Establishing Best Practices

- Working Early and Getting Paid Late: Cash Management Pitfalls That Can Sink Subcontractors
- Lien Waiver Best Practices
- Case Study: Why Bigane Paving Uses the ConsensusDocs 750 Subcontract Agreement as Our Standard Subcontract Form
- Business Development Working with Marketing and Sales
- Networking
- OSHA Illness/Injury Data Collection Requirements
- Legally Speaking: What Is a Construction Attorney Good For?

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2017 SUBExcel
ASA - We Build Excellence
March 15-18, 2017
Denver, Colorado
Textura’s Early Payment Program™ (EPP™) allows general contractors to offer subcontractors optional earlier payment. With EPP, subcontractors can get paid about 5 days after invoice approval – 30 to 90 days sooner than normal payment timing – in exchange for a modest fee.

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- Strengthen balance sheet
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**Business**
- Reduce business owner’s risk
- Offer more competitive bids
- Stronger relationship with general contractors
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ASA Encourages Superior Prime Contractors to Apply for Best Practices Awards

Prime contractors and specialty trade contractors that have signed, within the past year, a contract directly with a construction owner under which it performs construction services are encouraged to apply for ASA’s National Construction Best Practices Awards. These awards recognize prime contractors who subcontractors say are the best to work for—those who are committed to best business practices like safety management, prompt payment, prompt processing of change requests and claims, and effective project scheduling and coordination.

The criteria for these awards include the use of a standard subcontract whose provisions substantially reflect the best practices incorporated into the ASA-endorsed ConsensusDocs 750 Standard Agreement Between Constructor and Subcontractor, as well as highly favorable evaluations from three specialty trade contractors, based on 20 project management factors. Each applicant must supply three sealed business-practices recommendations from specialty trade contractors that have worked for it in the past year along with a copy of its standard subcontract with its application. A construction attorney will evaluate the standard subcontract, and the ASA Task Force on Ethics in the Construction Industry will evaluate the recommendations from specialty trade contractors. Prime construction contractors that use the ASA-endorsed ConsensusDocs 750 contract form as their standard subcontract automatically pass the subcontract evaluation.

The application deadline is Nov. 11, 2016, and the application fee is $495. Awards will be presented during ASA’s annual convention, SUBExcel 2017, which will take place March 15-18, 2017, in Denver, Colo. Information about these awards is located under "Education & Events" on the ASA Web site.

Abney Begins Term as 2016-17 ASA President

Robert Abney, the division president of the Southaven, Miss., branch of F.L. Crane & Sons, Inc., began his term as the 2016-17 president of ASA on July 1. He succeeded Letitia “Tish” Haley Barker, Haley-Greer, Inc., Dallas, Texas. Other officers beginning their one-year terms on July 1 were: Vice President Jeff Banker, Banker Insulation, Chandler, Ariz.; Treasurer Courtney Little, ACE Glass Construction Corporation, Little Rock, Ark.; and Secretary Anthony Brooks, Platinum Drywall, Maumelle, Ark.

Abney joined F.L. Crane, a contractor established in 1947 specializing in interior and exterior finishes, in 1994 while still in college and served in a variety of positions until he was promoted to division president in 2001. Abney is a past president of ASA of West Tennessee and led its merger into the now statewide ASA of Tennessee. F.L. Crane maintains membership in ASA of Alabama, ASA of Mississippi, and ASA of Tennessee. At the national level, Abney first joined the ASA Board of Directors in July 2008.

New ASA/FASA Education Catalog Showcases Tools and Resources for Subcontractors

Over the past year, ASA and the Foundation of ASA have developed dozens of new education programs and products especially for subcontractors. These and other ASA education programs and products are accessible in the 2016-17 edition of the ASA/FASA Construction Subcontractor’s Education Catalog. This catalog showcases videos-on-demand, books, and free, downloadable members-only resources to help subcontractors meet the demands of working in today’s construction industry.

OSHA Fines to Increase by 78 Percent on Aug. 1; Other Labor Agencies’ Fines Also Increase

The U.S. Department of Labor issued an interim final rule that will increase the maximum penalties available to the Occupational Safety and Health Administration by 78 percent on Aug. 1. The top penalty for serious violations will rise from $7,000 to $12,471. The maximum penalty for willful or repeated violations will increase from $70,000 to $124,709. OSHA’s maximum penalties have not been raised since 1990. The increase in fines was required by the “Federal Civil Penalties Inflation Act,” which Congress enacted in 2015.
The new law directed agencies to adjust their penalties for inflation each year using a much more straightforward method than previously available, and required agencies to publish “catch up” rules this summer to make up for lost time since the last adjustments.

In addition, the Wage and Hour Division’s penalty for willful violations of the minimum wage and overtime provisions of the Fair Labor Standards Act will increase from $1,100 to $1,894. The Office of Workers Compensation Systems will increase its penalties for failure to report termination of payments made under the Longshore and Harbor Workers’ Compensation Act, from $100 to $275. Fines issued by other DOL agencies, including the Employee Benefits Standards Administration, the Employee Training Administration and the Mine Safety and Health Administration, also will increase.

More information on DOL’s individual penalty adjustments can be found in a chart available online. Interested parties can submit comments on the interim final rule at www.regulations.gov, the federal government’s regulation portal, on or before Aug. 15, 2016.

OFCCP Updates Rule on Sex Discrimination for Federal Contractors

On June 15, the Office of Federal Contract Compliance Programs within the U.S. Department of Labor issued a final rule that updates its sex discrimination rule for the first time in 40 years. The new regulation, which takes effect on Aug. 15, details the rules that almost all contractors and subcontractors on federal and federally-assisted construction must meet to ensure nondiscrimination in employment on the basis of sex. Such contractors also must take affirmative action to ensure that applicants and employees are treated without regard to their sex. OFCCP’s new rule provides examples of prohibited sex discrimination in the workplace to ensure that contractors understand their obligations. It also offers contractors examples of best practices for prevention of this discrimination. The rule:

