

# **HOW TO MANAGE YOUR DISTRICT'S PROPERTY AND CASUALTY PROGRAM - ( P&C )**

**NJASBO**

**Professional Development Workshop**

**December 10 and 17, 2019**

# PROGRAM AGENDA

State of the Property and Casualty  
(P&C) Market

What Coverages are Needed and  
Why

Periodic Review and Evaluation

The P&C Broker

You can use this slide deck to sit and talk with your P&C Broker about your policy coverages.

# CURRENT STATE OF THE PROPERTY AND CASUALTY MARKETPLACE

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# CURRENT STATE OF THE PROPERTY AND CASUALTY MARKETPLACE

- **Direct Insurance Carrier** – This is when you have purchased an insurance policy from an insurance carrier. Thirty years ago this was how most school districts managed their P&C program. Today there are very few private carriers and those that do want to underwrite school districts usually don't provide every type of coverage you need. Because this market is limited, the districts who choose this option usually also have a Joint Insurance Fund (JIF) relationship to provide the other insurances that the private carriers don't care to underwrite.

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# CURRENT STATE OF THE PROPERTY AND CASUALTY MARKETPLACE

- **Joint Insurance Fund** – There are presently 12 joint insurance funds formed under N.J.S.A. 18A:18B1-10 and N.J.A.C. 11:15-4.6(a)1 and N.J.A.C. 11:15-4.6(c)1, specifically to serve school districts. A joint insurance fund is not an insurance company but instead an insurance cooperative formed by and for school districts to provide property and casualty insurance risk coverage. Unlike an insurance company they are not subject to taxes or surcharges. They are legally permitted to provide all form of property and casualty coverage and are highly regulated by the Department of Banking and Insurance of the State of New Jersey.

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# CURRENT STATE OF THE PROPERTY AND CASUALTY MARKETPLACE

- **Partial or fully self insured.** – This is most common among very large districts who can manage a P&C program with excess insurance placements above large deductibles or self insured retentions ranging from \$100,000 to \$1,000,000 or retain all risk themselves without any insurance carrier involvement. This requires hiring a third party claim administrator, a managed care network provider, safety and loss control services and selecting panel physicians and defense counsel. To do this districts need a Broker relationship where the broker has experience helping manage a partially or completely self-insured program.

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# WHAT COVERAGES ARE NEEDED AND WHY

## – AN OVERLY BROAD AND INADEQUATE DESCRIPTION

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# WHAT COVERAGES ARE NEEDED AND WHY

We are providing a highly simplified perspective on coverages.

It is in no way thorough enough for you to make finite decisions.

It is useful in helping you manage and discuss your insurances with a trained and licensed insurance professional.

Insurance coverage documents are at best difficult to understand.

Most people would rather drill holes in their feet than read them.

It is this fundamental truth that underscores this comment and advice: you must have a knowledgeable property and casualty insurance broker involved.

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# WHAT COVERAGES ARE NEEDED AND WHY

## – AN OVERLY BROAD AND INADEQUATE DESCRIPTION

1. General Liability
2. Automobile Liability
3. Excess or Umbrella Liability
4. Errors and Omissions/Directors and Officers/Educators Legal Liability/School Board Legal Liability
5. Property
6. Equipment Breakdown/Boiler and Machinery
7. Crime/Theft
8. Workers' Compensation
9. Cyber Liability
10. Environmental
11. Active Shooter/Disaster Management/Violent and Malicious Acts
12. Odds Bodkins – TERRORISM, TULIP & FLIP
13. Limits and Rates, Sub-Limits, Aggregate Limits, Exclusions and Deductibles, Losses
14. Coverage triggers and forms i.e., occurrence, accident, claims made

# WHAT COVERAGES ARE NEEDED AND WHY

– AN OVERLY BROAD AND INADEQUATE DESCRIPTION

## General Liability

This insurance provides defense and indemnification for bodily injury to others, damage to the property of others and personal injuries to others caused by you or an employee of the district.

This policy has exclusions, exceptions and sub-limits of coverage that are material. Examples include:

- Exclusions include automobile liability, property you own, crime, pollution, explosion of pressure fired vessels, electrical arcing, pollution, and workers' compensation to name some but not all. Note that *most of these exclusions are covered by other P&C policies.*
- A sub-limit example is for sexual abuse and molestation. It is typically sub-limited to protect the insurance provider from being a deep pocket.

