

# RISK MANAGEMENT BULLETIN

## Third Party Agreements

By Third Party this means services and work performed by individuals, a company and or organizations outside of the employment of your local government. This could be a contractor obtained to manage and operate your water/waste water treatment plant, contractor collecting trash, vendor who provides a service for your local government, organization who rents your community hall for a function, etc. The examples seem to be never ending.

The main reason for this Bulletin is to help alert Members to potential loss exposures when dealing with such contractors. Over the past two fiscal years, we have noticed an increase in liability claims arising from contractual relationships. These claims have cost in some cases a few hundred dollars and in others up into six figures. The following should be items to consider when dealing with third party organizations and/or individuals.

### Certificates of Insurance (COI's) and Hold Harmless/Defense Indemnification Agreements

1. Certificates of Insurance should be obtained on all contractors involved in a project, service or operation. The Certificates of Insurance should be reviewed to make sure that appropriate lines of coverage are in place; coverages have current effective dates and proper limits. *Limits should be equal to a minimum of what your entity carries. If your local government carries a limit of \$1,000,000 then the contractor or vendor should have at least that amount.*
2. Additional insured status should be obtained. This means having your local government additionally named on the contractors' and or vendors' insurance policies as an "additional insured".
3. Hold Harmless/Defense and Indemnification Agreements should be written in your entity's favor. *Subrogation should not be waived.* This means that even if the independent contractor is at fault for the damage to the member's property, since the member has insurance coverage, neither the member nor LGIT can go after the at-fault party and make them pay for the damages. More details can be found in LGIT's Claims Brief No. 23, February, 2002.
4. Notification of insurance cancellation should be required.

*Sponsoring Organizations*



5. Workers' Compensation coverage should also be verified as being effective. Be cautious as to the effective date. In some cases the Workers' Compensation effective dates are different from other lines of coverage and this can be easily missed.
6. Your entity's legal counsel should review and approve these agreements, particularly the hold harmless/indemnity portion.

Agreements between the entity and third party contractors and/or individuals should be reviewed periodically. This is especially true if the agreement goes on longer than 12 months. Certificates of Insurance should be reviewed thoroughly to help ensure that changes have not been made that are not to the benefit of the entity, coverage has lapsed, etc. Policy expiration dates that fall during the contract period should be noted for follow up to ensure renewal.

Claims during the period noted above have frequently occurred with those third party agreements pertaining to the operation, maintenance and or control of treatment plants. Therefore, a total review of agreements and Certificates of Insurance is strongly encouraged to help ensure that they are sufficient and are written in the favor of your entity.

We have noticed in some occasions that the entity may operate its own plants (water/waste treatment plant), but uses outside contractors for consultation, maintenance, repairs, etc. These contractors should also be held to the same accountability as those noted above. Also, in some cases contractors and/or individuals are involved with several entities and therefore agreements are encouraged to be reviewed thoroughly as the agreement entered into may be used in several different circumstances (i.e. organizations, contractors and/or individuals may be maintaining several different utilities, treatment plants, etc.).

### **Risk Avoidance/Risk Transfer**

We realize that some Members may not get involved with some of the elements of Risk Management that often, especially those that pertain to *Risk Avoidance* and, more importantly, *Risk Transfer*. *Risk Avoidance* means that the operation is discontinued (i.e., elimination of trash collection, etc.) which means the elimination of a loss exposure. *Risk Transfer* means that the loss exposure is transferred or shifted to another (third) party (i.e., Trash Refuse Contractor is obtained, etc.).

### **LGIT's Risk Management Manual**

The manual has several modules which can be a great resource when qualifying a contractor and or third party service provider. More specifically, Module 3 – Use of Facility and Equipment by Outside Groups; Module 15 – Liability with its various appendices (including Certificates of Insurance, Hold Harmless Agreements, etc.) should assist members in making the appropriate evaluation.

**Conclusion**

We also offer our assistance in reviewing agreements with third party contractors and/or individuals in order to point out areas of concern in ultimately making recommendations to help minimize loss potential.

The above suggestions are from a Risk Management point of view and are not meant to be all inclusive or in any order of priority. The above suggestions are not meant to be a substitute for legal advice and we encourage you to review these items with your own local legal counsel.

If we can be of any further assistance, please contact Richard A. Furst, Senior Loss Control Manager at 1-800-673-8231 or [Dick@lgit.org](mailto:Dick@lgit.org).

**This bulletin is intended to be merely informational and is not intended to be used as the basis for any compliance with federal, state or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.**