

RISK MANAGEMENT MANUAL	MODULE 9
Appendix A - Builder's Risk	Original: 6/30/97

A BUILDER'S RISK

A.1 INTRODUCTION

This Builder's Risk Module is designed to help identify essential underwriting information and assist local governments in their initial evaluations of a project involving Builder's Risk coverage.

This evaluation should start before and can continue after construction has started. It will pertain to new construction, renovation and/or rehabilitation projects.

The plans and specifications for the project should be reviewed by a local government representative and/or consulting engineer obtained by the local government.

A.2 PURPOSE

LGIT recognizes the need for Builder's Risk exposures to be identified and to incorporate controls from a risk management standpoint to help minimize loss. In this module we will try to identify activities which should take place.

- Controls Which Should Be in Place When Construction Begins
- Guidance in Regard to Coverage Areas for:
 - Property damage and intangible losses (Builder's Risk)
 - Intangible loss coverage
 - General liability
- Suggested Risk Management Guidelines

This information is offered with the hope that it will be a routine resource for any construction project, that it will provide a better understanding for the importance of transferring the risk and that the recommended procedures will be implemented.

It is important that contact with LGIT be made during the planning stages of a specific construction project so that proper guidance can be given in areas, such as, insurance coverage, contract language and loss control involvement, including future visits to these construction sites.

A.3 BEFORE CONSTRUCTION BEGINS

Before the start of construction, you should evaluate the risk exposures associated with the project and establish methods of addressing each of them.

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For assistance with evaluating these risk exposures, contact the Loss Control or Underwriting Department at LGIT.

A.4 PROPERTY DAMAGE COVERAGE

Builder's Risk coverage for new construction, additions and alterations is built into the property section of LGIT's Property Scope of Coverage. The following is a summary of this coverage as provided. Please review your scope of coverage document for specific information.

A.4.1 Limit

The Builder's Risk limit for property damage loss is determined by information you provide to LGIT. It should be at least equal to the contract price of the project. You are provided \$500,000 (per occurrence) in *automatic coverage for new construction, additions and alterations*. If more than \$ 500,000 is needed, the *limits can be increased upon request*. An increase in limits would result in an additional premium for this extension of coverage, based on each completed contract value.

A.4.2 Deductible

This amount can be found on the Declarations page of the Scope of Coverage.

A.4.3 Coverage

Builder's Risk coverage provides for construction exposures, including a new building under construction, an existing building undergoing additions, alterations or repairs, and materials necessary or incidental to construction.

- a. Contractor's interest in property is covered to the extent of your liability imposed by law or assumed by contract.
- b. Property locations must be specifically defined and listed.
- c. Coverage includes:
 - (1) Named Insured's interest in buildings in the course of construction
 - (2) Personal Property in transit and while at the premises awaiting installation.

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A.4.4 Perils Covered

Builder's Risk coverage is written on an "All Risk" or "Named Perils" basis, and is subject to limitations as defined within the Scope of Coverage.

A.4.5 Perils Excluded

The following highlights three exclusions in LGIT's Coverage Certificate relevant to construction projects: (Please refer to the coverage certificate for a comprehensive list of perils excluded.)

- a. The exclusion relative to faulty workmanship and defective design excludes the cost of making good defective design, faulty material or faulty workmanship. Only loss or damage resulting therefrom is covered.
- b. The coverage certificate excludes wear, tear and gradual deterioration unless other loss or damage from a covered peril ensues, and then only the ensuing loss or damage is covered.
- c. Unexplained or mysterious disappearances not covered.

A.4.6 Valuation

Replacement cost.

A.4.7 Extensions of Coverage

- a. Fire brigade charges extinguishing expenses are covered if property is destroyed or damaged by a covered peril.
- b. Demolition and increased cost of construction coverage is provided in the event of a loss.

A.5 INTANGIBLE LOSS COVERAGE

In the construction industry this exposure is known as "soft costs." Builder's use this term to refer to costs of non-tangible items directly related to the construction project, such as, financial costs, appraisals, legal expenses, insurance premiums, real estate taxes, etc.

With respect to the owner, if there is a delay in the scheduled acceptance date due to physical loss or damage to the project by a covered peril, the owner may incur the following expenses during the delay period:

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1. Interim interest on the construction loan.
2. Points and/or loan fees, plus additional interest, if the loan must be regenerated.
3. Project and administration expense (supervisory personnel, watchmen and/or people who may have to be kept on during the period of delay and whose expenses are not included in the direct damage loss).
4. Accounting and/or professional fees.
5. Insurance premiums.
6. Advertising and promotional expenses necessarily incurred.
7. Cost of additional expenses incurred upon renegotiating leases.

