



Austin Commercial

SURE PROGRAM AND SUBCONTRACTOR DEFAULT GUIDE

June 2009

SURE PROGRAM

SUBCONTRACTOR DEFAULT GUIDE

This notebook is a resource providing information to use to assist in preventing a subcontractor default, and/or deal effectively with controlling financial exposure if a default occurs.

Part A of the notebook provides information related to default prevention. Sometimes events take place that are out of our control, but the majority of the time, selecting a qualified subcontractor, monitoring the jobs progress, and being alert to problems, can decrease the chance of a subcontractor default. **Catching problems early and communicating the issue(s) are key to handling a potential default.**

Part B of the notebook provides information on how to manage a situation that is headed in the wrong direction. If a default occurs, knowing who to notify at Austin, taking the right steps contractually, and knowing what documentation is required by Zurich to document a Subguard Default Claim is essential to control cost and protect project schedule.

All documentation for the SURE Program is available on the intranet site; select Austin Commercial, Risk Management, SURE. Additionally, the SURE Program and subcontractor default is addressed in TQM².

The Risk Management Department is always available to provide assistance. The email address for the SURE Program is rms@austin-ind.com

SURE PROGRAM
SUBCONTRACTOR DEFAULT GUIDE
TABLE OF CONTENTS

PART A: PREVENTATIVE

CONTRACTOR DEFAULT LEADING INDICATORS

- › Underwriting Phase
- › Bid Phase
- › Construction Phase

STANDARD OPERATING PROCEDURES

PART B: CLAIMS

- › Potential Default Notification
- › Checklist for Sub Default
- › Letter Examples
 - Failure to Perform
 - Declaration of Default
 - Termination of Subcontract
- Documenting a Subguard Claim
 - › Claims Table of Contents
 - Narrative Describing Circumstances of Default
 - Notice of Default
 - Complete Cost Reconciliation of Claim
 - Copy of Defaulted Subcontractor's Executed Subcontract
 - Labor Costs
 - Material Costs
 - Equipment Costs

- Subcontractors
- Legal
- Unpaid Vendors
- Indirect Costs

The leading causes of contractor failure have been consistent over the past 35 years. According to a recent review of claims cases by the Surety & Fidelity Association of America, the five leading causes of contractor failure include:

- › unrealistic growth
- › performance issues
- › character issues
- › accounting issues
- › management issues

Certainly there are other issues such as material price increases , owner's inability to pay or overall economic decline but each of these are much farther down the list of common causes of failure.

There are "red flags" or leading indicators of subcontractor default to be aware of. These indicators are summarized in the following three phases:

- › **underwriting phase** (performed by risk management): these leading indicators are relevant to pre-qualifying a subcontractor to bid on a particular scope of work.
- › **bid phase**: be aware of these leading indicators when making the decision of which subcontractor to hire.
- › **construction phase**: be aware of these leading indicators when monitoring the performance of subcontractors that have been awarded the work.

Leading indicators do not necessarily produce a default. Awareness of these indicators is meant to identify potential problems so these can be dealt with quickly, if not avoided entirely. Problems are more likely if there are multiple indicators present or they occur frequently.

LEADING INDICATORS

- **UNDERWRITING PHASE (performed by risk management)**
 - lack of integrity
 - lack of business / management skills
 - inadequate accounting systems
 - lack of continuity plan
 - deterioration of financials
 - negative d & b report (payment history)
 - change in bank and/or quality and health of bank deteriorating
 - exhausting bank line of credit
 - bank taking greater security for loans or line of credit
 - deterioration in working capital and/or cash flow
 - slow turnover of receivables
 - deteriorating profit margins or the existence of losses
 - deterioration in pay record reflected in references and credit reports
 - vendors demanding cash on delivery for supplies and materials
 - deterioration of reputation for performance-time-budget
 - change in ownership and/or reorganization of company
 - surety relationship not in good standing
 - any change in surety, including from a standard to non-standard bonding company
 - fast growth and rapid expansion in terms of program size and annual volume (expansion greater than 50% is considered rapid)
 - undertaking individual projects of greater size (more than two times) and complexity than those previously completed
 - undertaking a different type of work than previously experienced
 - geographic expansion whether it is one large job or multiple small jobs
 - becoming involved in unrelated ventures such as real estate development or manufacturing
 - significant amount of work with questionable owners/general contractors
 - litigation with owners/general contractors
 - significant amount of un-resolved claims
 - problem projects

