

WORKING AS A *FEDERAL* SUBCONTRACTOR

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Contractor



Sub-Contractor



A QUANTA SERVICES COMPANY

PART 1

Mona Carlson, Nova Contracts Manager

CONTRACTOR VS. SUBCONTRACTOR: WHAT'S THE DIFFERENCE?



- ✓ Subcontractor is a contractual term, defining legal relationship
- ✓ Contractors/vendors/suppliers generally with a specific area of expertise employed by the Prime Contractor to perform a portion of the prime contract work
- ✓ Still, an independent contractor responsible for and liable for all licenses, permits, insurances, taxes, etc., required to perform their service
- ✓ Defines/limits chain of command
- ✓ No “privity of contract” with the owner; and yet is intended to be bound to the same terms and conditions

Contracts are promises enforceable by law

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Contract: An agreement between private parties creating mutual obligations enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality. In some states, element of consideration can be satisfied by a valid substitute. Possible remedies for breach of contract include general damages, consequential damages, reliance damages, and specific performance.

Federal Contracts

FAR 2.1 – Definitions

Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, **are in writing**.



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FEDERAL CONTRACTS

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FAR 52.244-2- Subcontracts

Subcontract means **any contract**, as defined in FAR subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.



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- ✓ Subcontractors
(performing physical work on site)
- ✓ Service Providers
(performing professional services – testing, layout, design, etc.)
- ✓ Suppliers (Vendors)
(providing supplies, material, equipment, rentals, etc.)
- ✓ Consultants
- ✓ Others
(shipping, delivery, etc.)

- Subcontracts
 - Long Form
 - Short Form
 - Services
- Purchase Orders (COTS)
- Purchase Agreements (Custom Order)
- Trucking/Shipping Agreements
- Equipment Rental Agreements
- Disposal

❑ Subcontracts

- ❑ Long Form – *Construction, work on site, work incorporated into project, higher dollar value, stricter terms and conditions, bonding, liability insurance, warranty, higher risk for both contractor and subcontractor, regulatory oversight (DOL, OSHA, EPA, etc.), paid when paid by owner (accepted) . . .*
- ❑ Short Form – *Construction, work on site, work incorporated into project, lower dollar value, relaxed terms and conditions, work on site, insurance, warranty, minimal risk for both contractor and subcontractor, paid when paid by owner (accepted) . . .*
- ❑ Services – *Professional services, work on site or off site, work in not incorporated into the project, Service Contract Act, generally NET 30 payment, generally Not-to-Exceed (NTE) orders with unit prices . . .*
- ❑ Purchase Orders (COTS) – *Commercial Off the Shelf products, standard stock, unit priced, returnable/restock, generally NET 30 payment, could be NTE or defined, taxed separately, . . .*
- ❑ Purchase Agreements (Custom Order) – *built to order, generally not returnable, submittals/approvals, higher risk for liability, stricter terms, payment upon acceptance by owner, terms for non-compliant material/equipment, warranty . . .*
- ❑ Trucking/Shipping Agreements
- ❑ Equipment Rental Agreements
- ❑ Disposal

– no work on site, use vendor forms, licensed and insured for type of business, generally NTE, unit priced (includes all markups), paid on trip tickets or invoice



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TERMS & CONDITIONS



- ✓ Inclusions/Exclusions
- ✓ Scope of Work
- ✓ Payment/Invoice
- ✓ Delivery/Schedule
- ✓ Rights and Remedies
- ✓ Dispute Resolution
- ✓ Procedures for Breach
- ✓ Terminations/Cancellations
- ✓ Flow Down Requirements
- ✓ Federal Law & Regulation
- ✓ Social Economic Requirements
- ✓ Insurance
- ✓ Certifications
- ✓ Claims, Liens, Bonds
- ✓ Damages
- ✓ Warranties/Workmanship
- ✓ Labor/Employment
- ✓ Changes

Understand the terms and conditions before signing. Ask for exceptions when necessary

NOVA
GROUP INC.
Safety, Quality, & Innovation in Construction

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Incorporates Prime Contract

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THIS AGREEMENT (“Subcontract” or “Agreement”) is made January 1, 2022

James Construction (“Contractor”) entered into Contract No. N44255-21-C-0001 Convert Warehouse (“Contract” or “Prime Contract”) with Naval Facilities Engineering Command, NW (“Owner” or “Government”). That Contract and all plans, specifications, amendments, general, special and supplemental conditions, addenda and change orders thereto are incorporated by reference in this Subcontract. **That Contract, including all amendments and subsequent Contract modifications can be accessed at [«udContractDocs»](#).** Specifications which are incorporated by reference into the Contract are so incorporated by reference into this Subcontract.

