

# TODAY'S contractor

SUMMER 2003

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## PERFORMANCE CONTRACTING: IS IT FOR YOU?

Looking for new project work opportunities for your construction firm? You may want to explore performance contracting. The basic idea behind performance contracting is simple: You finance the cost of adding efficiency features to a building, and pocket the operating and maintenance cost savings once the project is completed.

Because the payback schedule is tied to projected savings, such loans can be justified and approved without reliance on collateral, credit or bond ratings, bonding capacities, or other underwriting criteria. This is especially welcome during the current economic stagnation in many parts of the USA.

### Variety Of Forms

As a construction contractor, you can play several roles in performance con-

tracting. Performance contracting can be accomplished by governmental and private sector entities, and it can be accomplished internally as well as externally. For example, a city may borrow money from its own local utility company to perform a lighting and HVAC retrofit on its city hall, and repay the loan from savings achieved in lower utility costs. Once the loan is paid off, the city can apply the savings to other programs or projects. In another example, a private contractor might take the place of the utility by performing the retrofit and supplying the financing, along with a savings guarantee.

### A Growing Market

Private sector financiers as well as private performance contractors are growing in size and number. Also increasing in number are firms providing the financing and the retrofit performance contracting under one roof. Five typical categories of firms are in evidence:

1. Banks and finance companies offering financing for energy retrofit or similar projects yielding greater operating efficiency in buildings.
2. Engineering firms offering technical consulting services to building owners.
3. Building and construction companies offering to perform retrofits.
4. Manufacturers offering to perform retrofits with their products and guaranteeing the savings.
5. Firms offering some combination of the above.

ideas for profitable growth

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### Spending Bill Finally Passes

After weeks of wrangling, the House and Senate have passed a \$397.4-billion omnibus spending package that funds all the federal non-defense agencies.

Perhaps the most closely watched construction account has been the highway obligation ceiling. Construction interests have argued the 2003 figure is important for the money it will provide for roadwork this year and the funding baseline it sets for future bills.

House Transportation and Infrastructure Committee Chairman Don Young (R- Alaska), says he's satisfied with the level of funding for highways and transit. "As the committee works to reauthorize federal highway, transit, and safety programs this year, the \$31.6-billion baseline in 2003 for the highway program will position us to move forward in a way that reflects the Congress' strong commitment to infrastructure investments."

Other highlights of the 2003 Omnibus Spending Bill:

\$3.38 billion for airport improvement grants.

\$713 million for General Services

Administration's new construction and \$946 million for renovations.

\$7.3 billion for Department of Energy's defense cleanup.

\$4.6 billion for the Corps of Engineers.

### Iraq Reconstruction

Bechtel National Inc., the prime contractor for the \$680-million Iraq capital construction project, expects to award the bulk of subcontracts by August. Bechtel says that thousands of firms have already registered as potential subcontractors on its Web site. The "intense interest will translate into intense competition," says Tom Elkins, Bechtel's acquisition services manager.

The rebuilding mission is to get existing critical infrastructure up and running as quickly as possible. "Awards will be made in a fast-track environ-

## KNOW YOUR STATE'S LIEN LAW – ONE MISSTEP AND YOU LOSE LEVERAGE

The old adage, "knowledge is power," is especially apt when dealing with complex and changeable lien law issues. With current economic conditions, you may have trouble collecting on outstanding invoices. If these invoices cover jobs in another state, then that state's lien law applies.

Everyone benefits from knowing about lien law. No matter where you fit in the construction process, you should be aware of the complex rights, requirements, and obligations of these laws in order to protect your investments.

Will a review of the general statutes tell you all you need to know about lien law? Unfortunately, no. They only lay out the framework necessary for compliance. The courts in each jurisdiction have interpreted the law and how it applies in various situations. Knowledge of these decisions is essential to ensure maximum protection.

### Law And Order

In most legal disputes, a suit must be filed against someone for damages. The court then hears evidence and renders a judgment. If this judgment is in the plaintiff's favor, a lien may be recorded against the assets and real property of the defendant to ensure payment.

With *mechanics lien laws*, however, the *order* is the opposite: to protect the rights of contractors, workers, craftsmen, architects, engineers, and material suppliers, these laws allow the lien to be recorded against the owner's property first, and then the court hears the arguments.