- Brings the sex discrimination guidelines up to date. OFCCP’s new rule aligns the Agency’s regulations with current law.
- Requires that contractors provide workplace accommodations, such as extra bathroom breaks and light-duty assignments, to an employee who needs such accommodations because of pregnancy, childbirth or related medical conditions, in certain circumstances where those contractors provide comparable accommodations to other workers, such as those with disabilities or occupational injuries.
- Prohibits contractors from paying workers differently because of their sex. For instance, contractors may not deny opportunities for overtime work, training, better pay or higher-paying positions because of a worker’s sex. The rule also includes a provision that enables employees to recover lost wages any time a contractor pays compensation that is the result of discrimination, not only when the decision to discriminate is made.
- Prohibits discrimination on the basis of sex with regard to fringe benefits such as medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions and privileges of employment.
- Prohibits sexual harassment. The rule prohibits unwelcome sexual advances, requests for sexual favors, offensive remarks about a person’s sex and other verbal or physical conduct of a sexual nature when such conduct unreasonably interferes with an individual’s work performance, becomes the basis for employment decisions or creates a hostile working environment.
- Prohibits setting requirements for jobs or training that are based on an applicant’s or employee’s sex unless the contractor can meet the high bar of demonstrating that such requirements are a bona fide occupational qualification. In addition, a contractor may not set requirements, such as height or weight qualifications, that adversely affect applicants because of their sex unless it demonstrates that the qualifications are job-related and consistent with business necessity.
- Prohibits treating female or male employees or applicants differently based on the stereotypical assumption that women are more likely to have caregiving responsibilities. For instance, contractors may not deny mothers employment opportunities that are available to fathers based on the faulty assumption that mothers’ childcare responsibilities will...
conflict with their job performance. Similarly, contractors may not deny fathers flexible workplace arrangements that are available to mothers based on the faulty assumption that men do not have and do not assume childcare responsibilities.

- Makes clear that sex discrimination includes discrimination because of an employee's gender identity. The rule also requires contractors to allow workers to use bathrooms, changing rooms, showers and similar facilities consistent with the gender with which the workers identify. In addition, the preamble to the rule notes that an explicit, categorical exclusion of coverage for all care related to gender dysphoria or gender transition is facially discriminatory because such an exclusion singles out services and treatments for individuals on the basis of their gender identity or transgender status.

- Prohibits contractors from treating employees or applicants adversely because they fail to comply with expectations about how women and men should look or act or what kinds of jobs they should do.

For more information, see ASA’s OFCCP Rule on Sex Discrimination: Frequently Asked Questions.

One Year and Counting: OSHA’s New Silica Rule’s Requirements

In a year, on June 23, 2017, many, if not most, construction employers will need to be in compliance with OSHA’s new rule on crystalline silica. The new rule applies to all occupational exposures to respirable crystalline silica in construction work, except where employee exposure will remain below 25 micrograms per cubic meter of air (μg/m³) as an 8-hour time-weighted average under any foreseeable conditions. As with many OSHA rules, the new rule requires an employer to ensure that each covered employee can demonstrate knowledge and understanding of the rule’s basic components. Under OSHA’s silica rule, this includes:

- The health hazards associated with exposure to respirable crystalline silica.
- Specific tasks in the workplace that could result in exposure to respirable crystalline silica.
- Specific measures the employer has implemented to protect employees from exposure to respirable crystalline silica, including engineering controls, work practices and respirators to be used.
- The identity of the competent person designated by the employer.
- The purpose and a description of the medical surveillance program.

For more information, see the ASA Fact Sheet on OSHA’s Rule on Respirable Crystalline Silica and the ASA Frequently Asked Questions on the OSHA Standard on Respirable Crystalline Silica.

ASA, in collaboration with 22 other construction associations, has initiated a lawsuit to prevent OSHA from implementing its rule. In the meantime, ASA recommends construction employers to begin to determine how they will educate their employees to avoid silica exposure in order to be in compliance by the OSHA deadline.

ASA will offer a complimentary webinar, “OSHA Silica Rule—Applications for Subcontractors,” on March 1, 2017, as part of the 2016-17 ASA Webinar Series

Contractors Should Be Ready to Comply with OSHA Tracking Rule

Employers in the construction industry should be ready to comply with the employee retaliation and nondiscrimination provisions in OSHA’s new rule concerning tracking and reporting workplace injuries and illnesses. The first phase of the rule, which takes effect on Aug. 10, amends OSHA’s recordkeeping regulation on how employers inform employees to report work-related injuries and illnesses to their employer.

Specifically, the rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer’s procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses. This aspect of the rule also targets employer programs and policies that, while intended to promote safety, may have the effect of discouraging workers from reporting injuries and, in turn leading to incomplete or inaccurate records of workplace hazards.
Employers Should Be Ready to Comply with DOL’s New ‘Persuader’ Rule

Employers must comply with the U.S. Department of Labor’s so-called “persuader” rule, which is applicable to arrangements, agreements and payments made on or after July 1. DOL’s Office of Labor-Management Standards revised two public disclosure reporting forms, the Form LM-10 (employer report) and the Form LM-20 (agreement and activities report), in a final rule published on March 24.

The new rule pertains to the employer and labor relations consultant/“persuader” reporting requirements of the Labor-Management Reporting and Disclosure Act, which requires employers and labor relations consultants to report their agreements or arrangements in which the consultant undertakes activities with an objective, directly or indirectly, to persuade workers concerning their rights to organize and bargain collectively. The new rule states that consultant activities that trigger reporting include direct contact with employees with the goal to persuade them, as well as the following categories of indirect consultant activity undertaken with the goal to persuade employees:

- Planning, directing, or coordinating activities undertaken by supervisors or other employer representatives including meetings and interactions with employees.
- Conducting a union avoidance seminar for supervisors or other employer representatives.
- Developing or implementing personnel policies, practices or actions for the employer.
- Exempt “advice” activities that do not trigger reporting are now limited to those activities that meet the plain meaning of the term: an oral or written recommendation regarding a decision or course of conduct.

The final rule also requires consultants to file reports when they hold union avoidance seminars for employers, but does not require employers to report simple attendance at these seminars. More information on the rule is available on the OLMS persuader final rule page and employer-consultant reporting page, including the Form LM-20, Form LM-10, and corresponding instructions, as well as a persuader rule summary.

To help its members prepare to comply with the new OSHA rule on tracking and reporting occupational injuries and illnesses, ASA has prepared a simple PowerPoint presentation that is available as a PDF on the ASA Web site. Furthermore, ASA will offer a complimentary webinar, “OSHA Illness/Injury Data Collection,” from noon to 1:30 p.m. Eastern time on Oct. 4, 2016. Presenter Jamie Hasty, SESCO Management Consultants, Bristol, Tenn., will examine the requirements and explain what subcontractors should be doing to be in compliance.

