

A GUIDE FOR:

FUTURE

HOMEOWNERS

“How To Select A Contractor”

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Disclaimer

Buyer Beware

Most contractors are competent, honest, hardworking and financially responsible. However, contractors are in business to make money. A responsible and informed consumer knows that the "Buyer Beware" principle can help prevent or minimize frustration, disappointment and financial loss when preparing to make a major purchase decision. By carefully considering what you want to have done to your property, what it will realistically take to do the job, and what kind of professional should be brought in to do the job, you may avoid many of the headaches often associated with construction.

Planning is the first step in the construction process. Before you do anything, select contractors, secure loans or get permits, have a clear idea of exactly what you want, how you are going to get it done and how it is going to be paid for.

WHAT DO YOU WANT DONE?

Plan carefully exactly what you want done, what you want it to look like when finished, and how much you have to spend. Thoughtful, carefully prepared plans and specifications are critical in getting accurate bids from contractors. You may wish to seek the advice of an architect, engineer or draftsman. Remember that, in general, if something you want is not shown on the plans or stated in the specifications, you will not get it. The price of an architect or engineer may be cheap compared to the mental cost of not getting what you thought was in the plans.

PLANNING FOR ENERGY CONSERVATION

Because of rising energy costs, interest rates, and housing costs, it is advisable when planning your home to consider its impact on overall energy use. Some basic energy conservation measures that can be included in your plans are weather stripping, caulking of doors and windows, efficient air-conditioning systems, solar hot water heaters, location and type of doors and windows, landscaping to shade the house and many other considerations. An architect or energy consultant might be the best people to discuss these considerations with. A few dollars spent in energy planning could save thousands of dollars over the life of the building in energy cost. Without consideration for inflation or interest a \$20 per month energy savings will mean a \$4,800 savings over 20 years. If it cost \$2,000 extra construction costs to get the \$20 per month energy savings you would still be \$2,800 ahead. Many energy savings can be had just by how you design your home without any significant added cost.

You should also contact the building department of Public Works, Guam Power Authority, Public Utility Agency of Guam and the Guam Energy Office for information regarding energy conservation programs and ordinances that may affect your plans.

PAYING FOR YOUR PROJECT

You may need to obtain financing for your project through a personal loan, a home equity loan, a credit union, an insurance policy, a bank or savings loan. Your contractor may be able to help you secure financing, but it is important for you to investigate different sources of funding to compare the amount, interest rate, terms, service, and tax considerations.

Note: If you cannot pay for a project without a loan, it is a good idea to add a clause to your contract stating that it is valid only if you obtain financing at a particular rate.

When deciding among the various loan sources, you should ask about possible Pre-payment penalties, interest rate, the difference between a 15 vs. 30-year payback period, requirements for payback in case you sell the property before you pay back your loan, and required and optional loan insurance coverage.

Lending institutions can be a good source for getting recommendations on contractors.

Selecting a Contractor

How big your project is makes a difference in selecting a contractor. A given contractor might do great work on small projects under \$50,000 and have nothing but problems on projects over \$100,000. Be sure your contractor has done successful projects of the same size as your project.

The type of construction you are doing is important in selecting a contractor. If you are building a block house be sure your contractor has plenty of experience in block houses, the same with concrete. There are starting to be a lot of specialty construction materials available for home and commercial construction. Be doubly sure that your contractor has experience in this type of material before you sign any contract. Some manufactures will only warrant their material if it is installed by certified contractors.

The quality of workmanship you are looking for is important in selecting a contractor. Be very clear on the quality you expect. If you receive a bid that is significantly below you other bids it could be that you will receive a lower quality job from that contractor. In constructions as much as any business you get only what you pay for.

Ask for and check references.

Get personal, financial/ business and work references.

With personal references you want to know a company or owner has standing in the community, belongs to civic or religious organizations such as the PTA, Rotary Club, Chamber of Commerce, Knight of Columbus, etc. Find out if the company or owner has been around for a while.

It is an overall picture you are trying to get about your contractor. Any one reference can be colored by business relationships, or the last time the reference dealt with the contractor he did not have a problem. Always get at least three (3) references in each category.

Work References form others they have built for.

