



Project Superintendent Certification Program

Prepare to demonstrate your skills, gain valuable feedback, and achieve the recognition you deserve. Engage with our Project Superintendent Evaluation and take the next step towards professional excellence in construction management.

Let's Build Your
Future Together

Welcome to Construction Management Certification

Dear Student and Fellow Worker,

Welcome to a pivotal moment in your career journey! We at Construction Management Certification are thrilled to have you join our community of forward-thinking construction professionals. As you embark on this learning path, we want to acknowledge the significant effort and time you're investing by stepping away from your daily responsibilities to enhance your skills and knowledge.

Your Learning Experience

This course is meticulously designed to familiarize you with essential industry terminology and to provide you with a foundational understanding of the topics covered. While it may not delve deeply into every nuance of the subject matter, it will equip you with the critical tools and concepts needed to succeed in your role.

Remember, you are here to learn and grow—so do not feel intimidated by new concepts or terminology. Each lesson is crafted to be accessible and engaging, ensuring that you gain confidence as well as competence.

Accredited Certification – Opening Doors to New Opportunities

By choosing an accredited certification program like ours, you are not just learning—you are unlocking new opportunities. The knowledge and credentials you acquire here will significantly enhance your professional profile and open up new avenues in the construction industry. Certification is a testament to your dedication to professional development and positions you well to soar to new heights in your career.

Let's Begin

As we start this lesson, remember that every module is a step towards greater opportunities. We are here to support you throughout your learning journey and to celebrate your achievements along the way.

Thank you for choosing Construction Management Certification. Let's build a robust future together!

Warm regards,

The Construction Management Certification Team

We encourage you to approach each lesson with curiosity and enthusiasm as you pave your way

Working with Subcontractors

Rare is the project that does not employ subcontractors, and working with subcontractors encompasses the entire spectrum of management skills, from speaking softly to carrying and applying a big stick.

Although they are independent business people, subcontractors should be welcomed as team members and treated as such, unless proven otherwise. Subcontractor relations begin during the negotiation process when the bid proposals are being reviewed and analyzed by the project manager and the project superintendent in order to select the most qualified, competitively priced bidder for the project at hand. Problems often arise when one party or the other, or both, fails to adequately communicate what is expected of each other in the scope of work or performance of the work. Has the general contractor been specific in defining the work to be included or merely stated the scope of work as “plans and specifications”? With all the vagaries surrounding what is meant by plans and specifications, disputes and arguments can and do arise during the administration of a subcontract agreement unless a more definable scope is established and accepted by all parties.

A thorough review of the required work to be included in the subcontract agreement is the first step in this communication process. And a firm agreement and acceptance of that scope and the corresponding cost of work (subcontract amount) is the first step in establishing a professional relationship between the general contractor and the subcontractor. Unless the terms and conditions of the proposed subcontract agreement are fully understood and accepted by both parties at the time, it is merely a question of when disagreements will surface—and they will arise when the subcontractor may announce that the plans did not include a certain item or items of work, or when the superintendent demands certain tasks from the subcontractor only to be advised that this work was not included in the proposal and will not proceed as directed. And these disagreements always come at the most inopportune time.

Negotiating with Subcontractors to Avoid Disagreements

There are many ways in which to define the scope of work as completely as possible. Reviewing the appropriate plans and specification sections prior to meeting with the subcontractor and making notes of specific items to be discussed are an important first step.

Remember that there may be one or more “related” specification sections or drawings that ought to be reviewed to determine if they contain additional items of work to be included in the subcontract agreement. And don’t forget to review the general and supplementary conditions for information regarding such things as change order procedures, project closeouts, requisition preparation, and backup documentation for both change orders and requisitions.

Some general contractors use a Subcontractor’s Interview Form (Fig. 6-1) when they meet with the subcontractor to review the bid proposal. This preprinted form can be customized to include items or work specific to the project at hand. As the interview progresses and items are included or excluded from the work, addressed and checked off, at the conclusion of the meeting there should be no confusion as to what is and what is not included in the subcontract agreement. When the interview has been concluded, the subcontractor will be asked to sign the form, thereby evidencing agreement to the terms and conditions discussed during the meeting. When the subcontract agreement is prepared for execution and references this interview form, there is little room for disagreement about its content.

Other contractors use an interview form requiring greater subcontractor participation. This form is transmitted to the subcontractor in advance of the meeting so that he or she can be prepared to discuss this extensive list of work at the forthcoming get-together. Figure 6-2, which shows a preconstruction meeting checklist, is divided into six sections: an introduction and sign-in section (section 1), an overview discussion of the project by the general contractor (section 2), and a presentation by the subcontractor (section 3). Section 4 is a review by the general contractor to verify that the subcontractor is in possession of all required documents, and in section 5, the general contractor acquaints the subcontractor with many of the forms to be used in the administration of the project. Section 6 concludes the interview.

If the superintendent has not participated in any subcontractor interviews or negotiations and must therefore rely on the terms and conditions of the subcontract agreement, this definitive list of work becomes a critical part of the agreement. Although a scope definition of plans and specifications may suffice in many instances, as we discussed earlier in this book, errors, omissions, or inconsistencies in the contract plans or specifications, or both, often lead to confusion over what these plans and specifications *really* encompass. Quite often the clarifications and modifications to the basic scope of work will be added to the subcontract agreement as separate attachments, say, as exhibit A or B or attachment A or B, and so on, and that is all that’s needed.

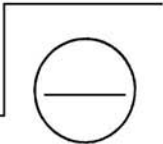
SUBCONTRACTOR NEGOTIATION FORM		Page 12 of 16	
CONCRETE - SCOPE OF WORK (Cont'd) Including but not limited to the following:			
ITEM	YES	NO	EXPLANATION AND/OR COMMENTS
<u>GENERAL CONDITIONS</u>			
1. Superintendent - Submit resume for approval			
2. Line & Grade - Define			
3. Teamster Shop Steward			
4. Master Mechanic - proportionate share			
5. Maintenance Engineer			
6. Until such time as contractor is able to provide temp. light & power, subcontractor will provide his own with portable generators, etc.			
7. When temp. services (light, power, water) are available they will be provided with maintenance, without cost to subcontractor during regular working hours. If services including maintenance are required outside of regular working hours, subcontractor will pay for same.			
8. Furnishes hoisting for own work			
9. Pumping concrete			
10. Form Drawings Designed by Engineer to conform to <u>OSHA</u> requirements,			
11. Reinforcing shop drawings			
12. As built drawings			
13. Insurance as specified			
14. Hold harmless insurance			
15. Retained percentage per Prime Contract			
16. Cost of performance & payment bond included in contract sum and in unit prices.			
17. Licenses and permits for own work			
18. Payment schedule & retainer			
			

Figure 6-1 Example of a subcontractor interview form, this one for cast-in-place concrete.

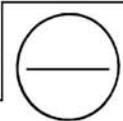
SUBCONTRACTOR NEGOTIATION FORM		Page 13 of 16	
CONCRETE - SCOPE OF WORK (Cont'd) Including but not limited to the following:			
ITEM	YES	NO	EXPLANATION AND/OR COMMENTS
19. Percentage for added work			
20. All work in accordance with local, state laws & regulations			
21. Restoration of damage to property			
22. Equal Employment Opportunity provisions			
23. Scaffolding for own work			
24. Personnel hoist for own work			
25. Contract amount shall include a minimum of two (2) moves of shanties field offices, sheds, etc.. Hook-up of electric services to be at subcontractor's expense.			
26. Working hours			
27. Stand-by requirements			
28. Perimeter rails - provide - maintain			
29. Rails at interior openings - provide - maintain			
30. Kick boards - install - maintain			
31. Conform to all OSHA requirements not elsewhere assigned to others			
32. Remove stripped lumber from floors daily			
33. Off-site disposal of rubbish and firewood			
34. Load rubbish onto containers provided by			
35. Project Work Rules.			
36. CGL Insurance to include X,C & U coverage.			
<u>CLEAN UP & PROTECTION</u>			
1. Broom clean slabs prior to placing fill and finish			
			

Figure 6-1 (Continued)

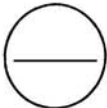
SUBCONTRACTOR NEGOTIATION FORM		Page 14 of 16	
CONCRETE - SCOPE OF WORK (Cont'd) Including but not limited to the following:			
ITEM	YES	NO	EXPLANATION AND/OR COMMENTS
2. Broom clean slabs after stripping and removing forms			
3. Clean concrete from inserts, slots, reglets etc.			
4. Cut off nails, ties, etc.			
5. Concrete spillage, drippings, etc. to be removed immediately from adjacent surfaces of stairs, walls, bricks, etc.			
6. When floors are being added to existing building, protect existing areas from splashing concrete.			
7. Protect stair nosings during concrete placement			
8. Flush forms with water or air before placing concrete.			
9. Provide protection above & below men working in shafts			
<u>WINTER PROTECTION</u>			
1. Heated concrete			
2. Provide temporary enclosures & heat			
3. Snow removal inside building site			
4. Protect sub-grade against freezing			
5. Covering & protecting foundation concrete against freezing			
6. Curing blankets - furnish, place, and remove			
			

Figure 6-1 (Continued)

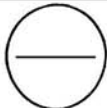
SUBCONTRACTOR NEGOTIATION FORM		Page 15 of 16	
<p>CONCRETE - SCOPE OF WORK (Cont'd) Including but not limited to the following:</p>			
ITEM	YES	NO	EXPLANATION AND/OR COMMENTS
7. Wind breaks			
8. Additional formwork allowed for			
9. High early cement. Additional cost _____			
<u>SCHEDULING & PROGRESS</u>			
1. Contractor has visited jobsite			
2. To facilitate jobsite mobilization and access to areas of the building by other trades, the subcontractor must agree to sequence his work as directed			
3. Participate in CPM planning			
4. Anticipated date concrete foundations will start			
5. Duration of foundation work			
6. Ready for structural steel by _____			
7. Anticipated date concrete superstructure will start			
8. Duration of superstructure			
9. Amount of contact surface lumber included for foundations			
10. A) If additional foundation forms are used for acceleration what will cost be? (specify amount) B) Schedule will be accelerated by _____ working days			
11. Amount of floor forms included for superstructure			
12. Subcontractor to submit shop drawings schedule within 15 days			
			

Figure 6-1 (Continued)

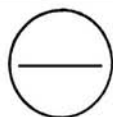
SUBCONTRACTOR NEGOTIATION FORM		Page 16 of 16	
CONCRETE - SCOPE OF WORK (Cont'd) Including but not limited to the following:			
ITEM	YES	NO	EXPLANATION AND/OR COMMENTS
13. A) If additional superstructure slab forms are used for acceleration, what will cost be? (specify amount) B) Schedule will be accelerated by _____ working days			
14. Anticipated supply problems			
Subcontractor will submit a detailed schedule of values broken down for labor & material of the contract amount to the Project Manager within 10 days of the award date.			
<u>BID DOCUMENTS & CONTRACT</u>			
1. Specification Sections Specify _____ _____			
2. Drawings - <u>Architectural</u> - <u>Foundation</u> - <u>Structural</u> - <u>Mechanical, Plumbing & Elec.</u> - <u>Site</u>			
3. Invitation to Bid dated _____			
4. Supplement Nos. _____			
5. Unit prices submitted -			
6. Hourly wage rates submitted			
7. Contractor has read General Conditions and assumes responsibility for all requirements that pertain to his work.			
8. Subcontractor verifies he has included all escalation costs as required.			
9. Subcontractor must return signed copy of Subcontract Agreement form within three days of date of receipt. Should signed agreement not be returned within specified time, agreement may become null and void at General Contractors option.			
10. Subcontractor has reviewed and agrees to sign standard form of agreement, including Schedules "A", "B", "C" etc. at the time formal award is made.			"Boiler Plate" document to be accepted without change. 
11. Subcontractor shall submit his Certified Financial Statement within seven (7) days of notification of award.			

