‘Green’ Contracts  
Documents Should Reflect LEED Requirements

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In the last several months, there has been a sea change in the acceptance of "green buildings," that is, buildings which are designed, built and managed in a manner which promotes occupant health and resource efficiency. It is now generally accepted that green buildings equate to high levels of energy and water efficiency, the appropriate use of land and landscaping, the use of environmentally friendly materials, and the increase in worker productivity through improved indoor air quality.

Where an owner elects to build green, its design and construction contracts should be revised to reflect the services of the project team necessary to meet the requirements for the production of a green building. In this article, we will provide a brief overview of the green building process and identify the types of services expected of the project team.

**The LEED Rating System**

Generally speaking, the measure of a "green" building is the rating awarded by the Leadership in Energy and Environmental Design ("LEED") green building rating system, established by the U.S. green building Council ("USGBC") in 1998. The LEED rating system evaluates the location, design, construction, and operational aspects of newly constructed and renovated buildings, and serves as a national standard by which construction and renovation projects earn credits toward certification as green buildings. The LEED rating system was created to (1) define a "green" building by establishing a common standard of measurement; (2) promote integrated, whole-building design practices; (3) recognize environmental leadership in the building industry; (4) stimulate green competition; (5) raise consumer awareness of green building benefits; and (6) transform the building market. (The LEED rating system can be found at http://www.usgbc.org/DisplayPage.aspx?CategoryID=19.)

The LEED rating system covers several types of projects (such as new construction, existing buildings, and commercial interiors) and awards credits for achieving LEED criteria, resulting in four levels of certification depending on the number of credits achieved: certified, silver, gold and platinum.

**A more practical approach to the enforcement of contractual obligations to perform services during the LEED certification program may be the intermediate step of tying the payment of fees to the performances of specific services during the design and construction process.**

**The Project Team**

The process of achieving a particular LEED rating is a team effort involving the owner, a LEED accredited professional, the architect and its consulting engineers, the contractor or construction manager and a commissioning authority. (A commissioning authority verifies that the building’s energy related systems are installed, calibrated and perform according to the design and construction documents.) Each member of the project team shares some degree of responsibility for earning the LEED credits necessary to achieve certification.

**A. The LEED Consultant**

The LEED consultant serves as the overall coordinator of the certification effort and provides specifications clarifying the LEED credit requirements relating to five distinct areas of planning, design and construction: sustainable site development; water efficiency; energy efficiency; material resources; and indoor environmental quality.

Each category will earn the owner a certain number of LEED credits and the LEED consultant will recommend architectural details, mechanical systems and construction practices which, if properly executed, will yield these credits. The LEED consultant should be expected to provide descriptions of the specific tasks to be implemented by various members of the project team and outline the type of documentation necessary to submit to the USGBC in connection with the LEED application.

It is the responsibility of the LEED consultant to register the project with the USGBC, prepare submittals for credit rulings and submit the LEED certification application. During the application process, all communications with USGBC should be through the LEED consultant, who should be required to respond and submit requested additional information.

The LEED consultant should also provide specifications for environmentally preferred products and work site practices. Inasmuch as construction of green buildings is a relatively new experience, the LEED consultant must assist the owner in the ongoing education of the contractors and participate in pre-bid and bid meetings to confirm that the contractors are...
aware of LEED requirements. During all phases of the project, the LEED consultant should review both design and construction activities to determine that the project is proceeding in accordance with LEED criteria, including the examination of all LEED submittals, products and construction practices.

B. Commissioning Authority

Commissioning of the building energy systems is one of the key elements of LEED certification. The objective of commissioning is to insure that the goals of reduced energy use, lower operating costs and improved occupant productivity have been met. As part of the LEED certification process the owner must designate an individual as the commissioning authority (also known as the CxA) to lead, review and oversee the completion of the commissioning process. The CxA must be independent of the project’s design and construction management, but may be a qualified employee or consultant of the owner, including the LEED consultant. The CxA should be expected to coordinate commissioning during design, develop an outline of design criteria, review design development documents, prepare a proposed construction phase commissioning plan, develop commissioning specifications and review construction documents. The CxA should present the final commissioning plan and schedule to all members of the project team, perform site observation and attend project meetings during the course of the work. The CxA should maintain logs and other reporting documentation and prepare initial submittals for the LEED certification process.

The actual process of commissioning involves a startup and prefunctional checkout for which the superintendent is responsible; however, it is advantageous to ensure that the owner reviews the procedures and obtains the necessary approvals. The CxA, in conjunction with the design team, should perform performance testing of the building systems, prepare commissioning and testing documents, and develop commissioning specifications. The CxA should review and recommend the project’s commissioning plan to the owner for approval. The CxA should be responsible for obtaining the owner’s final sign-off on the commissioning plan and maintaining a record of all commissioning activities.

Conclusion

Owners who undertake the LEED certification process should familiarize themselves with the LEED rating system and allocate responsibilities under the system to the various project members. The successful performance of those responsibilities will result in the desired LEED certification and enable the owner to proclaim that it has produced a green building, accompanied by the desired LEED certification.