

General Contract Information for Private and Public Works

12/08/16

Subcontracts

- Introduction
 - Subcontracts are for services being performed over \$10,000. Purchase Orders constitute a form of contract which requires evaluation and response. These are not contract change orders, even though they might be for work to be performed on the site of another existing project.
- Required
 - Review ALL Subcontracts with our attorney; developed a standard letter that covers any undesirable terms and/or condition that could be negotiated to eliminate certain terms
 - Client could take exception to your letter (thus you must decide what to accept).
 - Develop standard contract procedures on how you want staff to handle them.
 - Read the Subcontract.
 - The Subcontract needs to define payment terms.
 - The Subcontract needs to define the scope and location of the work.
- Teichert will require
 - They sometimes have retention withheld. (Depends on our contract with the Owner);
 - Sometimes will require Payment and Performance Bonds;
 - Always requires Insurance Certificates.

Different Types of Bonding

- Introduction
 - Bonding is a guarantee to the customer of financial ability to complete the contracted work.
 - The bonds most commonly used are:
 - Bid Bond – guarantees that if you are awarded the work you will enter into a contract;
 - Payment Bond – guarantees that you will pay our subcontractors and suppliers thereby limiting the liability of the owner;
 - Performance Bond – guarantees that you will complete the work on a timely basis. These are sometimes extended after completion as Warranty Bonds.
- Required
 - Contract must be received from Owner prior to issuing payment and performance bonds;
 - Verify who pays for bond.
- Desired
 - Teichert would prefer to use our bond forms.
- Avoid
 - Avoid dual or multiple obliges;
 - Avoid bond forms supplied by the Owner unless they have been approved by your surety;
 - Avoid contract language that would require bonds to be written at some unspecified time after start of work.

Purchase Orders

- Introduction
 - Purchase Orders constitute a form of contract which requires evaluation and response. These are not contract change orders, even though they might be for work to be performed on the site of another existing project.
- Required
 - Review ALL Purchase Orders with our attorney; developed a standard letter that covers any undesirable terms and/or condition that could be negotiated to eliminate certain terms
 - Client could take exception to your letter (thus you must decide what to accept).
 - Treat all purchase orders as a contract.
 - Develop standard contract procedures on how you want staff to handle them.
 - Read the purchase order.
 - The purchase order needs to define payment terms.
 - The purchase order needs to define the scope and location of the work.
 - Always requires insurance Certificate.
- Desired Terms You Should Ask For
 - Should not have retentions withheld.

Service Orders

- Introduction
 - Service Orders constitute a form of contract which requires evaluation and response. These are typically forwarded for work performed under \$10,000. not contract change orders, even though they might be for work to be performed on the site of another existing project.
- Required
 - Review ALL Service Orders with our attorney; developed a standard letter that covers any undesirable terms and/or condition that could be negotiated to eliminate certain terms
 - Client could take exception to your letter (thus you must decide what to accept).
 - Treat all Service orders as a contract.
 - Develop standard contract procedures on how you want staff to handle them.
 - Read the Service order.
 - The Service order needs to define payment terms.
 - The Service order needs to define the scope and location of the work.
 - Always requires insurance Certificate.
- Desired Terms You Should Ask For
 - Should not have retentions withheld.

Professional Service Agreement

- Introduction
 - Professional Service Agreement constitute a form of contract which requires evaluation and response. These are typically forwarded for work performed by entities that do not have a Contractor License.
- Required
 - Review ALL Professional Service Agreement with our attorney; developed a standard letter that covers any undesirable terms and/or condition that could be negotiated to eliminate certain terms.
 - Client could take exception to your letter (thus you must decide what to accept).
 - Treat all Professional Service Agreement as a contract.
 - Develop standard contract procedures on how you want staff to handle them.
 - Read the Professional Service Agreement which needs to define payment terms.
 - The Professional Service Agreement needs to define the scope and location of the work.
 - Always requires insurance Certificate.
- Desired Terms You Should Ask For
 - Should not have retentions withheld.
 - No Limits and no bonds.

Changes in Condition

Change Orders/Extra Work

- Introduction
 - The contract should address the potential for changes including extra work, changes to the contracted work, and/or differing site conditions.
- Required
 - The contract must define the method for identifying and notifying the customer of differing site conditions/changes prior to proceeding with the work;
 - All changes should allow you to recoup costs, overhead/profit, and contract time;
 - The contract should define who is authorized to approve all change orders and/or extra work on behalf of the customer.
- Desired
 - Minimum of 5 working days to notify customer of changes.
 - For Force Account / T & M changes, allowance of 60 days after completion of work to compile costs.
- Avoid
 - Short notice requirements regarding changes to the work;
 - Language that prohibits you from pursuing the owner for claims as a subcontractor or, alternatively, language that requires you to pursue claims directly against the owner;
 - Performing additional work without written approval.

