

Property & Casualty Newsletter

July 2018: Construction

Verifying Subcontractors' Insurance Coverage

Nearly all contracts involved in a construction project impose a series of insurance requirements on the project owner, general contractor, subcontractors, construction managers, and design and engineering teams working on the project. Unless a controlled insurance program is used, each of these entities agrees to obtain insurance coverages for themselves and to extend certain coverages to other parties.

Given the multitude of insurance requirements involved, verifying that their subcontractor's insurance program complies with the requirements can be a challenge for contractors. But ensuring compliance with insurance requirements is still a critical risk management tool. The following are four strategies that can help contractors in vetting their subcontractors' and suppliers' insurance coverage.

Set Forth Insurance Requirements in an Exhibit to the Subcontract and Include Samples of Certificates of Insurance and Endorsements

It is recommended that contractors routinely review and update the insurance requirements in their subcontracts and purchase orders with their insurance brokers and attorneys. Further, insurance requirements can change from one project to another, and it is often easier to update and address project-specific requirements when they are contained in a separate exhibit to the subcontract or purchase order.

To assist their subcontractors with compliance, many contractors include a sample certificate of insurance and sample endorsements with their contracting documents. Using a separate exhibit for insurance requirements makes it easier to provide these sample documents.

Require More Than a Certificate of Insurance as Evidence of Compliance

Some contractors still rely solely on a certificate of insurance from their subcontractor to verify compliance. While certificates are important documents to maintain, they simply provide evidence of an insurance policy and do not provide any details on the exclusions, conditions, or endorsements that could significantly limit the coverage the insurance policy provides. Many contractors have required their subcontractors to provide copies of additional insured, primary and non-contributory, and waiver of subrogation endorsements. Requiring these types of endorsements is a recommended practice.

In addition to these items, contractors, on certain projects, should be verifying that the subcontractor's insurance programs do not contain certain exclusions that would restrict or remove coverage entirely. Residential, multi-family, prior work, progressive and ongoing damage, height limitation, and subcontractor work exclusions can be present in the policies of some subcontractors and are not disclosed on a certificate or by easily produced copy of an endorsement. A practical solution to this issue is to require a copy of the schedule of forms listing all exclusions and limitations added by endorsement and review it with your insurance broker and attorney.

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Proactively Resolve Discrepancies

Ideally, your subcontractors will read and understand the insurance requirements contained in your subcontracts. Unfortunately, many smaller subcontractors lack the resources, time, or experience to appreciate the nuances of their own insurance programs. Consequently, subcontractors often send your insurance requirements to their insurance broker, some of whom will provide a certificate of insurance without giving much thought to compliance. As such, non-compliance issues can be frequent. These issues should be proactively addressed and resolved, if possible, before the subcontractor is allowed on the project site.

In addition, a policy should be created for dealing with issues when a preferred subcontractor is unable to meet a certain requirement. Contractors commonly experience these issues when requiring prior editions of certain additional insured endorsements. A policy should be developed to establish when an exception can be made and what additional measures are necessary to mitigate the risk of this exception.

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Involve Project Managers in the Vetting Process

Often, the responsibility of vetting a subcontractor's insurance program is delegated to the accounting department or other internal staff. In such cases, educating and involving project managers in the verification process can help create an overall better vetting process. Project managers deal with the subcontractors and suppliers on a daily basis. As such, the relationship necessary to effectively resolve disputes already exists. Further, the involvement of the project's manager may reduce internal conflict between support staff and the project management group.

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