

Contractual Risk Transfer



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What Are We Going To Discuss?

1. What is risk management?
2. Risk retention vs. risk transfer
3. Methods of risk transfer
 - Indemnification/Insurance
4. Certificates of Insurance
5. Additional insured status
6. Contractual risk transfer tools



What Is Risk Management?

1. What can go wrong? (Risk identification)
2. What can we do so it doesn't go wrong? (Risk control)
3. How do we pay for it if it does go wrong? (Risk financing)



Risk Financing

- Risk retention: Using funds from within the organization to pay for losses.
- Risk transfer: Using funds from outside the organization to pay for losses
 - Insurance
 - Contractual
 - Indemnification



Risk Transfer: Indemnification

■ Indemnification

- Contractor assumes all liability, caused in whole or in part, from Contractor's negligence arising out of the project.
- Contractor should show evidence of ability to pay for obligations assumed in contract
 - Financial assets
 - Insurance (Certificate of Insurance)



What Is A Certificate Of Insurance?

- Form that gives evidence of the insured's financial ability (via an insurance policy) to respond to a claim.
- No coverage benefits are afforded to the certificate holder.
- Merely confirms that the subject company carries insurance.
- Information shows only what coverages apply as of the date of the certificate.



When Are Certificates Needed?

- When another party performs services on our behalf, has our property in their care, custody, and control, and/or controls or directs our employees.
- Dollar value of purchase order or contract is not reflective of the risk/exposure.



Who Should Provide The Certificate?

- Advise vendor/contractor of our insurance requirements.
- Other party's insurance agent, broker, or risk management department will actually issue certificate.



What Should A Certificate Include?

- Name of insurance companies issuing policies.
- Named insured
- Address of named insured
- Description of coverages
- Policy
- Policy periods
- Coverage type (occurrence vs. claims made)



What Should A Certificate Include?

- Project name
- Endorsement information
 - Additional insured
 - Primary coverage
 - Cancellation notice



When To Request Certificates

- Goods are to be installed/services are to be provided on our property or on privately owned property that the owner has allowed the District to use
 - Major equipment or furniture installation
 - Construction
 - Janitorial, movers, towing, tree maintenance, road maintenance, welding, plumbing, electrical, environmental, concessionaires



When To Request Certificates

- Transportation services
- Professional, consultant services
- Leases, easements, license agreements, IGA's
- Contractor directs or controls the work of our employees where injuries might result
- Any activity which has a severe loss potential
- When contractor is handling our funds



What Insurance Coverages Do I Request?

- General Liability
- Automobile Liability
- Workers' Compensation/Employer's Liability
- Professional Liability
- Fidelity Bonds
- Property



Reviewing Certificates

1. Require contractors to provide a renewal certificate at least 30 days in advance.
2. Require contractors to cite a contract number/job location to tie the insurance to the work. Description block should not be blank.
3. Sole proprietors can decline workers' compensation coverage. Need letter stating that they will cover their own injuries.



Reviewing Certificates

4. Aggregate limits are total limits for all losses of the contractor.
5. Professional liability coverage is provided on “claims made” basis. Ask for proof of continued insurance.



Additional Insured

Additional Insured: Entity other than a named insured is protected under the terms of the contractor's insurance policy.

- Added by endorsement
- Insured may or may not pay additional premium
- Does not substitute for indemnification



Limitations Of Additional Insured

1. Policy could be cancelled.
 - Ask for 30 days cancellation notice.
2. Policy covers only excess above ours.
 - Ask that their coverage is primary.
3. The contractor's insurance may not have adequate limits.
 - Require limits adequate for the exposure.



Limitations Of Additional Insured

4. Can only be granted by policy endorsement--not a notation on the certificate.
5. There should be no special limitations on an additional insured status.
6. Cannot be named as additional insured on policies other than general liability and automobile liability.



Conclusion: Four Step Analysis

1. What can possibly go wrong? (and remember Murphy's law)
2. How likely is it to go wrong?
3. How expensive will it be if it does go wrong?
4. What is a fair allocation of risk between the parties?



Conclusion: The Basics

1. Develop correct insurance specifications; inform vendors/contractors requirements early.
2. Review forms promptly; notify vendor/contractor immediately of problems.
3. Save the signed forms for at least five years.
4. Tell the contractor's insurer immediately, in writing, of incidents/claims arising from work.
5. Risk Manager is your resource--ask questions!