

# Selecting Contractors

Community associations—even those that are self-managed—hire contractors on a regular basis to provide a wide range of services, including maintenance services (roofing, landscaping, pool maintenance, cleaning, paving, construction, interior design, pest control), legal services (e.g., attorneys), and financial services (e.g., accountants, CPAs, Reserve Specialists).

Selecting contractors requires ethical and diligent work from board members—who must avoid conflicts of interest and specify exactly what services the association needs.

## **CONFLICT OF INTEREST**

A conflict of interest is a situation in which an individual's duty to one leads to the disregard of a duty to another. For example, if a board member manages a lawn care company and the association is seeking bids for lawn care services, the board member could be facing a conflict of interest.

## **WHAT TO INCLUDE IN BID SPECIFICATIONS**

Before the association selects a contractor, it must specify in writing exactly what service or product it wants. These specifications allow contractors to bid accurately for the

association's business. They also provide the basis for a contract once the board has made its selection.

**TOOL 13.1:** *See the Sample Landscape Maintenance Contract at the end of this section.*

Contractors that agree to detailed specifications and clearly understand the extent and limitations of their duties are more likely to produce satisfactory work. The association's bid specifications and contract should clearly define how various details will be handled and by whom.

- Who are the parties to the contract?
- When must the work be completed?
- What are the penalties for delays or nonperformance?
- What is the exact location where the work will be performed?
- What days and hours will work be performed?
- How and when will payments be made?
- What is the total amount that will be paid for the project?
- How much of the total payment will be held back until all work is completed and accepted?
- Who will select materials? What type, color, or quantity of materials will be ordered and when? Where will materials be stored?
- Who will provide tools and equipment? Who will secure, insure, store, rent or repair tools and equipment?
- Who is responsible for damage to property or people?
- How much insurance is needed?
- What liability does the contractor assume, and what does the association assume?
- Is a completion bond needed?
- Who is responsible for licenses, permits, and warranties?
- Who will provide containers for trash and dispose of trash, and how frequently?
- When will progress inspections be conducted and by whom?

- How and when must the contractor notify the association of overruns?
- How will additional work be handled and who will authorize it?
- What is the minimum notice required for canceling the contract? Are there specific conditions that result in cancellation?
- Does the contract include a clause stating that both parties must meet all applicable state, local, and federal laws?
- Does the contract include language stating that the contract represents the entire understanding between the parties and that no verbal agreements have been made or will be honored unless added as a written addendum to the contract?
- Who is responsible for supervising the contract implementation—a board member, the manager?

Once the specifications have been completed, provide them to five or six prospective contractors and invite them to respond. Interview the two or three best prospects, and sign a contract with the one selected. Be sure to check references, and have the contract reviewed by the association's attorney before signing.

**TOOL 13.2:** See *Sample Contract Specification Requirements Checklist at the end of this section.*

## WHERE TO FIND CONTRACTORS

Where do boards find qualified prospective candidates who can bid for the services they need?

**Online directories.** The first place to look is CAI's online National Service Directory at [www.caionline.org/prog/prodir/index.cfm](http://www.caionline.org/prog/prodir/index.cfm).

**CAI chapter directories.** Many local CAI chapters maintain online or printed directories of service providers and contractors. A complete list of all chapters is available at [www.caionline.org/about/aboutchap.cfm](http://www.caionline.org/about/aboutchap.cfm). Links are included for chapters with websites.

**Advertisements.** Contractors who specialize in serving community associations advertise in CAI's national and chapter magazines and newsletters. They are also frequently quoted in

articles appearing in the publications that board members receive with their membership in CAI.

**Networking.** Not all experienced and capable contractors will be listed in a directory. Ask your community association manager for recommendations or meet and talk to contractors at local and national meetings of CAI.

## **Cautions**

*Board members must be objective and ethical when selecting contractors. It's important not to accept gifts or favors from contractors that either provide services or supplies to the association or bid for prospective work with the association.*

*Asking all prospective contractors to bid on the association's written specifications is a key factor in making the right choice. Board members should compare all bids based on the same criteria.*

## **FOR MORE HELP**

**Available online at [www.caionline.org/bookstore.cfm](http://www.caionline.org/bookstore.cfm) or call (888) 224-4321 (M–F, 9–6:30 ET).**

*Bids and Contracts: How to Find the Right Community Association Professional, a Guide for Association Practitioners,* by Stephen R. Bupp. (Community Associations Press, 2004.)

