

SUBCONTRACTOR INSURANCE REQUIREMENTS

Version 3/1/2018

The cornerstone of a successful contractual risk transfer program is a consistent approach to Subcontractor Insurance Compliance.

Structuring the Subcontractor Insurance Requirements as an Exhibit or Attachment to the standard subcontract agreement allows for easy modification of the Requirements as needs change, without having to rewrite the entire subcontract agreement. Distributing the Insurance Requirements as part of the prequalification or bid process may help ensure potential subcontractors can meet your company's insurance requirements at no additional cost to you.

The attached Minimum insurance requirements are designed to cover most common insurable risks, with recommendations for additional coverages where exposures exist. Certain projects or contracts may require higher limits and/or specialty coverages not addressed in these guidelines.

Best Practices:

1. Use comprehensive insurance requirements as an Exhibit to your subcontract agreement..
2. Include insurance requirements (including sample endorsement forms) with your subcontractor prequalification or pre-bid packets.
3. Use a subcontractor insurance checklist to verify coverage compliance. Develop an exception process and procedure to follow when subcontractors are noncompliant.
4. Request a new certificate of insurance package (including endorsements) prior to releasing final retention payment.
5. Keep certificates of insurance and endorsements in the contract file for 10 years after project completion.
6. Analyze Prime Contract insurance requirements for flow-down provisions. Incorporate all relevant coverage requirements in the subcontract insurance exhibit.
7. Meet with your insurance broker and/or attorney annually to updated requirements as needed. The 2018 Updates are:
 - 1.1 Workers' Compensation – Added language addressing PEOs and Temporary Employee Leasing Companies
 - 1.3 General Liability Additional Insured – Added language addressing subcontractor's higher limits of insurance than required by the Exhibit
 - 1.8 Builder's Risk/Property – Added requirement for Installation Floater if no builder's risk coverage is in place. Added language confirming Subcontractor is responsible for insurance its property, tools and equipment
 - 2.0 Pollution Liability – Clarified coverage requirements for bodily injury, property damage and clean-up costs
 - 2.7 Claims and Lawsuits – Added requirement to notify Contractor timely in the event of any claim or lawsuit pertaining to Subcontractor's work under the Subcontract

- 2.7 Indemnity – Added language preserving Contractor’s indemnity rights separate from Subcontractor’s Insurance

Insurance Exhibit

1.0 Minimum Insurance Requirements

Prior to commencing work, and until all obligations under this Contract are fulfilled, Subcontractor shall, at its sole expense, procure and maintain not less than the following coverage and limits of insurance. Such insurance shall be under forms of policies and from insurance companies satisfactory to Contractor. Insurance shall be placed with insurers with an A.M. Best rating of at least A- VIII, and insurers must be authorized to do business in the state in which the work is being performed. In specifying minimum insurance limits herein, Contractor does not assert that they are adequate to protect Subcontractor. Subcontractor is solely responsible to provide adequate insurance to protect itself.

1.1 Workers’ Compensation and Employers Liability Insurance as required by applicable law or regulations.

1.1.1 Employers Liability with a \$1,000,000 limit.

1.1.2 Waiver of rights of recovery endorsement in favor of the Contractor and Owner.

1.1.3 U.S. L&H and Jones Act coverage is required if any exposure exists.

1.1.4 Programs underwritten by any Self Insured Group require Contractor’s prior written approval.

1.1.5 If Subcontractor leases employees through an employment management, PEO or other such company, evidence of insurance must be provided through an Alternate Employer/Leased Employee endorsement naming Subcontractor on the employment company’s workers’ compensation policy. The PEO or temporary leasing company and their insurers waive all rights of recovery against Contractor, Owner and their insurers.

1.2 Commercial General Liability Insurance on a coverage form at least as broad as the ISO Occurrence form CG 0001.

1.2.1 The minimum limits of liability shall be as listed below, or as required in the prime contract, or as carried by the subcontractor, *whichever is greater*:

\$2,000,000 each occurrence

\$2,000,000 personal and advertising injury

\$2,000,000 general aggregate

\$2,000,000 products and completed operations aggregate

These limits can be provided in combination with an umbrella or excess policy.

1.2.2 Coverage shall include:

Per project general aggregate endorsement

Broad form property damage including Completed Operations

Coverage for claims arising out of subsidence or earth movement

Contractual Liability insuring obligations assumed in this agreement

1.2.3 Subcontractor shall maintain general liability and completed operations coverage through the expiration of the construction statute of repose period established by the state civil code where the project is located.

