Avoiding Liabilities from Contracted Work

BRIAN CHILD, CLCS, CIC
ACCOUNT EXECUTIVE
OLYMPUS INSURANCE

JARED SMITH, ARM
RISK MANAGER
CITY OF WEST JORDAN
What can go wrong?
Jury awards $4.75 million in Vienna fireworks accident
Sewage floods basements of about 10 homes in West Valley City
Feds seek $1.6M from contractor for fighting 2012 Alpine fire
HUNTINGTON BEACH CONTRACTOR HITS WATER MAIN, FLOODING STREET
Gas line in explosion was marked
Suits Filed After Deadly CT Fire Continue

STAMFORD — The father of the three girls killed in the Shippan fire in 2011 has agreed to settle with two contractors for their role in their deaths, leaving the city of Stamford as the sole remaining defendant in the wrongful-death suit.
City, contractor and grader driver named in $2M suit over pedestrian's death downtown
PROVO — A lighting technician who mistakenly set a 300-watt light fixture on a wooden speaker box in the attic caused the fire that destroyed the Provo Tabernacle last December.

The blaze caused an estimated $15 million in damage.
Contract / Project Risk Management Steps

Step 1
Identify Scope

Step 2
Contractor Selection

Step 3
Insurance Requirements

Step 4
Oversight
What type of contract will we enter into?
## Step 1 – Identify Scope

### Project / Contract Examples

<table>
<thead>
<tr>
<th>Construction Services</th>
<th>Infrastructure Services</th>
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<tbody>
<tr>
<td>Construct new building</td>
<td>Storm water line replacement</td>
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<td>Janitorial service</td>
<td>Street light maintenance</td>
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<td>Road resurfacing</td>
<td>Water line replacement / extension</td>
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<tr>
<td>Road striping</td>
<td>Water well maintenance</td>
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<td>Sewer line replacement / extension</td>
<td>Window washing</td>
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<td>Special Events</td>
<td></td>
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</tbody>
</table>
Step 1 – Identify Scope
Project Risk Assessment

- Identify
  What are the risks?

- Analyze
  How would these risks impact us?
  - Life safety
  - Property protection

- Prioritization
  Focus on highest priorities first!

- Treat the Risk
  Implement Risk Management tools

- Monitor
  Are the tools working? – Make adjustments!
Step 1 – Identify Scope
Project Risk Assessment

Location – Where the project occurring?
- Rural
- Urban
- Secured site
- Open to public

Duration – How long will the project take?
- Short term
- Multi-year
- Change in seasons, impact of weather, etc.
Step 1 – Identify Scope

Employee & citizen safety
- Work performed near the public or employees?
- Appropriate signage?
- Designated vehicle & pedestrian traffic routes?
Step 1 – Identify Scope
Project Risk Assessment

Property protection
- Will work impact existing buildings, facilities, infrastructure
- Demolition of adjacent structures
- Exposure to elements
- Hot work
- Sprinkler impairment
- Flammable liquids or gasses
# Step 1 – Identify Scope

## Emergency Planning

<table>
<thead>
<tr>
<th>SITUATIONS</th>
<th>PLANNING STEPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heavy rain event - Flooding</td>
<td>Access to emergency funds?</td>
</tr>
<tr>
<td>Gas leak</td>
<td>Back-up equipment available?</td>
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<tr>
<td>Wildfire</td>
<td>Equipment re-fueling available</td>
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## Step 2 – Contractor Selection

<table>
<thead>
<tr>
<th>Experience with similar projects?</th>
<th>Claims experience</th>
<th>E-mod</th>
<th>OSHA citations</th>
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<tr>
<td>BLS incidence rates</td>
<td>Safety program</td>
<td>Training documentation</td>
<td>Inspection logs</td>
</tr>
</tbody>
</table>
Step 2 – Contractor Selection

Experience with similar projects?
- E.g. Sewer line replacement with bypass pumping
Step 2 – Contractor Selection

