



ASA Announces SAP 'Hide the Ball' Award

ASA announced a Subcontractors Are Prey (SAP) Award to a subcontract clause that requires a subcontractor to visit a location distant from the project to review copies of contract documents incorporated by reference. The SAP "Hide the Ball" Award goes to the following clause:

All Subcontract Documents, including the Prime Contract, shall be available for review at the office of the Prime Contractor located at [the headquarters office of the Prime Contractor located in a state more than 800 miles from the project].

Be forewarned: Documents clearly identified as being incorporated in a subcontract by reference are legally binding on a subcontractor, even if they are not attached to the subcontract or otherwise supplied to the subcontractor. Thus, a subcontractor should obtain copies of all documents that are identified as being part of the subcontract whether directly or by reference. As indicated by the above clause, some prime contractors make this inordinately difficult. A prime contractor may argue it is reluctant to provide a subcontractor with a copy of its prime contract under the pretext that certain parts of the agreement, such as price and bonus terms, are proprietary or confidential. However, by making the prime contract a part of the subcontract by reference, the prime contractor, at least in theory, has an obligation to:

1. Furnish a copy of the portion of the prime contract that is applicable to the subcontract;
2. Delete the prime contract from the list of subcontract documents; or
3. Write a provision into the subcontract stating that the subcontractor is not bound by provisions in any document that is not provided to the subcontractor.

A subcontractor can limit the applicability of documents it has not been provided by inserting language such as the following:

No document included by reference in the subcontract is binding on subcontractor except for the following documents, copies of which have been provided to subcontractor: [insert list].

ASA's tongue-in-cheek SAP Awards recognize achievements in the use of predatory contract language in the construction industry. Nominations for SAP Awards can be submitted to ASA Chief Advocacy Officer E. Colette Nelson at cnelson@asa-hq.com.

ASA Government Advocacy and Contracts Task Forces to Meet

The ASA task forces charged with the management and oversight of ASA's government advocacy and contract documents programs will meet Oct. 20-21 at the Hyatt Regency Tamaya Resort and Spa in Santa Ana Pueblo, N.M. ASA members interested in advancing subcontractor rights before government and within the construction industry are invited to participate in these meetings. The Task Force on Government Advocacy, which is responsible for monitoring and influencing key subcontractor issues before the legislative and executive branches at all levels of government, will meet from 9:00 a.m. to noon on Oct. 20. The Task Force on Contract Documents, which is responsible for ASA model contract documents, as well as providing subcontractor input to ConsensusDocs and other associations' model documents, will meet from 1:00 p.m. to 4:00 p.m. on the same day. The Task Force on the Subcontractors Legal Defense Fund, which is responsible for managing ASA's advocacy efforts before the judicial branch of government, will meet from 9:00 a.m. to 10:00 a.m. on Oct. 21. ASA's Attorneys' Council, which is composed of attorneys who are ASA members and ASA chapter counsel, also will meet on Oct. 21 from 10:00 a.m. to 3:00 p.m. at the Hyatt. ASA has negotiated a special nightly hotel room rate of \$169 single/double for participants who identify themselves as being with the "ASA" group at the Hyatt Regency Tamaya Resort and Spa. [View the schedule and register online](#) for the ASA task force meetings and [make your hotel reservations online](#) or by calling the Hyatt Regency at (505) 867-1234, and cite "ASA" as the group, by **Sept. 21, 2017**. For more information about these ASA task forces, contact ASA Chief Advocacy Officer E. Colette Nelson at cnelson@asa-hq.com.

