



American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Choice of Law and Forum

Sample Language

ASA Recommends:

"Any dispute shall be governed by the law of the state where the project is located, the federal or state courts in the state where the project is located shall have exclusive jurisdiction and venue, and any arbitration shall be conducted within the state where the project is located."

What You May See in the Wild:

"Regardless of the site of the Project, the laws of the State of Alaska shall govern in the interpretation of any contract-related issues, and any hearings or dispute resolution meetings shall be held in the State of Alaska."

"This Subcontract shall be governed by the State of Alaska, without regard to principles of conflict of laws. Any action or suit arising hereunder shall be brought in the jurisdiction where the Contractor's principal office is located, without regard to principles of conflict of law or forum non conveniens."

Additional Resources:

ASA *Subcontract Addendum* (2011), ¶ 24. Available to ASA members at www.ASAonline.com.

ConsensusDOCS *Form 750, Standard Agreement Between Constructor and Subcontractor* (2012), ¶ 12.3. Available at www.ConsensusDocs.org; ASA members can get a 20 percent discount by entering ASA100.

American Institute of Architects A201, *General Conditions of the Contract for Construction* (2007). § 13.1. Available at www.aia.org/contractdocs/.

Impact on the Subcontractor

- Subcontractor may have to comply with laws and regulations with which it is not familiar and be held accountable for failure to comply.
- In the event of a dispute, the subcontractor may have to bear the expense of litigation in a distant location.
- Subcontractor may not be able to access witnesses or provide other evidence to support its position in a dispute.

Negotiating Tips

When the GC Says: "My company does business all over the country. It's just easier for us to take care of everything at home."

The Sub Should Say: "My company doesn't have any presence in Alaska. On the other hand, your company certainly has a presence here. Having to cope with all sorts of laws and codes from another state will just be confusing for both of us. On balance, it's much more equitable for us to resolve any disputes here where the project is."

When the GC Says: "The laws in our home state are much more representative of the construction industry than those here."

The Sub Should Say: "The construction team in this state have worked together to enact laws that are fair to everyone. I'm sure that neither of us agree with everything. But at least both know what the law is here."

When the GC Says: "I just don't get why you think you need this."

The Sub Should Say: "In the unlikely event that we have a dispute, we'll both need to produce documents and witnesses to prove our case. All of that is here, not in your home state. I can't justify a long trip with my people and records for legal actions away from the evidence of the job."

When the GC Says: "This isn't industry practice."

The Sub Should Say: "What I'm asking is in line with what both ConsensusDocs and AIA documents say is fair, and these forms reflect current industry practice."