- Are they happy with the work?
- Is the quality what they expected?
- Was the contractor easy to deal with?
- Were problems taken care of fast?
- Did they finish in the allotted time?
- Did they leave the area clean?
- Was it clean (safe) during construction?
- Did they come back fast without complaints for warranty work?
- Did they return calls in a timely manor?
- Did the contractor dandle himself in a business like manor?

Confirm that they have a license.

Unlicensed contractors will try to sell you on lower prices. They can offer lower prices because they are using lower skilled labor, not paying for insurance, probably not paying payroll or income taxes. If you have a problem with the unlicensed contractor he will probably have no more respect for you than he does for the law.

Get a copy of their insurance coverage.

Does your contractor have adequate insurance? If he does not have workers compensation insurance or it runs out in the middle of you project you could be paying the medical and legal bills if a worker gets hurt during construction. If the contractor does not have liability insurance what happens to your insurance rate if your neighbor's child get hurt on your construction site? If he does not have or has too little liability insurance you could be making up the difference out of your own pocket.

Check with the Contractor's License Boards for complaints. The Contractor's License Board keeps records on complaints against contractors. They can tell you if complaints have been filed, how many complaints have been filed, the nature of the complaints (poor workmanship, failure to complete projects on time, if the complaint(s) was resolved, if any fine or disciplinary action was taken, etc). Even the best contractors have complaints.

Remember A GOOD CONTRACTOR CAN HAVE A BAD JOB. It is how he took care of his problem that is most important.

UNLICENSED CONTRACTORS

Licensed vs. Unlicensed Contractors

There are unlicensed contractors on Guam. You are putting yourself in financial and legal jeopardy if you use an unlicensed contractor. If the contractor fails to perform, you may have very few recourse's against them. If a worker is injured you may have to pay all the medical bills, if the injured worker sues, it will probably be you he sues. Fines up to \$10,000 can be imposed on both the homeowner and the unlicensed contractor.

GOOD SOURCES OF CONTRACTOR INFORMATION

Contractors' License Board can provide information whether or not a contractor is licensed and what kind of work he is licensed to do, and if any complaints have been filed against them.

Architects and Engineers work with a variety of contractors over a number of years and should have a good idea about who is good at a particular type of work.

Construction Material Suppliers such as concrete, block, hardware stores, and lumberyards have a good idea about who is doing the most work and who pays their bills on time.

Friends, Neighbors and Relatives are great sources of information. They will tend to give you straight information uncolored by any potential future business relationship.

Other Contractors can be good sources of information. Contractors generally do not like to bad mouth competitors, however, commercial contractors might recommend residential contractors because they probably do not directly compete. Also sub-contractors are a good source because they work with a variety of general contractors, and like you, they want to do business with companies that pay their bills, are easy to get along with and follow the rules of good business.

Lending Institutions are a good source of information. Their loan officers are dealing with a variety of contractors daily. They hear from their borrowers if there are any problems and they send out inspectors of their own to check that construction phases are completed before payments are made.

OWNER/BUILDER

It is all a question of how much you know and how much responsibility you have the time and patients to handle. "Owner/Builder" describes a situation in which the homeowner becomes the general contractor. As an "Owner/Builder" you, not the person(s) you hire, assumes responsibility for the overall job, which may include such things as permits and code compliance, local and federal taxes, worker's compensation, and other legal liabilities. Unless you are experienced in construction or have the time and patience to learn it is best to leave these types of matters to your contractor.

BIDS

A bid is an offer to do work at a set price based on the information provided. It is advisable to get at least three written bids using identical plans and specifications so you can compare prices and contractors.

PLANING, PLANING, PLANING!!! The detail of your plans and specifications are very important in receiving complete accurate bids. The plans are drawings of your structure that show dimensions of buildings, size of cabinets, location of electrical and plumbing, etc. Specifications are written documents that state the way a structure is to be built, The quality of material to use, color, acceptable material manufacturers and how material is to be installed. Sometimes the specifications are written on the plans and are not a separate document. A good set of plans and specifications leaves no doubt as to what quality of material is to be used, the method of installation(if important),

and exactly where the material goes.

Whatever is left off the plans and specifications will always cost you more to have added later.

