

AMERICAN SUBCONTRACTORS ASSOCIATION of the Carolinas Carolina Subcontractors

MARCH, 2017

"The Voice of the Industry"



ASAC SAFETY RECOGNITION

ASAC promotes professionalism, pride and quality in the work performed by its' challenges, is promoting a safe and healthy working environment for ASAC member company employees.

free safety recognition" for 2016.

If your company has ZERO LOST TIME INJURIES/ILLNESS for the 2016 year, pleas send ASAC a signed copy of your company's OSHA For 300A before May 15th. Your company will receive recognition at the ASAC Convention and in the Carolina Subcontractor Newsletter

Please mail or email your form to the ASAC office at asac@asacarolinas.com or ASAC 104-A North Woodland Drive, Lancaster SC 29720.

RESERVE THE DATE:

June 15th—18th, 2017 **ASAC CONVENTION** Renaissance Asheville Hotel, Asheville NC See enclosed for details!

ASA Announces the SAP 'One-**Way Street' Award**

ASA announced a Subcontractors Are Prey (SAP) Award to a subcontract clause that passes the obligations, but not the benefits, of the prime contract through to the subcontractor. The SAP "One-Way Street" Award goes to the following clause:

"The Subcontractor agrees to be bound to the Conmembers. Equally important in meeting these tractor by all terms of the General Contract with respect to the work to be performed by the Subcontractor and to assume toward the Contractor all of the duties, obligations and responsibilities that the Contractor, by those Contract Documents, as-ASAC would like to recognize those sumes toward the Owner with the same force and member companies who deserve "accident effect as though every such duty, obligation or responsibility were set forth herein in full."

> A subcontractor should make sure that it is entitled to all of the rights that have been afforded to the prime contractor in the owner-prime contractor agreement. The following shows a typical two-way conduit clause that can be used to minimize possible misunderstandings:

"Our acceptance of the terms of the Owner-Contractor Agreement dated (copy attached), is conditioned upon the understanding that we shall be entitled to all rights, remedies and redress contained in that document applying to our portion of the project work."

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@asahq.com



As we know all too well, owners, design professionals and prime contractors use a variety of techniques to bind subcontractors to every imaginable part of the construction process. Yet subcontractors who complain endlessly about payment problems, too

often forget that scope of work is the flip side of the payment coin. They ignore or are sloppy in defining the scope of work, putting payment at risk.

To help subcontractors improve their scope-related negotiations, ASA has published a new white paper entitled Mastering Subcontractor Performance and Scope Requirements. The purpose of the white paper is to help a subcontractor understand why and how to reduce the description of its work to a precise statement of performance obligations as contemplated when it bid.

The subcontractor's goal should be a subcontract that contains a definite and concise statement of the work, limited to the exact scope contemplated by the subcontractor and expressly exclude related work that the subcontractor did not include in its bid.

Many of us have been burned by overly-broad, inclusive or dragnet scope requirements. Bidding a project with vague requirements and ambiguous instructions can only lead to conflicts — or, even worse, costly contract disputes. That's why many project failures can be traced back to the subcontract and its scope of work clause.

Why agree to uncertain conditions when your company will be providing services on credit and undoubtedly will be held responsible should a conflict arise?

The new ASA white paper points out that one method to avoid expanding scope of work in the subcontract is to incorporate your bid and the language of the proposal into the subcontract as the definition of the scope of work. If certain work is excluded in your bid, that work also should be excluded from the subcontract. If it is not excluded from the subcontract, you may have to perform the work even though it was excluded from the bid.

The clause in a subcontract document describing the subcontractor's work must be precise. The description of the work should begin with the denomination of the type of work that you're going to perform – that is, mechanical, electrical, roofing, etc. The work description should indicate the plans by sheet numbers, date and date of last revision. If you don't make sure that the plans are described in detail, you may find that you have bid on a version of the plans and specifications that were later revised and the scope of work has materially changed.

