

Subcontractor Notebook

by Denise David Baer

As a kid, I dreaded those occasions when Mom would drag me, whimpering in absolute terror, to the dentist's office. It didn't take too many trips before I learned that prevention was my only salvation. Three decades later when we started our construction business, that same sense of fear and trembling came back to haunt me every year in the guise of the insurance auditor.

Insurance auditors mean business. Each year they ask you to produce payroll records for employees, and payment records and insurance certificates for subcontractors. They don't ask for that information just to get their jollies, knowing you'll spend days frantically running around the office digging out all that data. No, insurance auditors get their jollies when you can't produce insurance certificates for all of your subs. For every insurance certificate you can't produce, your workers comp premium will balloon in direct proportion to the amount you paid that sub. If you're accustomed to paying carpenter's rates for workers comp, wait until you get hit with rates for some of the subtrades, like electricians or roofers or steel workers.

In defense of insurance auditors, I have to admit that they are simply doing their jobs, just like the rest of us, so spare them the head games and rude behavior. Their jobs require that they protect their employer, the insurance company, from excessive risks. And that's exactly what your subcontractors represent if you can't provide proof that your subs carry their own insurance protection.

That being said, we're not about to give

away our hard-earned profits to anybody who isn't in the direct employ of our company. So we protect our profits when the auditors comes calling by providing them with more information than they could possibly want, information that's well organized and laid out in time for their scheduled appointment. We also provide them with what we call the "Sub Notebook." I know it doesn't have a million-dollar title coined by some famous

agent to send us an insurance certificate showing our company as the "certificate holder" and indicating what types of insurance are in place. A valid certificate must also indicate the name of every insurance company providing the coverage, the effective dates of the policies, and the dollar limits of each.

When reviewing these certificates, your auditor is going to look for three basic pieces of information. First, the auditor wants to see liability and workers comp policies in place. Second, the auditor will check to see that those policies were effective during the time a particular sub was working for you. Last, the auditor makes sure that the policy dollar limits are adequate. To avoid surprises, you should check this information and correct any problems before the auditor arrives.

Single Operator

If a sub is a "single operator" — someone who does not have employees and, therefore, does not carry workers comp insurance — your auditor's company will probably require: an Independent Contractor's Statement, or ICS. This is a simple one-page document

(your insurance company can probably provide the form) that the subcontractor fills out and signs to attest that he or she is an independent contractor, that all the requirements to prove that relationship have been met, and that he or she is not entitled to any workers comp claims.

The ICS also includes a statement that the sub, not you the contractor, is responsible for fulfilling all tax obligations. By completing the form, the sub makes it

INDEPENDENT CONTRACTOR STATEMENT	
I, _____, in my capacity as _____	
for _____, hereinafter referred to as "Subcontractor," agree that for purposes of the work for which RESTORE 'N' MORE, INC., hereinafter referred to as "Contractor" has retained Subcontractor. Subcontractor is an independent contractor at all times. Nothing in the underlying agreement between Contractor and Subcontractor is intended to create an employer/employee relationship.	
As an independent contractor, Subcontractor has the right to adopt its own means and methods in accomplishing the agreed to results; is independent of Contractor's business; has the right to employ assistants and to supervise their activities; has the obligation to furnish necessary tools, supplies and materials; has agreed to do work and will be remunerated with agreed amount; is responsible for obtaining all licenses and permits as may be required by virtue of the nature of Subcontractor's business.	
As an independent contractor, Subcontractor is responsible for filing required returns and fulfilling all obligations incurred under the Federal Insurance Contributions Act (FICA), federal, state, and local income tax laws and other tax laws. Contractor is not responsible for Subcontractor's obligations under any such tax laws. Contractor will not withhold any taxes from payment to Subcontractor.	
As an independent contractor, Subcontractor shall maintain a policy of liability insurance in the minimum amount of \$500,000.00 to cover any claims arising out of the performance of its service within the underlying agreement. Subcontractor has already provided or will provide Contractor with evidence of such liability. Subcontractor shall further indemnify, save harmless, and defend Contractor from any claims arising from any act or omission of Subcontractor or Subcontractor's agents or employees.	
In the event that no Certificate of Insurance can be furnished, Contractor will hold back 25% of the contract amount pending settlement of Contractor's worker's compensation insurance audit. Any excess held back will then be paid to Subcontractor.	
As an independent contractor, Subcontractor shall not be entitled to any worker's compensation, pension, stock, bonus, profit sharing, health or other benefits which are available only to Contractor's full-time employees.	
By: _____	Date: _____
Subcontractor Company Name: _____ (please print)	

