

THE PRACTITIONER

A monthly newsletter of the Energy Facility Contractors Group's
Project Delivery Working Group



Issue 55

February 2024

Best Practice #259

Greetings Practitioners! This month's newsletter highlights EFCOG Best Practice #259 – "Washington River Protection Solutions (WRPS) Capital Asset Preplanning CRC Checklist."

This best practice is based on the Department of Energy (DOE) DOE O 413.3B (current version), Program and Project Management for the Acquisition of Capital Assets, CD Gate Process.

While most are aware of the prescribed process for "Initiation, Definition, Execution, and Closeout" phases of the "DOE Acquisition Management System", typical and ongoing compliance review findings indicate many do not employ the required approach.

As a helpful to reminder the purpose of the 413 approach is to:

"To provide the Department of Energy (DOE) Elements, including the National Nuclear Security Administration (NNSA), with program and project management direction for the acquisition of capital assets with the goal of delivering projects within the original performance baseline (PB), cost and schedule, and fully capable of meeting mission performance, safeguards and security, and environmental, safety, and health requirements unless impacted by a directed change."

Use of this "Capital Asset Preplanning CRC Checklist" best practice, places emphasis on the most critical component of project success, upfront planning. In an oversimplification of the typical planning process, discussions are held, decisions are made, and charge codes are issued. Much or most of the actions taken on the project are based on verbal discussions, and typically not traceable back to those with the authority and responsibility to make informed decisions.

With the CRC Checklist approach the project team (DOE Field Office/DOE Headquarters/DOE Contractor) collaboratively reach upfront agreement on implementation for each CD Gate task/activity via completion of the CRC Checklist form, which identifies:

Project Manager 413 Capital Asset Planning Compliance Review Checklist (CRC) for: Applicability Determination / Justification / Training Completed / Assignment Responsibility / Review Completion and Sign-off	
DOE 413.3B CD Gate Tables - Check Marks below Indicate Requirements or Need to Analyze if Applicable	
Prior to CD-0	
Perform Pre-Conceptual Planning activities that focus on the Program Offices' strategic goals and objectives, safety planning, design, development of capability gaps, high-level project parameters, a ROM cost range, and schedule estimates.	
Perform a Mission Validation Independent Review on all Major System Projects. (Refer to DOE G 413.3-9.)	
Approve a Mission Need Statement Document with recommendation from PM for projects with a TPC > \$100M. (Refer to DOE G 413.3-17.)	
Independent Cost Review (ICR).	
For Major System Projects, or for projects as designated by the CE, PM will conduct an ICR	
For Major System Projects, the Project Management Risk Committee (PMRC) will review and analyze the CD and make recommendations to the ESAAB, CE, or PME, as applicable, before approval.	
Program Requirements Document. For NNSA only, defines the ultimate goals which the project must satisfy. (Refer to NNSA Business and Operating Policy.)	
DOE-STD-1189-2016	
For Hazard Category 1, 2, and 3 nuclear facilities, and to the specificity possible, document DOE expectations for Safety-in-Design	
Post CD-0 Approval	
Submit all CD documents to PM, and if there are changes to the PB, submit BCP documents to PM	
Develop a Project Data Sheet (PDS)	
For Line Item Projects to request Project Engineering and Design (PED) funds. Develop funding documents for MIE or OE projects for the design, and OMBA-11 Business Cases. (Refer to DOE OFO Budget Call for PDS and Business Case Template.)	
Initiate monthly PARS II Reporting (excluding earned value data). FPD, Program Manager and PM will provide monthly assessments, as appropriate.	
Initiate Quarterly Project Reviews (QPRs) with the PME or their designee.	
Conduct a Project Peer Review	
of active projects when the top-end range is \$100M or greater.	
Proceed with Conceptual Planning and Design	
used to develop alternative concepts and functional requirements using operating funds.	

