

COVID-19: GUIDANCE FOR GENERAL CONTRACTORS AMID UNCERTAIN TIMES

Loss Control Services – Technical Bulletin



A subcontractor experiencing trouble can cripple a project; knowing about their difficulties early can help. Once a general contractor or first-tier trade partner recognizes that it is faced with a struggling subcontractor, four simple guidelines can help guide you:

1. Keep your eyes open and monitor every source of information available.

Notice how your subcontractors are performing not only on your job, but also in their overall work program. Effective communication is vital to addressing potential concerns.

2. Don't delay; if you see a potential problem, start asking questions. Engage the subcontractor directly to learn the depth of the problem and explore potential solutions. Use a proactive approach; schedule touch point discussions with every subcontractor on a project and develop a risk matrix. Ignoring a problem or hoping that it goes away can lead to bigger problems.

3. Notify the surety if you detect a problem with a bonded subcontractor who is unwilling to talk. General contractors or first-tier trade partners who cannot motivate a subcontractor to perform or who struggle to get answers to critical questions that could impact performance, can put the surety on notice of default. This tactic may help get the subcontractor's attention so you can obtain requested information.

4. Make sure your subcontract provides the ability to act, allowing you to suspend subcontractor performance, supplement the subcontractor's workforce or terminate the subcontractor. The route you chose will depend on the bond form and job circumstances, but there are some general "rules of thumb" to help contractors decide.

- **Suspend:** If the problem is a subcontractor who is ordering or storing materials now for work that will occur several weeks or months from now, consider suspending performance. As the general contractor or first-tier trade partner, you will be invoiced for materials supplied to the subcontractor or by the supplier that may never make it to the project if they close their doors, go into bankruptcy or are simply unable to perform. By suspending performance, you can potentially avoid incurring these costs because the subcontractor is not authorized to make any purchases during the suspension. However, this is less of an issue if the materials are being stored onsite or are in your possession.
- **Supplement:** If the issue appears to be a temporary problem for the subcontractor, and your company has the available labor forces – either your own or another reliable subcontractor – it may be best to supplement the subcontractor's performance at its own cost.

- Terminate: If the problem appears to be more than temporary, or a temporary problem persists, then the most prudent course of action may be to diligently pursue termination and nullify the ripple effects of a nonperforming subcontractor.

Again, if this is a bonded project, you must give the surety notice before supplementing forces, suspending or terminating to preserve your claim against the bond and obtain the assistance of the surety in completing the work. As always, confer with your legal counsel to make sure the action you take is the best route for your firm.

Failure to recognize and manage struggling subcontractors properly often leads to disputes, claims, project delays and poor-quality work. Most issues, however, can be resolved by working with the subcontractor, rather than taking drastic measures. If termination is the only option, follow the bond form's protocol and the conditions to the subcontract so you do not find yourself in dire circumstances.

There is no shortage of issues that occur on jobsites, and mistakes will happen. Your role as GC in this situation is to collect the information available, break the problem down into solvable solutions, effectively communicate with all parties and make informed, calculated decisions based upon facts. The key here is to improve upon the mistakes made in the past so that we do it better the next time around.



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