

Subs Be Warned: What should you look for in the insurance requirements section of a contract before bidding?

By Andy Guzinski, ARM

It is more important now than ever that the insurance section of a contract be reviewed BEFORE a bid is submitted, as insurance forms and endorsements are ever-changing.

Imagine this scenario: Before providing your finalized bid on a large project, you review the insurance requirements section of the contract and everything looks standard. The limits being required and the additional insured endorsements requested are what you're used to seeing. There are some limits that are higher than what your current program provides, or lines of coverage that may not be applicable to your trade that have always been waived in the past. You bid the project using your current costs and are awarded the job. You're excited about the profit margin built in.

Now fast forward to the week before the start date: You submit the contract to have the certificates of insurance issued. You receive notice that the certificate has been rejected. This is not totally uncommon, only this time, the endorsement exceptions and/or limit reductions you're used to seeing waived are not. You're now being told that until the changes are made, you won't be allowed on site or worse, the project could be awarded to the next bidder. Your broker is telling you the changes can be made, but there will be additional costs associated with them. Now those margins have been reduced substantially or in some rare cases, vanished entirely.

Push-back from owners and GCs: While the above is an example of a worst-case scenario, we have been seeing more and more push back from owners and generals to enforce strict, and in some cases unnecessary insurance requirements. With the economy in good shape and back logs still looking strong, owners and GC's have been able to allocate more resources to increased risk management and safety programs. This includes review and proper enforcement of standard insurance requirements. In addition, many firms are using third-party certificate review companies to ensure compliance of all trades as a cost-saving mechanism. With the thousands of versions and edition date combinations of insurance endorsements ever changing, a simple box-checking method of review by a third party can cause some serious delays and frustration.

Most insurance programs nowadays are built to include the basic forms and endorsements typically required on a "blanket" basis. While insurance companies are constantly trying to keep up with current case law and pending litigation, new versions and restrictions included in these forms are developed every day. While this "blanket" wording is still widely acceptable, more and more owners and GC's are requiring they be named specifically on the endorsement. This can incur additional charges by the insurance company and in some cases, the versions required may not be available.

So how do you avoid these potential delays and expenses? The most important component is to address any issues BEFORE bidding the work and ultimately signing the contract. Some general recommendations to adopt as a standard practice include the following:

- Review all insurance requirements of the agreement both internally and with your broker to determine if there are any potential deficiencies or gray areas prior to bidding
- If any questions arise from the above review, send a sample certificate for pre-approval to avoid any changes/disputes post-award
- At your annual insurance review, look back at all certificates issued for the prior year and use the information to negotiate what is anticipated will be needed for the upcoming year -- *i.e.*, the number of specific additional insured endorsements to be issued at no charge, form/edition dates etc.
- Request certificates be issued well before a project start date to avoid any "last minute" issues that could delay being allowed onto, or being kicked off, an active site.
- Consider a master subcontractor agreement with GC's you work with regularly to avoid having approval required for each individual job

While all of the above will help prevent any unforeseen issues, as mentioned before, the requirements and insurance industry forms are a continuously moving target. It is important to re-evaluate your processes and procedures at minimum annually. Additionally, an open dialogue with both your broker and the Owner/General Contractor representatives will help prevent additional costs or delays.

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