EFCOG Best Practice #259 Layout

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Best Practice #259

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- Applicability of training and CD Gate tasks/ activities for the project
- A “Narrative Justification” for any and all CD Gate tasks/activities identified as “No” or not applicable, with a justification as to “Why” a task/activity is not applicable
- The appropriate training and reference material that the project team will be required to take. This is best accomplished as required reading with signature to validate the training was completed.
- Assignment Responsibility name of the project individual responsible for a particular task/activity
- Activity Forecast Dates “Start” and “Finish” to facilitate a project management schedule which will then be integrated with the technical scope schedule.

Applicability		Narrative Justification if “No”	Training Required?		Assignment Responsibility Name	Activity Forecast Dates	
Yes ✓	No ✓		Yes ✓	No ✓		Start	Finish

EFCOG Best Practice #259 Layout #2

Consistent with all project documents, this document must be under configuration control through a formal document control revision process, and should be updated to reflect any changes from previous decisions made by the project team.

Expected Benefits of this Best Practice: Routine use of this checklist will improve the project team knowledge of the compliant approach prescribed by DOE in the “Initiation, Definition, Execution, and Closeout” phases of capital and GPP projects.

Benefits will also be realized in gaining upfront implementation of the 413 preplanning approach in flushing out differing and often incorrect interpretations of the order and its applicability. With agreement upfront, project stakeholders will be on the same page with a common understanding of how the project will proceed in implementing 413, allowing the project team to focus their collective energy on problem solving for the challenges that will be encountered during the “Execution” phase. This should represent a welcome change from the typical “blame game” encountered when “anyone” involved blames “everyone” else for the preplanning “nobody” did.

Please see the complete “413 Project Management CRC Checklist” at this link: [EFCOG Best Practice #259](#)

For more information on background, intent, and implementation strategy, contact Tony Spillman, WRPS Project Management Programs Manager and managing editor of the *Practitioner* at (509) 372-9986 or via [e-mail](#).

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It Is Not One World

DOL Announces New Independent Contractor Rule

New federal guidelines on classifying workers will impact contractors in the construction industry

— By Tom Zind, [EC&M 2024 Construction Forecast](#)

Employers are set to face new federal guidelines on classifying their workforce, a change that could have an outsized impact on construction contractors.

As of March 11, 2024, to be in accord with the Fair Labor Standards Act (FLSA) businesses will have to follow a U.S. Department of Labor (DOL) rule outlining a new set of criteria for determining whether workers are brought on as employees or independent contractors (1099 workers). The new rule succeeds one DOL crafted under the Trump administration and issued in 2021. The department under the Biden administration subsequently determined it was not consistent with interpretations of FLSA guidelines on determining worker status.

In better aligning them with FLSA, DOL says the new rule's guidelines will help ensure workers are not misclassified, a risk heavily weighted toward employers wrongfully designating workers as independent contractors rather than employees. By some estimates, the practice has a long history and remains commonplace in the construction industry; a 2020 study determined 12% to 20% of the construction workforce was improperly classified as independent contractors or working off the books.

Announcing its intent in October 2022 to craft a new rule, DOL called the practice of misclassifying workers as independent contractors “a serious issue that denies workers’ rights and protections under federal labor standards, promotes wage theft, allows certain employers to gain an unfair advantage over law-abiding businesses, and hurts the economy at-large.” While acknowledging the economic importance of legitimate independent contractors, it said “we have seen in many cases that employers misclassify their employees as independent contractors, particularly among our nation’s most vulnerable workers.”

Under the new rule, employers will use a non-weighted, six-factor test to determine whether a worker is economically dependent on them, in which case they’re rightfully employees. The test



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New Independent Contractor Rule

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will consider opportunity for profit or loss depending on managerial skill; investments by the worker and the potential employer; degree of permanence of the work relationship; nature and degree of control; extent to which the work performed is an integral part of the potential employer's business; and skill and initiative. DOL provides detailed guidance on applying each factor and others that may be present.

