Risk Transfer Seminar Series
Capital Projects & Construction

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NEW YORK SCHOOLS NYSIR INSURANCE RECIPROCAL

The Numbers

- **106 Projects Managed**
- **>$2 Billion in Construction**
- **>90% of Contractors in the Excess & Surplus Market**
- **5,567 Construction Document Touches**
- **1,526 Corrections and Re-Reviews**
- **2,319 Construction Certificates Processed – April to August**

Challenging Factors

- **Bids – No Insurance Spec Vetting**
- **Not Following Specs**
- **Contractors With Non-Licensed and Non-Admitted Carriers Awarded Bids**
- **No Specs Submitted for Review**
- **Old and Obsolete Specs Submitted for Review (2005)**

Capital Project Flow

Determine Insurance Specs

Send to NYSIR for Initial Review

Bid Packages Sent

Bid Package Analysis

Contractor Analysis

Risk Transfers – Why Bother?

ADVANTAGES

- Reduce the cost of claims
- Stabilize premiums
- Forces the controlling party to bear the cost of claims
- Follow overall industry practice

Risk Transfer – Why Bother?

CHALLENGES

- Time Consuming/Time Constraints
- Learning Curve
- Administrative Costs
- Disruption if third-parties don't comply
- Political Risk

What is Risk Transfer ?

Transfers the responsibility to pay for claims to another entity

- The contractor pays for claims arising from their negligence, not the district or the district’s insurer
- Without a risk transfer, the district or its insurer would be responsible

How are risk transfers completed?

- Through indemnification/hold harmless agreements and certificates of insurance

Requirements for a Successful Risk Transfer

- **Completed and Signed Contracts**
- **Insurance Procurement Requirements**
- **Indemnification Language**
- **Properly Completed Certificate of Insurance**
    - **Accurate information**
    - **Correct Terms/Conditions**
    - **Additional Insured Language for both Ongoing and Products and Completed Operations**
    - **Policy effective and expiration dates**

Sample Indemnification Agreement

To the fullest extent permitted by law, **(Contractor's Name)** agrees to defend, indemnify and hold harmless the **(District/BOCES)**, as well as any other parties which the contractor is required under the contract documents to defend, indemnify and hold harmless, their agents, servants and employees, from and against any claim, cost, expense or liability (including costs and attorneys' fees incurred in enforcing this indemnity), attributed to bodily injury, sickness, disease or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from or occurring in connection with the performance of the work by the contractor, its subcontractors and suppliers or their agents, servants and employees whether or not caused in part by the active or passive negligence, partial negligence or other fault of the party indemnified hereunder; provided, however, the contractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage or destruction is caused by the sole negligence of the party indemnified hereunder. The contractor's obligation shall not be limited by the provisions of any Workers' Compensation Law or similar Act.

INSURANCE SPECIFICATIONS

Contractors

Insurance Specs - Contractors

- **October 2019 – All Others Obsolete**
- **Licensed and Admitted – “Strongly Preferred”**
- **Primary and Non-Contributory Language and Umbrella or Excess Follow Form**
- **Sub-Contractors – Same Limits as Contractors**
- **Completed Acord 855 Form with explanations of “Yes” Responses to Items G through L**

Insurance Specs - Contractors

- **Minimum Required Coverage – GL**
  - **$1 Million/Occurrence and $2 Million Aggregate**
  - **$2 Million Products and Completed Operations**
  - **$1 Million Personal and Advertising Injury**
  - **$100,000 Fire Damage**
  - **$10,000 Medical Expense**
  - **The General Aggregate Shall Apply on a Per Project Basis**

- **Automobile Liability**
  - **$1 Million Combined Single Limit for Owned, Hired, Borrowed and Non-Owned Motor Vehicles**

Insurance Specs - Contractors

- **Owners Contractors Protective (OCP) Coverage – Licensed and Admitted Carriers**

- **Projects <$1 Million and < 1 Story (10 Feet)**
  - **$1 Million/Occurrence and $2 Million Aggregate**

- **Projects >$1 Million and/or >1 Story**
  - **$2 Million/Occurrence and $4 Million Aggregate**

Insurance Specs - Contractors

- **Owners Contractors Protective (OCP) Coverage – Non-Licensed & Non-Admitted Carriers**

- **Projects – Non-Licensed & Non-Admitted Carriers on GL, Auto and Excess**
  - **$2 Million/Occurrence and $4 Million Aggregate**

Insurance Specs - Contractors

- **OCP Policy**
  - **District/BOCES is the Named Insured**
  - **No Additional Insureds on this Policy**

- **Builders Risk – Up to Subscriber**

Insurance Specs - Contractors

- **Umbrella/Excess**
  - **$5 Million/Occurrence and Aggregate – General Construction; <$1 Million and Work at 1 Story**
  - **$10 Million/Occurrence and Aggregate – High Risk Construction; >$1 Million; Work Over 10 Feet**
  - **Excess Must Follow Form**

Insurance Specs - Contractors

- **Asbestos/Lead Abatement**
  - **$2 Million per Occurrence; $2 Million Aggregate**

- **Transporting Hazardous Materials**
  - **Pollution Liability Broadened Coverage (ISO Endorsement CS 9948)**
  - **Proof of MCS 90**

Insurance Specs - Contractors

- **Testing Company Errors and Omissions**
  - **$1 Million per Occurrence; $2 Million Aggregate**

NYSIR'S ROLE

- Review specifications for correct insurances before bid
- Review District's/BOCES certificates of insurance for proper coverages and endorsements
- Send responses back to District/BOCES, Architect and/or Construction Manager

Questions

Thank You!

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