

Contractors' Risk Management Practices

An Educational Guide
Courtesy of DBH Resources, Inc.



INTRODUCTION

Each year, the landscape for the construction industry becomes more complicated. Contractual requirements and litigation are challenges today's contractors face with more regularity, making risk management a necessity. Often, contractors need assistance when addressing these challenges.

The Cincinnati Insurance Company asked DBH Resources, Inc., a nationwide construction risk-management company, to develop a guide to help you find answers to your risk management questions. We are pleased to provide you with "Contractors' Risk Management Practices – An Educational Guide."

This Guide serves as a guideline and starting point. However, it is not intended to be a complete review of the subject matter presented, nor is it designed to be a comprehensive guide to risk management. Instead, it can provide you with tools to promote discussions and development of a risk management program for your business.

Each business considers specific requirements, challenges and operating areas to tailor risk management solutions that suit its unique circumstances. This process requires input from attorneys, insurance professionals and industry resources in order to address the needs of each individual business. This Guide includes general educational material and is not intended to apply to any specific set of facts or circumstances or to promise any particular results from its use. It is not legal or professional advice, nor is it intended to replace professional advice.

Nothing in this Guide should be construed as promising insurance coverage for any specific claims or circumstances. Additionally, while your liability insurance may cover some of the items discussed in this Guide, many risks you face are not generally covered by insurance. Consultation with your attorney and insurance professionals is your best tool for implementing a risk management program and for addressing your business risks.

For information, quotes, policy service or coverage availability in your state, please contact your local independent agent representing Cincinnati. "The Cincinnati Insurance Companies" and "Cincinnati" refer to one or more companies of the insurer group providing property and casualty coverages through ◻ The Cincinnati Insurance Company or one of its wholly owned subsidiaries – ◻ The Cincinnati Indemnity Company, ◻ The Cincinnati Casualty Company or ◻ The Cincinnati Specialty Underwriters Insurance Company – and life and disability income insurance and annuities through ◻ The Cincinnati Life Insurance Company. Each insurer has sole financial responsibility for its own products. Not all subsidiaries operate in all states. 6200 S. Gilmore Road, Fairfield, OH 45014-5141.

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Message from DBH Resources, Inc.

This Guide has been prepared with general information to help you identify issues that are increasingly common in the construction industry. Implementing this educational process may involve seeking specific assistance from experts, such as risk-management consultants, insurance agents and attorneys. I urge you to use this Guide to help protect your company from unnecessary risks.

This Guide provides:

- an explanation of risk management
- plans for accomplishing risk transfer
- ideas to encourage risk reduction through safety and construction quality
- sample construction contract provisions
- sample safety policy

For access to the latest industry news, a nationwide forum to discuss construction liability risk management issues with your peers, and a marketplace for obtaining further educational and consulting services, please visit DBH Resources' www.theriskcenter.com, or contact us at info@dbhresources.com or (310) 398-5697.

Sincerely,

A handwritten signature in black ink that reads "George Dale". The signature is fluid and cursive, with a long horizontal stroke at the end.

George Dale
President
DBH Resources, Inc.

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About DBH Resources, Inc.

RISK MANAGEMENT IN THE CONSTRUCTION INDUSTRY

– What Is Risk Management?

Risk is the potential or possibility that something, usually negative, will occur.

Risk management is the evaluation of the probability of a harmful event occurring. It also involves reducing risk, assessing the costs of reducing risk, and determining how to reduce exposure to the costs associated with a harmful event. To practice effective risk management, begin by creating a problem-solving plan and implementing the plan on a timely basis.

When it comes to the construction industry, this Guide focuses on two main areas of risk management: transferring risk to a responsible third party, such as a subcontractor, and reducing loss through activities, such as controlling job sites and construction quality.

Implementing risk management practices helps:

- protect your assets
- preserve your limits of insurance
- control your insurance costs
- reduce the possibility you will be involved in protracted legal disputes

Risk management allows you to focus on what you do best – running your business.

The term “risk management” is often heard but seldom truly understood. This Guide will introduce you to risk management as it pertains to the construction industry in the United States.

