

## Risk Topics

---

# Minimizing your risk for liability with subcontractor control guidelines

## Introduction

Are you at risk for liability exposures from the use of subcontractors? Protecting your resources and safeguarding your hard earned bottom line and reputation from subcontractor liability does not have to be hard...especially when you have the proper subcontractor control mechanisms in place. Subcontractors are an integral part of a contractor's work environment. Many employers outsource their work to subcontractors to curtail the cost of having permanent, on-site staff and to engage the services of those with a particular skill set or those who specialize in a specific scope of work.

There are ways to mitigate this risk and help protect your business. One such method is by verifying ensuring that you have a good subcontractor prequalification program, a written contract and by being vigilant about subcontractor control protocol.

## What is a subcontractor exposure?

Independent subcontractor exposures occur when a subcontractor is working on a project managed by you. They may be hired directly by you or a subcontractor to a subcontractor. Employees of subcontractors have the same expectation of a safe workplace as your own employees and they expect to report to work in a safe, healthy work environment. It is the express responsibility of the general contractor/construction manager to be aware that subcontractors are fully apprised of any hazards present on the premises and to make certain that they are familiar with and have working knowledge of various safety prevention measures and emergency protocol. Your hazard communication program with material safety data sheets should be provided to the subcontractor prior to commencing work. Additionally, the subcontractor should provide to the general contractor/construction manager documentation verifying that all employees have been trained on their hazard communication program. The subcontractor should also have a safety program for their

employees and be familiar with the site's safety and emergency response program. Emergency action plans should be provided to all subcontractors and be reviewed periodically with all site personnel.

### **Consider the following: Subcontractor selection**

Selecting a qualified subcontractor is perhaps the single most important element of an effective subcontractor management program. Subcontractor selection should be based on years of experience, a level of deep knowledge, as well as a proven track record. Subcontractor selection should never be based on price alone.

Reference checks should be done for subcontractors especially when completing large projects. These checks should include questions to former customers as to whether they would work with them again and the quality of their work. Projects requiring in-depth electrical, plumbing or restoration services mandate that special attention be paid to subcontractor credentials and licensing requirements to acknowledge

ensure that the subcontractor has the advanced skill sets needed to complete the project. Please refer to the Zurich RiskTopic on subcontractor prequalification for more in depth information.

If you bid work out, fully describe the size and scope of the project, the schedule and require compliance with all applicable requirements and codes as well as OSHA regulations. You should also add requirements for a documented safety program and safety loss experience.

The safety of completed operations by a subcontractor depends on compliance with job specifications. Emphasis must be placed on the selection of subcontractors, final inspection and sign off before accepting completed work. These are all important risk mitigations, which should be considered.

For more detailed information, please see the Zurich RiskTopic entitled "Subcontractor prequalification" or see the Zurich Subguard program Subcontractor prequalification initial account review and questionnaire Technical guidance document.

A sample Subcontractor Qualification Statement/prequalification form is available to all Zurich customers. To obtain a copy, contact your Risk Engineering account coordinator.

### **Insurance and indemnification requirements**

There are standard contracts developed by professional associations. Many of these standard agreements are constructed to benefit the party they represent. Since most contracts require a state by state interpretation, all contracts and amendments should be reviewed by competent legal counsel familiar with the specific jurisdiction. It is recommended to request that your insurance broker or agent also review the proposed agreement to review and recommend necessary insurance coverage provisions.

The selection criteria should include comprehensive insurance requirements. An indemnification or hold harmless clause in the contract may provide protection from a subcontractor's negligence in the event of an accident causing injury to a subcontractor's employee or to other third parties. An indemnification or hold harmless clause may also provide coverage for damage to an adjacent property. Equally important, you should ensure that this indemnity protection is extended to your parent company, officers and directors, trustees, and others as it may apply.

You can also have a subcontractor include you as an "additional insured" in their insurance coverage. If you have this requirement, you should require a copy of the endorsement that confirms your additional insured status. This helps provide a greater degree of protection including defense costs.