ASA/SBLC Call for Tax Reform to Preserve Retirement Plan System

ASA, in conjunction with the Small Business Legislative Council, submitted comments to the Senate Finance Committee that call for preserving the small business retirement plan system as part of planned tax code overhaul. "Most small business owners are motivated to establish plans, and to make contributions for their employees, by a desire to save for their own retirement," SBLC said. "If the tax laws are changed to reduce the ability or appeal of saving in a retirement plan, small business owners will be much less likely to continue an existing plan or start a new plan." So as not to disturb the current small business retirement system, SBLC urged Congress to:

- Reject attempts to decrease the amount that can be saved in a qualified plan. If the amount that small business owners can save in a qualified plan is reduced, small business owners will be motivated to freeze or terminate plans once they themselves have hit that cap. This will mean that fewer small business employees will be offered a plan.
- Avoid changes that would quickly force savings out of a plan after the owner's death or otherwise do anything to make owners concerned about saving too much in a retirement plan. If a small business owner is concerned about his/her descendants who inherit the plans assets will be forced to take the money out over a short period of time and therefore face negative consequences, the owner is likely to save less in the plan, which will not only impact his/her retirement security but that of the other employees of the business as well.
- Protect the deductibility of employer contributions. If the deduction for the employer contribution is eliminated, an employer will be far less likely to contribute toward an employee's retirement savings.
- Reject proposals to try to limit how much can be saved in a defined contribution plan pre-tax (i.e., to force some or all of the defined contribution retirement plan system towards Roth IRAs). If employees are taxed on contributions to a plan, they will be less likely to save, which, given that people are far more likely to save in employer-sponsored retirement plans than in any other vehicle, would reduce retirement savings overall.

SBLC is a permanent, independent coalition of more than 40 trade and professional associations that share a common commitment to the future of small businesses. ASA Chief Advocacy Officer E. Colette Nelson is a past chair of SBLC and currently serves on its board of directors.

This Summer, Give Your Business a Face Before Congress

Now is the time to get in touch with your elected leaders and legislators! Washington, D.C., in August is more than just humidity and long lines at the museums, it also marks the time when Members of Congress, both from the Senate and House, return to their individual home states and districts for their annual "summer recess." However, despite many cynical press reports to the contrary, the summer recess is more than a vacation. While it's true that there will be golf, sun and free time being enjoyed by our leaders, it's also one of the few times legislators have to meet with their constituents in a direct manner. While on recess, the legislator's district (home) offices become the center of legislative activity. Senators and Representatives usually are more than eager to hear the concerns of those they represent in a personal way, face to face. This presents an invaluable opportunity for you and your business. By getting to know your elected officials, you're able to put a human face with the issues that are important to you and your business before the leaders who are writing our laws. While you might not have a current need to address your leaders from Washington, new issues and concerns will always come up down the road. Wouldn't it be better if you could walk in to your elected official's office and have the staff recognize you, address you by name, and make your concern a priority to the legislator who knows first-hand what you do? Making an appointment to see your legislator is easier than you might think. A good place to start is a visit to www.Congress.gov. There you'll be able to find out who your leaders are, and how you can get in touch with them to make an appointment. It's usually as simple as making a local phone call. Look at your meeting as a public relations investment opportunity. In a crisis, having that personal connection in the nation's capital will only help you.

ASA's Glossary of Terms Answers 'What Does That Word Mean?'

Have you ever read a subcontract document and wondered "What does that word mean?" Do you wish you had a tool to help an employee, new to the construction industry, understand the industry jargon? ASA's *Glossary of Common Construction Contract Terms* might be just what you've been looking for. The 16-page glossary provides an alphabetical list of terms and acronyms—from AAA to xcu— frequently used in construction contracts and subcontracts and discussions about them, as well as the definition of such terms. The ASA [Glossary of Common Construction Contract Terms](#) is available under "[Contracts & Project Management](#)" in the Member Resources section of the ASA Web site.

