

# Risk transfer setup guide for contractors



As a contractor, the last thing you need is to be held responsible for your subcontractor's work that results in property damage or bodily injury claims. This can delay the project, tarnish your reputation and negatively impact the company's finances. By checking all the boxes below, you can help make sure you're using proper risk transfer to keep your business protected.



- Investigate and select an attorney licensed in your state(s) and who specializes in construction and risk transfer
- Enlist attorney to develop your subcontract, review situations where parties are requesting omissions or additions to contractual language and have them periodically review and update your subcontract



- Appoint designated individuals in your business to have authority to enter into contracts, and clearly define their responsibilities
  - Read all contracts to create and maintain a file for each project, making sure to:
    - Identify problematic areas such as scope beyond operational capabilities; overreaching indemnity; excessive insurance limit requirements, liquidated or consequential damages, accelerated schedules, etc.
    - Screen and prequalify subcontractors by utilizing our [Contractor Selection Guide](#).
    - Require certificates of insurance (COI) for all subcontractors
    - Require subcontractors provide copies of other important documents as a verification step. These documents could include, but do not have to be limited to: additional insured forms, waiver of subrogation, primary non-contributory forms and a copy of general liability coverage/exclusion forms.
  - Create and maintain a system to monitor COIs and verify new ones are in place
  - Complete a "Contractor's Checklist: Minimum Contract Insurance Requirements and Limits" for every new project (see Note below)



- Communicate your risk transfer process to key stakeholders
- Require contractors to re-sign Master Subcontractor Agreements (MSA) when updates are made to the contract or at expiration of the contract.
- Regularly review an internal diary/tracking system for insurance expiration of subcontractors working on your behalf to ensure updated COI's are obtained

Note: The Contractor's Checklist featured on pages 2 and 3 of this resource is part of a 5-page document that also contains an appendix listing the 8 essential minimum requirements of any agreement you sign with a subcontractor. [That entire document is available at MyLossControlServices.com](https://www.mylscontrolservices.com).

# Contractor's checklist

Minimum contract insurance requirements and limits



Contractor: \_\_\_\_\_

Designated Project File Manager: \_\_\_\_\_

## General Requirements

- For each policy type, you (i.e., the contractor) are to be notified of cancellation at least 30 days prior to the cancellation effective date.
- All contract insurance requirements apply to any subcontractor or person hired or used by the subcontractor.
- A certificate of insurance is to be provided prior to the start of work. The certificate is to either state that additional insured status for ongoing and completed operations is included, or be accompanied by copies of the endorsements confirming these coverages are in place.
- The contract is to be signed by the subcontractor prior to the start of work.
- Subcontractor adherence to your firm's safety manual/requirements is to be included in the contract.
- A project file is to be created to store all project contracts and certificates. Note: Contractors must keep project files through the statute of limitations and statute of repose in the respective states where work has been performed. The requirements vary by state, but many have a 10-year statute of repose.
- Importantly, all contracts should be reviewed by a qualified attorney.

## Indemnification Agreement

- The contract is to include an indemnification agreement in your favor.
- The indemnification agreement is to include the phrase "to the fullest extent allowed by law" to improve its enforceability.
- The indemnification agreement is to include a waiver of workers' compensation immunity.

## Commercial General Liability (CGL)

- At a minimum, the subcontractor's CGL policy limits are to be at least \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products-completed operations aggregate to avoid being considered an "inadequately insured subcontractor."
- The subcontractor's CGL coverage is to provide broad coverage with no exclusions, such as exclusions for subcontractor's work (ISO form CG 2294).
- The subcontractor's general aggregate is to apply on a per-project basis.
- The contract is to require the additional insured coverage to respond on a primary and non-contributory basis, via ISO form CG 2001 or equivalent.
- The contract is to include a waiver of subrogation in your favor.
- The personal and advertising injury coverage limit is to be at least \$1,000,000.

## Commercial General Liability (cont.)

- The contract is to specify additional insured status for ongoing operations via ISO form CG 2010 or equivalent coverage, PLUS ...
- The contract is to specify additional insured status for completed operations via ISO form CG 2037 or equivalent coverage.

**The parties to whom additional insured status is extended are to be clearly identified in the contract to avoid costly litigation.** Note: Many contractors purchase a CGL policy with blanket additional insured endorsements. This additional insured coverage will not respond in the absence of a signed written contract.

## Auto Liability

- At a minimum, the subcontractor's auto liability policy limits are to be at least \$1,000,000 combined single limit (CSL) or \$1,000,000/\$1,000,000 split limits.
- The contract is to require additional insured coverage for your business.
- The contract is to require a waiver of subrogation in your favor.

## Workers' Compensation/Employers' Liability

- At a minimum, the subcontractor is to provide evidence of workers' compensation/employers' liability coverage with a limit of bodily injury (BI) by accident of at least \$500,000 per accident; the limit of BI by disease should be at least \$500,000 per policy and \$500,000 per employee. These minimum limits are to apply in any state in which work is being done under the contract.
- The contract is to include a waiver of subrogation in your favor.

## Umbrella Liability

- At a minimum, the subcontractor's umbrella coverage limit is to be at least \$1,000,000. Limits that match or exceed your limits are highly recommended.
- The contract is to require additional insured coverage for your business.
- The contract is to require the subcontractor's coverage to respond on a primary and non-contributory basis.
- The contract is to include a waiver of subrogation in your favor.

**This is a list of minimum insurance requirements and limits that would assist in making your business insurable with Nationwide. It is not a complete list of those contract requirements to fully protect your business. You are to review these minimum requirements with your attorney as a starting point in the development of your standard subcontractor agreement.**

Note: Written contracts are to be used 100% of the time with your subcontractors. Failure to obtain a signed written contract can impact your insurability, cost of your coverage and success of your business.

## Questions?

Contact Nationwide Loss Control Services at 1-866-808-2101 or [LCS@nationwide.com](mailto:LCS@nationwide.com), or visit [MyLossControlServices.com](http://MyLossControlServices.com) to schedule a virtual consultation, where one of our loss control professionals can assist you in managing your risk.

## Other questions to ask when choosing a contractor

In addition to making sure your subcontractor is properly insured, (see pp. 2 and 3 for minimum coverage limits), you'll also want answers to the following questions:

- Is the subcontractor competent, qualified, properly licensed and experienced?
- Does the subcontractor's insurance coverage exclude contractual liability or have other coverage restrictions?
- Have the subcontractor's references been checked?
- Does the subcontractor properly screen and use effective risk transfer for all of their subcontractors and employees they hire and utilize?
- Is the subcontractor's equipment, including ladders, either new or well-maintained?
- Does the subcontractor have a written and enforced safety program that includes documented employee training?
- Does the subcontractor have a written OSHA-compliant fall protection program and have specific safety procedures in place for the use of ladders, scaffolding and working at heights?
- Has the subcontractor made efforts to reduce the use of ladders by using alternatives such as lifts and fully protected elevated work platforms?
- Are podium stepladders used by the subcontractor?
- Has the subcontractor designated a "competent person(s)" as defined by OSHA?
- Does the subcontractor adequately supervise the job site, conduct written job site inspections and maintain a daily work log?
- Have the subcontractor's employees and supervisors successfully completed OSHA 10- or 30-hour outreach courses for construction?
- Does the subcontractor have a history of OSHA violations?
- Is the subcontractor's workers' compensation experience modification factor 1.0 or less?



### Providing solutions to help our members manage risk.®

For your risk management and safety needs, contact Nationwide Loss Control Services at 1-866-808-2101 or [LCS@Nationwide.com](mailto:LCS@Nationwide.com)

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