

Contractual Risk Transfer

Protecting the County's Interests

OPAA Summer Workshop

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Why is Contractual Risk Transfer Important in Protecting the County?

Contractual Risk Transfer

- Service Contracts
- Property Leases
- Purchase Agreements
- Bid Specs – RFPs
- Quotes for “Small” Jobs

Goals of Contractual Risk Transfer

- Protect the County's Interests
- Fairness to All Parties
- Legal and Binding Contracts
- Accurate Insurance Terms

Elements of Contractual Risk Transfer

- Insurance Requirements
- Indemnification / Hold Harmless
- Waiver of Subrogation
- Limits of Liability

Insurance Requirements

- Type of Insurance
- Liability Limits
- County Named an Additional Insured
- Certificate of Insurance
 - Proof of Insurance Coverage

Core Insurance Coverage

- Commercial General Liability
- Automobile/Fleet Liability
- Builders Risk
- Workers Compensation
- Property Coverage
- Professional Liability

Minimum Insurance Requirements

- General Liability - \$1,000,000
- Auto Liability - \$1,000,000
- Workers' Comp – Comply w/Ohio law.
- Professional Liability - \$1,000,000

Indemnification / Hold Harmless

- Contractor agrees to indemnify and hold the county harmless for damages resulting from the contractor's negligence.
 - Contractor agrees to make the County whole for any damage to County property.
 - Contractor agrees to protect the County from liability claims by outside parties.

Indemnification / Hold Harmless

- The County CANNOT agree to indemnify a contractor for damages resulting from the contractor's negligence.
- Ohio Attorney General Opinion 99-049

Waiver of Subrogation

- Nullifies the effect of indemnification / hold harmless language.
- Waiver of County's property insurer's - right to recover from a negligent contractor or their insurer.
- Construction contracts, AIA, leases.
- Examine carefully. Do not waive subrogation unless County is protected.

Limit of Liability

- Professional contracts.
 - Engineers, Architects, TPA's.
- Limits contractor's liability in the event of breach or negligence to the value of the contract.
- This provision should be deleted.

Contractual Risk Transfer

Checklist

- ✓ Require contractor to carry adequate insurance.
- ✓ County named additional insured.
- ✓ Require contractor to indemnify / hold county harmless for damage caused by contractor's negligence.

Contractual Risk Transfer

Checklist

- ✓ OK for County to indemnify / hold contractor harmless for damage caused by the county's negligence.
- ✓ County CANNOT indemnify / hold contractor harmless for damage caused by contractor's negligence.

Contractual Risk Transfer

Checklist

- ✓ Do not waive right of subrogation.
- ✓ Do not agree to limits on contractor's liability.

**Everything is
Negotiable!!**

Case Studies

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