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# WHAT COVERAGES ARE NEEDED AND WHY

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## Automobile Liability

This insurance provides defense and indemnification for bodily injury to others and damage to the property of others caused by you or an employee of the district while operating an automobile you own.

This policy has options and exclusions that are material. Examples include:

- Options include; all owned vehicles, hired and/or non-owned vehicles; as well as uninsured and underinsured limit options as examples.
- Exclusions include: expected or intended injuries, workers' compensation, loading or unloading of property, pollution, war and racing to name some but not all.
- *It is critical* that you understand that *you cannot choose not to have commercial automobile insurance if you have contracted out all bussing and don't have any other automobiles*. You will be named in any claim that arises, you will have employee aides on the busses, you will have significant control over the busses and you cannot avoid owning the responsibility for these realities. You can buy hired and non-owned automobile liability insurance as a stand alone policy or as a specific enhancement (endorsement) to a general liability policy with stated and specific sub-limits of coverage.



# WHAT COVERAGES ARE NEEDED AND WHY

## – AN OVERLY BROAD AND INADEQUATE DESCRIPTION

### **Excess or Umbrella Liability**

This insurance provides defense and indemnification for bodily injury to others and damage to the property of others above the primary limits of your general and automobile liability limits.

It is best to think of this policy as an excess policy and forget the word umbrella. Umbrella suggests that there may be greater coverage than exist on the underlying policy and that is an unwise thought. It is far wiser to *think of this as excess of the underlying policies* as that implies it provides greater limits for the same coverages. This thinking will help you discuss what this policy provides more of and what it does not when talking it through with your broker.

Some examples of limitations include the following and are things you want to talk to your broker about annually.

- Underlying policies can carry sub-limits of coverages for specific kinds of claims. You need to identify each of them and ask if this excess policy provides cover over those sub-limits.
- Underlying general liability policies will have annual aggregate limits (see later slide for discussion). You need to ask your broker how the excess policy would work if the underlying limits have been exhausted due to claims.
- You need to simply discuss what isn't covered in this policy that is covered in one of the two underlying policies, if anything.

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# WHAT COVERAGES ARE NEEDED AND WHY

– AN OVERLY BROAD AND INADEQUATE DESCRIPTION

## **Errors and Omissions/Directors and Officers/Educators Legal Liability/School Board Legal Liability**

This insurance provides defense and indemnification for covered errors and omissions in governance and management of the institution. The claims are usually related to employment or disputes involving a student's rights under IDEA. The allegations are most often allegations that civil rights were violated and that the District failed to do something it should have, did a thing it should not have and/or did a thing it should have but did it incorrectly.

This policy is highly complex with limitations and exclusions that are material and complex. Examples include:

- Exclusions may include no coverage for administrative matters or coverage limited to the defense of these matters subject to a deductible and sub-limit of defense expense. Other exclusions include: expected or intended injuries, workers' compensation, and pollution to name some but not all.
- A critical limitation is that all of these policies are claims made policies meaning the claim is accepted only if it occurred and was reported in the policy period. This can be modified for past actions the district had no knowledge of through a retro date extending coverage back in time to the retro date.

# WHAT COVERAGES ARE NEEDED AND WHY

## – AN OVERLY BROAD AND INADEQUATE DESCRIPTION

### **Property Insurance**

Property insurance covers the loss of the districts owned tangible property subject to covered perils and provides various levels of recovery subject to deductibles and limits. Perils are a list of actions such as a fire, windstorm, lightning, falling object, theft and natural disasters that cause property to be damaged and needing repair.

This policy can be written on a comprehensive basis with various deductibles and limits of coverage for specified singular perils such as a flood or groups of perils. The policy can include automobile physical damages and coverage for inland marine equipment like tractors and forklifts, band equipment, Art, sports equipment and other property may be insured within this policy but may be restricted to on site. It is highly structured with limitations and exclusions that are material and complex. Examples include:

- Exclusions may include commercial automobiles and inland marine property and will include pollution and asbestos. Other exclusions include: expected or intended injuries, bodily injury, personal injury, workers' compensation, explosions of pressure fired vessels, electrical arcing and pollution to name some but not all.
- Limitations typically abound within this policy. For most insured perils the primary and lowest deductible and primary and highest limits will apply. For perils like flood, earthquake and wind larger deductibles and smaller limits likely apply. There may be a sub-limit for pollution or no coverage at all and the trigger for coverage will be separately defined.