The other provisions of the rule, which require employers in high-hazard industries, including the construction industry, to send injury and illness data to OSHA for posting on the agency’s public Web site, take effect on Jan. 1, 2017. Under those provisions, construction employers with 20-249 employees must electronically submit information from OSHA’s Form 300A. Construction employers with 250 or more employees must electronically submit to OSHA injury and illness information from OSHA Forms 300, 300A and 301. According to OSHA, the availability of this data will enable prospective employers to identify workplaces where their risk of injury is lowest; thus, employers competing to hire the best workers will make injury prevention a higher priority. In addition, OSHA suggests that public access to this data also will enable employers to benchmark their safety and health performance against industry leaders, to improve their own safety programs and customers to evaluate the management of their vendors.

To help its members prepare to comply with the new OSHA rule on tracking and reporting occupational injuries and illnesses, ASA has prepared a simple PowerPoint presentation that is available as a PDF on the ASA Web site. Furthermore, ASA will offer a complimentary webinar, “OSHA Illness/Injury Data Collection,” from noon to 1:30 p.m. Eastern time on Oct. 4, 2016. Presenter Jamie Hasty, SESCO Management Consultants, Bristol, Tenn., will examine the requirements and explain what subcontractors should be doing to be in compliance.
Save the Date!

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March 15 – 18, 2017
Denver Marriott City Center
Denver, Colorado
A brief review of recent cases that affect your business

Oregon. History is made with the Oregon Supreme Court’s holding that construction defect claims (negligent construction) are governed by the two-year statute of limitations (with a discovery rule), not the six-year statute that had been the case previously. This now matches the statute of limitations against architects. The Oregon Supreme Court issued its decision in Goodwin v. Kingsmen Plastering, Inc., on June 23.

It held that claims for negligent construction are governed by the two-year statute of limitations under ORS 12.110(1), not the six-year rule of ORS 12.080(3). “[T]his court’s recent statement in Abraham that [the two-year rule applies], although dictum, was a correct statement of the law.”

This will have a big impact on pending and future construction defect actions in Oregon.

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ASA offers national recognition to prime contractors that are committed to superior business practices like prompt payment. ASA’s annual National Construction Best Practices Awards, developed by the Task Force on Ethics in the Construction Industry, recognize elite prime contractors that uphold best practices and refuse to do business according to the “lowest common denominator.” The deadline for prime contractors to submit applications is Nov. 11, 2016. The application fee is $495. Each prime-contractor applicant must supply three sealed business-practices recommendations from specialty trade contractors that have worked for it in the past year, along with a copy of its standard subcontract, with its application. ASA will honor recipients during an awards ceremony at the ASA annual convention, SUBExcel 2017, March 15-18, 2017, in Denver, Colo.
An uptrend in the construction industry is good news, but when you’re the last to get paid when a job’s complete, the delay in cash flow can become a stumbling block.

For subcontractors, effectively managing cash flow is an ongoing and high-stakes challenge. Many make heavy use of lines of credit to fund ongoing projects while they wait to be paid for completed jobs—a dynamic that contributes to the high rate at which subcontractors go out of business.

Here are some best practices for cash management you can implement now to avoid finding your business short on cash.

**How Do You See a Cash Crisis Coming?**

Subcontractors often don’t realize they have a cash problem until it is too late, leaving management to find another source of funding. This usually means taking on additional debt, asking shareholders for money, or refinancing a building or equipment, none of which is a good option if you can avoid the situation entirely instead.

If your internal outflow is becoming more than you can reasonably afford, that is a sure sign you need to examine your cash flow management.

A large, outstanding accounts receivable balance is another sign, as are underbillings. Billing practices are often partly at fault—either because subcontractors don’t bill their customers in a timely manner or because they’re simply too lenient. One important related ratio to monitor is your AR turnover. Subcontractors often give customers 90 to 120 days to pay when closer to 30 days would be ideal (though 60 may be more realistic). Wherever this number falls, hold your customers to the payment terms your suppliers hold you to, which will keep you out of a negative cash position.

**Best Practices**

As a matter of primary importance, have your attorneys review any contracts before you sign them. When construction becomes especially competitive, subcontractors are in a high-risk position because of their payment schedule. Completing your work long before you are paid for it means having very little leverage when it is time to collect. If a customer refuses to pay, you’re left with the option either to sue or to accept a lower rate than the contract stipulated—sometimes as little as 50 cents on the dollar. Subcontractors can mitigate this risk by understanding their lien rights, which may vary based on the jurisdiction in which the project is performed.

Have your attorney look for loopholes in your payment terms, and make sure the level of risk you assume in a contract is commensurate with the margin you plan to receive from it. Margins naturally increase as subcontractors become more specialized, but sometimes it still isn’t enough to offset the risks (and the cash flow challenges) they face. Thoroughly vetting contracts is particularly important when working with a new customer or one that may pose a collectability issue in the future. Billing for your work as the job progresses is another way to mitigate your risk.

Remember that longtime, positive relationships with customers are typically a better source of ongoing work than a one-time contract with an unknown entity. Longtime relationships gradually take on the tone of business partnerships, putting you in a position to better negotiate to both parties’ mutual benefit.

As another best practice, after you’ve signed any contract (either with a new or existing customer), involve yourself in conversations between your customer and the project owner. This will give you a voice in the timing of project payments and the
contingencies they depend on—for example, if subcontractor payments must wait until after the owner agrees the project is substantially complete. Even if that part of the agreement is out of your hands, you’ll be able to plan ahead for any potential cash flow challenges it might mean to you.

Last, consider bonding around the retention amount. In this type of bond arrangement, the general contractor doesn’t hold retention, and in return the surety provider agrees to pay the general contractor up to the amount it would have had in retention if the subcontractor failed to complete the project. This type of arrangement benefits both the general contractor and the subcontractor. The general contractor retains the monetary projection it requires via the surety on the project, and the subcontractor retains its cash.

If predictability of cash flow is a concern, working with your lenders to refinance existing debt obligations can also help. Pushing out repayments creates an immediate bump in cash flow, which can help offset some of the variability subcontractors face. To make this work, subcontractors generally need to present the bank with a compelling reason for the change in repayment.

Last, make sure you’re putting idle assets to use. Equipment not actively being used to fulfill a job is essentially a wasted potential revenue stream. If you have excess equipment given your volume of work, consider appointing someone within your organization specifically to manage it. This person’s aim should be to reduce downtime by planning both where and when the equipment is needed.

