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Construction contracts

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Representing an owner or developer of real estate in negotiating and drafting a construction contract is one of my favorite professional tasks. I attribute this to my growing up in a north of Boston family that owned a building materials company in Lynn and also built and owned real estate in the north shore.

The objective in negotiating and drafting a construction contract is to require the general contractor (GC) to build the project on time, on budget, and pursuant to a detailed and coherent set of approved plans and specifications.

The GC should be rewarded in the event he finishes ahead of time but he should also be penalized for each day he is late in delivering a completed project.

The GC should not be able to front load his progress payments or to extract numerous change orders that increase the contract sum.

The GC should be required to obtain a payment bond and a performance bond in the event the owner or lender require a bonded project.

The GC must provide adequate insurance including but not limited to liability and workman's compensation.

The attorney for the owner or developer should control the drafting of the construction contract. Too often, the GC drafts the contract and gets the owner or developer to sign it. The contract favors the GC and fails to protect the owner or developer.

The most important part of the process, however, is to select, by a bidding procedure, the best GC for the job. As the saying goes, if you lie down with dogs, you get fleas! In a perfect world, the owner or developer will select a GC with whom he has worked in the past but, of course, this is not always possible.

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