How to Develop a Win-Win Contracting Format
Or Landfill Gas-to-Energy: QUALITY…on Time…on Budget
Keys attributes that are jugular for all projects

1. Quality
2. Schedule
3. Budget

Often a contractor will say: “pick two of the above”

As an Owner or Developer you need all three so . . .
Where do we go . . .
Let’s define the attributes required

• QUALITY: Conformance to an agreed set of requirements
• SCHEDULE: Program of future events and milestones
• BUDGET: Systematic plan for expenditure with a definite limit
Quality represents the WHAT in the contract...

What Quality is to one may not be the same as it is to another

Need to define the scope; CONFORMANCE TO REQUIREMENTS
On time is the WHEN…

Milestone schedule

- Define elements that are critical to success
- Identify external tasks/events
- Contract to the high level milestones
Budget is obviously HOW MUCH…

- Must think in owner terms
- In the end both the Contractor and Owner need to survive
- So don’t
Concerns of both parties are much the same; and both want

- Cost of work
- Liability
- Risk
- Profit

- Meet the proforma
- Liability
- Risk
- Profit
Agreed attributes are the basis for the contract

- Scope
- Deliverables
- Schedule
A turnkey contracting framework provides the basis for a successful project.

- Addresses attributes of Quality and Schedule
- Also addresses common financial concerns of risk, liability and profit
At this point project budget/cost should be addressed.

- Dollars most often become the stumbling point for most contracts
- In any contract or transaction each parties’ goal is to maximize their own benefits or more succinctly “win”.
- Compromise can lead to a Lose – Lose situation
- Strive to eliminate the lose
Both contractual parties must win

- Mutual benefit and mutual respect
- Selfish approach is \textit{win} – \textit{lose}
- Martyr approach is \textit{lose} – \textit{win}
- Think in terms of team; “\textit{we}” not “\textit{me}”
To be successful, both contractual parties must WIN

**LOSE - LOSE**
- Straight Lump sum tends to encourage change orders
- Unit prices tend to reduce incentive to improve project
- Both formulas tend to increase cost

**WIN - WIN**
- Balance, Share in the risk and liability when possible
- Share in the project rewards
- Both parties are on the same side of the ledger
- Each party is vested in the others success
Transformation of the turnkey contract and relationship assures success

- Requires that both parties WIN
- Both parties agree and share in the benefits
The WIN - WIN Contracting scenario

Target Price, Guaranteed Maximum, Shared Savings Contract
This Scenario embodies the WIN -WIN contracting scenario

- A “likely” target project cost is developed
- The developer/owner have the project cost (maximum cost exposure) that meets the proforma and they can budget and finance for.
- The contractor has a guaranteed minimum fee for the project
- Both parties have an incentive to reduce project costs and “share” in the savings
- Risk, liability, and PROFIT is shared
Setting the target price and guaranteed maximum are critical

High confidence level

Lump sum market
Major components of the Win - Win Contract

- Scope/Deliverables
- Target Price
  - w or w/o contingency
- Fixed Fee
- Guaranteed Maximum Price
- Shared Savings
  - Agreed split 30/70; 40/60; 50/50; 60/40; 70/30 etc
Win - Win contract is achieved

Actual Cost of Work + Fixed Fee – Guaranteed Maximum Price = $300,000