

Scribbles Squibs # 12 (June 10, 2013): The Value of ‘Love Me’ Letters

By Attorney Jonathan Sauer

Problem: How do you know if your auto mechanic knows what he or she is doing? How do you know if your lawyer knows what he or she is doing? Closer to home, how do your clients (and, hopefully, *future* clients) know that *you* know what you are doing? Part of the answer to the last question can be met, in part, with ‘love me’ letters. This *Squib* is being written because I am often surprised when I ask clients for ‘love me’ letters that most of them don’t try to get these letters on a regular basis. Even where getting them is free and where having them may make all the difference in a number of situations. Seeing that hole in many contractors’ marketing efforts has prompted me to write this *Squib*. And, it’ll be one of our shorter ones! And it is a suggestion that is not limited to Massachusetts. This can help any contractor anywhere.

What is in a ‘love me’ letter: A ‘love me’ letter is a letter from the owner, general contractor (if you are a subcontractor) or architect on any job you successfully completed. It should be on letterhead and contain as much of the following as possible:

“John Jones Construction Company (Jones) constructed the Never Melt Ice Cream Stand in Natick, Massachusetts as the general contractor. The contract amount for this job was \$879,000 with about six thousand dollars in change orders. The work was begun on time. The work was completed before the completion date in the contract. At all times, the contractor and its employees were courteous and professional. The workmanship was truly above average. There were no change orders for this project except those initiated by the owner. The punch list, fairly nominal, was completed on the first try. Although there were a dozen or so subcontractors and major material suppliers on the job, I didn’t receive any complaints of late payment to them by this contractor. There was a differing site condition on this project which could have potentially derailed this project. The contractor offered various suggestions to deal with this, which allowed us to meet the project schedule with only a minimum impact on time and expense. Moreover, Jones offered a variety of suggestions for value engineering, which allowed us to both save money and in at least two instances provided us with a better building. I would hire in a heartbeat John Jones Construction Company on any further construction activities my clients or I needed and I recommend this company highly to all other owners and architects. Please feel free to call me if you have any questions.”

The time to get these is towards the end of your more successful jobs. At that time, the owner and architect are already processing a variety of paperwork as part of project close-out. Therefore, writing a letter for you might be seen as a logical part of this process. They are appreciative of the job you did. And, one of the better human qualities is a desire that we have to help others, particularly when this is at little or no cost to ourselves.

My sense would be that asking for these letters a year down the road has a couple of problems. First, the architect is no longer being paid for any activity associated with a former job. There are things that need doing as to his/her *present* jobs and *future* jobs. Secondly, even if this individual says he/she will write a letter for you, you will have to wait until this person is good and ready to write that letter. After all, you are asking for a favor. Your need for this kind of letter can arise suddenly.

What are the uses for 'love me' letters: I can think of principally three basic uses.

First, from a sales standpoint, these are reference letters. Since presumptively someone writing such a letter is not getting paid to do so, one reading such a letter can only infer that there must be a desire to express appreciation for a job well-done. The fact that you have previously satisfied earlier clients is an indication of future success.

Secondly, these types of letters can be very helpful in assisting another owner or architect in doing his/her 'due diligence' in checking out your qualifications in determining your acceptability as to doing a present or future job. As a matter of law, with publicly-awarded projects, the determination of who is the lowest responsible, eligible and responsive bidder is a factual determination which will not be overturned by a judge or by the AG in a bid protest situation unless that decision was 'arbitrary, capricious or illegal'. For all intents and purposes, this is a nearly impossible standard to meet. Perry Mason himself cannot work his magic with this kind of a standard. (I am fairly confident in saying that. He is, after all, uh, a criminal lawyer. And, I think he is deceased, which makes getting to court even more difficult.)

It is obvious that not all of your customers will have the same opinion concerning your past performance. There are usually at least one or two clunkers in the performance of a company over a period of time. That your performance is seen that way may have little to do with how well you actually performed. Or, it may have *a lot* to do with how you performed. After all, none of us is perfect. It may be that the 'due diligence' search will end before these less pleased customers are contacted. But, whether they are contacted or not, having a fistful of recommendations can only help you in such an evaluation process by at least balancing out the one or two complainers with one half dozen or more satisfied clients. Where in Massachusetts contractors and subcontractors have to be prequalified to even bid certain projects, having this information at hand will not hurt your chances. Having the dollar amount in the letter can be helpful if you are bidding work close to your maximum single job, particularly when this is higher than your average-sized job.

Third, these types of letters might help with some kinds of bid protests. For example, someone is protesting you claiming you don't have the sufficient number of jobs to do what the bid documents require and/or experience to do this type of work at all. Your being able to produce a

fistful of these letters won't hurt your chances in an opposition. Those most familiar with my writing as to bid protests know that in many situations, the most important part of a bid protest is what happens *before* a bid protest is filed or before an owner has rejected your bid due to your possibly not being seen as 'responsible' or 'eligible'. In many of these situations, for a period of time, the situation is fluid: it could go either way. To be able to convince an owner and its architect before your bid is rejected that it should be accepted is the best kind of bid protest one can have. That being, *no* bid protest!

CONCLUSION: What is the downside to getting 'love me' letters? The answer to that would be: *none*. The price is right, too! If a requested letter is not as good as you might wish, you don't have to use it. Particularly when seeking such letters is part of your company's close-out procedures for all of your jobs, within a period of time, you should have enough of these to make this an important part of your marketing effort.

(These materials are intended as general information only, not specific legal advice. When confronted with a legal problem you don't understand, seek the assistance of legal counsel. Construction law is something that most 'general' lawyers don't do a lot of. At Sauer & Sauer, we only practice construction law.)

SEVEN QUICK THINGS ABOUT OUR FIRM:

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7. Satellite offices in Boston and Worcester for more convenient meetings.

Sauer & Sauer

15 Adrienne Road, East Walpole, MA 02032

Phone: 508-668-6020

jonsauer@verizon.net; sallysauer@verizon.net.

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