



SUBCONTRACT PROVISIONS - CHEAT SHEET

INTERNAL USE ONLY

This document is meant as a tool to better understand our Subcontract. If you have any questions, please see Cynthia Schultz, Dennis Towne or a senior member of our project management team.

Please note that "you" means the subcontractor.

"General Contract" is the contract between BSC and the owner and is a part of this subcontract.

The phrase "General Contract" (a copy of which is on file at the office of the Contractor and is available for inspection at all times) shall be deemed to mean the contract between the Contractor and the Owner with reference to the work described in Section 1 of this Subcontract, together with all the provisions, general conditions, plans, drawings, specifications and all addenda which are made part thereof or referred to herein.

1. If our contract gets terminated, you get paid through the date of termination with reasonable profit. There will be no payment for the profit that you would have made if the contract hadn't ended.

1. In the event the Owner by any reason decides to suspend, terminate, or cancel, in whole or in part, the construction work hereunder, the Subcontractor shall be entitled to payment for work done up to the time of Subcontractor's receipt of notice of cessation. The amount of said payment shall reflect the costs incurred by the Subcontractor with a reasonable profit on those costs but shall not include any amount for unrealized profit or any profit on uncompleted work including labor and materials. Final amount shall be subject to negotiation between Subcontractor and Contractor and subject to final approval of Owner.

2. The owner contract and all associated documents are a part of this subcontract. The relationship of the sub to the contractor is the same as the contractor to the owner.

2. Insofar as the provisions of the General Contract, do not conflict with specific provisions herein contained, they and each of them are hereby incorporated into this subcontract as fully as if completely rewritten herein. The Subcontractor agrees that he will so perform this agreement as not to violate any term, covenant, or condition of said General Contract. The relationship of the Subcontractor hereunder towards the Contractor shall be the same as that of the Contractor towards the Owner under said General Contract and the relationship of the Contractor hereunder to the Subcontractor shall be the same as that of the Owner towards the Contractor under said General Contract.

3. You have to pay all of your bills and show proof in the form of lien waivers.

3. The Subcontractor agrees to pay all obligations incurred by Subcontractor for labor, materials, equipment rental and all applicable Federal and State taxes, including, without limitation, Federal and State withholding, and income and gross receipts taxes. Subcontractor shall furnish the Contractor with such partial releases and waivers of lien and bond claims from the Subcontractor and from his material men and creditors as the Contractor may request from time to time (on a monthly basis) on labor, equipment, and/or material and/or other claims, and final releases and waivers of lien and waiver of bond claims at the time of final payment on this Subcontract.



4. We may want a list of the payment status for all of the suppliers, labor, etc. You must pay all your bills and indemnify BSC from any of your debts. If we find out that you haven't paid your bills, we can hold your money. If we think you're in trouble, we may request security/bond (*which you probably can't get*).

4. The Subcontractor shall furnish, if requested by the Contractor, sworn affidavits from time to time in accordance with the form provided by the Contractor, which shall state amounts due or become due, amounts paid, and any other information clearly to indicate the financial condition of the Subcontractor, insofar as relates to labor and material furnished and to be furnished under this Subcontract; and the Subcontractor agrees to pay as they accrue and to protect, indemnify, defend, and hold the Contractor harmless against any and all costs and expenses, charges, or damages, including reasonable attorney's fees arising out of any liens and claims of persons claiming to have performed labor or to have furnished material or appliances, equipment, insurance, or service in connection therewith. If at any time there shall be any lien or claim against the Subcontractor and/or Contractor for labor, materials or appliances or services used in said work for which, if established, the Contractor might be directly or indirectly liable then the Contractor may retain out of any money due or to become due the Subcontractor an amount sufficient to indemnify the Contractor against liability or loss by reason of such lien or claim, including the reasonable costs of any litigation thereunder until the same shall be effectively satisfied, discharged or canceled; or the Contractor may take such other steps as it may be deemed necessary to protect itself against any claim including but not limited to direct payment for materials without obtaining consent of surety, and/or issuing joint checks to the Subcontractor and any other person or entity. If at any time the Contractor shall determine that the Subcontractor's financial condition has become, in the opinion of the Contractor, unsatisfactory, Subcontractor shall furnish security satisfactory to the Contractor within three (3) days after written notice to his last known address, and in default of furnishing such security the Contractor shall have the option to cancel his contract. In case of such cancellation the rights of the Contractor shall be the same as if the Subcontractor had failed to perform his Subcontract in whole or in part.

