Disclaimer

• I am not an attorney

• Consult with either your campus in-house counsel/attorney (if you have one) or Minnesota State Office General Counsel for comments relating to indemnification

Session Overview

• What is Risk Management?
  • Why is risk management important
  • Specific coverages and definitions

• Relationship between risk management/insurance and contracts
  • Risk Management Process

• Insurance requirements and Certificate of Insurance

• Value of Risk Management
What is Risk Management?

- Risk is any issue that impacts the institution’s ability to meet its objectives.
- Essentially, risk management is figuring out what can go wrong and determining what to do about it.

Risk Management/Insurance Myths

- There is no risk
- Insurance is only for the institution
- Not coming onto campus so there’s no risk

Coverages

- **Commercial General Liability** — bodily injury, property damage. (Recommended minimum requirement is $2M per occurrence/$2M aggregate)
- **Workers Compensation** — bodily injury to contractor/vendor employees while working on school property. (Statutory requirement, if applicable)
- **Professional Liability** — for errors and omissions in performing professional services. (Recommended minimum requirement is $2M per claim or event/$2M aggregate)
- **Umbrella/Excess Liability** — provides additional limits in excess of an underlying liability policy. (Usually written in $1M increments)
Definitions

- **Risks** – uncertainty arising from the possible occurrence of given events.
- **Additional Insured** – a person or organization not automatically included as an insured under an insurance policy of another, but for whom the named insured desires or is required to provide a certain degree of protection under its insurance policy.
- **Waiver of Subrogation** – an agreement between two parties in which one party agrees to waive subrogation rights against another in the event of a loss. The intent of the waiver is to prevent one party’s insurer from pursuing subrogation against the other party.
- **Indemnification** - the insurer reimburses the insured for claims and claim costs already paid by the insured.

What does risk management & Insurance have to do with contracts?

- Entering into a contract creates certain exposures to institutions’ resources.
  - Tangible, i.e. facilities
  - Intangible, i.e. reputation
- Insurance provides a financial instrument to ensure that the other party can pay its contractual obligation in the event of a claim AND it provides proof that the contracting party has a better chance of being reputable.

Risk Management Process

1. Identify loss exposures
2. Analyze loss exposures
3. Examine feasibility of risk management techniques
4. Select appropriate technique
5. Implement technique
Risk Management Process

Step 1 – Understand the scope of work & the objectives

1a. Identify potential risks
   • What activities will take place?
   • Who could be harmed?
   • What property could be damaged & how severely?
   • What is a maximum likely loss for each activity?


Step 2 – Analyze risks
   • What is the likelihood of something happening and what is the consequence?

Step 3 – Risk management techniques/treatment
   • Avoid the risk?
   • Can we remove the risk source?
   • Can we change the likelihood or consequences?
   • Can we/should we retain the risk by informed decisions?
   • Can we share the risk or can we transfer the risk?


Step 4 – Contract/Agreement

Step 5 – Risk Control Techniques
   • Avoid
   • Finance
     • Insurance
     • Retain (self-insure)
     • Indemnity & hold harmless agreements
   • Control
     • Claims management & loss reduction
     • Waivers of liability
     • Loss prevention
Categories of Risks

Awful A’s
• Athletics
• Assault
• Automobiles
• Alcohol

Slippery S’s
• Slips, Trips and Falls
• Sexual Misconduct
• Suicide

Dreadful D’s
• Damaged Property

What do you have to lose?

In other words, what is the worst case scenario?
• Bodily injury
• Physical property
  • Building, computers, furnishings, etc.
• Campus infrastructure
• Reputation
• Intellectual property

General Insurance Requirements
Professional/Technical Contract Insurance Requirements

P/T Contract Insurance Requirement

1. Professional Liability Insurance: The contractor must provide a Professional Liability Insurance policy with a minimum limit of $1,000,000 per occurrence and a $2,000,000 aggregate limit. The insurance must be named to the Owner and must be in force during the performance of the services.

2. Workers' Compensation Insurance: The contractor must provide Workers' Compensation Insurance in accordance with the requirements of the state in which the services are performed. The policy must be written by a licensed insurance company.

3. Certificate of Insurance: A certificate of insurance must be provided to the Owner upon request.

4. Evidence of Insurance: The contractor must provide evidence of insurance in the form of a copy of the insurance policy or a certificate of insurance.

