



# SUBCONTRACTOR MANAGEMENT PLAN



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## Introduction

A Subcontractor Management Plan (SMP) outlines the relationship between contractors while they are performing work for a certain project, and it outlines the methods by which the primary contractor will ensure the production of quality deliverables from each of its subcontractors and ensure the development of long-term business relationships between the companies.

Please note that this plan contains key components that should be considered when drafting an SMP. This guide is not all-inclusive and certain areas may not apply to your contract. Also, include other components or areas pertinent to your contract.

Although the procurement person prepares the SMP, it is vital that the SMP contain the input of other members of the contract management team to ensure that existing issues, vulnerabilities and risks are adequately addressed. Consequently, the SMP draft should be routed for input through members of the contract management team.

This SMP provides guidance for subcontract management activities, including the following:

- Prequalification and bidding process
- Insurance considerations
- Beginning work
- Work site's written safety plan
- Safety training and recordkeeping policies
- Safety inspections
- Work-in-progress and post-project reviews

The information contained in this toolkit is not intended to be used as legal advice. The reader should consult legal counsel regarding specific legal issues.

## Prequalification and Bidding Process

Prequalifying subcontractors is an important way to ensure the hiring of a subcontractor that has the necessary experience and the ability to complete the job safely, on time and within the budget. While not mandatory, prequalifying a subcontractor helps minimize risk and increases the chance of the job being done right. Consider the following when going through the prequalification process.

- Gather the subcontractor's qualifications, whether through a questionnaire, formal written request, qualification statement or other method. Examine the following information:
  - Does the subcontractor have experience completing similar work?
  - Does the subcontractor have the necessary resources (manpower, finances, available equipment, insurance and surety bonding capacity, licensing, etc.) to complete the job?
  - Does the subcontractor have a history of litigation or other legal problems?
  - Does the subcontractor have any past OH&S violations?
  - Does the subcontractor's safety record prove that the job can be done in a safe manner?
  - Does the subcontractor have any references from previous contracts? Were past customers satisfied with the subcontractor's work?
- Prequalification should let a potential bidder know exactly what to expect from project start to finish. Giving a bidder every piece of relevant information, along with being available to answer any questions he or she might have, will make the process fair and objective.
- Not all subcontractors will qualify for the bid. To weed out bids that fall short of your standards, consider implementing minimum requirements for the subcontractor, such as making sure the subcontractor:
  - Has not been nor is currently debarred by any federal, provincial or local government authority in the past X years
  - Has not defaulted on any project in the past X years
  - Has not had any professional licence revoked in the past X years
  - Has not committed a serious or wilful OH&S or other federal or provincial safety violation in the past X years

After a list is compiled of qualified bidders, bids can be submitted. Generally, qualified bidders with the lowest bid will be selected for the contract, although this is not always the case. The lowest-bid contracts do not always ensure that a project is completed on time within the stated budget. Lowest-bid contracts tend to have more change orders throughout the process, increasing the overall cost of the contract and often causing delays and broken deadlines. Thorough examination of a subcontractor's qualifications and the proceeding bid, if reasonable, should both be taken into consideration before selecting a subcontractor for the job.

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Prior to awarding the contract to a qualified bidder, the primary contractor or owner should document:

- The proposed project schedule that includes key milestones and a description of the technical approach to the project;
- The project management team that includes, at a minimum, the construction management, field supervision and technical personnel. With the project management team list, resumes of the people listed may be included;
- A quality control plan that includes a copy and/or description of the quality control program to be used on the project and any implementing documents applicable to its program; and
- A cost control plan that includes a description of the cost control program being used for the project.

## Insurance Considerations

### Certificate of Insurance

Prior to the beginning of the project, the subcontractor should provide two certificates of insurance to the primary contractor showing that the subcontractor has coverage for him- or herself and his or her employees, agents and subcontractors. All coverage must be placed with insurance companies duly admitted in the province or in the desired licensing jurisdiction in which the work is being done, and all coverage must be reasonably acceptable to the primary contractor. Speak with your Thor Insurance & Registries Ltd representative to obtain certificates of insurance and verify the subcontractor is adequately covered.

The certificates of insurance should provide that the insurer give the contractor a written notice of cancellation and termination of the contractor's coverage at least 30 days prior.

### Additional Insureds

The subcontractor's policy must name the contractor as an additional insured. Coverage must be afforded to the contractor as an additional insured whether or not a claim is in litigation. Additional insured coverage must apply as primary insurance with respect to any other insurance afforded to the owner and contractor.