1.3 Additional Insured, Primary Insurance and Waiver of Rights of Recovery Requirements:

- 1.3.1 The subcontractor shall endorse its Commercial General Liability policy to add all parties required to be named as additional insured in this contract or the prime contract including without limitation Contractor, its directors, officers and employees and Owner.
- 1.3.2 The form of the Additional insured Endorsement shall be ISO CG 20 10 07 04 in conjunction with CG 20 37 07 04 or unmodified equivalent.
- 1.3.3 Additional insured endorsements shall be provided through the end of the construction period and for the warranty term following project completion.
- 1.3.4 A separate Primary and Noncontributory endorsement stating that Subcontractor's insurance shall apply as primary and any other insurance carried by Contractor or Owner will be excess only and will not contribute with this insurance. The form of the Primary and Noncontributory endorsement shall be ISO CG 20 01 04 13 or unmodified equivalent.
- 1.3.5 A waiver of transfer of rights of recovery endorsement in favor of Contractor and Owner is required.
- 1.3.6 If Subcontractor maintains higher limits than the minimum requirements shown above, then Contractor and Owner are entitled to such limits.

1.4 Automobile Liability Insurance on a coverage form at least as broad as ISO CA 0001, including:

- 1.4.1 \$1,000,000 Combined Single Limit for bodily injury and property damage
- 1.4.2 Coverage on any automobile basis, including all owned, non-owned and hired autos
- 1.4.3 Any subcontractors subject to the Motor Carrier Act of 1980 must provide a MCS-90 endorsement with a primary limit of \$1,000,000 each accident.

1.5 Umbrella or Excess Liability Insurance:

- 1.5.1 If higher limits of coverage are required by the Prime Contract, the subcontractor will comply with such limits by providing evidence of an umbrella or excess liability policy. This policy shall be subject to all the requirements of the general liability policy as stated in section 1.2 and 1.3, and provide excess limits over Automobile Liability requirements in section 1.4.

- 1.6 Certificates of Insurance
 - 1.6.1 Subcontractor shall furnish certificates of insurance and required endorsements acceptable to Contractor before commencing any work on the project, and as a condition of payment of final retention.
 - 1.6.2 Payment may be withheld or work suspended, at the option of Contractor, until such acceptable certificates and endorsements have been furnished. Failure to provide acceptable certificates and endorsements shall be considered a material breach of contract. Copies of subcontractor's insurance policies shall be furnished upon reasonable request.
 - 1.6.3 Subcontractor shall immediately notify Contractor in writing after receiving a notice of cancellation of any insurance policy applicable to this Agreement. Payment may be withheld or work suspended until withdrawal of cancellation or reinstatement of the canceled policy.
 - 1.6.4 Acceptance of certificates of insurance by Contractor shall in no way limit Subcontractor's duties and responsibilities under this Agreement, including the duty to indemnify Contractor and Owner.
- 1.7 Insurance Requirements for lower tier Subcontractors, Truckers, Trucking Brokers, Sub-Haulers, Vendors and Suppliers:
 - 1.7.1 Subcontractor is responsible for verifying that its' Subcontractors, Truckers, Trucking Brokers, Sub-Haulers, Vendors and Suppliers of any tier maintain insurance in like form and amounts, including the Additional Insured requirements stated in Section 1.3, and will provide Contractor evidence of such insurance before allowing the lower tier subcontractors to begin work on the project.
- 1.8 Builder's Risk Insurance/Property Insurance
 - 1.8.1 Subcontractor shall satisfy itself as to the existence and extent of Builder's Risk insurance prior to commencing work.
 - 1.8.2 If Builder's Risk insurance purchased by Owner or Contractor covers loss or damage to Subcontractor's work, and Subcontractor is responsible for the damage, then they will pay the insurance policy deductible.
 - 1.8.3 Subcontractor shall be responsible for the care and protection of their work until its completion and final acceptance, and if Builder's Risk insurance is not purchased by Owner or Contractor, Subcontractor will procure coverage (such as an Installation Floater) at its own expense. Such insurance shall also apply to Owner's or Contractor's property in the care, custody or control of Subcontractor.
 - 1.8.4 Contractor and Subcontractor waive all rights against each other and against all other Subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights they may have to the proceeds of such insurance.
 - 1.8.5 Subcontractor is responsible for providing insurance for all lits property, tools and equipment used at or away from the jobsite.