Claim experience?
- General liability
  - Caused bodily injury
  - Damaged property
- Automobile liability
- Workers’ compensation
Step 2 – Contractor Selection

Workers’ Compensation NCCI Experience Modifier (E-mod)?
OSHA released a report indicating that the incident occurring at the job site was “preventable.” A spokesman for OSHA, Scott Allen said that “every incident such as this is preventable if all OSHA standards and regulations are followed.” As a part of the initial investigation, OSHA had revealed that the construction site’s general contractor that employed the deceased worker had previously received nine citations from the safety administration since 2006, involving more than $64,000 in penalties for various violations.
### Step 2 – Contractor Selection

BLS incidence rates?

<table>
<thead>
<tr>
<th>Industry</th>
<th>NAICS code</th>
<th>Total recordable cases</th>
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<tbody>
<tr>
<td>Support activities for oil and gas operations</td>
<td>213112</td>
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<tr>
<td>Construction</td>
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<td>9.0</td>
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<tr>
<td>Construction of buildings</td>
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<td>3.6</td>
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<tr>
<td>Residential building construction</td>
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<td>1.4</td>
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<tr>
<td>Nonresidential building construction</td>
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<td>2.7</td>
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<tr>
<td>Heavy and civil engineering construction</td>
<td>2377</td>
<td>3.0</td>
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<tr>
<td>Utility systems construction</td>
<td>2371</td>
<td>2.5</td>
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<tr>
<td>Water and sewer line and related structures construction</td>
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<td>5.8</td>
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<td>Oil and gas pipeline and related structures construction</td>
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<tr>
<td>Power and communication line and related structures construction</td>
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<tr>
<td>Land surveying</td>
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<tr>
<td>Highway, street, and bridge construction</td>
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<tr>
<td>Other heavy and civil engineering construction</td>
<td>2379</td>
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<tr>
<td>Specialty trade contractors</td>
<td>238</td>
<td>3.8</td>
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<tr>
<td>Foundation structures and building exterior contractors</td>
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<tr>
<td>Poured concrete foundation and structure contractors</td>
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<td>Structural steel and prestressed concrete contractors</td>
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<tr>
<td>Framing contractors</td>
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<tr>
<td>Masonry contractors</td>
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<tr>
<td>Glass and glazing contractors</td>
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<td>Roofing contractors</td>
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<tr>
<td>Siding contractors</td>
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<tr>
<td>Other foundation, structure, and building exterior contractors</td>
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<tr>
<td>Building equipment contractors</td>
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<td>Electrical contractors and other wiring installation contractors</td>
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<td>Plumbing, heating, and air-conditioning contractors</td>
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<td>Other building equipment contractors</td>
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<tr>
<td>Building finishing contractors</td>
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<tr>
<td>Drywall and insulation contractors</td>
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<td>Painting and wall covering contractors</td>
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<tr>
<td>Receiving contractors</td>
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<td>Tile and terrazzo contractors</td>
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<td>3.3</td>
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<tr>
<td>Finish carpentry contractors</td>
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<td>4.7</td>
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<tr>
<td>Other building finishing contractors</td>
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<tr>
<td>Other specialty trade contractors</td>
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<td>3.2</td>
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<td>Site preparation contractors</td>
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<td>8.8</td>
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<tr>
<td>All other specialty trade contractors</td>
<td>23895</td>
<td>3.8</td>
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</tbody>
</table>
Step 2 – Contractor Selection

Safety Program
◦ Trench safety – Trench Box, Railing
◦ Fall protection – Scaffolding, Ladders
◦ PPE
◦ Exposed Rebar
◦ Combustibles
◦ Distractions – Cell Phone Use

Culture of safety and risk awareness

Agree to comply with all OSHA regulations
Step 2 – Contractor Selection
Training documentation
Step 2 – Contractor Selection

Vehicle / equipment inspection logs

Brake Failure on Truck Might Have Led to Crash That Killed LAPD Officer
Step 3 - Insurance Requirements

- Establish requirements
- Include in contract
- Verify compliance
Step 3 – Insurance Requirements

Key Definitions

**Indemnification** – compensate (someone) for harm or loss, secure (someone) against legal responsibility for their actions.