### Insurance Coverages Subcontractors Should Possess

#### Commercial general liability (CGL)

- Subcontractors should secure a CGL insurance policy to cover the damages that become due in case of bodily injury, property damage and personal or advertising injury arising out of or related to:
  - All of the subcontractor's operations and premises;
  - All of the subcontractor's products and completed operations;
  - All liability or responsibility assumed by the subcontractor;
  - All liability assumed in a business contract;
  - The contractor as an additional insured; and
  - Defence expenses paid in addition to the policy limits.
- There should be no endorsement or modification of the CGL for risks arising from pollution, explosion, collapse, underground property damage or work performed by the subcontractor.

#### Auto liability

- The subcontractor should secure an automobile liability insurance policy to cover the damages that become due in case of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of any motor vehicle or trailer owned, hired, leased, used on behalf of or borrowed by the subcontractor. The policy must also include coverage for any

equipment subject to motor vehicle laws, contractor and owner (if different than the contractor) and any subcontractor liability or responsibility.

## Umbrella or excess liability coverage

- The subcontractor should secure an umbrella liability insurance policy to cover the damages that become due in case of bodily injury, property damage and personal and advertising injury, with at least the same terms and conditions as the policies mentioned above.

## **Completed Operations Liability and Obligations**

Even quality workmanship is not immune to potential claims of property damage or bodily injury. All operations carry the risk that injury or damage may occur as a result of the work, leading to costly lawsuits. Considering the complicated mix of contractors and subcontractors that contributes to each project, who is liable for this risk?

In insurance terms, “your work” as used in an insurance policy is a broadly defined term that includes operations performed by the policyholder or on the policyholder’s behalf, including material, parts or equipment in connection with the operations. Operations or work performed on behalf of the policyholder means work done by a subcontractor is considered the contractor’s work. Therefore, faulty electrical work performed by an electrician that causes a fire or other damage could be considered the contractor’s liability, but would be covered under a standard CGL policy.

Because a contractor or other involved party could be held liable for defects in a subcontractor’s work years after it has been completed, filing the claim under the contractor’s CGL policy could cause the premium to rise. Many construction contracts require subcontractors to provide insurance coverage for claims resulting from their completed work for a finite period of time, typically the one- to five-year range. Typical contracts also require that the subcontractor name the owner, the architect, the general contractor and other third parties as “additional insured” parties, who are entitled to coverage under the insured subcontractor’s CGL policy. Naming additional insured parties requires a separate endorsement to that policy.

This means that subcontractors can be held liable for claims of property damage or bodily injury resulting from a defect in a contractor’s work. It is also critical to maintain this coverage into the future; failure to do so could lead to a breach-of-contract lawsuit brought by the contractor or other party.

It is important for subcontractors to understand this commitment when signing the contract—the insurance commitment doesn’t end with the project. Further, in the event of a large claim, subcontractors could be faced with a substantial increase in premiums on the policy.

What can subcontractors do to reduce the risk of a claim being filed against them for a defect in their completed work? To avoid litigation, it is crucial to know local regulations and adequately document proper performance. Subcontractors must know their company’s documentation practices relative to each subcontract, and carefully keep records of all processes.

## Beginning Work

After a subcontractor has been selected, each subcontractor should have a legally binding, written contract that defines the following items:

- The legal names of the parties involved in the contract
- The scope of the contracted work (contained in an attached statement of work (SOW)), which should include the following items:
  - Each subcontractor's clearly defined responsibilities and authorities
  - Each subcontractor's deliverables identified, and required content clearly specified
  - Each subcontractor's clearly identified and described services that it is responsible for providing
  - Schedule and budget constraints
  - Each subcontractor's clearly defined requirements for quality, including the requirement to allow independent quality inspections of materials and processes
  - Appropriate terms and conditions
  - Adequate facilities provided to meet the needs of the subcontractors
  - The primary contractor's support in processing invoices and payments
- The appropriate terms and conditions that will be imposed on both the primary contractor and the subcontractor
- An acceptance process

## General Subcontractor Management

Managing various subcontractors and their teams can be a difficult task, but successful projects all tend to have the same characteristics:

- They all have clear and unambiguous subcontracts established that include an SOW.
- The efforts of all subcontractors are integrated into a cohesive project plan with all subcontractors understanding where their efforts fit into the overall picture.
- The formal and informal interfaces between the primary contractor and the subcontractors, as well as among the subcontractors, are documented.
- Before starting specific work, the subcontractors are granted authorization to proceed. This authorization is given, in writing, via a Work Authorization form.
- A formal team building process is established and implemented.

These practices all contribute to reducing the risk of misunderstandings or isolationism.

The work of all subcontractors should be coordinated by the primary contractor to ensure that the efforts





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