



American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Protection of Work

Sample Language

ASA Recommends:

"Subcontractor is not responsible for damage to its work by other parties, and any repair work necessitated by such damage is extra work."

ASA Alternative:

"The Subcontractor shall provide reasonable protection for its jobsite material and work, but shall be liable for losses only to the extent caused by the Subcontractor's negligence. It is understood and agreed to that the Owner's all-risk insurance includes coverage for the full value of loss or damage to the Subcontractor's work in place, for its stored materials and for its materials in transit."

What You May See in the Wild:

"The Subcontractor shall protect its work hereunder and shall be liable for any loss or damage to any work in place and to any of the Subcontractor's material and equipment on the jobsite."

Impact on the Subcontractor

- The subcontractor may be forced to be responsible for the activities of others over whom it has no control.
- Unexpected expenses associated with correcting damage caused by others can rapidly erode a subcontractor's profit margin.

Negotiating Tips

When the GC Says: "I need you to be responsible for your work from the beginning of the project to the end."

The Sub Should Say: "Your company, not mine, is responsible for overall jobsite security. I can't be on the project 24/7 and thus I can't protect my work 24/7."

When the GC Says: "There are a lot of other subs coming and going on the jobsite. I need your work to be protected from their doing accidental damage."

The Sub Should Say: "I can't manage the comings and goings, and other activities of other subs on the project. Project sequencing, subcontractor management, and jobsite security all are your bailiwick."

When the GC Says: "You're one of those subcontractors who is coming and going. Certainly, you understand that you have to take precautions."

The Sub Should Say: "I train my employees to take precautions against damaging the work of others, and I'm willing to be responsible if they do. However, your language makes me responsible for damage done by others who I don't manage and can't control."

When the GC Says: "But your insurance covers this kind of damage."

The Sub Should Say: "The universal custom is that the owner provides all risk property damage insurance on material delivered to the jobsite or already installed."

Additional Resources:

ASA *Subcontract Addendum (2011)*, ¶ 10. Available to ASA members at www.ASAonline.com.

ConsensusDocs *Form 750, Standard Agreement Between Constructor and Subcontractor (2012)*, ¶ 3.16. Available at www.ConsensusDocs.org; ASA members can get a 20 percent discount by entering ASA100.