In contrast, the 2021 rule was less rigorous, effectively lowering the bar for designating a worker a contractor, DOL says. Reviewing the differences, DOL says the new rule is focused on a "totality of circumstances" analysis rather than one that gave more weight to select factors favoring a contractor designation; considers investments made by both parties; emphasizes the factor of "control" over work; resurrects the consideration of whether the work is integral to the employer's business or is an integrated unit of production; and fleshes out analysis of permanency, exclusivity, initiative and skill in the context of the work performed.



DOL's new rule is exposing a rift in the construction industry. Associated Builders and Contractors (ABC) and Associated General Contractors (AGC) have come out against the change, saying it will rob contractors of needed flexibility in staffing by curtailing their legitimate use of independent contractors and raise costs. Other groups, including the National Electrical Contractors Association (NECA), have voiced support, saying it will level the playing field.

In a January 12 press release, ABC, which represents non-union contractors, framed it as a hit against properly classified independent contractors who could "lose opportunities for work." The group has also complained that the new rule is "ambiguous" and "difficult to interpret" and "will jeopardize the ability of construction firms to continue the industry's longstanding practice of utilizing legitimate independent contractors."

In a joint statement, NECA and the International Brotherhood of Electrical Workers (IBEW) backed the DOL action, saying it was needed to ensure workers aren't exploited and that companies that play by the rules in classifying workers aren't harmed.

"In the construction industry, misclassification is a cost-cutting tool used by unscrupulous contractors to cheat the system, shirk legal responsibility and tax obligations, and underbid law-abiding contractors to win both public and private construction projects," the statement read.



ABC has signed on to an effort to block the new rule, a motion in the U.S. Circuit Court of Appeals for the Fifth Circuit to have the new rule struck down on procedural grounds and the 2021 rule restored.

Just for Fun: February's Notable Events and Famous Birthdays

1 — Actor Clark Gable (1901), singer Rick James (1948) and MMA fighter Ronda Rousey (1987) were born, and the space shuttle Columbia broke apart (2003)

2 — The Mexican-American War ended (1848), baseball's National League was founded (1876), Groundhog Day was first celebrated (1887), and actress Farrah Fawcett (1947), model Christie Brinkley (1954) and singer Shakira (1977) were born

3 — Actor Nathan Lane was born (1956), and musicians Buddy Holly, Ritchie Valens and Big Bopper died in a plane crash (1959)

4 — The American Revolutionary War officially ended (1783), aviator Charles Lindbergh (1902), and civil rights activist Rosa Parks (1913) were born, Disney released Snow White and the Seven Dwarfs (1938), singer Alice Cooper (1948) and football star Lawrence Taylor (1959) were born, and Facebook was launched (2004)

5 — United Artists was formed (1919), and baseball legend Hank Aaron was born (1934)

6 — Baseball legend Babe Ruth (1895), President Ronald Reagan (1911), and singer Bob Marley (1945) were born, and **Elizabeth II was crowned Queen of England** (1952)



7 — Author Charles Dickens (1812), singer Garth Brooks was born (1962), comedian Chris Rock (1965) and actor Ashton Kutcher (1977) were born, and the Soviet Union collapsed (1990)

8 — The Boy Scouts of America was founded (1910), actor James Dean was born (1931), Jay Berwanger was the first player selected in the first NFL draft (1936), and football player Julio Jones (1989) and basketball player Klay Thompson (1990) were born

9 — President William Henry Harrison was born (1773), volleyball was invented (1895), Daylight Saving Time was instituted (1942), actor Joe Pesci was born (1943), the Hollywood Walk of Fame opened (1960), and **the first American troops were sent to Vietnam** (1965)



10 — The fire extinguisher was invented (1863), and golfer Greg Norman was born (1955)

