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## **AGC Guideline on Builder's Risk Insurance Policies**

The risk of loss to the property on a construction project is an ever-present risk. Property losses may occur as a result of many diverse risks and causes, and such a loss can be devastating to all parties involved in a project. However, most risks can be easily insured with a properly designed insurance program.

The Project Owner should provide for a comprehensive all-risk "Builder's Risk" property insurance policy on a "no-fault" basis to insure participants against a casualty loss to the construction project. The Owner may delegate the responsibility to procure this insurance to the Contractor; however, the cost of the insurance should be included in the project price.

Following is AGC's recommended features of an appropriately designed "Builders Risk" Property Insurance Program.

- Policy Ownership – The policy may be owned by the Project Owner or the Project Contractor. The bid documents should clarify this issue.
- Covered Parties – The Owner, Architect, Contractor and all Subcontractors should be named as insureds, or additional insureds, and should not have language limiting their interests, such as "as their interests may appear".
- No Fault Insurance – This policy should respond to any covered claims regardless of fault, and all of the covered parties should benefit. All parties, including their insurers, should waive their rights of subrogation against each other.
- Policy Limits – The policy should be written for the value of the completed construction project.
- Policy Deductibles – AGC recommends that any policy deductibles should be paid by the Owner. However, if the Owner intends to pass any part of a deductible expense to the contractor and subcontractors, the deductible amount should be clearly stated in the bid documents. In addition, there must be some clearly stated formula for determining when a party is liable for a deductible.
- Insurance Companies – Builder's Risk policy should be written by domestic insurance companies rated at least A-7 by AM Best Insurance Rating Service.
- Policy Period – The policy should be in force at the start of construction and shall continue until the project is certified for occupancy or put to its intended use.

- Standard Coverages – The Policy should include the following standard coverages:
  - All Risk Policy – Covers all risks of loss including theft, vandalism, malicious mischief, collapse, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition and replacement occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.
  - Flood hazard coverage.
  - Earthquake hazard coverage.
  - Terrorism (both certified and non-certified).
  - Mold and/or fungus.
  - Water damage from any source.
  - Temporary Storage and In-Transit Materials - shall cover portions of the Work stored off the site, and also portions of the Work in transit.
  - Other Coverages:
    - Resultant damage and bodily injury, even if caused by faulty workmanship of an insured.
    - Parties should agree on amounts of any sublimits.
    - No co-insurance.
  
- Bid Documents – The Project bid documents should be clear and describe in detail the intended Builder's Risk Program. Contractors and Subcontractors should be given full disclosure and should be allowed to give their own insurance professionals a full written description to evaluate all of the policy components.
- Proof of Coverage – All covered parties should be given proof of coverage, including a full copy of the policy, if requested.
- Tenant Improvement Projects – The Owner or Tenant of tenant improvement projects should provide equivalent property insurance for the benefit of contractors and subcontractors.
- Owner Risks – The Owner should retain the risk of loss for any insurable risk for which the Owner decides it does not wish to procure insurance. The Owner (and its insurance carriers) should waive subrogation rights for such risks as to the Contractor and Subcontractors.
- Loss of Use/Delay/Consequential Damages – In the event of a substantial Builder's Risk property loss, there may be additional losses to the project Owner that are not covered under the Builder's Risk policy. Such losses may include lost rents, loss of use, liquidated damages, delay costs, lost opportunity, and other consequential damages. All such losses may be insurable by the Owner under separate insurance policies purchased by the Owner. The Owner (and its insurance carriers) should waive subrogation rights for such risks as to the Contractor and Subcontractors.

**CONTRACT DOCUMENTS – THE PRIME CONTRACT DOCUMENTS, AS WELL AS ALL SUBCONTRACT DOCUMENTS, WILL NEED TO BE REVIEWED BY COUNSEL TO PROPERLY INTEGRATE AND COORDINATE WITH THE BUILDER'S RISK PROGRAM. SPECIAL ATTENTION SHOULD BE GIVEN TO INDEMNITY CLAUSES, WAIVERS OF SUBROGATION, AND "OTHER INSURANCE" SECTIONS OF ANY CONTRACT.**

**ALL PARTIES SHOULD REVIEW ALL INSURANCE REQUIREMENTS WITH THEIR LEGAL AND INSURANCE COUNSEL. CONTRACTORS SHOULD BE AWARE THAT SUPPLEMENTAL INSURANCE MAY BE REQUIRED TO ADEQUATELY PROTECT EACH CONTRACTOR.**