



7 BEST PRACTICES FOR PROMPT PAYMENT

If you're getting paid on time
and if no one owes you money for a change order,
read no further.

If not, read on...



Photography: Robert Boucher, The Durst Organization



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OVERVIEW

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 a recognized advocate for the improvement of the economic condition of New York City's subcontractors and material suppliers.

When an issue arises that affects the ability of members of our industry to do business, the STA takes action. STA has mounted an educational and informational action plan to bring the problem of prompt payment to the attention of both public and private owners. This industry White Paper is one component of a larger program that will serve to communicate the needs of subcontractors and suppliers to the builders and owners they serve.

This White Paper will review current practices in New York's construction industry with the goals of better understanding the crippling effect the industry's slow payment process has on our industry.

DISCLAIMER

The information in this publication is provided here for informational purposes only and should not be used to protect, defend or make a claim without first consulting with your own legal counsel.

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7 BEST PRACTICES FOR PROMPT PAYMENT

SOME BACKGROUND

Early in 2007, the Subcontractors Trade Association (STA) held an agenda-setting forum, Get Paid, that attracted industry attendance and attention from both sides of the table – subcontractors and construction managers/general contractors. For the first time, we achieved consensus: subcontractors need to be paid on time.

All agreed that there were challenges to ensuring prompt payment, some which could be easily remedied, others more challenging. The STA recognizes all aspects of the prompt payment problem and continues to aggressively advocate the subcontractors' position. However, STA also recognizes that there are several Best Practices that subcontractors must implement to ensure that they are advancing their company's ability to be paid on time.

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The purpose of this discussion is to alert subcontractors to 7 Best Practices that should be incorporated into their contract negotiations and requisition procedures to encourage prompt and timely payments from owners, general contractors and construction managers. Get Paid is a process and an approach. STA encourages you to consider incorporating the Best Practices summarized below into your business operations.*

IS YOUR CHECK IN THE MAIL?

New York's public agencies are well funded with billions of dollars of construction funds to build new buildings and to build New York City. Private owners and builder developers are planning more and more projects and are rushing to get their projects in the ground. RFPs and bid requests are piling high on your desk. But if you're sitting in your office, preparing payroll, paying suppliers and planning whether or not to take on another job, you may be fooling yourself to think that your check for last month's work is in this month's mail. Getting paid for your work is not a 30-day process anymore.

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. Increasingly subcontractors across the City are complaining of delayed payments, non-payment for change orders and a host of project delays that are impacting on their ability to get paid for work on time.

The problem of slow payment is more pervasive in the public sector, where complex paperwork and approval procedures are standard fare for delaying payments. However, even in the private sector, some owners and developers are taking 45 to 60 days and even longer to make payments.





7 BEST PRACTICES FOR PROMPT PAYMENT

What follows are the simple and practical 'Best Practices' that every subcontractor should include in their payment procedures*:



You have input over the contract terms you negotiate before you sign a contract, not after. Examine contract terms and negotiate them to meet your financial and operational needs.

Mobilization Terms. If you require upfront mobilization funds to start a project, negotiate it. Be sure to include every item you require in your contractual payment breakout. The more detailed you make it, the more money you are likely to receive.

Long Lead Materials. If you need to purchase long lead materials for early fabrication or for later use, negotiate purchase monies, storage monies, you may have to provide insurances and even title of the purchased materials to get paid. But it will be worth it as part of your contract. Be sure to include all supporting documentation related to this expense. (Note: AIA Contract G702 and G703 include a built-in provision for this.)

Payment Terms. Be sure to examine payment terms before you accept a subcontract. Make sure that you know every aspect of your contract including the legal aspects as well as the specifications and notes for all plans and drawings. Make sure that you are comfortable with the payment terms of your contract. You will have

to live with them. If your contract is for a fast track project, negotiate payment terms that are consistent with the project's schedule. Fast track projects should yield fast track payments. Finally, if you are able to negotiate for special allowance processes to discourage late payment terms, do so. Check your contract to make sure you can invoke them when applicable.

Impress Accounts. Determine whether an impress account exists or can be set up before you sign your contract. Once you establish that it does, include that provision to draw upon it in your contract.

Reduce and Remove Retainage. Negotiate your terms for retainage before you sign your contract. Remember where you have provided bonding, negotiate the elimination of retainage. Include a provision for elimination of further retention after 50% of the work is completed to a reduction of the value of the punch list work after substantial completion. This is true especially where bonding protection is available to the owner and the owner and subcontractor have a good relationship.



Make sure the amount you are trying to collect is correct. Any difference between what you expect to get paid and what you should get paid will create needless havoc with your cashflow

Timely submission of your requisitions is a best step in the payment process. If you're late in submitting your requisitions, know that it is likely that your payment will be delayed. Try to prepare your requisitions early, and submit them early if you can. In addition, verify your payment amount on submission. Make sure the amount you are trying to collect is correct. Any difference between what you expect to get paid and what you should get paid will create needless havoc with your cashflow.

