



Liability & Property Pool Workers' Compensation Fund

RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

CONTRACTOR RISK MANAGEMENT

Municipalities often need services that their employees cannot provide. Common examples are road or building construction projects and other high-risk activities such as fireworks displays or bridge cleaning. For this reason, it is common to find — beside the full and part-time employees on a municipality's payroll — other personnel performing important work through contractual arrangements. We sometimes refer to these individuals as contract or subcontract personnel.

Contract arrangements are valuable because they allow a municipality to expand its capabilities to serve the public and, if a municipality handles it properly, to transfer some of the risk for contracted services. The use of contractors, however, does not entirely relieve the municipality of its responsibility to ensure a safe work project for workers as well as the public. It also does not relieve the municipality of being vigilant in such areas as security and property protection.

Safety Is the Prime Consideration

It is important for a municipality to insist on the same standards of safety for contractors as it does for its own employees. Otherwise, the municipality may weaken its organization-wide safety efforts. The safety obligations of contractor personnel are, under the Michigan Occupational Safety and Health Administration, the same as those of the municipality's employees. For example, the following MIOSHA regulations make specific references to contractors and their employees:

- Hazard Communication (MIOSHA Part 92),
- The Control of Hazardous Energy Sources (Part 85),
- Permit-Required Confined Spaces (MIOSHA Part 90), and
- Process Safety Management of Highly Hazardous Chemicals (MIOSHA Part 91).

The municipality should inform contractors of its safety requirements and require contractors to demonstrate their ability to meet them before entering any contractual arrangement. Contractors should be able to provide work conditions that are equivalent to those that the municipality provides to payroll employees.

The municipality should take time to inform the contractor about the entity's rules covering:

- pre-project planning;
- compliance with local, state, and federal requirements;
- selecting and inspecting tools;
- using personal protective equipment and clothing (PPE);
- performing hot work;
- reporting equipment that does not work or that malfunctions;
- keeping work areas neat;
- remaining alert and reporting safety hazards;
- reporting unsafe conditions immediately;

- avoiding intentional unsafe acts;
- marking/barricading work sites, particularly excavations; and
- MISS Dig contact procedures and requirements.

This general orientation allows the municipality to establish its expectations concerning the contractor's safety performance. The municipality should also confirm that the contractor has an effective safety program in place and provides training to employees that help them to identify the specific hazards associated with the job they will perform. Your municipality should have access to their training records. The training should reinforce workers' existing knowledge and cover the materials, equipment, procedures and situations that most frequently lead to accidents. Prevention is the primary consideration. Even if the contractor is fully insured, it is possible your municipality will be named in any legal proceedings in the event a serious incident occurs. Specifically, training might need to include the following:

- **Hot Work:** Discuss the municipality's hot work program, how the municipality issues hot work permits, permit process, fire watch and monitoring requirements. Confirm the contractor's employees are trained on the program.
- **Tools and Equipment:** Discuss why proper grounding, machine guards, PPE and attention to the task are important to safety.
- **Material Handling:** Stress the importance of proper lifting techniques, using correct material handling equipment, and of getting help when they cannot handle a load alone. Use mechanical assistance when possible.
- **Chemicals:** The contract employer should review basic Right-to-Know principles and train on the importance of reading labels and Safety Data Sheets (SDS's).
 - The municipality should inform contract employees of any chemicals it uses to which they might have exposure.
 - Make sure contract employees know where the municipality keeps the SDS's. The municipality should verify and have access to the contract employer's SDS.
- **Housekeeping:** Discuss how the failure to keep work areas neat and clean and to clean up spills can result in slips, trips, and falls. Work sites in disarray or not properly barricaded can also lead to citizen injuries and the resulting civil suits.
- **Electricity:** Emphasize the dangers contract employees face and the injuries they can suffer, such as shocks and burns, if they are careless or use defective equipment or equipment with loose connections. Insure employees are instructed not to perform any electrical work they are not qualified to do.
- **Substance Abuse:** The contractor should ensure that its employees understand the municipality's substance abuse policy and know that the policy extends to them. The contractor should stress that the use of alcohol or drugs, including over-the-counter and prescription medications, can affect a workers' alertness and result in injury to the worker and others.
- **Emergencies:** It is important for all employees, including contract workers, to have a clear understanding of the municipality's emergency response plan. This includes alarms and evacuation plans, as well as the location of fire extinguishers and first-aid supplies.
- **Confined Spaces:** The municipality is responsible for labeling all confined spaces and informing the contractor where they are. However, it is the contractor's responsibility to insure his employees are properly trained in confined spaces as required by MIOSHA.

