

## THE CONSTRUCTION CONTRACT

The contractor selection process is not complete until you have negotiated the terms of the contract. Wait until an agreement has been reached and a contract is signed before notifying other competing bidders that they have not been selected. Your lawyer should carefully review every detail of the contract so that it is clear what tasks the contractor will carry out, and which party bears legal responsibility under different situations that might occur. Two of the most important things to clearly specify in a construction contract are the price and construction timetable.

### PRICE

The two most common methods for determining the price in a construction contract are 1) a fixed or guaranteed maximum price and 2) a “cost plus a fee” price:

#### 1. With a **Fixed or Guaranteed Maximum**

**Price** a fixed price for the work has been agreed to up front, and most of the risk of cost overruns falls on the general contractor. With this type of contract, make sure you have a well thought out plan with complete construction drawings that specify all details of the project. Otherwise, if costs go up, some contractors might try to cut corners. To avoid that risk, you must rely on the contractor’s trustworthiness and your architect’s construction management skills to ensure the quality of the final product. Also, be aware that with a fixed or guaranteed maximum price project the contractor often builds a cushion into the price to protect his profit margin in the event that building costs increase.

2. With a **Cost Plus a Fee** contract, you pay the builder whatever it actually costs to construct the building plus a fee. The fee component can be a fixed amount or a percentage of the project’s cost. A cost plus arrangement shifts the risk that costs will rise to the client rather than the contractor. One way to limit your risk using a cost plus pricing method is to place a ceiling on total costs and to agree to a fixed rather than variable fee.

Keep in mind that even with a fixed or guaranteed maximum price contract, your costs can rise during construction because of unexpected conditions, changes you decide to make, and even provisions in the construction contract which allow the builder to pass on certain costs to you.

### CONSTRUCTION TIMETABLE

Timing is very important to a child care program, since opening dates must meet parents’ needs. The contractor will prepare a construction schedule with specific milestones to help you determine whether the project is on schedule – such as pouring of the foundation or completing the framing; or demolishing walls in an existing building.

You may want to write bonuses and penalties into the contract to give the builder a financial incentive to meet certain goals. For example, if you need to open on September 1<sup>st</sup>, offer a bonus if the project is completed by August 1<sup>st</sup>. The contractor may want provisions that protect him from penalties if a construction delay is caused by circumstances beyond his control, such as strikes by laborers, adverse weather conditions or changes made to the plans during construction.

## GROUNDBREAKING

The process of planning a facility improvement project is long, challenging, and time-consuming. So it is important to mark each milestone with a celebration. Take the opportunity to pat yourself on the back and thank your supporters. Few celebrations will be as momentous as the one marking your progress from project planning to actual construction. Traditionally such an event is called a “groundbreaking” because, in a new construction project, the first step is to dig a foundation. For a renovation project you might unveil a sign announcing the construction project, listing the funders and planning partners.

## DURING CONSTRUCTION

When you are ready to begin construction, organize a meeting with all the participants to formally launch the project and:

- Introduce team members to each other.
- Clarify roles and responsibilities of team members, especially if multiple representatives are from one organization. Make sure your organization designates a single point person for the other team members.
- Ensure agreement about the construction schedule, communications procedures, decision-making processes, etc.

### CONSTRUCTION ADMINISTRATION

Construction administration duties can be carried out by the project architect or a construction manager, or might be shared between the two. This will depend on the size and complexity of the project and on the capabilities of your development team. Large architectural firms have staff or subcontractors who specialize in construction administration, and it is common for an architectural contract to include construction administration. If the architectural firm is small, you might need to add a construction manager to your team.

Construction administration includes:

- **Design Consultations:** The architect should be available to clarify the contractor's questions about the construction drawings and materials specified. These issues can be very time-sensitive so it is important that your architect is responsive.
- **Construction Monitoring:**
  - Regular and frequent **site visits** ensure the project is proceeding according to schedule, that the building and materials are consistent with the plans and specifications, and that the construction is of sufficient quality.
  - **Weekly project team meetings** are generally held at the construction site to review progress and address any problems or questions that arise. These meetings often deal with details such as the delivery of materials, scheduling of subcontractors, change orders and the pace of construction spending.
  - **Monthly project oversight meetings** are where the decision makers address more strategic questions that could affect the construction process – such as how to make design changes to cut costs if change orders are using up the construction contingency.

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