A.6 LIABILITY COVERAGE

General liability coverage offered by LGIT includes protection for the member's interests in a construction project, subject to the terms and conditions of the general liability coverage section. However, it is typical to require that the contractor provide general liability coverage for construction projects with the "owner" (member) named as an Additional Insured. In fact, the American Institute of Architects (AIA) standard recommended agreement requires that the owner be named as an Additional Insured on the contractor's policy. LGIT also recommends this approach.

At times, contractors will ask the owner to add the contractor as an Additional Insured to the owner's policy. This is an *inappropriate* request, as the construction project is most often under the control of the contractor.

Guidelines for obtaining Certificates of Insurance (limits, agreement language, etc.) for the contractor(s) are discussed in LGIT's Risk Management Manual Module 3 - Use of Facilities, Equipment by Outside Groups and Module 15 - Certificates of Insurance.

A.7 RISK MANAGEMENT GUIDELINES

Construction operations produce unusual hazards and exposures to accidents and injuries for both employees and the general public. Local government employees may be exposed to hazards arising from the work being performed and the contractor's employees may be exposed to unfamiliar conditions. Property is also exposed to damage from perils such as fire, windstorm and/or vandalism.

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Builder's Risk exposures are generally addressed by contracts executed between the contractor and the local government. In addition to the basic performance requirements, contracts generally include conditions for specific insurance coverage, limits of liability, defense indemnification agreements, and risk control programs which must be implemented.

A.7.1 Exposures to Local Governments from Contractor's Operations

1. Automobile Liability

Exposures to claims should be minimized by the contractor providing the appropriate certificate of insurance verifying coverage for the contractor's vehicles. Common exposures to claims are:

- Poor traffic control at construction site
- Contractor lacks automobile liability insurance
- Work zone not properly separated from pedestrian traffic

2. General Liability

- Injuries to public due to job site conditions (particularly true of some public works or highway jobs, local government buildings, schools, etc., which cannot be barricaded from public access).
- Injuries to local government employees who may have access to the job site.
- Property damage to adjacent property during the course of construction.
- Liability assumed if contracts are not properly drawn, contractor did not have sufficient insurance coverage in place.
- Exposures to employees or the public from chemicals used on site.

3. Property

- Fires arising from construction operations.
- Builder's risk exposures such as, windstorm, hail and vandalism.

4. Environmental

- Exposures to employees or the public from environmental hazards encountered during renovation projects (i.e., asbestos, lead-based paint, etc.)

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- Liabilities arising from improper disposal of hazardous waste generated during construction or renovation.
- Liabilities arising from pre-existing environmental impairment at new constructions sites.

5. Worker's Compensation

- Injuries to local government employees.
- Injuries to contractors and subcontractors.

A.7.2 Risk Management Activities

The following issues should be considered:

1. Proper coverage and limits on Certificates of Insurance for all coverages as discussed in LGIT's Module 15 module involving Certificates of Insurance (i.e., automobile liability, general liability, etc.)
2. Pre-job planning meetings involving the contractor and local government officials to discuss issues such as:
 - **Work Areas**

Define the work areas that the contractor will have access to and permitted use, such as work zones, parking areas, storage areas, etc.
 - **Equipment and Supplies**

Determine that the contractor and not the local government will supply the equipment and supplies to be used on the project.
 - **Underground Utilities**

Ensure that all underground utilities will be properly located and marked.
 - **Safety Rules and Regulations**

Obtain contractor's basic safety operating rules and programs and provide contractor with local government's safety requirements.

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– **Job-Site Utilities**

Determine who will provide the utilities to the job site and who will control the utilities, including lockout and tagout, provision of power and piping.

– **Fire Control**

Define the responsibilities of the contractor to provide all necessary fire control, including extinguishers, automatic sprinklers, welding controls and adequate water supply.

– **Job-Site Security**

Determine how the job site will be secured and who will maintain responsibility for securing the site, including access, fencing and guard service.

– **First Aid and Medical Facilities**

Ensure the availability of first aid and medical facilities to construction personnel.

– **Operational Hazards**

Identify operational hazards at the job site for the contractor. This includes hazard communication issues or other unique operations the contractor may encounter.

– **Job-Site Housekeeping**

Acquire agreement concerning on-job-site control issues such as housekeeping and trash removal, use of temporary heating appliances, and temporary shoring.