Figure 6-1 (Continued)

- 1. Opening**
 - 1.1 Introductions
 - 1.2 Sign-in sheet
 - 1.3 Minutes and issues documentation
 - 1.4 Project site meeting schedules
- 2. XXXX presents:**
 - 2.1 The project overview
 - 2.2 The project CPM schedule
 - 2.3 The project safety requirements
- 3. The subcontractor presents:**
 - 3.1 The subcontractor's team
 - 3.2 The scope of subcontract work
 - 3.3 The subcontractor's submittals and submittal schedule
 - 3.4 The subcontractor's plan to accomplish the work
 - 3.5 The subcontractor's workforce plan
 - 3.6 Special materials, processes, or equipment to be used
 - 3.7 Material suppliers and subtier subcontractors
 - 3.8 AAAA material supply requirements if any
 - 3.9 The subcontractor's detail schedule and all subcontract milestones and completion dates
 - 3.10 The work interrelationships with other job-site subcontractors and trades
 - 3.11 The subcontractor's quality control and inspection approach and implementation plan
 - 3.12 The subcontractor's test and commissioning plan
 - 3.13 The subcontractor's punchout workforce plan
 - 3.14 The subcontractor's safety approach and implementation plan
 - 3.15 The subcontractor's MSDS list and data sheets
 - 3.16 The subcontractor's mobilization and demobilization plan
- 4. YYYY reviews the above for:**
 - 4.1 Verification that the subcontractor understands the work scope, schedule, submittals, and requirements
 - 4.2 Verification that the subcontractor understands the project safety requirements
 - 4.3 Verification that the subcontractor has the full drawings and specifications available and in the subcontractor's possession
 - 4.4 Verification that the subcontractor has the project master schedule available and in the subcontractor's possession
- 5. ZZZZ presents:**
 - 5.1 The look-ahead schedule process
 - 5.2 The short list tag process
 - 5.3 The notice to correct procedure
 - 5.4 The notice to clean up procedure
 - 5.5 The safety violation notice procedure
 - 5.6 The change request procedure
 - 5.7 The RFI procedure
 - 5.8 The time and material ticket procedure
 - 5.9 The backcharge procedure
- 6. Meeting conclusion**
 - 6.1 By proper communication of our expectations, problems can be avoided and the work can proceed successfully.

Figure 6-2 Preconstruction meeting checklist.

Review of the Subcontract Agreement to Become Familiar with Its Contents

Although the project manager, in many construction companies, is assigned the responsibility of administering the subcontract agreement, the project superintendent acts in a supporting role by advising the project manager in the managerial role. The project superintendent needs to read and fully understand the scope of work included or excluded in each subcontractor's agreement and must be familiar with the boilerplate provisions within the subcontract agreement, primarily those provisions dealing with performance, notices to correct, schedule compliance, and backcharge procedures. This review will alert the project superintendent to those specific subcontract provisions that are to be invoked if and when subcontractor-related problems arise. The most frequently referred to provisions in standard subcontract agreements are

1. Compliance with schedule requirements
2. Notice of nonperformance
3. Notice to correct
4. Disputed work or interpretation of contract scope
5. Requests for information or requests for clarification
6. Safety issues—violations and enforcement
7. Cleanup
8. Punch list work and other closeout procedures

Verifying agreement with the subcontractor's field supervisor

Before the subcontractor's starting work at the job site, a short meeting with the foreman or field supervisor assigned to the project by the subcontractor is advisable, if this person has not previously attended any of the subcontractor interview meetings.

The following items should be reviewed with the subcontractor's on-site supervisor:

1. Do you have, or are you familiar with, your company's fully executed subcontract agreement?
2. Do you have any questions regarding the scope of your work?
3. Do you have any questions regarding the construction schedule?
4. Have you begun to obtain and submit all required shop drawings? If not, when can we expect to receive them?
5. Are you aware of the working hours on the site?
6. Do you know which areas on the site have been set aside for your office trailer, material storage, and parking of workers' automobiles?

7. Have you received all Material Safety Data Sheets (MSDSs) pertaining to those materials you will be storing or using on site—and have you sent them to my office?
8. Do you have a copy of your company's safety plan on site?
9. Are you aware of any mock-ups that you will be required to prepare, and, if so, do you have all materials readily available to do so?
10. If preinstallation conferences for your trade are required, do you know what is expected of you?
11. If inspections or testing is required during the course of your work, are you familiar with these requirements?
12. Are you aware of the closeout procedures (if applicable) such as submission of as-builts, and manufacturer's site visits to obtain certification on certain items of work? It may also be helpful to review the various types of forms that will be used during the course of the project when the occasion arises:
 - a. Superintendent's notice of pending backcharges (Fig. 6-3)
 - b. Notice to clean up (Fig. 6-4)
 - c. Notice to correct (Fig. 6-5)
 - d. Stamp to be used on all time and material tickets (Fig. 6-6)

Compliance with Schedule Requirements

At the beginning of the project, the subcontractors will have been advised of the overall construction schedule and the time frame(s) in which they are expected to perform their work. They will have been required, or should have been requested, to review and comment on or accept this baseline schedule. If they take issue with their allotted sequence of work or the time frame in which the work is to be performed, these comments need to be addressed and resolved. As schedules change, are modified and adjusted, the subcontractor must be made aware of these change(s) and asked to review and either accept the changes or respond appropriately if the changes affect the contract sum or contract time. Once the changes are accepted, the subcontractors will be committed to the revised schedule. If they are unable to maintain the schedule owing to lack of workforce or materials or equipment, after a verbal notice of noncompliance is issued and ignored, the superintendent should notify the project manager so that a written notice to comply is transmitted to the subcontractor, referencing the paragraph in the subcontract agreement pertaining to noncompliance.

A typical subcontractor agreement schedule compliance clause reads as follows:

Subcontractor agrees to complete the subcontractor's work by (date). Subcontractors agree to commence the subcontractor's work (date to be filled in by the general contractor) in the most expeditious fashion but not later than indicated on the general contractor's construction schedule.

or

SUPERINTENDENT'S NOTICE OF PENDING BACKCHARGES

Referenced Project: _____

Project No.: _____ Date: _____

To: _____

Attn: _____

Project Manager copied to (name): _____

This is to notify you that backcharges are pending against your contract, on the project referenced above, for the following reason(s):

<input type="radio"/> Damages	<input type="radio"/> Errors in work
<input type="radio"/> Delays	<input type="radio"/> Noncompliances to safety laws/codes
<input type="radio"/> Noncompletion	<input type="radio"/> Technical problems
<input type="radio"/> Backcharges by others	<input type="radio"/> Poor workmanship

Description and Comments:

This notification does not necessarily mean that your company will be charged. However, failure to make corrections reimburse cost, or complete work, or willful disregard of this notice will result in charges. Actual backcharge amounts will be determined by and charged against your contract at the discretion of the Project Manager. Backcharges may also include administrative cost, interest or other carrying cost, legal fees, or any other cost incurred by _____ due to the problems or violations referenced herein.

If you have any questions concerning this notice, call me at:

Signature	Printed Name
Signature	Printed Name

Figure 6-3 Superintendent's notice of pending backcharges.

The subcontractor shall commence work upon receipt of a notice to proceed from the contractor and shall prosecute the work in a manner that will not delay the completion of the prime contract and in accordance with any schedule provided by the contractor, which schedule may be changed from time to time. The subcontractor shall be entitled to such extensions of time as the contractor shall receive from the owner and as applicable to the subcontractor's work and not other damages arising out of a delay apart from such damages the contractor may receive from the owner on behalf of the subcontractor.

NOTICE TO CLEAN UP	
Project #: Date:	
<hr/>	
To: x	
x	
x	
Attn: x	
Ref:	
Gentlemen:	
Please be advised that your company has failed according to the terms and conditions of our subcontract agreement to properly clean up debris resulting from your work on the above-referenced project.	
You are hereby directed to take all corrective action necessary to satisfactorily clean up your work by _____ under terms of our agreement.	
If satisfactory cleanup is not completed by the above date then _____ will directly perform the cleanup by whatever means necessary and will backcharge to your company all resulting costs pursuant to the terms and conditions of the subcontract agreement.	
Specific reference is made to the following items and areas: _____	

Please be advised that this constitutes formal written notice as specified in our subcontract agreement.	
Very truly yours,	Received by:
_____	_____
Project Superintendent	For: _____
	Date: _____ Time: _____
<hr/>	

Figure 6-4 Notice to clean up.

Notice of nonperformance

The ability to control the performance of a subcontractor is crucial to the administration of a successful construction project. When a subcontractor fails to meet the reasonable performance requirements of a project and verbal notification fails to correct nonperformance, the superintendent and project manager must review the subcontract agreement to determine which provision pertains to performance, or nonperformance, and how it is to be conveyed to the subcontractor.

NOTICE TO CORRECT

Project #:
Date:

To: _____

Attn: _____

Ref: _____

EMERGENCY - IMMEDIATE RESPONSE REQUIRED
 If corrective action is not undertaken immediately
 will correct the conditions at subcontractor's
 expense.

STANDARD - RESPONSE AS NOTED BELOW
 Subcontractor must complete corrective action by: _____

FINAL - 48-HOUR CORRECTION REQUIRED
 Subcontractor has failed to meet the conditions stated in the
 STANDARD Notice to Correct and unless corrective action
 is completed within 48 hours will complete
 the work at subcontractor's expense.

Gentlemen:

An inspection of your work was performed at the above-referenced project and the below-listed conditions and deficiencies were noted:

You are hereby directed to take all corrective action necessary to remedy these deficiencies under the terms of our agreement.

Please be advised that this constitutes formal written notice as specified in our agreement.

Very truly yours, _____ Received by: _____

Project Superintendent For: _____

Date: _____ Time: _____

Figure 6-5 Notice to correct.

The subcontract agreement provision for nonperformance is very similar to the schedule compliance requirement; however, most nonperformance clauses include specific notification rules and a time frame in which the subcontractor is given an opportunity to correct the problem. A typical provision allows the subcontractor anywhere from 48 to 72 hours' leeway to increase the pace of work, and this clause also alerts the subcontractor to the penalties that will accrue if performance is not accelerated. A standard nonperformance provision is set forth below:

The determination of whether the referenced work to be performed or already performed is in-contract or not in-contract is subject to further review by and/or our customer in accordance with the terms and conditions contained in our Subcontract Agreement with your firm. The signature of an authorized employee below provides verification only that the work needs to be performed or has already been performed. It does not establish or accept the validity, dollar value or time impact of a claim.

BY: _____

For _____

DATE: _____

Print Name

Figure 6-6 Stamp to be used on time and material tickets (fill in name of general contractor).

Time is of the essence.

Should the subcontractor fail to prosecute the work or any part thereof with promptness and diligence, or fail to supply a sufficiency of properly skilled workmen or materials of proper quality or fail in any other respect to comply with the Contract Documents, the Contractor shall be at liberty, after seventy-two (72) hours written notice to the Subcontractor, to provide such labor or materials as may be necessary to complete the work and to deduct the cost and expense thereof from any money then due or thereafter to become due the Subcontractor under this Agreement, and the Contractor shall be at liberty to bar subcontractor from the job and take possession for the purpose of completing the work included under the Contract Documents, all of materials, scaffolding, ways, works, apparatus, machinery, equipment and appliances thereon, and to employ or contract with any other person or persons to finish the same.

