



## American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Overtime Billing Rates

### Sample Language

#### ASA Recommends:

"The Subcontractor does not agree in advance to perform any of its work on overtime. Any overtime work shall be payable at rates jointly agreed upon by the parties, at the time such overtime is authorized by the Contractor. These overtime billing rates or adjustments for increased hours shall include a loss-of-efficiency factor related to the extent and duration of overtime."

#### What You May See in the Wild:

"The Subcontractor agrees to perform overtime to the extent directed by the Contractor. The Subcontractor shall be entitled to additional payment only for the overtime premium cost of labor plus required payroll taxes and employee benefits on the premium portion of the labor."

#### Additional Resource:

*Guidelines for a Successful Construction Project (2008)*, "Overtime, Construction Costs and Productivity." Available at [www.ConstructionGuidelines.org](http://www.ConstructionGuidelines.org).

### Impact on the Subcontractor

- The subcontractor may want to expedite its work by increasing its crew size instead of working its employees more than 40 hours per week.
- The subcontractor may want to avoid overtime in order to avoid declining productivity caused by overtime schedules, including work pace, absenteeism, accidents, stacking of trades, and more.
- The subcontractor may want to avoid overtime in order to avoid morale and attitude problems, including fatigue, turnover, supervision problems, employee demand for more overtime, and more.

### Negotiating Tips

**When the GC Says:** "If we need overtime to get this job done, I should just be able to get you to do it without it being a big deal."

**The Sub Should Say:** "I'd rather not have to work any overtime. But I don't have any problem with occasional casual overtime – that is, overtime limited to a few hours a day during a single week or a single weekend during the project. But I can't agree to more than such casual overtime for premium time cost only."

**When the GC Says:** "Work is work. I don't understand why you think you should be paid more than the premium time cost."

**The Sub Should Say:** "Research and surveys, as well as my own experience, show that productivity decreases significantly with every passing week of overtime. I want to avoid those kinds of scheduling problems. And, if the project needs overtime, my company needs to be reimbursed for the related loss of efficiency."