Mitchel Plumbing (“Subcontractor”) desires to perform a part of the work specified in the Contract, and Contractor is willing to sublet that work to Subcontractor for the consideration and upon the terms and conditions set forth herein.

Subcontractor certifies that it is fully familiar with the terms and conditions of the Contract, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor.

Subcontractor is bound to the Contractor to the same extent that Contractor is bound to Owner under the Contract. Where, in the Contract, reference is made to Contractor and the work or specifications therein pertain to Subcontractor’s trade, craft, or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of Contractor.

Contractor and Subcontractor therefore agree as follows:



ALWAYS ask for a copy. Don't sign accepting any reference you have not been provided access to

Subcontractor's terms ??????

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SECTION 21 SUBCONTRACT TO PREVAIL

To the extent that any document **attached hereto and/or incorporated by reference herein** by Subcontractor whether the same by titled a proposal, quotation, addendum, attachment, exhibit, etc., is in conflict with the provisions of this Subcontract, all terms and conditions of this Subcontract shall prevail and the conflicting provisions of the attached and/or incorporated document shall be deemed of no force and effect.

Unless references or included, your quote/proposal is not part of the agreement!



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Subcontract Documents

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«FirmName»
Subcontract No.: «SL»



SUBCONTRACT AGREEMENT

| JOB NO.: «Project» | SUBCONTRACT NO. «SL» |
|---|---|
| Contractor: «OurCompany» | Subcontractor: «FirmName» |
| Business Address: 185 Devlin Road Napa, CA 94558 | Business Address: «CvrdMailAddress» «CvrdMailAddress2» |
| Contact Person: «ResponsibleFirstName» | «CvrdMailCity», «CvrdMailState» |
| «ResponsibleLastName» | «CvrdMailZip» |
| «ResponsibleTitle» | Contact Person: «ContactName» «ContactNo» |
| Telephone Number: «ResponsiblePhone» | Telephone Number: «FirmPhone» |
| Fax Number: «ResponsibleFax» | Fax Number: «Fax» |
| E-Mail: «ResponsibleEMail» | E-Mail: «EMail» |



SUBCONTRACT AGREEMENT (Services)

| JOB NO.: «Project» | SUBCONTRACT NO. «SL» |
|---|---|
| Contractor: «OurCompany» | Subcontractor: «FirmName» |
| Business Address: 185 Devlin Road Napa, CA 94558 | Business Address: «CvrdMailAddress» «CvrdMailAddress2» |
| Contact Person: «ResponsibleFirstName» | «CvrdMailCity», «CvrdMailState» |
| «ResponsibleLastName» | «CvrdMailZip» |
| «ResponsibleTitle» | Contact Person: «ContactName» «ContactNo» |
| Telephone Number: «ResponsiblePhone» | Telephone Number: «FirmPhone» |
| Fax Number: «ResponsibleFax» | Fax Number: «Fax» |
| E-Mail: «ResponsibleEMail» | E-Mail: «EMail» |

«FirmName»
Subcontract No.: «SL»

EXHIBIT SB TO THIS SUBCONTRACT AGREEMENT IS A CERTIFICATION OF THE SUBCONTRACTOR'S AND STATUS IN ACCORDANCE WITH THE SMALL BUSINESS ACT AND 13 C.F.R. PARTS 121-127. THIS CERTIFICATION MUST BE COMPLETED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE SUBCONTRACTOR AND RETURNED TO THE CONTRACTOR. FAILURE TO COMPLETE, SIGN, AND RETURN THIS DOCUMENT WILL PRECLUDE PROCESSING SUBCONTRACTOR'S REQUEST FOR PAYMENTS.