The contract should address the responsibility and liability associated with the use of sub-subcontractors by the subcontractor. Sometimes a contract might have mirror image reciprocal indemnification terms. They are designed to hold the other harmless for one's own negligence. In addition to the liability issues, the subcontractor should be required to furnish a release of waiver of liens from the subcontractor, all sub-subcontractors, material purchased and others in connection with the work performed.

### **Certificate of Insurance**

A Certificate of Insurance is a document that verifies insurance coverage and limits that the subcontractor carries. The contract should specify the statutory coverage for workers compensation and employers liability for the subcontractor. It should also specify the requirements for general liability coverage. The liability coverage should include coverage for premise and operations, independent subcontractor, products, completed operations and contractual liability. The contract should state that the subcontractor's liability coverage would be the primary coverage.

However, a certificate of insurance does not provide any insurance protection by itself nor does it guarantee that the coverage will continue for the life of the project. If a subcontractor fails to pay the required premium or allows the coverage to lapse the owner of the project and his insurance coverage may become responsible for a loss. Therefore, you must be vigilant in ensuring that the subcontractor's insurance protection does not lapse during the term of the project agreement. You can ask that a cancellation notice be sent to you, however, the subcontractors insurance company is not obligated to notify you in a timely manner. It is also important to match the "Named Insured" on the certificate to the name on the contract. If you are working with a large number of subcontractors and sub-subcontractors, consider subscribing to a certificate monitoring service to help reduce the risk of contraction with uninsured subcontractors.

The contract specifications should stipulate the minimum policy limits per occurrence. Although the desired level of coverage for a subcontractor may vary depending on the expected level of risk for the job, at least minimum limits equal to your own limits or greater should be specified and the subcontractor's policies should be primary to respond. Subcontractors should be required to meet or exceed any insurance requirements provided in the owner contract. If the contracted service includes the use of vehicles for transporting of people or the delivery of products and equipment, the subcontractor should be required to carry adequate coverage for auto liability. Again, it is recommended to consult with your insurance broker or agent to determine the minimum acceptable limits for this coverage.

Avoid adding a subcontractor as an "additional insured" on your own insurance policy without the express consideration of its insurance contract ramification, such as in the construction project wrap up.

### **Coordination**

The degree of involvement over contracted operations and services can be complex. With more emphasis on prevention as well as Occupational Safety and Health Administration (OSHA) requirements, you should manage a subcontractor's job safety in an interactive and cooperative manner but without increasing vicarious liability exposure through direct supervision.

This is especially important for short/large complex and long term projects. Ensure that appropriate permit controls for high risk jobs involving hot work, wet work, confined space and lock out are enforced. A safety coordinator should be designated as a liaison.

A pre-project meeting should be arranged, consider these steps:

- A tour of the jobsite.
- Subcontractor familiarization with safety programs, personal protective equipment requirements and emergency procedures.
- Identification (photo badges, etc.) for subcontractor employees.
- Isolation and protections of work areas (barricades, walkways and signs) and restricted areas.
- Specified entrances and exits for subcontractors.
- Review of specific safety requirements, such as temporary electrical connections, lock out and/or tag out of electrical and hazardous energy sources, cave in protection, hot work permits, wet work permits, hazardous chemicals, confined spaces and fall protection.
- Housekeeping and storage of material, supplies, debris, tools, etc.
- Coordination and ongoing communication with other subcontractors and sub-subcontractors.
- A procedure to notify a subcontractor in writing if an unsafe act or condition is noted. The written notice should include a request for follow up actions to include the date the condition was corrected. These documents should be maintained on file.

Consider these steps for ongoing project,:

- Risk Registers – for additional information, please see the Zurich RiskTopic entitled “Hazard identification and Risk Register.”
- Job hazard analysis, activity hazard analysis and daily hazard analysis are all tools to identify and mitigate risks at different stages and from different perspectives on the project.
- Crisis management plans.
- Emergency action plans.
- Integrated work plans also provide a comprehensive means to identify and track all aspects of project planning and risk mitigation into one place.

