



RBS DESIGN GROUP ARCHITECTURE

*Your partner in design from
concept to completion.*

GN Excavating Sub-Contractor Change Request



From: Craig Thomas
Sent: Tuesday, January 2, 2024 12:28 PM
To: Kyle Estes <kyle.estes@russellville.kyschools.us>
Subject: FW: Russellville Project

Kyle, happy new year

RBS received the attached letter from GN Excavating and Trucking Corp requesting to change the listed sub-contractor from Knight's Electric to Don's Electric. (see attached RBS Design Group Letter. pdf) Below you can see RBS email response to GN Excavating request and there response to RBS three questions.

In reviewing the project manual and the General Conditions of the Contract for Construction, (attached) RBS does not make reasonable objection to such substitution as outlined in the general conditions article 5.2.4. Does the owner have any objections to this change? If yes, please outline your objection, otherwise state no.

Please let me know if you have any questions or concerns.

Thank you

Craig

Craig Thomas, A.I.A. Architect

President

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.



Gary Nugent
2240 Popular Grove Road
Lewisport, KY 42351
(270)927-9173
g.n.excavating89@gmail.com

December 29, 2023

Craig Thomas

RBS Design Group
723 Harvard Drive
Owensboro, KY 42301
craig@rbsdesigngroup.com

Subject: Decision to Choose Don's Electric for Our Project

Dear Mr. Craig Thomas,

I trust this letter finds you well. I am writing to clarify a recent mistake made and provide an update on our subcontractor selection for the upcoming Russellville School Project.

There was a mix-up in the company names and project costs. After careful review, it has come to my attention that Knight Electric was listed as the electrical contractor, but the cost estimates used in the bid was Don's Electric. I appreciate your understanding in this matter.

Upon a detailed evaluation, we have found that Don's Electric offers a significant cost advantage of approximately \$100,000 for the project compared to Knight Electric. This, combined with our positive work history with Don's Electric, including the successful completion of a similar project in the last six months, has led us to make the decision to proceed with Don's Electric for our upcoming project.

We value the relationships we have built with our subcontractors and believe that Don's Electric aligns well with our project requirements and budget considerations. We look forward to a continued successful collaboration with Don's Electric and are confident in their ability to deliver high-quality results.

Thank you for your understanding, and we appreciate the opportunity to work together in the future.

Best regards,

A handwritten signature in black ink, appearing to read 'Gary Nugent', with a long, sweeping underline.

Gary Nugent
Owner/President
GN Excavating & Trucking

On Fri, Dec 29, 2023 at 3:29 PM Craig Thomas <craig@rbsdesigngroup.com> wrote:

Gary, please confirm the following:

1. You made a mistake on bid day and wrote Knight Electrics name down when you should have written Don's Electric, correct?
2. You are not offering a credit of \$100,000, but simply stating that there was a large difference in the subcontractors cost, correct?
3. Don's Electric was your sub-contractor on the Hancock County Project Correct?

Thank you

Craig

Craig Thomas, A.I.A. Architect

President

From: Gary Nugent <g.n.excavating89@gmail.com>

Sent: Friday, December 29, 2023 3:38 PM

To: Craig Thomas <craig@rbsdesigngroup.com>

Subject: Re: Russellville Project

1. You made a mistake on bid day and wrote Knight Electrics name down when you should have written Don's Electric, correct? **YES**
2. You are not offering a credit of \$100,000, but simply stating that there was a large difference in the subcontractors cost, correct? **YES**
3. Don's Electric was your sub-contractor on the Hancock County Project Correct? **YES**

Yes to all three!

From: Craig Thomas
Sent: Tuesday, January 2, 2024 3:19 PM
To: 'Kyle Estes' <kyle.estes@russellville.kyschools.us>
Subject: RE: FW: Russellville Project

RBS is not found of making any change to the sub-contractor list. Based upon the project manual, GN's letter requesting the change of sub-contractor and response to our questions, RBS has no objection to this change. There is always risk associated with administering a contract for the owner, architect and contractor. A low bidder requesting a change of sub-contractors is not typical but not uncommon. It does happen for many reason and considering the stated reason, our tendency is to approve.