business management guru — in fact, it's really nothing more than a three-ring binder. But the papers that binder holds have steadfastly protected our profits.

Insurance Certificates

One of the first things that goes into our Sub Notebook is an insurance certificate for each sub proving that he or she carries insurance. To validate that requirement, we ask each sub's insurance

clear that he or she can substantiate “nonemployee” status, and that he or she is filing all necessary tax returns.

In the case of a sub who is not a single operator but who does not provide us with a certificate of insurance, we use the ICS in another way: We’ve added a clause that permits us to withhold 25% of the subcontract amount pending the settlement of our workers comp annual audit. That way, if we get charged additional workers comp premiums on account of that sub, we can use the withheld funds to pay the additional premium. So far, none of our subs has let a little insurance certificate get in the way of 25% of their cash.

A W-9 for Every Sub

Another form that finds its way into our Sub Notebook is a W-9 form for each and every sub, regardless of status. This simple form, available from the IRS or your accountant, provides spaces for your sub to fill in his or her name, company name, address, and form of organization (sole proprietor, partnership, or corporation). The crucial data on this form are the Taxpayer Identification Number (TIN), which is either the sub’s Social Security number or Employer Identification Number (EIN), and the certification section, in which the sub declares that he or she is not subject to backup withholding.

It may be a simple form, but it’s essential to accurate reporting on 1099s (the IRS doesn’t like it when you report a sub’s payments using the wrong reporting name or number). In the very rare instance of a sub who is subject to backup withholding, this form acts as a reminder to notify the IRS immediately. That way, you will have the tax information you need before you make any payments to that subcontractor.

A change in a sub’s form of organization (from sole proprietor to corporation, for instance) can change the reporting name and TIN, and a sub’s company may become subject to withholding from one year to the next. So make sure you update W-9 forms regularly. Since you will be updating insurance certificates annually, schedule

the W-9 update for the same time.

Final Proof

If you add one more component to the Sub Notebook, you’ve got a real winner. Ask each of your subs to supply you with a business card and a sampling of any advertising. Samples can be as elaborate as a four-color brochure or as simple as an ad torn out of the local newspaper — even a classified ad for their services will do. Also, take a snapshot of their truck or yard signs, and clip newspaper or magazine stories that mention any of their projects. In short, include anything that proves your subs actively seek business from other contractors or individuals.

Planning Tool

Not only will your Sub Notebook help you keep a lid on workers comp premiums and help you satisfy the prying eyes of IRS and insurance auditors, it will also come in handy every time you start up a new job. For example, you can quickly check to see if any subs you plan on using need to update any of their paperwork before they show up on the job site.

Our notebook also includes notes about each sub that we find useful when preparing estimates. A note that says “small crew, can’t take on large projects” or “excellent at restoring decorative plaster” or “won’t travel outside a 25-mile radius” can be a big help when deciding which subs to call for quotes.

Once you create this notebook, you’ll want to keep it around for a long time. To make your notebook easier to use and to prolong its life, put each sub’s collection of paperwork into a pocket-type, clear plastic sheet protector. Then, arrange each sub’s packet in alphabetical order or by trade.

Now you have an impressive multipurpose resource that everyone in the office can use, and one that can be easily transported anywhere. And, in case you hadn’t noticed, putting the notebook together didn’t require the use of a computer.



Denise David Baer and her husband, Gary, own and operate Restore ‘N’ More, a remodeling company in Lancaster, Pa.