By Denise Norberg-Johnson

DAVID AND GOLIATH— Will They Ever Get Along?

EXAMINING THE RELATIONSHIP BETWEEN ELECTRICAL CONTRACTORS AND GENERAL CONTRACTORS

GETTY IMAGES

REMEMBER THE "GOOD OLD DAYS" of construction? The electrical contractor scribbled an estimate on the back of an envelope, shook hands with the general contractor, and they danced into the sunset sharing a reasonable profit, to the delight of the project owner. Labor was cheap, benefits were minimal and regulation was manageable. Today, both sides are drowning in paperwork, costs are choking profits, and no one can keep up with regulatory oversight or adequately insure for all risks. When the present feels like the tortures of Hell, nostalgia cloaks the past in halos and harps.

Most people know the ancient story of David, the shepherd boy who defeats the giant Goliath with only a slingshot, a stone and his skill. For Goliath, might does not equal victory, and power is not always where it appears to be. Victory lies in strategy and the effective use of one's tools, especially when the opponent is complacent in his reliance on muscle instead of intellect. In today's market, the electrical contractor plays the role of David, the lowly shepherd boy, and the general contractor appears as a looming Goliath. But can they work together as partners?

With the increased use of alternative project delivery systems, construction team relationships are no longer so well defined. Some electrical contractors believe that general contractors are becoming extinct, and that prime contracts with owners are their most profitable source of future business. Others accept the current environment, believing that general contractors still serve a useful role in the process.

The traditional general contractor-subcontractor-supplier team structure made sense. The G.C. operated like the manager of the baseball team, the subs played the game to win, and the suppliers provided equipment and uniforms. The owner paid the expenses in return for a winning season and delighted fans.

Both in baseball and in construction, things have changed. Owners never provide enough money, interfere in team strategy, and someone is always trying to change the rules and sneak in materials not to spec. The construction owner wants to spend $250 million to build a $500 million project, and grudgingly pays to finish the project. No one wins; the best to hope for is a tie score, and

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the fans leave grumbling.

The game of construction has been transferred to the Roman Colosseum. The owner plays emperor, releasing gladiators into the arena to entertain the public, and no one is paid enough to tolerate the carnage that follows.

Considering the number of subcontractors who have been killed off by the increasingly vicious and adversarial game of construction, the comparison isn't so farfetched. In truth, construction projects throughout history have been built under adverse conditions: the Egyptian pyramids were built by slaves as monuments to the pharaohs, the cathedrals of Europe built by laborers who would not live to see the results, the Hoover Dam built by Depression-era men desperate enough to risk death to earn a living wage.

Today, tradespeople make a better living (especially in the union sector), fewer people are killed per 100,000 labor hours, and working conditions are more humane. But owners still build monuments to themselves, and there is still an unfortunate level of desperation driving project relationships. The trends negatively affecting general contractor-subcontractor relationships involve risk shifting, egregious contract terms, incomplete design documents, inadequate financing, fast-track scheduling and burdensome regulation.

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Too often, general contractors and subcontractors forget that many obstacles to their ability to partner effectively have been created by project owners and their attorneys, forcing the contractors to squabble amongst themselves. In fact, part of the general contractor's role involves advocacy for the team, and the contracting team has greater power vis-à-vis the owner when it operates as a cohesive unit.

For example, contingent payment clauses force the electrical contractor to accept the risk of owner default. It's easy to forget that these clauses became entrenched in contracts during the last few decades, when general contractors moved from "self-performing" up to 80 percent of the project with their own tradespeople, to relying on subcontractors for 60 to 100 percent of the project work. General contractors who earn a minor percentage of the project funds for themselves have minimal overhead and no opportunity to mark up their own work; their incentive to maximize earnings on other people's money is natural.

Is it logical for the "non-performing" G.C., which keeps a mere 10 percent of the total project cost for itself, to finance the project for the owner? Of course not. The G.C. has no business acting as the banker for the project; but then neither does the subcontracting team. Somewhere around the early 1970s, when interest costs were well into the double digits, owners convinced the construction team to accept more of the financial risk. If the G.C. no longer advocates for prompt payment flow to the electrical contractor, the alternative is a direct disbursement escrow, in which money from the owner is paid out directly to the electrical contractor. The team must refocus on handing the financing responsibility back to the owner, where it belongs.

In fact, every risk should be logically allocated to the entity best able to control it. Contracts that shift risks to the contracting partner farthest from the owner are short-sighted, and cause more defaults and unfinished projects. Any electrical contractor who accepts risks he or she cannot control becomes part of the spiral of rising insurance and bond premiums, underfinanced projects, defaulting contractors, and unacceptable losses.

For example, design professionals complain that owners are not paying for complete plans and specifications, much less for project oversight. No one forces contractors to bid on projects with poor or incomplete plans and specifications. Some choose to play "design roulette," others purchase errors and omissions insurance and "fix" the design problems in order to stay in business; in either case, the contracting team has assumed ownership of the problem.

Fast-track projects are now the norm, rather than the exception. Electrical contractors complain that general contractors have abdicated their responsibility to coordinate scheduling and work flow, yet many are reluctant to offer scheduling information as part of their bid submissions, or flag potential bottlenecks in project work flow. Both sides have the potential to correct the problems, as long as the owner doesn't interfere, makes timely decisions and keeps the money flowing.

Contrary to popular belief, lawyers don't force their clients to litigate when conflicts arise; they advise, collect their fees, and wonder why their clients didn't consult them before the problems escalated. Perhaps if David and Goliath had submitted to voluntary arbitration or mediation, the whole slingshot incident could have been avoided. They chose "spontaneous litigation" instead. General contractors and subcontractors are capable of resolving disputes amicably and rationally, if they have the proper training and can put egos aside.

Fortunately, electrical contractors today have options. They can choose to work in partnership with general contractors who value them and will shift risks back to owners when appropriate. Or, they can evaluate their power to assume risks as prime contractors directly to owners in return for higher profits, fairer contracts, and direct payment flow. Become the new Goliath, or practice with the slingshot? It doesn't really matter, as long as you have the power when you need it. **EC**

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