Risk Management Advice for Mu

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You are a town council member and you chair the Special Committee for infrastructure revitalization. Your committee has recently received approval to start breaking ground on the town's new recreation centre.

The proposed recreation centre will be the municipality's first major construction project since 2000. The municipality has a lot to lose financially if this project folds. With multiple parties involved, you know the best way to ensure success is by consolidating and maintaining control where you can, but where do you start?

This is a common challenge for municipalities when assessing risk transfer strategies for new construction projects. If your project is large enough, one effective risk management tool is designing and implementing an Owner Controlled Insurance Program (OCIP). As the project owner, project manager or insurance advisor, there are six key areas to address when developing an OCIP for your next infrastructure project:

Risk Assessment

Careful review of the project details including scheduling, specifications and contract form can substantially minimize the likelihood of disputes and provides a basis for timely resolution should a problem arise. This process will assist municipalities in formulating a risk management plan built around project specific construction needs. The risk assessment begins at the conceptual /design stage, is incorporated into the eventual tender and contract, and continues through the remainder of the project.

Surety Bond Requirements

To properly securitize the funds spent on a project, it is appropriate to bond it in the following manner:

- Bid Bonds – guarantees contractors will hold their bid price if awarded the project.
- Consent of Surety – confirms that successful contractors will be able to provide performance bonds and labour and material payment bonds.
- Performance Bonds – guarantees contractors will complete projects on time, within contract specifications and within quoted prices.
- Labour and Material Payment Bonds – ensures subcontractors and suppliers will be paid by the general contractor.

Property Insurance Requirements

The appropriate risk transfer mechanism for property exposure is a builder's risk or course of construction policy.

This policy provides coverage against all risks of physical loss or damage, including the result of flood or earthquake. It also provides coverage for materials forming part of the project while in transit, in storage awaiting delivery, or at project site during and after being incorporated into the project. Other considerations for this policy include the following:

- Soft Costs – additional costs caused by the loss or damage to the project that result in a delay in completion and requires additional financing.
- Mechanical Breakdown (Boiler & Machinery) – provides comprehensive coverage for project start-up and testing.

Liability Insurance Requirements

This type of policy addresses third party property damage and bodily injury for exposure outside the project.

Municipalities can ask each party working on site to provide evidence of their own liability coverage, or they can provide a wrap-up policy to provide coverage for all contractors and sub-contractors. This is an effective method of ensuring everyone is covered for a limit appropriate to the size of the project. The wrap-up liability policy can also provide extended coverage for any claims for a period of up to three years following the completion of the project.

The completed operations extension assures that coverage is still available even if the contractor ceases business, or has exhausted their combined liability limits.

Project Professional Liability Insurance

Surprisingly, project professional liability insurance is often overlooked, yet project owners are most likely to file claims against architects or engineers. This policy will respond to errors in design caused by engineers, architects or project managers. Municipalities also have a stake in ensuring that the professional's insurance will respond effectively. Project professional liability provides specific coverage for your project alone, and dedicates limits that are not impacted by other projects that the architects or engineers are working on.

Environmental Liability

Environmental liabilities have and will continue to be growing challenges for municipalities. Whether a regulator or a contaminated site owner, municipalities are often faced with the challenge of facilitating remediation and determining who ought to pay. In an effort to reinforce that the "polluter pays," sound environmental risk management is imperative to keep environmental liabilities off the ledger during a construction project. There are a number of policies offered by the insurance marketplace that address this issue, including:

- Contractor's Pollution Liability – a policy provided to a contractor that will insure against a range of contracting operations, including environmental, civil and general construction work performed by or on behalf of the contractor.
- Fixed Site Pollution Liability – covers pollution risks associated with owning, leasing, financing or otherwise operating a facility or site.
- Clean-up Costs – a financing mechanism that provides protection for owners, buyers and/or sellers of contaminated properties from cost over-runs associated with remediation of contaminated properties, closure of landfills, hazardous waste treatment or disposal facilities and post-closure care and monitoring of such facilities.

There are a number of benefits for municipalities to act as a project owner when arranging for its insurance on a specific project. With the greatest financial interest, municipalities should ensure coverage is project specific and designed to protect its interests. There is always potential for project coverage to be deficient in protecting the interests of a municipality when policies are shared among a number of contractors. An OCIP cannot guarantee that every possible contingency associated with a construction project will be addressed; however, it does provide municipalities with some certainty with respect to the following:

- Consistent coverage for all contractors and subcontractors involved in the project.
- Broader coverage available for project specific programs.
- Substantial reduction of administrative costs for the municipality.
- Dedicated limits of insurance for the project.
- In many cases, the premium for dedicated project coverage will be less than the premium paid by individual contractors, collectively.
- Completed operations coverage for up to three years, even if the contractor is no longer in business.
- Control of any covered claim and payment thereof on the project as various contractors' insurers will not point fingers and cross claim parties on the project.

As municipalities address their infrastructure deficits, it is in their best interest to consult with an experienced broker with a specific focus on insurance and bonding to understand all of the complexities of an OCIP. With this sound advice and preparation, municipalities will be able to proceed with confidence.