NASCLA Contractors Guide to Business, Law and Project Management

Utah 3rd Edition

Supplemental forms and links are available at **NASCLAforms.org**
using access code **UT129354**.

National Association of State Contractors Licensing Agencies (NASCLA)
23309 N. 17th Drive
Building 1, Unit 110
Phoenix, Arizona 85027
(623) 587-9354
(623) 587-9625 fax
Visit our web site:
www.nascla.org

NASCLA Contractors Guide to Business, Law and Project Management

Utah 3rd Edition

Revised March 2016

Copyright © 2008, 2012, and 2016 by

National Association of State Contractors Licensing Agencies (NASCLA)
23309 North 17th Drive, Building 1, Unit 110
Phoenix, Arizona 85027

ISBN-10 1-934234-82-6

ISBN-13 978-1-934234-82-2

All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage and retrieval systems beyond that permitted by the United States Copyright Act without the express written permission of the copyright owners.

The information contained in this reference manual is being provided as a service to the construction industry. Although the information contained herein is believed to be correct at the time of printing, changes in laws and regulations occur regularly. It is the contractor's responsibility to review his or her activities with an attorney, accountant, and tax professional. The publishers do not assume, and hereby disclaim, any liability to any party for loss or damage caused by any errors or omissions in this publication.

This publication is designed to provide authoritative information in a highly summarized manner with regard to the subject matter covered. It is sold with the understanding that the publishers are not engaged in rendering legal, technical or other professional advice or service. If legal, financial, technical or other expert assistance is required, the services of competent professionals should be sought.

INTRODUCTION

The construction industry is one of the strongest industries in America. To keep the construction industry thriving and to be a successful construction contractor, you must be knowledgeable in both your trade and managing a business.

Thorough business planning and good management skills are the keys to success in today's market. A solid business plan lays the foundation for your financial, marketing, and management strategies and helps you maximize your potential. Competition can be fierce in the construction industry. In developing a business plan, you analyze your market and competition and understand where you can gain an edge.

Good management skills entail applying knowledge from all aspects of the business to create a successful operation. Effective managers know how to win customers, satisfy employees, meet all legal obligations, and increase the bottom line. If this is where you want to take your business, this book can help you get there.

About This Book

This book is organized into three sections. Part 1 focuses on planning and starting your business. This section will help you formulate a business plan, choose a business structure, understand licensing and insurance requirements and gain basic management and marketing skills.

Part 2 covers fundamentals you will need to know in order to operate a successful construction business. This section covers estimating, contract management, scheduling, project management, safety and environmental responsibilities, and building good relationships with employees, subcontractors, and customers.

Part 3 provides valuable information to assist you in running the administrative functions of your business. Financial management, tax basics, and lien laws are covered. Effective management of these areas of business is vital and failure to give them proper attention can cause serious problems.

Part 1: Getting Your Business Off the Ground

- ✓ Chapter 1 covers tips for writing a business plan and discusses key characteristics of entrepreneurship. A sample business plan is provided in Appendix A and at **NASCLAforms.org** using access code **UT129354**.
- ✓ Chapter 2 describes each type of business entity and summarizes their advantages and disadvantages.
- ✓ Chapter 3 reviews the licensing process and the requirements for getting a license.
- ✓ Chapter 4 discusses insurance and bonding options to protect your business against unmitigated risk.
- ✓ Chapter 5 is your business toolbox with tips on time management, delegation, business ethics, and technology. It also provides information on resources available to assist small businesses.
- ✓ Chapter 6 helps you execute your marketing plan through promotional materials, public relations and effective selling skills.

Part 2: Fundamentals for the Field

- ✓ Chapter 7 shows you how to formulate estimates and evaluate bid opportunities.
- ✓ Chapter 8 takes you through the key elements of contracts and what is needed to make them enforceable.
- ✓ Chapter 9 covers scheduling techniques and the fundamental skills needed to effectively manage construction projects.
- ✓ Chapter 10 explains the importance of understanding customer expectations and handling change orders effectively. The basics of successful negotiation are also addressed.
- ✓ Chapter 11 is your resource for employment law, hiring and retaining of good employees, and discipline and termination of employees if unfortunate employment circumstances arise.
- ✓ Chapter 12 gives you the fundamentals for understanding OSHA laws and setting up a safety program for your company. Environmental considerations and possible permitting situations are covered in the event you are creating or working with environmental hazards.
- ✓ Chapter 13 covers the basics of finding and hiring good subcontractors and establishing good working relationships with them.