EXHIBIT SC TO THIS SUBCONTRACT AGREEMENT INCLUDES FEDERAL ACQUISITION REGULATIONS (FAR) RELATING TO IMMIGRATION, E-VERIFY REQUIREMENTS, BUSINESS ETHICS & COMPLIANCE, CERTIFICATIONS AND CLAIMS OR PROPOSALS, PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, AND CLEAN AIR AND WATER. SUBCONTRACTOR, BY SIGNING THIS AGREEMENT, HEREBY CERTIFIES PER THE INCLUDED PROVISIONS.

EXHIBIT SI TO THIS SUBCONTRACT AGREEMENT INCLUDES SUBCONTRACTOR INSURANCE REQUIREMENTS. BEFORE COMMENCING THE SUBCONTRACT WORK, AND AS A CONDITION OF PAYMENT, SUBCONTRACTOR SHALL PURCHASE AND MAINTAIN INSURANCE AS LISTED IN EXHIBIT

EXHIBIT FED TO THIS SUBCONTRACT AGREEMENT INCLUDES THE PROVISIONS OF THE FEDERAL ACQUISITION REGULATIONS (FAR) OR CODE OF FEDERAL REGULATIONS (CFR) WHICH ARE APPLICABLE TO THIS SUBCONTRACT IN ACCORDANCE WITH THE CONTRACT. THE SUBCONTRACTOR SHALL INCLUDE THESE CLAUSES IN ALL COVERED LOWER TIER SUBCONTRACTS AND PURCHASE ORDERS.

SECTION 1 ENTIRE CONTRACT

THIS AGREEMENT ("Subcontract" or "Agreement") is made «SubcontractDate».

«OurCompany» ("Contractor") entered into Contract No. «ProjectNo» «ProjectTitle», «ProjectLocation» ("Contract" or "Prime Contract") with «Agency», ("Owner" or "Government"). That Contract and all plans, specifications, amendments, general, special and supplemental conditions, addenda and change orders thereto incorporated by reference in this Subcontract. That Contract, including all amendments and subsequent Contract modifications can be accessed at «ContractDocs». Specifications which are incorporated by reference into this Contract are so incorporated by reference into this Subcontract.

«FirmName» ("Subcontractor") desires to perform a part of the work specified in the Contract, and Contractor is willing to submit that work to Subcontractor for the consideration and upon the terms and conditions set forth here

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[VENDOR NAME]
Agreement No. [AGREEMENT Number]

| PURCHASE ORDER FOR COMMODITY ITEMS ("Order") | |
|--|-------------|
| Order No: | PRCUI-000## |
| Order Date: | Order Date |

| CONTRACTOR | VENDOR |
|---|--|
| Contractor: «OurCompany» ("Contractor") | Vendor: «VendorName» ("Vendor") |
| Business Address: 185 Devlin Road Napa, CA 94558 | Business Address: «VendorAddress» «VendorCity, State & Zip» |
| Contact Person: «ProjectManagerName» | Contact Person: «PrimaryVendorContact» |
| Telephone Number: «ProjectManagerPhone» | Telephone Number: «VendorPhone» |
| Fax Number: 707.265.1199 | Fax Number: «VendorFax» |
| Email: «ProjectManagerEmail» | E-Mail: «VendorEmail» |

| | |
|---|--|
| END INVOICES TO: «OurCompany» 185 Devlin Road Napa, CA 94558 accounts@novagroup.com or Fax: (707)265-1199 | Payment: Net 30 days |
| | See Section 3. Include the Order number on all invoices. |

| | |
|---|--------------------|
| SHIP TO: [Location] [Delivery Address] [City, State, Zip] | Deliver by: [Date] |
| CALL 24 HOURS PRIOR TO DELIVERY | |

HIBT SB TO THIS PURCHASE ORDER IS A CERTIFICATION OF THE VENDOR'S SIZE AND STATUS IN ACCORDANCE WITH THE SMALL BUSINESS ACT AND 13 C.F.R. PARTS 121-127. THIS CERTIFICATION MUST BE COMPLETED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE VENDOR AND RETURNED TO THE CONTRACTOR. FAILURE TO COMPLETE, SIGN, AND RETURN THIS DOCUMENT WILL PRECLUDE PROCESSING VENDOR'S REQUEST FOR PAYMENTS.