When nonperformance is an issue, either a letter or an appropriate form should be promptly sent to the subcontractor. Even though a verbal notice of poor or nonperformance has been transmitted to the subcontractor’s field representative or project manager, written notification must follow promptly.

Notice to correct

During an architect/engineer inspection, reports will be issued to the general contractor recapping the results of that inspection and whether certain items of work comply with the contract requirements or whether specific items require removal, modification, or replacement to meet the terms and conditions of the contract.

During a walk through the project by the project superintendent or project manager, inspections may also reveal corrective action required by a subcontractor or subcontractors. Items to be corrected generated by these types of inspections can

<p>Company Letterhead</p> <p><i>Oriole Construction Company</i> 566 Southway Baltimore, Maryland 21200</p>	
<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>On (date) we sent you a letter requesting your recovery plan for accelerating your work in order to meet our schedule requirements. To date, we have not received your response to this request.</p> <p>Following the provisions of (paragraph or article in the subcontract agreement pertaining to performance) in our subcontract agreement with your company, dated (date), we are hereby giving you the required (48- or 72-hour, or the time frame stated in the subcontract agreement) notification to increase your performance, or we will provide any additional manpower and materials required to do so. All related costs in this matter will be backcharged to your account.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 37 Putting the subcontractor on notice regarding poor performance.

be verbally transmitted to the subcontractor(s) involved, but these items also need to be confirmed in writing in the event that the verbal notification goes unnoticed. A simple form such as the one displayed in Fig. 6-5 is often adequate for the purpose. When such a deficiency or notice to correct report is produced by the A/E, the general contractor is put on notice that if the work is not corrected within a reasonable period of time, an appropriate sum will be withheld from a future payment. When this involves subcontractor work, a similar notification to the subcontractor is required, making reference to the appropriate provision in the article of the subcontract agreement.

<p>Company Letterhead</p> <p><i>Oriole Construction Company</i> 566 Southway Baltimore, Maryland 21200</p>	
<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>Reference is made to our (date) letter in which we gave you the required notification to increase your performance at the job site.</p>	
<p>Since you have failed to respond to our request, we have engaged another subcontractor (or vendor) to (describe the work that is underperforming, i.e., install the doors, paint the walls, etc.).</p>	
<p>Upon completion and acceptance of the subcontractor's (or vendor's) work, we will issue a backcharge to your account for all costs associated with this work, including our supervisory and project management costs along with an appropriate amount for overhead and profit.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 38 Hiring another subcontractor to supplement the poorly performing subcontractor.

A typical notice to correct provision in a subcontract agreement is similar to this:

The subcontractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the Architect and Owner or by the Contractor or their authorized representatives and shall within twenty-four (24) hours of receiving notification from the architect or the contractor to that effect remove from the grounds or buildings, all work or materials condemned by them, whether worked

<p>Company Letterhead</p> <p><i>Oriole Construction Company</i> 566 Southway Baltimore, Maryland 21200</p>	
<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>Attached is a copy of the architect's (or engineer's) punch list dated (date). Please correct and/ or complete all indicated items pertaining to your trade, not later than (date).</p>	
<p>If you have any questions relating to any of the items on this list, please let us know; if not, you will be expected to complete all of your listed work.</p>	
<p>Notify this office when your work has been completed so that we can obtain the architect's (or engineer's) acceptance.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 39 Transmitting the punch list to a subcontractor.

or unworked, and shall take down and remove all portions of the work which the Architect or Contractor shall, by notice, condemn as unsound, improper or defective or in any way failing to conform to the contract documents or to the instruction of the Architect or Contractor, and the subcontractor shall at once remedy, replace or make good all its work so removed and all work damaged or destroyed by such removal and the replacement thereof, provided, however, that no inspection or failure to inspect by the Contractor or Architect shall relieve the subcontractor of any obligations imposed by the contract documents.

Company Letterhead
Oriole Construction Company
566 Southway
Baltimore, Maryland 21200

The American Steel Company
855 Industrial Circle
Owings Mills, MD 21240

Re: Waterfall Plaza
Project No. 6444

Attention: Mr. Jim Beam

Dear Mr. Beam:

On (date) we forwarded the architect's (or engineer's) punch list dated (date) to your office with instructions to complete and notify this office.

During a walkthrough on (date) we found that most (or all, or some) of your punch list work remains incomplete. You are requested to expedite this work and complete your portion of the punch list not later than (date).

Please advise when this work is ready for inspection and sign-off.

With best regards,

Will Spencer
Project Superintendent

Letter 40 When punch list work is ongoing, but incomplete.

Disputed Work or Interpretation of Contract Scope—RFIs and RFCs

Disagreement over what constitutes *contract scope of work* is not unusual when you are dealing with subcontractors who may be interpreting their contract requirements differently from the general contractor's or designer's viewpoint. When scope issues are involved and relate to interpretation of plans and/or specifications, the subcontractor should be directed to prepare a request for

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>Letters to your office on (dates) regarding incomplete punch list items have failed to achieve completion of your punch list work. Therefore, we plan to engage another subcontractor to complete all incomplete items on the punch list.</p> <p>When this work has been completed, inspected and accepted by the architect (or engineer), all related costs will be charged to your account.</p>	
<p>With best regards,</p> <p>Will Spencer Project Superintendent</p>	

Letter 41 Subcontractor fails to complete punch list work as directed.

clarification that will allow the general contractor to pass it on to the “interpreter of the contract documents”—the design architect or engineer. If upon receipt of the response from the architect the subcontractor disagrees with the ruling, the subcontractor can issue a formal protest to the general contractor which will be processed in accordance with either the provisions in the contract with the owner or the subcontract agreement, whichever document contains resolution of such matters.

Most agreements between subcontractor and contractor link this agreement to the contract with the owner with a simple statement, such as

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Oriole Construction Company
566 Southway
Baltimore, Maryland 21200

The American Steel Company
855 Industrial Circle
Owings Mills, MD 21240

Re: Waterfall Plaza
Project No. 6444

Attention: Mr. Jim Beam

Dear Mr. Beam:

You have failed to complete your punch list work even though we have requested you to do so on several occasions (or state dates of letters sent requesting completion). On (date), the architect (or engineer) established the following values for each incomplete punch list item pertaining to your trade:

If any of these items remain incomplete after (date), we will deduct its value from any monies due and owing your company.

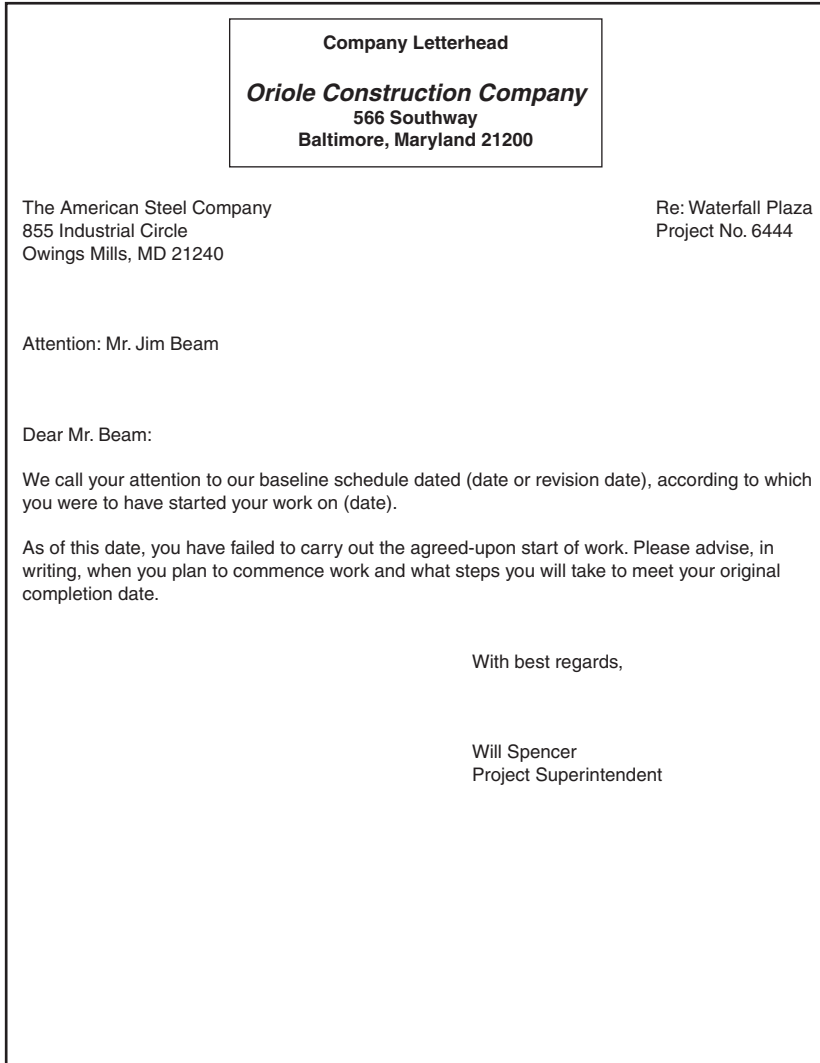
With best regards,

Will Spencer
Project Superintendent

Letter 42 Deducting value of punch list items from subcontractor’s account.

The Subcontractor shall be bound to the Contractor by the terms and provisions of all of the contract documents and assumes toward the Contractor, with respect to the Subcontractor’s work, all of the obligations and responsibilities which the Contractor, by the contract documents, has assumed toward the Owner.

The provisions of AIA Document A201, General Conditions of the Contract for Construction, also apply to the contract between contractor and subcontractor. Therefore, in the absence of any other language, Article 4, Administration of the Contract, is applicable specifically.



Letter 43 Failure to meet start date of work per schedule.

Articles 4.2.11, 4.2.12, and 4.2.13 assign the decision-making process with respect to contract document interpretation to the architect. This assignment of design interpretation to the architect seems a one-sided affair in that the designer who prepared the documents is given the authority to decide on their completeness or “intent.” It is also appropriate that Article 4.3 which follows is entitled *Claims and Disputes*.

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We call your attention to our baseline schedule dated (date or revision date), according to which you were to have completed (tasks to have been completed) by (date).</p>	
<p>That work is still in progress and it appears that it will not be fully completed for another (day, week, etc.), that is, until (date). Your delay in completing your work is affecting other trades and must be improved upon.</p>	
<p>We require an immediate written response with your proposed method of getting back on schedule.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 44 When it appears that the subcontractor will be late in completing work.

Safety Issues

One of the project superintendent's more important tasks concerns the administration and implementation of the company's safety policy. Each subcontractor on the site will be required to comply with the provisions of that program. The subcontract agreement, recognizing the importance of job site safety, will generally include an article devoted to this subject, such as

The subcontractor shall take all reasonable safety precautions with respect to the work, shall comply with all safety measures initiated by the Contractor and with all applicable laws, ordinances, rules and regulations and orders of any public safety

authority for the safety of persons or property in connection with its performance hereunder. Subcontractors shall take whatever precautions are necessary to properly protect the work of other trades from damage caused by any operations.

The general contractor's safety program usually includes a provision for weekly *toolbox talks* to be held, attended by the GC's own field workers and by subcontractor tradespeople. A specific safety topic is discussed at each of these weekly meetings, and all attendees are required to sign in as an acknowledgment of their attendance. Although brief, generally 15 to 20 minutes, these toolbox talks act as a refresher to experienced workers and as a learning experience for new hires.

