



Welcome to the Subcontractors Academy!

Brought To You By:

City of Austin Contract Management Department

In partnership with



Goals:

1. Ensure all interested subcontractors have access to information, resources and tools they need to be successful in their City contracts.
2. Provide subcontractors an opportunity to network with, and learn alongside, government contracting officials to gain a better understanding of the City processes, roles, and responsibilities associated with City government contracting.



Contract Management Department

Subcontractors Academy

Know Your Contract

Module 1 - Conditions of the Contract

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Know Your Contract?... Why?

In today's economic climate it is imperative that your **obligations** and **responsibilities** are understood to maximize your organizations' efficiency and profitability.



City of Austin's Bidding Requirements, Contract Forms, & Conditions of the Contract can be found at:

<http://austintexas.gov/page/bid-docs>

Flow-Down Clauses



- A flow down clause is a contract provision by which the parties incorporate the terms of the general contract between the owner and the Prime / General Contractor into the lower tier agreement(s).
- Flow-down provisions help to ensure that the subcontractor's obligations to the contractor mirror the contractor's obligations to the owner.

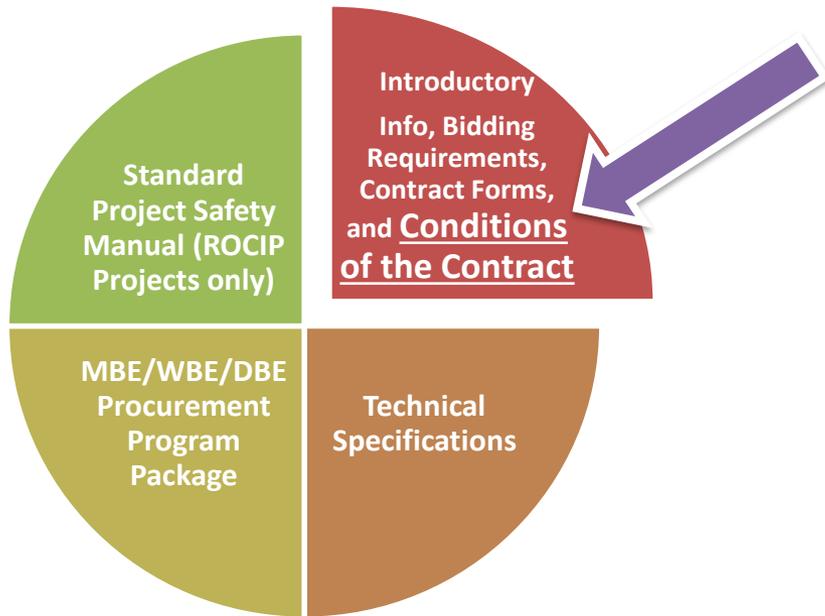
Example of a flow-down clause in COA construction contracts: **Dispute Resolution Requirements 00700 // 16.3 Resolution of Disputes between Contractor and Subcontractor or Supplier:**

If a dispute exists concerning a claim between a CONTRACTOR and a Subcontractor or Supplier, the CONTRACTOR agrees to participate with such Subcontractor and/or Supplier in a process substantially paralleling the steps set out in paragraphs 16.1 and 16.2 above, including the delivery of written notices, submission of supporting data, negotiation with previously uninvolved personnel, and, if such alternative dispute resolution process is unsuccessful, mediation between the parties to the claim.

(Notice: This process is not a substitute for the statutory payment bond claim process)

Conditions of the Contract Sections 00700 and 00810

City of Austin's Typical Project Manual



These conditions stipulate rules regarding subcontractors, changes, time, payments, completion, protection of persons and property, insurance, bonds, correction, termination, suspension, claims and disputes



- **General Conditions (00700)** define the basic rights, responsibilities, minimum performance requirements, and relationships of all parties involved in the construction process.
- The **Supplementary Conditions (00810)** **modify the General conditions to meet specific requirements for the project**, They reflect the peculiarities and special needs of a specific job.