LEADING INDICATORS

▪ BID PHASE

- substantial spread between subcontractor's price and the next several bidders (>25%)
- project is of greater size (>2X and complexity) than those previously completed
- different type of work than previously experienced
- work is outside its normal geographic area
- response to rfp is unsophisticated, demonstrates lack of understanding of project and/or demonstrates lack of administrative organization
- scope of work is significantly different from other bidders
- schedule of values and quantities are not in line with next several bidders
- quality of named major suppliers and lower tier subcontractors is less than acceptable
- inordinate and/or unusual qualifications
- material substitutions
- questionable means/methods

LEADING INDICATORS

▪ CONSTRUCTION PHASE

- lack of quality personnel
- a change in management or ownership, including the incapacitation of key owners/officers
- **breakdown in communication at any level**
 - doesn't return (or consistently late) calls or emails
 - missed meetings
 - consistently blames others
- overall decline in performance in both field operations and project management
 - project manager/superintendent turnover
 - consistently working overtime to maintain schedule
 - transferring craft workers off the project
 - equipment leaving project early
- difficulties in manning project and/or slips in schedules occur
- submittals and request for information not timely
- change order pricing is unreasonable and not timely
- deteriorating safety performance
- quality of work is unacceptable, has to be removed and replaced
- over-billings on pay requests
- the appearance of disputes, liens, claims and other such legal actions
- lack of contingency plan for unforeseen events
- negative comments from the field

STANDARD OPERATING PROCEDURES

▪ **MAKE RESPONSIBLE BUYING DECISIONS:**

- › without an acceptable clarification, do not award to a subcontractor:
 - with a substantial bid spread (>25%) and scope delta.
 - undertaking individual projects of greater size (more than two times and complexity) than those previously completed.
 - undertaking a different type of work than previously experienced.
 - that is working outside of its normal geographic area.

▪ **REVIEW MONTHLY PAY APPLICATIONS:**

- › certify that billings are in line with percentage complete (**including cost to complete**) and consistent with field inspections, so that over-billings do not occur.
- › verify that stored materials are being inspected (**properly tagged and photoed**).
- › confirm that suppliers and lower tier subcontractors are being **paid timely**.

▪ **INSPECT QUALITY OF SUBCONTRACTOR'S WORK:**

- › confirm submittal of shop drawings is timely.
- › attend job site progress meetings.
- › review qa/qc inspections & reports.
- › review testing agency inspection reports.
- › review architect/engineer field reports.
- › review contractor's daily construction reports.
- › request information from field personnel, superintendents, and engineers, regarding any problems observed with performance, quality of work, manpower, or delivery of supplies.
- › inspect mock-ups for compliance and quality
- › confirm work is consistent with plans and specifications.
- › confirm submittal of change order request pricing is timely.
- › verify that schedules are being met.
- › determine extent of punch list items, and that they are addressed timely.

The SURE Program **Potential Default Notification - Form 1500** notifies Risk Management that a subcontractor may be defaulted and provides a summary of the events. This sets in motion the steps detailed in the next section, Checklist for Subcontractor Default.

This form should be submitted as soon as it is determined a subcontractor may be placed in default. It is not necessary to have placed the subcontractor in default prior to submitting the form.



Austin Commercial

Potential Default Notification

Please fill in form and hit "Submit" button at bottom to send to Austin Risk Management Group.

Form 1500

Project #

Subcontractor Name

Orig. Subcontract Date

WIP Percentage Complete %

***Description of Issue/Problem

*****Include remedial actions being taken: Austin's exposure, PM's recommendations, etc.**

Outstanding Liens and/or Intents? Yes No

Potential Magnitude of Loss \$

On Critical Path? Yes No

Completed By

Date

Phone

Submit Form

The SURE Program **Checklist for Subcontractor Default - Form 1510a** explains the procedure to follow once Risk Management has received the Potential Default Notification form.

