

EXHIBIT 1

SUBCONTRACT ACKNOWLEDGMENT OVERALL NEGOTIATING APPROACH

The Subcontract Acknowledgment serves as a valuable tool for reaching agreement on subcontract terms. Use of this neutral form helps Subcontractors to avoid long drawn out negotiations, and it can serve to limit the number of issues that need to be discussed with a customer. Still, Subcontractors should be ready to address the reluctance by some GC's to permit any meaningful changes to their boilerplate subcontract language.

Most General Contractors are busy people who are comfortable in dealing with construction means and methods, but who are often ill at ease in negotiating subcontract terms. These GC's push their Subs to simply sign their printed forms without any modifications. At the same time, responsible Contractors recognize the value to them of reaching agreement on potential problems before a job begins. They also know that fair subcontract terms attract more responsible Subcontractors who are more likely to comply with the letter and spirit of negotiated terms than Subs who blindly accept a Contractor's subcontract form without change. If approached in a positive, non-confrontational way, the negotiation of subcontract terms typically results in better rapport with customers since you can sell yourself and your company's strengths while convincing the GC that terms in its subcontract designed for use with marginal Subcontractors are not appropriate for responsible specialty trade contractors. Busy GC's will usually agree to use similar contract clarifications on future jobs as well.

Although GC's may initially contend that they never change their printed subcontract terms, practically all of them do agree to reasonable clarifications such as those found in the Acknowledgment. One good way to overcome their objections is by calling attention to some discrepancies between the GC's document and the specs or general conditions for the project. A more disarming way is to say, if true, that others have praised the GC's fairness in arriving at level playing field subcontract language.

During negotiations, it is important for Subcontractors to listen closely to the GC's concerns that led to the various unfair terms in their subcontract form. You can often craft specific language to give the GC a comfort level on a given point of concern and thereby avoid unnecessarily broad, unfriendly language in the GC's printed document. Most GC's will also agree to subcontract terms contained in their general contract or consistent with prevailing construction industry practice.

Should you need to concede a point or two during the give-and-take of subcontract negotiations, the concession should be made conditional on the GC's agreement to the remaining points under consideration. Casual concessions simply encourage more GC demands. By firmly and cooperatively addressing mutual needs, a tailored Subcontract Acknowledgment that is fair to both parties will usually result.

Typical General Contractor Objections

“Our subcontract is not subject to any changes. That’s our company policy. We want the same terms for every subcontractor on a project.”

Response: You have a lot to gain through the clarifications in our Acknowledgment. It brings the subcontract into line with best industry practices. Many of your terms would be OK to use with a marginal sub where you need extra protection. Fair terms cause responsible subs such ourselves to be the good team players you need for successful jobs. (If true, add that others have praised the GC’s fairness in working out win-win terms.)

“You’re right in calling our subcontract tough, but we always do what’s fair when problems come up – even if the subcontract would allow us to do otherwise.”

Response: Having a subcontract that doesn’t mean what it says helps no one. We both benefit by having a clear understanding upfront before disputes arise and confusion takes hold. When big problems occur, the lawyers and the courts look to the intent of the parties in the contract documents. Our Acknowledgment confirms a level playing field agreement that probably reflects how you intend to deal with problems anyway.

“We made clear in our bid documents that all subs should price their work based on our standard subcontract form being used. We expect you to do just that.”

Response: Our bid confirmed that we agree to use your subcontract document, but subject to mutually agree upon clarifications. Our Acknowledgment contains these clarifications. If you consider that any of them are inconsistent with the general contract terms or contrary to industry best practices, we’ll be glad to discuss these particular points and, if need be, to add further clarification in the Acknowledgment.

“You’ve signed our subcontract form in the past. Why are you taking a different position now? I don’t remember your having any big problems on our past jobs.”

Response: We’ve had some serious problems working under terms similar to those in your subcontract. As a result, we now use the Acknowledgment to work terms fair to both parties. We’d like for them to apply to future projects as well. That way, the two of us won’t have to spend time going over the same points.

“It’s mighty funny that all of your competitors sign my subcontract without so much as a gripe, but you want all sorts of changes. What makes you so different?”

Response: I can only speak for my company, but we take our contract obligations dead seriously. Like other reputable specialty contractors, we offer high quality work at competitive prices based on fair subcontract terms. You’ve got to agree that’s better than your dealing with outfits that sign whatever terms they’re offered and winding up with misunderstandings throughout a project. (If you are aware that your competitors also insist on subcontract changes, that point should be made as well.)

“What’s this form you’ve stapled to our subcontract? I’ve glanced through it, and I’ve got some problems with a number of your points.”

Response: That’s our Subcontract Acknowledgment drawn from construction industry best practices. You’ll find that it’s quite consistent with AIA and AGC model contract terms. The Acknowledgment clarifies the basis of our acceptance of your subcontract by addressing potential conflicts, loose ends, and inequities. I’ll be glad to discuss any of the clarification points that you consider to be problems.

“I just don’t have time to go through all of your proposed changes right now. I’ll be in touch after I’ve had a chance to give them further thought.”

Response: We’ll be proceeding on the basis of our Acknowledgment terms until we hear further from you. Should you want to talk about any of the items, please let me know soon since we’ll need a signed subcontract with mutually acceptable terms before starting our jobsite work.