



Subcontractors Association of the Metroplex

PUNCH LIST

The voice of the Subcontractor's Industry



Subbie Sam Says

- If you don't sign a bad contract, it won't come back to haunt you.
• Make sure that you're keeping up with our beloved Government regulations. One unhappy employee or unfortunate injury can be the start of a nightmare.

Inside this issue:

Hot Air Blog 1
Coming events 2
From the President 2
SAM's new E.D. 2
June Meeting 3
News from Austin 3
Legally Speaking 3
Our Officers 4

Hot Air Blog - News From Washington

Last week, we were applauding Congress & President Obama for repealing the 1099 filing provision that saved small businesses from a paperwork nightmare. Now, we have shifted our focus to another provision that will hurt small businesses having contracts with federal, state, or local governments

3% Withholding Tax on Government Contracts - The Next 1099 Issue

Do you do any work under a contract with a local, state, or federal government? A provision in the 2005 tax reconciliation bill (Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005) requires federal, state, and local governments to start withholding 3% of payment due to government service providers starting next year. (Originally this provision had an effective date of January 1, 2011, but that was delayed until 2012 by the Stimulus bill). The pending withholding requirement applies to federal, state, and local governments with at least \$100 million in expenditures and affects payments for goods and services under government contracts, as

well as payments to any person for a service or product provided to a government entity.

Like the 1099 filing requirement that was just repealed by Congress, the reasoning behind the 3% withholding requirement on government contracts was to increase tax compliance. Unfortunately, it will do little to reduce the tax gap while penalizing small businesses that operate honest taxpaying companies.

The withholding requirement presents a particular problem for small businesses in a competitive market like the construction industry. The 3%, subject to government withholding represents the estimated profit or operating cash flow on a construction project. This 3% could be used by contractors to compensate for material costs, supplies, and other operating expenses; instead, construction contractors will in essence be "floating" the government a 3% interest free loan.

This withholding provision unfairly penalizes construction contractors, because it applies to the total contract, not to the net revenue gener-

ated from the project. For example, on a \$1 million dollar project, \$30,000 will be withheld from payment. If the contractor is fortunate enough to achieve a 4% profit, \$40,000 will be realized before paying for supplies, services, and other business expenses. Tax generated on the \$40,000 is \$14,000 (35% of \$40,000). The government has (over)-withheld \$30,000 for only \$14,000 in tax obligations.

Efforts over the last six years to repeal the 3% withholding provision have fallen short. Repeal is needed right now. Governments and the contractors that work for them are spending billions to figure out how to work under the withholding requirement. Contact your local representatives to repeal the "NEXT 1099 IS-SUE". Contact your Congressman and Senator Today!

Article furnished by Lynne Black, Executive Director of the National Subcontractors Alliance.

Flash! As of May 9, the IRS postponed implementation of the law until Jan 1, 2014.



INSURANCE SEMINAR - NOT BORING!

Our meeting of April 7 was an afternoon seminar on Subcontractor's insurance presented by the master of making insurance interesting and understandable, Ricky Locke of the Independent Insurance Group and a SAM member.

The seminar reviewed insurance requirements from a typical GC. There was a discussion on how insurance limits work, how to read a certificate of insurance, and why owners and GC's ask for those strange endorsements that often drive you crazy at the last minute.

niques.

Ricky used example claims and the participants asked a lot of questions which helped to make a normally dull subject more interesting.

The insurance requirements are a changing target and Ricky showed us how we got to where we are, and the requirements that we now have to meet.

Thanks Ricky for giving us one more valuable business tool!

Ricky led us through the tangled web of insurance with a logical and eye-opening explanation of what we are required to buy for our customers, just so we have the privilege of working for them.

In addition, he covered why subs can also have the same issues as GC's when they sub out part of their jobs and how they can protect their company by using some of the same tech-



Ricky Locke (above)
Turah Stewart and Doug Miller (below)

COMING EVENTS



Texas State Capitol

It's been a fact that the State Legislature can change our business plans quickly and unexpectedly. We'll have at least one program after the legislature is out to get us up to date on what they've done to us (for us?) in this 2011 session.

We all know that the Margins tax replacement for the Franchise Tax was a disaster for

small business, and Subcontractors in particular.

Most of us know that the State of Texas is woefully over spent and under funded, and the legislature has stuck their head in the sand over any tax law revisions.

We also know that we need meaningful lien law reform and it would be really helpful if we got some

contract language legislation (Pay if Paid) like they have in many other states.

Expect to hear from Will Newton, State Director of the National Federation of Independent Business, and hopefully from one or our valued State Legislators.

SAM'S GOT AN EXECUTIVE DIRECTOR!



Pete Snider
SAM Executive Director

Most of you will recognize the face, but not the title. After his retirement from the glass business, Pete stepped up to the job of Executive Director of SAM.

Pete was a co-founder of SAM in the early 1990s, along with the late Roy Neu of Neuco, and

Norma Mann of Mann Steel Co.

The three had a vision that Subcontractors could get the vital information that they need to succeed without having to give up all their profits in exchange.

SAM has been coasting along

ever since, but now with someone to take care of the busy work, we're looking forward to having SAM grow to represent all the responsible subcontractors and suppliers in the metroplex.

JUNE MEETING, JUNE 3, 2011

CONSTRUCTION FORECAST

MIKE MEHNO
of
MCGRAW-HILL
CONSTRUCTION

McGraw Hill is the preeminent industry voice on construction activity - and Mike Mehno, of McGraw Hill's north Texas operation, is a top expert in his field.