Make sure all bids are based on the same plans and specifications.

Discuss the bids in detail with each contractor making sure you have a "meeting of the minds" on just what you expect. A common complaint is quality of workmanship. The homeowner wanting better and the contractor says he provided "Guam Standard" work. What "Guam Standard" seems to indicate is low quality. So if you don't want the contractor to decide "Guam Standard" for you, you need to make your quality standards clear and in writing before you get your bids.

Ask your bidders if they have any suggestions or ideas on how to build your structure cheaper with the same quality or a higher quality for the same or lower price.

Beware of any bid substantially lower than the others. It probably indicates that the contractor has made a mistake or is not including all the work quoted by his competitors. You may be headed for a dispute with your contractor if you accept an abnormally low bid.

"If it sounds too good to be true, it probably is!!!"

THE CONTRACT

You are about to commit yourself to 30 years of mortgage payments and interest. A typical mortgage over thirty years will cost you twice the initial loan amount. For \$100,000 you will pay back \$200,000 over Thirty years. For that kind of money and the difference between a house that appreciates in value vs a house that depreciates in value over the 30 years, I think \$1-2,000 for a lawyer to look over your contract and construction agreements is not very expensive.

Assume Nothing

Anything you sign could be used by a contractor as authorization to go forward with your project. This means that any bid you sign may become a contract. Do not sign anything until you completely understand what you are signing and agree to all the terms.

Make sure everything is in writing.

The contract binds you and the contractor to the project. A written contract protects both you and the contractor. All agreements should be put in writing. It should include everything you have agreed upon and the extent of the work to be done.

Get all oral promises and agreements in writing and spell out exactly what the contractor will and will not do. Don't forget it should also spell out what you are responsible for. If your contractor tells you it is not necessary to write your agreements down or keeps telling you that he will do it later, look out, you are headed for trouble. If all your agreements are not in writing you could have a difficult or impossible time in getting what you thought was part of your contract.

If you intend to do some of the work yourself or to hire another contractor to do some work, this should be spelled out in your contract.

Get a copy of the contract immediately after you sign it and keep it for your records. Never sign a blank or partially blank contract. Both you and the contractor are bound by everything set down in the contract so read it carefully before you sign.

If you have any questions or don't understand something do not sign the contract until you fully understand and your questions have been satisfactorily answered.

Your Contract Should Include:

Financial Terms

The contract should include the total price.

Schedule of Payments. Make sure the payment schedule is based on the work completed. Never let your payments get ahead of the work actually performed by the contractor. My experience is that as soon as you make an advance payment to a contractor that will be the last time you see him until he needs more money.

Under what conditions payments are to be made.

Is there a cancellation penalty?

Are there liquidated damages? (Failure to complete on time)

Down Payment, if any, should be specified and normally never exceeds 10% of the contract amount.

Retainage of 10% is normally held until after the project is complete and the owner has accepted occupancy. Sometimes retainage is held for a 60 to 90 day period after the project is accepted.

SCHEDULE OF EVENTS

Starting date based on the "Notice to Proceed." The notice to proceed is the document that says all terms and conditions of the agreement are acceptable. Failure to start construction within an agreed upon time period should constitute a breach of contract.

Dates for completion of major items like the foundation, outer walls and roof. Failure of your contractor to meet these dates could mean problems and that your completion date will not be met.

Finishing date, such as 120 working days after the Starting date. (I prefer a real date like April 3, 1997. No counting is necessary nor questions about what is or is not a "working day".) The larger the project the more detailed the schedule should be.

CHANGE ORDERS

After the contract has been signed your contractor, or you, may offer suggestions that will change your original ideas, or unforeseen items may appear. If you have added work, substituted material or equipment, or changed the completion date, make sure that a clearly worded and signed "change order" reflects this. The "change order" becomes a part of your contract and should be attached to it.

The change order should:

1. Be in writing.
2. Be signed by both the owner and the contractor before any work is started.
3. Clearly list all changes, increase or decrease in cost, new or different material, any change in completion date.

Building Codes and Permits

The contract should call for the work to be performed in accordance with all applicable building codes. Keep in mind that building codes only set minimum safety standards for construction; they do not protect you against poor quality work.