5. We're not going to pay more than the work in place. *Overbilling is frowned upon in CMAR.*

5. The terms of payment provided herein shall not make it incumbent on the Contractor to make payments in an amount that would not leave a sufficient balance sufficient to satisfy all obligations of the Subcontractor for labor, materials, etc., furnished or to be furnished by him under this Subcontract.

6. With the money that you get from us, you must pay bills related to our contract. *Not other contracts.*

6. The Subcontractor agrees that moneys received for the performance of this contract shall be used first and primarily for labor and material entering into this work and said moneys shall not be delivered or used to satisfy obligations of the Subcontractor on other contracts.

7. Protect us and the owners from debtors.

7. The Subcontractor agrees to protect the Owner and Contractor against all costs or claims for transportation, freight and express, on men, materials and equipment to and/or from the job, and for all other incidental expenses in connection with his work, and to repay the transportation charges on all materials, etc., shipped.

8. You must obey the law. i.e. licensing, health and safety, etc. If you do break the laws, you must protect us and we can fire you for it.

8. Subcontractor shall obtain and pay for all building permits, bid depository fees, pro-rata charges and inspection fees required in the awarding or performance of this Subcontract. He shall also comply with all laws, ordinances and regulations relating to such performances, including, but not limited to, those involving licensing, building, health and safety and environmental requirements, and those governing wages and hours, payroll contributions, and deductions, nondiscrimination in employment and labor relations, and shall protect, indemnify, defend, and hold Contractor harmless for any damages, costs and expense (whether direct, general and incidental), including reasonable attorney's fees, resulting from Subcontractor's violation thereof. Violation of this covenant is hereby expressly made ground for termination of this Subcontract.



9. Changes in the work can be made. Prior to making the change you must get approvals. You can't talk directly with our clients (some instances okay).

9. The right is reserved by the Contractor to require changes in, deviations from, additions to, and omissions from, the work herein contracted, and the Subcontract price shall be adjusted accordingly. Before proceeding with any change, deviation, addition or omission, the Subcontractor will first obtain written authorization from the Contractor which authorization will state the amount of money and time by which the subcontract will be adjusted, if any. The subcontractor shall have no dealings with the Owner or his authorized representatives in regard to changes, extras or omissions in connection with this work, but must deal only with the Contractor.

10. You must carry all the right insurance policies, name us as additional insured and provide required endorsements.

10. The Subcontractor shall carry, pay for, and maintain in force continuously during the performance of the Work and/or life of this subcontract insurance with satisfactory coverages and limits aligned with the requirements stated on Exhibit C of this Subcontract. Subcontractor shall also require any of its Sub-Subcontractors to do the same. Insurance requirement shall be applicable to his work hereunder as is specifically required by the General Contract, the Contractor or any public authority. The Subcontractor shall furnish the Contractor with executed certificates showing names of the carriers, numbers of the policy and expiration dates and all coverages as required by Exhibit C. Contractor may obtain any required insurance not obtained by Subcontractor and charge the Subcontractor's account for the premium together with interest thereon at eight (8) percent per annum. The Subcontractor shall comply with all applicable safety and health laws and all standard rules, regulations and orders adopted pursuant thereto, including those issued under the Construction Safety Act and the Occupational Safety and Health Act, and shall cooperate actively with the Contractor in assuring compliance by Subcontractor and lower tier subcontractors. Contractor may terminate this subcontract upon Subcontractor's failure to comply strictly with the terms of this paragraph.

