



American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Copies of Contract Documents

Sample Language

ASA Recommends:

"No document included by reference in the subcontract is binding on subcontractor, except for the following documents, copies of which have been provided to subcontractor: <insert list>."

What You May See in the Wild:

"With respect to the work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to the Contractor by each and all of the terms and provisions of the General Contract and other Contract Documents, including those referenced herein."

Impact on the Subcontractor

- The subcontractor may be bound by clauses in documents, even if they're not attached to the subcontract or otherwise provided to the subcontractor.
- The subcontractor may be subject to unusual obligations, such as liquidated damages.
- The subcontractor may not know about and be able to take advantage of beneficial terms from the owner to the general contractor (i.e., rate of interest).

Negotiating Tips

When the GC Says: "I'm reluctant to provide you with a copy of my contract with the owner, who is my customer, not yours."

The Sub Should Say: "We can't agree to general contract terms sight unseen."

When the GC Says: "Many of these subsidiary documents bear directly upon your scope of work; these include references to codes, standards and regulations. Surely, you intend to perform as specified."

The Sub Should Say: "We're fully committed to providing you with a first-rate job. To do so, we must have copies of the general contract and all other documents related to our work. If they are not provided, the document references in the subcontract need to be deleted."

When the GC Says: "Certainly, you understand that my contract with the owner contains information that is confidential."

The Sub Should Say: "I understand your concerns. I would accept your furnishing a copy of just the portion of the prime contract that is applicable to my subcontract. Alternatively, you can block out confidential or proprietary information. Then we just need to include a provision that says I'm not bound by provisions in the document that you don't provide to me."

When the GC Says: "This kind of clause is standard practice in the construction industry. I can't make exceptions for you."

The Sub Should Say: "Certainly, you can't expect me or anyone to be bound by terms which we don't know about. In fact, both the ConsensusDocs and the AIA standard subcontracts make clear that a subcontractor like me is only bound by documents and provisions that have been provided to me."

Additional Resources:

ASA *Subcontract Addendum (2011)*, ¶ 3. Available to ASA members at www.ASAonline.com.

ConsensusDocs *Form 750, Standard Agreement Between Constructor and Subcontractor (2012)*, ¶ 2.4. Available at www.ConsensusDocs.org; ASA members can get a 20 percent discount by entering ASA100.

American Institute of Architects A401, *Standard Form of Agreement Between Contractor and Subcontractor (2007)*. Article 1. Available at www.aia.org/contractdocs/.