Part 3: Office Administration

- ✓ Chapter 14 takes you through the accounting cycle, the preparation and analysis of financial statements and payroll procedures.
- ✓ Chapter 15 gives you federal and state tax basics and helps you understand the forms you need to file.
- ✓ Chapter 16 covers lien law regulations and the process for filing a lien.

Supplemental forms and links are available at **NASCLAforms.org** using access code **UT129354**.

Whether you are studying for the contractors' licensing exam or need an ongoing reference manual for managing your business, the *NASCLA Contractors Guide to Business, Law and Project Management* will serve as a valuable resource. We hope you find this reference useful in your daily operations and that the concepts discussed give you the tools for running a successful business.

TABLE OF CONTENTS

PART I
Getting Your Business Off the Ground

CHAPTER 1: THE PLAN
Being an Entrepreneur 1-1
The Benefits of a Business Plan 1-2
Elements of a Business Plan 1-2
Business Plan Pitfalls 1-3

CHAPTER 2: CHOOSING YOUR BUSINESS STRUCTURE
Sole Proprietorships 2-1
Partnerships 2-2
C Corporations 2-3
S Corporations 2-4
Limited Liability Company (LLC) 2-4
Summary of Business Legal Structures 2-5
Joint Ventures 2-6
Naming Your Business 2-6
Reserving Your Name in Utah 2-6
Contacting the Utah Division of Corporations and Commercial Code 2-6

CHAPTER 3: BECOMING A LICENSED CONTRACTOR
Purpose of Licensing 3-1
Division of Occupational and Professional Licensing 3-1
When is a Contractor's License Needed? 3-2
Licensing Process 3-3
License Renewals 3-4
Reciprocity (Endorsement) 3-4
Disciplinary Action 3-4

CHAPTER 4: MANAGING RISK
Risk Management Benefits 4-1
Insurance 4-1
Property Insurance 4-2
All-Risk Builders' Risk Insurance 4-2
Named Peril Builders' Risk Insurance 4-3
Inland Marine/Equipment Theft Insurance 4-3
Equipment Floater Policy 4-3
Transportation Floater and Motor Truck Cargo Insurance 4-3

Liability Insurance 4-4
Commercial General Liability (CGL) 4-4
Umbrella Liability Insurance 4-4
Director's and Officer's Liability Insurance (D and O) 4-4
Other Types of Liability Insurance 4-4
Business Owner's Policies (BOPs) 4-4
Automobile Insurance 4-4
Burglary and Theft Insurance 4-5
Key Man Life Insurance 4-5
Coverage Gaps and Overlaps 4-5
Employment-Related Insurance 4-5
Workers' Compensation Insurance 4-5
Unemployment Insurance 4-6
Social Security 4-8
Insurance Coverage for Subcontractors 4-8
What is a Bond? 4-8
Bond Language 4-9
Types of Bonds 4-9
Qualifying for a Bond 4-9
Bond Claims 4-10
Laws Governing Bonding of Federal Construction Projects 4-10
State Law Governing Bonding of Utah Construction Projects 4-11

CHAPTER 5: YOUR BUSINESS TOOLBOX

Time Management 5-1
Delegation 5-1
Business Ethics 5-2
Technology 5-2
Small Business Assistance and Loans 5-3
State of Utah Official State Website 5-3
Local Community Colleges & Universities 5-3
Small Business Administration (SBA) 5-3
Service Corps of Retired Executives (SCORE) 5-4
Business.USA.gov Website 5-4
Small Business Certifications 5-4

CHAPTER 6: MARKETING AND SALES

Executing Your Marketing Plan 6-1
Logos, Stationery, and Business Cards 6-1
Promotional Materials 6-2
Public Relations 6-2
Effective Selling Skills 6-2
Organizing the Sales Process 6-3
Your Sales Presentation 6-3

PART II
Fundamentals for the Field

CHAPTER 7: BIDDING AND ESTIMATING
Bid Documents 7-1
Ethics in Bidding 7-2
Estimate Planning 7-2
Project Documents 7-2
Site Visit 7-2
Estimating Framework 7-2
Define the Phases 7-3
List Each Task and Materials Needed 7-3
Estimating Checklist 7-3
Determining Estimated Costs 7-3
Quantity Take-off Method 7-3
Step 1: Determine Labor Cost for Each Task 7-3
Step 2: Add Labor Burden 7-4
Step 3: Determine Materials Cost 7-4
Step 4: Determine Project Equipment Costs 7-4
Step 5: Add Subcontractor Fees 7-5
Step 6: Add Allowances 7-5
Step 7: Add Contingencies 7-5
Step 8: Add Project Overhead 7-5
Step 9: Add Company Overhead 7-6
Calculating an Overhead Percentage 7-6
Step 10: Add Markup and Determine Profit Margin 7-6
Other Methods of Estimating 7-7
Estimating Pitfalls 7-7
Preliminary Estimates 7-7
Inaccurate Estimates 7-7
Using an Estimator 7-8
Submitting Your Bid 7-8
Job Cost Recording System 7-8
Technology Tools for Estimating 7-9

