

## All Trussed Up and No Place to Go (Case 1023)

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### The Case:

You are a senior engineer for a well-known and respected structural engineering firm in Dallas, Texas. Your firm has been involved in the structural design of a number of high-rise buildings in the Dallas area, and has also provided structural engineering services as a subconsultant to project design companies focused on large public works projects, such as bridges, sewage treatment plants and airports. In this regard, you are aware that a significant public works project is being planned nearby in Fort Worth. The project will require a considerable amount of structural engineering design work.

You are contacted by I. B. Shaker, Vice President for Development of Moover Design Consultants, Ltd., which is a national public works project design firm headquartered on lower Fifth Avenue in New York City. Shaker tells you that they are committed to putting together an outstanding Statement of Qualifications (SOQ) and Proposal in order to be selected as the prime designer for the proposed Fort Worth project. Since your firm is probably the best known structural engineer in the area, Moover Design Services would like you to join their team in pursuing the project. Also, due to the intense competition for the design contract, they would like your firm to enter into an exclusive arrangement with them whereby you agree not to be on any other design teams competing for the work.

This is not an unusual request for such a project, and after conferring with your associates in the firm, you decide to join the Moover Design team as their structural engineering subconsultant for the project. One of your associates indicates that Moover is known to have its own structural engineering group in-house in New York City, so you call I. B. Shaker on the telephone and mention this to him, asking what role his in-house structural group will play in the project. He tells you that his firm has decided that in order to be awarded the project design, especially in light of the heavy competition anticipated from at least six other public works design firms from Seattle to Atlanta, they will need to team with a reputable Dallas/Fort Worth-based subconsultant to demonstrate local commitment to the project. As a result, their in-house structural group will be called on only to review your work from time to time during the project design.

The selection process for the project designer proceeds without delay; the Moover Design team is one of four A/E firms short-listed for the project; you are asked to attend the interview in front of the selection committee and make some

comments as a member of the Moover team; when you arrive at the presentation you realize that you know virtually all of the members of the selection committee due to your interaction with them on an individual basis for a number of projects in the past; your presentation goes exceptionally well (even though I. B. Shaker appeared nervous and didn't know that Dallas is closer to Fort Worth than Austin is).

Several days later you receive word from the agency funding the project that the Moover team has been selected as the design consultant. As a result, you submit a scope of work and your estimated fee to Moover for the structural engineering portion of the work and are told that you will be contacted about getting started once the final contract has been negotiated between Moover and the funding agency. Due to the complexity of the project, your fee is estimated to be \$435,000.

Your attention is diverted to a number of other projects which come up in the next several weeks, so it is not until two months later that you realize you have not heard from Moover, and call I. B. Shaker on the telephone. His secretary tells you that he is in San Francisco chasing a large sewer tunnel design project, and won't be able to return your call. Instead, she transfers you to Chuck Cleaver, Moover's design project manager, who tells you that they have started on the design, their in-house structural group is having no problem doing the work and if they need any additional assistance during the life of the design contract, they will call you (but don't call them). You are astonished at both the content and tone of the response.

The following week you attend a national engineering society meeting at the Anatole Hotel in Dallas. During the cocktail hour you happen to run into an acquaintance who used to work in Dallas, but now is in New York City, by happenstance working for Moover Design Consultants. After a couple (or three) beers, he tells you that although most people don't know it, it is company policy with Moover to bring local engineers onto their teams when they are competing for work in specific cities outside of New York in order to show local expertise and a commitment to the area. However, once the project has been awarded to Moover, the real work is done in-house, and the subconsultants who were listed on the team are ignored, or sometimes given a very small amount of work to do. After all, why not keep the profits at home in the New York office?

What, if anything, do you do?

### **Alternate Approaches and Survey Results for “All Trussed Up and No Place to Go” (Case 1023)**

1. Leak the story to the Dallas-Fort Worth Inquirer, then send a copy of the article to Chuck Cleaver, I. B. Shaker and the president of Moover Design Consultants in New York City and wait to see if anything happens.