00700 General Conditions



1. Definitions
2. Preliminary Matters
3. Contract Documents: Intent, Amending, Reuse
4. Availability of Lands; Subsurface and Physical Conditions; Reference Points
5. Bonds and Insurance
6. Contractor's Responsibility
7. Other Work
8. Owner's Responsibilities
9. Engineers/Architect's Status During Construction
10. Changes in the Work
11. Change of Contract Amount
12. Change of Contract Times
13. Tests and inspections; Correction, Removal or Acceptance of Defective Work
14. Payments to Contractor and Completion
15. Suspension of Work and Termination
16. Dispute Resolution
17. Miscellaneous

Sections of interest and/or impact subcontractors include, but are not be limited to...

Please make sure to review each contract . There may be other conditions and /or project specific requirements that apply to your project



00700 Article 1 – Definitions

Working Hours. All work shall be done between 7:00 a.m. and 6 p.m. unless authorized by Owner's representative.

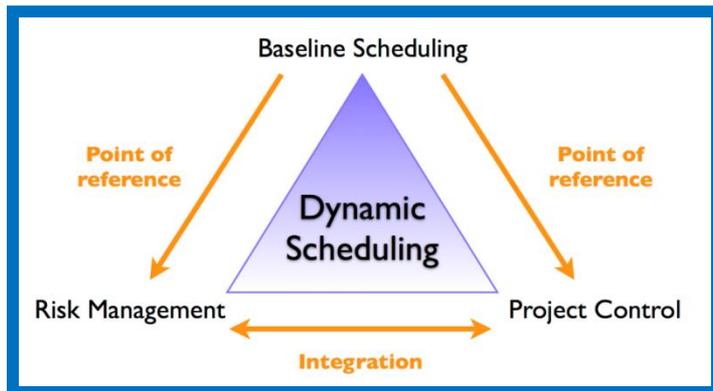


00700 Article 2 – Preliminary Matters

2.4 Before Starting Construction:

2.4.2 **It is mutually agreed between Contractor and Owner that successful completion of the Work within the contract completion date is of primary importance.** Therefore, the contractor hereby agrees to submit to the Owner's representative for review and approval, or acceptance, as appropriate, all information requested by this section, including a **Baseline Schedule**, no later than five working days prior to the preconstruction mtg. conference.

This Baseline Schedule, a copy of which shall be made available at the jobsite(s), must contain sufficient detail to indicate that the Contractor has properly identified required Work elements and tasks, has provided for a sufficient and proper workforce and integration of Subcontractors, has provided sufficient resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract Time.



The Baseline Schedule confirms that the Work/Project can be completed within the Contract Time – and must identify when all Subcontractors will be utilized.



Article 2 – Preliminary Matters

2.5 Preconstruction Conference

Prior to commencement of Work at the site, CONTRACTOR must attend a preconstruction conference with Owner's Representative and others, as set forth in Division 1.

Additionally, prior to commencement of work, the **CONTRACTOR shall host a preconstruction conference for the Subcontractors identified on the originally approved compliance plan**, Owner's Representative and others, as set forth in Division 1.

New Requirement

The CONTRACTOR shall notify all Subcontractors five (5) working days prior to the preconstruction conference. If the CONTRACTOR has included Subcontractors in the initial preconstruction conference, the additional Subcontractor preconstruction conference will not be required



Article 3 – Contract Documents: Intent, Amending, Reuse

3.1 Intent

The intent of the Contract Documents is to include all information necessary for the **proper execution** and **timely completion** of the Work by the Contractor.



In cases of disagreement, the following **order of precedence** shall generally govern (**top item receiving priority of interpretation**):

1. Signed Agreement
2. Addendum to the Contract Documents, including approved changes
3. Supplemental General Conditions
4. General Conditions
5. Other Bidding Requirements and Contract Forms
6. Special Provisions to the Standard Technical Specifications
7. Special Specifications
8. Standard Technical Specifications
9. Drawings (figured dimensions shall govern over scaled dimensions)
10. Project Safety Manual (if applicable)

Article 3 – Contract Documents: Intent, Amending, Reuse

3.3 Amending and Supplementing Contracts

3.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- .1 Change Order
- .2 Change Directive
- .3 Time Extension Request

A written Change Order or Change Directive is required before Contractor commences any activities associated with a change in the Work.