# WHAT COVERAGES ARE NEEDED AND WHY

– AN OVERLY BROAD AND INADEQUATE DESCRIPTION

## **Equipment Breakdown/Boiler and Machinery Insurance**

Property insurance excludes explosions of pressure fired vessels and electrical arcing. This policy covers those perils. It provides the coverage to replace the damage to property caused when a boiler goes “Kaboom” due to too much pressure and the property policy covers the ensuing fire. This policy covers the electrical panel that goes “Kaboom” when circuits fail generating electrical surges and arcing and an explosion of the panel. The property policy covers the ensuing fire. Think of this as “Kaboom” insurance.

This policy is typically written on a comprehensive basis with various deductibles and limits of coverage for specified singular perils such as an ammonia escape, spoilage, business interruption, extra expense, to name a few but not all. It is highly structured with limitations and exclusions that are material and complex. Examples include:

- Exclusions typically include nuclear, war, demolition and increased cost of construction, cyber liability and terrorism to name some but not all.
- Limitations typically abound within this policy. For most insured perils the primary and lowest deductible and primary and highest limits will apply. For perils listed as sub-limits different deductibles and limits may apply.

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# WHAT COVERAGES ARE NEEDED AND WHY

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## Crime/Theft

Most commercial property insurance policies do not cover employee crime-related losses. This coverage allows the district to file claims following the occurrence of criminal offenses such as securities theft, robbery, embezzlement, forgery, or other similar crimes by employees.

This policy covers all employees except those employees who in law are required to be separately bonded. For school districts in New Jersey there are two positions: Secretary to the Board and Treasurer/Custodian of School Monies. Some policies cover excess of the bonds some do not. Your auditor can advise you on required statutory minimum amounts required to be bonded and more importantly a rational limit given the risk of theft by persons in those positions.

- Exclusions typically include nuclear, war, failure to report a crime (*you must prosecute*), loss by electronic deception and terrorism to name some but not all.
- Limitations typically abound within this policy.

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# WHAT COVERAGES ARE NEEDED AND WHY

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## Workers' Compensation

Workers' Compensation *is a law administered and managed by insurance organizations*. It is social legislation that dates in New Jersey to 1911. It is required that all employers in the State provide workers' compensation benefits for their employees with very few exceptions. The trade off is that employees cannot sue their employers because they are entitled to the benefits in the law. The law provides medical and indemnity benefits. There are no deductibles and employees will receive lost wages if out of work and possibly receive permanency rewards for significant injuries.

- Exclusions include nuclear, war and terrorism to name some but not all.
- We encourage further exploration into this coverage as it will represent 50% or more of your P&C expenditures.
- See N.J.S.A. 18A:30-2.1 Sick leave payment for service connected disability; satisfactory services
- See New Jersey Division of Pensions and Benefits Fact Sheet#45 dated February 2019

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## CYBER Liability

Cyber Liability responds to the loss of Personally Identifiable; Information (PII), Health Information, (PIH), and Financial Information (PFI) as well as online trick and deception leading to loss of money, ransomware, denial of service attacks and more. These are not covered in other policies and triggers a needed host of services to help identify the nature and depth of the loss, the types of records taken, what needs to occur to regain operations in a safe manner, what reporting must occur per State and Federal law and may provide public relations support.

These policies are complex and very challenging to understand.