RISK TRANSFER FOR CONTRACTORS

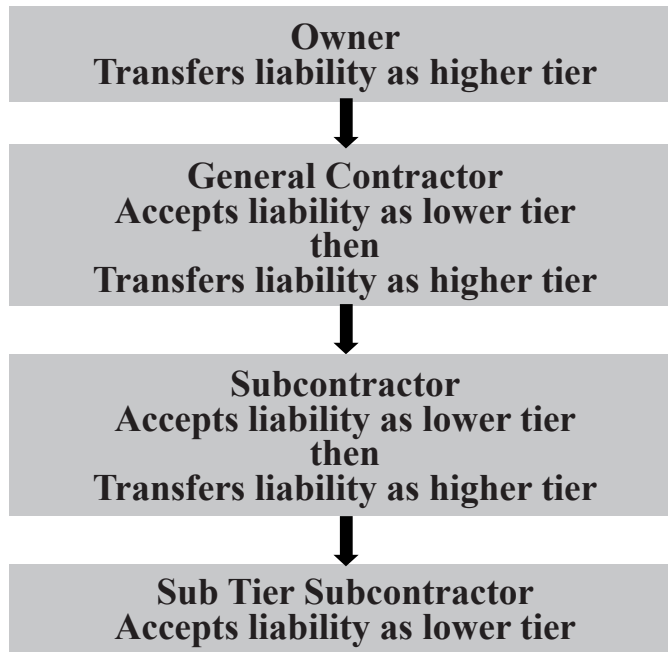
General contractors often hire subcontractors skilled in a particular trade, such as plumbers, electricians or carpenters. However, general contractors may be held legally liable for any injury or damage caused by their subcontractors' work. Furthermore, contractors are responsible for the job-site safety of their own employees, their subcontractors' employees and visitors. For example, in most states an injured employee of a subcontractor may sue the general contractor. To protect themselves, general contractors transfer risk.

– What is Risk Transfer?

Risk transfer entails shifting the risk of loss for injury or damage among the parties of a contract. General contractors transfer risk to subcontractors they use on a particular construction project by including indemnification and hold harmless provisions as well as additional insured requirements in their construction contracts.

When it comes to transferring risk, contractors and other parties in a contract are referred to as either *higher tier* or *lower tier*. The higher tier hires a lower tier contractor to perform work and transfers its risk of loss to the lower tier contractor.

Higher tier and *lower tier* are relative terms. A contractor may be a higher tier in one relationship and a lower tier in another. For example, when an owner hires a general contractor to construct a building, the owner is the higher tier and the general contractor is the lower tier. As a result of the owner's transfer of risk to the general contractor, the general contractor becomes responsible for payment of injury or damage resulting from work performed for the owner. However, when the general contractor hires subcontractors, the general contractor is the higher tier, and requires each subcontractor (the lower tier) to be responsible for payment of injury or damage resulting from the subcontractor's work. If a subcontractor hires another subcontractor, the initial subcontractor is the higher tier.



– Construction Contracts – One Tool Used to Transfer Risk

A contractor's risk management strategy should include contractually transferring as much risk as possible to lower tier contractors. Specific areas that are commonly addressed in construction contracts include:

- specific scope of work and performance standards
- time for completion of the project or portion of the work
- payment terms
- risk of loss to the ongoing work
- indemnification and hold harmless agreements in favor of the higher tier for claims arising out work performed by the lower tier
- insurance requirements

For your convenience **Appendix A** on Pages 20-22 provides a *Sample Insurance and Indemnity Language for Subcontractor Agreement* that includes the insurance and indemnity requirements found in the Risk Transfer Checklist on Page 14.

– Written vs. Oral Contracts

Oral construction contracts can be valid and enforceable, but they are extremely difficult to prove. The honesty of each party, the reliability of their memories and the passage of time can affect the recollection of contract terms. Furthermore, oral contract terms tend to focus on price and scope of work, and often fail to specifically include risk transfer. The enforceability of oral contracts varies by state, but use of an oral contract is generally not a good idea anywhere.

The terms of written construction contracts are easier to prove and enforce even though there may be disagreement over the meaning of the written word. A *written* contract is the best way to document risk transfer terms and agreements.

– **Basics of Risk Transfer**

When a higher tier transfers risk to a contractor, the contractor should transfer as much risk as possible to the next lower tier. For example, a property owner typically requires the general contractor to sign an indemnification agreement in favor of the owner, as well as a hold harmless agreement and additional insured status on the general contractor's liability policy. However, the transferring of risk is not yet complete because the general contractor will require the same of each subcontractor. The same goes for subcontractors who hire a subcontractor. In other words, there is a "domino effect" at work when it comes to higher tier/lower tier risk transference.

By using appropriate risk transfer techniques, contractors can reduce their exposure to loss from both higher and lower tier contractors, thereby protecting their own business assets.

This Guide addresses the most commonly used methods of risk transfer: indemnification and hold harmless agreements, as well as additional insured endorsements.

– Indemnification Agreements

Indemnification agreements (also called indemnification provisions or indemnity agreements) transfer risk and responsibility to other parties. They are a critical part of construction contracts, and are examined by the courts when a claim or lawsuit results from a dispute. A typical construction contract includes an indemnification agreement that requires the lower tier contractor to indemnify the higher tier contractor for loss described in the contract. A common example is a contract between a general contractor and a subcontractor.

Not all risk transferred by an indemnification agreement is covered by insurance. For instance, there is no coverage for a warranty. As a higher tier, you may enter into an indemnification agreement with a lower tier. If the lower tier assumes a risk of loss not insured by its policy, it will have to reimburse you with its own funds. If the lower tier lacks the financial resources to do so, you could be left with no source of recovery.