1.9 Professional Liability Insurance

- 1.9.1 Professional Liability insurance in the amount of \$1,000,000 per claim/\$2,000,000 aggregate shall be carried by Subcontractor **if** work under this Agreement includes any professional services, testing, design assist, design-build, stamped drawings or LEED certification services.
- 1.9.2 Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the project.
- 1.9.3 Claims-made policies must have a retroactive date prior to the first date design services were performed under the Scope of Work, and coverage must extend a minimum of five (5) years beyond Consultant's completion of Scope of Work, or end of this Agreement, whichever is later.
- 1.9.4 If Claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy with a retroactive date prior to the Agreement effective date, the Consultant must purchase Extended Reporting Tail coverage for a minimum of five (5) years beyond completion of Scope of Work or end of this Agreement, whichever is later.

2.0 Pollution Liability Insurance

- 2.0.1 Contractor's Pollution Liability insurance that protects Contractor and Owner for all bodily injury, property damage and clean-up costs from sudden and accidental pollution conditions with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate is required **if** Subcontractor or their Subcontractors or Suppliers of any tier:
 - 2.0.1.1 Bring pollutants to the job site, or;
 - 2.0.1.2 If their operations create a pollution exposure, or;
 - 2.0.1.3 If they are performing work on or penetrating or sealing the building envelope, or dealing with water. Coverage for mold and bacteria is required in these cases.
 - 2.0.1.4 If their work could in any way contribute to or cause airborne silica to be released. Coverage for silica is required in this case.
- 2.0.2 The Owner and Contractor must be named Additional Insured on this policy.

2.1 Hazardous Materials Abatement

- 2.1.1 Contractor's Pollution Liability with limits no less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate is required **if** Subcontractor or their Subcontractors or Suppliers of any tier are required to perform remediation of hazardous materials as those terms are defined in federal, state or local law; or if their operations involve an exposure to hazardous materials, including but not limited to Asbestos, Lead and Mold.
- 2.1.2 The Owner and Contractor must be named Additional Insured on this policy.
- 2.1.3 **If** Subcontractor or their Subcontractors or Suppliers haul hazardous materials, the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles.

If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.

2.2 Riggers Liability

2.2.1 Subcontractor shall carry Rigger's Liability Insurance with limits no less than \$1,000,000 per occurrence **if** Subcontractor's work involves moving, lifting, lowering, rigging or hoisting of property or equipment belonging to others. Such insurance shall insure against physical loss or damage to the property or equipment. Deductibles greater than \$50,000 require Contractor's prior written approval. **If** Subcontractor is performing crane services then General Liability/Excess limits required are \$10,000,000 per occurrence/aggregate.

2.3 Subcontractor's Use of Contractor's Equipment

2.3.1 Contractor may permit Subcontractor to use Contractor's equipment. Contractor may require the return of equipment to Contractor's custody and control for any reason and at any time, and Contractor may allow parties the use of equipment at any time.

2.3.2 Subcontractor is solely responsible for its activities while using equipment and agrees to use the equipment at its own risk. Contractor makes no warranties or guarantees regarding the safety or suitability for a particular purpose, or the accuracy or effectiveness of the equipment to be used. Subcontractor has inspected the equipment to its full satisfaction before taking possession to ensure the equipment is operating safely.

2.3.3 Subcontractor agrees that Contractor shall have no liability for any damages resulting from the use of the equipment by Subcontractor. Subcontractor agrees that all terms of the Indemnification clause of this Contract shall apply to Subcontractor's use of equipment.

2.3.4 Subcontractor shall ensure that its employees, agents and any individual(s) assigned by Subcontractor to operate the equipment (collectively "Operators") are trained and certified on the operation of the equipment before operating equipment. Before operating equipment, any operator shall have demonstrated their understanding of all hazards related to the operation of the equipment. All operators assigned by Subcontractor to operate the equipment shall be under the sole and exclusive supervision, direction and control of Subcontractor.

2.4 Work near Railroads

2.4.1 **If** Subcontractor or their Subcontractors or Suppliers performs any work or conducts any operations within fifty feet of any railroad (including light rail, fixed rail or any other rail system), Subcontractor Commercial General Liability policy shall be endorsed to delete any exclusion, including the Contractual Liability exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor before work within fifty feet of the railroad commences.