The format for a typical toolbox talk is shown in Figs. 6-7 and 6-8. There are a number of companies specializing in offering or assisting a general contractor

<p>TOOLBOX TALK NO. 12</p> <p>Concrete Construction Safety</p> <p>Concrete construction can take three distinct forms:</p> <ol style="list-style-type: none"> 1. Cast-in-place concrete 2. Precast concrete 3. Tilt-up concrete <p>Hazards associated with concrete construction of all types:</p> <ol style="list-style-type: none"> 1. Falls 2. Caught-in-between 3. Impalement on exposed reinforcing bars or welded wire mesh 4. Struck by falling objects 5. Spatters on skin and in eyes <p>General safety requirements:</p> <ul style="list-style-type: none"> ■ Obtain assurance that the structure can support the additional load to be imposed by the placement of concrete. This information is generally available from the structural engineer. ■ Place caps on exposed rebar, or otherwise place guards around areas where the pour is to take place, if there is a chance that a worker may fall and be impaled on exposed rebar. ■ Wear appropriate personal protective gear to avoid contact with skin and eyes. ■ When using a crane to lift and place overhead buckets, route the travel so that the fewest number of workers are exposed to hazards associated with this method of placement. No one should be working under the bucket. ■ Watch that no one is standing in the way of a ready-mix truck maneuvering or backing up on the site. ■ When pumping concrete, ensure that the concrete is flowing properly and no area in the hose to the delivery tube is blocked at any time. ■ If posttensioning is being performed, erect signs and limit employee access to the posttensioning area. Do not permit any employee not essential to the operation to stand behind the jack during the posttensioning process. ■ When lifting tilt-up panels, check to see if the lifting hook is located properly and is firmly embedded and the crane is able to maintain the center of gravity required.

Figure 6-7 Format for a concrete construction safety toolbox talk.

TOOLBOX TALK NO. 12

Concrete Construction Safety

Sign-in Sheet

This sign-in sheet documents that the undersigned employees of (Company) have taken part in the training session on concrete construction safety, held on (date) at (location).

This Toolbox Talk covered the following:

- Three types of concrete construction
- Hazards associated with concrete construction of all types
- General safety requirements

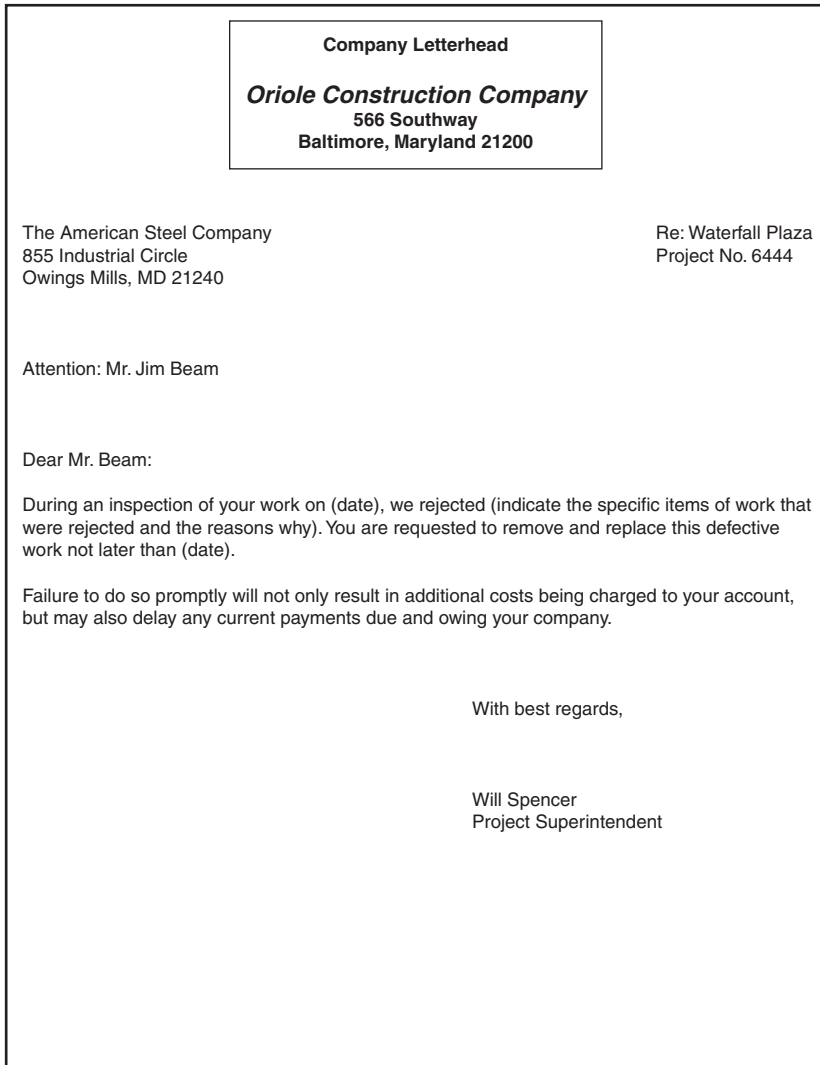
Employee signature	Print name and company affiliation here
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
	Supervisor's Signature

Figure 6-8 Typical toolbox talk attendance sheet.

in the preparation of safety programs, and these companies often offer subscriptions to an entire program of toolbox talks along with the related forms.

Job Cleaning and Subcontract Provisions to Enforce This Task

Possibly no event provokes greater controversy between subcontractor and project superintendent than period or progress cleaning of the job site and related removal of debris and waste materials from the job site. Subcontractors frequently promise to clean their areas by a certain date and fail to do so; or a subcontractor will argue that all or a major portion of the debris that he or she has been requested to remove was actually generated by other subcontractors. As the project superintendent's patience begins to wear thin, a review of the subcontract agreement to highlight the provision relating to cleaning should be made before a letter of notification is sent to the subcontractor to clean the area, remove all the trash off-site—or else. Quoting the exact provision in the subcontract agreement relating to cleaning and possibly another article relating to notice to correct in the letter to the subcontractor is effective. A typical cleaning provision will follow this format:



Letter 45 Rejecting defective/nonconforming work.

The Subcontractor shall at all times keep the Project site free from rubbish, debris and waste, and/or surplus materials resulting from its operations and shall turn over the subcontractor work in such a condition as to permit the next succeeding or intervening work to be commenced without further cleaning. At the time of completion of the subcontract work, such work is to be clean and in a condition acceptable to the Owner. If the Subcontractor fails to comply with the provisions of this paragraph, after 24 hours written notification by the Contractor, the Contractor shall have the right itself or through others to perform such cleaning and to charge the cost thereof to the Subcontractor.

Company Letterhead

Oriole Construction Company
566 Southway
Baltimore, Maryland 21200

The American Steel Company
855 Industrial Circle
Owings Mills, MD 21240

Re: Waterfall Plaza
Project No. 6444

Attention: Mr. Jim Beam

Dear Mr. Beam:

On (date) we sent a letter to your office advising you of work rejected for (poor quality, nonconformance with the contract documents, etc.). As of this date this work has not been corrected.

Failure to comply with our request by (date) will result in our engaging another subcontractor to remove and replace this (defective, nonconforming, etc.) work at your expense.

Your immediate response is requested or else we will proceed with any required corrective action.

With best regards,

Will Spencer
Project Superintendent

Letter 46 Second request to correct rejected work.

A project cleaning checklist

1. Establish firm job cleanup rules and procedures at the first on-site subcontractors' meeting. Include this statement in the meeting minutes in that initial meeting, and include it in all subsequent minutes—as a reminder to all attendees.
2. Report both good and bad cleaning performance at each subcontractor's meetings.



Letter 47 Engaging another subcontractor to correct defective work.

3. When you are walking the site, comment on good cleaning activities and let the supervisor know that you appreciate the effort. A thank-you note to the subcontractor's office can achieve a great deal.
4. When poor performance or nonperformance is noted, don't delay in issuing a verbal notice to correct; and if that doesn't work, issue a written one.
5. Never threaten without being ready to carry out that threat. If no action results from the notice to correct or notice to clean up, within the time frame

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>We are enclosing a copy of the (architect's or engineer's) (letter, field report, memo) dated (date) and call your attention to (that part of the letter, field report or memo dealing with the rejected or nonconforming work). Please comply with the (architect's or engineer's) findings and correct the work as required. Upon completion advise this office so that we may schedule a reinspection.</p>	
<p>With best regards,</p> <p>Will Spencer Project Superintendent</p>	

Letter 48 Notification of an inspection by the architect/engineer and the rejection of work.

- contained in the subcontract agreement, promptly have other forces clean the area in question.
- Prompt submission of the costs to clean and dispose of debris (including the general contractor's supervision costs and applied overhead and profit) should be sent to the subcontractor's office to warn of the impending backcharge.

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We are in receipt of your (date) letter in which you take exception to (either our rejection of work or the architect/engineer's rejection of work).</p>	
<p>Please provide a detailed explanation of your position in this matter so that we may (render our opinion — if rejected by the GC — or submit it to the architect/engineer for review); we will respond appropriately.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 49 Responding to a letter in which a subcontractor disagrees with the reason for rejecting work.

Change Orders and the Subcontractor

The change order process, as it relates to subcontractor involvement, is threefold:

1. Request for change in scope by owner, architect, or engineer for which the subcontractor will become involved

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>Attached is the (architect's/engineer's) response to your (date) letter in which you take issue with (his/her/its) finding(s). If you wish to pursue this matter further, you may file a claim in accordance with the provisions included in your subcontract agreement.</p>	
<p>In the meantime, you are directed to immediately correct the work as specified or we will engage other forces to do so and charge your account accordingly.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 50 Responding to a letter in which a subcontractor takes issue with the finding(s) of the architect/engineer.

2. Request for change order by the general contractor for nonowner-generated changes
3. Request for change order by the subcontractor for perceived errors and omissions in the plans and specifications or in the scope of work, as outlined in the subcontract agreement

Given that changes to the contract scope can increase or decrease the scope of work, costs can either increase or decrease accordingly. When costs increase,

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<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>Enclosed is an inspection report dated (date) as received from the architect (or engineer or inspection service). We call your attention to (Section X, or sections of the document pertaining to the subcontractor) that indicates rejection of your work (or remediation required).</p> <p>Please advise by return mail (or e-mail or fax) as to the process you plan to implement to correct the work rejected by the architect (or engineer) and when you anticipate the corrective work will be complete and ready for reinspection.</p>	
<p>With best regards,</p> <p>Will Spencer Project Superintendent</p>	

Letter 51 Transmitting an inspection report requiring rework.

they are generally scrutinized pretty closely; but often when credits are presented for scope decreases, that same amount of attention is not displayed. Change orders can also affect contract time, either increasing or decreasing it.

Each company has its own policy when it comes to change order authorization, allowing some superintendents limited authorization for some change order requests of a specific scope or dollar value, while other companies place this responsibility solely in the hands of the project manager. Whatever the case may be, the project superintendent can play an important role in this process.

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We refer to the inspection report dated (date) submitted by the architect (or engineer or inspection service) and forwarded to you on (date) with a request to respond with your proposed corrective action.</p>	
<p>As of this date we have not received your response, and in accordance with the provisions of (paragraph or article in the subcontract agreement that gives the subcontractor X days to correct) be advised that unless this corrective work is completed, inspected and approved not later than (date), we will proceed with whatever actions are necessary to obtain the architect's (or engineer's) approval.</p>	
<p>When all related costs have been received and tabulated, the appropriate backcharge will be issued to your company.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 52 When the rework required by an inspection report has not been performed by the subcontractor.