- Exclusions include nuclear, war and terrorism to name some but not all.
- We encourage you to sit with your Broker and talk through your policy services, limits and deductibles. ***Make certain you know how to file a claim promptly as you will need a lot of help right away in these claims.***



# WHAT COVERAGES ARE NEEDED AND WHY

– AN OVERLY BROAD AND INADEQUATE DESCRIPTION

## Environmental Liability

Environmental liability is very much needed because all other policies either exclude pollution outright or provide a very small sublimit. In the 1970's and early 1980's insurance policies were being declared to cover Superfund sites in commercial policies and mold claims in homeowners policies. The inherent vice exclusions insurers relied upon to deny these claims weren't holding up and the ambiguity led to coverage. So the insurance industry universally adopted the absolute pollution exclusion in 1983. Since then a chemical spill in a lab or pool or a custodian mixing chemicals by mistake that create a deadly toxic gas are not covered at all without an environmental policy that provides defense and indemnity for third parties suing for bodily injury as a result of any of these scenarios. Some but not all provide first party clean up coverage for mold but that coverage is rapidly disappearing.

These policies are complex and very challenging to understand.

- Exclusions include nuclear, war, asbestos, lead, mercury and other pollutants that are not insurable and terrorism to name some but not all.
- We encourage you to sit with your Broker and talk through your policy services, limits and deductibles. ***Make certain you know how to file a claim promptly as you will need a lot of help right away in these claims.***

# WHAT COVERAGES ARE NEEDED AND WHY

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## **Active Shooter/Disaster Management/Violent and Malicious Acts**

It is our present reality that active shooters are a real and constant threat to every school district. The problem is that these events create previously unanticipated hardships not covered under the insurances discussed. An event can take lives, distort lives, create a public information firestorm and damage buildings. It will only take a matter of days for a renovation company to restore the building to the pre-event state but the school community may not be able to return so soon requiring alternate educational facilities for some time at extra expense. This extra expense is not covered under a property policy. The district will need PR help immediately to manage the crisis event and maintain public confidence. Many employees, students, parents and responders will need counseling and there can be need for many other services. These policies are written to provide the missing services and extra expense monies needed following a shooting tragedy.

These policies are complex and very challenging to understand.

- Exclusions include nuclear, war, asbestos, lead, mercury and other pollutants that are not insurable and terrorism to name some but not all.
- We encourage you to sit with your Broker and talk through your policy services, limits and deductibles. ***Make certain you know how to file a claim promptly as you will need a lot of help right away in these claims.***

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### **Odds Bodkins – TERRORISM, TULIP & FLIP**

The following three policies are non-standard but must be discussed and considered.

- Terrorism provides coverage across all lines for acts of terrorism. The World Trade Center disaster brought home the need for this coverage. Up until that point and still today policies exclude acts of war such as invasion, insurrection, revolution, military coup and terrorism.
- TULIP is an acronym for Tenant Users Liability Insurance Policy. As a school district people and groups of all types will want to use your facilities. You should have a Use of Facilities Policy and Procedure that require hold harmless and indemnification agreements and proof of general liability insurance at a minimum.
- FLIP is an acronym for Foreign Liability Insurance Policy. If you can remember that when you fly out of U.S. and Canadian air space you have flown out of insurance coverage it will help you. Any trips outside of the U.S. or Canada require placement of a policy providing general liability, automobile liability, property and foreign repatriation coverage.
- We encourage you to sit with your Broker and talk through these coverages and their applicability to your district.

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### **Limits and Rates - General**

- Are negotiable with higher limits driving higher rates.
- Require annual discussion for each P&C policy with the broker.
- Vary annually due to market conditions.
  - A series of wind and water events (hurricanes) along the eastern seaboard can have negative impacts on property rates.
  - A series of shootings or sexual abuse claims in a few New Jersey school districts can have adverse impact on general and educators legal liability rates.
  - A series of bad bus accidents can have a negative impact on commercial auto rates.
- Reflect your perceived risk, risk tolerance and fiscal capacity.

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# WHAT COVERAGES ARE NEEDED AND WHY

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### Limits and Rates – Specific by policy type 1

- Limit is a function of rate and risk tolerance. The simple math is price or premium equals limit selected times rate/s for finite and measurable school data. Typical rate and data by policy type is shown below.
  - **General liability** primarily student count (ASSA) and may include budget.
  - **Automobile liability** by classification of automobiles owned and .
  - **Excess liability** a percentage of the underlying premium.
  - **Educators legal liability** primarily student count (ASSA) and often includes budget.
  - **Property** is a rate per \$100 of total insurable value (TIV).
  - **Equipment breakdown** is a rate per \$100 of total insurable value (TIV).
  - **Crime/Theft** is exposure to monetary loss by person, amount and controls in place.
  - **Workers' compensation** is by employee classification and gross payroll by classification times a NJDOL derived rate per \$100 of payroll.

