenue in prior year plus the population increase in the county, plus an inflation factor, whichever is less.

The bill would define "inflation" as the consumer price index as of July 25th of the year before the tax is to be collected. The CPI referenced is for all urban consumers in the western region.

The bill also defines "population change" by comparing the two most recent years prior to the tax being collected. The percentage derived from the data depends on whether the taxing district's boundaries are coterminous with a city, town or county or any combination thereof. If a taxing district is solely located in the unincorporated area of a county, then only the population of the unincorporated part of the county will be considered.

If a taxing district is totally contained within a city or town—which is rare at this time—then the population change data for the city or town is used. If a taxing district is not totally, but only partially, located in a city or town, then the data for the entire county is used. If a taxing district is located in more than one county (which does occur in Washington) then the county data of the county in which the greatest portion of the total assessed valuation is contained is used.

Apparently, these population change percentages would be reported by April 1 annually by the Office of Financial Management.

Yes, it would be wonderful if this bill were to be adopted by the Washington Legislature and then signed into law, effective later this year for use in levying taxes for collection in 2024. **However, section 6 of 5618 provides that it only takes effect if a separate bill, Senate Bill 5495, is enacted by August 1 of this year**.

SB 5495 would create a primary residence tax exemption and a renter's credit. This bill, which would not really take effect until 2027, would provide what is essentially a tax rebate on the first $250,000 of a residential property owner's tax from a previous year. Alternatively, if a person is a renter and not a single family residential owner, the bill would allow a 2% rent rebate, against a prior year's rent.

At this point, it seems to us very speculative to guess on whether SB 5495 will be enacted by August 1, 2023, if it ever is adopted and approved by the Governor. Therefore, we will not comment further on these two bills at this time. Certainly, it is very intriguing to think about the possibility of some "tax reform" with regard to the miserly 1% lid law, which never seems to keep pace with the inflation we see annually in wages, health care premiums, gasoline, diesel, medical supplies, etc.

It appears that the enactment into law of SB 5495 would offset some of the gains inherent in SB 5618. SB 5495 sure looks like a tax decrease law. But again, we do not foresee SB 5495 passing at this time.