In addition to pre-project planning meetings, periodic meetings are advisable to discuss the progress of the project, problems encountered, resolution of these problems and planning of subsequent work. Records of these meetings should be carefully maintained as evidence of good faith efforts in the event of any future litigation. It is also important to perform periodic inspections of the subcontractor’s work for quality and specifications to ensure satisfactory completion of the work and materials. However, before the start of the job a signed statement should be obtained from each subcontractor stating that they have been informed of the requirements and that they understand the safety rules and regulations and will comply with the safety requirements as well as entry and exit procedures for the facility.

This inspection process does not mean providing direct or indirect supervision of a subcontractor’s employees. It is recommended that your personnel do not direct the methods or means of a subcontractor’s employees, including employee scheduling, training, directing, wage payments etc. The Internal Revenue Service has specific requirements for who qualifies as an independent subcontractor as compared to their own employee. Direct supervision of the contracted employees or of the project has significant liability implications and should be avoided except in the case of a unique or emergency situation, such as imminent hazard or condition that is capable of being immediately dangerous to life or death.

## Conclusion

Finally, by taking a proactive approach in the selection and coordination of subcontractors and contracted services, will help to manage the associated risk effectively. This this helps to provide – an uninterrupted flow of operations. The selection of a qualified and experienced subcontractor is among the first and most important steps in this process. Contractual protection in a written contract backed by a verified and responsive insurance program can help to make the risk transfer complete and effective. An interactive and cooperative dialogue with the subcontractor promotes good communication and helps avoid safety lapses due to misunderstandings and confusion.

## References

1. Chanter, Barrie, and Peter Swallow. Building Maintenance Management. Oxford: Blackwell, 2007. Print.
2. Rudd, Ann. Effective Contractual Risk Transfer in Construction. Rep. N.p.: n.p., 2009. Print.

April 2020

The Zurich Services Corporation  
Risk Engineering  
1299 Zurich Way  
Schaumburg, Illinois 60196-1056  
800 982 5964 [www.zurichna.com](http://www.zurichna.com)

---

The information in this publication was compiled from sources believed to be reliable for informational purposes only. All sample policies and procedures herein should serve as a guideline, which you can use to create your own policies and procedures. We trust that you will customize these samples to reflect your own operations and believe that these samples may serve as a helpful platform for this endeavor. Any and all information contained herein is not intended to constitute advice (particularly not legal advice). Accordingly, persons requiring advice should consult independent advisors when developing programs and policies. We do not guarantee the accuracy of this information or any results and further assume no liability in connection with this publication and sample policies and procedures, including any information, methods or safety suggestions contained herein. We undertake no obligation to publicly update or revise any of this information, whether to reflect new information, future developments, events or circumstances or otherwise. We provide links to other sites that we believe may be useful or informative. These links to third party sites or information are not intended as, and should not be interpreted by you as constituting or implying our endorsement or recommendation of the third party information, products or services found there. We do not maintain or control those sites and, accordingly, make no guarantee concerning the accuracy, reliability or currency of the information found there. We make no representation that materials found on those sites are available for use. Moreover, Zurich reminds you that this cannot be assumed to contain every acceptable safety and compliance procedure or that additional procedures might not be appropriate under the circumstances. The subject matter of this publication is not tied to any specific insurance product nor will adopting these policies and procedures ensure coverage under any insurance policy. Risk Engineering services are provided by The Zurich Services Corporation. SuiteLife Underwriting Managers undertakes no obligation to publicly update or revise any of this information, whether to reflect new information, future developments, events or circumstances or otherwise.

© 2020 The Zurich Services Corporation. All rights reserved.

A1-112013428-A (04/20) 112013428

This material is authored by sources external to SUITELIFE Underwriting Managers and its accuracy, completeness and relevance has not been independently verified by SUITELIFE Underwriting Managers. The information is provided "as is" and without warranty of any kind. This article is intended for information purposes only and is not a substitute for professional advice. If you have questions, please review with your licensed insurance professional.

SUITELIFE Underwriting Managers is a series of RSG Underwriting Managers, LLC. RSG Underwriting Managers is a Delaware Series limited liability company and a subsidiary of Ryan Specialty Group, LLC, specializing in underwriting management and other services for insurance products distributed through agents and brokers. Some products may not be available in all states or may be available only from surplus lines insurers. In California: RSG Insurance Services, LLC License #0E50879. © 2020 Ryan Specialty Group, LLC.

