



**US Army Corps
of Engineers**

ENGINEERING AND CONSTRUCTION BULLETIN

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Subject: Evaluation of the Designer in Design-Build Contracts

Applicability: Guidance

1. Design-build (D-B) contracts are being used more often as a project delivery method. A common question has arisen: Can the designer be evaluated separately? The answer: No. A performance evaluation addresses the total performance of the contract and is assigned to the prime contractor. The management and quality of the design should be addressed in the remarks block of the CCASS construction contract evaluation (DD Form 2626). The designer can and should be identified in Block 8. We have no privity of contract with the designer, and no legal right to do an independent evaluation of the designer's performance. ER 415-1-17, Contractor Performance Evaluations, paragraph 5.g., does indicate that a separate subcontractor performance evaluation can be prepared "where a subcontractor is known to exert significant influence ... or by virtue of performing a significant portion of the contract." This provision was developed before the widespread use of D-B and was not intended to apply to a design subcontractor on a D-B contract.

2. One of the primary benefits of the D-B process is single source responsibility. Evaluating the designer separately undermines this concept. The prime contractor is totally responsible for all aspects of contract performance, including the design. Poor design will often be reflected in the quality of materials, schedule delays and overall management. If the prime contractor knows that it will be held responsible for the performance of the designer, the contractor is more likely to correct the deficiencies and get the project back on track. Also, we do not know the specific agreement between the prime contractor and the designer, and how this agreement affected the overall design quality and performance.

3. There are different D-B team configurations that further complicate the desire to evaluate the designer separately. For example:

- What if the design is done in-house by the D-B contractor? Would you still evaluate the design and construction separately?
- What if a construction contractor and an architect-engineer (A-E) firm create a D-B joint venture? A joint-venture is a separate legal entity. Would you still separately evaluate the A-E firm?

ECB 2002- XX

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- What if the D-B contractor hired a number of architectural and engineering subcontractors and coordinated the design disciplines? Would you evaluate each subcontractor separately? Would you also evaluate the prime contractor on overall design coordination and management?
4. The CCASS performance evaluation can be utilized in future D-B source selections involving the same prime contractor. However, since we do not know if the prime contractor shared the evaluation with the designer, the design firm must be allowed to comment on any alleged unsatisfactory design performance before the evaluation information can be used in a future A-E selection involving that firm. Similarly, if the design firm is being considered in a future D-B source selection, but with a different prime contractor, the prime contractor and the design firm must be informed of the use of the CCASS evaluation and be allowed to discuss any adverse information.
5. We do feel that the DD Form 2626 could be revised to better reflect performance on design-build construction contracts. We would welcome any suggestions on specific changes and/or additions that would make the DD Form 2626 more relevant to design-build type projects.
6. This bulletin was coordinated with the Office of the Chief Counsel and the Office of the Principal Assistant Responsible for Contracting.
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