

INSTRUCTIONS FOR USE OF THE
CONSTRUCTION ASSOCIATIONS'
SUBCONTRACT AGREEMENT RIDER
WITH THE AGC STANDARD SUBCONTRACT

1997 Edition

Minnesota Wall & Ceiling Contractors Associations ♦ Carpenters Employers Council
Minnesota Painting & Wall Covering Employers Association ♦ Thermal Insulation Contractors Association
National Electrical Contractors Associations (Minnesota-Dakotas) ♦ Gypsum Dry Wall Contractors Association
Minnesota Mechanical Contractors Association ♦ Sheet Metal, Air Conditioning, Roofing Contractors Association (Minnesota-Dakotas)

These instructions are for your aid and guidance when you are performing as a subcontractor and the proposed contract is the Standard Subcontract Agreement for LABOR and MATERIALS prepared by the Associated General Contractors of Minnesota, *1996 Edition*. The instructions anticipate that you will be using the Construction Associations' Subcontract Agreement Rider, *1997 Edition*.

These instructions and associated rider have been prepared at your Association's request to balance the more significant inequities of the Standard Subcontract Agreement. The matters raised in these instructions and rider are not necessarily all of the covenants or conditions of the Standard Subcontract Agreement which may be a problem for you as a subcontractor, but are rather those matters that members of the Association have questioned. The reasons given for the changes made, only partially explain why the change is suggested. A book would be necessary to explain all the reasons for the changes suggested.

The instructions and rider presuppose no special riders of revision of the Standard Subcontract Agreement language. If the project is large or has peculiar features to it or the general contractor insists on riders or special additional language, you should seek legal counsel before executing the subcontract.

PLEASE NOTE: To make the rider or any exceptions to the contract documents a part of your bid, you must, prior to making your bid, advise the general contractor that rider is a condition of your bid.* A recommended procedure is to give to the Contractor, prior to the day of bid, an unpriced written proposal including all your terms and conditions, including the rider. On the day of the bid, call in your price specifically directing that the price be inserted in the written proposal previously furnished.

INSTRUCTIONS

1. Second and Third Premise Clauses. The premises clauses are those beginning with the work "WHEREAS". The second and third premise clauses state that the contractor has made available to the subcontractor copies of the documents referred to and that the subcontractor has carefully examined all of them.

These clauses charge the subcontractor with knowledge of and responsibility for what is contained in the documents referred to. Subcontractors are responsible even though they have not read the documents and even though they may not have seen them.

The subcontractor will be obligated to perform work of the type it contracted for even when the work is found only in documents it did not see. You will be bound to notice provisions, waiver provisions, claim and guarantee provisions even when those provisions are found only in documents not seen.

If you have not seen all documents, the documents not seen should be deleted from the list. If you have seen as is frequently the case, only the mechanical or electric drawings and Division 15 and 16 of the

specifications, that fact should be noted. A suggested procedure is to write in at the end of the second premise clause a note such as “Only Drawings M1-M7 and Division 15 of the specifications received.” This must be done to avoid your being obligated for work or subject to conditions contained in documents you have not seen or examined.

2. Second Premise Clause. The second premise clause also provides that the subcontractor shall be responsible for obtaining its own copies of the contractor documents. This means that the cost of a set of contract documents is your cost. You may wish to make special arrangements with the general contractor to obtain them.

3. Clause One. Clearly describe the work you are to do. Always use specification section numbers. If the section describing the work you are to do is cross-referenced to other parts of the specification, be sure you have copies of the parts referred to and that those parts do not obligate you for work you did not bid. Commonly, the general and special or supplemental conditions are cross-referenced. If you did not bid work included in this clause or referred to in other parts of this contract, or if the general contractor is to perform certain work or provide certain working conditions, such as hoisting or clean-up, a special notation to the effect should have been made in your bid and should be made in this Clause One.

4. Clause Four: This clause is amended by the rider to preclude the subcontractor from having to follow an expensive and/or uncommon work sequence or order. To make the amendment clear you should strike through the wording in the standard form.

5. Clause Five This clause is amended by the rider to allow subcontractor a right to claim delay for causes beyond its control. To make the amendment clear, you should strike through the wording in standard form.

6. Clause Six. This clause is amended by the rider to eliminate a right of recourse from other subcontractors. It also makes more equal the rights of recovery between Contractor and Subcontractor in the event of a dispute. To make the amendment clear, you should strike through the wording in the standard form.

7. Clause 7.2. The rider revises this clause. This is done to limit the subcontractor’s liability to injuries occurring from its own fault. This clause no longer insures the contractor against injuries arising from the contractor’s own acts. Most insurance policies exclude liability assumed by contract. You should check with your insurance agent to be sure you have the proper coverage. Note also that most insurance policies cover only for contracts in writing. Consequently do not start work until the contract is signed.

8. Clause Eight. The change is made so that the Contractor’s decision will be subject to review.

9. Clause Eleven. This clause again makes the subcontractor responsible for all of the contract documents. You are again cautioned to read and review particularly the general and special conditions, but also the architectural specifications and all drawings. This clause may require you to perform the work included in those documents even if your bid did not include them.

