Management Starts Before the Job Begins

Consultant, attorney, and subcontractor Robert Southward says you must prepare to manage jobs successfully.

As a fourth-generation drywall subcontractor himself, attorney Robert H. Southward understands all the problems such businesses face. “In fact,” he explains, “it was my experience with these problems that opened up my current line of work.”

Though today a consultant who “provides services nationwide exclusively to the subcontracting industry,” Southward himself entered the drywall business in 1961 (and at present, he still holds a current California subcontractor’s license). But by 1977, as Southward experienced chronic problems with slow payment, he began attending nightly law school classes. Six years later, Southward graduated and was admitted to the California bar.

“Now I have two offices,” Southward says, “my home base in Tucson, Arizona-and at the airport!” He has participated in subcontractor claims preparation and disputes resolution from coast to coast, including Alaska and Hawaii. And as author of the 1989 book, ‘Common Sense Subcontracting,” Southward is in great demand as a seminar speaker.

In this interview, Southward focuses not on the “worst-case” scenario as the only basis for preparing to manage a subcontracting project. Instead, he shares some basic principles preparing to manage the more typical jobs in which major disasters do not occur-and that comprises the majority of a subcontractor’s work.

DIMENSIONS: Eking human, contractors tend to focus on and prepare for worst-case scenarios. But obviously, these don’t happen on most projects. How should subcontractors prepare to successfully manage “ordinary” jobs?

SOUTHWARD: To successfully manage a construction project, the key is creating a simple organizational plan with flexible parameters-and then sticking to it! The tools you need are your subcontract, your schedule, the general contractor’s schedule, a safety program or manual, and an ability to communicate and get along with people while still being: firm and fair.

The first preliminary preparation is to know your rights, and make sure you don’t inadvertently negate those rights. For example, many state laws give subcontractors several legal remedies if not paid for work completed. But to qualify for those rights, you may have to file notices to the owner, lender and general contractor that you are going to perform work on your project. Check with your local contractors’ association, or the appropriate government agency, if you’re not sure what the requirements are.

On federal work, the Miller Act requires general contractors to secure payment bonds. Under these bonds, should a GC fail to pay for services rendered, the bonding company becomes liable. When you’re engaged on federal work as a subcontractor, ask the GC for a copy of the bond. Or at least get the name of the bond provider, and then verify that company’s worthiness.

For private projects, most owners require GCs to purchase a payment bond. In this case, the bonds protect the owners should GCs fail to pay subcontractors or suppliers. The protection indirectly benefits subcontractors, in that payment must ultimately be forthcoming from either the GC or the bond provider. Again, you should ask the GC for a copy of the bond, or the name of the bond provider.

Knowing the bonding company’s name and address is also for another reason-as leverage against late payments. When you notify the bond

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provider of a slow payment situation, that company puts pressure on
the GC—and the GC listens. Usually, the bond provider is the same
company that furnishes the GC’s bid bonds, without which the GC
cannot bid new work.

You should also, of course, be familiar with the highlights of your
subcontract. Many of the terms and conditions will not come into play
during the life of the project. But you should at least be aware of those
portions of the subcontract you’ll be dealing with on a daily or weekly
basis.

**DIMENSIONS:** What are some of those contract provisions, the ones
subcontractors typically deal with on a frequent basis?

**SOUTHWARD:** First check the scope
of work, or all the “typed-in stuff.”
If it’s not in small print, then it’s
probably your scope of work! This
includes the plans you must work
from, including their respective dates
of print; the specifications sections
for which you are responsible; your
inclusions and exclusions; and any
other special requirements imposed
by the GC or by the nature of the
project.

Be familiar with the payment
clause, which explains when to submit and what to include with your

progress billings, and what you must
not do if you want to get paid. You
may perform work correctly—but
payment can nevertheless be delayed
if your billings are improperly sub-
mitted, or if you violate contract pro-
visions for which the penalty is with-
holding funds.