HIBT SC TO THIS PURCHASE ORDER INCLUDES FEDERAL ACQUISITION REGULATIONS (FAR) RELATING TO IMMIGRATION, E-VERIFY REQUIREMENTS, BUSINESS ETHICS & COMPLIANCE, CERTIFICATIONS AND CLAIMS OR PROPOSALS, PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, AND CLEAN AIR AND WATER. VENDOR, BY SIGNING THIS AGREEMENT, HEREBY CERTIFIES PER THE UNINCLUDED PROVISIONS.

HIBT FED TO THIS PURCHASE ORDER INCLUDES THE PROVISIONS OF THE FEDERAL ACQUISITION REGULATIONS (FAR) OR CODE OF FEDERAL REGULATIONS (CFR) WHICH ARE APPLICABLE TO THIS ORDER IN ACCORDANCE WITH THE CONTRACT. THE VENDOR SHALL INCLUDE THESE CLAUSES IN ALL COVERED LOWER TIER SUBCONTRACTS AND PURCHASE ORDERS.

HIBT T&C TO THIS PURCHASE ORDER INCLUDES ADDITIONAL TERMS AND CONDITIONS. THE VENDOR, BY SIGNING THIS AGREEMENT, AGREES TO COMPLY WITH ALL THE TERMS AND CONDITIONS OF THIS ORDER.

ENTIRE ORDER

«OurCompany» ("Contractor") entered into Contract No. «ContractNumber» «ProjectTitle», «ProjectLocation» ("Contract" or "Prime Contract") with «GovernmentAgency», ("Owner" or "Government"). That Contract and all its specifications, amendments, general, special and supplemental conditions, addenda and change orders thereto are incorporated by reference in this Order. Specifications which are incorporated by reference into this Contract are so incorporated by reference into this Order. That Contract, including all amendments can be accessed at «FileLocation».

used in this Order or referenced documents, the term "Subcontractor" means the Vendor and the term "Contractor" means this Order.

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Potential Required Documents

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| REQUIRED DOCUMENTS | | (1) Long Form Subcontract | (2) Short Form Subcontract | (3) Services Subcontract | (4) Consultant Agreement | (5) Purchase Agreement | (6) Purchase Order | (7) Field Purchase Order | (8) Other | NOTE |
|--------------------|---|---------------------------|----------------------------|--------------------------|--------------------------|------------------------|--------------------|--------------------------|-----------|------|
| | Signed subcontract/purchase order | √ | √ | √ | √ | √ | √ | | √ | |
| | Joint Check Agreement | A | A | A | A | A | A | | | |
| | W-9 | √ | √ | √ | √ | √ | √ | √ | √ | |
| | Pay Application/ Schedule of Values | √ | √ | √ | √ | A | | | A | (2) |
| | SF 1413 (Payrolls) | √ | √ | | | | | | | |
| | LCP Tracker Subcontractor Set Up | √ | √ | | | | | | | |
| | Performance Bond | √ | | | | | | | | (1) |
| | Payment Bond | √ | | | | | | | | (1) |
| | Supply Bond | | | | | √ | | | | (1) |
| | Personal Indemnification | A | A | A | A | A | | | | |
| Insurance | Workers' Compensation & Employers Liability | √ | √ | √ | √ | | | | | |
| | USL&H | A | A | | | | | | | |
| | General | √ | √ | √ | √ | A | A | A | A | |
| | Auto | √ | √ | √ | A | A | A | A | A | |
| | Hazardous Materials (Pollution Liability) | A | A | A | | | | | | |
| | Professional Liability | | | A | A | | | | | |
| | Property/All Risk | A | A | A | | | | | | |