– Types of Indemnification Agreements

The type of indemnification agreement determines who contractually bears the financial risk of loss. In the following examples, assume that you are a higher tier transferring risk to a lower tier. The types of indemnification agreements are commonly referred to as:

Broad Form Agreement – you transfer all risk of loss described in the contract regardless of who is at fault. The lower tier is responsible for all damages, even if you are entirely at fault.

Intermediate Form Agreement – you transfer all risk of loss described in the contract, except when the loss is *entirely* your fault. Even if the lower tier is just one percent at fault, it is responsible for all damages.

Limited Form Agreement – the lower tier is obligated to reimburse you for its share of liability for loss described in the contract. For example, if you are involved in a claim for \$100,000 where the lower tier is ruled to be 30 percent at fault, the lower tier is required to indemnify you for \$30,000.

– State Laws Affect Indemnification Agreements

When drafting an indemnification agreement, be aware that most states have anti-indemnity statutes that limit the enforceability of some indemnification agreements, especially Broad Form Agreements. An invalid agreement means you could retain risk you meant to transfer to another party.

For out-of-state jobs, or jobs in your home state for out-of-state owners or developers, the laws that apply may be those of your home state, the state where the job is located or another designated state. Consult your attorney to help you draft indemnity and choice of law provisions that contemplate the variations in state laws.

– Hold Harmless Agreements

Construction contracts often include both indemnification agreements and hold harmless agreements; these are two separate legal terms. Under a hold harmless agreement, the lower tier assuming risk agrees not to attempt to recover payment for damages from the higher tier.

– Additional Insured Endorsements

As stated above, if a court rules that your indemnification agreement is invalid, you could end up retaining risk you thought you transferred. An additional insured endorsement helps to fill this potential gap in your risk management strategy.

An insurance policy is a contract between your business (the *policyholder* or *insured*) and an insurance company (the *carrier* or *insurer*). When an insurer issues a liability policy, it agrees to pay those sums that you are legally obligated to pay as damages because of bodily injury or property damage covered by your policy. If a covered claim occurs, the insurer will defend you and any other insured, and pay the amount of any settlement or judgment, up to the policy limits.

When you hire a contractor, you can – and should – request the lower tier contractor to add your business to its liability policy as an *additional insured*. The lower tier’s insurer will do this by adding an additional insured endorsement to the lower tier’s policy. As an additional insured, you are protected by the lower tier’s policy against liability for injury or damage *caused by work the lower tier contractor does for you*. The lower tier’s policy will defend all insureds and will pay the amount of any settlement or judgment, up to its policy limits.

– *Whose Insurance Pays First?*

Requesting coverage as an additional insured on a *primary* basis means the lower tier’s policy must respond first in the event of a covered claim. Your liability policy will respond on an excess basis and will pay only the amount of any judgment or settlement that exceeds the lower tier’s policy limits. Your policy is less likely to be involved in a loss if the additional insured coverage being provided is on a primary basis. Transferring the responsibility to pay a claim on a primary basis to your subcontractor’s policy helps control your insurance costs and preserve your limits of insurance.

If the additional insured coverage being provided to you is on an *excess* basis, your *own* policy pays covered claims first. The additional insured endorsement under the subcontractor’s policy then responds only after your policy limits are exhausted.

– *Limits of Insurance*

Higher tier contractors should require lower tier contractors to maintain adequate limits of insurance, such as:

- \$1 million Each Occurrence (Bodily Injury and Property Damage)
- \$2 million General Aggregate that applies on a per project basis
- \$2 million Products/Completed Operations Aggregate
- \$1 million Per Person or Organization (Personal and Advertising Injury).

Many factors impact the limits of insurance you should require. Your insurance agent or attorney can advise you on limits appropriate for your project.

– *How Long Should You Require Additional Insured Status?*

In construction contracts, higher tiers state the length of time for which additional insured status is required. Long after the job is completed, contractors may be held liable for injury or damage caused by a lower tier who did work for them. As a result, many higher tiers require additional insured coverage under their subcontractors' policies for the entire time of the statute of limitations based on laws of the jurisdiction that applies. Your attorney can advise you what to require in your construction contracts.

– *Which Additional Insured Form?*

There are many types of additional insured endorsements that provide varying degrees of coverage. The lower tier's liability policy and the additional insured endorsement added to that policy determine the terms of coverage that protect you.

To transfer the most risk possible to the lower tier, higher tiers require additional insured coverage that includes both work in process (referred to as *ongoing operations* coverage) and completed work (referred to as *completed operations* coverage). There are standard industry endorsements to accomplish this.

Your insurance agent can advise you on the appropriate additional insured coverage to request in a particular situation.

– Certificates of Insurance

Contractors who practice risk management require certificates of insurance from subcontractors *before* allowing them to enter the job site or start work. They set up procedures to review each certificate of insurance to ensure compliance with the insurance requirements of the construction contract.

