

Selecting a Contractor: Contract Do's and Don'ts

The roles and responsibilities of ownership and property management of a fraternity/sorority house can be complex and time consuming. A facility housing a large number of undergraduate students requires a hands-on approach and constant monitoring to ensure that the facility remains a source of pride for the organization and also provides a safe living environment for its tenants. Owners and Housing Corporations are constantly identifying and making decisions as to what construction projects are warranted to ensure that the facility remains in good physical condition. This process results in contracting with local construction companies to complete the applicable work.

When entering into agreements with contractors or other entities, it is very important to be wary of the terms and conditions associated with these contracts. It is not unusual for the terms and conditions of a contract to be very one-sided and to favor the party which you have contracted with to complete the work. It is important to take the time to review the contracts and make changes to the terms of conditions as it becomes necessary to protect the owner and/or housing corporations. This checklist can help you select an appropriate contractor.

- Have you examined the contractor's history with your local Better Business Bureau?
- Have you obtained references for the contractor?
- Is the contractor licensed and/or bonded?
- Does the contractor have his/her own General Liability Insurance to respond to claims arising from the legal liability of the contractor that can result in property damage or bodily injury?
- Does their General Liability Policy carry minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate?
- Does the contractor carry a Products Completed Operations limit of at least \$1,000,000?
- Does the contractor carry Worker's Compensation and Employer's Liability Insurance with a minimum limit of \$500,000?
- Does your organization maintain the right of subrogation against the contractor for damages arising from their negligence?
- Has the contractor added the Inter/National Fraternity or Sorority, the House Corporation and the undergraduate chapter as Additional Insureds on a primary, non-contributory basis on their General Liability Policy?
- Has the contractor provided to you a Certificate of Insurance documenting the limits of liability as well as the fact that the owner has been added as an Additional Insured on the General Liability policy?
- Does the contract outline clear deadlines and consequences for failing to meet those deadlines?
- Has an attorney reviewed the contract? (Recommended for projects that include significant work.)

In addition to this checklist, there are several provisions that **should not** be a part of your contract:

- Be aware of indemnity provisions of the contract that hold the contractor harmless for any and all losses as well as defense cost if a claim arises resulting from their operations.
- Do not agree to terms of a contract that require that the contractor be added as an Additional Insured on property owner's General Liability policy.
- Do not agree to a contract that limits the liability of the contractor to the amount of the contracted work.

Failure to follow these steps can be costly. A chapter in California hired a contractor to paint the chapter house. An employee of the contractor fell off a ladder and was injured. He filed a workers compensation claim with his employer who did not have workers compensation insurance. Since the fraternity had that type of insurance, a suit was filed to force the fraternity's worker's compensation carrier to pay the claim. The cost of the claim could approach \$200,000. The litigation is proceeding slowly, but if the suit is successful, the fraternity's insurance premiums will increase. The situation could have been avoided by insuring that the contractor carried workers compensation insurance.

In another case, a contractor was hired to complete some remodeling work in a chapter house. The contractor had no liability insurance. He was soldering pipes and ignited combustible materials in the area resulting in a major fire. The house sustained significant damage of approximately \$900,000. The property insurance carrier of the insured adjusted, settled and paid the claim. Since the contractor did not have liability insurance, the probability that the Insured's property insurance carrier can successfully recover the dollars paid out has been significantly reduced. As a result, the property claim loss experience of the insured was adversely affected, resulting in higher property renewal premiums. Again, this could have been avoided by hiring a contractor who carried liability insurance.

When a significant loss occurs, it is possible that all pertinent parties could be pulled into a claim or suit and be named as a defendant. Although this remains a possibility, by following the recommendations outlined above, an owner or Housing Corporation will be in the best possible position to deal with this situation. Following these guidelines will aid the owner and/or Housing Corporation in potentially being released from the claim or suit that is brought against them for damages resulting from the negligence of the hired contractor.

Willis offers this educational information to provoke thought and discussion and it should not be viewed as a mandate or requirement. We view part of our role as an insurance and risk management professional to anticipate your needs and educate you in an effort to complement the organization's loss prevention and control efforts, not replace the decision making autonomy of our client organizations. We hope you find this checklist to be of value as you work with contractors, and we stand ready to discuss it further with you or any of your constituents.