Article 3 – Contract Documents: Intent, Amending, Reuse

3.4 Reuse of Documents Prohibited

Contractor and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the Owner:

- i. Shall not have or acquire any title to or ownership rights in any way of the Drawings, Specifications, or other documents (or any copies thereof) prepared by or bearing the seal of E/A or E/As consultant, and
- ii. **Shall not reuse any such Drawings, Specifications, or other documents or copies on extensions of the Project or any other without written consent of Owner and E/A.**



Article 4 – Availability of Lands; Subsurface and Physical Conditions; Reference Points

- Availability of Lands - Access to Site
- Subsurface and Physical Conditions
 - Geotechnical reports
 - Contractor must notify Owner in writing within 3 calendar days if unforeseen conditions are encountered
 - Location and protection of utility lines
 - Primitive records and antiquities of archeological, paleontological or historical significance (Stop all work in close proximity)
- Reference Points - Control Points and Benchmarks (Benchmarks and property markers provided by COA . Shall be carefully preserved. In case of destruction or removal shall be replaced by a registered Professional Land Surveyor at Contractor's expense.)
- Hazardous Materials (Immediately notify City of any suspected hazardous materials and take necessary precautions to avoid further disturbance.)



Article 5 – Bonds and Insurance

5.2 Worker's Compensation Insurance Coverage

5.2.9 Contractor **shall contractually require each person with whom it contracts to provide services on a Project**, to provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, **for the duration of the Project**.



Article 6 – Contractor’s Responsibilities

- 6.1 Supervision and Superintendence
- 6.2 Labor, Materials and Equipment
- 6.3 Progress Schedule
- 6.4 Concerning Subcontractors, Suppliers and Others



Contractor :

- Shall maintain a work force adequate to accomplish the Work within the Contract time
- Employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract.
- May not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on City property; nor may workers be intoxicated, or under the influence of alcohol or drugs on the job.
- If OWNER or Owner’s Representative notifies CONTRACTOR that any worker or representative of Contractor is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Texas Law, or has possessed or was under the influence of alcohol or drugs on the job, CONTRACTOR shall immediately remove such worker or representative, including an officer or owner of CONTRACTOR, from performing Contract Work, and may not employ such worker or representative again on Contract Work without OWNER’s prior written consent.

Article 6 – Contractor’s Responsibilities

6.4 Concerning Subcontractors, Suppliers and Others

- CONTRACTOR must provide and will be deemed for all purposes to have provided in its contracts with major Subcontractors or Suppliers on the Project (those contracts of more than \$10,000) the following specific provision: **alternative dispute resolution (paragraphs 16.2 and 16.3), which shall be mandatory in the event of a subcontractor or supplier claim and a prerequisite for the submission of any derivative claim.**
- The CONTRACTOR’s standard subcontract form is subject to the OWNER’s review and approval. The OWNER may request and the CONTRACTOR will provide within five (5) working days a copy of any subcontract requested by the OWNER.



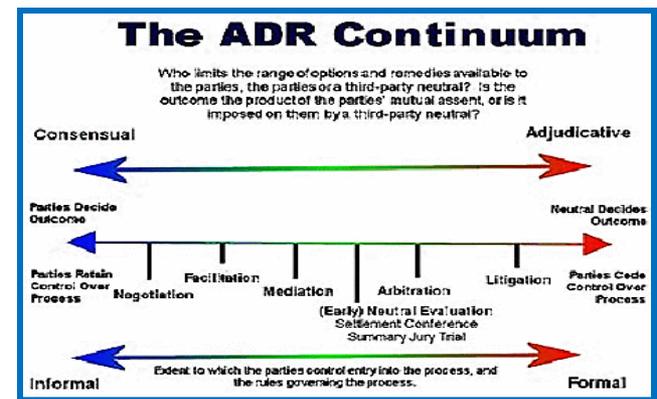
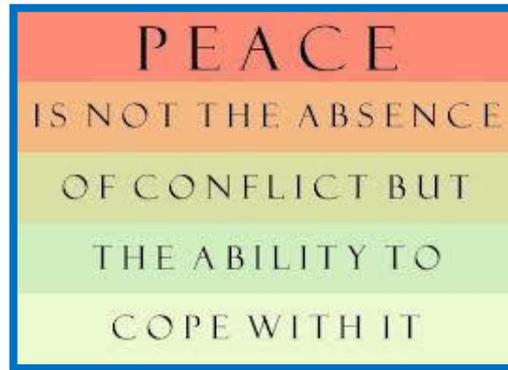
Article 16 - Alternative Dispute Resolution