The next part of the description should state that the work shown on the plans will be in accordance with denominated sections of the specifications. If you bid only part of a trade, then make sure to break out and list those specification sections that relate to your work. (Continued on page 3)

2017 **ASAC Event Calendar** 03.15.17 ASA National SubExcel -Denver Marriott City Center, Denver, CO 03.24.17 **Triangle Chapter Inaugural Skeet Shoot Charleston Chapter Meeting** 03.27.17 Senator Paul Campbell 03.28.17 **Midlands Chapter Meeting** Tony Richardson, Amerisure, Driver Liability & Risk Management 04.11.17 Triangle Chapter Meeting (Dinner Meeting) GenConnect 04.24.17 **Charleston Chapter Meeting** Bill Ross, One Region 04.25.17 **Midlands Chapter Meeting** 05.18.17 **ASAC Board of Directors Meeting** 06.15.17 ASAC Convention- Renaissance Asheville Hotel, Asheville NC 06.15.17 **ASAC Board of Directors Meeting ASAC Membership Renewals Due** 06.30.17 07.11.17 **Triangle Chapter Meeting** BIM and Related Issues, Kirlin Carolinas 08.08.17 **Triangle Chapter Meeting** Site Specific Safety Plans 09.29.17 **ASAC Midlands Chapter 11th Annual Golf Tournament—The Windermere Club** For additional meeting details visit www.asacarolinas.com or call ASAC at (803 or 877) 285-3356



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(Continued from page 2) ASA Advocacy

Design professionals sometimes place work in a different category of drawings than that in which the work normally is encountered. So subcontractors should avoid dragnet clauses, which provide that a subcontractor will perform the work of its trade, regardless of what section of the specifications is applicable or on what drawings the work might appear. Another type of dragnet clause provides that the subcontractor will perform work not expressly called for in the plans and specifications. Such a provision may bind a subcontractor to furnish any item, system or amount of labor that is required to make the system work, whether or not these things were required by the original plans and specifications.

The new ASA white paper also discusses subcontract language which broadly binds the subcontractor to do all work that is required by the owner or the prime contractor. When such clauses are interpreted literally, a subcontractor could be obligated to perform the entire job for which the prime contractor is obligated, rather than furnishing only work that was intended under its subcontract. If the subcontractor is bound to the prime contractor as the prime contractor is bound to the owner, it should only be in relation to portions of the work covered under its subcontract.

Another situation the white paper addresses is design professionals placing the same requirements under more than one heading. As a result, more than one subcontractor may be required to perform the work, which can lead to disputes and even litigation. Therefore, a subcontractor should be very careful to determine if work of its trade is required in other specifications or if the contract specifications are ambiguous so that such duplications can be eliminated.

Always remember: Documents clearly identified as being incorporated in a subcontract by reference are legally binding on a subcontractor, regardless of whether they're attached to the subcontract or otherwise supplied to the subcontractor.

You can learn more about securing explicit scope requirements by downloading a copy of ASA's new Mastering Subcontract Performance and Scope Requirements. The white paper is available at no cost to ASA members on the ASA web site at www.asaonline.com.

AMERICAN SUBCONTRACTORS ASSOCIATION, INC. 1004 Duke Street, Alexandria, VA 22314-3588 Phone: (703) 684-3450 Email: CNelson@asa-hq.com Web: www.asaonline.com

Do you ever scroll through Facebook and feel defeated?

You ask yourself, where did I do wrong? This is true especially when it comes to our children. Facebook is a great place to showcase the accomplishments of our children. You may see pictures of high achievements, beautiful weddings and seemingly the perfect child.

In honor of my newest book, Rhinestones on My Flip-flops, I thought I would address this issue of feeling less than perfect. Yes, we all have flip-flops as parents whether we admit it or not.

My mother told the day before Holmes was born, "This will be the last night you will not stress about your child." My mother was correct.

As a new mother, I was clueless. I remember when my pediatrician peeked his head into my room and asked me if I had any questions. I said that I was fine...until the last day I was in the hospital, then, I cried like a baby.