CHAPTER 8: CONTRACT MANAGEMENT
Required Contract Elements 8-1
Offer and Acceptance 8-1
Consideration 8-2
Competent Parties 8-2
Legal Purpose 8-2

Contract Provisions 8-2
Contract Price and Payment Terms 8-2
Obligations of the Parties 8-3
Supplemental Conditions 8-4
Breach of Contract 8-4
Boilerplate Provisions 8-4
Provisions to Limit Risk 8-5
What Are Recitals? 8-5
Types of Construction Contracts 8-5
Lump-Sum Contract 8-5
Unit-Price Contract 8-6
Cost-Plus Contract 8-6
Contracting Methods 8-6
Single Prime 8-6
Design/Build 8-6
Construction Management 8-6
Turnkey 8-6
Fast-Track Construction 8-6
Multiple Prime Contracts 8-6
Partnering 8-6
Sources of Contracts 8-7
Making Changes to the Contract 8-7
Resolving Claims 8-7
Alternative Dispute Resolution 8-7
Making Substitutions 8-8
Contract Documents and Project Manual 8-9
Are Oral Agreements Legally Binding? 8-9
Legal Interpretation 8-9
Subcontracting 8-10

CHAPTER 9: SCHEDULING AND PROJECT MANAGEMENT

Scheduling Process 9-1
Scheduling Methods 9-2
Calendar Scheduling 9-2
Bar Chart Scheduling 9-4
Critical Path Method 9-5
Scheduling and Cash Management 9-5
What is Project Management? 9-6
Who is the Project Manager? 9-6
Project Supervisory Team 9-6
Project Life Cycle 9-7
Contract Award 9-7
Pre-Construction Phase 9-7
Construction Phase 9-7
Job Completion and Closeout 9-8

Tracking the Progress of the Project 9-8
Daily Reports 9-8
Status Reports 9-8
Tracking the Schedule 9-9
Budget and Cost Controls 9-9
Materials 9-9
Budget Tracking 9-9
Quality Assurance 9-9
Accurate and Detailed Specifications and Plans 9-9
Detailed Shop Drawings 9-10
Quality Assurance Program 9-10
Customer Satisfaction Surveys 9-10
Value Engineering 9-10

CHAPTER 10: CUSTOMER RELATIONS

Communication with Customers 10-1
Handling Customer Change Orders 10-1
Negotiation Basics 10-2

CHAPTER 11: EMPLOYEE MANAGEMENT

Interviewing and Hiring Employees 11-1
New Hire Reporting 11-2
Hiring Minors for Construction Work 11-2
Employee Documentation 11-3
Key Employment Laws 11-4
Fair Labor Standards Act (FLSA) 11-4
Recordkeeping under the FLSA 11-5
Penalties 11-5
Immigration and Nationality Act 11-5
Completing the I-9 Form for New Hires 11-6
Certification 11-6
Americans with Disabilities Act (ADA) 11-7
Other Labor Laws 11-7
Required Postings 11-8
Employee Handbook and Policies 11-9
Writing Your Employee Handbook 11-10
Employee Satisfaction 11-10
The Value of Job Descriptions 11-10
Providing Benefits 11-11
Disciplining Employees 11-14
Terminating Employees 11-15
Contractual Employees 11-15
At-Will Employees 11-15
Sample I-9 Forms 11-17

CHAPTER 12: JOBSITE SAFETY AND ENVIRONMENTAL FACTORS
Safety Standards 12-1
Safe Hiring and Training 12-2
Substance Abuse Policies 12-3
Safety Equipment 12-3
Emergency Action Plan 12-3
OSHA Recordkeeping 12-4
OSHA Injury Decision Tree 12-6
Material Safety Data Sheets (MSDS) 12-6
Underground Utility Safety 12-7
Overhead Power Line Safety 12-7
Benefits of Providing a Safe and Healthy Workplace 12-7
Employee Rights 12-8
Penalties 12-8
Environmental Considerations 12-9
U.S. Environmental Protection Agency 12-9
Utah Department of Environmental Quality 12-10
Environmental Law 12-10
Air Quality 12-11
Asbestos 12-11
Clean Water Act 12-12
Sedimentation and Erosion Control Measures 12-13
Hazardous and Non-Hazardous Solid Waste 12-13
Hazardous Substances 12-14
Lead 12-14
Remodeling or Renovating a Home with Lead-Based Paint (Lead PRE) 12-15
Sample OSHA Forms 300, 300A and 301 12-18