Risk Management and the Project Staff will coordinate developing an action plan for managing the situation.

SUBCONTRACTOR UNDERWRITING RISK EVALUATION

CHECKLIST FOR SUBCONTRACTOR DEFAULT

Form 1510a

Following is a checklist to follow in the event a subcontractor is to be placed in default:

- Project Staff submits to Risk Management - *Potential Default Notification Form 1500*. This form may be submitted as soon as it is determined there may be a default.
- Upon receipt of the form, Risk Management will contact accounting to hold all payments on all projects.
- Risk Management will set up a status meeting with
 - Regional Project Manager
 - Senior Project Manager
 - Austin Industries Law Department
 - Accounting
 - Risk Management
- Risk Management and the Project Staff will develop a plan of action. The Project Staff should be prepared to discuss the following details:
 - What happened
 - Correspondence with subcontractor
 - Status
 - Austin's exposure
 - Subcontract amount, including change orders executed/incurred
 - Amount paid
 - Retainage
 - Amount owed
 - subcontractor
 - lower tier subs and suppliers
 - outstanding liens
 - Cost to complete the work
 - Recommendation for replacement subcontractor
 - Schedule impact
 - Project Manager's recommendation
- Risk Management will notify Willis & Zurich
 - Initial notification
 - Status reports

This section includes examples of **letters** to be issued to a subcontractor when conditions of the subcontract are not being met. Review the subcontract terms when it's determined you may need to default a subcontractor.

- › **Failure to Perform**
 - Document the results of the 48-hour 'cure period'
- › **Declaration of Default**
- › **Termination of Subcontract**

The Austin Law Department and Risk Management Department should be copied on all of these letters. Additionally, if the subcontract is bonded, the surety should be copied as well.

FAILURE TO PERFORM

<Date>

<Name of Subcontractor>

Attn: <Contact Name>

<Subcontractor Address>

< Subcontractor City, State Zip>

Reference: <Project Name>

Per Article 19 of your Subcontract Agreement dated <date of subcontract> with Austin Commercial, L.P. on the above referenced Project, this letter is to inform you that you have failed to perform the following obligation(s) of the Subcontract Agreement:

<list all deficiencies>

Austin Commercial L.P. requests that the above item(s) is/are cured within forty-eight (48) hours from the date of this letter. If the above item(s) is/are not cured within the said forty-eight (48) hours, Austin Commercial L.P. will begin to exercise its rights under Article 19 of the Subcontract Agreement and cure the above item(s) and/or, at Austin Commercial L.P.'s option, terminate the Subcontract Agreement. All payments and expenses as a result of <Name of Subcontractor>'s failure to perform will be allocated as outlined in the Subcontract Agreement.

Hopefully, this matter can be amicably resolved without delay. Thank you for your prompt attention to this matter. Your cooperation is greatly appreciated.

Yours very truly,

<Name of Austin Commercial Employee-Owner>

Austin Commercial L.P.

send certified mail/return receipt requested

CC: Austin Risk Management Group
Austin Law Department
Subcontractor's Surety (**if bonded**)

DECLARATION OF DEFAULT

<Date>

<Name of Subcontractor>

Attn: <Contact Name>

<Subcontractor Address>

<Subcontractor City, State Zip>

Reference: <Name of Project>

Per Article 19 of your Subcontract Agreement dated <date of subcontract> with Austin Commercial L.P. on the above referenced project, this letter is to notify <Name of Subcontractor> that <Name of Subcontractor> has failed within the 48 hour remedy period to perform the following obligation(s) under the Subcontract Agreement and is hereby declared in default:

<list all deficiencies>

Austin Commercial L.P. will begin to cure the above item(s) and make good any deficiencies. All payments and expenses, including, but not limited to, compensation for the Architect/Engineer's, Owner's, and Contractor's additional services made necessary by such default, neglect or failure to perform, will be deducted from payments due the Subcontractor. If the expenses incurred by the Contractor exceed the unpaid balance, Subcontractor shall pay the difference to Contractor, along with any other damages incurred by Contractor as a result of Subcontractor's default.