This provides you with a very powerful tool when dealing with deadbeat property owners. However, because the law is so powerful, you must follow the legal proce-



dures precisely. If even one minor item has been omitted, filed improperly, or in an untimely manner, you may forfeit all lien rights.

### Be Diligent

Mechanics lien laws exist in all 50 states and in the District of Columbia. However, the laws are often complex and vary dramatically from state to state. You cannot assume to be "covered" by knowing the requirements for your state alone. If you have a project in a state other than where you are headquartered, the laws of that state – not yours – will apply. Many of our clients are increasingly finding work beyond their own state lines, and therefore, must be extra diligent.

If you face outstanding invoices and need help, consult our office and your attorney on any questions concerning these issues. Plus, you may want to check out the following Web sites for state lien law requirements. ●

[www.lienlawonline.com](http://www.lienlawonline.com)

A comprehensive resource providing access to authoritative, up-to-date information on the lien laws of all 50 states and the District of Columbia.

[www.ncscredit.com](http://www.ncscredit.com)

The National Council of States offers a hard copy or CD of its National Lien Digest, a guide to the timely filing of notices, mechanic's and materialman's liens, and bond claims.

The NCS Hotline is 800-826-5256.

## ROUNDTABLE: IS IT TIME TO GIVE YOUR BUSINESS A BOTOX PARTY?

**O**ur roundtable was asked to consider two questions: When is it time to give a business a new look – a makeover? What aspects of the company should be renewed?

### “When The Time Feels Right.”

Roundtable members agreed that there is no hard and fast rule when a company may need a facelift. Rather, the decision should be based on a feeling that the time for change has come. It may be on the business’ anniversary; the introduction of a new business venture; the purchase of a new fleet of trucks, which will carry a new logo; at a business merger or acquisition; or simply when the business’ image begins to look dated and tired.



*Makeovers can become the foundation of a company’s future success because they are direction-setting.*

Following are some of our roundtable participants’ quotable quotes about newness and change:

“Tradition” may fool you into thinking that the logo and stationery from 1926 should never be changed. At least, maybe, they should “evolve.” E-mail and Web site addresses should be definitely added. Think color instead of black and white. Put your company’s rich tradition and history on the Web site and brochures.

“If it ain’t broke, don’t fix it.” It may sound good, but it’s not such a great idea. Because once you are broke, there’s nothing left to fix.

A new image should be good enough to last a while, so people can come to recognize your business by its color scheme and its unique look over a long period of time.

Changing the company name is a business gamble. A new name should be avoided, unless the old name must be retired because it has acquired a bad reputation. Everything from business cards to the ad in the Yellow Pages to the fax transmittal forms to the embroidered patch on the uniforms should match and be kept up to date. Business cards with crossed out phone numbers, addresses, or titles are uninspiring.

### Beauty Is More Than Skin Deep

While roundtable members spent much time discussing the “cosmetic” issues of a business makeover, they pointed out that deeper aspects should also be considered for a remodeling:

**Point of Contact.** The business may need a makeover at its point of contact. A well-trained receptionist can be the most important image asset of a business. This person sets the tone at the point of contact with the public. An enthusiastic and energetic person portrays a vibrant business.

**Changes in Policy or Strategy.** Another makeover area may be in a company’s policies and strategies... such as a new marketing strategy, a new in-house credit management policy, or a new employee benefits package.

Such makeovers can become the foundation of a company’s future success because they are direction-setting. While image makeovers are important, a re-examination of policies and strategies can invigorate a business from within.

Most roundtable members firmly believe a company’s core values should, as a rule, not be tampered with. After all, if they are true basic philosophies guiding the company’s behavior and direction, then they should pass the test of time. Honesty, customer service, fairness, and promise keeping should need no makeovers. ●

## Washington Watch

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ment,” says Elkins. He urged potential bidders to make their first offer their “best and final offer.”

About 90% of the work will be subcontracted... many will be for under \$1 million and the largest will be for about \$30 million. About \$600 million in subcontracts are expected to be awarded by August.

If you are interested in getting a piece of “the action,” register your company in Bechtel’s global supplier and contractor database at [www.bechtel.com](http://www.bechtel.com). There is no cost for this registration.

To complete the registration process, have your Dun and Bradstreet Universal Numbering System (DUNS) number available. If you do not have a DUNS number, you may obtain one directly from Dun and Bradstreet at: [www.dnb.com](http://www.dnb.com).