Consider too the tradeoffs between buying and leasing equipment. Buying equipment comes with maintenance costs, but leasing means having an ongoing payment obligation. Either can be a valid avenue depending on your particular circumstances and the extent to which you use the equipment. Generally speaking, if you have a strong enough balance sheet to purchase equipment and a healthy backlog of future work, consider buying. On the other hand, if you need equipment only for one or a handful of projects and don’t have enough volume to keep it in use year after year, leasing may be a better option.

The same goes for cash reserves. Project out several business cycles to understand what your cash flow needs will be, and consider investing amounts left in reserve into income-generating assets, since these can provide an additional source of cash flow. It’s best to approach the process of adjusting your allocations in five steps:

- Review the current structure of your liquid assets for susceptibility to economic or interest rate volatility.
- Look at your business cycle cash flow historically to identify near-term liquidity (cash you access repeatedly during a business cycle), strategic reserves (cash you access a few times a cycle) and idle cash.
- Project your needs out through the next business cycle, considering any seasonality issues, capital needs, and industry conditions.
- Work with third parties (such as sureties or bankers) to understand how any adjustments in the structure of your liquidity—such as allocating a portion of your cash to high-quality, fixed-income bonds—could impact covenants and the availability of financing.
- For closely held contractors, assess your ownership’s risk tolerance and create a plan for how you’ll respond to a range of potential cash flow–related situations.

Common Cash Flow Pitfalls

Construction is frequently a closely held business with few shareholders. If that’s the case, be especially diligent about forecasting the impact of any distributions made from the business to the shareholders individually, since doing so can pull needed cash away from the business. Above all, if you do choose to make a distribution, be sure it’s invested wisely—ideally into an income-generating asset that will continue to grow.

On a related note, it’s important not to comingle subcontractor assets with those of another venture. It isn’t unusual for owners to also hold real estate as part of another business or to invest in side projects, but tying up subcontractor funds in another business can present complications when cash is needed quickly. Further, comingling assets can distort financial ratios. Lenders are often well aware of this, and they tend to back out those assets for purposes of their own calculations. It’s owners, more often, who are caught off-guard when they discover their actual available balance.

Another all-too-common pitfall is electronic fraud. One common scheme involves fraudulent email meant to impersonate vendors. Typically these emails ask for payments to be sent to a new address or bank account. Only afterward does the payer discover that the real biller went unpaid, and the onus is on the payer to correct the situation. To prevent situations like this from happening, subcontractors that receive these kinds of emails should also get a verbal confirmation of the new address from billers before sending payments.

Learn More

In the Oct. 11, 2016, ASA webinar, “Is Your Cash Working for You? Understanding the Competitive Advantage of Cash Management,” presenters Kevin Jacobs and Aaron McFarland, Moss-Adams, will cover the active side of cash management: how to allocate the cash you receive when it comes in. In the meantime, work with your CPA and other advisors to see which, if any, of these strategies you may be able to implement.

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Lien waivers may be some of the most misunderstood documents in the construction industry. Despite, or perhaps because of, their ubiquitous nature, lien waivers are seldom examined as much as they need to be. But the fact that waivers are exchanged on nearly every project doesn’t mean that they can be overlooked. These documents significantly impact lien rights, and unless you work in one of the 12 states that statutorily regulate lien waivers, the provisions that can be included in a waiver are almost limitless.

It’s common to find terms and provisions that seem confusing (or unfair) in a waiver. The freedom of contract allowed in non-regulated states provides ample opportunity for the parties requesting the waiver (i.e., the parties that give payment) to insert terms that will protect themselves at the expense of the parties receiving payment.

That is not to say that the top-of-chain parties are immune from lien waiver risk. Lack of project visibility can prevent an owner or GC from collecting waivers from all of the required parties, which may result in double payment. Misplaced faith in waivers that do not comply with applicable laws exposes parties to similar risks.

As documents that are exchanged multiple times on nearly every project, lien waivers are tricky, and proper management is a crucial part of managing or mitigating financial risk—both for parties at the top and bottom of the contracting chain. This article presents best practices to follow in order to properly use lien waivers, minimize financial risk, and engage in fair payment practices.

### Lien Waivers for Owners and GCs

Lien waivers present interesting problems for parties at the top of the contracting chain. A top tier party’s primary lien waiver objective is to obtain waivers from the parties below (subcontractors and suppliers), and to make sure those lien waivers are valid and correspond correctly with the payments that are given. In order to accomplish this, and remain protected to the maximum possible extent, GCs and owners should follow several best practices.

### Lien Notices Are Your Friend—Use Them

Lien notices and lien waivers are quite connected, and the proper use of notices can provide an enormous benefit to top tier parties. One major challenge for top-tier parties is learning all of the parties beneath them on a project. This is important because, in order to fully protect themselves, top-tier parties must collect lien waivers from all parties who provide work toward the project.

A smart GC (or other top tier party) uses the preliminary notices for this purpose, and doesn’t just file the received notices away without real review. Preliminary notices provide a perfect template for creating a birds eye view of the project, and completing the knowledge gaps regarding the parties on the job at a far remove from the GC. That bird’s eye view is a custom-made checklist of parties from whom lien waivers should be obtained.

### Use Sufficient Waiver Forms (and Be Fair)

Are you making a payment? Request a lien waiver. Twelve states require the use of specific lien waiver forms that are spelled out in state laws. In those 12 states, failure to use the proper form can invalidate the lien waiver, which puts top tier parties in significant jeopardy of double payment. So, if the project is in California, Nevada, Utah, Arizona, Texas, Massachusetts, Mississippi, Georgia, Florida, Missouri, Wyoming, or Michigan, it is a best practice to use the proper statutory form. This is helpful in that it eliminates doubt regarding how to prepare the waiver document.

In the other 38 states, lien waivers have more of a grey area. While it might seem best to be overly cautious and include an abundance of protection clauses in a waiver, this has its drawbacks. Mainly, it can tarnish relationships with those being asked to sign the waiver. They might even refuse to sign. Moreover, these extra-cautious clauses are unnecessary. Lien waivers were created with a single purpose—to waive an amount of lien rights associate with a given payment. Thus, it is best practice to request a waiver when making a payment.

If the money has not already exchanged hands, conditional waivers—which kick into effect after payment is made—are suitable. If money has already been transferred, unconditional waivers are appropriate. Reserving unconditional waivers for these situations will go a long way to building trust and a respectful relationship with subcontractors, which can yield smoother projects, and more business down the road.
Connect Waivers to Specific Payments

Every payment should be associated with a lien waiver (or waivers) that waives rights all the way down the contracting chain. This is when a well-formed project-tree is beneficial. If all project participants are known, each particular payment can be associated with lien waivers from all parties to be paid from that disbursement. Collecting waivers from all of these parties all but eliminates the risk of valid lien claims being filed against the property.