P/T Contract Insurance Requirement, cont.

5. Professional Liability Insurance: The policy must cover claims arising out of the services provided under the contract.

6. Workers' Compensation Insurance: The policy must cover all employees of the contractor.

7. Certificate of Insurance: A certificate of insurance must be provided to the Owner upon request.

8. Evidence of Insurance: The contractor must provide evidence of insurance in the form of a copy of the insurance policy or a certificate of insurance.

The following coverage shall be included:

- Property Damage Liability
- Products Liability
- Personal Injury

The deductible shall be not to exceed $50,000 for each loss.

The insurance policy shall be written by a reputable insurance company.

The following coverage shall be excluded:

- Bodily Injury
- Property Damage
- Professional Liability

The insurance policy shall be in effect throughout the term of the contract.

The insurance policy shall include a provision for the transfer of coverage to the Owner upon the completion of the services.

The insurance policy shall be endorsed to include the Owner as an additional insured.

The contractor shall deliver to the Owner a copy of the insurance policy and a certificate of insurance.

The contractor shall maintain the insurance policy in force throughout the term of the contract.

The contractor shall provide the Owner with a copy of the insurance policy and a certificate of insurance within 10 days of the effective date of the policy.

The insurance policy shall be reviewed and renewed annually.

The insurance policy shall be endorsed to include the Owner as an additional insured.

The contractor shall provide the Owner with a copy of the insurance policy and a certificate of insurance within 10 days of the effective date of the policy.

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The insurance policy shall be reviewed and renewed annually.
P/T Contract Insurance Requirement, cont.

C. Additional Insurance Conditions:

- Contractor’s policy/ies shall be primary insurance to any other valid and collectible insurance as applicable in the State of Minnesota with respect to any other existing site of Contractor’s performance under this contract.
- If Contractor executes a cancellation or reinstates an insurance policy or extends an insurance policy, Contractor agrees to notify the State of Minnesota within five (5) business days of the cancellation or extension. Notice of reinstatement of a policy or cancellation of a policy, or extension of a policy shall be in accordance with the provisions contained in the policy.
- Contractor shall be responsible for payment of Covered losses at the time of loss and payment shall be immediately made to the State of Minnesota.
- Contractor’s policy/ies shall contain a provision that coverage afforded under the policy/ies shall not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota, and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor’s policy/ies to meet the liability policy limits specified in the Contract.
- The State reserves the right to immediately terminate the contract if the Contractor is not in compliance with the insurance requirements and refuses an additional grace period. The Contractor agrees to submit a separate document certifying compliance with all insurance requirements at the time of request. The document certifying insurance compliance must be submitted to the State’s authorized representative upon written request.
- The successful bidder is required to submit Certificates of Insurance acceptable to the State of Minnesota in evidence of insurance coverage requirements prior to commencing work under the contract.

Certificates of Insurance (COI)

- Certificates of insurance provide evidence of insurance at the time the form is printed.
- A COI does not replace an insurance policy or guarantee coverage.

Example of COI
Waiver of Subrogation

• Institutions should seek this clause when a vendor’s employees perform work on the school’s campus.

• This will prevent a vendor’s workers compensation insurer from attempting to collect from the institution for injuries to the vendor employees injured while working at the institution.

Vague Terms to Avoid

“... reasonable ...”

• Example: SCHOOL shall reimburse vendor for reasonable travel costs.

• Instead: SCHOOL will reimburse vendor up to $X per day for travel costs.

Vague Terms to Avoid

“... in amounts that are reasonable and customary ...”

• Example: VENDOR shall purchase Commercial General Liability insurance in an amount that is reasonable and customary for the services discussed in this agreement.

• Instead: Name an exact amount. Such as those listed in our minimum general insurance requirements.
Examples of potential “low risk” activities

- Speaker/Lecturer
- Computer Recycler

Value of Risk Management

- Creates a more risk aware culture
- Can help reduce, mitigate, and transfer risks
- Ensures that risk controls/safety requirements/engineering controls have been considered
- Financial savings – can save the institution a lot of money!
- Can help limit indemnification obligations
- Through the risk assessment process, you can confirm that the contract is in line with institution objectives

QUESTIONS???
Who to call?

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