Delays, Penalties and Liquidated Damages



- Introduction
 - The contract should address the potential for:
 - Compensable delays (those you can recoup money for) - owner denial of access to the job site or equipment, defects in design that render it non-constructible, or owner-directed suspension of the work;
 - Excusable delays (unavoidable; caused by circumstances beyond your control) – Acts of nature, public enemy, fire, flood, epidemics, strikes, governmental agency, freight embargo, and inclement weather;
 - Non-Excusable delays (delays by you) – do not entitle you to additional time or compensation, may result in our paying liquidated damages (also applies to subcontractors you hire).
- Required
 - Be paid for all compensable delays;
 - Receive a time consideration for the compensable and excusable delays.
- Desired
 - To receive compensation for costs/overhead/profits associated with excusable delays.
- Avoid
 - Notice requirements that are less than 72 hours.
 - Clauses that address lost revenue (occasionally LDs could be preferable).
 - Language requiring payment of “consequential” damages.

Dispute Resolution and Attorney Fees

- Introduction
 - The contract typically defines the rules that apply to dispute resolution including court of jurisdiction, and whether mediated or arbitrated.
 - The purpose is to provide a clearly defined dispute resolution process including a predetermined path for escalation of dispute proceedings and resolution.
- Desired
 - Prevailing party receives costs and attorney fees;
 - All contracts should address the process of dispute resolution;
 - Provisions for mediation and/or arbitration prior to court action;
 - Provisions for mediation and/or arbitration according to standard industry guidelines;
 - Discovery clauses that provide for review during normal business hours upon reasonable advance notice.
- Avoid
 - Any clause that requires you to resolve the dispute in a location other than where the project is located in a court within jurisdiction.
 - Avoid an alternate dispute resolution that is so broadly written that includes non-contractual disputes, such as tort liability.

Indemnity

- Introduction

- Indemnity means to protect or hold harmless. You will be required by contract to protect our customers from damages caused by our actions and the actions of your subcontractors.
- The business practicality is that owners will try to force you to indemnify them to the maximum extent allowed by law. This will sometimes go beyond your own negligence and require you to indemnify them for your shared responsibilities at a job site. You are often called upon to indemnify the owner for everything up to but not including the owner's sole negligence or willful misconduct.

- Desired

- To the extent possible, modify language so that you indemnify the owner only for the proportion of a loss caused by our own negligence or that of your subcontractors.

- Avoid

- Indemnifying engineers or architects;
- Indemnifying agents, representatives or insurers;
- Language that reads “this is to be interpreted as a Type I indemnity”;
- Language that requires you to indemnify and defend your customer until such time as a court has made final determination of negligence – the fact is that most of these cases never get to a final determination in court; they are almost always settled out of court.

Insurance

- Introduction

- Insurance is your guarantee to your customer that you will pay for damages that you cause as a result of our work.
- You want to verify that our insurance meets the provisions of the Customer's requirements.
- In general the Customer will require that you have: workers' compensation, including a waiver of subrogation; general liability insurance and additional insured endorsements with our coverage shown as primary; and automobile liability insurance.

- Required

- Workers' Compensation – you are a qualified self-insured and you should note that somewhere on all contracts.
- The contract wording should specify that the additional insured endorsements have a form number plus the wording "or its equivalent" (e.g. "CG 2010 1185 or its equivalent").

- Avoid

- Specific deductible maximums – our self-insured retention (very similar to a deductible) is \$500,000 for any general liability, auto liability loss and workers compensation.
- Naming any agents, engineers, or architects as an additional insured (modify contract language to eliminate).
- Naming any entity as additional insured unless specifically identified in the contract (e.g. construction managers, consultants).
- Required limits of liability in excess of \$5,000,000.
- Requirements for copies of our policies – modify language to provide certificates evidencing coverage.

Owner Controlled Insurance Programs (OCIP)

- Introduction
 - An OCIP is an insurance program where the owner or general contractor insures the project and therefore covers all subcontractors at every tier.
 - Normally you are required to identify our insurance costs and credit those costs back to the owner.
- Required
 - The requirement for OCIP must be identified as such at the time of bid to correctly identify our cost of insurance for the project.
 - OCIP projects must be written for large limits of insurance. The owner or general contractor must be providing project limits not less than \$25,000,000 otherwise you are inadequately covered.
- Avoid
 - Requirements that you provide a copy of your insurance policies to the OCIP insurance administrator;
 - Deductible or Self-Insured Retention provisions where you are responsible for paying a deductible in excess of \$25,000. Some OCIP programs require you to contribute what our deductible would normally be under our policy (in our case \$500,000/\$1,000,000).

Liens

- Introduction
 - Lien rights are given to Contractors performing work on private property, allowing them to record a Mechanic's lien against the real property that benefits from the improvements.
- Required
 - All reference to lien rights shall comply with California Civil Code 3262 and the form identified within it;
 - Preliminary Notices will be sent out for ALL contracts in excess of \$400, except Federal Projects Contract Amount shall be shown on Preliminary Notices;
 - Description of the real property being improved.
- Desired
 - Full, legal description of the real property being improved (Assessor's Parcel Number [APN] Preferred, Street address, city, state).
- Avoid
 - Language that attempts to require the waiver of lien rights; it is illegal to require waiver of these rights;
 - Lien waivers that do not comply with Civil Code 3262;
 - Forms that incorporate multiple conditions, i.e. waiver of claims;
 - Requests for lien waivers from parties that do not have rights against a project (doesn't apply to Public Work).