Lien Waivers For Subcontractors and Suppliers

While the top of the contracting chain is concerned with obtaining waivers and limiting lien exposure, parties below worry about losing more than they bargained for, and being leveraged into unfair situations because they need to be paid.

Since lien waivers are exchanged at a crucial time in the project—when a payment is to be received—the exchange can result in an imbalance of power between the party with the money and the party that needs it. That being said, there are many best practices to follow in order to both minimize risk, and to promote faster payment. First, however, what do lower tiered parties need to look out for?

What to Watch Out For

Many times, owners or general contractors will (or will attempt to) include provisions in lien waivers that attempt to accomplish more than just waiving a lien right. Watch out for provisions that aim to:

- Waive contractual rights, or other rights beyond the ability to file a mechanic’s lien.
- Waive lien rights beyond the individual payment at hand. This might include payment for retainage, change orders, or extra work.
- Indemnify higher tier entities in the event of claims from lower tier subcontractors and suppliers.
- Require the person signing the waiver to make a personal attestation.
- Waive lien rights unconditionally before payment has been made.
- Waivers generally waive the ability to lien for work performed through a certain date, but this can be a problem if there are retainage amounts outstanding, or pending change orders, etc. This problem can be avoided by making sure that the waiver includes an “exceptions” section in which these items are listed. (California’s statutory waiver includes an exceptions section.)

The importance of carefully reviewing a lien waiver, especially in the 28 unrelated states, cannot be overstated. State legislatures and courts are forced to balance the rights of owners against the rights of potential lien claimants. Because the purpose of a lien waiver is to prevent the filing of frivolous or bad-faith liens, the courts and statutes will often side with that intention when waivers are inaccurate through no fault of the owner or GC.

Using Waivers to Promote Fast Payment

Lien waivers, contrary to popular understanding, can be utilized to promote relationships and faster payment. The needs of the lower tiered parties (getting paid quickly), and the needs of the upper-tiered parties (keeping the project free of lien claims and avoiding double payment) intersect at the lien waiver document. Due to misunderstandings, complications, and poor practices, lien waivers often cause slow payment. However, optimizing lien waiver processes can fundamentally change the speed of payments while still providing protection to both parties. So, how do parties accomplish this?

Conditional waivers, which only take effect after payment is made, should accompany every pay-app or invoice. Since the waiver is conditioned upon actual payment, it is not enforceable until such payment occurs, whereupon it immediately waives the right to lien for that amount. By proactively providing lien waivers, a lower tiered party shows that it is willing to waive lien rights when applicable, and removes a step or two from the payment process. This is a way to build relationships, get more business, and get paid faster.

Conclusion

The following is a summary of best practices to follow to both mitigate financial risk from lien waivers and promote faster payment exchanges.

- Utilize lien notices to construct a tree map of everybody working on a project.
- Use the required waiver when working in one of 12 states with statutory waiver documents.
- Determine the appropriate waiver type: unconditional or conditional, final or progress.
- Create review and approval processes for signing and accepting waivers.
- Watch out for provisions that waive additional rights and require personal attestations.
- Have a set policy to get assistance from counsel if needed.
- Create a policy or culture to include conditional lien waivers with every invoice or pay-app.

Lien waivers are sometimes treated as complicated documents, but while they do have significant impact on parties’ rights and risks, they should be, and are in essence, simple documents. Lien waivers act just like a receipt of payment—I got paid, so I won’t file a lien for the amount I got paid. Simple and fair. Following the best practices set forth above helps ensure that all parties gain the benefits that can be derived from the proper use and management of lien waivers.

Nate Budde is chief legal officer for zlien, a platform that reduces credit risk and default receivables for contractors and suppliers by giving them control over mechanic’s lien and bond claim compliance. Budde manages and oversees the Lien Genome, and zlien’s products, processes, and resources. He also directs the Construction Payment Blog, protects zlien’s interests and intellectual property, and performs general counsel duties. He can be reached at (866) 720-5436 or @NathanBudde on Twitter.
When I first started working for Bigane Paving Co., the majority of our contracts were subcontracts. We were a small firm with a limited number of subcontractor vendors. As we became more involved in ASA and attended more of the education seminars, it became apparent that we needed to have a more formal contractual arrangement with our subcontractor vendors.

At first, we used a subcontract that we found more equitable that we had modified from a local general contractor. As an infrastructure contractor, we rarely saw the AIA subcontract documents. Active participation in ASA and its committees continued to increase my education of contractual changes and risk transfer issues that were facing the construction community. It became apparent to me that we needed to develop a better procedure in house to protect both Bigane Paving and the rights of our subcontractors.

At the same time, Bigane started to do more work as a prime contractor with additional subcontractors working for us. I was looking for a standard subcontract that would be equitable to all parties. We considered the AIA family of documents, but found that they had moved toward transferring all risk away from the design professionals. All stakeholders in the construction industry have a certain amount of risk which only they can control. In the effort to protect themselves from frivolous claims the design professionals have taken no responsibility for their designs. This was not acceptable to us.

We began looking for another set of documents that would provide an equitable transfer of risk between all parties, but would also adequately cover the roles and responsibilities of each party. We have used the ConsensusDocs 750 Agreement Between Constructor and Subcontractor and 751 Short Form Agreement Between Contractor and Subcontractor for the last eight years.

ConsensusDocs is a coalition of more than 40 construction associations with members from all stakeholders in the design and the construction industry. ConsensusDocs is committed to its project-first philosophy by providing contracts that are written in plain English, incorporate best practices, and address emerging trends. With a catalog of 100-plus contract documents addressing all methods of project delivery, ConsensusDocs contracts incorporate fair risk allocation and best practices to represent the project’s best interests.

ASA is a founding member of ConsensusDocs. ASA members can get a 20 percent discount on ConsensusDocs documents by entering ASA100 during checkout at www.consensusdocs.org.

We were first attracted to ConsensusDocs because these contract documents were developed with all stakeholders in the industry. They were not a set a documents designed to protect one party of the construction process over another. A project built with a collaborative effort, including the documents, is always the most successful in our experience.

Anne Bigane Wilson is president of Bigane Paving Company, Chicago, Ill., and is a past ASA president. She can be reached at (312) 738-0600 or awilson@biganepaving.com.
Best of class AEC firms have a business motor turning with three gears interlocked and moving in the same direction—marketing, business development, and sales (securing contracts). These three are the cornerstone to finding and securing work and keeping that funnel (pipeline) of opportunities full.

