

Churches often use outside contractors to perform work on church property. These contractors can include roofers, painters, lawn service companies, plumbers, remodelers, cleaning companies, electricians, HVAC service companies, security services, construction and other general contractors. Along with the needed services these contractors provide, however, they also bring with them the risk of liability for the church for property damage or personal injury that might occur while they’re at work.

For example, a 29-year-old employee of a contractor fell from scaffolding during renovation work at a church, sustaining multiple broken bones which left him permanently unable to return to his work. The contract for the work failed to adequately protect the church and, as a result, the church was liable for the worker’s injuries. The total cost was more than \$650,000. As another example, a new church under construction was destroyed when an uninsured roofing contractor accidentally set the roof on fire. Damages in that case exceeded \$1 million.

So how should a church protect itself when requesting the services of an outside contractor? The following are some practical considerations:

- 1. Obtain Multiple Bids.** It is generally a good idea for the church to obtain several bids for a job before selecting a contractor. This is a matter of good stewardship, as the bid process helps the church to determine whether it is paying a reasonable amount for the value it will be receiving in return. Obtaining multiple bids is important even when the proposed contractor is a congregation member.
- 2. Check References.** Before selecting a contractor, check with organizations where the contractor has performed work in the past. References from other churches or worship centers are especially helpful, as you can get a good idea of the contractor’s experience and willingness to work with the unique needs of churches. You may also want to contact your local Better Business Bureau (BBB) to see if other organizations have registered complaints about this contractor. Also, consider checking online court and government records to learn what you can about the contractor’s history and to verify that he or she is appropriately licensed.
- 3. Have a Written Contract.** Once the contractor is selected, it is a good idea to have a written agreement that sets out the scope of the work, price for the job, payment terms, anticipated beginning and completion dates, and other terms such as permit obligations and fees, warranty information and dispute resolution.

To fully protect your church, two clauses are especially important to include in the written contract: (1) a hold harmless or indemnity clause and (2) an insurance clause. The purpose of the hold harmless clause is to have the contractor agree to indemnify the church for any injuries or damages that may occur while they are working on the church project. The purpose of the insurance clause is to specify the types and limits of insurance coverage the contractor will carry and that they agree to name the church as an additional insured on its insurance policies. (See "Make Sure They're Insured" section below).

A sample service-repair contract is included with this packet of materials. It is strongly recommended that an attorney review any such contract before entering into an agreement.

4. Make Sure They're Insured. When an outside contractor comes to perform work on church property, there's no reason to put your church's insurance claims history – and potentially your insurance premiums – on the line. The contractor's insurance, not yours, should be at risk. To do this, check that the contractor has appropriate insurance policies (including general liability, property damage, workers' compensation, and excess or umbrella liability) and insurance limits that are at least equal to or greater than the church's insurance limits. Require them to name the church as an additional insured on their insurance policies and then follow through to have them to provide proof that they have done this.

A certificate of insurance *that lists your church as an additional insured* (not just as a "certificate holder") or, better, an endorsement (change) to their policy naming the church as an additional insured is evidence of insurance. A sample Certificate of Insurance with instructions on reading and understanding the certificate is included with resource packet.

Also, this should not be a "one-time" verification. Insurance policies are issued on a 12 month basis so, if you use the same contractor at a later date for another project, check the certificate you have on file and if it shows a policy expiration date that has already passed, obtain a new certificate verifying that they have a current policy in force.

If the contractor is not insured or, as sometimes happens, is a sole proprietor who does not carry workers' compensation insurance, think twice before allowing any work to be performed at the church. A contractor without insurance means that the church will typically retain liability for the work, damage, or injuries that might occur while he or she is on the job.

5. Protect Yourself at the Finish. Once the job is done, churches can still be in a precarious position if they sign-off on the work and/or make final payment to the contractor. The danger here arises in two different situations: (1) where concerns remain over the quality or completeness of the work; or (2) where the contractor has failed to pay its suppliers or subcontractors for materials or labor supplied for the job. In the first situation, churches lose leverage over getting the contractor to fully perform once they have made final payment. In the second situation, churches are at risk for the suppliers or subcontractors coming back against the church for payment. To protect themselves, churches should consider discussing their situation with an attorney before making the final payment. Requiring the contractor to provide either a payment bond or lien waivers from subcontractors or suppliers can protect the church from what are called "mechanics liens."

When Protection is Particularly Needed

Sometimes the question arises whether these protections – specifically the written contract with hold harmless/additional insurance language and obtaining proof of the church's additional insured status – are needed in every single situation involving a contractor. Ideally, the answer is yes but, at a minimum, these protections are vital in three contractor situations:

1. Where the work is significant, such as new construction, renovation, or demolition;
2. Where the work is high risk, such as involving roofs, electrical systems, trees, scaffolds, ladders, etc.; and
3. Where the work is regularly undertaken on church premises, such as regular cleaning, lawn service, etc.

By making sure that the church is properly protected in situations involving outside contractors, the church is exercising good stewardship over the people, property, and finances entrusted to its care.

Please review the attached reference materials on this topic:

1. Sample Contract for Service-Repair Work
2. Sample Certificate of Insurance
3. Instructions for Reading and Understanding a Certificate of Insurance