Requests by owner

Requests for changes to the contract originating from the owner are often presented by the owner's design consultants, and these requests are usually accompanied by a drawing and/or specification revisions, sketches, or a written description of the work to be modified. These directions or instructions are distributed to subcontractors and vendors affected by the change, and it is usually helpful if the project superintendent reviews these changes, when received,

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>On (date) we sent you a letter requesting (whatever was requested; e.g., clean-up by a certain date, accepting the schedule by a certain date — any matter that requires a response of acceptance). If we do not have your written response by (date), this will be taken to mean acceptance of the referenced matter.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 53 Letter forcing a response.

with the subcontractor or vendor. Clear understanding as to what is being requested, whether deleted work or extra work, how the associated costs are to be presented needs to be reviewed. Particularly when some portions of work are to be deleted and other portions of work are to be added, a clear understanding of how credits and extras are to be presented will help process the request smoothly.

The contract with the owner often includes specific language regarding *adds* and *deducts*, stipulating that the cost of the deleted work is to be subtracted from the

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<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We are in receipt of your letter (or e-mail or fax) in which you claim that the contract documents, as you interpret them, do not require you to (portions of work in dispute).</p>	
<p>We disagree with your interpretation and are forwarding your letter to the architect (or engineer) for (his/her/its) ruling in this matter. We will advise you of the response when received.</p>	
<p><i>Note: If you need further reinforcement of this issue, refer to AIA A201, General Conditions, Articles 4.2.12, 4.2.13, and 4.4 (Claims).</i></p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 54 When a subcontractor's interpretation of contract obligations differs from the general contractor's.

cost of the added work before any overhead and profit percentages are added. The contract may also specify the nature and extent of documentation to support the credit that is to be applied against the added costs.

The subcontractor ought to provide sufficient documentation for the changed conditions to allow the owner to reasonably evaluate the quotation being presented. At a minimum the subcontractor should include the following information:

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We refer to your letter of (date) in which you took issue with your contract responsibilities to (disputed items of work). We forwarded that letter to the architect (or engineer) for review and comment, and enclosed is the response dated (date).</p>	
<p>If you wish to pursue this matter further, you must file a formal claim in accordance with the provisions in the contract documents. Unless you choose to file a claim, we consider this issue closed and request that you perform the work per your contract obligations.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 55 When a subcontractor's interpretation of contract obligations differs from the general contractor's—follow-up letter with architect/engineer's response.

1. Break down labor costs, including the division of labor employed, i.e., laborer, mechanic, supervisor. The number of hours for each worker proposed should be listed along with the applicable hourly rate including fringe benefits. Quite often an owner will request additional labor rate breakdowns—the basic hourly rate plus a listing of each fringe benefit that all together equals the *burdened rate*. So the subcontractor preparing the estimate should be able to back up any detail of its published labor rate, if requested.

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>Please provide the necessary labor and materials to clean your work areas per the provisions of your subcontract agreement. We request that this work commence immediately upon receipt of this (letter, e-mail, fax).</p>	
<p>With best regards,</p> <p>Will Spencer Project Superintendent</p>	

Letter 56 First request to a subcontractor to clean work areas.

2. Cost of materials is documented with invoices reflecting the actual purchase of the material(s) or invoices for similar materials recently purchased.
3. Rental equipment can take two forms: equipment from a recognized rental company supplying these items or subcontractor-owned equipment that will be billed at competitive hourly or daily rental rates.
4. When equipment is purchased specifically for the change order work, the owner may request that the equipment be turned over to her or him when

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>In response to our repeated requests to clean your work areas, you now indicate that the trash remaining is that of another subcontractor.</p>	
<p>We are proceeding to engage forces to clean your work areas and charge your account for all associated costs. If you disclaim responsibility for the generation of debris and trash in your areas, it is up to you to resolve this matter with the subcontractor you say did deposit the trash. In no way does this relieve you of your cleaning responsibility.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 57 Responding to a letter in which a subcontractor claims trash was generated by another subcontractor.

the work has been put in place. Or the owner may require the contractor to issue a credit for the residual value of the equipment after the work for which it was purchased has been completed.

5. The small tool issue is often questioned by owners who see a dollar amount for “small tools” or a percentage of the total cost of work, less overhead and profit, included for this item. The subcontractor should offer an explanation

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>Attached are (plans, sketches, specifications, letters, etc.) for your review and pricing. Please submit your cost proposal in the following format:</p>	
<p> Labor: trade classification, hourly rate and number of hours</p>	
<p> Materials: list separately</p>	
<p> Equipment: rental rates as applicable — hourly, daily, weekly, monthly; if an operator is required, list separately per Labor above</p>	
<p>List any additional or miscellaneous costs separately, i.e., small tools, insurance, permits, etc. Attach proposals from subcontractors, if applicable. When estimates include adds and deducts, apply overhead and profit percentages on net amount. Refer to the contract documents for allowable overhead and profit percentages for your work and that of lower-tier subcontractors.</p>	
<p>Please respond not later than (date).</p>	
<p style="text-align: right;">With best regards,</p>	
<p style="text-align: right;">Will Spencer Project Superintendent</p>	

Letter 58 Requesting a cost proposal for change-order work.

for this small tool item if included in the quote, or at least be prepared to defend it, if and when questioned by the owner.

6. Last, but not least, the subcontractor's overhead and profit will be added to the costs. If the contract's general conditions or special conditions relating to change orders contain a limitation on second- and third-tier subcontractor fees, or contain a graduated fee structure based upon the value of the work, then these restrictions ought to be brought to the subcontractor's attention.

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>On (date) we sent you (plans, sketches, specifications, letters, etc.) relating to a proposed change in the work. We requested that you respond not later than (date); however, as of this date, we have not received your response.</p>	
<p>Please expedite this cost proposal to our office.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 59 Follow-up letter requesting cost proposal submission.

And remember, if the change requires adds and deducts, a full accounting of the deleted work must be included.

These procedures should be followed for all change order work. *View the change order preparation from the perspective of the person or organization receiving the proposal. "Is there enough background, documentation, and breakdown of costs included that I can intelligently review this proposal and fully understand the changes that will take place and their related costs?"*

Company Letterhead

Oriole Construction Company
566 Southway
Baltimore, Maryland 21200

The American Steel Company
855 Industrial Circle
Owings Mills, MD 21240

Re: Waterfall Plaza
Project No. 6444

Attention: Mr. Jim Beam

Dear Mr. Beam:

We submitted our proposed change order (if it has a number, include it) for (describe the work) to the architect (or engineer or owner), which included (dollar value of subcontractor's work as submitted in its cost proposal) pertaining to your work.

Upon review, the architect (or engineer or owner) questioned the cost of the work in your proposal.

Please provide further documentation justifying the costs and scope of work included in your proposal so that we may forward it to the architect (engineer or owner).

With best regards,

Will Spencer
Project Superintendent

Letter 60 When the architect/engineer questions a subcontractor's costs.

Requests by the general contractor

There are at least two reasons why a general contractor will want to consider issuing a change order to the subcontractor or subcontractors:

1. To include items of work previously omitted from the subcontract agreement by either design or error.
2. To incorporate additional work activities into the subcontractor's scope of work to effect better coordination or single-point responsibility. Examples

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We are in receipt of your current application for payment in the amount of (\$\$\$\$\$) covering the period (whatever the period is). This requisition cannot be processed since you did not include lien waivers for your second-tier (or third-tier or both) subcontractors. At your option, you may deduct the amounts for these lower-tier subcontractors from your request for payment, or furnish the required lien waivers by (date).</p>	
<p>Any payment applications received after this date will be processed during the next pay period.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 61 When payment for lower-tier subcontractors is requested, but their lien waivers are not included.

could include adding wood blocking into the drywall subcontractor's work or including masonry waterproofing in the mason contractor's scope of work.

Once again, the project superintendent's input can be valuable in reviewing the subcontractor's proposal to comment on the reasonableness of the costs, the impact the added work will have on the schedule, and whether any work had been deleted for which no credits had been included in the proposal.

<p>Company Letterhead</p> <p><i>Oriole Construction Company</i> 566 Southway Baltimore, Maryland 21200</p>	
<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>Please be advised that all requests for payment must be received in our office not later than (date). Any requests received after that date may be delayed until the next requisition period. Please carefully review the requirements for all accompanying material such as (certified payroll, lien waivers, etc., or you can merely state, "Refer to the contract specifications to insure that all accompanying documentation is provided with your application for payment.").</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 62 Advising a subcontractor of the due date to apply for payment.

Requests by the subcontractor

Requests for change orders emanating from the subcontractor can encompass questions relating to his or her interpretation of the contract documents or the scope of work presented and negotiated into the subcontract agreement, or from damages, real or alleged, arising out of the general contractor's action or inactions.

In the first case, these requests for change orders relating to contract interpretation need to be passed through to the owner, and this may result in an increase in both the general contractor's and the subcontractor's scope of work. But when

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>Your current application for payment includes a request for payment for materials (or equipment) stored off-site. No such payment can be honored without a previous agreement with the architect (or owner). If you wish to requisition for off-site storage, you must comply with the following requirements:</p> <ul style="list-style-type: none"> Submit a request to do so and include a detailed description of the materials (or equipment). Provide insurance certificates including coverage for transport to the site. Supply a bill of sale that will transfer title to the owner upon payment. At the architect's option, storage in a bonded warehouse may be required. At the architect's option, reimbursement for all expenses involved in traveling to the site and inspection of the stored materials (or equipment) prior to payment may be required. 	
<p>If these conditions are met, and with the architect's prior approval, you may include off-site materials (or equipment) in your next application for payment.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 63 Responding to a subcontractor's request for payment for materials stored off-site.

the owner rejects any claim for extra work because of the architect's ruling in the matter, the general contractor and subcontractor need to discuss the matter to determine if they wish to pursue the issue further or withdraw their request.

Subcontractor claims for extra work where there is no owner reimbursement

When the scope of work in the subcontract agreement is not fully defined, it can often lead to a claim for extra work that cannot be passed on to the owner. A

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p> <p>During review of your current application for payment dated (date) in the amount of (\$\$\$\$\$), the architect requested (select one of the following: additional documentation to support the value of your work in place, or additional documentation to support the value of materials stored on-site, or additional documentation to support the value of materials stored off-site).</p> <p>The architect, however, has rejected the amount of your requisition as submitted and reduced the value to (\$\$\$\$\$). If you disagree with this revaluation, we will arrange a meeting with the architect to discuss the matter more fully.</p>	
<p>With best regards,</p> <p>Will Spencer Project Superintendent</p>	

Letter 64 Architect doesn't agree with a subcontractor's requisition amount.

subcontract agreement solely defining the scope of work as *per plans and specifications* is ripe for disagreements to occur. Some subcontractors dismiss the *intent* of the contract and rely on the strict language of the plans and specifications to request extras. For example, the hardware specification section requires the subcontractor to install hardware on all interior and exterior doors. However, the specific hardware set for the aluminum entry doors is listed in another specification section, say, storefront work. Is the subcontractor entitled to an "extra" to install this hardware by stating that these items were not included in the finish hardware specification section? Some specifications sections include a

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We have received your current application for payment in the amount of (\$\$\$\$\$) covering the period (date to date, month, etc.). The processing of this requisition cannot be completed until a lien waiver for the previous pay period is submitted. Upon receipt of this lien waiver we will continue processing your application for payment.</p>	
<p><i>Note: When second- and third-tier subcontractors have been engaged by the prime subcontractor, all waivers will be required and you should so state in your letter.</i></p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 65 Requesting lien waiver from subcontractor.

paragraph entitled *Related Work*, and these types of disagreements may often be settled if such a paragraph was included in either specification section. By the strict interpretation of the subcontract agreement that references the hardware specification section but not the storefront specification section, they may have a point. But why wasn't the issue raised when they were awarded the contract? Does it seem unreasonable to hold the subcontractor responsible for this work? Many of these types of disagreements can be approached by using the argument of "reasonableness."