The person who obtains the permit is considered to be the contractor and is therefore liable if the work does not comply with the building codes. Your contractor should obtain the necessary building permits and pay for them as part of his work. Otherwise you may be held legally responsible for failure to obtain the required permits. Also, the contractor is in a better position to know the permitting requirements and how, when and where to obtain them.

Warranties

Guam Public Law 21-18, Article 5, Homeowners' Warranties, in general protects new homeowners for a period of 18 months from shoddy construction or defects that might appear. This warranty is in addition to any other warranties established by law, equity or by agreement.

Individual items that go into your project may have warranties of their own, such as floor covering, windows, hot water heater, air-conditioning units, etc. Be sure to collect these warranties and keep them with your other important papers. Termite protection is an important warranty and is usually spelled out in the contract. Have it in writing that all material, product or equipment warranties are to be turned over to you before the retainage is released.

Bonding

With a payment and completion bond if the contractor is unable to complete the job or the job goes sour, the bonding company will complete the job. Contractors must be financially solvent, and have a proven track record to obtain a payment and completion bond (or put up cash or property equal to the cost of the project). Inability or unwillingness of a contractor to obtain this type of bond may be a signal that the contractor cannot qualify for bonding, or is otherwise unsuitable. On the other hand, many small contractors who may be competent are unable to acquire payment and completion bonds because they don't have the financial reserves.

This type of Bonding usually cost between 1 and 5% percent of the total job costs. You need to weigh the cost of a bond to the security it provides. Some lending institution require Bonding before they will make a loan.

Insurance

Be sure your contractor has workman's compensation insurance. This is a legal requirement. You should require your contractor to carry liability insurance as part of your contract.

CONSTRUCTING THE PROJECT

Permit, Plans and Specifications

The new "One Stop" in Anigua is set up to provide a single location to get all building permits and clearances. Five (5) complete sets of plans and specifications are required for the permitting process. Any changes to you plans after your project has started, such as closing in your carport or relocating your sewer line, have to be reviewed by One Stop. One Stop has a very good pamphlet on its services and you should read it carefully before submitting your plans.

Inspections

Public Works and the Building Codes require all projects to be inspected at certain points during construction, such as, before concrete is poured, before electrical and plumbing is covered up, when walls are erected, when the roof goes on, etc. Require a copy of all inspections in your contract. This lets you know of any problems that might need your attention. Remember the building inspectors are looking for MINIMUM compliance with codes not quality workmanship. What is acceptable by code may not be up to the standards you want.

Once your job is complete your contractor will call for a final inspection by Public Works. Once again the building inspectors will only be looking for minimum standards. Make sure that you also make a final inspection or "walk through," with your contractor. If you find any items that are incomplete or not to contract specifications make sure it is noted on a "punch list." Don't sign off for final payment until the punch list items are taken care of.

Keep a Job File

You should keep a file of all papers relating to your project. It should include:

1. The contract and any change orders.
2. Plans and specifications.
3. All bills and invoices.
4. Canceled checks.
5. Lien releases from your contractor and his subcontractors and material suppliers.
6. Letters, notes of phone calls or conversations and correspondence with anyone, especially your contractor, about your project.
7. Building Permit, Inspection reports, Occupancy permit, Notice of substantial completion, all legal or government documents.
8. Warranties

It is also a good idea to keep a record of each subcontractor who works on your project, the work performed, and length of time on the job. When material suppliers make a delivery, write down the name of the company, the date, and a general description of what they delivered. When you receive lien releases from subcontractors or material supplier, check them against your list. That way you will have a record of who has and has not been paid.

Safety

A clean job is a safer job. There is no such thing as a safe construction site. But a clean site truly does lower the possibility of accidents. Remember the workers are only there during the day. At night the neighbors kids probably play there. A piece of wood with a turned up nail or a ladder up to the roof can cause pain, suffering and financial damage to the child, the new neighbor, and YOU. Require daily clean ups of your project in the contract. Be sure the contractor understands this requirement before the contract is signed.