Marketing
Marketing is the work done in the office that communicates the value proposition of the firm. The greatest strength, which I refer to as the company story, is spun myriad ways to confirm the features, benefits, and proofs of using your firm. It has a major positive differentiator that appeals, attracts, and resonates with your ideal clients. This should be the focal point for every marketing piece, Web site, social media, article, etc.

Marketing tells your story and complements the efforts of business development and assists with material for proposals and presentations. Marketing doesn’t sell anything by itself. It is intended to be a complement and a way to document your ongoing story in your marketplace. Marketing proves your claims, whatever they are, in a credible and natural way. Be careful not to tout and blow your trumpet in too many areas. Studies show that the human mind can only believe so much, so stay away from excess fluff and stick to facts, situations, and the morale of the story.

Business Development
The business developer is the main storyteller of the AEC concern. They know the story and they know the main points of the value proposition and they know the differentiator (greatest strength) and how to deliver it appropriately. Business development needs to draw on marketing for every relationship, every opportunity, and every chance to support the firm. Business development goes out and collects the ongoing successes through testimonials (both verbal and written). Every project is a marketing opportunity and a good business developer will leverage this fact for the benefit of their organization.

I have heard and seen amazing things that business developers have accomplished in their respective marketplaces. The stewardship of relationships at every level is paramount to firm success. One GC in Illinois shared with our class that an older business developer had
transformed their business from 100 percent hard bid to 100 percent private negotiated work in a matter of two years. Then, the gentlemen had a heart attack and in no time flat, the organization was back to 100 percent hard bid. Two years later, the semi-retired business developer returned and within a short time frame, they were back to completely negotiated work. These testimonies are not rare but they prove the power of this key function in the AEC industry.

Sales

When the RFP smashes through your office window, it is necessary to bring in forensics to dust it off for fingerprints to see who the players are and the competitive lay of the land. How did your firm get invited to the project dance? Do you have an established relationship with the owner, or could your firm just be a price check to keep the incumbent honest? To be awarded most construction projects is more complicated than it looks on the surface. Even being the low bidder these days does not assure that the project is secure. The owner might choose their favorite and give them the last look or you may lose out on points on a matrix that is secretly applied to the project award.

How you go about gathering the project intelligence and in what form and approach you come forth with your proposal to the owner, will correlate with your likelihood of success. Do you know what the owner is trying to accomplish with this project? Do you know their hot buttons, goals, concerns, and previous project experience? Your odds of winning the work will increase the more you discover and the more you apply the proper project sales principles in the correct manner. The proposal is a sales document and serves as an outline for any presentation. It answers basic questions about why you are the best for this project above your competitors, and the value you bring that is crucial to them moving forward.

Assess

The three gears of marketing, business development, and sales can drive the engine of your firm’s growth or it can sputter and grind that growth to a halt when not in sync. My encouragement is to assess these three vital functions and get the engine well-oiled and purring, so you can advance with clients and work waiting for your bright future.

Larry Silver is president of Contractor Marketing Inc., a consulting/recruiting firm in the AEC Industry. Silver performs strategic planning, marketing/business development audits and training, and is currently the publisher/editor-in-chief of Business Development, an ezine that is distributed to more than 100,000 firms. Silver can be reached at (937) 776-7170 or larry@contractormarketing.com.

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Business Development is all about relationships and opportunities. It is a people position. A business developer is rubbing shoulders with people all day long. A business developer’s network needs to be diverse, extensive, and strategic.

**Diverse**

Every AEC business has different goals, target markets, and types of clients served. Depending on your firm’s unique marketplace position, the network that you develop will be customized accordingly. For example, let’s say that your firm specializes primarily in healthcare work. Therefore, your business development network will begin with your fellow employees, your subs, suppliers, consultants, your industry peers, association contacts, etc. It is clear that your network will be diverse, consisting of many types of individuals and businesses. You will undoubtedly have many networks focused in the healthcare industry at various levels and priorities.

Your clients will rank high along with prospects and industry allies (all those you rub shoulders with in healthcare). It is good to track and report on these relationships with your executive team to ensure that the firm’s network continues to grow and be focused for the future. This networking activity is not just the business developer’s responsibility, though business development can lead, orchestrate, and direct such activity for the betterment of the firm.

**Extensive**

This networking of people is an extensive proposition. To capture and leverage your firm’s extensive network, start by realizing that it typically equals thousands of individuals and businesses. This may seem overwhelming and difficult to manage, but the best AEC firms are working toward this all the time. They use relational databases, spreadsheets, and competitive analysis to evaluate opportunities that present themselves, practically daily. The better and bigger your network is, the more impact it has on every contact, every proposal, every competition you face.

You have heard the saying, “It is not always what you know, but who you know that counts...” There is definite truth in that saying. People tend to buy from others they like and trust. If there is a solid relationship in place, that trust goes a long way and can be hard to overcome. Human nature is to go with a tried and true relationship rather than to experiment when an important project arises on a firm or relationship that is unknown and untested.

**Strategic**

Although many business developers and firms do have extensive relationships in place, often those relationships are not strategically considered when growing or pursuing new opportunities. I helped a general contractor who had 300 employees in a city of 20,000 or so. They had tentacles into every neighborhood, every church, organization, and business in that city. We encouraged them to tap into their extensive network in a more strategic way by offering a monetary reward for project referrals. The network was there but it was more hidden and untapped for business development purposes.

There is never a time like the present to organize your network into a quantifiable asset for your firm. Develop a simple database using Excel or a CRM software program to track and record your intentional strategies moving forward.

**Social Networking**

I was recently reading that the average American online invests about three hours a day connecting and relating to others through social media and other online activities. In some ways, this has shifted the outrageous number of hours that was being invested in television watching. Still, people are wired together to be social and to enjoy and relate to one another as a very real and tangible part of life.

As business developers, we can learn and progress in our networking skills to leverage our businesses to the next level and to enjoy the rewards of meeting our organization’s goals through the people networking process. Remember as you invest countless hours in business development that you need to have diverse, extensive and strategic networks formed and to leverage those networks for your firm’s bright future.