Yours very truly,

<Name of Austin Commercial Employee-Owner>

Austin Commercial L.P.

send certified mail/return receipt requested

CC: Austin Risk Management Group
Austin Law Department
Subcontractor's Surety **(if bonded)**

TERMINATION OF SUBCONTRACT

<Date>

<Name of Subcontractor>

Attn: <Contact Name>

<Subcontractor Address>

<Subcontractor City, State Zip>

Reference: <Project Name>

<Scope of Work>

On <date>, ACLP gave you written notice to commence and/or continue correction of the <type of work> on the above noted project, a copy is attached for reference. Your failure to commence/correct the work is delaying the project and constitutes a default under your Subcontract Agreement. Pursuant to Article 19.A of the Subcontract Agreement, this letter is to inform you that as of 12:00pm, CST on <date> your Subcontract Agreement was terminated due to your default and consistent failure and refusal to perform. We are undertaking to complete your work and will charge your account for all costs we have incurred, and will incur, because of your default.

Yours very truly,

Austin Commercial, L.P.

<Name of Austin Commercial Employee-Owner>

<Title>

send certified mail/return receipt requested

CC: Austin Risk Management Group
Austin Law Department
Subcontractor's Surety **(if bonded)**

The goal of documenting a Subguard claim is to clearly set forth the costs incurred and paid due to the default of a subcontractor who is enrolled in the Subguard Program.

Subguard indemnifies Austin for all covered costs associated with a default that have been incurred and paid by Austin. As soon as a claim situation occurs, set up a new cost code to collect all costs associated with finishing the subcontractor /supplier's scope of work. This becomes a good reference for ensuring we have gathered all incurred costs. In order to document the costs, the following items must be provided as they apply to the actual costs incurred by Austin as a direct result of the subcontractor's default.

The accuracy and thoroughness of the information provided will assist Zurich in the timely evaluation of Austin's claim and payment of our losses. If you have additional information or documentation of costs not itemized in this manual that you believe to be incurred as a result of the subcontractor default, please include it with your submission of proof of loss along with a narrative stating why these costs should be included. Zurich will review these costs with the evaluation of the claim. **Keep in mind that in all cases you must identify the cost incurred, how it relates to the default, and proof the costs were incurred.**

In some cases, you may be asked to provide additional information to clarify questions through the submission of a "Request for Information" (RFI) authored by the reviewing Zurich risk engineer.

SUBGUARD CLAIM

TABLE OF CONTENTS

NARRATIVE DESCRIBING CIRCUMSTANCES OF DEFAULT

NOTICE OF DEFAULT

- › Other relative correspondence to and from defaulted sub
- › Lien notices or other litigation documents from defaulted sub, including bankruptcy, complaints, suits, etc.
- › Brief narrative of financial condition of defaulted subcontractor
- › Prequalification documentation completed on defaulted subcontractor
- › Listing of other client projects with defaulted sub

COMPLETE COST RECONCILIATION OF CLAIM (INCLUDING ALL COSTS)

- › Reconcile defaulted subcontractor's subcontract to available balance
 - Original completion costs
 - Original subcontract value
 - Include change orders (both additive and deductive)
 - Deduct amount paid defaulting subcontractor
 - Additional completion costs
 - Deduct itemized labor costs
 - Deduct itemized material costs
 - Deduct itemized equipment and/or tool costs
 - Deduct replacement subcontractor's costs
 - Deduct legal expenses
 - Deduct unpaid vendors
 - Deduct indirect costs
 - Total claim amount

COPY OF DEFAULTED SUBCONTRACTOR'S EXECUTED SUBCONTRACT

- › Executed change orders
- › Unexecuted change orders
- › Outstanding requests for a change order or claims made by defaulted subcontractor
- › Defaulted subcontractor's progress billings with front and back of cancelled checks attached to each paid billing

LABOR COSTS

- › Narrative identifying employee(s) and explaining their participation in subcontractor's default
 - Detailed and contemporaneous daily timesheets for each employee's time
 - Accounting records/payroll reports showing actual labor rate and burden for each employee involved
 - Spreadsheet of hours, rate and total cost per employee
 - Proof that relative and as-planned labor budget for general conditions was exceeded due to the default

