

Duff on Hospitality Law

## Ten Things to Consider When Selecting a Contractor on a Hotel Project

By Greg Duff on 8.2.13 | Posted in Construction

*Please welcome new author and GSB attorney, Julia Holden-Davis, to the Duff on Hospitality blog! She has over 15 years of experience in the legal aspects of design and construction and works out of our new office in Anchorage, Alaska. Welcome, Julia, and thank you for today's recommendations on selecting an appropriate contractor. – Greg*

Selecting the “right” contractor is one of several key steps in ensuring a hotel project has a strong likelihood of success. At times, the selection of the contractor might seem obvious – for example, a developer entering a new geographical market might bring with it a contractor with whom it already has extensive experience in other markets. However, contractor selection should consider a broader number of criteria, tailored to the particular needs of the project, to maximize the likelihood of success.

### 1) Pick the right people to make the selection

Consider first with whom to place the responsibility of making the selection, recognizing that within the typical hotel ownership and management structure, not to mention other project participants such as an architect or designer, not everyone has the same priorities, experience, or end goals. For example, one person (e.g. franchisor) might care the most for the aesthetic-related capabilities of a contractor. Another might prioritize timely performance (e.g. operator), yet another lowest cost (e.g. owner/developer). An outside architect may have a relationship (be it good or bad) with certain contractors. Selecting an individual or a team who understands the needs of the facility, the critical points, and the overall goals can lead to a much better evaluation process – and ultimately, identification of the most suitable contractor.

### 2) Consider industry dialogue

Consider discussing the project or portions of the project with a variety of contractors or other industry professionals before actually evaluating or selecting a contractor. The information gleaned in early discussions can play a significant role in defining realistic expectations, developing innovative ideas, selecting new products, and improving the overall quality of the project. For example, a franchised property whose intended aesthetic is cutting edge, top of the line, with new and fresh ideas may want to carefully consider the use of new materials

which may not yet have a proven service record. Similarly, contractors with a depth of building experience with the chosen brand may have good suggestions to the design, phasing, or to other aspects of the project that could improve the overall quality or decrease the time or cost of construction.

### **3) Be creative in reference checking**

Contractor responses often provide limited or focused information on their backgrounds, due in part to the limitations placed in requests for qualifications or requests for proposals. While contractor-provided references may lead to interviews with satisfied clients, consider whether there are others who might have just as much meaningful information. For example, consider calling subcontractors – their experience with the contractor may tell you a lot about the contractor’s management style, their timeliness in paying their bills, and their relationships with lower tier entities in general.

### **4) Determine what really is “relevant”**

Hotels are interesting and complex structures, with components that in many other instances would be stand alone facilities – restaurants, health clubs, spas, meeting and event facilities, parking garages, etc. Because of that, not all hotel-related experiences are the same, especially in smaller scale remodel or renovation work. Make sure that the contractor’s hotel (or other) experience actually relates to the project at hand. A contractor who has done a hundred guest room remodel projects may not be the best candidate for a renovation of spa facilities – even if it has the most “hotel” experience. A contractor who has always done new construction may not have full appreciation for the limitations and challenges of a renovation project being done while the property is still largely occupied. Determining early on what experience is necessary, what experience is ideal, and what performance capabilities really matter allows a better and more focused analysis of the potential contractor.

### **5) Prioritize evaluation factors**

Be clear in both establishing evaluation factors – i.e., determining what is relevant – and then determining which of those items matters the most. Prioritizing, or ranking, evaluation criteria, and following a disciplined approach to the application of those criteria, can lead to a better understanding of what works best for a particular project and its specific considerations.

### **6) Consider the contractor’s familiarity with and involvement in the local community**

Projects have a number of points where they can be impacted by the beliefs, fears, and opinions of the local community – both the geographical community and more construction focused “communities.” Use of a local versus a non-local contractor can have significant impacts on the project. Familiarity with local resources – subcontractors, suppliers, and labor pools being just a few – can be key on certain projects. Understanding how to work with local building officials and knowing who to call to get something done can both be important

benefits of using a local contractor. On the other hand, those items may be offset by the benefits of experience a non-local contractor may bring. In certain communities, bringing in an outside contractor may be perceived as taking jobs away from local community members – and may not be the way the property wants to be perceived. Consideration of these implications, and how to potentially meld the various positives, can also assist in the long term success of the project.

### **7) Confirm what resources will actually be made available to your project**

Although companies matter, in many ways people matter more. Make sure that your analysis of a contractor's capabilities is based upon the experiences, mannerisms, and styles of the people who would actually be providing the leadership or the manpower for the project.

### **8) Consider financial strength**

The contractor's financial strength – or lack of it – can significantly impact the project. Unfortunately, the mere fact that a firm has been around “a long time” may not be a reliable indicia of current financial posture. Consider the contractor's ability not just to complete the work, but to bear the burden of the potential damages should the project be delayed or somehow go awry. Dun & Bradstreet and LexisNexis (through PeopleWise) both have reports that can be purchased to review credit history and financial status. Depending on where the contractor is based, information may be publicly available relating to the contractor's payment (or lack of payment) for worker's compensation premiums and state revenue taxes. References not just from owners for whom the contractor has worked but also from the contractor's vendors may provide information about the Contractor's financial strength or history. Depending on the significance of the project, one could also consider asking the Contractor to provide information to demonstrate that it can meet the cash flow needs of the project.

### **9) Consider how the contractor uses dispute resolution mechanisms**

While very few people want true disputes to arise on a project, they sometimes do. How the contractor is going to respond in that situation may be quite meaningful. Many standard contracts require mediation – typically a facilitated negotiation of some kind – before litigation or arbitration. However, a mediation that occurs only to meet a requirement, and not from any true commitment to try to resolve disputes, is a waste of resources. Making sure that both parties are committed to engaging in processes truly aimed at resolving disputes can control legal costs, lead to better results, and ultimately benefit both parties.

### **10) Evaluate major subcontractors**

One major subcontractor's failure to perform can send an entire project into disarray. While the contractor may be responsible for the subcontractor's actions by contract, contractual protection alone may be insufficient to truly address the real costs associated with a delayed or troubled job. Consider, therefore, evaluating the major subcontractors as you would the

prime contractor – considering their relative experience, what they are truly committed to bring to the project, their financial capacity, their project management skills, and whatever other traits or abilities are desirable for the project.

*If you have any questions please contact [me](#).*

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