Larry Silver is president of Contractor Marketing Inc., a consulting/recruiting firm in the AEC Industry. Silver performs strategic planning, marketing/business development audits and training, and is currently the publisher/editor-in-chief of Business Development, an ezine that is distributed to more than 100,000 firms. Silver can be reached at (937) 776-7170 or larry@contractormarketing.com.
Most employers traditionally have had little to no interaction with the Occupational Safety and Health Administration, the federal agency tasked with overseeing workplace safety. Unless they were inspected by OSHA, most businesses, particularly smaller businesses, may have gone for many years without interacting with the agency. But that is about to change.

On May 12, 2016, OSHA finalized a recordkeeping and reporting rule to “modernize injury data collection to better inform workers, employers, the public, and OSHA about workplace hazards.” The rule contains three provisions to promote complete and accurate reporting or work-related injuries and illnesses: (1) the employer must inform employees of their right to report work-related injuries and illnesses free from retaliation; (2) employers’ procedures to report work-related injuries and illness must be reasonable and not deter or discourage employees from reporting; and (3) an employer must not retaliate against employees for reporting their work-related injuries. The new rule is effective Aug. 10, 2016. The new rule may be a sign that OSHA will take on a more aggressive “public watchdog role,” as the agency stated that it intends to make the information publicly available because it believes it will nudge employers to focus on safety.

**Covered Employers**

- Employers with 250 or more employees at any one “establishment” will be required to submit annually the injury data for such an establishment online. These employers are required to report this data by submitting OSHA Form 300 (running injury log), Form 300A (annual summary of injuries) and Form 301 (detailed incident and injury reports) through an OSHA-provided Web site.
- Employers from previously exempt, low-hazard industries (finance, insurance, etc.) remain exempt from this electronic-submission requirement, even if they employ more than 250 employees at one establishment.
- Employers in industries with historically-high injury rates (utilities, construction, manufacturing, etc.) must comply, even if they do not employ 250 employees at any one establishment (unless each establishment employs less than 20 employees).
- Employers with fewer than 20 employees at each of their establishments need to submit their injury data electronically only if specifically requested to do so by OSHA.

**Non-Retaliation and Internal Reporting**

Covered employers must proactively alert employees about their right to report injuries and illnesses without fear of adverse action. Posting of OSHA’s “Job Safety and Health—It’s the Law” poster satisfies this requirement.

Employers must establish “a reasonable procedure” for employees to report work-related injuries and illnesses promptly and accurately. The rule prohibits this procedure from deterring or discouraging a reasonable employee from reporting an injury or illness. The rule also prohibits any retaliation for reporting an injury or illness. Under this new reporting standard, employer policies that request or require post-accident drug or alcohol testing will now face scrutiny by OSHA because, the agency claims, post-incident testing deters injury reporting.

Although no provision refers to drug testing, OSHA commentary plainly previews its enforcement of the rule.

**Public Posting**

OSHA plans to post online the new electronic injury data it receives from employers. For this reason, employers are expected to remove personally identifiable information from their forms before submitting them electronically.

**Compliance Schedule**

Employers with 250 or more employees at an establishment must submit information from their 2016 Form 300A by July 1, 2017 (one form only), and information from their 2017 Forms 300, 300A and 301 (three forms) by July 1, 2018. Beginning in 2019 and each subsequent year, information for all three forms will be due by March 2.

Employers in industries with historically-high injury rates and 20-249 employees in at least one establishment must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and each subsequent year, the Form 300A information will be due by March 2.
position on post-accident testing policies. According to OSHA:

Although drug testing of employees may be a reasonable workplace policy in some situations, it is often perceived as an invasion of privacy, so if an injury or illness is very unlikely to have been caused by employee drug use, or if the method of drug testing does not identify impairment but only use at some time in the recent past, requiring the employee to be drug tested may inappropriately deter reporting.

OSHA then concludes that only narrowly tailored post-accident testing—testing where drug use likely contributed to the accident and that accurately tests for impairment—will be immune from enforcement action under the rule:

Drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use. For example, it would likely not be reasonable to drug-test an employee who reports a bee sting, a repetitive strain injury, or an injury caused by a lack of machine guarding or a machine or tool malfunction. Such a policy is likely only to deter reporting without contributing to the employer’s understanding of why the injury occurred, or in any other way contributing to workplace safety.

Employers with post-incident or accident drug testing policies will be put to the task of justifying each decision to test based on the facts of each workplace incident or accident. To avoid conflict with OSHA, employers may no longer rely on blanket policies requiring tests following a report of an injury. Policies should be tightened to tie referrals for post-accident testing to situations where it appears an employee caused or contributed to the accident, or abandoning post-accident testing in favor of reasonable suspicion testing. Employers maintaining a blanket policy should be prepared to defend that decision through reference to workers’ compensation programs, safety considerations and other means which will establish the program does not deter reporting of injuries and does not constitute retaliation for reporting a specific injury.

Although there is general agreement that reliable tests exist to measure alcohol-related impairment, most testing providers acknowledge that drug tests measure only recent drug use. Although the presence of illegal drugs in an individual's system may very well reflect impairment, employment drug tests are not designed to measure impairment. Therefore, even if an employer carefully adopts a program that calls for a post-accident drug test only where it appears that an employee’s acts, or failure to act, has caused or contributed to an accident, it may be more difficult to show that the individual was impaired by the drug.

As a result, employer post-accident drug testing programs may be challenged, even if they focus on investigating only those accidents which appear to have been caused by an employee’s error. Employers may wish to utilize tests that measure only very recent drug use. Apart from revising their post-accident testing programs, employers may seek to compensate for OSHA’s approach by increasing their random drug testing programs in order to attempt to detect and deter illegal drug users before accidents occur.

OSHA concedes that an employer which conducts drug testing to comply with the requirements of a federal or state law or regulation will not be considered a violation, because its motive in conducting testing is not retaliatory.

If OSHA finds that an employer drug testing policy deters the reporting of injuries and illnesses by employees, it may issue steep penalties for each violation. At present, available penalties up to $7,000 per violation may be imposed or, for willful violations, up to $70,000. However, those penalties will increase substantially in August 2016, when they are expected to increase to as much as $12,471 and $124,712, respectively.

Jamie Hasty is the vice president of SESCO Management Consultants, Bristol, Tenn., and Richmond, Va. Under an arrangement with ASA, SESCO provides results-oriented human resource consulting services to ASA members. SESCO provides a special “retainer” relationship that provides a free “hotline” to ASA members to discuss day-to-day employment issues such as policy development, employee challenges such as disciplinary actions, terminations, or workers’ compensation issues, compliance to federal and state employment regulations, and many other management and human resource matters. Hasty can be reached at (423) 764-4127 or jamie@sescomgt.com.
What Is a Construction Attorney Good For?

by Todd R. Nectoux and Richard Thomas

A good construction attorney can help a subcontractor make good decisions that impact the day-to-day and long-term success of the subcontractor’s business.

