



For Public Sector Owners with Capital Budgets

CAN YOU REALLY GET YOUR PROJECTS BUILT?



If you're happy with today's high construction bids and you have enough bidders, read no further.

If not, read on...

WE KNOW YOU HAVE A PROBLEM

New York's public agencies are cash rich with billions of dollars of construction funds to finance new buildings and to build New York City.

If you're sitting in your office waiting for the bids to pour in and contractors to call, you may be fooling yourself. Across New York, subcontractors are turning away from public work and looking to private projects that have less risk as a result of the slow payment practices of public projects. Across the board, agency procurement heads are confronting dismal prospects of attracting qualified subcontractors to achieve their construction goals.

Slow payment practices have taken their toll on New York City's Construction Industry and have negatively affected its health. The result: fewer qualified contractors who can accept public work and rising construction costs for public projects.

The Subcontractors Trade Association (STA) is New York City's largest association of union subcontractors and material suppliers. With members drawn from all of the union trades, STA is the recognized advocate for the improvement of the economic health of New York City's subcontractors and material suppliers. The purpose of this White Paper is to bring the problem of slow payment to the attention of both public and private owner with the goal of creating needed change.

OUR PROBLEM IS YOUR PROBLEM

Subcontractors advance millions of dollars every week to make payroll and pay for materials, with limited prospects of being paid within 30 days. Payments to subcontractors are running 60, 90 and 120 days on approved requisitions.

Now however, this is not only the subcontractor's problem. Without industry standard ground rules to ensure timely payment, owners, developers and all New Yorkers will pay higher construction costs that are necessary to compensate subcontractors for payment delays. This is occurring as a result of bureaucratic red tape, late payment review processes and a host of uncompensated delays that have nothing to do with the subcontractors' performance.

WHY DO WE HAVE FEWER SUBCONTRACTORS?

Thirty percent fewer subcontractors operate their businesses today than did a decade ago. The industry is a mix of high risk projects and high risk payment practices which when combined yield imposing obstacles to realizing a profit and staying in business. Subcontractors are financing construction. Slow payment and slow payment approval processes constrict subcontractors' resources and inhibit their ability to take on new projects.

WHY SUBCONTRACTORS ARE NOT GETTING PAID?

The factors affecting slow payment to subcontractors are diverse.

- (1) Payment in 30 days is not a construction industry standard. Payments must be correlated more closely to performance of work and delivery of materials or the construction industry will continue to suffer and will have to increase prices to compensate for this.
- (2) Retainage withholds part of a subcontractor's earned money. It should not apply when bonding is required. If retainage is required, it should be interest bearing and should be released periodically as the job progresses and promptly as projects are completed.
- (3) Change orders for work performed outside of a contract or in addition to a contract that are not paid promptly are creating havoc for subcontractors. A subcontractor should not perform any additional work unless he has explicit written authorization and payment approval.
- (4) Mobilization monies or start-up funds are the dollars needed to begin a project for labor, material purchases, storage, insurance and other expenses. Generally, subcontractors do not receive these funds and begin projects out of pocket until a first invoice is approved and paid, often more than 60-90 days after the project starts.
- (5) No Damages for Delays have exacerbated the risk subcontractors must take when they are delayed because of administrative red tape or agency changes. Subcontractors must be compensated for damages resulting from owner delays.



BOON OR BOMB?

New York is enjoying a robust construction market with five year projections on an upward swing; but the number of competent subcontractors is not growing to meet the demands for the projects that need to get built in New York.

The volume of business a subcontractor can assume is limited by the company's available working capital. Subcontractors are financing a larger volume of work for longer stretches of time than ever before. In general, private work has become more attractive to

subcontractors because the payment cycle is generally more prompt than the public sector.

YOU HAVE A CHOICE

As a public owner, you can pay more, wait longer for a project to be built, accept lower quality or less reliability. You can bundle and unbundle projects trying to get smaller contractors to bid on them. Or, you can recognize that better procurement and payment practices will free the funds that subcontractors need and rely on.

CHANGES THE INDUSTRY NEEDS NOW

To sustain a competent, qualified construction industry and encourage new bidders in both the public and private sectors, the STA recommends the following changes be implemented as quickly as possible:

- #1.** Overhaul the public procurement process to create Industry-wide prompt payment practices and faster approval – setting a 30 day standard.
- #2.** Provide payment upfront for start-up costs and long-lead materials and storage.
- #3.** Adhere to timely payment review procedures.
- #4.** Codify change order procedures.
- #5.** Provide equitable damage for delays.
- #6.** Close jobs out and make final payment within 30 days of satisfactory completion.
- #7.** Remove retainage when bonding is in place and reduce retainage correlated progress when bonding is not involved.
- #8.** Analyze all contracts provisions in a risk and rating approach to create equitable risk allocation.
- #9.** Implement a claims process that is based on equitable dispute resolution.
- #10.** Impose penalties for non-compliance with prompt pay practices.

IT'S TIME TO BEGIN OUR DISCUSSION WITH YOU

New York's construction industry economic forecast is excellent. However, the problem is who will build New York? There are a limited number of qualified contractors who want to bid the work. Those who do bid should be pricing to manage the risk involved.

The Subcontractors Trade Association is dedicated to building New York with qualified union contractors. To that end, we propose a series of recommendations that must be incorporated into our industry quickly to stem the hemorrhaging we are experiencing.

We see our industry with long term lenses. We are not simply concerned with today and our strong economy; we, like our public officials, are looking to 2030 when almost one million new residents will be living in New York City.

Who will build New York is a question to which we know the answer – We will build New York. But we will do so only if we can create the economic climate that will provide for the financial stability of our industry's subcontractors and over 120, 000 workers we employ.





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& Restoring Its Past**

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ABOUT THE STA

The Subcontractors Trade Association was established in July 1966 by a group of subcontractors and suppliers with a vision that saw the need for representation. We have a membership of over 350 subcontractors and suppliers in the greater New York area including every discipline in the construction industry.

Our goal is to improve the economic well being of our members through representation, support and assistance through the process of legislation, legal action, public relations, education and other public information programs.

We focus our activities on problems affecting subcontractors in public and private construction, including progress payments, bid-shopping, improper back charges, legislation, prevailing wage enforcement, lien laws, insurance/bonding and the like.

STA PROMPT PAY COMMITTEE

The STA Prompt Pay Committee is one of 11 STA committees that works on behalf of its membership to advance the financial well-being of New York's subcontractors.

COMMITTEE MEMBERS

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