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Effective Insurance Planning for Contractors and Large Capital Projects

UMAA 2014 Spring Conference

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Discussion Elements

- How effective are we in holding contractors responsible for acts of negligence?
- What are the key elements in the insurance requirements of a contract?
- How do we set appropriate limits?
- How important is safety evaluation prior to hiring a contractor?



Holding Contractors Responsible

- Since many contractors are not substantial enough to indemnify a significant loss, requiring appropriate insurance is essential.



Key Elements

- Commercial General Liability Policy
 - Additional insured status
 - Ongoing operations v. completed operations
 - Requiring a certificate and actual policy language
 - If construction is undertaken, evidence must be provided for a period greater than the construction completion. Many policies state, “if the bodily injury or property damage occurs during the policy period;” stopping coverage on a late discovered claim or event if the policy ends after completion of the contract.



Commercial General Liability

- Completed Operations – what is covered?
 - Resultant Damage
- What is not?
 - Damage to property of others that is caused by the contracted operation
 - Damage to the policyholders work
 - Personal property in the care, custody, or control of the named insured
 - Electronic data or systems



Professional Liability?

- Any engineering or design work that may result in a system, process, or building failure



Setting appropriate limits

- Three part test
 - How hazardous is the work that is to be performed?
 - What is the proximity to other property of the public?
 - What is the duration of the contract?



Benchmarks

		Hazard			
		High ←			→ Low
Proximity	High	15+	12	10	5
		12	10	5	3
		10	5	3	2
	Low	5	3	2	1

*In Millions (\$)



Examples

- Janitorial service cleaning windows on a first floor building vs. window cleaning on a high rise in a major urban area
- Road resurfacing in a rural area vs. a major traffic corridor
- Utility work that could impact services in a broad service area
- Bridge replacement in a major traffic area



Misconceptions

- Limits should be set according the value of the contract
- Exceptions need to be made for smaller contractors who will be unable to compete if the insurance requirements are too rigorous



Safety

- Many agencies are evaluating safety performance prior to the hiring of contractors
 - Even if they can be completely held responsible for negligence, the organization will still bear a substantial cost when claims arise:
 - Administrative
 - Reputation or good will



Model Safety Evaluation Criteria

- Points System
 - <60 points – Unacceptable
 - 60-70 points – Probation for up to 1 yr
 - 70+ points – Acceptable
- Basic criteria – 3 years of data
 - E-Mod
 - Incident Rates
 - Repeat Violation Citations
 - Willful Citations
 - Fatalities



Model Safety Evaluation Criteria

- E-Mod
 - $1.00 > \text{E-Mod}$: 20 Points
 - $1.00 < \text{E-Mod} < 1.50$: 0 Points
 - $\text{E-Mod} > 1.50$: -20 Points
- Incident Rate
 - Contractor Rate $<$ National Rate: 20 Points
 - Contractor Rate $< 1.15 \times$ National: 0 Points
 - Contractor Rate $> 1.15 \times$ National: -20 Points
- OSHA Repeat Offenses
 - 0 Repeat Offenses: 20 Points
 - 1 Repeat Offense: 0 Points
 - 1+ Repeat Offense: -20 Points
- OSHA Willful Citations
 - 0 Willful citations: 20 Points
 - 1 Willful citation: -20 Points 1st year; -10 2nd year; -5 3rd year
 - 1+ Willful citation: -40 Points 1st year; -20 2nd year; -10 3rd year



Monitoring Performance

- Review certificates and policy language before the start of work
- Have a suspense system in place to follow up on:
 - Expiring certificates
 - Annual or more frequent review of safety criteria
- Clearly defined criteria in place, when either insurance or safety contract provisions are not met, or have expired.



Sample Certificate

COVERAGES ~~SPRC003~~ DE CERTIFICATE NUMBER: ~~1037858~~ REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	N	N	GL4014104273	4/1/2011	4/1/2014	EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ XXXXXXXX
	<input checked="" type="checkbox"/> CONTRACTUAL LIAB						PERSONAL & ADV INJURY \$ 2,000,000
	<input checked="" type="checkbox"/> *TENANTS LEGAL LIAB						GENERAL AGGREGATE \$ 10,000,000
	GENL AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 3,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
A	AUTOMOBILE LIABILITY	N	N	BUA4014104287	4/1/2011	4/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$ XXXXXXXX
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$ XXXXXXXX
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
	<input type="checkbox"/> UMBRELLA LIAB	<input type="checkbox"/> OCCUR					Garagekeepers \$ Included
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$ XXXXXXXX
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						AGGREGATE \$ XXXXXXXX
C B B B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N	WC4014104225(RETRO)	4/1/2012	4/1/2013	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input checked="" type="checkbox"/> N	N/A	WC4014104239(DEDUCTIBLE)	4/1/2012	4/1/2013	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below			WC4014104242 (CA)	4/1/2012	4/1/2013	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
				N/A IN MONOPOLISTIC STATES			E.L. DISEASE - POLICY LIMIT \$ 1,000,000



Monitoring Performance

Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Ukiah, Its Officers, Officials, Employees and Volunteers
300 Seminary Avenue
Ukiah, CA 95482

Location and Description of Completed Operations:

Additional Premium:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who is An Insured is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".



Other Considerations

- Waiver of Subrogation
- Primary and Non contributory
- Limits per project
- Alternative employer endorsement



Builders Risk

- Owner Controlled vs. Contractor Controlled





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