- 2.5 Manned or Unmanned Aircraft/Helicopter Insurance
 - 2.5.1 Aircraft Liability insurance with limits no less than \$10,000,000 per occurrence, including Passenger Liability, shall be provided if the Subcontractor or their Subcontractors use any owned, leased, chartered or hired aircraft of any type in the performance of this Agreement.
 - 2.5.2 Subcontractor or their Subcontractor shall name Contractor and Owner as Additional Insured as respects aircraft liability and provide a Waiver of Subrogation endorsement of Contractor and Owner as respects physical damage to the aircraft or helicopter hull.
 - 2.5.3 Evidence of coverage in the form of a certificate of insurance and acceptable endorsements shall be provided prior to the start of the project.

- 2.6 Marine Insurance
 - 2.6.1 If Subcontractor or lower tier subcontractor utilizes vessels or barges in their operations, Marine Insurance of the following types and limits are required:
 - 2.6.2 Hull and Machinery Insurance, with coverage equal to that provided by the American Institute Hull Clause (6117), including collision liability, with the Sistership clause un-amended, with limits of liability equal to the full value of the vessel and with the navigational limitations adequate for Subcontractor to perform the contracted work. When the Subcontractor engages in towing operations, said Insurance shall include Tower's Liability with the Sistership clause un-amended.
 - 2.6.3 Protection and Indemnity Insurance covering injuries to or death of masters, mates, crews of vessels and Maritime employees. Coverage is to include Voluntary Removal of Wreck and/or Debris Insurance. The limits of liability of such insurance shall be equal to the value of each Vessel covered or \$10,000,000, whichever is greater.
 - 2.6.4 Collision Liability Insurance, whether contained in the Hull Policy, P&I Policy or elsewhere, in an amount equal to the value of each vessel covered or \$10,000,000, whichever is greater.
 - 2.6.5 Towers Liability Insurance for any subcontractor with towing operations, whether contained in the Hull Policy, P&I Policy or elsewhere, in an amount equal to the value of each vessel covered or \$5,000,000, whichever is greater.
 - 2.6.6 Vessel Pollution Liability with WQIS or equivalent, with a limit of \$5,000,000 per occurrence.
 - 2.6.7 Coverage as required per the U.S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act, or other applicable laws, regulations or statutes.

- 2.7 Other Requirements
 - 2.7.1 IF an Owner Controlled Insurance Program ("OCIP") or Contractor Controlled Insurance Program ("CCIP"), herein designated as a WRAP PROGRAM ("WRAP"), will be implemented for a project, then Subcontractor will be required to participate as further described in the Project specific WRAP Manual ("MANUAL"), and the insurance exhibits in the Contract Documents. WRAP insurance consists only of those coverages outlined in the MANUAL, and the specific limits provided are outlined therein.

Subcontractor is required to comply with all remaining insurance requirements in this Insurance Exhibit.

- 2.7.2 Insurance coverage in the minimum amounts set forth herein shall not relieve Subcontractor for liability in excess of such coverage, nor shall it preclude Contractor from taking other available actions under any other provision of this Agreement or law. Contractor makes no representation as to the amount of insurance coverage required to protect Subcontractor's interests. 2.7.3 Subcontractor's obligations for loss or damage arising out of Subcontractor's work are not limited to the types or amounts of insurance set forth above. To the extent Subcontractor maintains insurance greater than these minimum requirements, Subcontractor agrees that such insurance shall be applicable to any of Subcontractor's liability obligations arising out of this Agreement.
- 2.7.4 Regardless of the Policy exclusions, coverage limitations or deductibles by Contractor, Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s). Deductibles of Self-Insured Retentions over \$50,000 must be disclosed and approved by Contractor.
- 2.7.5 Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish Contractor with evidence of renewal or replacement of the policy. Failure of the Subcontractor to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event Subcontractor fails to maintain any insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate this contract.
- 2.7.6 **If any claim for damages is filed with the Subcontractor or if any lawsuit is instituted against the Subcontractor that arises out of or is in any way connected to the Subcontractor's performance under the Subcontract, and in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect the Contractor, the Subcontractor must give prompt and timely (within ten (10) Calendar Days following the date of receipt of a claim or following the date of service or process of a lawsuit) written notice thereof to Subcontractor.**
- 2.7.7 **Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under the Subcontract including the duty to indemnify and hold Contractor harmless.**

I accept the terms and conditions of this insurance exhibit with no modifications:

Subcontractor Name _____

Signature _____ Date _____