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# WHAT COVERAGES ARE NEEDED AND WHY

## – AN OVERLY BROAD AND INADEQUATE DESCRIPTION

### Limits and Rates – Specific by policy type 2

- Typical rate and data by policy type is shown below.
  - **Cyber liability** is new and every application is different. Be prepared for this to change every year as the risks continue to increase.
  - **Environmental liability** is a complex and very thorough application requiring significant documentation.
  - **Active shooter/Disaster management/Violent and Malicious Acts** is very new and will include ASSA, location count and questions about your policies, procedures, training and assets relative to training for and surviving an active shooter incident.
  - **Odds Bodkins, Terrorism** is typically offered as an option by policy type and can be a stand alone policy across all policy types in which case a separate exhaustive underwriting takes place. **TULIP and FLIP** are number and type of event oriented.

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# WHAT COVERAGES ARE NEEDED AND WHY

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### **Sub-Limits and Aggregate Limits**

A **sub-limit** is a smaller limit than the general policy limit shown on the declarations page of a policy for a specific type of loss within a policy. Yikes. A common example is a sub-limit of coverage for sexual abuse and molestation claims within a general liability policy. Sub-limits exist when a type of claim is known within the insurance industry to result in high severity (read high cost) and the insurer is unwilling to provide full limits to this classification of claim.

**Aggregate** limits represent the total amount of money available in a policy period for the totality of claims filed against the policy over time but directly associated with the policy year. These are typical in nearly every class of liability policy. They can be negotiated but typically only on an application basis i.e., per project, per location, etc. Automobile liability usually does not have an aggregate.

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# WHAT COVERAGES ARE NEEDED AND WHY

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### **Exclusions and Deductibles**

All policies contain **exclusions**. You are well advised to accept that knowing the exclusions is the key to knowing what is covered. Without knowing the exclusions you risk assuming coverage that may not exist at all or may exist but as a sublimit within an exclusion. For example your general liability policy may exclude medical professionals but within the exclusion it will specifically except nurses, audiologists, psychologists and others from the exclusion meaning they are covered.

Many policies have **deductibles**. While these are familiar in property coverage like a fire loss or an automobile collision, they are less familiar in liability policies but very often present. Some policies will have a **self insured retention**, which is similar to a deductible but requires the insured entity to pay first with the insurance carrier later reimbursing.

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# WHAT COVERAGES ARE NEEDED AND WHY

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### **Losses**

There is *nothing more important* to what a school district will pay for property and casualty insurances *than its own loss history*.

Knowing your losses is essential to understanding where they are coming from and then doing something to reduce the chance you get another loss for the same reason.

Paying attention to safety and risk management every day will pay off in a manageable P&C budget, and more importantly, in a healthier, safer, happier and more productive school district.

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# WHAT COVERAGES ARE NEEDED AND WHY

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### RECAP

We've discussed the various policies you should be considering and provided a very basic idea of what they are and what they cover.

We've discussed key structural elements and the value of knowing your losses so that you can manage risk.

*You don't need to become a P&C expert, you just need to be able to have a solid conversation with your broker periodically to be aware of how things are or may be changing so that you can best prepare.*

We hope this slide deck provides a long lasting and useful framework for that discussion.

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# PERIODIC REVIEW AND EVALUATION

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# PERIODIC REVIEW AND EVALUATION

The old days of creating a bid document detailing an exhaustive outline all of the coverages the district is considering and likely to purchase are gone.

Today, the choices are very different as the majority of the P&C market in New Jersey is represented by a Joint Insurance Fund where the coverages offered are defined by a Plan of Risk Management with either no variation from member to member or limited variation. This being the reality, it is important to know what purchasing requirements are relative to P&C insurance.

# N.J.A.C. 6A:23A, FISCAL ACCOUNTABILITY, EFFICIENCY, AND BUDGETING

N.J.A.C. 6A:23A-6.1 Conditions precedent to disbursement of State aid. Pursuant to N.J.S.A. 18A:55-3 as a condition of State aid, a district shall:

1. Examine, no less than **once every three years**, all available group options for every insurance policy held by the district, including self-insurance plan administered by the New Jersey School Boards Association (NJSBA) Insurance Group on behalf of districts, and shall participate in the **most cost effective plan**. This shall include review of **annual claims data and other experience rating information**, as applicable.

