



Subcontractors Association of the Metroplex

PUNCH LIST

The voice of the Subcontractor's Industry

BID IT RIGHT THE FIRST TIME



Subbie Sam Says.

Watch after your and your customers proprietary information. What you have on your computer is not for everyone to see.

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Every construction project starts with a bid (unless it's a negotiated job, but how many of those are there?), so how you been a job is important.

REQUIRED DOCUMENTS?

Many Invitations to Bid or Project Manuals include documents and forms the general contractor contends are "mandatory," and that you consented to by bidding the job. Examples include (of greatest consequence) the Subcontract form, along with collateral but related documents, including safety policies and practices, and bond forms.

Many subcontractors believe (and the Gcs hope you'll continue to believe) that, if a subcontract form is provided upfront, and bid documents state that your bid constitutes acceptance of the Subcontract form, unmodified, you have irrevocably accepted the Subcontract form by bidding the job. But, not so fast.

Just as there is no project you've ever bid in which there was complete agreement between the general contractor's idea of what your scope was, and what your idea of the scope was, there is also no bid which cannot be qualified appropriately. So, always remember, when bidding a job, include an explicit statement that you are not automatically agreeing to sign the GC's subcontract form; suggested language might read like this: "Subcontractor's bid, and its agreement to perform work on this project, is contingent upon negotiation of mutually-acceptable subcontract language." You know that, regard-

less of the conditions the GC put on the bid, if your proposal and your number are attractive to the GC, they will probably negotiate contract terms with you, and if they won't, perhaps you don't want to work for them anyway.

INSURANCE

Be wary of the possibility of a Controlled Insurance Programs (OCIPs and CCIPs); sometimes, the existence of one of these beasts is disclosed upfront, and sometimes it is not, but always anticipate the possibility. Notwithstanding the marketing hype, the principal purpose of OCIPs and CCIPs the removal of money from your pocket to the pocket of the plan sponsor, whether it be the owner or the general contractor. If there is no CIP mentioned in the bid documents, you might include a qualification your bid such as: "Subcontractor's bid is based upon no OCIP or CCIP participation." You might also consider, especially if a CIP is disclosed, including the following: "Subcontractor's participation in a Controlled Insurance Program shall be at no cost to Subcontractor, after due allowance for Subcontractor's cost of administration, the cost of all insurance coverage required to protect the Subcontractor from risks not covered by the Controlled Insurance Program, and any actual net savings to Subcontractor after consideration of all factors."

SCOPE, SCOPE, SCOPE!

You can never be too specific in identifying the scope you're bidding to perform. Identify, by sheet number, title and date,

the Plans you are relying upon in preparing your bid, and by date and revision the Specifications. In addition, make sure that all inclusions and exclusions are separately and clearly detailed, with great specificity. Avoid bids with words like "... all related work..."; These can be the black hole through which your profit disappears! Finally, always review, very closely, the scope as described in the Subcontract, to ensure that it matches what you bid to provide. It is not unheard-of for a contractor to slide a little extra scope in, to cover for a bidding error that they made.

Bid a job right, and you'll improve your odds of contracting right - and making a little money, too!

Spike Cutler is SAM's legal counsel and represents SAM on the Attorney's Council of the NSA.



UPCOMING PROGRAMS

October: Qualifications that are required to be a 1099 subcontractor with Mario Hernandez, legal counsel to Commissioner Ruth R Hughs, commissioner representing employers. With all the changes in the laws concerning independent contractors, this will be a very informative meeting

November: SAM's famous Lein and Bond Claim seminar led by our own legal counsel, Spike Cutler. This seminar is a must for the training of all subcontractors and their staff.

TCA GEARS UP FOR AUSTIN



Mike White, Vice President for Government Relations for the TCA

Mike White, Vice President for Government Relations for the Texas Construction Association traveled up from Austin to bring us up to date on the legislative agenda for the 2017 Texas Legislature. First and Foremost on the list is the Lien Law Moderni-

zation act to bring the lien process into the 21st century and make the lien process easier for all parties to access and use.

Mike brought us a list of several other items that the TCA will monitor, and the TCA

board is now deciding which of these we will actively promote.

