Schedule

The contractor's work has been coordinated and a schedule was established. So what now? It should run like clockwork, right? Hopefully, but don't count on it. There may be material and equipment delivery delays. There may be equipment breakdowns. There could be contract employees who do not show-up for work, for whatever reason. What do you, as someone who may be responsible for the contract, do to get back on track? Hopefully, you have a good enough handle on the execution of the contract that there are no surprises. And you should have developed a good enough rapport with the contractor that any "concerns" you have are addressed immediately. But, if everything else goes sour, you will have to rely on the contract language to help you. There should be some "damages" language that will address what happens if a contractor doesn't perform. This could address reducing the cost of the contract by the amount of money it cost the owner to rectify the situation. There could be a "liquidated damages" clause in the contract that would pay the owner a stipulated amount for a specified delay. This is typical in construction projects.

So what does all this really mean? Let's use our cleaning example. If you had a custodial service that was not cleaning when it should, you may put them on notice that if they did not complete the work to your satisfaction, you would be hiring someone else to complete their work and the money would come out of their contract. Or maybe you have a contract with a shuttle service to transport people back and forth to the airport. After they miss an appointment and one of your employees is running late, she has to call a taxi to get her to the airport. You have been "damaged" by the cost difference between the shuttle ride and the taxi, and should be reimbursed the difference.

Obviously there will usually be schedule problems. So there are two things you should do to mitigate any delays. First, don't set unrealistic schedules; make sure they have a good chance to be met. Second, have a Plan B (or as far down the alphabet as may be comfortable) in hand so that you can react quickly in case the schedule does head south.

Cost

What could cause the cost of a contract to exceed its contract price? There are a variety of elements that could instigate a potential change in the cost, some of these controllable, and some not. One of the most common problems in contracts is unforeseen conditions. If you have a construction or maintenance contract and, after exposing some of the work the contractor finds rock, or another wall, or something else that is not in his documents, then that affects his actual work. This change in work generally costs more money because it may disrupt his work flow, add
time, require a change to materials, or a variety of other reasons. It may even shutdown the work completely while a solution is sought.

If a contractor is providing materials as part of his contract, an unforeseen price increase may require him to seek relief from you, even if it isn’t in the contract. Not too long ago the price of steel started going through the roof. If providing a product, or some materials made of steel was part of a contract, it could have broken a contractor. Just think how the price of gasoline has gone up in the last couple of years and what a trickle-down effect that has. Even that shuttle company would see a big impact.

So how do you handle cost changes in a contract? Well, most often the owner ends up paying. Construction contracts tend to have a whole series of change clauses addressing a variety of issues, but they specify how changes will be handled. Other contracts should have similar clauses in them just in case something should happen. Absent of the remedies stipulated, the owner would have to determine whether he was paying for something that he had already paid for, in other words, is he getting any added value or should this have been included in the existing pricing? For example, a delivery service that transports your products locally may have experienced a large increase in the cost of fuel for its trucks. Since its contract price is based on a per-mile charge, any additional operating costs would cut into its profits. “Tough luck,” you might say, “he bid it that way.” That is true, but if you had your own vehicles, your cost would have gone up proportionally. Plus, it is probably a good idea to keep a good working relationship with the service, so maybe a renegotiation would be in order.