



Contract Process

Once you have closed your tender and have a contractor (or contractors!) that you are comfortable with, its time for the real work to start. The amount of involvement you have in the contract management process depends largely on the nature of the work you award.

If you're issuing separate contracts for each trade, then you will have a full-time job as a construction manager, and you definitely need to keep track daily of your activities. If you're issuing one contract to a builder for the whole project however, then you will be only involved at certain occasional milestones. But that doesn't mean you shouldn't still keep track of your activities!

- 1) Once you have reviewed your tender and decided on a preferred Contractor, **arrange a pre-award meeting**, either in person or by conference call, with the Contractor and anyone else who needs to attend. Prepare a summary of questions to ask them about their commitment. The questions you ask them will be project- and scope-specific, but should include at minimum:
 - a) You will want to remind them that you expect them to adhere to the specifications. Review the important points in the spec and the drawings with them to make sure they've read it – especially items to do with life safety and building envelope.

Confirm they are using the products from your materials schedules, or if they have alternates they want to propose. Any alternates they propose to use, record them in your **Quality Assurance Log**, located in the Sample Project Folder under "Quality Control".
 - b) Inquire about their performance schedule – planned start, manpower, planned finish. Ask if they have any other commitments they need to work around.
 - c) Remind them that you will be retaining a small percentage of the contract amount for holdback, payable after completion of contract deficiencies (I recommend 5%). This is not lien holdback, as the BC Lien Act does not apply to native land. The



money for this holdback should be held in a joint account under both names, and deposited with each invoice payment.

- d) Discuss billing expectations – yours and theirs. They may ask you for a deposit or front end payment, you may need to remind them if you have a cut-off date for receiving payment requests, and discuss your payment turnaround time so they don't expect a cheque the next day.
 - e) Get a few work references from them from previous clients. **Check the references** before awarding any contract. If you get less than convincing references, you need to weigh out whether the risk is worth the reward of what they offer you. If the price is low enough, sometimes its worth taking on someone who is a little more difficult to manage. Sometimes it is not. It's a judgement call, and we all learn our lessons on this the hard way.
- 2) **Create** a new contract. Open the "Contract Template" file in your *newly created project folder*, and edit the legal information and the terms you have agreed on with your chosen Contractor. Save the contract along with a copy of their quote and a copy of their tender documents, in the same file.

Send out two copies of the contract to your Contractor for their signature, and when you get them back, sign both of them. Initial next to any changes that have been made during their review, assuming you agree. Send one executed copy back to the Contractor.

** Make sure you save the folder on your computer's hard drive, not the desktop, and remember to make a backup copy of your project folders regularly! **

- 3) **Set up** a separate account to keep the money you will be withholding from your contracts for deficiency holdbacks, this should be a joint account which both of you need to sign to release,
- 4) **Perform** whatever work you have committed to do before the Contractor starts work, and give them a reasonable amount of notice (1-2 weeks ideally), in writing, advising them when the site will be ready for them to get started.
- 5) **Inspect** the work at regular intervals to make sure you are getting the quality you expect, and record any inspections you perform, and deficiencies you noted, in the ***Quality Assurance Log***, located in the Sample Project Folder under "Quality Control".



Since you don't have a building inspector or architect to do inspections, you definitely need to inspect (or hire someone external to inspect for you) at important fixed milestones in the construction, prior to it being covered, so you can assure yourselves that it was done according to the tender documents:

- a) Perimeter drainage and damp-proofing installation prior to backfill
- b) Framing prior to mechanical/electrical rough-in and building wrap
- c) Have a mock-up done of the first window installation, to make sure it is done correctly before they carry on installing the rest of them.
- d) Building wrap and rainscreen installation prior to cladding
- e) Mechanical and electrical rough-in and firestopping prior to insulating
- f) Insulation and vapour barrier prior to drywalling

Changes –

- g) After your Contractor starts on the job, there will be circumstances that require you to consider making changes to the contract value:
 - (i) Added scope of work – you may decide that you want to have your Contractor do more than you originally asked them to do in the tender - for example, you may ask your drywall contractor to also perform the interior painting scope.

You may also ask them to borrow some of their equipment or labour to do something extra, like jackhammering or drilling something out that was not part of their work.

- (ii) Inclusions and exclusions - This relates to the quality of your tender documents. If there is anything missing or unclear in the tender, your Contractor may tell you later that they did not include something that you assumed they did. Whether or not you write them a change order for it is up to you – review the documents again. Sometimes giving them an extra is a matter of politics, to help ensure their continued cooperation.
 - (iii) Change to design – if you decide to re-think the design after the Contractor has started work, they may need to re-do some things they've already installed. This may also affect other contractors as well.



(iv) Backcharges - occasionally your Contractor will fail to perform something you expected, or damage the work of others, which requires you to spend money to fix it.

Give them the opportunity to fix it themselves, if possible, within a certain amount of time – but **definitely** resolved before their contract is paid out in full! This is why its important to do interim inspections of the work, and keep an appropriate deficiency holdback for them.

If they do not fix the deficiencies to your satisfaction, then you can get the work done by others, and charge it back to the contractor. You need to notify them in writing of this action before charging against the contract.

(v) Material escalation cost – an unexpected market change might be something you are willing to consider paying the contractor for. An example is the drywall tariff that was levied in 2017, which increased the cost of board by nearly 50%.

(vi) Schedule delays – They usually plan for unimpeded work, so if they are obstructed from being able to perform, they may ask you for additional travel time, living costs, efficiency costs, etc. You will need to negotiate this with them first, as in some cases, contractors ask for more than is reasonable.

- h) They can either quote it lump sum cost, or give you a unit rate – hourly or by area/item. If they give you a unit rate price though, you need to measure and watch the work. Hourly work is easy to lose track of, and your bill may be much larger than you expect it to be. However, it may be the easiest method for complicated changes with uncertainty involved.
- i) Once you know the amount of the change, **write a formal change order** to the Contractor using the “Contract CO Form”, located in your Sample Project folder under “Contracts/Changes”. The Change Order becomes a legal document, an addendum to the original contract, so the information you include in it should be in contractual language – clear and concise.
- j) Record the amount and details of all change orders written into your ***Change Tracking Log***, located in your Sample Project Folder under “Contracts”.



6) Invoice Payments

- a) **Progressive draws** - Your Contractor may either bill you one time at the end of their scope of work, or do interim draws against the contract. How you arrange this is scope-specific and project-specific. Small contracts usually wait until the job is done, but a house builder may take 4+ months to finish so they can't usually carry those costs themselves. There also may be a deposit required to get them started with material purchasing.
- b) At each billing period, do an **inspection** of the work to determine if they are billing you reasonably, and if anything they have performed is deficient in quality. Enter the inspection date and deficiencies noted into your ***Quality Assurance Log*** which is in the Sample Project Folder under "Quality Control".
- c) **Advise** the contractor that you either approve their invoice, or, if you feel they are over-billing or have deficiencies, that they need to resubmit.
- d) Remember to **retain the deficiency holdback** from each progressive draw and put that money into the joint account. You may wish to make contracts under a certain amount exempt – say \$10,000.
- e) Make payment promptly, according to your contractual agreement.

7) Close-out

- a) When the Contractor's work is finished, they will request final payment. It is your last chance to resolve any outstanding deficiencies, change orders, back-charges, etc. Do a full review of the drawings and the construction before agreeing to pay out in full. This includes the delivery of any warranties or equipment manuals.