11. Not in Use.

12. For government contracts:

- BSC is not liable for extra costs unless approved by the government.
- Obey all the laws related to government work. If you don't, we can fire you.

12. Where the general contract is a Government contract, Subcontractor agrees that: (a) Contractor shall in no event be liable for change orders, extras, terminations, stoppages or suspensions of work except to the extent that amounts are received from the Government relative thereto; (b) Subcontractor shall comply strictly with all Government procurement laws, policies, regulations and requirements as if incorporated verbatim herein, and including specifically articles in the general contract covering the Davis Bacon Act, Eight Hour Law, Apprentices, Payroll Records and Payrolls, Copeland Act, Withholding of Funds to Assure Wage Payment, Non-Discrimination in Employment, listing of job vacancies with Federal State Employment Service System, utilization of minority business enterprises, and Subcontracts-Termination. Breach by Subcontractor of this covenant is hereby expressly made grounds for termination of this Subcontract.

13. The subcontract trumps any other proposals, verbal conversation, etc. (except Thyssenkrupp Elevator, ANI, GE and a few others who have written modifications Bradbury has approved).

13. This Subcontract represents the entire agreement between Contractor and Subcontractor and takes precedence over any and all proposals, correspondence, and oral agreement made prior to the date hereof.



14. The subcontract includes all changes, addendums, and revisions to date.

14. This Subcontract includes all changes, addenda, amendments, modifications, revisions, etc., to date.

15. If you have any subs, we can cancel them if we don't think they are competent. (Discuss with Dennis Towne or Cynthia Schultz if issues arise)

15. If any portion of this Subcontract is sublet, the Contractor reserves the right to require cancellation of such sublet portion or portions if in the opinion of the Contractor any such Subcontractor is incompetent or undesirable.

16. You cannot assign this subcontract or funds associated with it unless we say okay. If we say okay, this subcontract becomes a part of your deal with them.

16. Subcontractor shall not assign or attempt to assign in any manner at any time this subcontract or any portion thereof or any funds accrued or to accrue hereunder without written consent of Contractor and no such assignment shall be binding on Contractor unless and until accepted in writing by the Contractor. Subcontractor shall extend the provisions of this Subcontract to any approved Subcontractor.

17. If you cause loss or damages or create liquidated damages, you will reimburse us.

You aren't responsible for the failures of others.

If you fail to perform, this will constitute default and we may make a demand in writing to you and your bonding company for immediate correction. If you don't correct within 3 days, we can:

1. Take any steps we deem necessary to get the work done.
2. We can take possession of your equipment, materials, etc.
3. Costs associated will be deducted from your subcontract.
4. If costs run over what we owe you, you agree to pay the average plus 12% interest.
5. Anything that we do to fix your shortcomings will not relieve your bonding company from liability.

17. Subcontractor shall reimburse Contractor for any and all loss or damage, including, but not restricted to, any liquidated damages which may become due the Contractor under Section 4, or due the Owner under the general contract, and extra expense paid or incurred by Contractor which is due to Subcontractor's failure to perform its obligations under this Subcontract. Subcontractor, however, shall not be held responsible for any delays caused by Contractor, Owner, or any other Subcontractor. If Subcontractor fails or refuses to perform its obligations under this Subcontract, such failure or refusal shall constitute a default and Contractor may make demand in writing or email to Subcontractor and its surety, if any, for the immediate correction of any default. If Subcontractor and its surety, if any, fails to correct said default within three (3) days after demand in writing is mailed, emailed, or delivered by hand to Subcontractor, Contractor may, at his option, take any steps Contractor deems advisable to prosecute the work to completion and to this end Contractor may take possession of and use such of Subcontractor's equipment and materials as are situated on or near the jobsite. In case Contractor deems the foregoing procedure necessary, all moneys expended and all of the losses, damages and extra expenses incurred by Contractor in completing the work covered by this Subcontract shall be deducted from the Subcontract price herein stated, and if such expenditures together with said losses, damages and extra expenses, exceed the amount otherwise due to Subcontractor hereunder, Subcontractor agrees to Contractor on demand the full amount of such excess together with interest thereon, at the rate of 12 percent per annum until paid. No action taken under this paragraph shall relieve Subcontractor's surety, if any, from liability.