MATERIAL COSTS

- › Narrative tying costs to defaulted subcontractor's contract
- › Copy of invoices
- › Front and back of cancelled checks attached to appropriate invoice

EQUIPMENT COSTS

- › Rental Tools and Equipment
 - Narrative tying tools and equipment to defaulted subcontractor
 - Invoices for equipment (include monthly and final rental tickets where applicable)
 - Front and back of cancelled checks attached to appropriate invoice
- › Purchased Tools and Equipment
 - Narrative tying tools and equipment to defaulted subcontractor
 - Appropriate invoices
 - Front and back of cancelled checks attached to appropriate invoices

- Current disposition of purchased tools and equipment

SUBCONTRACTORS

- › Copy of executed subcontract agreements for replacement subcontractor(s)
- › Executed change orders issued to replacement subcontractor(s)
- › Replacement subcontractor pay applications
- › Front and back of cancelled checks attached to appropriate pay apps
- › Acceleration and/or recovery costs

LEGAL

- › Narrative tying legal costs to defaulted subcontractor
- › Invoices
- › Front and back of cancelled checks attached to appropriate invoices

UNPAID VENDORS

- › Narrative tying vendor costs to defaulted subcontractor
- › Invoices
- › Front and back of cancelled checks attached to appropriate invoices
- › Lien notices or notarized sworn statements for amounts owed

INDIRECT COSTS

- › Narrative describing how the subcontractor's default caused the delay
- › Contemporaneous as-planned approved project schedule
- › Schedule clearly identifies critical path, float and activity codes
- › Contemporaneous monthly updates
- › Critical path segment detailing default impact
- › Contemporaneous predecessor/successor reports
- › Monthly project reports
- › Associated delay claim and costs documented per above
- › Acceptable documentation to provide if contemporaneous cpm schedules not used on the project

NARRATIVE DESCRIBING CIRCUMSTANCES OF DEFAULT

- Provide a written narrative of the default including what happened before and after the default. Identify the defaulted subcontractor's scope of work, and provide a description of the work completed and work remaining at the time of default. Reference to supporting documents will help clarify the claim.

NOTICE OF DEFAULT

- Provide a copy of the written notice of default sent to the subcontractor and a copy of the termination notice, if applicable. Provide copies of the entire subcontract file, including correspondence, change orders and documentation supporting those change orders. This should include all correspondence to and from the subcontractor. Submittals and other similar data are not required unless they apply specifically to the facts of the default.
- Provide lien notices or other litigation documents from the defaulted subcontractor, including complaints, suits, demands for arbitration, etc.
- Provide a brief narrative explaining the current financial condition of the defaulting subcontractor. Include any information you have regarding bankruptcy filings if applicable.
- Provide all prequalification documentation that was completed on this subcontractor. Include bid scope cards and bid tabulation spreadsheets for all original bids for the defaulted subcontractor's scope of work.
- Provide a listing of all other Austin projects that you have active subcontracts with the defaulting subcontractor. Include copies of the relative subcontracts and current contact information for each project.

COMPLETE COST RECONCILIATION OF CLAIM

- Prepare and provide a spreadsheet arranged similarly to the claim reconciliation, sample subguard claim summary, included in this document. Please transmit this spreadsheet electronically and as part of the proof of loss documentation. Also, please make every effort to organize the proof of loss documentation in accordance with the "Table of Contents".