√ - Required A - As Applicable/desired



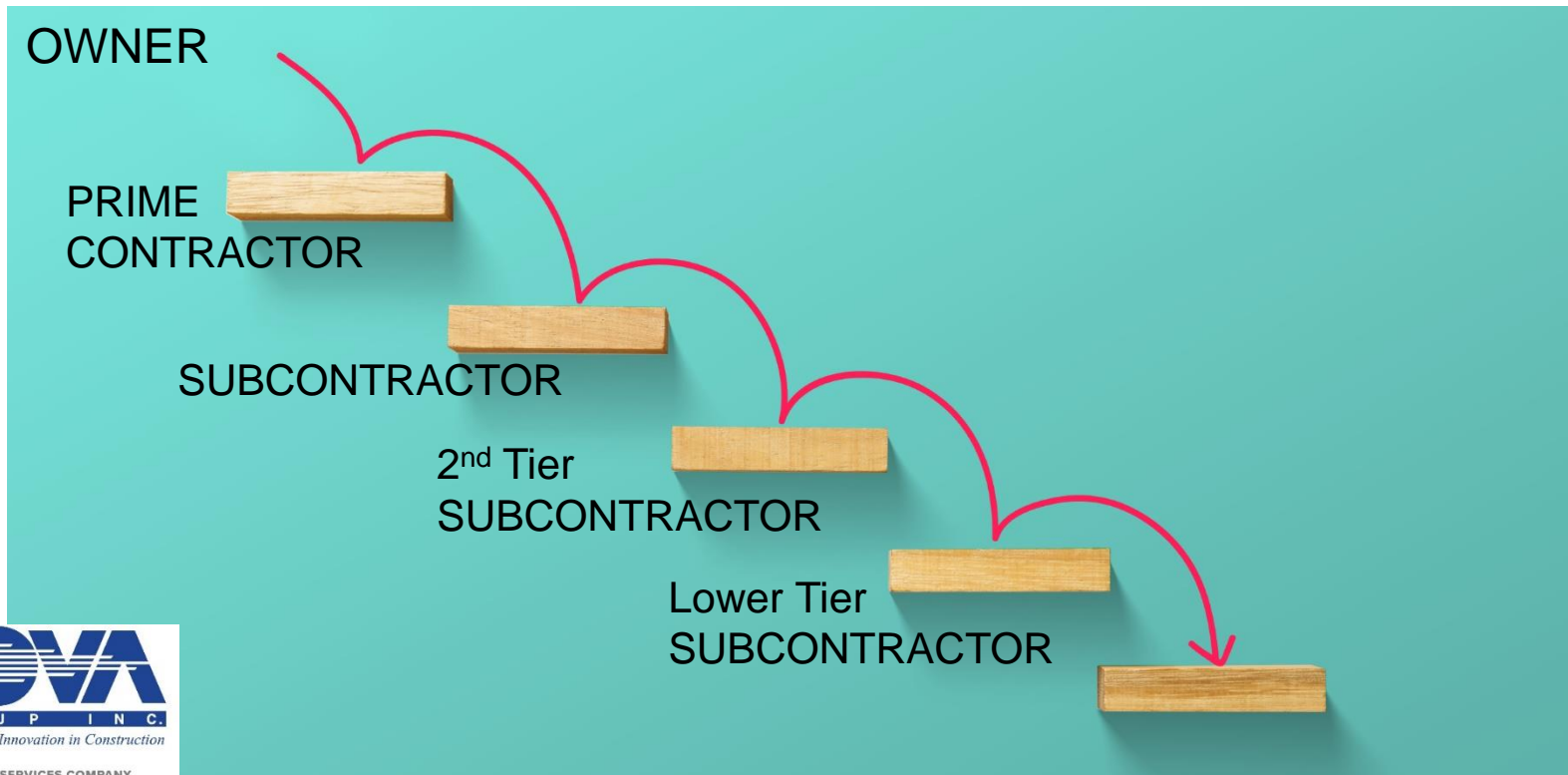
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Mona Carlson, Nova Contracts Manager

FLOW DOWN TERMS & CONDITIONS

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All terms and conditions should be flowed down to all lower tier subcontractors and vendors you employ. Failure to “loop them” restricts liability . . . Which may then fall on you.



QUESTIONS

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Mona Carlson

Nova Group, Inc

Contracts Manager

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