




Oregon

Moving Oregon Forward Together
Evaluating & Managing Risk Through Contracts


Presented by: DAS Risk Management
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Introductions

- Introduce the topic: Evaluating & Managing Risk Through Contracts.
- Introduction of DAS Risk Management team.
- Confirm who audience is (state & local gov't).
- Meeting goals:
 - We have some,
 - What are yours? What are you hoping to learn today?
- Timing of questions.



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Agenda & Learning Goals

Evaluating and Managing Risk Through Contracts


During this meeting you will learn about:

- Risk Management's role.
- Risk to government entities from contracted services.
- Why you should be concerned.
- Managing the risk through the contract.
- Tools and resources.
- Risk assessment and insurance requirements.
- How insurance helps the contractor/vendor.



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Risk Management's role


In the world of injury, loss, damage, claims:

- Government seen as:
 - The source of a loss;
 - A deep pocket;
 - A target.
- Bottom line: Claims arising from contractor/vendor services can be (and are) made against the government entity (state agencies).



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Risk Management's role


Risk Management may not be “in” Procurement, our functions include:

- **Mitigating risk** to the government entity.
 - For state government:
 - Direct & manage all risk management of state government.
 - Per statute.
- **Managing claims**
 - Adjust losses against the state (or local government).
 - Directing claims to other responsible parties.




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Risk Management's role

- **Managing the insurance program.**
 - Reduce losses to retain affordable insurance for the government entity.
 - For state government this includes:
 - Risk control – such as risk transfer.
 - Policy: When and how the Insurance Fund will pay claims and defend an agency.
 - Policy may condition payment loss on compliance with risk control.
 - Policy has exclusions (such as liability from contracts).



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Why the concern


Examples of exposures from contractors (creating potential liabilities for government entity):

Abandoned & derelict vessel removal.	Construction
SaaS contract – 1M+ private records.	Caretaking Services
Emergency communication system.	Housing (houseless; houseless due to wildfires).
COVID relief funds – eligibility & distribution.	Vehicle maintenance and repair.



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Why the concern


Consider these exposures and take note:

- Government entity (state agency) is not providing the service. However:
 - Seen as source of loss;
 - Seen as deep pocket;
 - Claims arising from contracted services can be (and are) made against the government entity.
- Without *risk control* (risk transfer):
 - Cost of such claims become agency cost (unbudgeted).
 - Government entity (agencies) put in harms way; face millions of potential claim costs.
- How will the injured party be made whole?




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Managing risk through the contract

- How do we manage/mitigate this risk?
- Through the contract! (And that is where you come in.)
- Contract provisions include:
 - **Indemnity (hold harmless, defend indemnity).**
 - Contractor Insurance.



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Managing risk through the contract - Indemnity

Example Only – Not intended for use (seek legal counsel and Risk Management).

General Indemnity. Contractor shall defend save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this agreement.

1. Language should be in he contract.
2. Do not modify Indemnity language. See Risk/Legal.




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Managing risk through the contract – Contractor Insurance

- With the Indemnity provision, why require insurance?
 - For financial backing!
 - Other provisions that help transfer the risk.
- How do we determine types and amounts of insurance to require?
 - Risk assessment!

Questions?



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Risk assessment & insurance requirements

DAS Risk Management Website Links

- <https://www.oregon.gov/das/risk/pages/index.aspx> Main Page
- <https://www.oregon.gov/das/Risk/Pages/Ovcontracts.aspx> Contracts page
- <https://www.oregon.gov/das/Risk/Pages/CntrctrInsReq.aspx> Contract Insurance Tool, Template & Tool Training
- <https://www.oregon.gov/das/Risk/Pages/Toolkitra.aspx> Risk Assessment Toolkit
- <https://www.oregon.gov/das/Risk/Pages/Toolkitsc.aspx> Contraction Toolkit



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Risk assessment & insurance requirements

Risk Assessment? What's that?

Its HELP!!!

- Document the risks
- Id needed insurance and amounts


Who does the RA?

- NOT YOU ☹ (whew, huh)
- Always the Subject Matter Experts (SME's)
 - Project manager, team or other person requesting the contract

When is the time to do a RA?

- During the RFP once the SOW is developed or as early as possible

Need help or have questions – Call the Risk Busters! (DAS RM)




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Risk assessment & insurance requirements

Tips to be a Risk STAR ★

- Use a FRESHLY DOWNLOADED tool for each contract
 - Don't reuse them
 - New contracts DESERVE a fresh risk assessment
 - Situations/risks change and are not the same
 - Save the completed RA copy in the contract folder for reference/history/what were they/we thinking protection!!!
- DO the actual risk assessment (Tab 3)
- Don't jump to the scoring! (Tab 4/5)
- Contract value ≠ risk/insurance amounts
- Never use the Oregon Tort Claims Act (OTCA) as limits



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Risk assessment & insurance requirements


Contract Risk Assessment 101

- Let's do one!
- Elevator Maintenance/Service Contract
- 60 DAS owned Buildings
 - Portland/Salem/Eugene, 5-year contract with extensions, Historic buildings and elevators included
 - Conduct initial assessment of all 60 elevators with condition
 - Maintenance plans, rankings with explanations and priority
 - Inspection schedule meeting code requirements, preventative maintenance schedule for all elevators
 - 24-hour emergency service response, 1 hour or less response guarantee
 - Needed expertise for older/proprietary equipment
 - Provide service routs, repair teams and who responders will be




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 **Risk assessment & insurance requirements**

Insurance requirements and risk transfer.

- In addition to types & amounts of insurance:
 - Primary & non-contributory.
 - Additional insured.
 - Waiver of Subrogation.

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 **Risk assessment & insurance requirements**


Primary & non-contributory:

Example only:
All coverage shall be *primary and non-contributory* with any other insurance and self-insurance...

- When the indemnity provision applies, the contractor's insurance pays (not ours).

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 **Risk assessment & insurance requirements**

Additional insured:

Example only:
All liability insurance...required under this Contract must include an *additional insured endorsement* specifying the <government entity>, its officers, employees, and agents as *Additional Insureds* with respect to Contractor's activities to be performed under this contract. Coverage shall be *primary and non-contributory*...

- Government entity is an (additional) insured under the contractor's insurance policy.
- If contractor cannot (or does not) take responsibility under the indemnity provision.
- Provides government entity with same defense and indemnity.


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Risk assessment & insurance requirements

Waiver of Subrogation:
Example only:
 Contractor and contractor's insurer shall *waive rights of subrogation*...against the <government entity> by virtue of the payment of any loss...

- Goes hand-in-glove with Additional Insured Requirement.
- Keeps cost of claim with the contractor and their insurer.




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Risk assessment & insurance requirements

- Indemnity provision key to risk transfer.
- However, insurance requirements also contribute to risk transfer.
 - Primary & non-contributory;
 - Additional insured;
 - Waiver of subrogation.
- *Do not modify language without consulting with Risk Management.*




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Insurance requirements – helping the contractor


- The promise made under the Indemnity provision.
- ORS 278.052 – the state is required to collect.
- Protecting their life's work.

[RiskWise: Why State Contracts Have Insurance Requirements.](#)
[RiskWiseWhyStateContractshaveInsuranceRequ.pdf \(oregon.gov\)](#)




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Working with Risk Management

- Contact Risk Management early!
 - For assistance with risk assessment.
 - At start of RFP development.
 - Especially complicated and high exposure contracts.
 - Waiting until negotiations is:
 - Frustrating for all parties.
 - Creates delays.
 - Is damage control.
- For state agencies:
 - Risk.Management@das.Oregon.gov



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