Carefully examine certificates of insurance you receive from subcontractors. The certificate is evidence that your subcontractor's liability policy meets your insurance requirements and that you are named as an additional insured. It summarizes the subcontractor's insurance coverage:

- name of business
- policy number
- name of insurance agency
- name of insurance company
- type of policy (General Liability, Automobile Liability, Excess/Umbrella Liability, etc)
- policy effective and expiration dates
- limits of insurance
- exclusions added by endorsement
- special provisions
- terms under which you, the certificate holder, must be notified if the subcontractor's policy is canceled

The certificate should name your business as an additional insured and should include the form number of the additional insured endorsement protecting you. This information is presumed to be accurate as of the date the certificate was issued.

– *Certificates of Insurance and Additional Insured Endorsements*

A certificate of insurance is *not* the same as an additional insured endorsement. A certificate of insurance does *not* change the terms of the insurance policy. Only an additional insured endorsement can make you an additional insured. Request a copy of the actual endorsement showing you have been added as an additional insured and be sure to get another copy at each renewal.

– *Tracking Certificates of Insurance*

Many contractors maintain a general log and make it available to everyone who needs access to this information. They log certificates in a general ledger-type entry system as each is received and file certificates alphabetically or by effective date for each job.

You can also set up a manual or automated suspense system to track certificates. This allows you to be notified when your subcontractors' policies come up for renewal. Due to the fact the subcontractors' policies may expire during the term of the job contract, it is necessary to make sure your certificates of insurance are updated.

For your convenience, **Appendix B** on Pages 23-25 provides a *Sample Notice of Required Insurance Information* letter and a *Sample Certificate of Insurance* that you can use to remind subcontractors of their insurance obligations.

– Using Uninsured Subcontractors Puts You at Great Risk

The fact that a contractor has inadequate insurance, or doesn't have insurance, is a danger signal.

Using an uninsured subcontractor reduces the value of your indemnification agreement. If you hire an uninsured subcontractor, you could be responsible for payment for injury or damage that should have been the responsibility of the subcontractor. While the subcontractor may also be sued, without insurance, it may be unable to pay for the injury or damage.

Additionally, your annual cost to hire subcontractors affects your liability premium. If you hire an uninsured subcontractor, your insurer will charge extra premium at the end of the policy period based on the subcontractor's payroll. Essentially, you pay premium as if the subcontractor's employees were on your payroll, and losses are paid under your policy.

When claims are paid under your policy that should have been paid under a subcontractor's policy, your policy limits are unnecessarily reduced, your renewal premium is more likely to increase and insurers are less willing to insure your business.

– Risk Transfer Checklist

Follow a set procedure each time you hire a subcontractor. Require written contracts with every subcontractor, and do not allow them to enter a job site or start work until all contracts are signed and all risk transfer requirements are met. Risk transfer requirements include:

A written construction contract with each subcontractor that includes at least:

- An indemnification agreement in your favor¹
- A hold harmless agreement¹
- A requirement that you be added as an additional insured on the subcontractor's commercial general liability policy
- A requirement that such additional insured status be on a *primary* basis
- A requirement that the additional insured coverage include both work in process (i.e., ongoing operations) and completed work (i.e., completed operations)²
- A requirement that the additional insured coverage be maintained for a specified length of time¹
- A requirement that the subcontractor maintain adequate^{1,2} commercial general liability limits of insurance, such as
 - \$1 million Each Occurrence (Bodily Injury and Property Damage)
 - \$2 million General Aggregate that applies on a per project basis
 - \$2 million Products/Completed Operations Aggregate
 - \$1 million Per Person or Organization (Personal and Advertising Injury)
- A requirement that you be given 30 days' written notice if the subcontractor's policy is canceled

Obtain from every subcontractor a completed certificate of insurance that:

- Describes the type of insurance and limits of insurance in effect. Compare it to your risk transfer checklist to make certain it meets your requirements
- Names you as the certificate holder and indicates you have been named as an additional insured on the commercial general liability coverage
- Indicates the form number of the additional insured endorsement
- States that you must be given 30 days' written notice if the subcontractor's policy is canceled

Other action items such as:

- Obtain a copy of the endorsement added to the subcontractor's policy that names you as an additional insured
- Verify that the additional insured endorsement provides coverage for the required work in process and completed work
- Maintain organized files that include the construction contracts, certificates of insurance and additional insured endorsements
- Set up a suspense system, whether manual or automated, to track the certificates' policy expiration dates. When a commercial general liability policy expires, contact the subcontractor and request a current certificate of insurance

¹ Your attorney can counsel you on what will be appropriate for your project

² Your insurance agent can counsel you on what will be appropriate on your project

LOSS CONTROL FOR LIABILITY EXPOSURES

Liability exposures are present both during the actual construction project and for a considerable period of time after the project has been completed. While the project is underway, exposures for bodily injury are present. After the project is complete, construction quality issues may arise. Reducing the potential for liability losses – whether covered by insurance or not – is achieved by controlling the construction job-site and the quality of construction. In addition to reducing the potential for losses, these efforts may increase project efficiency, promote public relations and protect the reputation of all parties involved with the project.

– Controlling Job Sites

The construction industry faces risk on the job site for several types of bodily injury losses. There is risk of injury to construction workers, visitors to the job site (invited guests or trespassers), people adjacent to the job site and project owners or buyers.

