

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.

Contractor's Checklist

Minimum Contract Insurance Requirements and Limits (cont'd.)

Commercial General Liability (cont'd.)

- 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 \$100,000 per accident; the limit of BI by disease should be at least \$500,000 per policy and \$100,000 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, or visit mylosscontrolservices.com to schedule a virtual consultation where one of our loss control professionals can assist you in managing your risk.

Appendix to Contractor's Checklist

Eight (8) Minimum Contract Insurance Requirements

As your insurer, we want you to view these as the eight essential minimum requirements of any agreement you sign with another contractor. This information is provided solely to help you gain an understanding of risk transfer methods. ***You should enter into a contract only after seeking the counsel of a qualified attorney, and these examples are not to be viewed as a substitute for legal advice.***

1. Indemnification Agreements, and Waiver of Workers' Compensation Immunity

Under indemnification agreements, the party performing the work (i.e., your subcontractor) must defend, indemnify and hold harmless you (i.e., the contractor), the property owner and your agents for whom the work is performed, for any liability, loss or other claim for damages for death, bodily injury or property damage arising out of performance of the work by the subcontractor or any of their agents, servants, employees, subcontractors or suppliers, except to the extent of any fault attributed to you as the contractor.

“Saving language”

In many states, indemnification agreements will be considered void if they require the subcontractor to accept responsibility for the sole negligence of the hiring contractor (or general contractor). To ensure that the contract will be upheld, the contract is to contain what is frequently called “saving language.” This is a phrase that usually states “to the fullest extent allowed by law.” This saving language will ensure that the indemnification agreement will comply with state anti-indemnification statutes and allow the agreement to be upheld.

“Waiver of workers' compensation immunity”

In addition, the subcontractor is to agree that the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. In some states, an employer's obligation to injured workers is limited to workers' compensation benefits. A waiver of the workers' compensation immunity requirement bars your subcontractor from using this defense when their employee is injured on your job.

IMPORTANT: If you use work orders for routine work, the work order is to contain your insurance requirements and an indemnification provision to be signed by the subcontractor before work begins. If you use subs for multiple small jobs throughout the year, a master subcontractor agreement meeting these requirements may be an even better alternative.

2. General Acceptance Provision

Any work order, contract or similar document is to contain or reference an indemnification provision (see 1 above) and an insurance requirements/additional insured status provision (see 3 below). Such documents routinely specify that commencement of any part of the work will be deemed as acceptance of such provisions and for all purposes legally equivalent to full execution of same. With regard to service work which may be done throughout the year, it is to be expressly stated in writing that these requirements remain in effect until otherwise agreed in writing.

3. Insurance Requirements and Additional Insured Coverage

Insurance procurement requirements call for additional insured status for (1) ongoing operations and (2) completed operations on your subcontractor's general liability (GL) and umbrella policies on a primary and non-contributory basis. *Note: The contract is to be clear that these requirements are to apply to any subcontractors hired by the subcontractor as well.*

Appendix to Contractor's Checklist

Eight (8) Minimum Contract Insurance Requirements (cont'd.)

3. Insurance Requirements and Additional Insured Coverage (cont'd.)

Be careful. In an attempt to save premium dollars, some subcontractors are purchasing insurance from non-standard or surplus lines insurance carriers. While some of these carriers provide reasonable levels of coverage, others exclude primary liability exposures, even if such liability was assumed by the subcontractor in the contract with you (such as class of work exclusions such as roofing, or residential construction exclusions). This coverage gap can result in your subcontractor being virtually uninsured for certain types of losses. This increases your liability exposure and the likelihood of problems with your insurability. *Please consult with your agent or broker to make sure that your subcontractors have adequate insurance coverages and limits.*

It is also essential that your subcontractor carry workers' compensation coverage for the states related to the contract. If not, then the subcontractor's employees' wages may be added to your payroll as if they were your employees, and you may be responsible for their injuries. If your subcontractor is an individual or partnership, then confirm that he/she has elected to be covered by the workers' compensation policy.

4. Certificate of Insurance Requirement

A certificate of insurance is to be provided to your firm prior to the commencement of work as evidence the subcontractor is maintaining their own general liability, umbrella and workers' compensation insurance with sufficient limits to cover a significant loss. The certificate should show you and the property owner as additional insureds for ongoing and completed operations on a primary and non-contributory basis. Also, the subcontractor's insurance policies are to be endorsed to guarantee you a right to notice of cancellation of their coverage.

A certificate of insurance provides you with evidence that particular types of coverage are in force at a particular time. It also lists the limits of coverage in force at the time coverage was issued. It is most commonly used to provide the certificate holder (e.g., you or your customer) with evidence that certain insurance requirements have been met.

No subcontractor is to be permitted to enter your job site without first providing an up-to-date certificate of insurance. The ACORD Certificate of Insurance form has become the industry standard. It provides evidence of the types of coverage as well as endorsements to the commercial general liability (CGL) policy. The type of coverage, name of insurer, policy term and limits of coverage are the typical entries on the form. It provides a brief summary of the coverage in force when it was issued. Since it provides information only, it does not constitute a contract between the insurer and the certificate holder.

5. Waiver of Subrogation

The subcontractor is to waive any and all rights of subrogation against you and the property owner. Waivers of subrogation for general liability and umbrella policies must require the subcontractor to waive their insurer's right to be reimbursed by you should a loss occur that was a result of your negligence.

6. Requirement That Subcontractor's Insurance Respond First

When a subcontractor is hired, they generally have control over their work and the condition of their work area. The subcontractor has primary control over how safely the work is done. When a loss occurs, you want the subcontractor to have primary responsibility for the loss. To ensure that the subcontractor's insurance pays first (ahead of your coverage), it is essential to clearly state in your contract that the subcontractor's coverage (CGL, auto and umbrella) shall respond first, that is, on a primary and non-contributory basis.

Appendix to Contractor's Checklist Eight (8) Minimum Contract Insurance Requirements (cont'd.)

7. Requirement That the Contract Apply to Subs of Your Sub

It is important to state in the contract that all obligations and requirements of the contract apply to any parties or subcontractors hired by the subcontractor. Too often, losses are caused by parties/ persons hired by your subcontractor. By stating these requirements must be passed on to any subcontractors hired by your subcontractor, you create additional protection for your business.

8. Safety Program Requirement

Contractors put a lot of time and energy toward creating safety programs and manuals. Keeping workers and others visiting the work site safe is essential. ***An important contract requirement is to ensure subcontractors follow the same safety requirements as your own employees.*** Including this requirement in your contract should alert your subcontractor that safe work practices are expected. An accident-free work site is a reflection on your business and impacts your insurance premiums and reputation.

Closing the Loop with Thorough Project File Management

It is best to identify one person who will function as your firm's designated project file manager. If this critical step is left unassigned, it can jeopardize your entire risk transfer program.

Next, for each project you want to maintain a project file. The project file, at a minimum, is to include:

- **Certificates of insurance for each subcontractor**

Note: A new certificate of insurance is to be required once a policy shown in the certificate expires. You want to confirm your subcontractor's coverage renewed and remains in force. Make sure someone is designated to maintain and update your subcontractor's coverage expiration dates.

- **Copies of each signed contract with each of your subcontractors**

In the event of an accident or claim, this information will be critical in preparing your defense and tendering of the claim to the responsible subcontractor. Valuable time can be lost locating this information after a claim and can result in the inability to transfer the loss to others.

There's no substitute for good project file management!

