



Risk Tip 13 – Managing Risks in Subcontracting Services
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Services for clients often include subcontracting some of the work to a subcontractor or sub-consultant (hereinafter “sub”). Some reasons for subcontracting include: meeting contractual requirements for participation by a Minority Owned, Women Owned, or Disadvantaged Business Enterprise, (MBE), (WBE) or (DBE).; specialty work not typically performed by the prime; strategically including a team member that improves the chances of being selected; or that the sub can perform the service more economically than the prime. Key elements to consider in managing subcontracting risks are:

- Contractual terms and conditions
- Minimum insurance requirements
- Sub’s quality assurance plan, as applicable
- Health and safety plan, as applicable

Contractual Terms and Conditions: Often claims against primes are the direct result of errors and omissions committed by subs in the performance of their work. To reduce this risk, contracts with subs must contain certain flow-down provisions from the prime agreement with the client. Your sub should assume all of the obligations and responsibilities that you assume toward your client as they relate to the sub’s services. In addition, the sub must be bound to indemnify the prime and its client to the same extent that the prime is bound for liability related to the subcontracted services. While limits may vary, the sub should agree to defend, indemnify and hold the prime harmless from and against all claims, damages, and exposure arising out of or related to the sub’s actual or alleged negligence.

Minimum Insurance Requirements: The sub at its sole expense needs to procure and maintain the more stringent of the insurance requirements in the prime contract or what the prime requires in its subcontract. The recommended types of insurance and minimum limits are:

- A. Worker’s Compensation – statutory limits as well as Employers Liability coverage of \$1 million each accident; \$1 million each employee for disease and \$1 million policy aggregate.
- B. Commercial General Liability - \$1.0MM per occurrence/\$2.0MM in the aggregate for services not requiring field work; otherwise \$2.0MM per occurrence and \$2.0MM in the aggregate. The physical presence of the sub on site during field work increases the risk of personal injury or property damage.

- C. Automobile Liability - \$1.0MM each accident combined single limit for both bodily injury and property damage.
- D. Umbrella – At least \$1.0MM for added protection which may be used to satisfy the CGL and Automobile Liability limit requirements.
- E. Professional Liability (PL):
 - ✓ For low risk services such as community outreach, public relations, data collection or augmentation of non-professional staff, PL may not be required, unless there is a flow down provision in the prime contract.
 - ✓ For moderate to high risk services consider \$1.0MM each claim/\$1.0MM aggregate to \$3.0MM each claim/\$3.0MM aggregate depending on the technical complexity of the project. Examples of moderate risk may be limited design in architecture or engineering services including surveying while high risk include extensive design services.
 - ✓ For very high risk services, such as subcontracted work exceeding \$3.0MM in value, complex geotechnical conditions or when the terms of the prime contract include liquidated damages or other onerous provisions that increase the risk for problems arising from subcontractor performance, consider greater than \$3.0MM each claim/\$3.0 MM aggregate.
- F. Other types of insurance may be needed due to the type of project, such as railroad, marine, and pollution. Consult a qualified insurance representative for guidance on minimum coverage and limits.

Prior to the sub commencing services and upon renewal of the sub's insurance policies, the sub must provide a certificate of insurance (COI) evidencing compliance with the insurance requirements.

Sub's Quality Assurance Plan: This is not needed in all cases. For example, a quality assurance plan is not needed from a sub under the direct supervision of the prime or a sub providing augmentation of staff. A sub providing professional services shall be solely responsible for professional quality, technical accuracy and the co-ordination of its design documents, calculations, reports, or other data and shall, without additional compensation, correct errors or deficiencies upon written notice. To minimize errors or omissions, the sub should provide and maintain a Subcontractor or Sub-consultant Quality Assurance Plan (SQAP) that sets forth the sub's policy for quality assurance including procedure(s) for implementation. The prime should reserve the right to conduct audits and/or otherwise monitor the sub's compliance with the SQAP. The submission and acceptance of the SQAP does not relieve the sub of full liability for errors, omissions or other deficiencies in the sub's services.

Health and Safety Plan: This may not be required of all subs. However, any sub working in the field must take all necessary precautions for the health and safety of its employees. At a

minimum, the sub must comply with the applicable law and any requirements established by the prime and its client, especially when the client has a specific safety plan or requirements for specific training. When the sub's services require field work, the sub should implement a site-specific health and safety plan, providing any appropriate personal protective equipment.

Incorporating the above elements into your subcontracts benefits both the prime and the sub in minimizing risks related to the sub's services.

This ACEC/MA Risk Tip is intended to provide current and accurate information to assist the reader in becoming more familiar with the subject matter. It is informational only and not intended to substitute for technical, legal, or risk management professional advice. The reader is encouraged to consult with an attorney or appropriate professional consultant to explore this information further.

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