16.3 Resolution of Disputes between Contractor and Subcontractor or Supplier:

If a dispute exists concerning a claim between a CONTRACTOR and a Subcontractor or Supplier, the CONTRACTOR agrees to participate with such Subcontractor and/or Supplier in a process substantially paralleling the steps set out in paragraphs 16.1 and 16.2 above, including the **delivery of written notices, submission of supporting data, negotiation with previously uninvolved personnel, and, if such alternative dispute resolution process is unsuccessful, mediation between the parties to the claim.**

If the CONTRACTOR and Subcontractor or Supplier agreement provides an alternative dispute resolution process, which provides substantially equivalent rights to those set forth herein, it may be followed, unless the CONTRACTOR and affected Subcontractor or Supplier agree to follow the process outlined above. The OWNER is not a party to the alternative dispute resolution process between the CONTRACTOR and Subcontractor or Supplier and will not pay any costs incurred in the process. Each party will be responsible for its own expenses incurred in the process, which will include an equal share of the mediation expenses, unless otherwise determined by the mediator.

*****NOTICE: THE ALTERNATIVE DISPUTE RESOLUTION PROCESS IS NOT A SUBSTITUTE FOR THE STATUTORY PAYMENT BOND CLAIM PROCESS.**



Article 6 – Contractor’s Responsibilities

6.4 Concerning Subcontractors, Suppliers and Others

6.4.7

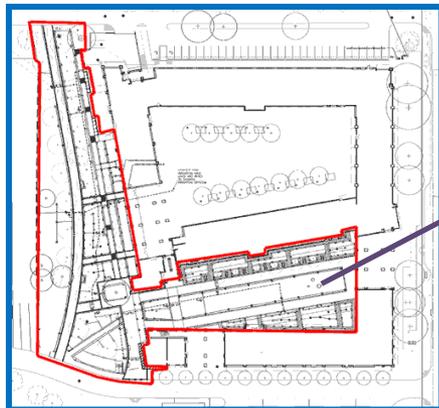
- **CONTRACTOR shall pay each Subcontractor and Supplier their appropriate share of payments made to CONTRACTOR not later than ten (10) Calendar Days of CONTRACTOR’s receipt of payment from OWNER.**
- **Upon request from Owner, the CONTRACTOR has two (2) Working Days to provide documentation verifying Payment to Subcontractor(s).**
- **The CONTRACTOR is required to notify the Subcontractor(s) in writing of rejection of Application for Payment within two (2) Working Days following notification by Owner.**
- Failure of CONTRACTOR to make payments to Subcontractors or for labor, materials or equipment in accordance to this contract, may be cause to reject future Bids by the CONTRACTOR in accordance with Section 00100 9.B.4 and may be cause to reject payment in accordance with 00700 14.4.1.3.



New Requirement

6.9 Use of Premises

6.9.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right of way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.



Limits of Construction (LOC)

6.9.2 During the progress of the Work and on a daily basis, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work.

Don't forget to check if the Prime is doing all the cleanup or expect subs do it? Who pays for what?





6.11.3 Safety

Requirements:

- Safety Representative: OSHA 30-Hour Construction Industry Training
- **All construction workers on the job site, whether employed by Contractor or subcontractors: OSHA 10-Hour Construction Industry Training**
- Safety Representative must receive a certificate of training completion before allowing a worker on site; and
- shall ensure that workers, including competent persons, have completed all applicable OSHA specific or other training needed to perform their job assignments.

Tip courtesy of Austin Area Black Contractors Association (ABCA):

The Texas Department of Insurance offers **FREE OSHA-10 Construction Course** both in English and Spanish in Austin, Dallas/Fort Worth, Houston, El Paso, and McAllen.

Training Calendar:

<http://www.tdi.texas.gov/wc/events/index.html>

Next Class in Austin: April 29-30

Contact for Training:

Allyssa B. Lee, Marketing Specialist

Texas Department of Insurance

Division of Workers' Compensation

Workplace Safety

PH: 512-804-4610

E-mail: **allyssa.lee@tdi.texas.gov**

6.11.6 Rest Breaks

- An employee performing construction activity at a construction site is entitled to a rest break of not less than ten (10) minutes for every four (4) hours worked.
- **No employee may be required to work more than 3.5 hours without a rest break.**



Note: An employee is not entitled to a rest break under this ordinance on any day the employee works less than 3.5 hours or spends more than half of his or her work time engaged in non-strenuous labor in a climate controlled environment.

