

Ten Survival Tips for Subcontractors in Lean Times

by Donald Gregory, Esq.

The credit crisis has accelerated subcontractors' concerns about the economy. Residential construction has been weakening for some time, and commercial construction has been anything but strong in many areas of the country. Subcontractors facing possible lean economic times need to make smart business decisions that will allow them to survive and, ultimately, prosper. Here's a "Top 10" list of survival tips for lean times.

Give Notices to Improve Chances of Payment.

Especially during difficult economic times, subcontractors shouldn't assume that their customers will be able to pay their bills on time. When work slows down and credit becomes tighter, subcontractors should ensure that their business practices maximize their chances of being paid on time. Getting paid or preserving payment rights often means giving the right notices at the right times. For example, subcontractors should give notices of their change order work before they perform the work. Similarly, suppliers should submit the preliminary notices that state lien laws often require.

Review Contracts for Shifting of Credit Risk.

Risk-shifting contract provisions can cause subcontractors to experience losses even when they perform work in a timely and otherwise satisfactory fashion. For example, pay-if-paid provisions in subcontracts may shift the credit risk of a project owner's nonpayment from a contractor to its subcontractors. In difficult economic times, it is even more important for subcontractors to review their contracts for the shifting of credit risk, and to make changes such as deleting pay-if-paid language and adding effective prompt payment language. ASA's Web site (www.asaonline.com) is a great resource for evaluating and developing contract language. The members-only section contains the model *ASA Subcontractor Bid Proposal (2008)*, the *ASA Addendum to Subcontract (2008)*, and other tools.



Train for Your Current and Future Markets.

Challenging economic times are the wrong time to ignore training. Examine what kinds of training opportunities might represent an investment in your company's and your workforce's future. For example, providing training in a new and developing field such as green building might help a subcontractor secure work in new markets.

Increase Marketing.

A tough economy requires subcontractors to make a greater investment in marketing simply to hold on to current market share. When work is harder to find, subcontractors will find even more value in creating relationships or taking marketing approaches to help them retain market share. Remember:

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Most business opportunities come from existing clients or referrals from existing clients, so providing good, responsive service to these valued clients is crucial. One potential upside of difficult times is that they sometimes help "weed out" competitors that don't focus on customer satisfaction.

Cut Costs.

Consider the lean economy as an opportunity to increase efficiency through technology or other means of reducing labor costs. While this may entail difficult

personal decisions, subcontractors may emerge more profitable after implementing cost-cutting measures.

Double-Check Bids.

Despite the time and effort that subcontractors put into preparing bids, public entities often have to reject bids because they are not responsive in all material respects to the bid solicitations. Subcontractors should double-check inclusions and exclusions to ensure that scope of work and price are accurate. The worst time to live with the consequences of a mistaken bid is when work is tight.

Preserve Lien Rights.

Our founding fathers created mechanic's lien rights for a reason — to ensure that subcontractors and suppliers would

be paid for their labor and material, which improve the value of property. While lien rights are not a *substitute* for good credit decisions, subcontractors and suppliers should preserve their lien rights on projects on which they cannot afford to go unpaid.

Start With Mediation To Resolve Disputes.

Litigation always is expensive and can erode the bottom line. Settlements on the courthouse steps do little to avoid legal costs. Mediating a dispute at the earliest opportunity may lead to a compromise that saves significant legal fees for both sides in a dispute. Even if mediation fails, a subcontractor at least knows that it tried its best to reduce costs, and can move forward in litigation knowing that it had no other viable options.

Stay Informed and Support Your Industry.

Difficult economic times are the wrong time to cut costs by ceasing membership in valuable trade associations. The education and advocacy provided by these groups can often help subcontractors weather difficult times and be much stronger in the long run.

Keep Things in Perspective.

The construction industry has weathered downturns before, and will again. While nobody enjoys lean times, a sense of humor and a sense of perspective will serve you well in allowing your company to navigate any choppy seas.

By implementing some of these simple strategies, hopefully your company can continue to succeed in this challenging economy, and emerge even stronger in the long run. ■

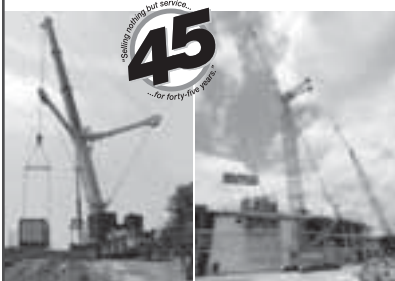
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Related Product

Order the Foundation of ASA's *Lien and Bond Claims in the 50 States* CD-ROM (Item #3006) online at www.contractorsknowledgenetwork.org (\$42 for members/ \$50 for nonmembers). This resource summarizes lien and bond requirements for each state, divided by public and private work, and provides information about effectively filing and executing claims.

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