



URGENT ALERT - NEW MASTER SUBCONTRACT

A number of clients have reported receiving, within the last week or two, a new Master Subcontract from a general contractor for whom they have been working for some time. This general contractor has asserted, in the letter which accompanies the new Subcontract, that *"It is mandatory for all subcontractors to review, sign, initial each page and return a copy..."* within less than two weeks after the letter's date. The letter also states that the new subcontract is *"...required by our insurance company."*

DON'T FALL FOR IT!

Insurance companies don't dictate the terms of Subcontract Agreements; they do expect appropriate language relating to indemnification by subcontractors and additional insured status under subcontractors' insurance policies - but that's all!

The Master Subcontract which has been sent contains stunningly-bad subcontract provisions. In fact, taken as a whole, the general contractor doesn't really promise to even pay the subcontractor for the work which it performs; but it does expect the subcontractor to pay the GC pretty much anytime the GC says so, and the risk of every aspect of the construction process is shifted from the general contractor, onto the subcontractor. In fact, under this subcontract, the general contractor has the subcontractor agreeing for the GC to be a "receiver" of the subcontractor's assets - this means, *granting to the general contractor the right to take over the subcontractors operations, write checks on his bank account, take action as if they owned the subcontractor.*

WHAT YOU SHOULD DO

If you ever receive a Subcontract with a very short "drop dead" time for execution, be suspicious; **no general contractor can insist that you sign a new agreement as a condition of being paid for work you have already performed**; any work underway now will be subject to the subcontract agreement in place when the work began.

REVIEW YOUR SUBCONTRACTS

Subcontract agreements exist to address when things go wrong, not when they go right - otherwise, the general contractor could simply sign your proposal. **Never** execute a subcontract (especially, a Master Subcontract) without fully understanding its effect, and negotiating appropriate terms.

MODIFY THE SUBCONTRACT

After you have reviewed a Subcontract, you should ensure that you don't agree to any risks you're not reasonably willing to accept and, most importantly, you should make sure that the subcontract provides for reasonable notice of any potential breach, and a reasonable opportunity to cure the breach. It's only fair.

In our twenty years as construction lawyers, we at Cutler-Smith, PC have reviewed many thousands of subcontract agreements - we have seen it all. Let us help you get the best result possible, one which protects you from financial and operational devastation. Feel free to contact us if you have any questions, or if we can be of assistance.