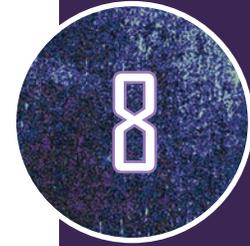


INDEPENDENT CONTRACTORS



Contractors fill many roles for the agricultural society, such as maintenance, repairs or improvements to the fairgrounds and more. These varied responsibilities raise several questions in administering agreements:

- How much insurance should be required?
- What kinds of coverages are needed?
- Who will be responsible if the agricultural society is sued?
- Why can we not operate on a handshake agreement?
- How risky could it be to hire that painter?
- Should the agricultural society just pay the contractor by the hour?

From determining insurance requirements to making sure that the independent contractor stays independent, the agricultural society must consider a number of details in managing relationships with independent contractors.



DETERMINING INSURANCE REQUIREMENTS

Just as each new project differs from the last, risk management concerns also differ. Some, but not all of the general concerns are as follows.

- Every independent contractor should have insurance coverage that is primary and not excess to any other coverage carried by the agricultural society.
- An agricultural society should determine and verify the financial ratings of the coverage providers that are acceptable to the organization.
- Coverage must be in force for the duration of the project with consideration given to whether the coverage is on a claims made or occurrence basis.
- An agricultural society should require advanced notice of change to insurance coverage and require that changes in coverage continue to meet contractual requirements.
- Independent contractors should be required to provide a certificate of insurance prior to beginning any work.
- The agricultural society should be listed as an additional insured on all policies other than workers' compensation and professional liability. (See "Additional Insured Clause Sample Language" for more information.)

Amounts and Kinds of Coverage

The agricultural society should determine the amount of coverage that independent contractors must carry, taking into consideration that the size of a contract does not necessarily correspond to the amount of risk posed.

Consider the painting contractor who cuts into a wall to make repairs prior to repainting and causes a problem with the wiring of the building that leads to a fire. The contract may have been for a minimal amount, but the complete loss of a building and all of its contents could cost millions of dollars.

In general, limits should match the tort caps of \$500,000 per claimant and \$1.5 million per occurrence. Usually the insurance is from a commercial general liability policy. Other potential coverages are commercial auto, products and completed operations, workers' compensation or employer's liability, and in some instances professional liability or errors and omissions.

Additional Insured Clause Sample Language

"Contractor shall name [MEMBER NAME] as an additional insured on Contractor's [Commercial General Liability] policy covering [MEMBER NAME]'s vicarious liability for Contractor's negligence, strict liability, and breach of warranty arising out of Contractor's ongoing and completed operations, with coverage equivalent to that provided by ISO Forms CG 2010 04 03 and CG 2037 04 13. The additional insurance shall be primary and non-contributory."

Source: Bob Huber and Steve Lindemann. "Construction Contracts—What Insurance Can be Required After Amendments to Anti-indemnification Law." Presented July 10, 2014, at Minnesota PRIMA Meeting: Revisions to MN Law, Updates: Workers' Compensation (mental-mental) and Additional Insureds on Construction Contracts. Stinson Leonard Street LLP, Kansas City, MO.

Table 1: Recommended Coverages and Minimum Limits

POLICY	LIMIT	AGGREGATE LIMIT
Commercial General Liability	\$1.5 million per occurrence	\$3 million
Commercial Auto	\$1.5 million combined single limit	n/a
Products and Completed Operations		\$3 million
Workers' Compensation and Employer's Liability		Statutory— \$1.5 million per policy by disease
Professional Liability or Errors and Omissions	\$2 million per wrongful act	At least \$4 million

See Table 1 for recommended *minimum* limits. Agricultural societies need to decide which limits they are comfortable with requiring and should consult with legal counsel prior to signing any contract.



Also, agricultural societies should consider requiring the following types of insurance policies, floaters and bonds: pollution liability, builder's risk/installation floater (construction projects), fidelity bond/crime insurance and performance/payment bond.

OTHER CONTRACTUAL CONSIDERATIONS

Contracts should include a hold harmless and indemnification clause favorable to the agricultural society (see *"Indemnification and Hold Harmless Agreement Sample Language"*). This and the insurance clause establish the requirement that the contractor provide insurance to protect the agricultural society from the negligence of the independent contractor. The clause should provide for defense when a member is sued for the negligence of the independent contractor.

KEEPING CONTRACTORS INDEPENDENT

Agricultural societies should take steps to avoid establishing an employer-employee relationship with independent contractors, as well as other pitfalls.

There are tax implications, Department of Labor and Industry considerations, workers' compensation ramifications, employment law requirements and a number of other concerns if the contractor is not kept independent.

Agricultural societies can avoid problems by following simple steps, such as:

- Always using a contract to define the scope of the job and always adhering to the terms.
- Not allowing contractors to use the agricultural society's equipment.
- Avoiding compensation terms related to hours or time worked.

Indemnification and Hold Harmless Agreement Sample Language

The following is sample language that would need to be adjusted to the specifics of each contract a member enters.

"The vendor agrees to defend, indemnify, and hold [MEMBER NAME] harmless, its employees and officials from any claims, demands, actions or causes of action, including reasonable attorney's fees and expenses arising out of any act or omission on the part of the vendor, or its subcontractors, partners or independent contractors or any of their agents or employees in the performance of or with relation to any of the work or services to be performed or furnished by the vendor or the subcontractors, partners, or independent contractors or any of their agents or employees under the agreement."

Construction Contractors

There are a number of steps that can help members avoid some of the possible pitfalls of construction:

- Establish and follow a contract. The contract should include:
 - Terms and conditions.
 - The scope of the work.
 - Compensation terms.
 - Insurance requirements.
 - Equipment and supplies (provided by the contractor, not the agricultural society).
 - Duration of the contract.
 - Termination and remedies.
 - Policies and procedures.
- Comply with the contract.
- Always consult with the county attorney or other legal counsel prior to entering into any contract.

Resources

The following articles are available at MCIT.org and provide additional information about managing risks of using independent contractors:

- "Checklist of Recommended Minimum Coverage Liability Limits"
- "Certificate of Insurance"

- "Contracts and Conflicts of Interest"
- "Independent Construction Contractors and Work Injuries"
- "Independent Contractors Limits of Liability"
- "Independent Contractors: Keeping Them Independent"