

Risk Allocation

- Risk Management

- Objective is to protect Company's assets from loss.
- Risk management is a key part of contracting process. Companies have a preferred risk management strategy which is in their standard forms, but there is room for negotiation.

Risk Allocation

- Risk Assessment

- Accurate assessment of risks involved must be made to properly manage risks associated with work. Risks to which Company is commonly exposed from its perspective include:
 - Damage to Company, Contractor, or third-party property.
 - Injury to or death of Company or Contractor employees, or third parties.
 - Environmental impairment or sudden pollution.
 - Loss of production or loss of use of facilities.
 - Liens on Company property due to nonpayment by contractors, subcontractors, etc.
 - Default or bankruptcy of contractors, subcontractors, etc.
 - Poor, incomplete, or inadequate performance.

Risk Allocation

- Risk Handling

- Risk handling can be separated into four categories: risk avoidance, risk transfer, risk assumption, and risk reduction. Risk is allocated in a manner which is most cost effective for Company.

- Risk Avoidance

- Risk can be avoided by electing not to participate in a given activity or not to do business with a particular party.

Risk Allocation

- Risk Transfer
 - Transfer of risk may be accomplished through indemnification articles of a contract and through contractual requirement that Contractor maintain an insurance program which meets Company standards.
- Risk Assumption
 - Company should generally assume or retain risk when transfer of risk is too costly.

Risk Allocation

- Risk Reduction

- Risk reduction involves taking actions to minimize possibility of occurrence of an incident. Typical actions include (1) implementation of safety and security programs, (2) implementation of project control procedures, and (3) hiring safe and financially sound contractors qualified to perform work.

Payment Security

- Bond

- Performance bond in certain amount drawn on a recognized financial institution to guarantee payment for any costs, losses or damages suffered in the event of non-performance or other breach of the contract.

- Letter of Credit

- Irrevocable standby letter of credit with a recognized bank in a certain amount to secure payment.

Payment Security

- Escrow Agreement

- Deposit of funds and/or documents with bank to assure monies available for contract performance. Bank distributes funds pursuant to written instructions of parties.

- Guaranty

- Third party guarantees performance of or payment of party due and/or owing under contract.

Standard Contract Terms

- Insurance

- Parties may be required to secure insurance. This provision would specify type and amount.

- Indemnification

- Requires one party to incur by way of compensation the loss(es) of another. Party paying compensation may or may not be responsible for the loss(es). Many states have anti-indemnity statutes applicable to different areas. Colorado has a construction contract anti-indemnity statute.

Insurance Coverages

- **Commercial General Liability**
 - **Bodily Injury/Property Damage combined single limits**
 - Commercial General Liability covers liability for third-party bodily injury and property damage claims excluding automobile liability incidents (*e.g.*, damage to third-party plant or equipment). This insurance should also cover contractual liabilities, including contractual indemnification given to another party.
- **Automobile Liability**
 - Bodily Injury/Property Damage combined single limits.
- **Umbrella**
 - Extra insurance for all claims.

Insurance Coverages

- Property Insurance
- Business Interruption: To pay your fixed expenses during a period of time when business is not operational.
- Officer and Director: For company officers and directors who may be personally liable for their actions on behalf of company.
- Home Office: Includes coverage for office equipment. Not automatically included in standard homeowner's policy.

Insurance Coverages

- Statutory Worker's Compensation
 - Covers injuries to employees on a no-fault basis;
 - Benefits are prescribed on scheduled basis;
 - Purchased commercially, through state fund or self-insured; and
 - In Colorado, applies to employers with one or more employees.

Insurance Coverages

- Employer's Liability

- Covers injuries to employee when liabilities arise outside of statutory workers' compensation.

Insurance Coverages

- Insurance Specifics

- **Additional insured:** Generally Company requires that it be listed as an additional insured under all liability policies except worker's compensation and employers' liability. Allows Company to become an insured under Contractor's policy.
- **Waiver of subrogation:** Contractor must require its insurers and its subcontractors' insurers to waive all rights of subrogation against Company. A waiver of subrogation is a policy endorsement by which Contractor's insurers agree not to pursue recovery against Company for claims paid by insurer on behalf of Contractor.
- Required of subcontractors as well.

Thank You For Coming!!

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