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## RISK MANAGEMENT BULLETIN

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### REDUCING YOUR SUBCONTRACTOR RISK

A subcontractor is any outside, non-employee, person or company you engage to assist your firm in completing a task that is part of a job you have undertaken for a client.

These individuals or firms may be small neighborhood operations or very large national or international firms.

If you hold the primary contract, whether it's trenching, testing, designing or filtering, you are blamed and generally the target of a suit if anything fails, property is damaged or someone is injured. So, your firm is first in line to be blamed and sued. Unfortunately, you can't escape, because the contemporary American legal system allows attorneys to use a "shotgun" approach to making their accusations or allegations. While you would have your own insurance policy to back up your defense, neither you nor your insurance company should be paying for the negligence of others.

You can mitigate or reduce your worry and your damages by prudent risk management. The easiest and best first step is to ***be sure that you have a written contract with your subcontractor.*** Some larger firms will have their own standard forms, but you can always ask for modifications. Don't hesitate to do so. If it is a standard contract from the subcontractor, be sure that the contract has a "***hold harmless***" provision in it that protects you in the event that they make a mistake. If you do not find a hold harmless clause in your favor, then you must seek to add one.

You should seek to add one of two clauses to the contract. The first is more standard and the second is much better to safeguard your interests. The clauses are:

1. The subcontractor shall hold harmless and indemnify (ABC Water) for any damages arising from the work or product of the subcontractor. Or
2. The subcontractor shall assume all liabilities and defense of (ABC Water) for any allegations of negligence or damages arising from the work or product of the subcontractor.

The first clause is less desirable than the second, because the term indemnify really means that the beneficiary of the indemnification is made whole after they have paid or suffered damages in the first instance. Only after suffering the damages will indemnification take place.

The second clause creates an immediate obligation on behalf of the subcontractor to take the defense of any court action and handle the damages as they arise. So, you don't have to suffer damages first and then wait for indemnification.