



## Contractual Liability Guidelines

Any construction project is complex and present many pitfalls, which can result in a liability exposure. The focus of this Risk Management Alert is actions that can be taken to help reduce contractual liability exposures.

- The first key is to have good documentation of all transactions, contracts, insurance and agreements.
- All contracts should be in writing and contain the duties and responsibilities of all parties. Review all contracts with legal counsel.
- One way to verify compliance with the insurance guidelines is to require the contractor and subcontractors to furnish certificates of insurance, or better yet, endorsements showing your department as an additional insured under their policies of insurance. Therefore, obtain two copies of all certificates of insurance and/or endorsements and have your attorney review them to determine if they include appropriate language that indicates the insurance will fully defend and indemnify your interest. The certificates of insurance should state the coverage provided is primary to any other coverage that may be available to your operations. The coverage should take effect immediately upon execution of the contract and be signed by a person authorized by that insurer to sign on its behalf.
- The contractor should agree to indemnify, hold harmless, and defend your operations, and members and your hold your department and members harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, to include court costs and attorney fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by the contract. The contract should also require the contractor to post limits of indemnity, which are appropriate for the exposure. A hold harmless and indemnification clause is only as good as the contract itself and the financial resources of the contractor. Contracts with part-timer, jack-of-all tradesmen with out financial wherewithal should be avoided.
- You should maintain contracts and certificates of insurance for at least five years. Also set up a diary system that will alert you when contractor's certificates of insurance are about to expire so that you can request a current certificate.
- Work with your Utica National Insurance Agent to make sure that you have proper coverages to defend your interests.

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