18. You will fix defective work to our satisfaction as well as the owner and designer. If you won't fix it after receiving notice, we will take the cost out of your subcontract. If there is not enough left and we incur costs over and above amounts owed, you will pay plus 8% interest.

18. The Subcontractor shall promptly amend, correct, and make good any defective materials and/or workmanship during construction and guarantee periods to the entire approval and acceptance of the Contractor, Owner and/or Architect or their authorized representatives. Should the Subcontractor refuse or neglect to proceed at once with the correction of rejected or defective materials and/or workmanship after receiving notice to do so, it is agreed that the Contractor shall have the right and power to have the defects remedied or changes made at the expense of the Subcontractor, and the Subcontractor agrees to pay to the Contractor on demand any and all loss and/or expense incurred by the Contractor in remedying such defects and/or making such changes, together with interest thereon at the rate of eight (8) percent per annum until paid or during the construction period the Contractor may withhold these amounts from any payments to the Subcontractor.

19. Your obligation to complete all work is absolute and without exception. You have to secure and protect your materials and you're responsible for loss or damage unless it's caused by direct negligence of the contractor. Exercise due care in performance of the work and you will have to pay for any damages to the work of others if it is your fault. (If no one admits to damages, we will charge the subs for their proportionate amount at our discretion.)

19. The obligation of the Subcontractor to perform and complete all work covered by this Subcontract to the satisfaction of Contractor and/or Owner and/or Architect is absolute and without exception; the Subcontractor shall effectually secure and protect his materials and work, and shall bear and be liable for all loss and/or damage of any kind in connection therewith at any time prior to the final completion and acceptance of the entire general contract by the Owner subject to the provisions of Section 23 hereof as they may apply. The Subcontractor shall be responsible for the exercise of due care in the performance of the work required herein and shall be liable for any breakage of damage to work or materials of other Subcontractors and/or the Contractor due to the Subcontractor's action and shall reimburse the Contractor on demand, or the Contractor may withhold the amounts of any damages therefor from payments due Subcontractors. If damages occur, which are definitely due to carelessness of various workmen, but cannot be specifically assigned to any individual Subcontractor or the Contractor, the Contractor may at his discretion assess certain Subcontractors and himself their proportionate share of the damages involved to pay the damaged Subcontractor.

20. If the substrates are not suitable, you must notify us in writing. If you don't you won't be paid for any extra cost due to the condition of the substrates.

20. If the Subcontractor deems that surfaces or work to which his work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to the Contractor, otherwise no consideration will be given to claims for extra compensation or non-responsibility in connection therewith.

21. You must provide your own storage, office, etc. and clean up your areas.

21. The Subcontractor shall provide at his own expense whatever storage sheds, workshops and offices and private telephone facilities as are necessary for the performance of this Subcontract, and shall remove same and thoroughly clean the premises at the completion of the work.

22. You must keep the site clean as it pertains to your work. If you don't, we'll take care of it at your expense plus 15%.

22. The Subcontractor shall clean up and remove from the site as directed by the Contractor, all rubbish and debris resulting from his work, also he shall clean up to the satisfaction of the inspectors, and Contractor, all dirt, grease, marks, etc., from the walls, ceilings, floors, fixtures, etc., deposited or placed thereon as a result of the execution of this Subcontract. It is understood and agreed that the Subcontractor shall clean up and leave all work installed by the Subcontractor in a condition satisfactory to the Contractor and Owner for final acceptance of the contract. If the Subcontractor refuses or fails to perform this cleaning as directed by the Contractor, the Contractor shall have the right and power to proceed with said cleaning, and the Subcontractor will on demand repay to the Contractor the actual cost of said labor, materials and equipment plus fifteen (15) percent of all direct costs to cover general overhead and profit or Contractor may decrease Subcontract the amount of the charge.