Open Lines of Communication on a Project Pay Off

There's an old saying that only two things in life are certain: death and taxes. For honest, hard-working contractors and subcontractors, another certainty is that establishing clear lines of communication on projects and accurately recording communications for later reference pays off. Clear communication among the people managing and running projects, such as foremen, project managers and superintendents, minimizes guessing and the risks of the different parties on a project feeling they are being treated unfairly. The resulting improved coordination on the project will enhance productivity and reduce disputes. All contractors and subcontractors agree in principle that open communication is valuable, but they don't always seem to agree that it's worth the expense of time and money to establish on actual projects. For example, a superintendent may not schedule enough project meetings, or a client may not reveal what's happening behind closed doors with the owner when there's a dispute concerning a subcontractor's work. Why should a subcontractor insist on better, more open communication in such circumstances? If the promise of enhanced productivity isn't enough, just talk to any of the subcontractors that are the most diligent about keeping detailed records of communications with clients—the subcontractors that have lost major claims for extra work. These subcontractors have learned the hard way to record

daily reports and demands for payment, take photographs, save emails and much more. They know that courts and arbitrators look at such communications in determining the outcome of claims and the monetary judgment of awards, if any, to the prevailing party of a dispute. When talking to customers about opening lines of communication, use the “Guideline on Communication” in the [Guidelines for a Successful Construction Project](#) developed and published by ASA, the Associated General Contractors of America, and the Associated Specialty Contractors. The guideline contains several suggestions for improving communication, which can be summarized as follows:

- Each party should have a readily available, competent authorized representative (and backup) who can represent it for project coordination purposes. Project coordination should occur through these representatives, and they should hold regular on-the-job meetings, take minutes and promptly distribute them to all parties.
- The prime contractor should provide a clear site logistics plan, detailing such items as personnel lifts, storage areas and heating/ventilation.
- Communications such as shop drawings, submittals and information about damage to work should be relayed promptly to the appropriate parties.
- In disputes with the owner/architect, the prime contractor should represent subcontractors equally and effectively. Disputes between the prime contractor and subcontractor should be settled in good faith and without disruption to the project. Monetary issues should be settled as promptly as possible.
- Parties should follow the procedures for change orders, back charges, progress and final payments, and the communication protocol between the subcontractor and the architect and/or its consultant. However, it is inappropriate for parties to ask for prospective lien waivers.

When asking clients to improve their communications, use the guideline—even provide them with a copy of it. Be sure to emphasize that the guideline contains best practices developed by and for all construction contractors.

Contract Changes and Claims: Limitations on Calculating Equitable Adjustments

Contract clauses may limit the types of costs the subcontractor may recover, as well as the amount of overhead and profit. Consequently, it may be less expensive for an owner to incorporate changes after the contract has been executed than to include certain items of work in the original bid documents. Also, in cases where a large number of changes occur, these contract limitations may significantly impair the subcontractor’s ability to receive the full actual increase in cost. The subcontractor’s anticipated profit for the project may be eroded. These types of limitations should be reviewed very carefully and modified to allow the subcontractor to be reasonably compensated. ASA’s [Contract Changes and Claims](#) is a series of articles providing tips for the management of changes and changed conditions and how to realize full adjustment to the contract price or contract time.

Help Steer Direction of ASA by Completing 2017-18 Member Needs Assessment Survey

Every ASA member has a part to play in shaping the direction of, and the services provided by, the Association. How can you play your part? Complete and return ASA’s [2017-18 Member Needs Assessment Survey](#). “Every other year, ASA seeks your feedback on the challenges your business is facing in the construction industry and the ASA services and benefits you most value,” said 2017-18 ASA President Jeff Banker, Banker Insulation, Chandler, Ariz. “Your responses to this survey are very important to us, because they help ASA evaluate our members’ current needs and priorities and help steer the strategic direction of the Association. Essentially, you are helping us serve you better, so I encourage your participation.” We need only your company name at the end of this survey in order to verify your membership. Multiple individuals from each member company are welcome to complete and submit the survey. Your name and email address are no longer required, but your name and company will remain anonymous. This year’s member needs assessment survey should take 10 to 15 minutes to complete.