Payments

- Introduction
 - In exchange for work performed the ultimate goal is to be paid within a predetermined time period as agreed to in the contract while protecting all rights to payment.
- Required
 - To be paid within the time allowed by law.
 - As a prime contractor, Teichert requires to be paid within 60 days after completion of all billable contract work performed. This excludes warranty or punch list work.
 - As a subcontractor, Teichert must receive final payment within 30 days of completion of all work under the prime contract.
 - Interest if not paid when due.
 - Right to stop work if not paid when due.
 - No more than 150% of the value of disputed items should be withheld.
 - Retention shall be released within 45 days of occupancy.
 - The general contractor may not hold any retention longer than seven days after the general contractor has been paid.

Payment – Continued

- Desired
 - Monthly progress payments.
 - Retention not to exceed 10% of the original contract.
 - Retention released within 30 days of completion of your work.
 - Retention reduction at contract milestones.
- Avoid
 - Extended progress payment terms.
 - Clauses that allow retentions to be held longer than 30 days after completion of work.
 - Pay when paid. If you are forced to accept these terms, they should not exceed a reasonable time period, and no later than seven days after General Contractor receives payment for progress payments.
 - Pay if paid. This is illegal in California.



Safety, Pollution, SWPPP, & Hazmat

- Introduction
 - These are requirements that the customer will make of you that outline the responsibilities to maintain a safe job site. The purpose is to protect the public, ourselves, and the customer from loss and/or liability.
- Required
 - Accept responsibility only for our actions and the actions of our subcontractors;
 - A copy of any plan or report referred to in contract.
- Desired
 - Reasonable reporting requirements for incidents and/or accidents (i.e. OSHA recordable injuries – not all medical aid or injuries; “as soon as practicable” rather than “within 48 hours” or “immediately”);
 - When documentation is required by the contract (i.e. Our safety plan, MSDS sheets) modify language to “make available” instead of “supply copies of”.

Safety, Pollution, SWPPP, & Hazmat - Continued

- Avoid
 - Items outside of our control or scope;
 - Items not specifically included in the scope of work;
 - Language that makes you take responsibility for pre-existing and/or latent conditions -if you discover/find some sort of hazardous condition on site the contract should allow for reporting of the changed condition and cost/time if necessary;
 - Language that makes you responsible for penalties or citations not related to our work or subcontractors' work (you do not want to take responsibility for the illegal or negligent actions of our customer);
 - Language that makes you responsible for any future government regulations;
 - Language that makes you responsible for creating or filing any hazmat or SWPPP plan;
 - Language that makes you responsible for any site remediation.

Termination

- Introduction
 - Termination is a cessation of the work. It may consist of several types: “For Cause” non-performance, default; and “For Convenience” at the will of the contract entity. The purpose is to protect your Construction from loss due to termination on the part of the customer.
- Required
 - Terms of payment for work performed and cost incurred as related to the termination, including indirect costs;
 - If due to default on our part, you must have a reasonable time frame to receive notice and correct any deficiencies.
- Desired
 - Allowance for additional costs, overheads and profit.
- Avoid
 - Any language that allows the customer to have a lien on or take possession of equipment, tools, appliances, and materials (other than materials on site).

Union Requirements

- Introduction
 - To insure that your firm complies with all its master labor agreements.
- Required
 - Teichert Construction is signatory to AGC Northern California Master Labor Agreements for Operating Engineers, Laborers, Teamsters, Cement Masons, Carpenters and Underground Utilities/Fitters. We must abide by the terms of these agreements.
- Desired
 - Customer has no conflicting labor agreements.
- Avoid
 - Customer labor agreements that conflict with Teichert's agreements
 - Customer labor agreements with local union affiliates that Teichert is not a signatory

Close Out & Retention

- Introduction
 - Upon completion of field work all requirements under the contract must be met prior to release of the retention. Retention must be released within 30 days of completion of all work on the prime contract but no later than 45 days after occupancy.
- Required
 - The contract will have specific requirements in order to receive final payment. These typically include the following:
 - Furnish written warranty to the customer;
 - Turn in As-Built drawings;
 - Final Lien Releases;
 - Final billing;
 - Request for retention;
 - Agency/Owner/Engineer acceptance;
 - All other documentation required by contract.
 - Read the contract to ensure all items have been identified and completed.

Close Out & Retention - Continued

- Desired
 - Warranty not more than one year.
 - Acceptance of your work if Agency acceptance is delayed due to items of work outside of the contract.
 - Clear definition for the transfer of maintenance and responsibility (e.g. SWPPP or third party liability).
- Avoid
 - Furnishing authorization to release payment from surety.
 - Delay of final billing due to warranty or punch list work.
 - Withholds greater than 150% of warranty or punch list work.

Questions?
