

## You Don't Say...

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It's inevitable, at some point in time you're going to have to hire a contractor to carry out a project or simply to complete a portion of it. Remember, the best use of your time and talent is to manage and operate an agricultural enterprise. Therefore, unless it is a small project or fix you're better off hiring the work done. This is especially true if it requires specialized tools, equipment, or expertise – you don't want to be messing around with that 3-phase, 480-volt line.

Granted, hiring a contractor can be a source of stress and anxiety. It's unfortunate that a few unscrupulous individuals have forever tainted the public's general perception of contractors. However, it is possible to have a mutually beneficial and honest relationship with a contractor.

Just as in real estate where the three most important things are location, location, location; the three most important things in contracting are communication, communication, communication. Here, what you *don't* say is just as important, if not more so, as what you *do* say.

**1. Never tell a contractor you aren't in a hurry.** This will almost assuredly move your project to the bottom of the list. A better alternative would be to communicate a timeline, an expectation of project milestones, and a completion date. This gives the contractor some flexibility in scheduling and gives you some assurance of timely completion. Setting milestones – dates by which certain phases of the project need to be completed -- keeps the project moving forward. Without this measure some contractors may start a project just to keep you happy/quiet and then disappear for 3-4 weeks. That said, you might need to exercise a little grace. For example, if your project is inside and this is the first sunny and dry week in two months they may be elsewhere trying to complete other projects that have been stalled because of the inclement weather.

Additionally, you could stipulate a time penalty -- \$X lost per day beyond the date a project is to be completed – as well as “drop dead” dates for initiating and/or completing the project. In this case, if the project was not started or completed by certain dates the contract becomes null and void and you are free to secure another contractor to do the work. Again, you may need to cut them a little slack if the weather has been a factor. Make sure none of these dates are on or over a holiday weekend.

**2. Never tell a contractor they are the sole bidder.** When I worked for the Soil and Water District and

NRCS, it was policy to require at least three bids. This gives you a true appreciation for the market. It also encourages contractors to assemble their bids with a very sharp pencil. Now some of you may have built quite a relationship with a contractor over the years. This is not a bad thing. You call, they come over, get it done PDQ, and for a fair price. However, giving a go-getting newcomer a chance can be a good thing – potentially gives you a good back-up when your primary is not available and it keeps your primary's bids on the up-and-up.

**3. Never agree to a “Gentleman's Agreement”.** Unfortunately, gone are the days when things could be done on a handshake. This is not only a function of trust but of complexity, as well. There was a time when things were simpler, choices were fewer, timelines shorter, and everyone knew what everybody was talking about. Today, however, there are a myriad of choices and even minor misunderstandings can have major implications. Moreover, who's going to remember specifically what was said or understood three or four months later when timelines get crunched, skies threaten to snow, and tempers begin to flare.

Instead, write out very detailed contracts with specific expectations (completion dates, milestones, etc.) and a list of expenses and payment schedules (more on this coming up).



*Effective communication will help ensure you get the project you want, when you want it, and how you want it.*

**4. Never tell a contractor your budget.** If you do they will usually make the bid fill the budget even if it could be done for less. Better to have them submit a bid for the work you need to have done. Better yet, have a copy of the design that you give to each bidding contractor (see #2). That way you can compare apples to apples when reviewing the bids. You may also want to provide a bid sheet that further breaks the bid down into labor, materials, and activities (sitework, erection, etc.). This gives you even more discernment when comparing bids.

Many contractors will up-charge on the materials. This is not unreasonable as they will be expending time, effort, and possibly equipment to get them onsite. Expect

10% - 20% and this may be a function of the size of the order. Smaller orders may have a larger upcharge because of fixed costs – it takes just as much time and effort to drive down to the lumber yard and haul back six-2x4's as it does a full pallet of them. You could secure the materials yourself to save the upcharge. However, after doing this a few times you may come to appreciate the contractor's efforts.

**5. Never delegate materials choice to the contractor.**

This differs from the previous paragraph in that this is the selection of specific materials and finishes. This is where you tell them what materials to purchase; even where to purchase it and the price to pay for it. In some cases this may not even be an option as the engineer may have already specified in the design documents the particular materials to be used to meet structural standards.

In the absence of this the contractor may use materials leftover or recycled from other jobs; that may be inferior, overpriced, or just plain not right for the job. You may ask the contractor for his input or experience with certain materials, but ultimately it is your choice and responsibility.

**6. Never pay a contractor upfront.** While it is necessary to pay something upfront, like earnest money, to secure the contract and for the contractor to purchase the materials, it is foolhardy to pay the entire amount upfront. You have now given away all your leverage requiring them to do a good job and complete the work. Worse yet, they may disappear and not do any of the work.

This is where detailed contracts and payment schedules are worth their weight in gold. Usually a payment schedule is based on reaching a milestone in the project and often matches up with quarters or thirds of the project. Once a milestone is completed (foundation poured, frame erected, etc.) a check is cut to the contractor for ¼ or ⅓ of the total amount. If appropriate, you may require a passing inspection on the milestone prior to payment. Withhold final payment until the project has been completed to your satisfaction. Satisfaction may include passing a final inspection, and in the case of CAFO projects, an in-your-hand copy of the as-built.

Make every effort to be sure any subcontractors on the project are getting paid. Just because you're paying the general contractor doesn't necessarily mean the subs are getting paid. Failure to pay the subs could result in a lien on your property even if you've paid everything in full. A better practice would be to pay the subs directly, but this should be spelled out in the contract.

**7. Never, ever, hire anyone illegally.** Some contractors may offer to bring in people who aren't legally licensed to do the work to keep costs down. DON'T DO IT! You open yourself and your business up to a huge liability,

especially if someone gets hurt. Ask your contractor to provide documentation of a business license and proof of insurance. Likewise with any subcontractors brought in by the general contractor (GC). They should be licensed and covered under their own policy or the GC's policy.

There you have it. Seven practices to avoid when working with contractors. They aren't difficult but they can be missed if you're in a hurry. Take your time. It takes time to do things right. If you're not careful you may get taken advantage of.

Conversely, most contractors are honest and hardworking. They have a business to run, employees to pay, and often, a family to take care of. Don't be difficult, pay promptly for work successfully completed, and don't ask for freebies outside of the contract ("Since you're here could you..."). It's right and fair for them to make a profit...it just doesn't all have to be off of you.

**Bonus Tip:** Having worked on both sides of the contract I can tell you that little things to keep the crew happy go a long way toward successful and timely completion of a project. Coffee & donuts or fresh cookies at break-time, even iced tea and lemonade on a hot day cost little but score big points and usually yield an extra effort to make sure things are done just the way you like them. It also means they may move your name up on the list the next time you have a project to do. (Truthfully, no one wants to go work on the project of the local curmudgeon who tries to micromanage the work and reprimands anyone taking a breather.)



*Good contracts start and end with clear expectations on the part of BOTH parties.*