Aug. 8 ASA Webinar Examines Overlap Between FMLA, ADA and Workers’ Compensation Laws

Most subcontractors understand that when an employee suffers an injury at work, workers’ compensation insurance will provide coverage for the claim. But when an employee suffers an injury at work and is unable to come back to work, other laws are implicated. In the Aug. 8 ASA webinar, “The Devil’s Triangle: Understanding the Overlap Between the FMLA, ADA and Workers’ Compensation Laws,” presenter Philip J. Siegel, Hendrick, Phillips, Salzman & Siegel, will provide an overview of the interplay between the Family Medical Leave Act, the Americans with Disabilities Act, and workers’ compensation laws, all of which may come into play when an injured employee will need to miss work. Siegel will explain the employer’s compliance obligations under what is often referred to as the Devil’s Triangle. Webinar participants will be in a better position to avoid a misstep when dealing with an injured employee, which could cost the company thousands of dollars. Participants will also better understand the legal road map for effectuating a termination of an injured employee who is unable to timely return to work. This live, 90-minute webinar will begin at 12:00 p.m. Eastern time/9:00 a.m. Pacific time. Registration is \$99 for members and \$179 for nonmembers. [Register online.](#)

Learn About Self-Funded Healthcare for Subcontractors in Complimentary Aug. 22 ASA Webinar

Subcontractors around the country are creating a competitive advantage and saving millions of dollars annually in healthcare costs through a self-insurance model—without adding any risk. Those savings are being used to land more jobs and recruit more employees. In the complimentary Aug. 22 ASA webinar, “Self-Funded Healthcare for Subcontractors,” presenter Mike Bechtol, Redirect Health, explains how these subcontractors are challenging the status quo and providing the healthcare their workers need—at less than \$100 per employee per month—and gaining a distinct hiring advantage in a very competitive environment. This live, 90-minute webinar will begin at 12:00 p.m. Eastern time/9:00 a.m. Pacific time. Registration is free for members and nonmembers. [Register online.](#)

Is Your Cash Working for You? Learn About ‘Cash Management’ with FASA Video-on-Demand

For subcontractors, effectively managing cash is an ongoing and high-stakes challenge. In the FASA video-on-demand, “Is Your Cash Working for You? Understanding the Competitive Advantage of Cash Management,” Kevin Jacobs and Aaron McFarland, Moss Adams, LLP, outline steps subcontractors can take to adjust their allocations so they have cash on hand when they need it, while earning a return on their long-term reserves:

- Examine current liquidity structure.
- Analyze business cycles.
- Project company’s needs.
- Understand the impact on third parties and owners.

Play this on-demand video with a free media player like [Windows Media Player](#), and use it for group training by projecting it onto a screen or wall in a conference room. “Is Your Cash Working for You? Understanding the Competitive Advantage of Cash Management” (Item #8095) is \$65 for ASA members and \$95 for nonmembers. [Order online.](#)

ENR Magazine to Host Dormitory Authority Conference on Sept. 27 in New York City

Construction, architecture, and engineering professionals throughout the New York region will learn about new opportunities with the Dormitory Authority of the State of New York (DASNY) during a conference hosted by *Engineering News-Record* magazine on Sept. 27, 2017, at the CUNY Graduate Center in New York City. Called “Building Brighter Futures,” this inaugural conference will address news, trends, and opportunities in the industry, as well as updates to DASNY projects, and is expected to attract hundreds of attendees from the area who are looking to contract business with DASNY, higher education facilities, and major construction firms. General contractors, subcontractors, architects, engineers, facility managers, and other industry service providers interested in contract opportunities with DASNY are encouraged to attend. The Dormitory Authority of the State of New York is among the nation’s largest issuers of low-cost, tax-exempt bonds and one of its biggest public builders. It creates health, education, and scientific facilities that form the backbone of inclusive, sustainable communities in the region. DASNY takes contractors through an entire project, from concept to commissioning, and manages all contracts, the environmental review process, and financing. For more information, visit www.dasnyconference.com.