We are in a time of adjusting our companies to fit the business that we expect to see in the near future.

To plan your business, you need to know what's coming down the pike- McGraw Hill's data is the tops. Mike's prior SAM visits have all been Very Big Hits with SAM's members.

Plus, as always, SAM's invaluable Business Practices

Meeting, and a Legislative Update from SAM General Counsel, Spike Cutler, of Cutler-Smith, P.C.

YOU CAN'T AFFORD TO MISS THIS VALUABLE MEETING!



Co-Founder, the late Norma Mann—Creator of our Business-Practices interchange

NEWS FROM AUSTIN By Spike Cutler, SAM Legal Counsel

The Texas Legislature has been busy, mostly fretting about the huge funding gap in the state's budget. There have, however, been lots of bills related to construction issues filed - here are some which are still alive, and merit attention:

> **Indemnification**- SB361 (Duncan), HB2010 (Smithee) - This bill follows up on the "consensus" bill which was killed last session by the voter ID issue; this year, there is no more "consensus," and the

general contracting industry is fighting it. It would serve to restrict unfair indemnification provisions, while allowing reasonable protection for legitimate indemnitees. Strongly recommended as a benefit to subs.

> **Workplace Fraud**- HB2989, Rep. Deshotel, seeks to address the issue of misclassified "independent contractors" on jobsites by creating a mechanism for reporting and investigation of alleged abuses of independent contractor status. If you've had

a problem with unfair competitors who aren't paying payroll taxes, this bill's your friend. Some are concerned about the reporting and investigation provisions in the bill, but it could really help to clean up some nasty practices at the jobsite.

> **Costs and Attorneys Fees for Mechanics' Liens**- HB346 (Kleinschmidt), SB539 (Carona) - provides for award of attorneys' fees for mechanics' lien claimants - very important!

> **Mechanics Liens for Retainage** - HB1390 (Deshotel), SB590 (Estes) - Simplifies and clarifies the ability to claim a lien for retainage withheld, and the process to do so. Vitally important, essential fairness. No honest GC or property owner could object to this bill, and you should be supporting it!

It appears other bills benefitting subs are not likely to have a chance, but you should contact your Representatives and Senators, right away, and urge passage of these bills.

LEGALLY SPEAKING By Spike Cutler, SAM Legal Counsel

Waiver of Liens in Advance

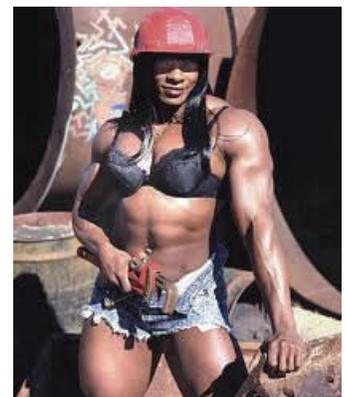
Many subcontract agreements we are seeing lately include a waiver, in advance, of the right to file a mechanics' lien or payment bond claim, and many subcontractors ignore such language in subcontracts. A common reason given is, "...that language is not enforceable, anyway, because it's not fair." **WRONG!**

The concept that contracts have to be "fair" applies to

consumer contracts (like the vacuum-cleaner salesman snookering your granny at the house), but in business contracts - such as the subcontract agreements general contractors expect you to sign every day, *there is no obligation for fairness at all*. Instead, if there is no fraud - if the sub is not suckered into signing the subcontract through lies and deception - the contract is enforceable as written.

There is never a valid reason for subs to agree to waive

liens in advance, especially when (as is the case almost always) the GC expects the sub to assume the risk of Owner non-payment. The mechanics' lien is the only security the subcontractor has to enforce payment when an Owner fails to pay the GC, so responsible subcontractors should NEVER WAIVE LIEN OR BOND CLAIM RIGHTS in the subcontract agreement - it's just bad business!



What do you mean, you'll only pay me if you get paid?



Subcontractors Association of the Metroplex



Pete Snider, Executive Director
1420 Hubbard Drive
Forney, TX 75126

Phone: (972) 771-0188
Cell: (214) 908-9248
E-mail: execdir@sam-dfw.org



The Subcontractors Association of the Metroplex was founded with the purpose of creating an affordable forum for Subcontractors to exchange information and learn from each other how to be better business men or women.

Sam is a member of the National Subcontractors Alliance, the largest Subcontractors association in the USA, and also a member of the Association of Specialty Contractors where we have a voice in National Legislation.

Sam is also allied with the National Federation of Independent Business who has a voice in the Texas Legislature on small business issues.

**Your Source for Subcontractor's
information.**



**Visit us at:
<http://www.sam-dfw.com>**



Our Association Officers

President and B.P.I. Chair:

**James Mayhew,
Apex Services, Inc.**

jmayhew@apexservicesinc.net

Treasurer:

**Kay Schultz
Baker Triangle**

kschultz@bakertriangle.com

Member:

**Eric Lindberg
PCI Construction**

ericl@pciconstruction.com

Member:

**Tim McSorley
Storage Equipment**

tmcsorley@secdfw.com

Associate Representative:

**Clem Lesch
PCL Contract Bonds**

clesch@pclbonds.com

Legal Counsel:

**Spike Cutler
Cutler-Smith, PC**

scutler@cutler-smith.com

If you're not a member of SAM,
you should be.

Call Pete Snider for a member-
ship application.

(972) 771-0188

Cell (214) 908-9248



**SUBCONTRACTORS—
THE ONES WHO
REALLY BUILD THE
BUILDING**