13.3 Test and Inspections

13.3.1 Contractor shall give timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.



13.6 Correction or Removal of Defective Work

If required by OWNER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall correct or remove and replace defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of defective Work. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal **(including but not limited to all costs of repair or replacement of work of others)**.



14.1 Application for Progress Payment

Retainage until final payment:

- If original COA/GC contract is less than \$400K, Retainage = 10%
- If original COA/GC contract is more than \$400K, Retainage = 5%



New language added in Section 14.1.5:

A Subcontractor may submit a written request to the CONTRACTOR and (City) Project Manager requesting release of retainage for work by the Subcontractor that has been completed and approved. The Project Manager will evaluate the request and if it is approved, the Project Manager will request the CONTRACTOR to include the request for release of an appropriate amount of retainage in the next Pay Application.

Retainage will not be withheld on federally funded projects



14.4 Decisions to Withhold Payment

New language added via Section 14.4.3:



- **Subcontractors may request Partial Payment when the OWNER withholds payment of an invoice to the CONTRACTOR** for any reason listed in Section 14.4.1.
- **If payment is withheld by the OWNER, the CONTRACTOR shall notify all affected Subcontractors within two (2) working days of notice that payment is being withheld.**
- Upon notification, Subcontractors may submit a formal written request for Partial Payment to the CONTRACTOR and OWNER.
- If directed by the OWNER, the CONTRACTOR shall within three (3) working days resubmit to the OWNER an invoice for the same period that includes only the work performed by the requesting Subcontractors during this period.
- The OWNER will review this resubmitted invoice in accordance with Section 14.3.1.
- Upon receipt of payment for the resubmitted invoice, CONTRACTOR shall pay the subcontractor within ten (10) Calendar Days in accordance with Section 6.4.7.

16.5 MBE/WBE Program Progressive Sanctions

Program violations include:

.1 providing false or misleading information to the OWNER in connection with the submission of a Bid, responses to request for qualifications or Proposals, Good Faith Efforts documentation, post award compliance or other Program operations;

.2 substituting M/WBE Subcontractors without first receiving approval for such substitutions;

.3 failure to comply with the approved Compliance Plan without an approved request for a change, an approved Change Order or other approved change to the Contract;

.4 violation of any other provision of the “Minority - owned and Women - owned Business Enterprise Procurement Program”;

.5 providing false or misleading information to the OWNER in connection with an application for or challenge to certification, recertification or decertification as a MBE/WBE; and

.6 bid shopping.

MBE/WBE Ordinance & Rules also apply to Subcontractors.

For example, Subcontractors must secure SMBR’s prior approval for substitution of their suppliers, and tier subs.



Progressive sanctions within a rolling 24-month period:

- i. A period of probation for up to six (6) months for the first violation;
- ii. A period of suspension from bidding for up to 24 months for the second violation; and
- iii. A period of debarment for up to five (5) years for the third violation.



17.8 Owner's Right to Audit

- Records means all records generated by or on behalf of CONTRACTOR and each Subcontractor and Supplier of Contractor, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this contract
- CONTRACTOR shall allow OWNER'S agent or its authorized representative to inspect, audit, and/or reproduce, or all three, all Records generated by or on behalf of CONTRACTOR and each Subcontractor and Supplier, upon OWNER'S written request.
- Further, CONTRACTOR shall allow OWNER'S agent or authorized representative to interview any of CONTRACTOR'S employees, all Subcontractors and all Suppliers, and all their respective employees.
- CONTRACTOR shall retain all its Records, and **require all its Subcontractors and Suppliers to retain their respective Records, during this Contract and for three (3) years after final payment, until all audit and litigation matters that OWNER has brought to the attention of CONTRACTOR are resolved, or as otherwise required by law, whichever is longer.**



Contractor shall insert 00700 audit requirements in each written contract between Contractor and any Subcontractor or Supplier and require each Sub and Supplier to comply with these provisions.