When I was pregnant, so many women told me, "Don't worry! Instructions come with the baby." Well, my instructions must have gotten stuck in my uterus.

My goals were to keep my younger children feed, rested and free from disease. When they matured, my goals were different; health, homework, hormones, hanging out with the right crowd, decent clothes, church, no car accidents, good grades, monitor the Internet, wholesome entertainment, a clean room...whew...

At present my goal is just one; try not to stress-out when they make decisions that are counter to the above goals. Sometimes it works and then there are the other times...

The bottom line is to have as little to regret as possible. My sweet mother-in-law said many times that children are born with natures. It is our job to steer these natures and accept the direction they choose.

Share this with mothers who may need some encouragement. Do not focus on the Facebook world of perfect children. Be thankful that you are blessed to lead a child; do your best and learn to handle the rest.

Tah- DAH!!!!!

JANE JENKINS HERLONG entertained ASAC members at the 2016 ASAC Convention in Greenville SC.

Check out her web site at www.janeherlong.com

ASA Answers Your Questions on the Transfer of Casualty Risks

Subcontractors report that one of their biggest challenges is subcontract terms that shift casualty risks—risks of "bodily injury" and "property damage"—to them, whether or not they're equipped to control the risk or avoid the loss. Casualty risks are transferred to subcontractors by three types of subcontract clauses: indemnity clauses (often including a requirement to "defend"), additional insured requirements and waivers of subrogation for workers' compensation and general liability insurance. These three mechanisms can have harsh consequences for a subcontractor, making its insurance far more expensive than its own claims experience would justify.

To help subcontractors deal with such clauses, ASA provides a Frequently Asked Questions that reviews the casualty risk transfer clauses that a subcontractor is likely to encounter and to show the way out of the risk transfer dilemma: Accept the risk or lose the work. ASA has a broad range of other educational materials to help subcontractors learn about casualty risk clauses. These include the following documents that are available online to ASA members:

<u>Subcontractor Negotiating Tip on Indemnity or Hold</u> Harmless

Subcontractor Negotiating Tip on Duty to Defend

Subcontractor Negotiating Tip on Additional Insured

<u>Subcontractor Negotiating Tip on Contractors Protective</u>
<u>Liability Policy</u>

<u>Subcontractor Negotiating Tip on Subrogation of Workers' Compensation</u>

Anti-Indemnity Statutes in the 50 States

White Paper and Podcast: Addressing the Additional Insured Problem

White Paper and Podcast: Defending Yours—Not Others'—Mistakes

ASA also has a robust advocacy effort to address casualty risk transfer. This includes both legislative initiatives and judicial action when appropriate. To find out what you can do to help with ASA's advocacy efforts, contact your local ASA chapter, review ASA's legislative work kit A Guide to Reforming Risk Transfer: Improving Safety and Quality in Your State or contact ASA's Subcontractors Legal Defense Fund.

Contract Changes and Claims: Interest as an Element of Profit

Several courts and boards of contract appeal specifically have not allowed recovery of interest costs for diverted capital but have considered interest recoverable as an element of profit. Consequently, the same rationale and factual showing discussed in earlier articles would apply here, and should be included in calculating the appropriate profit percentage on the total claim. While it may exalt form over substance, this approach can make the difference in using the equity capital method of demonstrating costs. 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.