For example, if the contract
requires “conditional” releases or
other affidavits of performance, be
sure to have them ready with your
invoice. Don’t give the GC any
excuse for not paying! (By the way,
if the GC wants you to “uncondi-
tionally” waive your rights before
receiving any money, *always* negoti-
ate such clauses out of the subcon-
tract. No waivers of rights should
ever be given to the GC until his
check has cleared the bank.)

Change order clauses cause, in my
experience, more trouble and con-
sternation for subcontractors than
any other single provision. Why?
Because subs refuse to believe what
the clauses say—that for work not
included in the subcontract, payment
cannot be authorized unless the
modification is *in writing.*

Many times the GC or owner will
tell you they “have” to have this
change, and the paperwork is just a
little slow. Baloney! Your pre-job
preparations should anticipate such
situations, so that you establish pro-
cedures whereby:

- Before you begin the changed work,
  write a short memo that states the
  price and describes the work. Fur-
  ther state if any items are unclear,
  and what allowances you are mak-
  ing for your interpretations of the
  documents. And if the change order
  impacts your overall work progress,
  request any extension of the project
  completion date that may be neces-
  sary. Then have the memo signed
  by the GC’s authorized
  representative.

- Also before you begin, have the GC
  issue you a memo confirming the
  price and description of the changed
  work, along with instructions to pro-
  ceed. Both your initial memo and
  the GC’s confirmation should state
  these constitute a separate agreement
  from the subcontract, and that pay-
  ment must be made regardless of
  whether the GC receives funds from
  the owner.

- As the change order work progresses,
you must collect the data required to justify your billings. The costs that might arise from a change order are not limited to just labor, materials, tools, equipment, overhead, and profit. Since a change is a modification to your subcontract, you must see how the order affects all aspects of the project. Therefore you must consider the monetary effect of timing, demobilization and remobilization, and of the scheduling impact upon your entire workforce.

**DIMENSIONS:** You mentioned earlier about establishing good communications. How can contractors prepare the lines of communication that will help them manage the project successfully?

**SOUTHWARD:** Communication is a two-way activity. It involves speaking and listening. Both must occur for mutual understanding to take place. In the case of subcontractors, there are four groups of people with which you must establish good lines of communication, so the project will go smoothly:

- First are your own personnel. The most important asset you have on the construction site are the people who work for you-so treat them as such. It’s true you can “catch more flies with honey than with vinegar?” Few workers are named “Hey You.” Take the time to get to know your people. Make new employees feel welcome. On large projects, be sure each sub-foreman knows his crew members’ names.
  - Organize your people so they know what’s expected of them and why you expect it. A company is a sort of family, and a family that communicates well and understands teamwork will survive longer as a unit than other groups who are filled with friction.
  - Keep suppliers, vendors, and subcontractors apprised of developments as they occur. If site access for deliveries was good, but has been washed out or been obstructed, let them know. If a crane won’t be available, let them know. If a proposed change order is expected that could impact their work, let them know.
The more suppliers, vendors, and sub-sub know about your current, the better service you’ll receive. So it’s vital to establish good working relations with these parties from the start.

Many conflicts can arise between trades on a project. Therefore you must initiate good communications with fellow subcontractors, such that you can go to each other and solve problems when they occur.

For example, suppose the studs at a plumbing wall are unduly damaged because of the size of pipe installed in the cavity space. The drywall and plumbing contractors could start pointing fingers at each other. Or they could discuss matters, realize the fault lies with the designer, and jointly write the GC a memo requesting he intercede with the architect for a speedy clarification.

As for good communications with the GC, the first step is making sure the subcontract delineates your respective rights and responsibilities. Some GCs may attempt to absolve themselves of some management duties and improperly delegate them to subs, in which case misunderstandings may later arise.

After the subcontract is signed, you must abide by its terms. But implementation may vary from person to person, since all writings are subject to some degrees of interpretation. Discuss with the GC’s project representative the normal business procedures of your respective organizations, and talk about how they might affect your day-to-day workings together.

DIMENSIONS: At the outset, you also mentioned safety manuals and programs as “tools” for successful project management. Could you explain?