17.13 Contractor Evaluation

The Owner will review and evaluate the Contractor's Work and performance on the Project and provide the Contractor with a written Contractor Evaluation Report



COA Administrative Rule R-161-13.37

<http://austintexas.gov/department/contract-management>

Supplementary Conditions

Supplementary Conditions may revise or add to the General Conditions and supersede them.

- 00810 Supplemental General Conditions
- 00810A Federal Aid Assurances (Federally-funded projects)
- 00820 Modifications to Bidding requirements and Contract
- 00830 Wage Rates and Payroll Reporting
- 00830HH Wage Rates Heavy Highway
- 00830BC Wage Rates Building Construction



Let's Recap



- Subcontracts contain **flow-down provisions** by which the parties incorporate the terms of the general contract between the Prime and City into the lower tier agreements.
- **General Conditions (00700)** define the basic rights, responsibilities and relationships of all parties involved in the construction process.
- The **Supplementary Conditions (00810)** **modify the General conditions to meet specific requirements for the project,** They reflect the peculiarities and special needs of a specific job.

Questions? Comments?



**For additional
Information:**

<http://austintexas.gov/departments/contract-management>

Next Class:

May 26, 2015

9:00 – 10:00 am

One Texas Center

Suite 1045

Handouts and Supplemental Info

The Basic Relationships Among the Various Documents

Construction Documents						
Bidding Documents						
Typical Project Manual						
Bidding Requirements	Contract Forms	Contract Conditions	Specifications	Plan Drawings	Addenda	Contract Modification
Bid Invitation	Agreement	General Conditions	Division 01 General Requirements	Working Drawings		Contract Change Orders
Instructions	Performance Bond	Supplementary Conditions	City Standard Technical Specifications	Civil		Change Directives
Information Available	Payment Bond (Labor/Material)		Special Provisions to City Standard Specifications	Architectural		Minor Changes
Bid Forms and Attachments	Certificates		Division 02-16 Technical Specifications	Structural		
Bid Security Forms				Mechanical Electrical		
When Owner-Contractor Agreement is signed, these become CONTRACT DOCUMENTS						

00700 General Conditions

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Article 2 – Preliminary Matters

The topics to be discussed in the **preconstruction conference** may include, but will not be limited to, the following items:

1. Introduction of persons attending the meeting.
2. General project description, including length of contract and liquidated damages.
3. Key personnel associated with the construction (may include, but is not limited to the following):
 - a) Contractor's Project Manager
 - b) Contractor's Superintendent
 - c) Owner's Project Manager
 - d) Engineer/Architect's representative
 - e) Owner's Sponsor Department Representative.
 - f) Representatives of the various utilities.
4. Lines of communication and chains of command.
5. Wage and personnel records and reporting requirements.
6. Subcontractors and suppliers.
7. Submittal review and approval procedure.
8. Job and traffic safety.
9. Permits.

10. Utility coordination report.
11. Notification of property owners and other affected by the project.
12. Job meetings.
13. Use of the site for construction, storage, staging, etc., and interrelationship with other contracts.
14. Equal Opportunity requirements.
15. Laboratory testing of material requirements.
16. Inventory of materials stored on site provisions.
10. Progress estimate and payment procedure.
11. Posting of signs.
12. Project safety.
13. Prompt Payment procedure.
14. Review of contract - addenda, supplementary general conditions, special provisions, special specifications, and other unique project items.
15. Other



Many topics that impact subcontractors!

14.4 Decisions to Withhold Payment

OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

1. defective Work not remedied;
2. third party Claims filed or reasonable evidence indicating probable filing of such Claims;
3. failure of CONTRACTOR to make payments properly to Subcontractors for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
5. damage to OWNER or another contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
7. Failure of CONTRACTOR to submit a schedule of values in accordance with the Contract Documents;
8. failure of CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;
9. failure of CONTRACTOR to submit and update a construction Progress Schedule in accordance with the Contract Documents;
10. failure of CONTRACTOR to maintain a record of changes on drawings and documents;
11. failure of CONTRACTOR to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of OWNER;
12. failure of CONTRACTOR to submit monthly subcontractor reports;
13. CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up;
14. failure of CONTRACTOR to comply with the Austin City Code, Chapter 2-9-A, as amended, "Minority-Owned and Women-Owned Business Enterprise Procurement Program;" or
15. failure of CONTRACTOR to comply with any provision of the Contract.