Learn How to Identify Innocuous Contract Clauses— and Remove Their Hidden Dangers— with FASA Video-on-Demand

Construction subcontracts typically contain numerous "boilerplate" and other clauses that many subcontractors overlook and fail to negotiate before signing the contract. Subcontractors can learn how to identify these seemingly innocuous contract clauses and how to remove their hidden dangers with the FASA video-on-demand, "Sleeper Clauses: Contract Clauses That'll Make You Lose Sleep at Night." "These clauses should leave a nagging feeling in the back of subcontractors' minds, which, quite reasonably, should be disturbing to their sleep," said presenter Daniel F. McLennon, Esq., Smith, Currie & Hancock, LLP, San Francisco, Calif. "Conversely, the subcontractor who properly negotiates these clauses may sleep well at night." 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. "Sleeper Clauses: Contract Clauses That'll Make You Lose Sleep at Night" (Item #8091) is \$65 for ASA members and \$95 for nonmembers. Order online. www.asaonline.com



2017 Virginia Casey Short Award - Nomination Form Nominations due before May 15th

The Virginia Casey Short (VCS) Award, named in honor of ASAC's first full time Executive Director, is the maximum recognition bestowed upon an ASAC member. To be eligible for the VCS Award, a nominee must have been a member of ASA of the Carolinas for five (5) years as of January 2, 2017.

The VCS Award Committee considers the following criteria, among other things, which it thinks pertinent:

- The nominee's outstanding citizenship and service to the association in a fashion which
 most exemplifies the personality, attitude and character of Virginia Casey Short;
- The attitude and personality of the nominee from a standpoint of enthusiasm, positiveness and leadership;
- The nominee's participation during meetings;
- The nominee's service on committees, the board and as an officer;
- The nominee as an active participant in all association matters;
- The nominee's efforts to bring in new members;
- The nominee's demonstrated adherence to the Subcontractor's Code of Ethics;
- The nominee's service to the community;
- The nominee's record in respect to attendance at meetings and payment of dues and other charges.

The VCS Award will be presented during the ASAC Convention at the Renaissance Asheville Hotel, Asheville NC on June 17th, 2017.

Past VCS Award recipients include:

Tommy Parker, Eddie Williams, Robert Roberson, Harry Robbins, Bill Cooper, Dave Denson, Alan Jennings, Charles Truluck, Daniel Brailsford, Fenton Erwin, Jay Foreman, Theresa Brewer, Timmy McLaughlin, John Parker, Brian Johnson & Terry Preston.

To submit your nomination for the VCS Award, complete the information below, in addition to a brief narrative of the nominee's qualifications on a separate sheet. This form must be returned to the ASA Carolinas Executive Director no later than May 15th, 2017.

Name of Nominee:	
Company:	
Address:	
Nomination made by:	
Your Phone #:	
Your Company:	
(Provide a brief narrative of the nominee's qualifications)	

Mail to: ASAC, 104-A North Woodland Drive, Lancaster, SC 29720 OR Email to: asac@asacarolinas.com



ASAC Education

Committee Report— MARCH, 2017

ConsensusDocs Updates Best Practice Standard Contracts

Keeping You Ahead of the Curve!

The <u>ConsensusDocs</u> Coalition has published the 2016 comprehensive revisions to many of its prime and subcontract agreements. Contracts are the foundation of every project, and ConsensusDocs' mission is to publish contracts that advance project results. The revised contracts address industry changes impacting insurance, legal, technology, and terminology.

Here are the ConsensusDocs Contracts that have been revised to help you remain current with industry changes:

- ConsensusDocs 200 Owner & Constructor Agreement
- ConsensusDocs 205 Owner & Constructor Short Form Agreement
- ConsensusDocs 240 Owner & Design Professional Agreement
- ConsensusDocs 750 Constructor & Subcontractor Agreement
- ConsensusDocs 751 Constructor & Subcontractor Short Form Agreement

Coming in early 2017 the following revised contracts will be released:

- ConsensusDocs 235 Owner & Constructor Short Form Agreement (Cost of Work)
- ConsensusDocs 245 Owner & Design Professional Short Form Agreement
- ConsensusDocs 410 Owner & Design-Builder Agreement (Cost of Work Plus Fee with GMP)
- ConsensusDocs 415 Owner & Design-Builder Agreement (Lump Sum)
- ConsensusDocs 420 Design-Builder & Design Professional Agreement
- ConsensusDocs 450 Design-Builder & Subcontractor Agreement
- ConsensusDocs 460 Design-Builder & Subcontract Agreement (Cost Plus with GMP)
- ConsensusDocs 500 Owner & Construction Manager Agreement (GMP with Preconstruction Services Option)

The <u>Coalition</u> will continue to release new and updated contract documents throughout 2017 and beyond to further its mission of helping the industry build a better way.