LEGAL CONSIDERATIONS

liens

A lien is a legal claim on another's property a security for the payment of a just debt. The law provides that anyone who furnishes labor or materials to your project can record a "Labor Lien" or "Mechanic's Lien" against your project if they are not paid. Even if you have paid your general contractor in accordance with the contract, if he or she fails to pay any subcontractor or materials supplier who performed work or supplied material in connection with your project, you run the risk of having a Lien filed against your project and foreclosure proceedings started. You could be required to pay a bill twice to keep from losing your home. If a lien is filed, you can "post a bond" against the lien, however, if you want to sell your property you will have to satisfy the lien before you can sell.

Protect yourself from liens against your home in the event the contractor does not pay his subcontractors or suppliers. Add a release of lien clause to your contract requiring the contractor or subcontractor and suppliers to furnish a certificate of a waiver of lien before they receive payments. If you have obtained financing for your project, the bank or lending institution may require that the contractor, subcontractors and suppliers verify that they have been paid before releasing funds for subsequent phases of the project.

Dispute Resolution

The Contractors' License Board governs the issuance of licenses to contractors and enforces contractor compliance with the applicable laws of Guam. If a contractor breaks any laws of the Territory of Guam the CLB can impose a fine up to \$10,000 and/or suspend or revoke their license up to two years. If a problem does arise, the CLB can help mediate between the homeowner and the contractor. If the contractor is found to be in violation of the law, the CLB will take action against the contractor.

Inserting an Arbitration clause in your contract is a reasonable precaution and could enable you and your contractor to resolve disputes more quickly and enforce your warranty without litigation. Arbitration may be cheaper and faster than some types of litigation. If you have an arbitration clause in your contract and you pursue legal action in court you may nullify the arbitration clause. It is also possible that the court will not hear your case until the arbitration is over.

You may have legal rights and remedies beyond these referred to in this booklet. You may want to consult an attorney for advice before signing your contract.

There are several agencies listed in the back of this booklet which may be of assistance to you.

AVOIDING PROBLEMS

Some warning signs of possible trouble ahead:

- The contractor does not have a license.
- The contractor can not verify his insurance or ability to bond.
- The contractor does not return your calls.
- You can't verify the name, address and telephone number or credentials of the contractor.
- The salesperson tries to pressure you into signing a contract by using scare tactics, intimidation or threats.
- The company or salesperson says your home will be used for advertising purposes, (as a model job, or show-house, or by display of their sign) and that you will be given a special low price.
- The contractor tells you this is a special price available only if you sign the contract today.
- The contractor doesn't comply with your request for references or the references have some reservations about the contractor's work.

If a contractor has been on island for several years he should be able to provide you with lots of references. If he can only give a couple references, check him out closer.

- You are asked to pay more than 10% of your project in advance.
- You are asked to pay cash to a salesperson instead of by check to the company.
- You are asked to sign a completion certificate for the job by threat, or trick, or personal appeal, before the job is properly completed.

The best way to avoid problems is by planning, following the recommendations of this booklet and keeping the lines of communications with your contractor open.

WHAT IF PROBLEMS OCCUR?

In spite of all the precautions you have taken problems will sometimes occur with the work on your project. If problems occur, either during construction or afterward, contact your contractor first and express your concerns to him directly. Usually he will make corrections willingly. Make sure all problems or complaints are addressed in writing directly to the contractor, and keep a copy so that you both have a record. However, even with the best of intentions, problems sometimes arise that can not be resolved between you and your contractor. Should the contractor refuse to make corrections, you can file a complaint with the Contractors' license Board, Building Permits Division Public Works, Arbitration, Small Claims Court, or consult an attorney.

CHECK LISTS

Some things to consider-

DO's

1. Do plan your project carefully. The more you know, the less likely you will have a problem.
2. Do shop around before hiring a contractor. There are over 900 licensed contractors on Guam. If you only talk to one or two, you are doing yourself a disservice.
3. Do get at least three written bids on your project.
4. Do provide accurate plans and specifications for bids from contractors.
5. Do check with the contractors' License Board to see if a contractor is properly licensed.
6. Do check out all potential contractors.
7. Do look at work the contractor has completed within the last year.
8. Do ask your contractor to prove he can furnish a performance or completion bond if required.
9. Do consult with more than one lending institution regarding the type of loan to obtain.
10. Do make sure your contract provides for at least a 10% retention.
11. Do make sure everything you and your contractor have agreed to is included in your contract.
12. Do ask your contractor about inconveniences that may occur and plan accordingly. (Will you be able to store your furniture in your new home before it is finished? Will there be water, sewer, or power outages once you move in? How about mud during construction?)
13. Do keep a job file.
14. Do make sure you receive lien releases from your contractor.
15. Do make frequent inspections of the work, including a final walk-through.
16. Do consult an attorney if a lien is placed against your property.
17. Do try first to negotiate with the contractor if problems or disagreements occur.