Contractors should be dedicated to controlling job sites. Historically, emphasis has been placed on preventing injury to construction workers. While this practice must continue, consider the safety of invited guests and trespassers to the job site. Job sites are attractive to children as unsupervised areas for recreational activities and pose hazards to passersby.

This Guide raises awareness and proposes risk management techniques for contractors. For your convenience, **Appendix C** on Pages 26 and 27 contains a *Sample On-site Safety Policy*.

– Construction Site Guests

Construction sites have various visitors, many of whom may not be knowledgeable about risks that may be present. Safety practices include:

- providing invited guests with an authorized escort and advising all employees of this requirement. Escorts explain site safety, describe any unusual hazards on the site and advise guests what precautions to take, such as wearing hard hats. When touring the site, they point out hazards – even obvious ones
- discouraging pedestrian traffic through construction sites
- ensuring that steps to all permanent and temporary structures are safe and do not present hazards
- providing written notification to project owners/buyers that access to the site requires an appointment. Advise sales personnel about this requirement and the need to have an authorized escort present
- designating delivery areas and requiring delivery personnel to follow the same safety practices required of other invited guests

– Perimeter Security

Job sites are a natural curiosity to the public. For their own safety, it is important to keep trespassers out of the job site at all times. Practices should include:

- erecting fences around the perimeter of the job site. A fence is a good way to signal to trespassers that they are not welcome. Fencing should be sturdy and should be taken down only when and where it's absolutely necessary to perform work
- making every worker responsible to report breaches of the job site perimeter to the site supervisor
- requiring the site supervisor to monitor security throughout the day and after hours
- posting a guard or sentry to direct the public away from dangerous areas when necessary

– Control Entry

On job sites where vehicles are permitted, reduce accidents by:

- monitoring entry of all vehicles to the job site
- discussing safety issues with every driver
- distributing a vehicle-safety policy to all drivers, and requiring a signed acknowledgement of its receipt
- maintaining record of entry and departure for each vehicle
- using fences to limit access to a controlled point on large job sites with multiple points of entry

– Warning Signs

Along with perimeter security, the presence of warning signs is important. Common-sense, to-the-point signs are the most effective. For example, the following have been used: “Private Property – Unauthorized Entry Is Prohibited” and “Construction projects may contain conditions that could cause injury to visitors. Please do not come onto our site without our permission. We give rewards for information on violators. To help us keep our site safe, please call us at (insert your telephone number).”

To make certain that your signs are understood, consider the location of your job site. Signs in second languages may be appropriate for your site, but keep in mind that Spanish is not the only second language in the United States. Being culturally aware can lead to more effective job-site security.

Make every worker responsible to report downed warning signs to the site supervisor.

– Special Considerations for Children

Construction sites attract children, who have a different perception of risk than adults. They tend to minimize common-sense rules and believe that they are invincible. Different standards of care apply when it comes to protecting children.

During the project planning stages, consider children's safety. If the project is located in areas where children congregate, such as schools and parks, discuss these issues with local authorities and school personnel. Equipment and other attractions should be kept away from the perimeter of the project. If site supervisors note bicycle tracks or other evidence that children have been on site, immediate action to intensify security efforts will be necessary.

– Ground Hazards

Trenches and other types of excavations are frequent sources of job-site injuries. All unusual variations of ground elevations should be clearly marked and covered with sturdy materials. The better an area is marked, the less likely that someone will be injured. This is a classic area in which construction workers often assume that others will realize the dangers of a hazard.

Courts often consider ground variations to be hidden and impose a high level of responsibility.

– Construction Material Hazards

As construction projects progress, more materials are stored on site. Scrap and other substances are frequent sources of job-site injuries. Because potential buyers may tour an unfinished site, contractors should maintain projects in broom-swept condition at all times. Trip hazards, such as lumber and hardware scraps, unfinished wiring or holes in the floor or slab should be promptly corrected. Site supervisors should inspect job sites daily and insist that they are free of hazards at all times.

– The Developer's Responsibility

Despite contracts that transfer risk and responsibilities to subcontractors, the developer often retains responsibility for the overall security of the job site. All of the developer's supervisory personnel and all contractors hired by the developer should be aware of the developer's safety policy, and one person should be responsible for implementing and monitoring it. A daily entry should be made in the site security log or a daily foreman's report to record security precautions taken at the job site. Private security patrols or the developer's employees should patrol the job site after hours.

– Construction Quality

Contractors can reduce the risk of loss through quality construction. Most disputes over construction quality involve allegations of construction defects and stem from two main areas:

- disputes over which contractor is responsible for a particular scope of work or for making sure that a portion of the structure will work as designed
- inadequate scheduling or work sequencing

When a general contractor signs a contract with an owner, there are legal expectations regarding the quality of the end product. Many times, a general contractor is required to provide an express warranty with very specific performance standards. In today's legal climate, customers who are dissatisfied with the quality of work are increasingly resorting to litigation against the contractor. Some causes of this trend include the use of lawsuits as a means to resolve minor complaints, vague laws defining construction defects and variations in contractor quality-control efforts. Regardless of the reasons, the trend toward construction defect litigation is a widespread reality. Meanwhile, claims involving construction quality often are not covered by traditional liability insurance.