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<p>The American Steel Company 855 Industrial Circle Owings Mills, MD 21240</p>	<p>Re: Waterfall Plaza Project No. 6444</p>
<p>Attention: Mr. Jim Beam</p>	
<p>Dear Mr. Beam:</p>	
<p>We have been advised by (name of person at subcontractor's office) that unless you receive payment on your current requisition by (date) you will substantially reduce your manpower (or pull all workers off the project).</p>	
<p>Please refer to your subcontract agreement, and particularly to the "pay when paid clause." As of this date we have not received payment from the owner and therefore cannot remit payment to you.</p>	
<p>We remind you that any action to reduce or remove manpower from the project at this time is a direct violation of your contract obligations and will be dealt with accordingly.</p>	
<p>With best regards,</p>	
<p>Will Spencer Project Superintendent</p>	

Letter 66 Responding to a subcontractor's threat to reduce manpower unless paid.

Time and Material Work—Pitfalls to Avoid

Time and material work is often the method of choice when you decide to proceed with some types of "extra" work. In many cases this type of authorization is considered the most equitable way to proceed with work in an emergency or when exact costs are difficult to determine beforehand. But in other cases, time and material work becomes the basis for arguments that escalate into disputes and claims. When what is more familiarly referred to as *T&M work* proceeds with

established controls are in place, few problems occur. When controls are lacking, problems surface.

Control over T&M work involves the following:

1. *Documentation of all labor expended.* This is accomplished by having the subcontractor or vendor prepare daily labor tickets for verification by the contractor's on-site representative or the superintendent. Verification is to confirm the number of hours worked and the number of workers. The actual work performed that day, written right on the ticket, may prove to be invaluable when the scope of work is in question.
2. *Prior knowledge and agreement of the labor rates.* The subcontractor or vendor should be requested to submit a breakdown of labor costs for each type of tradesman to be used in the T&M work. Figure 6-9 is an example of a complete hourly labor rate that includes all costs and overhead and profit percentages.
3. *An agreed upon percentage for overhead and profit.* This should have been either previously established by negotiation with the subcontractor/vendor or included in the contract or specifications. If no specific percentage has been established, do so as the first cost proposal is being prepared, because this will serve as the precedence for all future change order work.
4. *Procedure for verifying materials used or equipment rented or leased.* Receiving tickets for materials, signed by the authorized subcontractor representative, is generally sufficient to satisfy the materials issue, but costs for equipment rentals may be somewhat vague. If the subcontractor is using her or his own equipment, it is important to verify hours in use. The "cost" of the rental equipment can be resolved if both parties agree that the hourly rate of any subcontractor- or contractor-owned equipment will not exceed the rental rates of an equipment rental company. Prior agreement to rates when the equipment is "idle," i.e., not working while stationed on the T&M project, can be established. This will generally apply only to rather large pieces of equipment such as bulldozers, backhoes, excavators, compactors, hoists, and cranes.

A daily ticket checklist

1. Require the subcontractor to submit the daily T&M by the close of business each day, so the work can be reviewed and verified while fresh in everyone's mind.
2. Each ticket should be reviewed for correct data:
 - a. Personnel are identified and applicable hours assigned.
 - b. Equipment is identified—statement as to active or idle time is ascertained.
 - c. Materials are itemized. If receiving tickets are available, attach a copy.
3. Description of work completed or in progress is noted on the T&M ticket. If area on site or in the building is easily definable, include the location.

BREAKDOWN OF HOURLY RATES			
Worker's Title:	LABORER	MA DRILLING JOBS	
	Straight Time	1½-Time Premium	Double-Time Premium
Base Wage Rate	23.35	11.68	23.35
FICA 7.65%	1.79	0.89	1.79
FUTA .80%	0.19	0.09	0.19
SUTA 7.42%	1.73	0.87	1.73
Gen. Liability	1.03		
Workers' Comp.	2.63		
Welfare Fund	3.50		
Pension Fund	6.90		
Apprentice Fund	0.35		
Vacation Fund			
Ed. & Cult. Fund	0.95		
Deferred Income Fund			
Paid Holidays			
Bond Premium			
Incidentals			
Other: Umbrella	0.57		
Subtotal	42.99	13.53	27.06
Overhead and Profit (10%) + (5%)	6.66	2.10	4.19
Total	49.65	15.62	31.25

Figure 6-9 Complete hourly rate for laborer breakdown.

4. On all accepted tickets, indicate acceptance. On all rejected tickets, indicate the reason for rejection along with a request to void or resubmit ASAP.
5. On all tickets where disagreement exists, note the area of disagreement and write *Disputed* on the ticket. Note the area of disagreement: personnel, hours, equipment, idle and active hours, materials, quantities, costs, portion of “contract” work included on T&M ticket.
6. Meet with the project manager promptly to resolve any disagreements.

The superintendent's limited authority to approve T&M work

If the subcontractor is required to do work that may or may not be clearly defined as an extra but is proceeding with T&M work, what is your company's policy with respect to authorization to proceed? Generally this decision is arrived at in consultation with the project manager.

The project manager and the project superintendent should come to an agreement on the procedure to follow when engaging in time and material work:

1. The subcontract agreement is to be reviewed to determine whether any unit prices exist that could apply to the work being considered. If so, some or all portions of the proposed T&M work will not apply, but unit prices will be used.
2. Review the intended work with the subcontractor to determine if a lump-sum agreement can be reached as it applies to the work under consideration, eliminating the need to proceed on a T&M basis.
3. If time and material is the only equitable method to be used to accomplish the planned work, establish the ground rules for its implementation. What costs will be included and what costs will not? Subcontractors often want to include supervision costs or project manager costs. Will these costs be acceptable to the owner, who may disallow any on-site supervision costs, stating that this activity is included in the general contractor's overhead percentage?
4. Any tickets prepared by the subcontractor must be explicit enough to define the work being pursued, the number of workers employed, their status (foreman, laborer, trades person) and the hours each devoted to the work at hand. The project superintendent should establish the procedure with the subcontractor to verify that workers listed on the ticket were actually engaged in the T&M work and not "contract" work.
5. The material tickets presented for the T&M work must also be explicit, identifying the product and where it was incorporated into the work. A clear distinction must be made as to the limits of the superintendent's authority when signing daily work tickets and/or material and equipment tickets. Does the signature acknowledge only that the work was performed? If that is the case, each ticket signed by the superintendent should contain the following caveat: "The undersigned verifies only that the work contained in this ticket has been performed, but does not establish or infer any contractual obligation." A stamp can be made containing specific language addressing the definition of a superintendent's authority, or lack thereof, when signing a T&M ticket by referring to Fig. 6-6.

The project manager can resolve this matter of scope responsibility with the subcontractor within the overall context of the subcontract agreement.

Extra work often requires additional time to complete that work, time that may extend the contract completion date. The T&M process should make clear

whether the contract time has been affected. Does it remain the same, is it decreased, or is it increased?

Limiting exposure to damages for delay claims

There are actually two types of damages that can be created by delays in the project: direct losses and consequential damages. Direct losses or costs include such items as extended office trailer rental, additional salaries paid to on-site staff, increased ongoing utility costs, and other similar time-related costs. Consequential damages are not so clearly defined and are more subjective, but could include extended corporate costs—accounting, legal, and office administrative expenses required to continue servicing the extended project. Claims for damages for delays may be presented by the subcontractor when he or she is of the opinion that extra costs other than direct costs are being incurred or will be incurred because of delays created by the general contractor for which the subcontractor was not responsible. These would probably fall into the consequential damages category. As discussed previously, if there is a “no damages for delays” provision in the subcontract agreement, the subcontractor is contractually blocked from instituting such a claim. If no such protective clause has been included in that agreement, there may be some way in which the delay for damages claim can be presented, if the facts do justify that action.

The superintendent should never agree with the subcontractor that the subcontractor is being delayed in the performance of the work, or else the superintendent will be quoted later on as having agreed to these delays. All such claims by the subcontractor should be forwarded to the office so that the project manager can formulate a response. There is more on this subject in the chapter on disputes and claims.

When the Contract Is a Cost Plus or a Cost Plus with a GMP

When the agreement between an owner and the general contractor is either a cost plus or a guaranteed maximum price (GMP) contract, the article in that contract pertaining to cost of the work may include language on reimbursable costs such as “The Contractor will be reimbursed for all costs *actually incurred*.” This provision, in effect, affords an owner or their architect, when presented with a change order request to question any and all costs in that proposed change order.

Another contract provision may read:

Owner will pay contractor workmen wages plus documentable payroll burden, cost of materials plus freight and rental costs of materials.

One of the most important tasks that a project superintendent and their project manager faces is establishing and maintaining creditability in the eyes of the owner.

Too many times, an owner, on reviewing a cost proposal with obvious errors will grouse, “They (the contractor) never even looked at this cost proposal, they just passed through what the subcontractor submitted.”

Creditability damaged is difficult to repair.

Reviewing hourly rates

Some owner’s will express “sticker shock” when presented with a T&M ticket containing labor rates in the \$80.00 to \$100.00 per hour range and an astute project superintendent and their project manager need to be prepared to defend these rates.

One approach is to send a blank labor rate sheet such as the one in Fig. 6.10 to each subcontractor as the beginning of the project, have them complete it so that it can be reviewed by the project super and project manager, make all necessary adjustments, obtain the subcontractor’s approval, and then send them on to the owner/architect. This will establish the baseline for all labor rates and reduce, if not eliminate, any question about the cost of labor that may arise later in the project.

When the superintendent and project manager review these labor rates, there are some things to look out for:

- Small tools add-on. Is this really a legitimate cost or merely a way to increase the subcontractor’s OH&P? And some subs go so far as increasing their small tool add-on by 1¹/₂ times for time and one-half work!
- Travel time—an hourly add-on that may be justified, but does it seem reasonable? When a worker works an extra hour or two beyond their normal 8 hour day, why should those extra hours include an additional amount for travel?
- When collective bargaining agreements are in effect, the fringe benefit labor add-on may take two forms; one set of costs included in that union agreement and another set of costs incurred by the company such as FICA, worker’s compensation, and others. Do those “others” seem appropriate and reasonable?
- Some other fringe benefits may not increase when overtime wage rates apply and any questionable ones ought to be resolved before passing them on to the owner.

The unemployment tax question

On each labor breakdown there will be an entry, with an hourly cost, for FUTA and SUTA—Federal Unemployment Tax and State Unemployment Tax. The application of these taxes are a little more subtle.

These taxes are paid by an employer based on hourly wages of each employee up to certain wage limits or levels. Although the FUTA tax is uniform across the country, each state does set its own rates and limits on taxes set aside for the state unemployment fund. But when these wage levels or limits have been

Labor Rate Breakdown

Subcontractor: _____ **Project:** _____
Submitted by: _____ **Location:** _____
Address: _____
Date: _____
Craft(s): _____
Level: _____ (Journeyman, Foreman, etc.)

