



American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Subcontractor Communication with Owner

Sample Language

ASA Recommends:

"The subcontractor may directly contact the Owner or the owner's agent concerning the status of payment for work performed by the Subcontractor."

What You May See in the Wild:

"The Subcontractor understands and agrees that it shall not deal directly with the Owner or representatives of the Owner, but shall handle all matters connected with this Subcontract, or payment for work completed under the Subcontract, exclusively through the Contractor, unless otherwise directed in writing by the Contractor."

Impact on the Subcontractor

- The subcontractor relies, at least in part, on owner's approval of its work and payment.
- If the subcontract has a pay-when-paid or a pay-if-paid clause, payment by the owner is a crucial event that determines when the subcontractor will get paid.
- The subcontractor relies on the general contractor to submit a timely request for payment and then pay the subcontractor.

Negotiating Tips

When the GC Says: "The owner is my customer. I'm uncomfortable with your running to the owner every time you have a concern or question. That's why he hired me."

The Sub Should Say: "I understand and I certainly agree to a limitation on my communicating with the owner or the design professional on everything except the status of payment."

When the GC Says: "I've already agreed to eliminate the pay-if-paid clause in my subcontract, so I'm ultimately on-the-line for payment to you. So, again, I'm concerned about your running to my customer all the time."

The Sub Should Say: "And I appreciate your working with me. But even with the pay-when-paid clause to which we've agreed, the timing of my payment is dependent the status of the owner's processing payment. If you want me to base my payment on the timing of the owner's actions, then the owner's actions are very much my business."

When the GC Says: "This just isn't how it's done in the construction industry."

The Sub Should Say: "I have to respectfully disagree with you. AIA's standard documents have long included a clause that allows the sub to check with the owner about the status of payment. And AGC and ASA agreed in their own joint industry guidelines. Even the federal government specifically prohibits a GC from prohibiting its subs from getting payment status information from the contracting officer."

Additional Resources:

American Institute of Architects A201, General Conditions of the Contract for Construction (2007). § 9.6.3. Available at www.aia.org/contractdocs/.

American Institute of Architects Form A401, Standard Form of Agreement Between Contractor and Subcontractor (2007), § 3.2.3. Available at www.aia.org/contractdocs/.
Guidelines for a Successful Construction Project (2008), "Communications." Available at www.ConstructionGuidelines.org.