**Subrogation** – the substitution of one person or group by another in respect of a debt or insurance claim, accompanied by the transfer of any associated rights and duties.
Step 3 – Insurance Requirements

POLICIES

General liability
Automobile liability
Excess liability
Workers’ compensation / Employers liability
Environmental Liability
Builders’ risk

ENDORSEMENTS / MISC.

Additional Insured
- Ongoing operations
- Completed operations
Waiver of subrogation
Primary & non-contributory
Loss payee
WC – Excluded owners & officers
Step 3 – Insurance Requirements

General Liability

Bodily injury
Property damage
Personal injury
Advertising injury
Completed operations
  ◦ Construction defects
Step 3 – Insurance Requirements
Automobile Liability

Bodily or property damage arising from the use of a vehicle.
Step 3 – Insurance Requirements

Excess Liability

Extends General Liability and Automobile Liability. Can extend Employers Liability, if scheduled. Generally doesn’t extend Environmental Liability. Does not apply to Builders’ Risk, or other ‘first party’ coverages.
Step 3 – Insurance Requirements
Workers’ Compensation / Employers Liability

Responds to injuries from contractor employees.

If we fail to verify workers’ compensation coverage, the injured contractor employee may make claim on our workers’ compensation program.
Step 3 – Insurance Requirements

Environmental Liability

Responds to claims arising out of environmental impairment, or resulting from exposure to ‘pollutants’.

- Pool chemicals
- Sewer system back-up
- Soil contamination
- Storm water contamination
- Water system contamination
- Water treatment chemicals

‘Dirty water’ causes illness in Cedar Hills neighborhood
Step 3 – Insurance Requirements
Builders’ Risk

Protects assets while in the course of construction. Carefully evaluate supplemental limits:

- Property in-transit
- Property in storage
- Earth movement
- Flood
Step 3 – Insurance Requirements
Verify Compliance

EVIDENCE OF COVERAGE

Contract only
Certificate of insurance
Endorsements
Complete policy
Certified copies of policy

VERIFICATION TIMELINE

When contract signed
Policy renewal – During project
When work completed, prior to final payment
Policy renewal – During warranty period
Records retention
- 3 years – Property damage
- 4 years – Personal injury
- 10 years – Construction defects
Step 3 – Insurance Requirements

Sample Certificate

Name should match legal name of entity we are contracting with.

Ensure additional insured and waiver of subrogation boxes are checked.

Must have ‘Any Auto’ checked on automobile liability.

Excluded officers or owners on WC…

Verify insurance carrier is AM Best rated, > A X.

Ensure entire project falls within policy period, if it does not, obtain a certificate prior to policy expiration – during the project.

Most additional insured endorsements only grant ‘AI’ status if there is a written contract.

If questions arise regarding certificate, call insurance carrier.
Step 4 - Oversight

How will we monitor compliance with the requirements outlined in our contract?

◦ Contractor safety
◦ Citizen safety
◦ Employee safety
◦ Property protection
◦ Insurance requirements
Step 4 - Oversight

Do we have the authority to stop work for unsafe conditions?

- Zero tolerance

Sewer facility employee falls more than 50 feet to his death

SLATERVILLE, Weber County — A man was killed Thursday morning after reportedly falling 50 to 60 feet off some scaffolding.

Emergency crews responded about 8:30 a.m. to the Central Weber Sewer Facility, 2594 W. Pioneer Road, on a report of an industrial accident.
Conclusion

Contracted work is essential to maintain existing infrastructure and to construct new facilities. Having a safe and reliable contractor enhances the ability of your city to meet the critical needs of citizens – whether they be roads, waterlines or playgrounds.

An unsafe contractor, can cause injuries to citizens, city employees, and ultimately the city’s reputation.
Questions?
Contact Information

JARED SMITH
801.569.5147
jareds@wjordan.com

BRIAN CHILD
801.486.1146
brianc@olyins.com