- The claim reconciliation should itemize each cost element as follows:
 - › Original Completion Costs
 - Original Subcontract Value
 - Change Orders (both additive and deductive)
 - Deduct Amount paid to defaulted Subcontractor
 - › Additional Completion Costs
 - Deduct Itemized Labor Costs
 - Deduct Itemized Material Costs
 - Deduct Itemized Equipment and/or Tool Costs
 - Deduct Replacement Subcontractor's Costs
 - Deduct Legal Expenses
 - Deduct Unpaid Vendors
 - Deduct Indirect Costs
 - › Total Claim Amount

SAMPLE SUBGUARD CLAIM SUMMARY

ORIGINAL COMPLETION COSTS	Submitted	Check Numbers
Original Subcontract	\$ 500,000	
Executed Change Orders	\$ 60,000	
CO 1	\$ 45,000	
CO 2	\$ 15,000	
Pending Change Orders	-----	
Revised Subcontract	\$ 560,000	
Paid to Subcontractor	\$ (390,000)	
Pay App 1	\$ 150,000	123789
Pay App 2	\$ 200,000	124876
Pay App 3	\$ 40,000	125243
Available Contract Balance	\$ 170,000	
ADDITIONAL COMPLETION COSTS		
Labor	\$ (100,000)	
Able Body Temps	\$ 75,000	143243
Direct Labor	\$ 25,000	Payroll
Material	\$ (35,000)	
Supply House	\$ 20,000	145078
Material Mart	\$ 10,000	145876
House of Screws	\$ 5,000	143098
Equipment	\$ (10,000)	
Rental Center	\$ 10,000	146987
Subcontractors	\$ (150,000)	
Replacement Sub A	\$ 90,000	147567
Replacement Sub B	\$ 60,000	148328
Legal	\$ (20,000)	
Dewey, Fleecem & Howe	\$ 20,000	149382
Unpaid Vendors	\$ (35,500)	
Moon Supply	\$ 25,000	150945
Plains Rental Center	\$ 10,500	151234
Indirects	\$ (56,500)	
Acceleration	\$ 11,500	
LD's	\$ 45,000	
TOTAL CLAIM AMOUNT	\$ (237,000)	

COPY OF DEFAULTED SUBCONTRACTOR'S EXECUTED SUBCONTRACT

- Provide a copy of the entire executed subcontract agreement for the defaulting subcontractor. Include boilerplate and scope of work for the defaulting subcontractor. Also, include all executed and pending change orders. An unsigned "file copy" is not sufficient for executed change orders. Include any unexecuted change orders, outstanding requests for change orders or claims made by the defaulting subcontractor
- Provide the defaulting subcontractor's progress billings with the corresponding front and back of each cancelled check attached to each paid billing. This should include copies of the approved progress payment requests, including the complete schedule of values and pay application continuation sheet (G703), conditional and unconditional, partial and/or full releases of lien.

LABOR COSTS

- If any of the defaulting subcontractor's work is self-performed, or if additional staff labor is incurred and caused by the default, an accounting of those costs must be included. For all staff hourly and salary labor costs claimed, the Insured must submit copies of detailed and contemporaneous, daily timesheets. These timesheets will outline the number of hours expended for each employee, on a daily basis, with a description of actual work performed, for each day. Timesheets that are simply cost coded without a daily detailed description of work performed are not acceptable.
- In addition, Austin must submit accounting records/payroll reports that show the employees hourly pay rate and proof of payment for the amounts claimed. This information must itemize the costs included in the hourly pay rate. Therefore, Austin must detail on a per hour basis the cost of burden, taxes and insurance, exclusive of profit, unpaid overtime, and/or "billable" mark-ups. These charges should also be summarized in a spreadsheet that totals the actual hours, rate and total cost per employee.
- For Austin labor to manage work within the defaulted subcontractor scope, Austin must submit proof that they have exceeded the as planned and relative budget of their general conditions due to the default. The typical proof would be an as-planned general conditions ledger for the project and corresponding (contemporaneous) updates. If Austin has a general conditions ledger that is detailed enough, in its labor budget, to budget for an individual trade (associated with the defaulted subcontractor), then Austin must demonstrate that the general conditions labor budget for that specific trade was exceeded due to the default.

MATERIAL COSTS

- Provide a written description/narrative stating how the material costs relate to the defaulting subcontractor's scope of work.

- Provide a copy of all invoices with the front and back of the corresponding cancelled checks attached to the appropriate invoice.

EQUIPMENT COSTS

- Rental Tools and Equipment
 - › Provide a written description/narrative stating how the tools and equipment costs relate to the defaulting subcontractor's scope of work.
 - › Provide copies of invoices (include monthly and final rental tickets where applicable) with copies of the front and back of cancelled checks attached to the corresponding invoice.