Lawsuits alleging construction defects have become a major liability for all contractors in the United States. Avoiding these claims starts with a clear understanding of who has responsibility for a particular scope of work. Make sure that each person understands the scope of his or her work and address questions and uncertainties *before* the work begins. Document the resolution of these questions and uncertainties in writing. Implement proper risk transfer techniques to be sure responsibility is appropriately addressed.

– Construction Defects

Water intrusion and structural failure are examples of construction defects. Adequate scheduling and performing work in a specific sequence are necessary to avoid these types of construction defects. Contractors must insist that work be performed in proper sequence, even if this results in a job delay. Years later, no one remembers that a job was finished on time if the building leaks or walls crack.

Contractors are doing more to increase the quality of their product and to educate their customers about proper building maintenance. You can reduce the risk of construction defect claims by constructing buildings:

- in the correct sequence
- with proper supervision
- documenting plan changes
- practicing effective quality-control techniques

There's no guarantee a structure that meets local inspection requirements and that is built precisely to plan will never have a construction defect. However, customer complaints or litigation are less likely if you stress customer service rather than strictly enforce the terms of a limited warranty.

Construction trade groups that play advocacy roles for legislative, regulatory and policy reforms provide a wealth of knowledge and support to participants. Knowledge and communication are keys to protecting contractors from potential construction defect claims. Having organized records is critical for your defense in the event litigation cannot be avoided. Maintain organized files that include:

- documentation of the actual construction process, including plans, plan changes, schedules, sequence of construction and your documented quality assurance checks
- copies of supporting documentation such as soil reports and warranty programs
- written construction contracts with the owners/contractors that hired you
- written construction contracts, certificates of insurance and additional insured endorsements of the subcontractors you hired to work on the project
- your insurance coverage

Good risk management requires judging the subcontractor's ability to deliver a high-quality product that meets or exceeds the standards to which you commit. You can accomplish this by pre-qualifying subcontractors. Pre-qualification takes many forms: visiting prior jobs, getting recommendations, checking claims and license history, and confirming that the subcontractor makes quality a high priority.

Most contractors hire subcontractors they know or have used before. It can be a mistake to hire a subcontractor solely because it is the only subcontractor available to get the job done on time. Poor quality work, even with risk transfer methods in place:

- will cost you extra time to re-do the work to the customer's satisfaction
- will take your attention away from other projects
- will have serious consequences to your reputation

Written contracts promote quality control. The contract between the general contractor and the subcontractor is a crucial document that should reflect the general contractor's own construction standards, the construction standards that the general contractor agreed to with the owner and each subcontractor's warranties for its work.

**APPENDIX A:
SAMPLE INSURANCE AND INDEMNITY LANGUAGE FOR SUBCONTRACTOR
AGREEMENT**

This document contains sample or template language for Builders/General Contractors you may use to help modify subcontractor agreements to reflect the requirements of indemnification and broad additional insured endorsements that include both work in process (*ongoing operations*) and completed work (*completed operations*). This sample language pertains only to insurance and indemnification clauses and is not intended to cover all provisions in a construction contract.

All contracts and modifications to your contracts should be reviewed, approved, and integrated by your attorney, prior to use in any document.

INDEMNIFICATION

The Work performed by the Subcontractor shall be at the risk of the Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at Subcontractor's sole expense) and hold harmless Contractor, the Owner (if different from Contractor), affiliated companies of Contractor, their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors, and assigns ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) ("Claims") which arise or are in any way connected with the Work performed, Materials furnished, or Services provided under this Agreement by Subcontractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Subcontractor, its employees or agents, whether active or passive. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of the Indemnified Parties, whether active or passive. Subcontractor shall not be obligated to indemnify and defend Contractor or Owner for claims found to be due to the sole negligence or willful misconduct of Indemnified Parties.

Subcontractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Laws.

IMPORTANT: The information contained herein is intended to be used solely as a guideline. Attorney review is strongly recommended before using this document in a contract. DBH Resources, Inc. is not responsible for the use of any language used in full or in part from this sample document.

INSURANCE

Upon execution of this Agreement, and prior to the Subcontractor's commencing any work or services with regard to the Project, the Subcontractor shall carry commercial general liability insurance on ISO form CG 00 01 10 01 (or a substitute form providing equivalent coverage) and the Subcontractor shall provide the contractor with a Certificate of Insurance and Additional Insured Endorsement on ISO form CG 20 10 11 85 (or a substitute form providing equivalent coverage) or on the combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 (or substitute forms providing equivalent coverage) naming the Contractor and the Owner as Additional Insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to Owner and Contractor. The coverage available to the Contractor and Owner, as Additional Insureds, shall not be less than \$1 million dollars Each Occurrence, \$2 million General Aggregate (subject to a per project general aggregate provision applicable to the project), \$2 million Products/Completed Operations Aggregate and \$1 million Personal and Advertising Injury limits. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors. All coverage shall be placed with an insurance company duly admitted in the State of _____ and shall be reasonably acceptable to Contractor. All Subcontractor insurance carriers must maintain an A.M. Best rating of "A-" or better. Coverage shall be afforded to the Additional Insureds whether or not a claim is in litigation.

