

CONSTRUCTION CONTRACTS

Insurance Requirements

tips to navigate insurance on projects

By Aman Kahlon



In the modern era, most construction contracts incorporate insurance requirements as a primary means to address the risk of unexpected occurrences that are inherent to the construction industry. Some insurance, like workers' compensation coverage, may be required by law. Other insurance coverage may be required by a lender or other financing party in order to close on the construction loan for a project.

Contractors often pay little heed to the insurance requirements described in their contracts. They may check the box on required proofs and limits of insurance, but then ignore the additional insured endorsement requirements or risk shifting provisions elsewhere in the contract that leave the contractor in a precarious position in the event that insurance coverage is denied.

When unforeseen events occur that may implicate insurance, there are often disputes over what qualifies as a covered "occurrence" and what types of property damages are recoverable. Many of these disputes arise from misunderstandings and misinterpretations of what is covered

and excluded under the applicable insurance policy. Unfortunately, state courts do not apply uniform standards in determining how insurance policy language should be interpreted, so coverage may vary from state to state.

However, by being informed of contract insurance requirements and the limitations of insurance policy coverage, contractors should be able to utilize insurance to effectively allocate risk and ensure project success. Below are some general tips on how to navigate insurance on construction projects.

Review insurance policy coverage scope with your broker or attorney.

Contractors should consult their brokers or attorneys to go over the scope of coverage and any applicable exclusions to a particular policy before procuring any particular insurance coverage. In the rush to maximize profits, contractors may on occasion seek coverage with the lowest premium costs without fully understanding the limits of that coverage. When reviewing the scope of coverage, a contractor should make sure

he or she understands the applicable exclusions. Courts will often apply the plain or ordinary meaning to terms that are undefined in an insurance policy, so, if a contractor is at all confused by the meaning of a term or provision, it may consider suggesting that it be specifically defined or revised to clarify.

Review the contract insurance requirements and make sure you can satisfy them.

If the contract requires a contractor to provide a specific additional insured endorsement and proof thereof, the contractor needs to make sure its insurance provider can and will provide the required proof or endorsement. Language in a certificate of endorsement or the policy itself may also alter the terms of coverage with respect to an additional insured, so both parties to a contract should be aware of that possibility.

For instance, depending upon the edition of the CG 20 10 form used to name an additional insured under a Commercial General Liability policy, the coverage extended to the additional insured may extend only to ongoing operations and not completed operations. If the additional insured party required completed operations coverage (i.e., coverage for occurrences related to the insured's work after it was completed), the form of the certificate may be determinative to whether a primary insured has satisfied its contractual obligation.

A contractor should also be wary of excessive insurance limit requirements that may result in increased premiums or

other hurdles to coverage. These issues are important because some contracts may define a failure to provide adequate coverage as a material breach of the contract subjecting the contractor to liability and potential termination for default.

When a potentially covered event occurs, be sure to promptly notify the insurer.

If a party potentially has coverage either as a primary insured or additional insured, the party should be timely in providing notice to its insurance carrier. Insurers often seize on late notice from the insured as the basis for a denial of a claim, even where the merits for recovery on a policy are otherwise strong. When project issues arise, contractors and owners often first look to their counter-party to the contract for relief, but available insurance and bonds are powerful remedies that construction parties can rely on to resolve disputes and should not be ignored. Even where insurance coverage doesn't fully resolve a dispute, it may provide enough dollars to get the parties to a settlement that might not otherwise be achievable.

Because insurance may help parties resolve disputes without litigation, it is important to consider potential insurance coverage in framing your demand or claim against the other party to a contract. If the event giving rise to the demand is potentially covered, a party should craft the demand with the applicable insurance policy and its coverage requirements in mind. This approach will encourage an insurer to address any claim robustly. An attorney can help you through this process and help maximize the chances of getting coverage.

CLOSING THOUGHT

While most contractors, lawyers, and brokers will acknowledge that insurance policies and insurance law are not easily understood, insurance requirements are going to be a feature of most every construction contract for the foreseeable future, so contractors would do well to spend the time to get informed about the types, quality, and scope of coverage available, as well as how their policies satisfy requirements from owners. A contractor who manages its insurance coverage requirements ably may have an invaluable resource to resolve project risks and avoid prolonged disputes with owners and subcontractors. ■

about the author

Aman Kahlon is a partner in the Construction Practice Group at Bradley Arant Boult Cummings (www.bradley.com) in Birmingham, Alabama. He represents owners, general contractors, and subcontractors in construction and government contracts matters. His litigation experience covers a wide variety of disputes, including substantial experience in power and energy matters. He also advises clients on delay, interference, defective design, and negligence claims. He can be reached at akahlon@bradley.com.

OSHA Compliant Guardrail and Stair Rail Systems

Safety Boot® Guardrail System

- Simple, Affordable & Reusable
- Residential, Multi-Family & Commercial Applications
- Unique Free Standing Design
- Keep Post Attached For Reuse On Next Level Or Project

Featured on osha.gov website!

StringerShield® Stair Rail System

- Non-Penetrating Design
- Rugged Steel Construction
- Exceeds OSHA Regulations

SAFETY MAKER

1.800.804.4741
safetyboot.com

CLEANFIX

Reversible Fans For Radiator Cleaning

- Improved Air Conditioning
- Increased Horsepower
- Less Downtime

www.cleanfix.org