23. If we carry builders risk insurance and there is a claim due to fire, for example, you are responsible for the deductible. (General liability-rare instances.)

It's your responsibility to determine whether the right insurance is in place.

23. The General Contractor or Owner at their option may carry Builders Risk Insurance the Builders Risk may have a deductible, the Subcontractor is hereby put on notice that any damage to their property may be partially or totally subject to this deductible, which shall be paid by Subcontractor. Subcontractor assumes the responsibility to determine whether adequate insurance is in force. In the event that no insurance is carried by the General Contractor or Owner it is agreed that any loss sustained by the Subcontractor due to casualties or occurrence of any type shall be borne by the Subcontractor.

24. The CONTRACTOR and the SUBCONTRACTOR agree to waive all rights of subrogation against each other and any of their SUBCONTRACTORS, SUBSUBCONTRACTORS, agents and employees, each of the other, the OWNER, and, if required by the Prime Contract, the Architect, the Architect's consultants, and separate contractors, for damages caused by perils insured against to the extent covered by any Builder's Risk, Inland Marine, or any other Property Insurance applicable to the work, except such rights as they may have to the proceeds of such insurance held by the OWNER or CONTRACTOR as trustee. The SUBCONTRACTOR by written agreement shall require similar waivers of subrogation by it SUB-SUBCONTRACTORS in favor of all parties enumerated in the above paragraph.

25. You need to furnish shop drawings, etc. promptly. If they are approved, it does not relieve you from complying with the contract-documents. If they are erroneously approved, this does not relieve you of the responsibility to rectify mistakes at no cost to the owner.

25. The Subcontractor shall furnish promptly all samples, lists, shop drawings, cuts, schedules, technical data, etc., required in connection with his work and shall pay any transportation or reproduction costs to provide an adequate amount of copies of the same. Approval of same by the General Contractor or the Owner shall not relieve Subcontractor of full responsibility for performance of the work in strict accordance with the plans, specifications, terms and conditions of the general contract. It is further understood and agreed that approval of erroneous shop drawings does not relieve the Subcontractor of the responsibility for rectifying such mistakes and correct performance of the contract as herein above provided at no cost to the Owner or Contractor.

26. You will provide all required bonds, guarantees, etc. They are required for subcontracts over \$125K for public work changes to the subcontract doesn't relieve the liability of the bonding company. If we don't receive within 7 days of request this will be cause for cancellation of this contract.

26. The Subcontractor shall furnish all guarantees, bonds, operating instructions, etc., as required by the General Contract and applicable law as it pertains to the Subcontractor's work. If requested by the Contractor the Subcontractor shall furnish to the Contractor an adequate performance and payment bond in term and amount and with surety acceptable to the Contractor. All subcontracts of \$125,000.00 or more for public works projects require the Subcontractor to furnish payment or performance bonds. Changes or modifications in this subcontract shall in no way relieve the surety's liability thereunder. Failure to furnish this bond within seven (7) days after request will be cause for cancellation of this subcontract.



27. If we let you use our equipment, scaffolding, etc. you will pay for those services unless stated in the subcontract. Refer to the Safety Segment for more details. You will indemnify if anything bad happens.

27. If the Subcontractor makes use of the Contractor's hoisting facilities, equipment or scaffolding, he shall pay for this service unless stated herein. Contractor expressly disclaims any warranty in connection therewith and Subcontractor agrees to indemnify, defend, and hold Contractor harmless against any claim or action resulting from the use thereof by Subcontractor, his agents or employees.

28. Claims and disputes will be settled by binding arbitration. If we decide to use the dispute resolution method contained in the general contract and we process diligently, you will be bound by that ruling. The work shall proceed while all of this is happening.