– **Hazardous Materials**

Identify all hazardous materials on job site (i.e., asbestos or lead-based paint) and ensure proper removal and disposal procedures will be implemented. Review process local government will use to obtain notice of hazardous materials brought on job site by the contractor to which local government employees may be exposed.

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2. Pre-construction surveys of adjacent property to identify pre-existing condition and damage.
3. Explain to local government employees the nature of the work which will be conducted in their areas.
4. Pre-construction or acquisition environmental impairment surveys of sites.

A.7.3 Risk Management Controls

- Implement certificate of insurance procedures.
- Conduct pre-construction planning meetings.
- Review contract (responsibility of corporation counsel and/or town attorneys)
- Review, prior to inception of work, construction or renovation projects (responsibility of loss control consultants and underwriters). Builder's risk issues should also be addressed..
- Identify environmental impairment liability exposures and implemented controls.

A.7.4 Additional Items

- Type of Construction

Provide the type of structure to be completed and note whether this building is a structure other than a building (i.e., waste-water treatment, etc.).

- Unusual/Advanced Architecture or Engineering

Notation should especially be made if the structure is to have any unusual or advanced architectural design features (i.e., space-frame construction, air-supported roof, etc.)

- Renovation of Existing Structure

Many times, a renovation project is not considered to be a new structure and, therefore, not a builder's risk exposure. These types of projects can be of concern as in many cases local government employees are working within the facility while construction/renovation is being conducted. There are also exposures to third-party residents and visitors to the local government coming into the project being renovated. In conjunction with this non-structural renovation work (i.e.,

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removal of all non-weight-bearing walls, rebuilding of heating systems, electrical system renovation, etc.) should be identified.

– **In-Transit Exposure**

These are materials owned by the local government which are covered under the Builder's Risk Scope while in transit. It is helpful to know the maximum value of a single shipment and the type of materials in that shipment.

– **On-Site Storage**

Distances between the facilities and the structure, expected maximum value, type of stored materials for which the local government has responsibility, should be identified.

– **Off-Site Storage**

A description of the facility (i.e., contractor's yard, warehouse, etc.), including the type of construction, type of security and fire protection, provided for the facility. Again, dollar amount and type of material storage should be indicated.

– **Environment**

It is important to address the type of public fire protection (hydrants), private fire protection and sprinkler systems/sandpipes. In some cases, the existing structure may have a sprinkler system and sandpipes. It is important to know that the plans will involve shutting down the system in stages during renovation. This has a bearing due to the fact that protection may be cut off for considerable amounts of time.

– **Perils**

Some perils to be considered during the construction and/or renovation periods would include wind, hail, sprinkler leakage, water damage, exposure to vehicles (automotive, mobile, cranes, etc.), collapse, water run-off problems, subsidence, civil disturbance, earthquake zones, flood damage, etc.

A.7.5 Additional Risk Management Controls

– **Fire Department Access.**

Site access should remain clear and passable for fire department equipment throughout the project. Entry and departure by other vehicles/equipment should be controlled to provide a smooth flow of traffic.

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– **Condition of Interior/Exterior Premises**

Waste, rubbish, etc., should be placed in areas with the use of containers which would prevent these materials from creating any extra hazards.

– **Temporary Heating/Electrical**

Temporary heating units for both building heat and concrete curing are operated per manufacturer's instructions, used with adequate ventilation for both building heat and concrete curing and combustible materials are kept clear of the units. Flammable/combustible heating fuels are stored in accordance with applicable NFPA codes in order to minimize the possibility of their being a source of fuel for fire. If plastic sheeting is used for temporary enclosures for weather protection, it is made of flame-retardant plastic material. Temporary or electrical wiring is insulated, grounded and mounted, to reduce the possibilities of short-circuiting and being an ignition for fire.

– **Alarms/Communication**

The fire department should be contacted by the local government in order that they can familiarize themselves with the project. Fire department re-visits should be made to maintain familiarity with these conditions. Telephones should be made available on the site. If there are multi-level projects, a communication system (i.e., two-way radios, phones, etc.) should be provided for communication between the ground and upper floors.

– **Welding/Cutting/Soldering**

These exposures should be performed with effective fire prevention procedures (i.e., fire-watch, removal or protection of combustibles, proper-type fire extinguishers, etc.). An effective hot-work permits system should exist.

- A written permit with the date, time, etc., for which the operation is approved, signed by the approving authority (typically the prime contractor) and posted in the area where the welding, cutting or soldering is occurring.
- Proper fire extinguishers available at the point where the operation is occurring.
- Effective area, free of combustible trash, waste and debris.
- In-place combustible materials protected from ignition.