- Purchased Tools and Equipment
 - › Provide a written description/narrative stating how the tools and equipment costs relate to the defaulting subcontractor's scope of work.
 - › Provide copies of invoices with copies of the front and back of cancelled checks attached to the corresponding invoice.
 - › Provide the current disposition of the purchased tools and equipment.

SUBCONTRACTORS

- Provide copies of all executed subcontract agreements for subcontractors retained by you to complete the defaulting subcontractor's scope of work. Include boilerplate, scope of work and if necessary, identify the portions of the replacement subcontracts that are attributable to the defaulting subcontractor's scope of work. Also include all executed change orders and a narrative to explain how each change order is the responsibility of the defaulting subcontractor's scope of work.

- Provide all replacement subcontractor progress billings with the front and back of the appropriate cancelled checks attached to each paid billing. This should include copies of the approved progress payment requests, including the complete schedule of values, pay application continuation sheet (G703), conditional and unconditional, partial and/or full releases of lien.

- Acceleration and/or recovery (hereinafter referred to as "premium time") costs submitted as a part of the replacement subcontractor(s) costs may require an additional proof of loss. If the replacement subcontract's change orders include premium time cost which differs from the terms of the defaulted subcontract the submission should separately report the premium portion of the costs and the specific dates of occurrence for the premium time. If the premium time is minimal, occurred without routine or frequency, and can be considered "spot overtime", provide the documentation that can support such a position. If the replacement subcontractor overtime is due strictly to corrective work, provide the schedule documentation that includes the relative "corrective work" fragnets demonstrating the impact on and subsequent recovery to the project end date, because of the necessary corrective work and its necessary use of premium time. If the corrective work is performed intermittently on premium time to avoid interference with other trades or to avoid impeding the replacement subcontractors other work in progress, or to minimize impacting tenant occupancy and schedule fragnets were not incorporated into the contemporaneous CPM schedule updates, provide other appropriate documentation that can support these circumstances. Please note that corrective work for "resultant damages" due the default may be recoverable under "other collectible insurance" and Austin must timely pursue these other recoveries wherever and whenever possible. Documentation for the need to work premium time for corrective/defective work costs should include but are not limited to manpower evaluations, correspondence, meeting minutes, change orders, proposals,

defective work punch lists, non-conformance logs, etc. If the extent of the premium time and the dates of occurrence, are contiguous or occurred with regular frequency, and/or the relative cost is a significant portion of the replacement subcontractors' costs; it is necessary to submit a schedule delay analysis (similar to the proof of loss requirements listed for indirect costs in this document). This analysis must demonstrate that the submitted replacement subcontractor(s) premium time is caused by the default, and not by other concurrent or non-concurrent (non-default), delaying events/causes. Most importantly, provide critical path subnets for the as-planned schedule, updated schedule(s) and as-built schedule, with start/finish dates, original, remaining and actual durations, corresponding float, activity id, responsibility and/or descriptions. The periods of replacement subcontractor premium time should be plotted (manually) along these subnets, so that it can be readily seen as to which activities were driving the project critical path at time of (the premium time) occurrence(s).

LEGAL

- Provide invoices from any legal firm employed by you to handle any legal issues attributable to the defaulting subcontractor. Invoices should specifically refer to the defaulting subcontractor and identify the services provided, time spent and hourly rate charged. If necessary, provide a narrative that ties the legal costs to the defaulting subcontractor. Provide copies of the front and back of the appropriate cancelled check attached to the corresponding invoice.

UNPAID VENDORS

- When lien claimants or other unpaid subcontractors or suppliers are paid, provide copies of invoices and the front and back of the appropriate cancelled check attached to the corresponding invoice. Include proof of payment and a narrative that ties each vendor payment to the defaulting subcontractor's scope of work.

- Provide copies of invoices, lien notices, and/or notarized sworn statements for amounts owed. provide copies of the front and back of cancelled checks attached to appropriate invoices.