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# GROUP INSURANCE PROCUREMENT PROCESS/TIMELINE

Thirty thousand foot view.

- 1) Collect examination information and documents from each joint insurance fund option that is rational for you to consider and any standard market options. - January
- 2) Examine Data and Information. - February
- 3) Recommend to Board of Education most cost-effective plan. - March



# RELEVANT INFORMATION/DOCUMENTATION CHECKLIST

Item  
Furnished

- \_\_\_\_\_ • Year of Joint Insurance Fund (JIF) Incorporation.
- \_\_\_\_\_ • List of All Current Members by line of coverage.
- \_\_\_\_\_ • List of lines of coverage offered showing deductible and limit options by line of coverage with all sub-limits identified by name and sub-limit.
- \_\_\_\_\_ • Last two years Certified JIF Financial Audits.
- \_\_\_\_\_ • JIF Plan of Risk Management.
- \_\_\_\_\_ • JIF Bylaws.
- \_\_\_\_\_ • URL of JIF Website.
- \_\_\_\_\_ • Description of expectations of members.

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# RELEVANT INFORMATION/DOCUMENTATION CHECKLIST

Item  
Furnished

- \_\_\_\_\_ • List of distributed Statutory Dividends by year.
- \_\_\_\_\_ • List of Safety Incentive Awards/Grants by year.
- \_\_\_\_\_ • List of Financial Performance Awards by year.
- \_\_\_\_\_ • List of Additional Assessments by year.
- \_\_\_\_\_ • List of no cost safety/loss control programs provided to members showing cost if any and availability of program/s on-site at district request.
- \_\_\_\_\_ • List of safety/loss control programs
- \_\_\_\_\_ • List of at cost safety/loss control programs provide to members with list of cost per course.
- \_\_\_\_\_ • Any other information or documentation warranted.

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# EVALUATION CRITERIA

Coverage – Does the coverage offered meet the District's risk appetite?

Experience – Does the JIF or Standard Market have sufficient experience in working with school districts?

Financial Strength – Does the JIF or Standard market have sufficient financial strength for the district to confidently rely upon the JIF or market to pay all of its bills from the past, present and into the future?

Program – Does the JIF or Standard market have the depth of programs needed to help the District proactively manage risk?

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# JIF MARKET REALITIES

JIFs vary in many ways. Some of the variations are generically listed below.

- Lines of coverage offered.
- Limits and deductibles.
- Premium/contribution allocation strategy.
- Services and service structure.
- Membership standards about coverage with some permitting one or two lines of coverage to constitute membership and others requiring all lines of coverage.
- Expectations of member involvement.
- Broker/RMC involvement.

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# MEMBERSHIP CONSIDERATIONS

- Regional or Statewide
- Active Governance by Members – Mission determined by Colleagues not Vendors or Employees
- Commitment to Safety and Risk Management
- Convenience of Meeting - Locations
- Record of accomplishments
- Cohesiveness of membership

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# PROGRAM EQUITY

- Dividend Distribution
- Safety Awards & Grants
- Interest Distribution
- Future Premium Calculation
- Fund Decision Making

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# PROPERTY AND CASUALTY INSURANCE PROCUREMENT RECOMMENDATION

In accordance with NJAC 6A:23A-6.1, I have examined all available group options and have determined that the \_\_\_\_\_ is the most cost effective plan for property and casualty insurance for the following reasons:

## Coverages

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## Cost

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## Membership

- \_\_\_\_\_
- \_\_\_\_\_

## Service & Support

- \_\_\_\_\_
- \_\_\_\_\_

## Program Equity & Fairness

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## Fund Financial Strength

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## Experience

- \_\_\_\_\_
- \_\_\_\_\_

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# STANDARD CERTIFICATION DECLARATION FOR AN EXTRAORDINARY UNSPECIFIABLE SERVICE

TO: Members of the Governing Body  
FROM: Name and Title of the Contracting Unit's Designated Administrative Official  
DATE:  
SUBJECT: This is a contract for \_\_\_\_\_