	Straight Time	Time and One-Half	Double Time
Basic hourly wage			
FICA			
FUTA			
SUTA			
General liability insurance		N/A+	N/A
Worker compensation		N/A	N/A
Welfare fund		N/A	N/A
Pension fund		N/A	N/A
Apprentice fund		N/A	N/A
Vacation fund		N/A	N/A
Education fund		N/A	N/A
Paid holidays & number		N/A	N/A
Travel pay		N/A	N/A
Truck allowance		N/A	N/A
Small tools*	N/A	N/A	N/A
Other			
Subtotal:			
OH&P-	_____	_____	_____
Total hourly rate:	_____	_____	_____

+ N/A denotes no increase in related fringes when applied against 1½ and double time rates and after statutory limits have been reached
 *Small tools is considered overhead and is not to be included as a wage add-on.

Figure 6-10 Blank labor rate sheet.

reached, these adds onto the hourly rate are no longer valid, and when T&M work is performed, the wage rates should not include these additional costs. As an example, the FUTA rate is 0.8 percent and is paid on only the first \$7000 of wages in a calendar year. In the Commonwealth of Massachusetts, their SUTA tax is paid up to the first \$10,800 in wages in a calendar year. Assuming a laborer’s hourly wage is \$26.00 per hour or \$1040 per week, after seven weeks their FUTA limits will have been reached and after 10½ weeks their SUTA limits

will have been reached. So if this employee is a full-time employee and they are engaged in T&M work, say in March, these FUTA/SUTA add-ons should not appear in their hourly wage rate costs.

Establishing some ground rules for T&M work

The development of what may be called a Protocol for Change Orders, T&M and Premium Time Work presented to subcontractors at the beginning of a project and, better yet, included in their subcontract agreement as an exhibit, will establish the ground rules for any extra work.

Protocol for change order, T&M, premium work

Change orders

1. Each proposed change order is to contain a brief explanation of the nature of the change and who initiated it (owner/architect/general contractor/subcontractor). Attach all supporting documents, letter requesting change, revised drawing, ASI etc.
2. If scope of work has increased or decreased, state prior condition and proposed condition, i.e., Drawing A-5 contained 50 lf of Type A railing, ASI#22 changed this to 75 lf- an increase of 25 lf (or decreased to 30 lf, a credit of 20 lf is due.)
3. All submitted costs to be broken down into labor (hours \times rate), materials (number or lineal or square feet whichever is applicable.) These labor/material costs should not include OH&P which is to be added to the total cost of the proposal as a separate line item.
4. Equipment—indicate whether contractor owned or rented. If owned, rates should not be higher than third party rental rates. List number of hours in operation, cost per hour. Rates charged for equipment often change depending upon actual time in usage. Subcontractor to verify.

For example, if operated for more than 4 hours, the daily rate applies, not the hourly one. If operated for more than three days, the weekly rate shall apply and if operated for more than three weeks, the monthly rate shall apply

For time and material work. Follow procedures above for change order work plus:

1. Subcontractor to present daily tickets to project superintendent to include worker's trade category, number of hours worked, task performed, materials used. Signature of the project superintendent or their representative is to verify time only and not verification of costs.
2. Receiving tickets for all materials are to be attached to the daily report.
3. Receiving ticket for rental equipment to be attached to the daily ticket and when the rental equipment is returned, that return ticket is to be attached to the corresponding daily ticket.

For premium time work. Follow appropriate procedures above plus:

1. Include reason for premium time work (approved by general contractor or owner, protect newly installed work when sudden inclement weather descends, other reasons that may justify these added costs)

It is also important to include in this protocol another statement regarding the project superintendent's authority to sign T&M tickets.

The contractor's field representatives are not authorized to bind the contractor to pay subcontractor for any additional compensation. The contractor's field representatives, by signing any extra work tickets, verify solely that the work had been performed.

Third-Party Subcontractors and the Lien Waiver Problem

The project superintendent needs to be aware of every subcontractor working on the site. Often subcontractors will employ other subcontractors (referred to as second-tier or even third-tier subcontractors) to perform various specialized work on the project. The most common situation involves an HVAC subcontractor hiring an insulation contractor, or an air and balancing subcontractor or even a firm that fabricates the metal ductwork. It is important for the superintendent to be advised of these hires for any number of reasons—safety and security, to name just two. But there is also another important reason, and it involves the lien waiver process.

Subcontractors are generally required to submit a lien waiver along with their payment application request, signifying that monies previously received were used to pay for all labor, materials, and equipment employed during that period covered by that prior payment. If the subcontractor had engaged another subcontractor (a second-tier subcontractor) during the previous pay period, a lien waiver from this second-tier subcontractor should also be submitted—but quite often this is not done. If, at a later date, this second-tier subcontractor provides evidence of not having been paid, she or he can place a lien against the property, requiring the general contractor to satisfy (pay) the amount of the lien. If the general contractor cannot backcharge the prime subcontractor for the cost of removing the lien and must pay this lower-tier subcontractor, the GC will have, in effect, paid twice for the same work—once when the subcontractor requested payment, received payment, but did not honor the second-tier subcontractor's invoice, and payment a second time to remove the lien.

A provision inserted in the subcontract agreement can alleviate this situation to a degree, if enforced. The subcontractor can be required to notify, and obtain approval from, the general contractor for any lower-tier subcontractors the subcontractor intends to employ.

The subcontractor shall not subcontract or delegate all or any portion of its work nor shall it assign any amounts due or to become due or any other claim or right

arising in connection with this Subcontract Agreement without the prior written consent of the Contractor. In the event consent is granted to the Subcontractor to delegate or further subcontract any portion of its obligations hereunder, the subcontractor shall require that such delegatee or subcontractor bind itself to the terms of the Contract Documents insofar as they pertain to its work and subcontractor shall remain fully responsible for all work performed by its Subcontractors.

Subcontractors do not often notify the general contractor either verbally or in writing when they hire a lower-tier subcontractor, so it is important for the project superintendent, walking the job daily, to note any unfamiliar faces and determine to which subcontractor they are assigned.

Damage to the Subcontractor's Work or Damage to Work of Others by the Subcontractor

How many times has one subcontractor damaged the work of another, claiming it was necessary to do so, but denied responsibility to repair the damage? This often occurs when one subcontractor must penetrate a block wall or a drywall partition to install the work. The penetration can be performed neatly or without any regard to the work already in place. Arguments then arise about the extent of cutting required and who should be responsible for patching. A provision in the subcontract agreement directing the subcontractor to protect his or her work and be responsible to repair the work damaged by other subcontractors will be helpful. Such a provision would be similar to the following:

The Subcontractor is responsible for the protection of the subcontract work, including all materials contained therein or stored at the Project site until final completion and acceptance thereof by the Owner. The Contractor shall not be responsible for damages to the Subcontractor's work caused by other subcontractors. The Subcontractor warrants and guarantees the workmanship and materials covered by this Subcontract Agreement and agrees to make good, at its own expense and at the convenience of the Owner, any defect in material or workmanship which may occur or develop prior to the Contractor's release from responsibility to the Owner.

The subcontractor quality control process

Quality control as it relates to the subcontractor begins with the subcontractor's *knowing the job*. What administrative responsibilities are assumed by the subcontractor and what are required of the general contractor relating to such quality items as inspections and testing? What installation procedures and quality control measures are included in the subcontractor's work in question? A quick reading of the subcontract agreement will define the basic parameters of the subcontractor's obligations to the general contractor as they relate to performance and the plans and specifications. Taking note of any exceptions or qualification to the scope of work as defined by the plans and specifications is certainly

a start to understanding what obligations the subcontractor has undertaken. Were there any addenda or bulletins issued that affect the subcontractor's work, and are they included in the subcontract agreement?

A review of the specification section or sections covered in the agreement is the next step in defining the subcontractor's responsibilities.

We know that the phrase *plans and specifications* is not always all-inclusive, so a review of each contract drawing with the appropriate subcontractor is one way to determine whether both parties agree on what is included what is not included, and what requires further investigation.

The weekly subcontractor meeting

Some companies require the project superintendent to hold weekly or biweekly subcontractor meetings while other companies assign this task to the project manager. These meetings are important for a number of reasons:

1. They introduce the subcontractor team members to one another and define the responsibility of each team member.
2. They provide a forum for construction schedule reviews and updates and a method by which to document subcontractor performance commitments.
3. They address field-related issues that affect one or more subcontractors.
4. They disseminate information received from the owner, architect, engineer, or general contractor.
5. Safety concerns can be addressed, and the meeting offers a place where accident investigations can be reviewed.
6. Materials, equipment schedules, and deliveries can be reviewed and addressed along with other site logistics concerns.
7. Specific problems involving one or more subcontractors can be aired and resolved.

Preparing Meaningful Meeting Minutes

Accurate meeting minutes are an essential element of every subcontractor meeting. Meeting minutes can be extremely helpful in providing additional documentation to prepare or defend against potential disputes and claims. Timely dissemination of these meeting minutes is also important. Meeting minutes are divided into four basic components:

- List of attendees
- Old business—review of topics discussed at the previous meeting
- New business—new items or topics initiated at the current meeting
- Closing statement of writer's interpretation of events that transpired and the date and time for the next scheduled meeting

Key elements of any set of meeting minutes will include the following topics:

1. After the first meeting, establish a time and date for the next meeting or meetings. The specifications may require biweekly meetings, but confirmation of the actual time and date of the subsequent meeting still needs to be listed.
2. List all persons attending the meeting; their company affiliation, position, phone/fax number, or email address. This can be accomplished by distributing a sign-in sheet at the start of each meeting.
3. Review important documents.
 - a. The construction schedule and a two-week look-ahead schedule. Each affected subcontractor should be prepared to participate in this discussion, and her or his remarks and response noted in the minutes.
 - b. The shop drawing submittal schedule.
 - c. The delivery schedule for materials and equipment that have been approved by the architect and engineer.
 - d. Issuance of change orders or proposed or impending change orders.
 - e. Review of outstanding Requests for Information (RFIs) or Requests for Clarification (RFCs).
4. Old business—a review of topics discussed at the previous meeting but not concluded at that time.
5. New business—any new items of discussion.
6. A closing statement requiring that any objection to the writer's interpretation of the meeting's content be submitted in writing within a certain time period.

During the course of the meeting, various individuals or companies will be asked to perform certain tasks or to commit to certain schedule requirements. These commitments must be documented in the meeting minutes so that it is very clear which party assumed responsibility for the specific event and the time frame in which this event is to be concluded. For every action item or event, the responsible individual or company must be listed. As an example, let's look at one event presented in a vague manner and the same event presented in very specific fashion:

Indecisive. The concrete slab in the hallway is to be flash-patched prior to the installation of carpet.

Specific action. Concrete subcontractor is to flash-patch corridor 105 in a manner acceptable to the flooring contractor, not later than September 14, 2003.

There will be no further need to send a letter unless the subcontractor fails to perform this work and another subcontractor is to be engaged to do the work.

The meeting minutes should be prepared as quickly as possible and distributed to all attendees promptly. Other interested subcontractors or individuals who receive informational copies should be included on the distribution list. A sample meeting minute format is shown in Fig. 5-5.

Backcharges—The Right and Wrong Ways to Deal with Them

Backcharges can originate due to a subcontractor's failure to perform specific items of work in a timely manner, or from his or her refusal to perform what is considered "contract" work, or when the subcontractor damages the work of other subcontractors and fails to make the necessary repairs. In either case, prompt verbal and written notification will avoid the many disputes over the justification and legitimacy of the general contractor's backcharge.

How many times have you heard this? "Why didn't you tell me it was important for me to clean up my area on the third floor by Friday? If I had known it was that important, I would have brought in some laborers to do so. I don't think this cleaning backcharge is proper." Or, "What damage to the drywall in room 105? My guys weren't even in that room on Monday." And there is always, "That's not my stuff in that trash pile, so I'm not going to accept a backcharge for cleaning."

