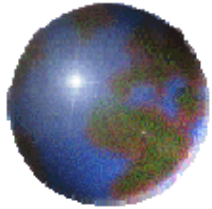




*Crystal A. Zarpas, Esq.*

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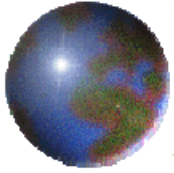


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**2009 GREEN TRADE NETWORK SUMMIT**

**SUCCESSFUL LEGAL STRATEGIES FOR GREEN  
PROJECT SUBCONTRACTORS**

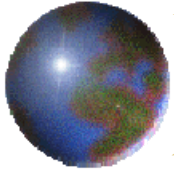
**September 25, 2009**



## ***THE GREEN BUILDING MOVEMENT***

### **🔩 The Nuts and Bolts**

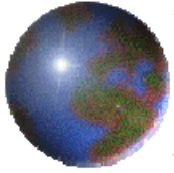
- Green is good – especially in your pocket
- Green Building is emerging as a long term trend
  - Commercial
  - Residential
  - Domestic
  - International
- Jumping onto the Green Building trend requires Subcontractors to develop new legal strategies for sustainability



## ***SUCCESSFUL LEGAL STRATEGY - ONE***

### **• Build a Proper Foundation**

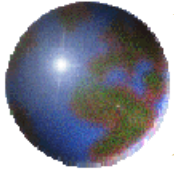
- Hire the necessary professionals
  - Consultants
  - US/foreign counsel
  - Tax professionals
  - Insurance professionals
  
- Protect your innovative product, process and/or name (Intellectual Property)
  - For domestic use and protection, REGISTER Trademarks/Service Marks/Patents with the United States Patent and Trademark Office and Copyrights with the United States Copyright Office
  
  - Register IP internationally in the Green Project country
    - CAUTION:
      - \* timing to obtain foreign registration could be years
      - \* first use vs first to file basis for filing



## ***SUCCESSFUL LEGAL STRATEGY – TWO***

### **Do Your Homework PRE-BID**

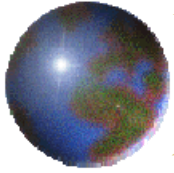
- Carefully review the bid documents. Do not assume you have "*been there done, that*"
- Can you meet the Green Project specs?
  - Is a particular Green product/process required for the Project? Is it readily available? At a reasonable cost? Can you lock in the pricing with your supplier?
- What additional administrative hours are required because this is a Green Project? Do you have the man power/internal systems to handle it? If not, how much will it cost to implement?
- What additional equipment is required because this is a Green Project? At what cost and expense?
- What additional safety concerns are there because this is a Green Project?



## *Continued - SUCCESSFUL LEGAL STRATEGY – TWO*

### ● **Cont - Do Your Homework PRE-BID**

- What are your capital requirements?
- Will you be responsible for 2nd tier Subs? When do they get paid?
- What rating system will be used to evaluate the Project? LEED?
- What level of certification is being sought?
- Are you required to guaranty your work/the Project for Certification purposes?
- Have you adequately factored into your bid all additional Green costs and expenses?
- Ask for clarification on any point now – post bid will be too late

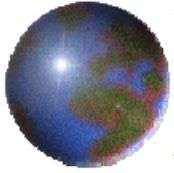


## ***SUCCESSFUL LEGAL STRATEGY – THREE***

### **● Allocating Risk in the Contract**

- **Boilerplate Contracts** - *One size does not fit all*
- **Scope of the Work** - Balance a general description vs a specific description
- **Certification Guaranty** – No guarantees for Certification purposes
- **Payment** – YES!!
- **Chain of Custody (Product)** - What are the document requirements?

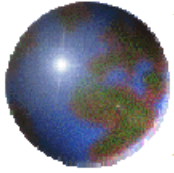
**Mann|Zarpas LLP attorneys at law**



## *Continued - SUCCESSFUL LEGAL STRATEGY – THREE*

### ● **Cont - Allocating Risk in the Contract**

- **Force Majeure** –What happens if your Green source is unavailable/delayed due to circumstances beyond your control? “But its not my fault” is no defense!
- **Damages** - What liability do you have for failing to perform? What if the Project does not meet the Certification requirements because of you? How much are you really on the hook for?
- **Limit Your Liability** – Can you afford to sign a blank check? If not, get a *Waiver of Consequential Damages*
- **Insurance** – Your first line of defense
- **Integration Clause** - An Integration Clause in the contract will exclude any prior oral agreements between the parties so make sure all agreed upon discussion points are included in the contract



## ***SUCCESSFUL LEGAL STRATEGY – FOUR***

### **● Become Sustainable**

- Continue to educate yourself on the legal issues as the Green Building trend evolves
- Understand both the practical and legal Green Building issues and shift the risks accordingly
- Re-evaluate your Green legal strategies Project to Project and adapt accordingly
- Accept only one bottom line - competing on the Project effectively and putting Green into your pocket!