

LOSS CONTROL TOPIC

FACILITIES CONTRACTORS

Financial Institutions rely heavily on outside contractors/vendors to maintain their facilities and provide other supportive services. The list is quite extensive and can include; facilities managers, snow removal, security, fire protection, landscaping, building trades, etc. In order to properly manage the contractor/vendor relationship, you need to exercise due diligence in the selection of contractors/vendors and in the management of the relationship. A poorly managed contractor/vendor relationship can result in damage to your business reputation, third party liability and loss of profits. There are some general guidelines that can assist you in this process.

Selection

Obviously seeking referrals from trusted sources is a good first step. Trade association members can be an excellent resource for this purpose. At least two candidates should be selected for interview. Request customer references that can be questioned regarding the quality of service that was rendered. How long have they been in business? Do they provide services to other financial institutions? Are they aware of any regulatory requirements that need to be complied with during and after the work? What is their financial situation? Can it be verified? Do they do all of the work themselves or use sub-contractors? What is the quality and experience of their staff? Do they use permanent employees for all tasks? Do they have enough employees to complete the task? Do they verify the immigration status of all employees?

The Contract

While it is prohibitive to discuss all possible inclusions for a contractor/vendor contract, there are certain common elements that are worthy of discussion.

Many contractors will present a form contract to sign. These contracts are often very vague and one-sided and it is usually advisable to have them reviewed by legal counsel before considering whether or not to sign them. It is a common practice that many services are performed under verbal contracts using recognized vendors, such as minor plumbing and electrical repairs that take less than 2 days to perform. This is certainly acceptable, but a written contract should be entered into for any extensive work.

A contractor/vendor contract should contain a “hold harmless” or “indemnity” provision where the contractor agrees to “defend and hold harmless” the owner against any and all claims arising out of the negligence of the contractor or his agents. This is important for the defense of any third party property damage or bodily injury claims or lawsuits that may arise out of the work performed.

It is vitally important that any contract detail the specific work to be performed and the materials that are to be supplied by the contractor. Vague sentences such as “repair roof” or “renovate lobby” should be replaced with a detailed description of the stages of the work and materials incorporated in those stages. Any responsibility of the financial institution should be clearly specified, including any expenses that will be incurred. There should also be clear language regarding the mechanism for any changes to work in progress. This can avoid unpleasant surprises should modifications to the work result in substantial additional costs.

The time frames for completion of the work and approval should be specified.

Specific payment and fee schedules should be included. If the contract calls for staged payments, the degree of acceptable work performed before these payments are made needs to be included.

Sub-contracts should be prohibited unless expressly agreed to by the financial institution.

There should be a clause in the contract stating that the contractor waives the right to any liens for materials or work performed. This should also include sub-contractor work.

The contract should also contain a section that specifies how it may be terminated. This can include 30 day notice provisions and termination for cause, such as; breach of contract, violations of law or insolvency. Automatic renewal clauses should be avoided as they can cause a financial institution to be forced to continue an unwanted contract.

Insurance

The contract should require the contractor/vendor to carry specified limits of insurance. This should include; a minimum of \$1 million in general liability insurance, \$300,000 in commercial automobile coverage and a requirement for workers compensation insurance. There should also be a requirement for at least a \$1 million umbrella policy covering these lines of insurance. The contractor/vendor should be required to produce a certificate of insurance naming the financial institution as an “Additional Insured” on all policies. This dovetails with the indemnity agreement to trigger the contractor/vendor’s insurance carrier’s duty to defend covered claims. In addition, the contractor

should be required to provide; products and completed operations, contractual liability, premises operations and independent contractor coverages. The contractor's policy should also state that the contractor's insurance is "primary" to any other coverages.

Snow and Ice Removal

Litigation over the alleged failure to properly remove snow and treat for ice is a major problem for financial institutions located in northern areas. The selection of a qualified snow and ice removal contractor and the proper wording of any contract are an important step in mitigating these expenses. Aside from the suggestions above, a snow removal contract should contain very specific language on the amount and duration of snow or ice accumulation that triggers the removal process.

The contract should make it clear that the sole responsibility for snow and ice removal and abatement lies with the contractor. It is strongly recommended that you do not allow your employees to participate in the snow and ice removal and abatement process. This can be a major issue when a claim occurs because it can be alleged that the employees failed to properly perform these functions.

It is very important to select the most qualified professional snow removal contractor available. Generally, professional landscaping companies are a good source. Look for membership in the Snow and Ice Management Association (SIMA) and at least one Certified Snow Professional (CSP) on staff. They should be available 24/7 with a toll free call number during snow months.

Source Materials

CUNA Operations Sales and Service Council 4/21/05 www.cumaopsscouncil.org

American Law Institute, *Restatement of the Law* (Second), Contracts 2nd

Corbin on Contracts, Linton Corbin (Rev. Ed 1993)

OCC Bulletin 2001-47, Risk Management Principles, Third Party Relationships 11/01/01
www.occtres.gov

American Bankers Association, *Vendor Management* aba.com

Snow and Ice Management Association (SIMA) www.sima.org

These guidelines are intended to offer general suggestions for follow up and should not be considered a substitution for legal advice and you are strongly urged to seek advice of competent legal counsel in these areas.

Copyright 2009, FinSecure, LLC