28. All claims, disputes and other matters in question arising out of or relating to this Subcontract or the breach thereof shall be decided by final and binding arbitration in Albuquerque, New Mexico in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise, and this agreement to arbitrate and award rendered by the Arbitrator shall be enforceable under the prevailing arbitration law of the State of New Mexico; providing that in the case of a government contract, if the Contractor elects in writing to process a claim of Subcontractor under the disputes provisions of the general contract and does process said claim with reasonable diligence and in good faith, the parties shall be bound conclusively by the administrative determination made, both as to questions of fact and mixed questions of fact and law. During the pendency of any dispute the work shall proceed under the orders of the Contractor. In the event of any dispute over the meaning or application of this Subcontract, it shall be deemed to have been jointly drafted, and shall be interpreted fairly and reasonably and neither more strongly for nor against either party.

29. You will protect us from and damages due to patent infringements.

29. The Subcontractor shall indemnify, defend, and hold and save the Contractor harmless from any liability including costs and expenses, for or on account of any patented or unpatented invention, article or appliance manufactured or used in the performance of this Subcontract, including their use by the Owner.

30. The subcontractor will not use equipment that you do not own unless you get our permission.

30. The Subcontractor shall not place on the work any equipment of which he is not sole owner unless he obtains written permission from the Contractor.

31. You will indemnify (protect) us from any damages that you may cause.

31. To the fullest extent permitted by law, Subcontractor agrees to indemnify, hold harmless, and defend Contractor, Owner, any other party as required by the prime contract, including the agents, officers, representatives, and employees of these parties from and against liability, claims, damages, causes of action, losses or expenses, including legal expenses and attorney fees, arising out of or in any way related to the subject matter of this Agreement and performance of the work to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Subcontractor, its SubSubcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or any of their officers, employees or agents.

32. If you breach the subcontract which results in a lawsuit, you will pay our reasonable legal fees.

32. In the event of a breach of this contract or any of its provisions by the Subcontractor, resulting in litigation by the Contractor to enforce its rights, the Subcontractor agrees to pay to the Contractor a reasonable fee for its attorney's services, which fee may be recovered in the same suit as a part of the Contractor's cause of action.



33. You will notify us of any potential or actual labor jurisdiction disputes and confer with us prior to taking action. You will submit disputes to the proper labor board having jurisdiction if we direct you to.

33. The Subcontractor shall notify the Contractor of any possible or actual labor jurisdictional disputes and confer with the Contractor prior to taking any action thereunder. The Subcontractor agrees, when directed by the Contractor, to submit disputed work assignments to the properly constituted national board having jurisdiction over the disputing trades.

34. If any portion of the subcontract is determined to be unenforceable, that portion will be severed, and the balance will remain in full force.

34. If any provision of the Subcontract, or the Additional Provisions of the Subcontract, or any of the exhibits, is held to be unenforceable, in whole or in part, the unenforceable provision, section, paragraph, or sentence shall be severed from the Subcontract, and the remainder of the Subcontract shall remain in full force and effect.

35. Pay apps will be electronic and you will use Textura. There is a charge for that, and they are listed below.

35. Unless otherwise directed or authorized, in writing, by Contractor, all Applications for Payment and all supporting documents (including but not limited to lien waivers, sworn statements, and the like) for Subcontractor and its sub-subcontractors and suppliers, shall be in electronic format and shall be submitted to Contractor using the Oracle Textura Payment Management (TPM) system. Subcontractor shall be responsible for the fees and costs owed associated with Subcontractor's use of TPM. Subcontractor shall include a similar provision in its sub-subcontracts and purchase orders. Fees to Subcontractors are calculated as 0.18% (18 basis points) of contract value, with a minimum fee of \$50 and a maximum fee of \$2,500. Fees to Subcontractors' sub-subcontractors and suppliers are a fixed fee of \$100 per sub-subcontractor or supplier contract. Fees to Subcontractors are calculated as 0.22% (22 basis points) of contract value (plus applicable taxes), with a maximum fee of \$3,750. Fees to Subcontractors' sub-subcontractors and suppliers are a fixed fee of \$100 per sub-subcontractor or supplier contract.