11 — Inventor Thomas Edison (1847), actor Burt Reynolds (1936), and singer Sheryl Crow (1962) were born, the Beatles played their first U.S. concert (1964), actress Jennifer Aniston was born (1969), singer Whitney Houston died (2012), and the World Health Organization named the COVID-19 virus (2020)

12 — President Abraham Lincoln and biologist Charles Darwin (1809), basketball legend Bill Russell (1934), and football star DeMarco Murray (1988) were born

13 — TV host Jerry Springer (1944), basketball coach Mike Krzyzewski (1947) and football star Randy Moss (1977) were born

14 — St. Valentine was martyred (270), Alexander Graham Bell invented the telephone (1876), the St. Valentine's Day Massacre took place in Chicago (1929), and football star Alshon Jeffery was born (1990)

15 — Inventor Galileo Galilei (1564) was born, the Spanish-American War began (1898), the first Teddy Bear was made (1903), Disney's "Cinderella" opened in theaters (1950), the entire U.S. figure skating team was killed in a plane crash (1961), Canada adopted the maple leaf flag (1965), and hockey star Jaromir Jagr was born (1972)

16 — King Tut's tomb was opened (1923), singer/politician Sonny Bono was born (1935), Nylon was invented (1937), rapper/actor Ice T was born (1958), the 9-1-1 system went into service (1968), and football star Jerome Bettis was born (1972)

17 — Football legend Jim Brown was born (1936), the first weather satellite was launched (1959), and comedian Larry the Cable Guy and basketball legend Michael Jordan were born (1963)

18 — **"The Adventures of Huckleberry Finn" was published** (1885), the first Academy Awards winners were announced (1929), the first 3-D movie opened (1953), actor John Travolta (1954), and rapper Dr. Dre (1965) were born, and race car legend Dale Earnhardt was killed in an accident at Daytona (2001)



19 — Astronomer Copernicus was born (1473), Thomas Edison invented the phonograph (1878), and singer Smokey Robinson (1940), actor Jeff Daniels (1955), and singer Seal (1963) were born

20 — The U.S. Postal Service was established (1792), John Glenn became the first American to orbit Earth (1962), and basketball star Charles Barkley (1963), singer Kurt Cobain (1967), baseball star Justin Verlander (1983), and singer Rihanna (1988) were born

21 — The sewing machine was invented (1842), Karl Marx published his "Communist Manifesto" (1848), NASCAR was incorporated (1948), DNA was discovered (1953), actor Kelsey Grammer was born (1955), and Malcolm X was assassinated (1965)

22 — President George Washington was born (1732), the Republican Party held its first national meeting (1856), **basketball legend Julius "Dr. J" Erving was born** (1950), the first Daytona 500 was held (1959), actress Drew Barrymore was born (1975), and the U.S. Olympic hockey team beat the USSR in the "Miracle On Ice" (1980)



23 — Plutonium was first produced (1941), the iconic flag raising on Iwo Jima occurred (1945), and actress Dakota Fanning was born (1994)

24 — Andrew Johnson became the first U.S. president to be impeached (1868), and entrepreneurs Phil Knight (1938) and Steve Jobs (1955), and boxer Floyd Mayweather (1977) were born

25 — Samuel Colt invented the revolver (1836), the first American aircraft carrier was launched (1933), the first televised NHL game was broadcast (1940), guitarist George Harrison was born (1943), and Cassius Clay (Muhammad Ali) beat Sonny Liston for the heavyweight boxing championship (1964)

26 — Singers Fats Domino (1928) and Johnny Cash (1932) were born, RADAR was first demonstrated (1935), and the World Trade Center was bombed (1993)

27 — The first Mardi Gras celebration in New Orleans was held (1827), actress Elizabeth Taylor (1932), football star Tony Gonzalez (1976), and First Daughter Chelsea Clinton (1980) were born

28 — DNA was discovered (1953), hockey star Eric Lindros (1973) and singer Jason Aldean (1977) were born

29—**Hattie McDaniel became the first African-American to win an Oscar** (1940)



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