



Monthly News Letter – May 2011
Contracts – Cost Not To Exceed (#3 of a four-part series)

The Cost Not To Exceed Contract is similar to a Stipulated Sum Contract in that the contractor should prepare a detailed estimate for his own use and prepare accurate documents reflecting the scope, identifying materials to be used, and plans to be followed. The Cost not to Exceed Contract can be "Cost plus a fee" or "Fixed Price". I will discuss the "Fixed Price".

This contract is used when the budget is set and the cost of the project cannot exceed this amount. Usually, the contractor has prepared an estimate and arrived at the total cost of the project. Also, there may be variables or the contractor has made some assumptions where all the details are unclear. This contract can expedite the project and be a good option as long as the unknowns are limited and the cost has been defined within an agreeable tolerance. The owner and contractor usually agree on a price "Not to Exceed" which is above the estimate to allow for unknowns but put a ceiling on the on the project to satisfy the budget limitations.

There can be problems with this contract when the scope is not clear enough in the beginning or when the final details are substantially different than the original plans. Substantial variations from the original plans that involve additional cost should be documented and dwelt with immediately. This contract is not designed to give the owner a blank check for the final details or design nor the contractor a windfall when the final details cost fall extremely short of the original estimate. The unknowns or final details should be minimal before using this agreement.

This can be a good contract but be aware and be careful! Immediate and upfront communication can save the construction experience.

If you have a construction related question, send me an email david@davidsimpsonconstruction.com and I will do my best to answer it.

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