10. Clause 13 1. This clause is amended by the rider. The intent of the rider is to require the general contractor to obtain a written directive or authorization from the subcontractor before it may backcharge the subcontractor.

11. Clause Fifteen. Clause Fifteen is amended by the rider. To make clear, you should strike through the wording in the standard from. Incidentally, it is suggested that all purchase orders for equipment state “in accordance with Specification Section(s) _____” citing the section(s) so that the supplier will be obligated to the General Contract terms and conditions, particularly guarantees.

12. Clause Eighteen This clause has been added to make clear that the subcontractor is not obligated, prior to bidding, to check the plans and specifications for the conformance with the multitudes of laws, codes and regulations.

13. Clause Twenty. This clause makes it imperative that you make reasonable inspection of any prior work before commencing your work. The clause as written will not make you responsible for unobvious or hidden defects, but it does make it your responsibility to find and report apparent or obvious defects. An example may help explain what the clause provides. If you had equipment that was to be set on anchor bolts placed by another, it would be reasonable to check the positioning on the anchor bolts before attempting to set the equipment. If you attempted to set the equipment and the anchor bolts were improperly positioned, you would have the right to require that the bolts be properly reset; but this clause precludes you from recovering the added costs of the second setting of the equipment and the down time.

14. Clause D. This clause is amended by the rider. The intent of the rider is to require the subcontractor to be paid no later than the time when the project should have been complete; and to avoid the subcontractor’s money being held up pending settlement of owner-contractor disputes unrelated to the subcontract.

15. Clause E. There are many options as to the advisability or arbitration clauses. If you desire arbitration, make to appropriate entries in the arbitration clause included in the rider.

16. Clause J. To be clearly effective, this rider must be given a description; for example, Rider “A” and an “A” inserted in this clause.

17. It is emphatically suggested that the subcontractor, prior to signing this agreement, reach a written agreement with the contractor for the use of contractor’s hoists, cleanup, rubbish removal, temporary enclosures, temporary heat, security, etc.

The foregoing instructions are given not to reverse the bias of the Standard subcontract Agreement, but rather to make it more balanced and fair.

*Wording such as the following may be used.

“Our bid is conditioned on the presumption that if we are the successful bidder on this job, we will be utilizing an AGC of Minnesota “STANDARD SUBCONTRACT AGREEMENT”, Labor and Materials, 1996 version and the “CONSTRUCTION ASSOCIATIONS’ SUBCONTRACT AGREEMENT RIDER”, 1997 edition.”

CONSTRUCTION ASSOCIATIONS **SUBCONTRACT AGREEMENT RIDER**

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Rider _____

This rider amends and modifies the STANDARD SUBCONTRACT AGREEMENT for Labor and Materials prepared by the Associated General Contractors of Minnesota, 1996 edition.

Clause 4- Delete and substitute: To proceed with the work in an orderly and reasonable sequence mutually agreed to by Contractor and Subcontractor and to abide by Contractor's reasonable decision as to the allotment of all storage and working space on all projects."

Clause 5- Delete and substitute: "That no extension of the time to perform this Subcontract shall be allowed unless Subcontractor is delayed in the performance and completion of the Subcontractor work for reasons beyond Subcontractors' control and Subcontractor shall have given notice in writing of the cause of delay to Contractor within seven (7) days following the beginning of each delay."

Clause 6- Delete and Substitute: "To save harmless the Contractor from any and all losses or damage occasioned by the failure of the subcontractor to carry out the provisions of this Subcontract unless such failure results from causes beyond the control of the Subcontractor."

Clause 7.2.- Delete and substitute: "Subcontractor agrees to liability imposed by law upon Contractor for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance of the work, provided such injury to persons or damage to property is due or claimed to be due to negligence of the Subcontractor, its employees or agents. Subcontractor further agrees to obtain, maintain and pay for such insurance coverage as will insure the provisions of this paragraph."

Clause 8 - Add: "Except that Contractor's decision shall be subject to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association."

Clause 13.1- Add: "However, no claim for services or for extra work shall be made by Contractor, or paid for by Subcontractor, or charged to Subcontractor's account unless and until authorized by subcontractor or its authorized representative in writing before the work and/or service are begun."

Clause 15- Delete and Substitute: "To guarantee its work to the same extent that the Contractor is obligated to guarantee its work under the General Contract but in any event to guarantee its work, except for lamps and fuses, against all defects in material and workmanship for a period of one (1) year after installation."

Clause 18- Add: "Except that a fair adjustment in the Contract price shall be made for any such compliance which results in work or materials being omitted or added."

Clause D- Add: "If Certification is withheld for causes which are not the fault of the Subcontractor, Contractor shall pay to Subcontractor final payment, including all retention, within seven (7) days of Subcontractor's written demand."

Clause E- Add: "Disputes involving _____ (\$ _____) Dollars or less shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association." (If no amount is inserted, this clause shall not apply.)