Percentage of votes agreeing: 2%

2. Send a hefty bill to I. B. Shaker for all of the time you and your firm spent in contributing to the SOQ, work scope preparation for the proposal, interview preparation and rehearsal, as well as your time for the presentation before the selection committee.  
Percentage of votes agreeing: 17%
3. Since you knew most of the people on the funding agency's selection committee, make a few telephone calls to these people and inquire what you should do about the situation, in the agency's opinion, realizing that they may say they have no control over the amount of work actually given to the subconsultants for the project.  
Percentage of votes agreeing: 10%
4. Find out who the funding agency's project manager is and arrange to have lunch with him/her. Express your frustration and concern, and ask if there is any reasonable course of action you can take.  
Percentage of votes agreeing: 10%
5. Send a certified letter to I. B. Shaker stating that the current work arrangement is not the way it was agreed prior to the submittal of the proposal and the interview, and as a consequence your firm is terminating any relationship with the project. Put a carbon copy note to the project funding agency at the bottom of the letter, and send a copy of the letter to the director of the funding agency.  
Percentage of votes agreeing: 31%
6. Have your corporate attorney file a legal complaint and notice of intention to sue Moover Design Consultants for breach of verbal contract, defamation of professional reputation, loss of anticipated profit and violation of the extent of local design participation implied to the selection committee.  
Percentage of votes agreeing: 13%
7. Make sure to tell the story of how badly your firm has been treated by Moover to anyone who will listen at all of the professional society meetings you and your people attend over the next year.  
Percentage of votes agreeing: 2%
8. Contact your acquaintance who is working for Moover in New York City to determine if any of the structural engineers working on the project are registered professional engineers (with structural engineering specialty) in the State of Texas. If there are none, contact the Texas State Board of Registration and file a complaint against Moover for not having the structural engineering design work performed and/or reviewed by a Texas registered professional engineer – a violation of the law.  
Percentage of votes agreeing: 13%

9. Contact your old high school classmate, Guido, who is involved in some kind of business in New York City to see if he can arrange to make an offer to Moover they can't refuse.

Percentage of votes agreeing: 3%

#### Forum Comments from Respondents

1. Although you did not sign any contracts with Moover for the work, send them an invoice immediately for all the work your firm believed it would perform for the project. Finally, promise I. B. Shaker that if the situation is not rectified immediately, you will initiate your best whistle-blowing tactics, including press releases and contacting the funding agency. You must protect yourself, but you also must represent and protect your profession.
2. Call the Texas Board of Registration for Engineers. Inform them of the consistent fraudulent and questionable behavior Moover has displayed as it has appeared to you.

You should consult a lawyer in order to get the most money out of the deal. After talking with both the Moover project manager (Cleaver) and your old acquaintance in their firm, it is obvious that this has been their intention all along. You should inform I. B. Shaker before this action is taken, so that he has a chance to recommit to the original agreement.

3. You should see if your friend's story is legitimate by checking into Moover's history of awarding subcontracts. If it is true, then ask your own company line management what action should be taken.
4. Maybe you have not heard the other side of the story in its completeness. Attempt to contact Shaker personally. Go into the discussion with an open mind. If there was deliberate fraud, send a certified letter (as in Alternate 5) and think about initiating a legal complaint [even though no contracts for your work had been signed with Moover – ed.].
5. I would track down I. B. Shaker wherever he is and ask him what gives, and make it known that I intend that he uphold his end of the deal. If he does not, I would approach key individuals at the funding agency, let them know what is going on and ask for their intervention. My experience has been that local involvement is usually a major issue with large projects for public works agencies. The proposal submitted by Moover and the interview materials likely documented the expected role and involvement of your firm.
6. If Shaker and his firm do not rectify the situation in a satisfactory manner, you should have your corporate attorney file a breach of verbal contract suit in Dallas. This will require Moover to defend themselves on your turf and

also could impact their authorization to do business in Texas if they are found at fault.

7. You should reference the RFP (Request for Proposal) for the project to see what it had to say about such “bait and switch” tactics. Agencies are getting wise to this gambit and many of them are inserting standard language that, “those who show up to make a presentation had damn well better be visible on the design team.” If the RFP addresses the use of subconsultants listed in the submitted proposal, and if it was made clear during the interview that the selection committee wanted the presenters to be on the design team, then a simple telephone call to your friends at the funding agency selection committee might solve the problem.
8. You should document the telephone conversation with Cleaver in a letter to Cleaver indicating that as you understand it, Moover does not intend to use your firm to anywhere near the extent that was indicated to the funding agency in the proposal and interview. Realizing that Cleaver will probably ignore the letter, you should then send a letter informing Moover and the funding agency that as a result of Moover’s actions, your firm is no longer a part of the design firm. The funding agency needs to be aware of the situation so when mistakes in the design crop up, your firm is not held liable (morally or legally). It’s lay it on the line time.
9. You should write I. B. Shaker and express your understanding of the situation and your disappointment at the behavior and lack of professional ethics of the company and its employees. You could also let your professional colleagues know what had occurred to put them on the alert in case Shaker approaches them on future proposals. Much beyond that, though, and you’ll be slinking down into the slime with Shaker and you and your company do not need that. Stick to the ethical high ground and avoid the mud-slinging.
10. You have learned a most valuable lesson. Henceforth, you should use written agreements or a MOU (Memorandum of Understanding) whenever you are collaborating with a firm you haven’t worked with previously or don’t know very well.
11. You should chalk this up to a learning experience. The next time a large out-of-town firm wants you to subcontract to give them a local presence, you will get a written agreement in advance and you won’t agree to be “exclusive” until you receive a retainer.