A subcontractor may wonder, “Why can’t I just use the attorney that prepared my will or incorporated my business?” A construction attorney is a lawyer whose practice focuses on representing businesses that work in the construction industry, such as contractors, subcontractors and suppliers. They are experts with specialized knowledge and experience (gained from analyzing and solving a variety of construction-related legal issues) to help their clients make good decisions.

A subcontractor can and should make many business decisions without any input from a construction attorney. A subcontractor does not need legal advice to know how to pick which projects to pursue, how to estimate a project or how to install something. There are times, however, when legal advice from a construction attorney is helpful, and getting that advice doesn’t necessarily mean paying a lot of attorney fees. Pursuing an expensive lawsuit is not always the right decision. Many times a phone call or meeting to discuss a particular decision is all that is needed to get helpful information and insight from a construction attorney.

Being a successful subcontractor is a lawyer whose practice focuses on representing businesses that work in the construction industry, such as contractors, subcontractors and suppliers. They are experts with specialized knowledge and experience (gained from analyzing and solving a variety of construction-related legal issues) to help their clients make good decisions.

A construction attorney can help a subcontractor gather relevant information and evaluate the risks and benefits of a particular decision.

Gathering Relevant Information

The many laws that affect the construction industry are relevant information needed to make many decisions that subcontractors face. A general understanding of a particular law can often lead to a bad decision. A construction attorney can provide an in-depth understanding of how the law will be interpreted and applied in a construction case. Construction attorneys are familiar with the numerous, potentially conflicting and constantly changing federal, state and local laws that affect the construction industry. They can efficiently gather and analyze the various statutes, codes and cases that apply to various construction issues such as delays/accelerations, payment disputes and disputes over scope of work. Many times the particular area of law is one that the construction attorney has already spent a considerable amount of time analyzing, so advice can be provided quickly.

Understanding how a particular law is interpreted and applied is relevant not only to decisions that arise when there is an allegation of a failure to
comply with a particular law. Such expertise is also relevant to decisions that arise when initially deciding how to comply with a particular law. Many disputes can be avoided by consulting a construction attorney BEFORE a dispute arises.

For instance, in Texas the mechanic's lien laws are complicated. It can be very difficult for a subcontractor to know what has to be done in order to have a valid lien on a project. Calculating the deadlines for filing notices regarding nonpayment is frustrating without specialized knowledge. It would be logical to assume that you don’t have to notify an owner that payment has not been made until an invoice has remained unpaid for 60 to 90 days. While logical, such an assumption for Texas project would probably cause the subcontractor to miss its notice deadline and lose its lien rights. A construction attorney is familiar with the subcontractor’s state lien laws and can ensure that the subcontractor preserves its lien rights and leverage for payment.

A construction attorney can also explain how construction contract documents, such as AIA and Consensus Docs contracts and proprietary subcontracts drafted by general contractors, are interpreted and applied by courts when a dispute arises. This expertise is valuable during a dispute, but it is also valuable when revising a proposed subcontract so that it is fair and reasonable.

As the old saying goes, “An ounce of prevention is worth a pound of cure,” consider contract reviews to be prevention therapy that a construction attorney can provide with minimal expense in order to minimize the odds of needing an expensive cure (lawsuit) later on. A construction attorney will make you aware of the rights and obligations that are contained in a subcontract and can also suggest revisions that can make the terms more fair and reasonable. Construction law expertise is necessary to suggest effective revisions. Construction attorneys are a valuable source of relevant information when a subcontractor is making contract negotiation decisions.

A construction attorney can also assist a subcontractor with decisions regarding performing work outside your home state, terminating employees, purchasing software licenses, challenging insurance coverage, quitting a project, responding to the termination of a general contractor and calculating and asserting delay and labor inefficiency claims.

Evaluating Risks and Benefits

In order to evaluate the risks and benefits of a particular decision, a subcontractor needs to identify those risks and benefits. In other words, the subcontractor needs experience dealing with the subject matter of a particular decision. Mark Twain said, “Good decisions come from experience. Experience comes from making bad decisions.” Why not benefit from a construction attorney’s experience?

A construction attorney has experience helping subcontractors — of various sizes and types — analyze and make numerous types of decisions that arise in running a successful subcontracting business. Many times this means trying to avoid or minimize the consequences of past bad decisions. This experience typically includes understanding how and why the bad decision was made. This unique experience with construction issues allows a construction attorney to identify and understand risks and benefits of particular decisions that may face a subcontractor.

Obviously, for decisions that have only benefits and no risks or decisions that have extreme, unreasonable risk and no discernable benefit, a construction attorney is likely not needed. In many circumstances, however, the right decision is not so obvious or easily determined. Rather the circumstances are often complex and often contradictory, and the right decision is not initially obvious. A classic example of a complicated and complex decision for which a construction attorney can be of assistance is the decision to walk off a project. While the benefits of escaping from a bad project seem obvious, in many cases there are risks (costly liabilities) lurking in the shadows. By getting help from a construction attorney, a subcontractor will be fully aware of the risks and benefits when making the decision, and possibly can minimize risks.

While construction attorneys do not perform construction work on a daily basis, they do assist subcontractors and suppliers with difficult constructed-related legal issues and decisions on a daily basis. As such, construction attorneys have a wealth of relevant information and experience that can be valuable when making important decisions.

Todd R. Nectoux is a partner Thomas, Feldman & Wilshusen, L.L.P., a Dallas, Texas, law firm that concentrates in the area of construction law and related litigation. Richard Thomas of TF&W is legal counsel for ASA—North Texas Chapter. Mr. Nectoux can be reached at (214) 369-3008 or tnectoux@tfandw.com. This article originally appeared in the February 2015 edition of The Contractor’s Compass.
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September 2016
13 – Webinar: Using the ASA Subcontract Document Suite

October 2016
4 – Webinar: OSHA Illness/Injury Data Collection Requirements (Complimentary)
21-22 – ASA Legal & Advocacy Meetings, Kansas City, Mo.

November 2016
8 – Webinar: Change Orders—The Bane of All Subcontractors

December 2016
13 – Webinar: U.S. Election Outcome & Potential Impact (Complimentary)

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10 – Webinar: Most Popular Benefits Employees Are Purchasing Without Employer Contribution
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