

Risk agreements between contractors are under discussion

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If a tree falls on someone, the landscape contractor that planted the sapling likely will hear about it. Depending on where the tree was planted, the subcontractor could be responsible for any hospital bills even if the company did the job 10 years ago, a trend that is flustering subcontractors in Wisconsin.

The companies, whether landscapers or tile installers, are being asked by generals and owners to accept more responsibility for longer periods, said Jeffrey Beiriger, executive director of the American Subcontractors Association of Wisconsin Inc. “The terms of those contracts are becoming increasingly one-sided,” he said, “and part of that is reflective of the fact that because of the market conditions, someone out there will want the work enough that they’re willing to make that concession.”

Generals are in the same situation as subs because owners are asking generals to assume more responsibility, said Mike Fabishak, chief executive officer of the Associated General Contractors of Greater Milwaukee Inc. Negotiations over who should assume responsibility and to what extent have been a point of contention for years, he said. “Everybody is trying to get a handle on the risk that’s associated with doing the work,” Fabishak said.

The latest red flag to catch subcontractors’ attention is an MSI General Corp. contract requiring subcontractors assume responsibility for problems in a building 10 years, instead of the more common two or three years, after a contract is signed, Beiriger said. The “additional insured coverage” means subs, rather than generals or owners, are responsible for legal fees or penalties for problems that arise from work those subs did on a project. “Where is the point at which enough is enough?” Beiriger said. “And this, to me, is such a step. From two years to three years to 10 years, it’s such a huge leap.”

Oconomowoc-based MSI referred questions about the contract requirement to the company’s insurance agent, Johannesen-Farrar Inc., Delavan. Representatives from the insurance company did not respond to calls for comment.

Kevin Henrichs, chief financial officer for Menomonee Falls-based Lippert Tile Co. Inc., said he does not think generals and owners are demanding more just to take advantage of hungry subcontractors. But, he said, the more often, say, 10 years of responsibility is put on individual contracts, the more likely it is that requirement will become the industry standard. “That’s the concern I have,” said Henrichs, president of the ASA of Wisconsin, “that you are opening up Pandora’s box.”

Although 10 years is much longer than the industry standard, some insurance companies will revise contracts to provide the coverage if the industry demands it, said Matt Bucher, relationship manager for HNI Risk Services Inc., an insurance broker based in New Berlin. “It is again an area where the two need to understand what each side needs,” he said of subs and generals.

Extending insurance coverage from two or three years to five or 10 years creates paperwork problems, Henrichs said. Lippert does 500 to 600 smaller projects a year, he said, and would have to keep tabs on all of them until the insurance runs out in case a liability issue arises.

“So, if you have to track them separately and everything else, that’s a nightmare,” Henrichs said. “And then, how do you track that risk?”

Beiriger said if the industry keeps pressing subcontractors to assume more risk on projects, his organization might turn to state lawmakers for relief. “ASA has always supported modifying the state law to address the issue of risk transfer,” he said. “Do we have active legislation right now? No.”