*Selecting the Landscape Maintenance Contractor, Guide for Association Practitioners #12,* by James B. Cranford. (Community Associations Press, 1996.)

*Conflicts of Interest: How Community Association Leaders Honor Their Duties, a Guide for Association Practitioners,* by Tonia C. Sellers and Jay S. Lazega. (Community Associations Press, 2004.)

**To download a PDF of the entire Board Member Tool Kit, go to [www.caionline.org/toolkit](http://www.caionline.org/toolkit).**

## Sample Landscape Maintenance Contract

This agreement between Greenlawn Master Homeowners Association, Inc., 1000 Meadow Place, Redrock, TX 75000 herein called "association," and Designers and Landscapers, Inc., 18 Nursery Trail, Redrock, TX 75000, herein called "landscape contractor," is made and entered into on [date].

**Employment:** The association agrees to engage the services of the landscape contractor and the landscape contractor agrees to accept the engagement.

**Services:** Both parties agree that all specifications and stipulations on the attached request for bid become a part of this landscape agreement between the parties.

**Contractor's Responsibilities:** Contractor is an independent contractor and therefore assumes all responsibilities for any taxes, insurance, or licenses as may be required by federal, state, or local laws for the protection of its employees or for the right to do business. Contractor agrees to be responsible for injuries or damage to property that occur as a result of the contractor's actions—even if the insurance in effect does not cover that loss. Contractor is responsible for initially investigating and trying to settle any damage or injury complaints as a result of the contractor's service. Contractor indemnifies and holds harmless the association, its directors and officers, management agent, and staff for any claims arising from this contract. Costs associated with resulting actions to rectify any violation shall be borne by the contractor.

**Term:** This agreement shall begin on [date] and be in effect for a one-year period. This agreement shall automatically be renewed at the end of the original term for successive terms of one year each, unless one party gives notice of its intent to terminate or renegotiate to the other in writing at least 60 days prior to the end of any term.

**Subcontracting:** The landscaping services shall not be subcontracted without the express written consent of the association.

**Compensation:** The association shall pay the landscaping contractor a fee of \$\_\_\_\_\_ per month for 12 months, which shall be due and payable within the first five days of the month following the month of service.

**Termination:** The contractor may terminate this agreement with 30 days

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notice should the association fail to meet the payment schedule as outlined. The association may terminate this contract with or without cause before the end of the contract term. Not less than 90 days notice shall be given in the event of cancellation without cause. Not less than 30 days notice shall be given for cancellation with cause. In the event of termination, the association shall pay the contractor for all described services that have been satisfactorily completed. Any payment shall be the contractor's sole exclusive remedy.

**Notice:** Notice that either party desires to give under this agreement shall be given by certified mail, return receipt requested, to the business address of the other party.

**Integration Clause:** This agreement constitutes the full understanding of the parties, and no oral representations or prior written representations made by either party shall be binding. This agreement may be modified only in writing signed by both parties. This agreement is binding with the signing of both parties, who represent to each other that they have the authority and ability to comply with its provisions.

\_\_\_\_\_  
Association President

\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
Association Secretary

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
Contractor's Secretary

## Sample Contract Specification Requirements Checklist

- Full name of all parties involved
- Time to complete the work
- Penalties for failure to comply
- Payment terms
- Total dollar amount of contract
- Complete specification of materials used and supplier of materials
- Storage of materials and tools
- Responsibility for damage
- Insurance requirements and proof
- Performance/completion bond
- License requirements/responsibilities
- Guarantee/warranty required
- Clean up requirements
- Labor supervision
- Liability of each party
- Responsibility for permits
- Inspections
- Notification of more repairs
- Contract coverages
- Failure to adhere to contract terms
- Time/cancellation provisions
- Jurisdiction in which the contract is enforced
- No oral agreements
- Maps or other description of work area
- Hours and days when work may be done
- Tools/equipment provision
- Association supervision