Subcontracting: What You Need To Know

In the business marketplace everyone is striving to get projects and work for their individual businesses. As a business owner you want to be the one who receives the awards of contracts you’re bidding or proposed on. In this process one thing that is always certain is normally there is one winner, the business who will be the prime contractor. This certainty that they will win the award is what directs and motivates business owners to improve procedures and processes, to expand into new areas and to keep current with market trends and technology. Business owners need to realize it is imperative to know that all businesses can’t be a prime contractor all the time. With this being said, let’s look at the other contracting opportunities available to us, by being a subcontractor to the prime either as a service or supplier.

The first thing you need to know about subcontracting is that like a prime contractor you need to have a signed agreement/contract in place. Now we know we need the agreement/contract to subcontract, what needs to be in it? Since having reviewed the entire solicitation package by having a copy of it, we must ensure that our subcontract agreement/contract encompasses the full scope of work and any changes made to the project. Note: When we complete the agreement/contract it is important that you consider having your or another attorney review it.

Once this is clarified we now need to know what is expected of us in the performance of our portion of the project. We must identify and list the scheduling requirements i.e., where we are in the line of work...when do we start our work? Establish a performance period, how many days we have to complete our portion of the contract? Ensure you have identified and listed any insurance requirements, if payment and performance bonding is necessary. It should be noted also that when pricing the subcontracted work, clarification of whether materials are to be furnished by you/by others needs to be addressed, and the important item, the details of how and when you will be paid for completed work. The reason that this is an important item is to ensure that your business gets paid and (hopefully this doesn’t happen) if something happens to you, whomever takes over the project will know what to expect.

Continuing with the subcontracting process we need to have some clauses and provisions that should be part of the agreement/contract such as the following:

Payment Clause: You should do your best to clarify the format you must follow, including the documents that need to accompany your request for payment. If this issue is fully explained, there should not be any adverse issues or confusions about getting paid and when you can submit your invoice for payment. Also you will want to clarify if there are to be any payment penalties for slow performance or exceeding your performance period and if so, what kind of penalty.
Indemnification: You should describe how all associated parties need to indemnify each other for the acts of the responsible parties. In this area the prime contractor’s superintendent is the best individual to identify and take care of contractual and personal problems regardless of who is the responsible party.

Arbitration: If an issue of disagreement occurs and you can’t resolve it you may want to file a lien and or sue the prime contractor to get justice. Remember, in many areas but especially in subcontracting, you have an avenue to fight for your right to bring forth your own unresolvable situations.

This is a brief overview of the most common issues you need to know when you are preparing to subcontract. It is not all inclusive. It is our intention to make you aware of things concerning subcontracting so that you will take heed of the items that need to be identified and to develop those areas until all parties involved feel comfortable with what each is required to accomplish.

This article is not to make you avoid subcontracting, but to provide some insight into the efforts and clarifications that are necessary to have a successful contractual relationship with another contractor. APAC encourages everyone who reads this article to take and use it to assist them in running their business and to know that you don’t have to be a prime contractor to be a successful contractor.

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