





## **6. Create a Certificate of Insurance Filing System**

Once an appropriate certificate is received, consider keeping a copy in each of the suggested files:

**Project file** - Each project file should contain a current certificate of insurance certifying the coverages, limits, and endorsements for subcontractors.

**Alphabetical file** - Maintain records for your "core" subcontractors and service providers. You can also include any selection or prequalification documentation.

**Expiration file** - Maintain records for your "core" subcontractors and service providers based upon insurance policy expiration dates. This will allow for easier retrieval and follow-up each month.

## **II. a. Written Contracts and Agreements (that you ask others to sign)**

### **1. Written Agreements for Subcontractors and Service Providers**

Securing signed, written contracts from your subcontractors, tenants, and service providers before they begin work or their lease starts can prove very beneficial to enforcing the terms of your agreements. Oral contracts, handshake deals or "gentlemen's agreements" can be difficult and costly to enforce. In many cases, participants to unwritten agreements may have different recollections of the terms thereof.

A written contract can, among other things, define the parties' responsibilities in regard to insurance, indemnity, tools and materials to be used, safety requirements, and other aspects of the business relationship. The following two sources provide standard subcontractor agreements:

#### **Associated General Contractors of America**

1957 East Street, NW  
Washington, DC 20006  
703-548-3118  
<http://www.agc.org>

#### **American Institute of Architects**

1735 New York Ave., NW  
Washington, DC 20006  
1-800-365-2724  
<http://www.aiaonline.com>

*It is important that your legal counsel review all of your written contracts to ensure that they adequately protect your interests and are tailored to your specific situation. Use of form contracts without consulting a competent legal professional and without consideration of your particular circumstances can lead to unexpected and undesirable results.*

### **2. Review all Documentation Submitted for Correctness before Work Proceeds or Commencement of the Lease**

Designate appropriately trained personnel within your organization who will be responsible for reviewing certificates of insurance and signed contracts, leases or purchase orders. Your legal counsel can help provide review guidelines for such personnel. It is important that assigned personnel review and approve

all certificates of insurance and signed contracts, leases, and purchase orders before any work begins or any lease commences. All too often, certificates of insurance, contracts, leases and purchase orders are received but not reviewed until after an incident occurs which calls into question the terms thereof.

## **II. b. Written Contracts and Agreements (that you are asked to sign)**

### **1. Carefully Review Contracts Before Signing and Designate People with the Authority to Sign Contracts in Your Company**

Have contracts reviewed by legal counsel and your retained insurance advisor before signing them. Evaluate the risk you are taking on in light of the value of the contract as a whole. Is the business you receive worth the potential liability you assume? Can you do business with the other party without assuming as much liability?

### **2. Contract Review Checklist**

In order to assist your legal counsel and insurance advisor in their review of your written contracts, a contract review checklist can be developed and completed to uncover questionable provisions. The completed checklist should be included with the contract for review by your insurance agent and legal counsel. Appropriate action regarding any unfavorable provisions can then be taken following such review.

### **3. Additional Insured Status - Primary or Excess**

One issue to be on the lookout for, regardless of which party requests it, is whether additional insured coverage is primary or excess. This could be addressed in either or both of the written contracts and the related insurance policies.

### **4. Legal Counsel Review of Hold Harmless/Indemnity Agreements**

Have indemnification/hold harmless agreements reviewed by legal counsel, whether you are giving or receiving indemnification. This is money well spent to prevent unwanted consequences and unnecessary expense to you later. Typically, when indemnification agreements are in place, one party agrees to protect the other party against damage, loss or liability, i.e. to hold them harmless. The company that agrees to provide this protection is the "indemnitor." The company that gets the protection is the "indemnitee." These contracts represent an attempt to clarify up front who will assume what liability. If you are not careful, you may find you assumed more than your share, or worse yet, all of the liability when a costly incident occurs.

## **III. Recordkeeping**

### **Documentation**

Retain purchase orders, leases, other contracts, and certificates of insurance in accordance with all applicable law and regulations in the jurisdictions and industries in which you operate. Consult your legal counsel for information and advice concerning any laws and regulations applicable to you.