

WHEN SMALL WORKS AND EMERGENCY PROJECTS GO BAD

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A recent Court of Appeals decision¹ addresses the problem of how an emergency declaration can be overused. The contractor in this case signed a \$200,000 small works contract with the local PUD "to furnish labor, material and equipment to provide trenching, backfilling, and excavation, etc. within the district service area, during the years 2007 and 2008, for a total cost not to exceed \$200,000.00." The contract contained various hourly rates. Roughly a year later, a massive storm occurred. The PUD requested the contractor to clear roads for repair crews, agreeing orally to cover the contractor's expenses and a reasonable profit. At the time, the \$200,000 agreement had been exceeded. The PUD passed a resolution declaring an emergency. The work expanded, and the contractor hired more employees and acquired additional equipment. The contractor billed the PUD and the PUD paid some of the invoices and rejected others. The contractor continued to work and invoice the PUD. Approximately 16 months later, the PUD terminated the contractor. The contractor sued and after a trial the jury entered a verdict in the contractor's favor for just over 4 Million Dollars. The primary issue in the case was the way the PUD handled the contract relations with the contractor. It passed one resolution declaring an emergency but did not enter into separate contracts for additional work, declare other emergencies, or put any of the work to bid. In the end the court found that the PUD had an oral agreement with the contractor and the contractor invoiced the PUD in accordance with the oral contract.

This decision is worth reading. The PUD made numerous mistakes with the municipal contracting laws by treating a friendly contractor much too informally. The lesson of this decision is to segregate work that is not part of the same contract, enter into separate contracts when the situation calls for it, comply with bidding and small works laws, and pass clear resolutions when an emergency occurs declaring what work is subject to the emergency.

If you are interested in learning more about this subject, please contact Michael Jonson at mike@jonson-jonson.com or Richard Jonson at richard@jonson-jonson.com

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¹ Spradlin Rock Products, Inc. v. Public Utility District No. 1 of Grays Harbor County, WA Ct. App. Div.II, No. 40415-0-II.

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