More things to consider....

DO NOT'S

1. Do Not hire an unlicensed contractor.
2. Do Not hire a contractor without first shopping around.
3. Do Not act as an owner/builder unless you are experienced in construction and are prepared and willing to accept the risks.
4. Do Not sign anything until you completely understand it and agree to the terms. A \$100,000 debt is worth talking to a lawyer about.

8. Do Not hesitate to ask questions of the contractor.
9. Do Not make final payment until you are satisfied with the job.
10. Do Not hesitate to call the Contractors' License Board if you have questions about your contractors performance.

Be Sure Your Contract Includes:

1. The name, address and license number of the contractor and the name and registration number of any salesperson who solicited and negotiated the contract.
2. The dates (not just number of working days) when the work will begin and be ready for occupancy.
3. A description of all the work to be done, a description of the materials and equipment to be used or installed, and the price for the work.
4. A schedule of payments showing the amount of each payment in dollars and cents, and the work that is to be completed before the payment is made.
5. If you feel you need, or your lending institution requires it, a performance of completion bond.
6. A copy of your contractors Workers Compensation and Liability Insurance.
7. A notice to the owner regarding Guam's Lien Laws and the rights and responsibilities of a the owner.
8. A requirement for a general release of Lien from the contractor before any payments are made.
9. A description of what constitutes start of work and completion.
10. A notice that the failure of the contractor, without lawful excuse, to commence, continue, or complete work by certain dates constitutes a violation of the contract.

DISCLAIMER

This publication is meant to be instructional, to provide information to assist the consumer in dealing with building contractors. The information in this publication is believed to be accurate at the time of its production. The Contractors License Board assumes no responsibility for any damage that arises from any action that is based on information found in this publication. Questions regarding civil Law and the civil courts system, should be addressed to an attorney.

FINAL NOTE

Before making any final decisions, or if you have a problem, you may wish to consult additional information resources.

The Consumers Resource Handbook
Free copy by writing:
Handbook
Consumer Information Center
Pueblo, CO 81009

Attorney General's Office
Suite 2-200F Judicial Center Building
120 W. O'Brien Drive
Agana, GU 96910
Phone: 475-3324

"One Stop" Building Permits
855 S. Marine Drive
Anigua, GU 96910
Phone: 475-4640

Dept. of Land Management
One Stop Building, Anigua
P. O. Box 2950
Agana, GU 96910
Phone: 475-5263

Guam Telephone Authority
P. O. Box 9008
Tamuning, GU 96913
Phone: 646-5525

Guam Energy Office
1504 E. Sunset Boulevard
Tiyen, GU 96913
Phone: 477-0557

P.E.A.L.S. Board (Professional Engineer, Architect & Land Surveyors)
718 N. Marine Drive
East West Business Center, Suite 203
Upper Tumon, GU 96931
Phone: 646-3131

Contractors License Board
542 N. Marine Drive, Suite A
DPW Compound
Tamuning, GU 96911
Phone: 649-2211

Guam Contractors' Association
718 N. Marine Drive, Suite 203
East West Business Center
Upper Tumon, GU 96931
Phone: 647-4840

Guam Power Authority
P. O. Box 2977
Agana, GU 96910
Phone: 647-5787

Guam Waterworks Authority
P. O. Box 3010
Agana, GU 96910
Phone: 647-7811

Environmental Protection Agency
15-6101 Mariner Avenue, Tiyen
Barrigada, GU 96913
Phone: 477-1558

Guam Housing Corporation
P. O. Box 2930
Agana, GU 96910
Phone: 475-2919