Advertisements

ASA Silver Sponsor eMeasure Offers Summer Sale

ASA Silver sponsor eMeasure is currently having a summer sale, ending Sept. 1—purchase eMeasure for just \$750! Plus, if using the promo code **ASA102**, you will also get your first year’s maintenance for free. Rental options are also available for just \$44.50/month! eMeasure is a simple electronic takeoff software and Excel add-in that allows subcontractors to measure from digital construction plans and blueprints with ease. Takeoff areas, lengths and counts from scans, PDFs and CAD, then live-link to your Excel spreadsheet, and drag and drop your measurements straight into your estimate! “The eMeasure system has only the features subcontractors really need,” said Adam Khemiri, eMeasure. “It’s simple, accurate and easy to use, and with the industry-leading Excel add-in it means you can totally eliminate copy-paste errors.” Khemiri explained that subcontractors can learn the eMeasure system in under an hour with eMeasure’s support resources, including FAQ, training videos, documentation and more—all included for free with the program. “eMeasure is the ultimate way to go paperless with your estimating!” he added. Visit www.emasure.com to see why eMeasure is “Made to Measure.”

Get Your Books in Order with Silver ASA Sponsor CapitalPlus

Silver ASA sponsor [CapitalPlus](#) has extensive experience providing financial services that help subcontractors and others in construction-related industries get their books in order by staying up-to-date with entries, ensuring accuracy, and providing funds when they are unable to get a traditional bank line of credit. CapitalPlus accomplishes this through two ventures, CapitalPlus Financial and CapitalPlus Equity. CapitalPlus Financial helps small businesses by providing

back-office services such as bookkeeping, risk management, and compliance. CapitalPlus Equity offers alternative financing for small businesses that may otherwise have a hard time closing the gap in their capital needs. CapitalPlus has been successfully assisting small businesses with their financial needs for over a decade and specializes in working with subcontractors and others in construction-related industries. FactoringClub named CapitalPlus the Construction Factoring Company of the Year for 2016. Special offer for ASA members: Sign up for any back-office service and get your second month free! For more information, visit www.capitalplusfinancial.com/capitalplus or contact Scott Applegate, chief operating officer, CapitalPlus, Knoxville, Tenn., at (865) 670-2345 or applegate@capitalplus.com.

Silver ASA Sponsor NES Rentals Maintains Strict Focus on Reliability, Customer Satisfaction and Safety

NES Rentals, a leader in the equipment rental industry and No. 1 in aerial lifts, is a proud Silver ASA sponsor. "We continue to exceed industry standards in customer satisfaction year after year," said Michael Disser, director of sales—technology and national accounts, NES Rentals. "We share in ASA members' concern for unparalleled safety, and as such, we provide safe, reliable rental equipment and IPAF safety training for customers and employees alike."

With a strict focus on reliability, customer satisfaction and safety, NES rents hundreds of different types of equipment and distributes new equipment for nationally recognized manufactures in a variety of industries, including construction contractors and subcontractors.

NES Rentals supplies businesses with the industry's most reliable rental equipment, including:

- Boom Lifts.
- Scissor Lifts.
- Industrial and Reach Forklifts.
- Dirt Equipment.
- Cranes.
- And more!

All of NES Rentals' equipment is maintained to OEM standards, is serviced by its quick-response maintenance programs and meets exacting internal performance criteria. In addition, NES is deeply committed to safety, with over 100 IPAF-certified employees and IPAF training for customers and employees alike.

In 2015, independent customer satisfaction scores ranked NES Rentals above other equipment suppliers and among some of the nation's finest companies. These high standards and performance span the company's 75 locations in 27 states across the Central-to-Eastern United States, helping ensure you get the job done and taking your rental experience to the next level.

For more information, visit [NES Rentals online](#) or contact Disser at (773) 597-5020 or mdisser@nesrentals.com.

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