The insurance coverage required under paragraph ___ shall be of sufficient type, scope, and duration to ensure coverage for the Contractor or Owner for liability related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any work performed by or on behalf of the Contractor or Owner in relation to the Project. * Subcontractor agrees to maintain the above insurance for the benefit of Contractor and Owner for a period of ten years, or the expiration of the Statute of Limitations pursuant to Code of Civil Procedure, Section 337.15, whichever is later.

** This language reflects a Statute of Limitations such as applicable in the State of California. Language for agreements to be executed in each state should follow that state's applicable Statute of Limitations.*

Each Certificate of Insurance shall provide that the insurer must give the Contractor at least 30 days' prior written notice of cancellation and termination of the Contractor's coverage thereunder. Not less than two weeks prior to the expiration, cancellation or termination of any such policy, the Subcontractor shall supply

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the Contractor with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of Contractor and Owner as set forth above.

Additionally, and prior to commencement of the Work, the Subcontractor shall provide the Contractor with a Certificate of Insurance showing liability insurance coverage for the Subcontractor and any employees, agents, or Sub-Subcontractors of the Subcontractor for any Workers' Compensation, Employer's Liability and Automobile Liability. In the event any of these policies are terminated, Certificates of Insurance showing replacement coverage shall be provided to Contractor. Coverages shall be no less than the following:

Workers' Compensation and Employers' Liability Insurance: As required by law and affording thirty (30) days written notice to Contractor prior to cancellation or non-renewal, providing coverage of not less than \$1,000,000 for bodily injury caused by accident and \$1,000,000 for bodily injury by disease.

Business Auto Liability Insurance: Written in the amount of not less than \$1,000,000 each accident.

Waiver of Subrogation: Subcontractor shall obtain from each of its insurers a waiver of subrogation on Commercial General Liability in favor of Contractor and Owner with respect to Losses arising out of or in connection with the Work.

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**APPENDIX B:
SAMPLE NOTICE OF REQUIRED INSURANCE INFORMATION**

During the bidding process, advise subcontractors about the minimum insurance requirements they must have in full effect before they may perform work on your behalf, by giving them a letter that:

- describes each insurance requirement
- makes it easy for your subcontractors to provide a copy to their insurance agents who can offer coverage with carriers that fulfill your insurance requirements and can advise your subcontractors about the related insurance costs
- indicates you must receive a Certificate of Insurance from your subcontractors before they may perform work on your behalf or receive payment for their work.
- requires your subcontractors to factor all insurance costs into their bids
- advises that once you accept their bids, the contracts will *not* be renegotiated for insurance costs left out of the bid

Sample Letter to Your Subcontractors

Date

RE: (Additional Insured/Your Name)

Dear Subcontractor:

Please read this letter carefully. The information contained in this letter will affect whether or not you may enter into a contract with us and may affect your receipt of prompt payment.

Should your bid succeed, our contract requires that you return to us a signed contract and Certificate of Insurance showing commercial general liability, business auto liability and employers liability insurance. Plus, our contract requires that you provide a copy of any endorsement issued by your insurance company naming us as an additional insured. We must receive these before you begin work or provide services on the project.

Your policies also should:

- include at least \$1,000,000 limits for commercial general liability, business auto liability and employers liability

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- be issued by an insurance carrier that maintains an A.M. Best’s rating of “A-” or better, is duly admitted in the State of (insert state here) and is reasonably acceptable to us. (Your insurance agent can advise you about ratings on insurance companies.)

Your commercial general liability policy should:

- include commercial general liability *aggregate limits* of at least \$2,000,000 with the general aggregate limit applicable per project
- be an occurrence coverage form equivalent to ISO’s CG 00 01 10 01
- include coverage for liability arising from premises-operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract (including tort liability of another assumed in a business contract)
- include no endorsements or modifications arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors
- include a waiver of subrogation
- name us as an additional insured on a primary basis for ongoing and completed work using ISO form, CG 20 10 11 85 or a combination of ISO forms, CG 20 10 10 01 and CG 20 37 10 01 (or using substitute forms that provide equivalent coverages)

Additionally, we require that your business will:

- carry completed operations insurance for __ years (the length of the statute of limitations)
- name our company as an additional insured on a primary basis on your commercial general liability insurance for __ years (the length of the statute of limitations)
- provide at least 30 days’ written notice prior to cancellation or termination of your commercial general liability, business auto liability and employers liability policies

Please make sure you provide your insurance agent with a copy of this letter and the attached Sample Certificate of Insurance. **You must include all insurance costs in your bid, as you will be unable to renegotiate these costs later.** Please contact me if your agent would like the names of carriers that meet these requirements and can provide these coverages.