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- A firewatch provided during the operation and a minimum of 30 minutes after the operation ceases.
- An inspection of the area by representatives of the approving authority to ensure that the above is completed prior to permit insurance period.
- Indicate if the hot-works system is in effect.

A.7.6 Materials Storage Facilities

Facilities should be adequate for materials protected from natural elements in accordance with manufacturer's requirements, congestion is minimized and there is adequate separation of hazards, flammable liquids, gases or hazardous chemicals which should be stored in areas which minimize their inherent hazards.

A.7.7 Severe Weather Procedures

An emergency plan and procedures to protect and secure the project's structure(s) and uninstalled materials from imminent severe weather conditions (i.e., high wind, heavy rain, etc.) exists.

A.7.8 Blasting

The type of work requiring blasting should be indicated, including the frequency of blasting (i.e., rock removal with daily blasting for road construction and/or structural projects, one shot for elevator shaft foundation excavation in a building under renovation). The distance between the blast area and the structure under construction or renovation should be noted. The local government should be advised if delay caps are to be used and the maximum charge weight per delay.

Applicable local, state and federal regulations should be verified as being complied with by the contractor. The contractor should verify utilizing pre-blast warning signals, blasting area warning signs, and all-clear signals. Caps and explosives should be physically separated in storage and transit. Seismic monitoring equipment should be suggested for use with tests conducted for exposed structures. Blasting mats or overburden should be verified to be used to eliminate rock slides and flying rock.

A.7.9 Miscellaneous

Other environmental exposures which should be evaluated for controls (i.e., piling driving) needs to be identified.

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A.8 RISK MANAGEMENT PROGRAM

Risk management committees can be useful in identifying additional standards.

A.8.1 Security

Local governments should have physical security and procedures in existence to minimize the possibility of access to the premises by unauthorized people which could result in theft or damage of materials and damage to the local government's structure.

A.8.2 Fire Protection

Fire protection equipment should be readily available, of the proper size and type, and employees know how to use it. It is important that this fire protection be available throughout the project and materials storage areas.

A.8.3 Housekeeping

The interior and exterior premises, including the material storage areas, are subject to a systematic and continuous removal of debris as construction progresses. This is part of the production process and not a "build now - clean later" attitude.

A.8.4 Premises and Equipment Inspection

Inspection of the interior and exterior of the job site and equipment are performed on a regular basis. Inspections identify areas needing improvement and those improvements are made.

A.8.5 Premises and Equipment Maintenance

To prevent losses resulting from material storage or damage to the structure, a preventative maintenance program, commensurate with the size and complexity of the project, should exist.

The prime contractor's expertise should be verified (i.e., visit to jobs completed in recent past, etc.). This will help determine the contractor's qualifications for this type of project.

The concern here is that the contractor may be getting involved in a project not previously undertaken (i.e., concrete construction, water tower erection, underpinning, etc.), resulting in greater loss potential due to inadequate expertise for the project.

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A.8.6 Summary

Hopefully, this information will alert Local Governments to concerns which may not have been considered during feasibility studies for upcoming construction projects. Please contact LGIT's Property and Liability Services Department for additional assistance.

A.8.7 Exhibits

Exhibit A-1, Builder's Risk Project Summary, has been provided to help document the construction process.

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Exhibit A-1 - Builder's Risk Project Summary

Owner of Building:			
Owner's Address:			
Description of Building/Addition Being Built:			
Job Location:			
Estimated Start-Up Date:			
Estimated Completion Date:			
Plans Forwarded to LGIT:			
• Plot Plan	Date Forwarded:		
• Report on Surface/Subsurface	Date Forwarded:		
• Fire Protection Plans	Date Forwarded:		
Flood Exposure:			
• Distance to Body of Water	Number of Miles:		
• Water Reached Site	<input type="checkbox"/> 10 Years	<input type="checkbox"/> 50 Years	<input type="checkbox"/> 100 Years
• Site in Flood Plain		<input type="checkbox"/> 50 Years	<input type="checkbox"/> 100 Years
Site Protection:			
• Security Officer Provided	<input type="checkbox"/> None	<input type="checkbox"/> During Day	<input type="checkbox"/> 24 Hours
• Distance to Fire Department	Number of Miles:		
Water Supply:	<input type="checkbox"/> City	<input type="checkbox"/> Well	<input type="checkbox"/> Other (Explain)
Name of Designer:	Address:		
Name of Contractor:	Address:		
Name of Subcontractors:	Address:		

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RISK MANAGEMENT BULLETIN

No. 91

February 6, 2003

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.

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.