Once your payment requisitions are submitted follow close the payment dates to CMs/GCs and yourself. Be sure to send late payment notices, when payment is late, if your contract provides for them. Also, walk the job with a project representative before each requisition is submitted, so that you may have an informal agreement.



Dotting every 'I' and crossing every 'T'

When you submit your requisitions, always include complete documentation as well as complete backup information. Dotting every 'I' and crossing every 'T' in the payment documentation process leaves little room for disputes later.

Schedule of Values. Add change order amounts to your schedule of values that may be applied for payment situations, especially approved change orders. Follow the contractual notice of requirements of your contract where delays and interference is encountered.



First, never proceed with work outside of the scope of your contract or a change of work in your contract, without an authorized written approval, written notice to proceed or a written saved work ticket.

Once you have written approval you need to be aware of the following: (1) know who is authorized to request and approve a change; (2) price work quickly; (3) establish a credible field ticket report process to monitor the work. And check your contract provisions concerning change orders, interference and notice requirements.

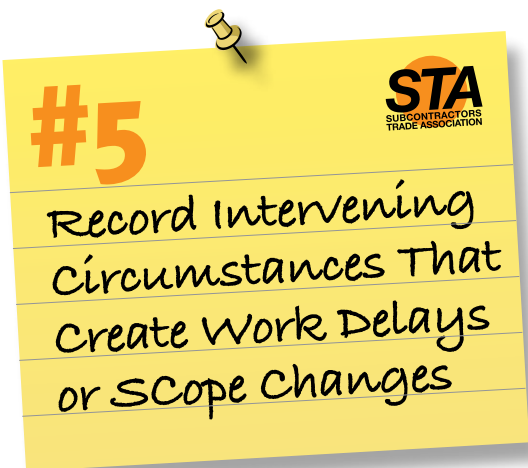
Before You Sign Your Contract: Make sure that you read and understand the change order procedure set forth in your contract. When you submit for a change, be sure that an acceptance line is included and it is signed in your return agreement prior to you proceeding with work.

Submit a Copy of Your Rates: With your submission, request that the Owner acknowledge receipt of the rates, so that he knows the rates. When certified payrolls are required make sure that they are accurate.

Prompt Issuance of Change Orders: Insist that the change orders be issued promptly and that they be

paid promptly and in accordance with the terms of the contract. It is suggested that all conversations with the contractor with regard to the change order should be done in writing and all verbal exchanges kept to a minimum. Make an orderly presentation of the cost of your materials. This cost should be filed with the change order.

Combine Time Tickets to Form a Change Order. If a group of time tickets are combined to form a single change order, then arrangements should be made to bill against the pending change in the interim. Add a provision that each separate change order be billed independently.



Intervening circumstances that occur on a project can create work delays, payment delays and extra costs. You leave yourself unprotected from delayed costs, or non-payments, when you do not document the reasons and circumstances that may create a work delay. In addition to documenting these circumstances, be sure to notify all parties, in accordance with contract requirements.

Additionally, give prompt written notice to all parties to any changes in your contracted scope of work or costs for the delay before proceeding with it. Where field requirements prevent prior notice be sure to give notice as promptly as possible.



An important part of the payment process is assurance that you have satisfied all insurance requirements, bonding requirements, if required, MWBE commitment requirements and all safety requirements. When you do not comply with these requirements, non-payment is sure to follow.



Your aim is to collect 100% of your monthly receivables. Always track your receivables. When you lose track, you lose money.

Know Your Owner. If you determine that your owner or GC/CM will not pay you on time, you should seriously consider whether or not you accept a job from those parties. Sometimes the best job is the one you didn't take.

STA provides a special information assistance program, Business Practice Interchange (BPI), which assists subcontractors to better understand business and payment precedents for many public and private owners, GC's/GM's.

Know Your Contract. It is essential that you know and follow all the requirements and mandates of your contract. Further, before you sign your contract, you should read and become familiar with all of the general conditions, special conditions, special attachments and notes (both attached to the contract as well as the plans). You must fulfill your responsibilities to get paid.

Lien Law Trust Fund Obligations. Lien Law Trust Fund Obligations can be helpful in prodding an owner/GC/CM to make payment. Any litigation can be time consuming and will inevitably promote bad feelings amongst all parties, Lien Law Trust Fund assertions can result in an audit of the owner's records and in the best of circumstances, payment to the subcontractor.

Asserting a Claim. If you believe you have a claim against an owner, bring it to the attention of your attorney. STA encourages you to navigate all alternatives to bringing a claim, the STA provides many of the services to assist subcontractors in preserving their rights. There have been positive results both parties are brought to the table early to resolve issues. If asserting a claim is the best option, that is a decision to be made between and your legal counsel

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. We must Get Paid!

To ensure prompt payment, STA works diligently on behalf of you, its membership, as well as the industry to create productive economic conditions to sustain and promote the health and vitality of subcontractors. As a subcontractor, you must do your part too. Incorporate our 7 Best Practices, among others, to ensure that you Get Paid! You can't afford not to.



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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 hundreds of subcontractors and suppliers in the greater New York area drawn from 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.

Ron Berger, Executive Director
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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.

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