We must remember that the TCA not only promotes new laws to help our industry, but they also monitor the legislature to block any laws that are harmful to us.

SAVE THE DATE—SUBS WALK ON THE CAPITOL



Save the date of January 31 and February 1 to make a difference in the fate of your company as it is controlled by the laws of the State of Texas. The TCA-PAC is hosting its bi-annual **Roundup and Walk on the Capitol**.

Mid-afternoon Tuesday starts out with a legislative briefing by the TCA lobbyists. Tuesday evening is the reception for the TCA-PAC contributors to meet with many legislators and fellow PAC supporters. Wednesday, January 1 the TCA members descend on the Capitol to meet with their legislators and their staff.

It is advisable to set up an appointment with the legislators that you wish to visit on January 1, but if you can't do this, the legislator's staff will spend time with you, and you will probably have an introduction to your representative or Senator.

The host hotel is the Doubletree Guest Suites, 303 W. 15th Street and it's a short walk to the Capitol. They are offering rooms for \$219 + tax through Monday, December 31 or until the TCA block is full. Ask for the Texas Construction Association rate at (512) 505-4067.

If the block is full, there is parking at the hotel, and there are many other options for hotels in Austin.

Come join your SAM team in Austin. You will make a difference!



All SAM members are also members of the National Subcontractors Alliance, the largest Subcontractor Advocate in the USA.



Marvin Durham of Compass Steel



Board Member, MaryEllen Evans of Trade Management



Garin Fant from Cutler-Smith delivered our legal minute.



Just applied for membership, George McGraw of the Plains Capital Bank

NEW DOL REQUIREMENTS FOR JOINT EMPLOYERS!



JOINT EMPLOYMENT

Are you a Joint Employer?

In early 2016, the wage and hour division of the Department of Labor (DOL) released guidance regarding joint employment under the Fair Labor Standards Act (FLSA). The new guidance from the DOL identifies common scenarios in which two or more employers jointly employ an employee and are, as a result, jointly liable for compliance.

What is the definition of the joint employer? Joint employment exists where two or more employers benefit from the employee's work and are sufficiently related to or associated with each other.

Examples of Joint Employment are as follows:

- The employers have an arrangement to share the employee's services;
- One employer acts in the interest of the other in relations to the employee, or
- The employers share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

Below are facts to consider when determining joint employment:

- Who owns or operates the possible joint employers?
 - Do the employers have any overlapping officers, directors, executives or managers?
 - Do the employers share control over operations?
 - Are the operations of the employers intermingled?
 - Does one employer supervise the work of the other?
 - Do the employers treat the employees as a pool of workers available to both of them?
 - Do the employers share clients or customers?
 - Are there any agreements between customers?
 - What do joint employers need to do?
- Joint employers have responsibilities under various laws but particularly FMLA. According to the DOL's recent regulations, employees who are jointly employed by two employers must be counted by both employers in determining employer coverage and employee eligibility under FMLA, regardless of whether the employee is maintained on one or both of the employer's payrolls.

Under FMLA, the primary employer is responsible for:

- Giving required notices to its employees Provide FMLA
- Maintain health insurance benefits during the leave
- Restore the employee to the same job or an equivalence job upon return from leave
- No interference by joint employers regarding employee's right to exercise his or

- her FMLA rights
- Refraining from firing or discriminating against employee for opposing a practice that is unlawful
- Keep records required by the FMLA
- Must meet all the obligations of FMLA even when the secondary employer is not in compliance with the law.

Reference: Shoenfeld, S. (4/15/2016) SHRM.org



Brad Gross of Lane Gorman Trubitt. Good to have Brad back with us.



Legislative Team member, Edd Fritz of Richardson Mechanical



Board member, Carrie Edomm of Astro Sheet Metal, Sporting her SAM duds!



Board member, Clem Lesch of PCL Contract Bonds. Just back from Russia and Mongolia.



Sam says:

SAM is your best source of information for the Subcontracting Industry



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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 a member of the Texas Construction Association, the unifying voice of the trades in the Texas Legislature and as such all SAM members have access to all the benefits of the TCA.

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.org>



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**SUBCONTRACTORS—
THE ONES WHO RE-
ALLY BUILD THE
BUILDING**