This is to request your approval of a resolution authorizing a contract to be executed as follows:

Firm: \_\_\_\_\_  
Cost: \_\_\_\_\_  
Duration: \_\_\_\_\_  
Purpose: \_\_\_\_\_

This is to request an award of a contract without the receipt of formal bids as an Extraordinary Unspecifiable Service [N.J.S.A. 40A:11-5(1)(a)(ii) and N.J.A.C. 5:34-2.3(b)]. I do hereby certify to the following:

- 1. Provide a clear description of the nature of the work to be done:**  
*(Provide a complete description)*
- 2. Describe in detail why the contract meets the provisions of the statute and rules:**  
*(Do not just rewrite or paraphrase the statute or rule, or merely state a desire to have a reliable job performed – provide a complete explanation. However, pursuant to N.J.S.A. 40A:11-5(1)(m), it is permissible by law that insurance contracts and/or services can cite the statutory provision)*
- 3. The service(s) is of such a specialized and qualitative nature that the performance of the service(s) cannot be reasonably described by written specifications because:**  
*(Describe why it is “qualitative in nature requiring the need for expertise, extensive training and proven reputation”. Provide a complete explanation why it is not reasonably possible to draft specifications. Please note this provision does not apply to insurance contracts and/or services and should thus be marked as non-applicable.)*
- 4. Describe the informal solicitation of quotations:**  
*(List vendors contacted, prices and terms provided. If this has not been done explain in detail). The lowest quotation is: (If no quotation(s) is received, explain why in detail)*
- 5. I have reviewed the rules of the Division of Local Government Services pursuant to N.J.A.C. 5:34-2.1 et seq. and certify that the proposed contract may be considered an extraordinary unspecifiable service in accordance with the requirements thereof.**

Respectfully,

Name \_\_\_\_\_  
(Signature)  
Title \_\_\_\_\_

*(Original to be retained by governing body's Clerk with the affirmed copy of the resolution; signed duplicate to be kept by appropriate official.)*

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AU 2002-2

Notice Number

New Jersey Department of Community Affairs  
Division of Local Government Services

2/26/2002

Date

# LOCAL FINANCE NOTICE

## Extraordinary Unspecifiable Services

One of the recent changes to Local Public Contracts Law rules amended the requirements for compliance with the extraordinary unspecifiable services (EUS) bidding exemption pursuant to N.J.S.A. 40A:11-5(1)(a)(ii). Those amendments eliminated the previous listing of services considered to be qualified or not qualified as EUS's. At the time of the changes, the Division stated that it preferred and intended to provide EUS examples through the issuance of a Local Finance Notice, rather than through the promulgation of rules. This Notice provides those examples and additional guidance on the use of the EUS process.

### Highlights of the Rule Amendment

The rule did not change the application of the terms and the determination and award of an EUS contract. However, the following summarizes the important amendments or modifications to the rule:

- The definition of the EUS was removed from N.J.A.C. 5:34-2.1 and relocated to N.J.A.C. 5:34-1.2, the definition provision of the Local Public Contracts Law rules.
- As an alternative to an EUS, it is strongly suggested that contracting unit officials consider the use of competitive contracting pursuant to N.J.S.A. 40A:11-4.1 (k) instead of the EUS provision. [N.J.A.C. 5:34-2.2 (c)]
- If a vendor participates in the early stages of procurement, such as conducting a survey or study or preparing specifications, appropriate care must be taken so that a firm is not authorized to participate in competitive bidding or competitive contracting, if its earlier participation would give it unfair advantage. [N.J.A.C. 5:34-2.2 (e)]
- The list of examples (N.J.A.C. 5:34-2.4) was repealed, to be replaced with this guidance.

(continued on next page)

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### Types of Services That Satisfy The Criteria for an EUS

The list of examples of what constituted and what did not constitute an EUS was eliminated with the repeal of N.J.A.C. 5:34-2.4. However, during the proposed rule comment period, local officials stated that the examples provided guidance to contracting units because they listed the types of services that satisfied the criteria for an EUS. Therefore, they requested that the section be inserted back into the EUS rule. The Division carefully considered the comments and concluded that examples would best serve as policy guidelines rather than directives. The list has also been updated to reflect current practices and needs.