Best regards,

Higher-tier Contractor

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SAMPLE CERTIFICATE OF INSURANCE

ACORD™ CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY) DATE		
PRODUCER <div style="border: 1px solid black; padding: 5px; width: 100%;"> SUBCONTRACTOR'S AGENT STREET CITY, STATE ZIP CODE </div>		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.				
INSURED <div style="border: 1px solid black; padding: 5px; width: 100%;"> SUBCONTRACTOR STREET CITY, STATE ZIP CODE </div>		INSURERS AFFORDING COVERAGE		NAIC #		
		INSURER A: NAME OF INSURANCE COMPANY		#####		
		INSURER B: NAME OF INSURANCE COMPANY		#####		
		INSURER C: NAME OF INSURANCE COMPANY		#####		
		INSURER D:				
		INSURER E:				
COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR	ADDL	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	[POLICY NUMBER]	[DATE]	[DATE]	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
B		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	[POLICY NUMBER]	[DATE]	[DATE]	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	[POLICY NUMBER]	[DATE]	[DATE]	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
		OTHER				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS						
Coverage applies to (specific location). Certificate holder is named as Additional Insured, per attached Form CG 20 10 11 85.						
CERTIFICATE HOLDER <div style="border: 1px solid black; padding: 5px; width: 100%;"> CONTRACTOR STREET CITY, STATE ZIP CODE </div>				CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. THIS NOTICE IS NOT VALID UNLESS IT IS RECEIVED BY THE CERTIFICATE HOLDER WITHIN THE TIME FRAME SPECIFIED ABOVE. AUTHORIZED REPRESENTATIVE		

ACORD 25 (2001/08)

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**APPENDIX C:
SAMPLE ON-SITE SAFETY POLICY**

This policy should be posted in every job trailer and made part of every contract.

This project belongs to: _____ (Developer/Owner). The responsibility for job-site safety for our construction workers as well as invited and uninvited guests lies with every worker on this project. _____ (Builder) maintains a zero-tolerance enforcement policy. Failure of any subcontractor to abide by this policy will be considered a breach of contract.

Our policy is to prevent unauthorized access and protect those on site from all obvious and hidden conditions that may cause injury. Remember that different visitors will have different experiences relating to site conditions. Do not assume that what is common sense to one subcontractor is obvious to another. Therefore, the following rules apply:

No one is allowed on this job site without prior authorization.

Site security on this project is maintained via the following methods (check all applicable boxes):

- Perimeter Fencing: Report all problems or breaches to Site Supervisor: _____
- Security Guard Service: _____
- Limited Access to Vehicles: All personnel must follow on-site vehicle policies. All visitors must receive and sign for a copy of the policy before entering the site. Visitors include delivery drivers. A copy of the policy is available from the Site Supervisor.
- Special Children's Area: The following special steps are to be taken due to the likelihood that children will be in the vicinity: _____; _____; _____
_____. Report all evidence of children's presence on site to the Site Supervisor:

- Visitors: All visitors must receive a site-safety orientation before entering the site. This must include a discussion of ground-variation hazards, such as trenches and utility holes; material hazards on site; height hazards, such as second-floor residences, and other special conditions. A written acknowledgment is required. All visitors should be accompanied by authorized personnel.

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- On-Site Trailers: Make sure that the areas around the trailers are safe and free from hidden and obvious hazards. Ensure that trailers are functional and placed in areas where access is free from hazards.
- Clean Site: Removing construction debris and scrap material is the responsibility of every person working on the site. Ensure that all excess materials are promptly removed and disposed of. Make sure that all utilities and fixtures are left in non-hazardous conditions.

Everyone is responsible for maintaining a safe work site. Please report all violations and suggestions to the Site Superintendent immediately.

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About DBH Resources, Inc.

DBH Resources, Inc. (DBHR) is a nationwide construction risk-management company. DBHR provides training programs, one-on-one consultation and outsourced risk-management services for the construction industry. In addition, DBHR offers a state-of-the-art customer-service software program, *BuildingResolutions.com*.

DBHR's training manuals cover a wide variety of topics, including safety, site safety, customer service, quality control, self-insured retention management, anti-drug-use education and cell phone safety. These ready-to-use manuals include agendas, training tips and course material and are available at www.theriskcenter.com within "marketplace."

DBHR also offers on-site evaluation of risk-management practices through its Risk Assessment Management Program (RAMP). RAMP offers an in-depth analysis of existing capabilities and deficiencies in the areas of contracting, loss control, safety, insurance and quality control.

In addition, DBHR provides ongoing consultation to assist clients who may not have in-house resources to deal with contract review, insurance certificate monitoring and training, owner-controlled insurance programs and periodic risk management issues.

For further general information, please visit www.dbhresources.com or e-mail DBHR at info@dbhresources.com.