SOUTHWARD: In the area of safety, your personnel must have the attitude of working with you—and not just working for you. It’s vital to keep your people “thinking safety.” Why? Because a workplace reasonably free of hazards allows your crews to work efficiently without undue concern about the work environment.

Establish for your workers a policy of weekly safety meetings at a regularly set time. Your insurance company, for example, can provide films or literature for short talks. (One firm has developed a collection of more than 200 five-minute talks about various safety subjects in the construction workplace.) Such meetings show workers you are concerned for their welfare, and keep safety issues at the forefront of their thinking.

One way to encourage your personnel about injury prevention is an incentive program. Many insurance plans pay contractors dividends when injury costs are below predicted levels. Why not distribute some or all of these monies to foremen and employees through some formalized program?

DIMENSIONS: It’s often said that analyzing data from past jobs is an important tool for managing current jobs. What general principles should guide subcontractors in collecting and applying this type of information?

SOUTHWARD: You’re right about the importance of subcontractors documenting their daily operations. Don’t fall into the trap of saying “we’re builders, not paper pushers!” Perhaps it’s unfortunate, but over the past generation, contractors have necessarily become both. Construction today is no longer the straightforward business it once was.

Each of your daily reports need contain only six general items — who,
what, why, where, when, and how much—each with two subdivisions. Keep these in mind, for they make the task of documentation much easier, usually just one piece of paper per day. These six items are: WHO #1. Here you need the names of each worker for each workday, information usually derived from your payroll. WHO #2. This item describes anyone else with whom you communicated on a given day—perhaps the GC’s or owner’s representative, your suppliers, or any government officials.

WHAT #1. Write down what your workers were doing, or rather the activities that correspond to your labor breakdowns. WHAT #2. Also record what anybody else (see Who #2) communicated to you that day.

WHY #1. Give the reasons why your workers are performing a task. Is it part of the schedule, or pursuant to a change order, and under what circumstances? WHY #2. Describe why someone else communicated with you (again see Who #2) that day. After all, if everything was okay there would probably have been no communication.

WHERE #1. Being as specific as possible, record where on the jobsite your employees were working. WHERE #2. If someone outside communicated with you that day, write down what area of your work that communication affects.

WHEN #1 and #2 List the date and time of day of your workers’ activities (#1) and of any communications from outsiders (#2).

HOW MUCH #1. Document how much your crews produced. Then answer whether this productivity was average, better than average, or worse. HOW MUCH #2. To the best of your knowledge, record how much of interruption was caused to your planned approach by any outside communications.

DIMENSIONS: We’ve talked about preparing to successfully manage “ordinary” projects that don’t fulfill a contractor’s worst-case scenarios. But is there ever a project where disputes don’t occur?

SOUTHWARD: There was a project completed in 1946 that didn’t involve any questions about scope, quantity, and quality of work; inter-
pretation of plans, specs, and codes; or change orders. It was a small office building for a newly incorporated plastering contractor, and financed entirely with the owner’s money.

The owner served as his own builder and architect; he was also the retiring building inspector for a city that wasn’t known for strict regulatory enforcement. All the labor and materials were donated by workers and suppliers in hopes of future employment.

Don’t give the GC any excuse for not paying!

Recently, the building was demolished for an urban development project. But I hope someone saved the cornerstone as a memento of “the building that was constructed without a single dispute.” So in answer to your question, “Are there ever jobs where disputes don’t occur?”, I’m afraid that 1946 project is the only one I know.

Disputes, of course, are inevitable. On something as complex as today’s building projects, differences of opinion are bound to arise over any subject matter contained in (or alleged to be contained in) the many contract documents required. Disputes can arise from interpretations or modifications of the contracts, plans, specifications, schedules, or codes.

But if subcontractors do what I suggested at the outset—prepare a simple organizational plan with flexible parameters, and then stick to it—most misunderstandings can be anticipated and effectively worked out. And if the worst-case scenario should happen, than at least the sub contractor will have the standing and documentation to effectively present his case.