

Defining “Green”

by Quenda Behler Story

You probably think that I have been around too long and have seen too many contracts to sign anything containing an important specification that isn't clearly defined. Surely I would never do something as stupid as that, right?

Wrong, unfortunately. Recently I was involved in preparing bidding specs for a building; everything was done by committee and we all agreed that the project would be “green.” But now that we're too far along for second thoughts, I'm wondering, “Hey, what *is* a ‘green’ building?”

At the time, I thought I knew what it meant: a building that's technically advanced in terms of energy use and inhabitant comfort. So does that mean, for example, that I wanted the building roofed with sod? Well, I hadn't actually thought about sod. As it turns out, though, that is what one of the other committee members meant when he talked about “green.” And that's the reason I'm so worried now: When the other members of the committee talked about “green,” did they mean what he meant or what I meant?

What we should have done — and what you should do when you hear customers mumbling about how cool it would be to make their project green and energy-efficient — was decide in advance exactly what such terms mean. Otherwise, you're likely to wind up with a huge hassle down the road. When customers think about “green,” they're often thinking not in terms of the entire project but about a particular kind of insulation or air conditioning, say, or a building technique they've read about. They may have strong, very specific ideas about what they'll be getting — and it may be something different from anything you've seen or heard of before. Unless you're a mind-reader, you need to pin down precisely what it is that they have in mind.

Local Ordinances

It's possible that you work in a community that's adopted a green-building requirement or adjusted its building code to address such issues. Washington, D.C.,

has passed an ordinance requiring that certain types of new residences be green, and other communities have passed similar rules for commercial buildings. Most of these ordinances are based on model standards developed by industry or environmental groups. Washington, for example, uses the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) green-building rating system, the best-known of the various options out there.

In these municipalities, local ordinances already define what a “green” building is, so writing contracts is fairly easy. If a customer decides after the building is complete that he had something different in mind, that's his problem. As with building codes, any standards exceeding those dictated by the local ordinance need to be spelled out in the contract.

That doesn't mean you'll never have problems with definitions, of course. Think of all the disagreements you can have with a building inspector over how to interpret a particular line in a building code. Still, those exchanges are between you and the inspector; once he or she signs off on the work, you've met the contract requirement between you and your customer — even if you thought a green building meant one with a high-efficiency furnace and the customer thought it meant one with a photovoltaic power system.

Incorporation by Reference

But what if your community hasn't adopted a green-building standard? How do you write a contract for a green building in those circumstances? This is not a time to be creative. Look around for what somebody else with credentials on the subject has already written. You could use the LEED standards, for instance.

The correct way to incorporate someone else's standards into your contract is by reference, which involves easy language and is done all the time. The magic words are “incorporate by reference”; after that phrase, you say what it is that you're incorporating. So you could write it like this: “The parties hereby incorporate the LEED

green-building rating system created by the U.S. Green Building Council as part of the building standards.” Or, using similar language, you could pick out specific LEED clauses or standards; perhaps you just want to talk about air conditioning or light wells. (But remember: This is for communities without existing standards. You can’t cherry-pick the standards your local ordinance requires you to meet.)

Addressing Cost

Your contract should also include language about what happens to your estimate if the material and labor costs change. Why? Because some green products are not readily available, some cost a lot more than the products you’re used to dealing with, and some have special installation requirements.

For example, how do you keep that sod roof from eroding? Isn’t it based in dirt? And doesn’t dirt slid down an incline? If sod requires a flat surface, what happens

to the snow load? This job could wind up costing a whole lot more than what you bid.

You should discuss the potential for higher-than-estimated costs with your clients — who may turn out to be surprisingly understanding, because most people who want this kind of project know there are greater immediate costs associated with green building. They understand that the payoff — reduced energy costs — is down the road.

There’s always the possibility that you’ll get so interested in green building you’ll decide to make it your niche. If so, remember that you can’t advertise yourself as having constructed a building to a particular green-building standard unless you go through the certification or training process for that standard.

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