### Environmental Compliance Tool

In April, then-EPA Secretary Christine Whitman unveiled a new Web-based Construction Industry Compliance Assistance Center to help contractors comply with federal and state environmental regulations. Whitman believes that “use of this Construction Industry Compliance Assistance Center will substantially increase... compliance with the new stormwater regulations and other important regulations such as those involving wetlands, asbestos, and lead paint.”

The new CICAceneter, found at [www.cicacenter.org](http://www.cicacenter.org), was developed by the National Center for Manufacturing Sciences, in partnership with the Associated General Contractors of America, the National Association of Home Builders, the American Road and Transportation Builders Association, and the Golf Course Builders Association of America.

Visitors to the site will find plain-language explanations of applicable regulations, as well as links to state and local regulatory agencies. ●

## Performance Contracting: Is it for you?

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Performance contracting can work only if the calculated figures of energy and other savings will, in fact, bear out once the retrofitted facility has been brought back into operation. If you have the capability to perform this engineering work in-house, you may be able to offer performance contracting under one roof. However, if you are like most contractors, you will need to affiliate with an architect and engineer to pursue performance contracting work.

### Resources And Information

If you'd like to know more about how performance contracting works and its benefits to the client and contractor alike, go to [www.famuso.net/ibs/projornl](http://www.famuso.net/ibs/projornl). You will find useful case studies on performance contracting, several of which exemplify performance contracting in its



many forms. Of special interest to construction contractors is the case study titled, "Private Sector Efforts Stimulate Energy Retrofit of Buildings." Others of interest are:

- "Still Waters Run Deep in Richland: the Story of an 'Invisible' High-Impact Lighting Update"
- "Borrowing Your Way to Energy Savings – the College Station Independent School District Story"
- "NO FUNDING/ NO PROBLEM! The Federal Energy Management Program's Win-Win Energy Savings Performance Contracts Result in GSA Building Retrofits"

Here are further sources to get you up to speed on performance contracting:

- Alliant Energy outlines its services at [www.alliantenergyisco.com/services\\_contractingservice.php](http://www.alliantenergyisco.com/services_contractingservice.php)
- Most states have legitimized performance contracting as a procurement method. For example, Guidelines for Performance Contracting with the Texas State Government can be found at [www.seco.cpa.state.tx.us/sa\\_performcontract.htm](http://www.seco.cpa.state.tx.us/sa_performcontract.htm)
- Excellent articles can be found at: [www.watermgt.com/perfcon.html](http://www.watermgt.com/perfcon.html) and [www.bsdglobal.com/tools/bt\\_pc.asp](http://www.bsdglobal.com/tools/bt_pc.asp) ●

## CONSTRUCTION TREND DATA

New construction starts in March slipped 1% to a seasonally adjusted annual rate of \$475.2 billion, as reported by McGraw-Hill Construction Dodge, a division of The McGraw-Hill Companies. Both nonresidential building and housing fell slightly, while nonbuilding construction made a partial rebound from a weak February.

"Last year the construction industry leveled off, and the early results for 2003 are now pointing towards a mild loss of momentum," stated Robert A. Murray, Vice President of Economic Affairs for McGraw-Hill Construction Dodge. "Single family housing has held up quite well, thanks to low mortgage rates, but other construction sectors have been dampened by the lackluster economy, the diminished fiscal health of the federal and state governments, and uncertainty related to the buildup towards war against Iraq. The quick end to hostilities has lifted some of the uncertainty, but it may take some time before the economy strengthens in a sustained manner, and it will be even longer before the federal and state governments see improvement in their fiscal posi-

tions. In this environment, the moderate slowdown experienced by construction during the first quarter provides a good indication of how the year as a whole will play out."

On a regional basis, total construction in the January-March period was as follows: the West, up 6%; the South Central, down 3%; the South Atlantic, down 8%; the Midwest, down 12%; and the Northeast, down 27%.

For more information, go to [www.construction.com](http://www.construction.com).

### Dodge: Year-To-Date Construction Contract Value

Unadjusted Totals, In Millions

	3 Mos. 2003	3 Mos. 2002	Change %
Nonresidential Building	\$ 30,935	\$ 36,250	-15
Residential Building	\$ 57,789	\$ 55,407	+4
Nonbuilding Construction	\$ 20,235	\$ 26,012	-22
Total Construction	\$ 108,960	\$ 117,669	-7