ConsensusDocs are the only industry standard contracts written by a coalition of 40 leading design and construction industry associations. Offering 100+ contract documents addressing all methods of project delivery, ConsensusDocs incorporate fair risk allocation and best practices to represent the project's best interests. Coalition members represent Designers, Owners, Contractors, Subcontractors and Sureties (DOCS).

For additional information, please visit www.consensusDocs.org.
You can contact us at (866) 925-DOCS (3627) or support@consensusdocs.org.
CONSENSUSDOCS CONTRACTS ARE COPYRIGHTED DOCUMENTS.
YOU MUST HAVE AN ACTIVE SUBSCRIPTION TO USE THE CONTRACTS IN WHOLE OR IN PART.
USE OF THE CONTRACTS WITHOUT A SUBSCRIPTION IS STRICTLY PROHIBITED.
EACH FINALIZED CONTRACT IS ENCRYPTED WITH A UNIQUE SECURITY ID.



Our Construction Team provides a wide-range of accounting and advisory services to general contractors, specialty contractors, engineers and architects. We bring clients valuable insight and a unique perspective based on in-depth knowledge and first-hand industry experience. Benefit from advisors who understand your business from the ground up.



Georgia | North Carolina | Ohio | South Carolina | Tennessee | Virginia elliottdavis.com



General Site Contractor

Gulf Stream Construction Company, Inc.

1983 Technology Drive

Charleston, South Carolina 29492

843-572-4363

www.gulfstreamconstruction.com

Celebrating 51 Years of Excellence 1966 - 2017

ASAC and Whitehurst Offer

Discounted Dental, Vision, Life & Disability Plans to Member Businesses





The American Subcontractors Association of the Carolinas (ASAC) and Whitehurst Strategic Partners are excited to announce that they will soon be offering discounted VBA Dental, Vision, Life & Disability Plans. These benefits will be available to ASAC member businesses starting in December 2014.

VBA Dental Insurance Plans are among the most competitive dental plans on the market today in both pricing and benefits. They allow employees to choose ANY dentist they prefer. As an added enhancement, employees also have the option to use VBA's Maximum Care Dental Network to choose their dentists, which will save them additional money. The minimum enrollment is only three employees and group plans are guaranteed issue*.

VBA Vision Insurance is an affordable way for employees to protect and maintain their sight. It uses the VSP national network of over 22,000 participating locations. It is 100% voluntary, and the minimum enrollment is also only three employees. Plans are guaranteed issue* and rates are guaranteed for two years.

For more information or a custom quote for your business, please call Whitehurst Strategic Partners at 919-488-5240.

*Employer restrictions may apply

About VBA



VBA (Voluntary Benefits Agency, LLC) is a privately-held company based out of Columbus, Ohio, and is licensed to do business in 48 of the 50 United States. VBA is a General Agency and Enrollment Firm dedicated to doing business exclusively through the broker community and is often referred to as "The Broker's Broker".

VBA has built itself on selecting the right products and the right plan designs to match the needs of each individual client. With 19 years experience in the voluntary benefits arena, our staff understands the insurance market. Every client is different and every need is unique. We will help ASAC's members design the right plan and the right mix of products to meet their individual needs.

About Whitehurst Strategic Partners



Whitehurst Strategic Partners was founded in 1966 and offers personal service to our clients by communicating on a regular basis. We minimize losses, reduce costs and maximize protection by identifying the risk unique to your business. Over the years, we have built a reputation for providing our clients with value and service. We offer ASAC members customized solutions to protect what means the most to them, their families, employees and other assets.