INDIRECT COSTS (per the subguard policy definition)

- If any costs are incurred and claimed for acceleration, liquidated damages and/or extended overhead, the following documentation should be included with your proof of loss:
- Provide a detailed narrative describing how the subcontractor's default caused the delay. Include in the narrative, specific references to the appropriate schedule activities, including activity numbers, impacted by the subcontractor default and provide a calculation of number of days of delay attributable to default and to each and any other cause.
- Provide the original and contemporaneous as-planned/approved project master schedule, for all activities with critical path, float and activity numbers clearly identified. Provide colored hard copies as well as electronic copies of the schedule.
- Provide the contemporaneous monthly schedule updates for all activities with the critical path, float and activity codes clearly identified. Provide colored hard copies as well as electronic copies of the schedule updates.
- Provide critical path subnets for as planned, updates and as-built schedule with start/finish dates; original, remaining and actual durations; float, activity id, responsibility and descriptions identified.
- Provide copies of the contemporaneous predecessor/successor (text) reports for the original baseline and all update schedules. If it will help to explain the delay, provide extracts (fragments) from the schedule updates reflecting the activities of the defaulting subcontractor and those project activities impacted by the default of the subcontractor. Provide extracts of the schedule showing the activity sequence and/or duration that had to be adjusted as result of the work subcontractor default.
- Provide copies of monthly project (and daily if applicable) reports to support the actual sequence of events.
- Provide proof of loss for all associated delay claim costs, including contemporaneous timesheets, invoices, certified payrolls, canceled checks, etc similar to the proof of loss requirements discussed above for labor, material and equipment.

- If in the event contemporaneous cpm schedules were not used on the project, provide a narrative and calculation of days of delay attributable to the default and others, including the dates/durations of all impacts (i.e. Owner, other trades, weather, concurrent delays, etc.). Include a graphical (summary bar chart) representation of the critical activities "as-planned" and "actual" durations and sequences. The periods of any impacted sub acceleration should be plotted along the "actual" bars, so that the relationship to specific activity durations can be derived. To support the purported dates/durations of delay provide (and cross reference) the contemporaneous documents that can substantiate each date and duration used in the analysis (i.e. "look ahead documents", letters, notices, meeting minutes, change orders, daily reports, superintendent logs, etc.).

1. SURE Survey

1. Please answer the following:

Project Number

2. FIELD OPERATIONS SURVEY

1. Has there been a change in management or ownership?

Yes

No

Comments

2. Is there a breakdown in communications at any level?

*** doesn't return (or consistently late) calls or emails**

*** missed meetings**

*** consistently blames others**

Yes

No

Comments

3. Is there a lack of quality personnel assigned to project?

Yes

No

Comments

4. Is the performance in the field operations declining and/or unacceptable?

*** superintendent turnover**

*** consistently working overtime to maintain schedule**

*** transferring craft workers off the project**

*** equipment leaving project early**

Yes

No

Comments

5. Is the performance in the project management declining and/or unacceptable?

*** project management turnover**

Yes

No

Comments

6. Does subcontractor have difficulty manning the project?

Yes

No

Comments

7. Is the schedule slipping?

Yes

No

Comments

8. Are submittals consistently late?

Yes

No

Comments

9. Are requests for information consistently late?

Yes

No

Comments

10. Is change order pricing unreasonable?

Yes

No

Comments

11. Is safety performance declining and/or unacceptable?

*** incidents are increasing**

*** severity of incidents are increasing**

*** at risk conditions are increasing**

*** at risk conditions are not promptly corrected**

Yes

No

Comments

12. Is the quality of work declining and/or unacceptable?

*** work not consistent with mock-ups**

*** work not consistent with plans and specifications**

Yes

No

Comments

13. Are billings out of line with percentage complete (including cost to complete) and inconsistent with field inspection?

Yes

No

Comments

14. Are there any negative comments coming from the field?

Yes

No

Comments

15. Is stored material, if any, tagged and/or photoed?

Yes

No

Comments

16. Are suppliers and lower tier subcontractors being paid timely?

Yes

No

Comments

17. Does Subcontractor have a contingency plan when faced with unforeseen events?

Yes

No

Comments

3. FINISH

Thank you for taking our survey.