A backcharge should not be considered in a situation where prior notice to correct was not presented to the subcontractor. The backcharge should be administered only after one or more efforts to have the subcontractor remedy the problem have been ignored. These prior notices could have been verbal, but written documentation will provide the superintendent with more ammunition should a backcharge be decided upon.

Then and only then should the superintendent notify the subcontractor's supervisor on the job site that a backcharge will be forthcoming, stating the reason why and even advising the subcontractor how the remedial or repair work will be handled. For example, "Because you failed to repair the damage (be specific about the type and location of the damage) I'm going to perform the work with my company's own forces on Saturday at overtime rates," or "I'm having the drywall subcontractor repair the wall you damaged." Whichever method is used, the superintendent should send a note to the project manager, advising of the decision to proceed with the remedial work. When the work has been completed, a detailed labor and material cost report or an extra work ticket signed by the superintendent should be forwarded to the office. The nature of the work and why it was required will be helpful in forcing the charge back to the subcontractor. Developing a team approach laced with a little bit of give and take is an effective, harmonious, and productive way to work with subcontractors. But when the team approach fails, knowing when to invoke those provisions of the subcontract agreement that afford control and promptly issuing the proper notices are often the only avenue open to the project superintendent.

Reviewing The Subcontractor's Requisition

When requested to review a subcontractor's monthly application for payment there are a number of things to consider:

- Has the amount of work indicated on the subcontractor's requisition been completed as of the date of that requisition?

It may be difficult to determine percentage complete for some trades without a detailed breakdown of their estimate, and each trade's requisition should be reviewed before their first submission to determine it, additional detail must be added to allow for a review of their work on a monthly basis. This detailed schedule of values will benefit both subcontractor and general contractor, not to mention the owner's architect who also will inspect for work completed.

- Is all of the work acceptable or is a portion rejected and therefore the amount of one or more trade items need to be reduced? Have any notices been sent out to the subcontractor rejecting work that failed to meet quality standards? If so, the subcontractor should be notified that their payment request will be reduced by "X" dollars.
- Are there change orders included in the subcontractor's requisition, and, if so, have these change orders been approved by the general contractor so that payment can be honored?
- If the request includes materials or equipment stored on site, are those materials or is the equipment stored properly and inspected for damage? A quick site walk should uncover any damaged or poorly stored materials, and, in the case of the latter, the subcontractor can be directed to correct the problem by the end of the day, or early next day, or else their request for payment will be reduced accordingly.
- Are there any pending backcharges that may impact the amount being requested by the subcontractor? As we discussed previously, there are right and wrong ways to approach a backcharge and when it comes to reducing a subcontractor's payment, the project superintendent must be on firm ground.
- Are there any second- or third-tier subcontractors working on the project whose work is included in the prime subcontractor's payment request, and, if so, are their lien waivers attached to the prime's? Although the prime subcontractor may have their own lien waiver attached to their request for payment, any of their second- or third-tier subcontractors working on the site during the current pay period request must be identified to determine whether they, too, must provide lien waivers. (If this is their first period of work, they will not need lien waivers.)
- Are there requests for payment for off-site stored materials or equipment? If that is the case, approval becomes more complicated and we need to discuss the procedures that will accompany such a request a little further.

Subcontractor's request for payment for off-site storage of materials

Most contracts between owner and general contractor include a pass-through provision, whereby its provisions trickle down, or pass through to the general contractor's subcontract agreements. The owner/general contractor contract will generally stipulate that a contractor, and therefore subcontractor, cannot include payment for off-site storage of materials without the owner's consent. The language of this provision basically states that:

Progress payment shall include . . . materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the owner), suitably stored off the site at a location agreed upon in writing.

The concerns of an owner regarding payment for materials and equipment stored off-site are:

- Are the materials and/or equipment *actually* stored off-site and do they meet the approval of the architect/engineer?
- Are the materials and/or equipment stored in a secured area to prevent theft or damage?
- Are the materials and/or equipment insured against loss by fire or theft, and does this insurance cover the transportation to the site?
- When payment is made to the vendor or subcontractor, will title pass to the owner?

When a subcontractor requests payment for materials stored off-site, the project superintendent or project manager should alert the subcontractor to put this request in writing, stating the material/equipment involved, where it is stored, the value of the equipment and the reason for requesting payment.

Some typical reasons for requesting payment for off-site storage are:

- The long lead time for delivery of such material/equipment requires early purchase so it would be available when required and the project will benefit by having the equipment ready at hand. On-site storage may subject the material/equipment to damage or theft, that's why it is stored off-site.
- The material/equipment is being produced out of the country and delays in transportation may not allow for "just-in-time" delivery.
- The material/equipment is required before installation to ensure proper coordination with other components.

This request for off-site stored material/equipment payment should be passed on to the owner with the assurance that the proper documents will accompany the actual request for payment, if granted by the owner.

The three necessary documents are:

1. The bailment agreement—the document stating the nature of the items stored off-site, where it is to be stored and the "bailee's" (the vendor or subcontractor) agreement to be responsible for its storage (see Fig. 6.11a).
2. A bill of sale indicating that title will pass to the owner upon receipt of payment by the vendor or subcontractor (see Fig. 6.11b).
3. A copy of an insurance certificate indicating not only insurance during storage but insurance coverage during shipment to the construction site.

BAILMENT AGREEMENT for Off-Site Storage

THIS BAILMENT AGREEMENT entered into on _____ (date) between _____ (Contractor), _____ (address) and _____ (subcontractor) _____ (address)

1. General Conditions:

(Contractor) and (Subcontractor) hereafter referred to as Bailee have entered into this Agreement to have the Bailee hold (Contractor's) property for the purpose of construction in accordance with the requirements of the Bailee's subcontract agreement dated (date) for the project known as (project name and location).

All services performed by the Bailee under this agreement shall be in the capacity of an independent contractor and not as an agent.

2. Items to be Stored:

Bailee will hold for (Contractor) as stored items, those items indicated on the attached schedule of the Bill of Sale purchased by the Bailee on (Contractor's) behalf pursuant to the specifications in the subcontractor's agreement dated (date).

Bailee will be responsible for the security and condition of the stored items until they have been delivered to the project and have been inspected and accepted in accordance with the subcontract agreement dated (date).

3. Manner of Storage:

Bailee will hold the stored items at the following premises (name warehouse or location), located at (street and city, state address) in the manner specifically stated below. (Contractor) or owner's representative retain the option to periodically inspect the stored items to insure that the manner of storage complies with the requirements as indicated below. (Contractor) or owner's representative will not be required to give Bailee any notice of the inspection and Bailee agrees to permit immediate entry into the premises for inspections during normal working hours.

(Insert here any special storage requirement, i.e., conditioned air, storage on pallets, not to be stacked, etc.)

4. Insurance:

Bailee shall bear all risk of loss with respect to the stored items for the duration of the Agreement. Bailee to provide (Contractor) with a Certificate of Insurance certifying that Bailee's All Risk insurance covers the stored items to their full invoiced value wherever located until the items become subject to the Project's All risk or other insurance policies.

5. Entire Contract:

This Agreement complements the subcontract agreement dated (date) and may not be changed, modified or discharged except by written instrument, duly executed by each party.

6. Governing Law:

This Agreement shall be governed by the law of the State of _____

IN WITNESS WHEREOF, this Agreement has been executed on _____ (day) _____ (Month)

ATTEST

Contractor
By: _____

BY:

Vendor/Subcontractor
By: _____

.....

Figure 6-11a A typical bailment agreement: for off-site storage.

BILL OF SALE OF PERSONAL PROPERTY

KNOW ALL MEN BY THESE PRESENTS THAT, _____

(Vendor/Subcontractor) for, and in consideration of the sum of \$ _____ and other goods and valuable consideration, upon receipt of payment of which the Undersigned ("Seller") does by these present GRANT, BARGAIN AND SELL into (Contractor) ("Purchaser"), the goods and chattels located at (place where stored-street, city, state address) as described in Schedule "A" attached hereto and by this reference, made a part of hereof the Property.

IN CONSIDERATION OF THE FOREGOING AND THE COVENANTS HEREIN CONTAINED, SELLER AGREES AS FOLLOWS:

- 1. Seller does hereby covenant and warrant to the Purchaser that Seller is the lawful owner of the Property; that the Property is free from all liens and claims whatsoever; that Seller has good right to sell the same; that Seller will warrant and defend same against the claims and demands of all persons.
- 2. Seller will provide safe and proper storage for the Property and will cause to be placed conspicuously and securely on the Property a sign or signs which will show that the Property is the property of the Purchaser.
- 3. The Property shall be held at Seller's risk and shall be kept insured against fire, theft and all other hazards by Seller at Seller's expense while in its custody or control in an amount equal; to the replacement cost thereof, with loss payable to the Purchaser. Copies of insurance certificates evidencing such insurance are to be furnished to the Purchaser.
- 4. The Purchaser shall have the right to inspect the Property at any time during normal business working hours at the storage facility of the Seller. The failure to inspect shall not be deemed a waiver of any of the rights of the Purchaser, and if the Property is found to be defective, in materials or workmanship, stolen or lost, in whole or in part, the Seller shall replace the same at its own cost.
- 5. The Property shall be subject to removal by Purchaser at any time upon Purchaser's instructions.
- 6. Seller does hereby warrant to Purchaser that value of the property described herein is \$ _____

FURTHER- IN WITNESS WHEREOF, The undersigned has set his hand on

This _____ (day) of _____ (Month)

SELLER: _____

Title _____

WITNESS: _____

State of: _____

County of: _____

(To be notarized by a Notary Public)

Figure 6-11b A typical bailment agreement: bill of sale of personal property.

The importance of recognizing second- and third-tier subcontractors

It is important to know exactly who is working on your job site and prime subcontractors frequently hire other subs, second- or third-tier, to contribute to their overall scope of work. An HVAC subcontractor may subcontract ductwork fabrication, insulation, air and liquid balancing, and low voltage control wiring. Prime subcontractors often neglect to advise the general contractor when contracting with these other specialty trades. The project superintendent needs to know the identity and whereabouts of all companies working on the site for any number of reasons, safety is one, security is another, and lien waiver requirements is a third.

Although a prime subcontractor may submit their interim lien waivers with each monthly request for payment and submit a final lien waiver with their final payment request, they also need waivers from any second- or third-tier subcontractor working for them on the construction site. This protects the general contractor from claims of nonpayment by these lower-tier subs. Even though the prime subcontractor has received payment in full, any lower-tier subcontractors that have not been paid in full may lien the project for nonpayment.

The project superintendent must stress the need to be apprised of any specialty contractors hired by the prime subcontractor, and this can be a standard topic of discussion at each subcontractor meeting.

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End of Lesson Wrap-Up

Congratulations on completing this lesson! You've taken another important step in your journey to becoming a certified professional in the construction industry.

Up Next: Quiz Time

Before we move forward, there's a short quiz waiting for you. Remember, this quiz isn't designed to trip you up but to reinforce your understanding of the concepts we've covered. It's a way to ensure that you have grasped the essential elements of the lesson and are ready to build on this knowledge in subsequent modules.

You're Doing Great!

You're doing an excellent job so far, and we encourage you to keep up the momentum. Every quiz and lesson is a building block towards your ultimate goal of certification and professional advancement.

See You in the Next Lesson!

We are excited to continue this journey with you and look forward to seeing you in the next lesson. Keep up the great work and stay motivated—your future in construction management looks promising!

Keep learning, keep growing, and remember, we are here to support you every step of the way. See you soon for more learning and development

Contact Information:

Construction Management Certification

Website: www.ConstructionManagementCertification.com

Email: support@ConstructionManagementCertification.com