CHAPTER 13: WORKING WITH SUBCONTRACTORS
Sources for Finding the Right Subcontractor 13-1
Creating a Winning Partnership 13-1
Site Rules for Contractors 13-2
Employee or Independent Contractor: IRS Guidelines 13-2
Behavioral Control 13-2
Financial Control 13-2
Type of Relationship 13-3

PART III
Office Administration

CHAPTER 14: FINANCIAL MANAGEMENT
Bookkeeping 14-1
The Accounting Cycle 14-1
Step 1: Classify and Record Transactions 14-2
Step 2: Post Transactions 14-2

Step 3: Prepare Trial Balance 14-2
Step 4: Prepare Adjusted Trial Balance 14-3
Step 5: Prepare Financial Statements 14-3
Balance Sheet 14-3
Income Statement 14-5
Statement of Cash Flows 14-7
Notes to the Financial Statements 14-7
Step 6: Analyze Financial Statements Using Financial Ratios 14-7
Methods of Accounting 14-8
Cash Method 14-8
Accrual Method 14-8
Changing Your Method of Accounting 14-8
Contract Accounting 14-8
Completed Contract Method 14-8
Percentage of Completion Method 14-8
Cost Comparison Method 14-9
Cash Management 14-9
Cash Flow 14-9
Payments 14-10
Petty Cash Fund 14-11
Equipment Records and Accounting 14-11
Depreciation Methods 14-11
Accounting Process for Materials 14-12
Payroll Accounting 14-13
Calculate Gross Pay 14-13
Calculate and Deduct Applicable Taxes and Deductions 14-14
Calculate Net Pay and Issue Checks 14-15
Update Payroll Journal 14-15
Technology Solutions for Accounting 14-15

CHAPTER 15: TAX BASICS

Employer Identification Number 15-1
Federal Business Taxes 15-1
Income Tax 15-3
Estimated Tax 15-3
Self-Employment Tax 15-3
Federal Employment Taxes 15-3
Circular E 15-3
Social Security and Medicare Taxes (FICA) 15-4
Federal Income Tax Withholding 15-4
Deposit Schedule 15-4
Federal Unemployment Tax (FUTA) 15-4
Penalties 15-5
Information Returns – 1099-MISC 15-5
Tax Calendar 15-6

Utah State Tax Specifics 15-6
Corporate Franchise Tax 15-6
Sales and Use Tax 15-7
Withholding Tax 15-7

CHAPTER 16: UTAH PRECONSTRUCTION AND CONSTRUCTION LIEN LAW
What is a Lien? 16-1
Who is Entitled to a Lien? 16-1
State Construction Registry Program 16-2
Notice of Retention 16-2
Notice of Commencement 16-2
Preliminary Notice 16-2
Notice to Subcontractor 16-2
Notice of Completion 16-3
Conditional Waiver and Release 16-3
Waiver and Release Upon Final Payment 16-4
Filing a Claim of Lien 16-4
Time Limitation for Liens 16-5
Priority 16-5
Monetary Awards 16-5
Bonding Around a Lien 16-5
Abuse of Lien Rights 16-5
Lien Recovery Fund 16-6

APPENDIX A: GLOSSARY

APPENDIX B: BUSINESS PLAN TEMPLATE

APPENDIX C: USEFUL LINKS

APPENDIX D: NEW BUSINESS CHECKLIST

APPENDIX E: UTAH CONSTRUCTION TRADES LICENSING ACT

APPENDIX F: UTAH CONSTRUCTION TRADES LICENSING ACT RULE

APPENDIX G: GENERAL RULE OF THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

APPENDIX H: UTAH WORKERS' COMPENSATION LAW

APPENDIX I: UTAH OCCUPATIONAL DISEASE ACT

APPENDIX J: UTAH INJURED WORKER REEMPLOYMENT ACT

APPENDIX K: UTAH PRECONSTRUCTION AND CONSTRUCTION LIEN LAW

APPENDIX L: RESIDENCE LIEN RESTRICTION AND LIEN RECOVERY FUND ACT

APPENDIX M: RESIDENCE LIEN RESTRICTION AND LIEN RECOVERY FUND RULE

APPENDIX N: DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING ACT

APPENDIX O: STATE CONSTRUCTION CODE ADMINISTRATION AND ADOPTION OF APPROVED STATE CONSTRUCTION CODE RULE

APPENDIX P: STATE CONSTRUCTION AND FIRE CODES ACT