For purposes of guidance, the Division finds that based on individual local circumstances, the following services might satisfy all the criteria for an EUS and they are therefore listed as examples:

1. Specification drafting;
2. Management consultant studies;
3. Labor management consultants;
4. Certified landscape architects;
5. Information and telecommunications technology preliminary feasibility surveys, design of systems and preparation of specifications, web site design, maintenance, and hosting;
6. Expert financial advisors;
7. Public relations consultants;
8. Child custody, foster care, and similar services when contracted directly with the individuals performing the services and not with any firm, corporation or partnership which employs others to perform the work;
9. Establishment of a fixed assets inventory when the total system includes an accounting component;
10. Expert witnesses; and
11. Clerk of the works or construction advisor (not the actual construction).

In all cases, advice of legal counsel should be obtained to ensure that the criteria are met.

The Division also concludes that under most circumstances the following services **do not** satisfy all the criteria for an EUS and they are therefore listed as examples of contracts that are not eligible for the EUS exemption for purposes of guidance:

1. Facilities management contracts (for data processing or other operations);
2. Information technology services, including programming, service bureau processing, rental of information technology equipment, purchasing of information technology data processing equipment, Internet service providers. These activities are in some cases complex but are specifiable, and may be viable candidates for the competitive contracting process;
3. Construction management contracts (involving price guarantee, responsibility for conducting the construction, etc);
4. Physical taking of a fixed assets inventory;
5. Electrical equipment maintenance;
6. Maintenance of non-proprietary computers and networking equipment, and common office equipment;
7. Tradesmen;
8. Heating specialists;
9. Maintenance of motor vehicle fleets;
10. Feeding programs; and
11. Revaluation services.

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Advice of legal counsel should be obtained if a contracting unit determines that individual circumstances might permit the use of an EUS for these purposes.

### **Insurance Satisfies the Criteria for an EUS**

Insurance, including, the purchase of insurance coverage and consultant services, is a limited exception to the public advertising and bidding requirements by virtue of N.J.S.A. 40A:11-5(1)(a)(ii) and 40A:11-5(1)(m), in that it is considered an EUS. The statutory language means that procedural requirements of an EUS must be met to document the governing body's action. The contracting unit is required to do the following:

- When the insurance contract is in excess of the bid threshold, efforts must be made to secure competitive quotations. [N.J.S.A. 40A:11-6.1(b)] The Division has found that in most circumstances solicitation of quotations is practicable for insurance purposes;
- State supporting reasons for its action in the resolution awarding such contracts (i.e., that the law permits insurance to be considered an EUS);
- Print once in the official newspaper, a brief notice stating the nature, duration, service and amount of the contract(s);
- Contract(s) must be on file and available for public inspection in the office of the clerk of the contracting unit.

Since "insurance" includes the purchase of insurance coverage and consultant services, it is considered as a "statutory" EUS and does not require supporting reasons for its action beyond citing the statutory reference. The Division has also concluded that those services that are part of traditional insurance coverage, such as administrative services, claims administration services, risk assignment, participation in a joint self-insurance fund, a risk management program, or related services could qualify as an EUS.

### **General Summary**

Before the governing body can award a contract under the EUS provisions, a designated administrative official of the contracting unit must file a certificate with the governing body. The certificate must describe clearly the nature of the work to be done; state that is not reasonably possible to draft specifications; describe the informal solicitation of quotations; and describe in detail why the contract meets the provisions of the statutes and the rules. The certification must be kept with the resolution awarding the contract. [N.J.A.C. 5:34-2.3(b)] **Do not file the certification with the Division.**

A standard certification format has been included with this Notice and can also be downloaded from the Division's website at [www.state.nj.us/dca/lgs](http://www.state.nj.us/dca/lgs)

If, after your review of this Notice, you have any questions concerning its contents, or the EUS process generally, please direct them to the Division's Bureau of Local Management Services at (609) 292-7842, by fax at (609) 633-6243 or by e-mail at [lpcl@dca.state.nj.us](mailto:lpcl@dca.state.nj.us)

Enclosure

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# THE IMPORTANCE OF A BROKER

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THANK YOU.

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ANSWER ANY  
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