2017 ASAC Convention

Together We "C A N" Make ASAC Greater



The Asheville Renaissance, Asheville NC June 15th — June 18th, 2017

American Subcontractors Association of the Carolinas (ASAC) 104-A North Woodland Drive, Lancaster, SC 29720

Phone: (803 or 877) 285-3356

Email: asac@asacarolinas.com Web Site: www.asacarolinas.com Facebook: American Subcontractors Association of the Carolinas Inc.

<u>REGISTRATION</u>—Registration rates listed apply to registrations March 1st, 2017—March 31st, 2017

NOTE: To qualify for the "early" reduced registration rate, completed registration WITH PAYMENT must be received at the ASAC Office BEFORE March 31st.

2017 ASAC Convention

Together We "CAN" Make ASAC Greater

Schedule

THURSDAY—June 15, 2017

14 40 DEF	
12:30 PM	Convention Registration Open

1:00 PM ASAC Executive Committee Meeting

3:00 PM ASAC Full Board Meeting

3:00 PM Hotel check in time 6:00—7:00 Welcome Reception

FRIDAY— June 16, 2017

8:00—9:00 AM Breakfast

9:00–10:00 Keynote Speaker—CHUCK GALLAGHER,

"SECOND CHANCES: Transforming Adversity into Opportunity"

10:15—10:45 General Membership Meeting

10:45—12:00 Program: "BREAKING COMMUNICATION BARRIERS", Chuck Gallagher

1:00 PM Whitewater Rafting (Optional Event)

SATURDAY—June 17, 2017

8:00—9:00 AM **Breakfast**

9:00 —10:00 AM General Contractor Panel Discussion

10:00—10:15 Break

10:15—11:30 Program: TBA

1:00 PM Golf—Asheville Country Club (Optional Event)

7:30 PM Reception

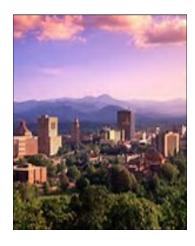
8:00 PM Banquet & Silent Auction

We are looking forward to a great conference in beautiful downtown Asheville NC.

The Renaissance Asheville is located within walking distance of many restaurants, shops, entertainment and other activities.

For more information on things to do in Asheville, check out www.exploreasheville.com

We look forward to seeing you in Asheville NC for another great ASAC Convention!



Asheville Renaissance Hotel
31 Woodfin Street
Asheville NC 28801-3020

Phone: (828) 252-8211

ASAC Convention/Vendor Table Registration

June 15th, 2017 — June 18th, 2017......Renaissance Asheville Hotel, Asheville NC

iuui css.		City/State/Zip:	
Phone:	Fax:	Email:	
Registrant:		Spouse/Guest:	
	(first & last name as you won	uld like it to appear on name tag)	
Other:		ita iiie ii to appear on name iagi	
<u> </u>	(attach additional sheet	with other names if needed)	
Convention registration fo		ption, Friday Breakfast & Seminars, Sat	urdav Breakfast, Sem
-		convention functions. However, there n	•
for all functions where food	l is served. Please call the ASAC offi	ce for information on registration for ch	ildren)
	CONVENTION	REGISTRATION	
Registration for one coup	le at \$800 <i>before March 31st</i>		\$
_		mpany at \$750 each <i>before March 31s</i>	
Individual registration \$6	35 per person before March 31st		\$
		payment received at the ASAC office	before March 31st.
NOTE: Attention First Co	onvention Attendees. To welcome y	you to your first ASAC Convention,	
registered couples will rec	eive a \$100 gift credit card, individ	lual 1st time attendees will receive a	
\$50 gift credit card when	you pick up your registration pack	ages at the ASAC Convention	
Registration desk.			
		Total Convention Registration	ı \$
TO I	HELP US PLAN FOOD SERVICE	OFFERED DURING THE CONVEN	NTION
	PLEASE COMPLE	TE THE FOLLOWING:	
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Thursday Evening (6/15/17		Saturday Morning (6/17/17) Break	
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