The KDE version of the AIA front end, does not have any stated reasons on when or why a sub-contractor can be changed. If the owner has no objections then RBS would recommend to move forward with this change. However if the owner has reason to object, then RBS needs to know the reasoning before making a final recommendation.

Please let me know if you have any questions, concerns or objections to the requested change.

Craig

Craig Thomas, A.I.A. Architect

President

Kyle Estes email to RBS with response

From: Kyle Estes <kyle.estes@russellville.kyschools.us>
Sent: Tuesday, January 2, 2024 3:50 PM
To: Craig Thomas <craig@rbsdesigngroup.com>
Subject: Re: FW: Russellville Project

Craig,

The local subcontractor being replaced, Knight Electric has voiced concerns to me on 2 fronts.

1. The new subcontractor (Don's Electric), is not reputable. Allegedly they are not licensed, cannot bond, and cannot issue a PO for lighting...
2. The General Contractor allegedly shopped the electrical work after bids were awarded. In Knight's opinion that is illegal.

I do not know the merit of these claims, or if it should pose any issue, but I do want to be transparent and forthright in disclosing what has been argued.

I am inclined to go along with the request to change subcontractors, but I don't want to open the district to litigation, nor do I want to sever any relationships that will make future projects difficult for the board.

Can you provide any additional insight? We can discuss further over the phone if you like.

Kyle

From: Craig Thomas
Sent: Wednesday, January 3, 2024 2:00 PM
To: Kyle Estes <kyle.estes@russellville.kyschools.us>
Subject: RE: FW: Russellville Project

Kyle, we offer the following response to these allegations below:

1,) Don's is a reputable Electrical Contractor having completed work on a recent RBS project for Hancock County School. I have confirmed with Mr. Cox (owner of Don's Electric) that Don's is a licensed and insured contractor. They are not required to provide a bond or issues P.O. to the owner on this project. The bond is required by GN Excavating. Material suppliers may require P.O.'s but this project does not.

2.) Most people including myself consider it unethical to shop a bid. To my knowledge shopping a bid is not a legal issue. RBS does it best to keep this from happening by requiring the bidder to list their sub-contractors on the form of proposal. In this case the bidder is claiming in writing that they made a mistake.

Thank you

Craig

Craig Thomas, A.I.A. Architect, President

Kyle Estes email to attorney

From: Kyle Estes <kyle.estes@russellville.kyschools.us>

Sent: Tuesday, January 2, 2024 4:15 PM

To: Michael A. Owsley <mowsley@elpolaw.com>

Subject: Fwd: FW: Russellville Project

Mike,

I need a legal opinion on the email and supporting documentation below. I can explain and provide greater context over the phone, but

My question is simply this: by allowing the General Contractor (GN) to change subcontractors as requested, do I open the district to potential litigation?

Kyle

From: **Michael A. Owsley** <mowsley@elpolaw.com>
Date: Tue, Jan 2, 2024 at 6:03 PM
Subject: Russellville Project - Privileged and Confidential
To: kyle.estes@russellville.kyschools.us <kyle.estes@russellville.kyschools.us>
Cc: Theresa Wells <twells@elpolaw.com>

Kyle,

This will confirm our telephone conference this afternoon regarding the request of the general contractor, GN Excavating and Trucking Corp (“GN Excavating”), to change the listed sub-contractor from Knight’s Electric to Don’s Electric.

I reviewed the correspondence from GN Excavating to the architect, Craig Thomas of RBS Design Group, explaining the mistake made in its bid and the answers they provided to the questions raised by the architect. I also reviewed the General Conditions of the Contract for Construction that you forwarded to me.

Paragraph § 5.2.4 provides: “The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.”

The architect has asked if the Russellville Independent School District has any objection to the substitution. You advised that the architect has worked with the general contractor and subcontractor in the past and had no concerns regarding the qualifications of either. Based on the architect’s experience, and the language in the General Conditions, I believe the District should not have any objection to the substitution and should not have any legal exposure to other bidders.

I note the correspondence indicates the general contractor may save \$100,000 by this substitution. Perhaps the District could negotiate some savings by this change.

Mike

Michael A. Owsley
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