- **MISS Dig (Dial 811):** Require contractors to comply with MISS Dig requirements when performing digging or excavating activities where underground utilities may be present.

The municipality should emphasize that its commitment to safety extends to everyone -- payroll employees, contract personnel and visitors. By doing so, the organization underscores the importance of safety and can help ensure ongoing participation from municipal employees in its safety efforts.

Security and Protection of Property

Because contract employees may be less familiar to management than regular employees may be, municipal management should take some basic steps to protect itself and its property. Municipalities should:

- Require contract employees to identify themselves to appropriate management personnel upon arrival.
- Require contract employees to carry identification or wear a uniform that readily identifies them as personnel who belong at a job-site.
- Require visitors from the contractor's firm -- as well as other visitors -- to sign in at the office, and to state the purpose of their visit as well as the area they will visit.
- Post the sign in and/or identification requirements where contract employees and visitors to the site can see them.

By limiting the entry of unauthorized personnel, the municipality can minimize its exposure to theft and damage or destruction of property as well as claims of injuries from individuals who have made unsupervised entry.

Protecting the job site is also important. The municipality should work with the contractor to ensure that the job site is secure at the end of the workday. Employees should store equipment properly and they should park, turn off, and secure all motorized equipment and vehicles. In addition, good housekeeping practices can help to reduce the likelihood of fire from waste materials, overgrown weeds, or oily rags. Unannounced inspections of the site can be effective in determining if the contractor is complying with all requirements.

Protecting the Municipality

Municipalities can minimize liability exposures and potential losses by obtaining appropriate documentation from the contractor and by requiring the contractor to have adequate insurance. The municipality should obtain a copy of all policy documents and verify that the contractor's coverage is in effect. In addition, the municipality should seek legal counsel before entering a contractual arrangement.

The following are some requirements that municipalities should consider implementing:

- **Workers' Compensation and Employer's Liability:** The municipality should require the contractor to have adequate workers' compensation coverage. The contract should state that the contractor cannot recover expenses for worker injuries from the municipality, its officials, employees, or volunteers. Contractors who have no employees do not have to meet this requirement. The MML does have waivers available for "Sole Proprietor with Employees" and "Sole Proprietor without Employees" on its website, under "On-line Forms", for small contractors. You may check directly to determine if your contractor has workers' compensation by going to: <https://wcinsurancecoveragelookup.apps.lara.state.mi.us/>

- **Hold Harmless and Indemnification:** The contract between the municipality and the contractor should state that the contractor will hold the municipality harmless from and indemnify it against all liability arising from the contractor's performance of the work.
- **Independent Contractor:** All contracts should contain language that stresses the contractor's independence from the municipality. Contracts should also state that no employer-employee relationship exists between them. State workers' compensation laws and/or the federal Fair Labor Standards Act define the term "independent contractor." Make sure that contract language complies with the definition(s).
- **Assignment:** All consulting contracts should clearly prohibit the contractor from assigning any of the services he or she has agreed to perform to anyone else without first obtaining written consent from the municipality.
- **Comprehensive General Liability Insurance:** The municipality should make certain that all contractors have and maintain adequate general liability coverage for the duration of the project. The policy should list the municipality as an additional insured. Generally, the amounts of coverage should be equivalent to those maintained by the member with the MML.
- **Professional Liability Insurance:** The municipality should require contractors whom the state requires to have professional certification (such as design engineers) to provide adequate professional liability insurance.
- **Business Auto Liability Insurance:** The municipality should require all contractors to have business auto liability coverage. This coverage should include all vehicles the contractor owns and uses on the contract as well as hired and non-owned vehicles.
- **Subcontractors:** The contract should specify that the contractor is responsible for assuring that all subcontractors comply with the same insurance requirements that the primary contractor must meet. The municipality may also wish to limit the percentage of work that the primary contractor can subcontract. The municipality should require the contractor to obtain written consent from the municipality before assigning work to subcontractors.
- **Performance Bond:** The municipality should require the contractor to furnish the local government with a performance bond in a form acceptable to the municipality before start of construction.
- **Builders Risk Insurance:** On projects that consist of either above or below ground structures, other than standard manholes, sewer or water lines, the contractor should purchase and provide insurance coverage equal to one hundred percent (100%) of the completed value of the work the contractor is performing.

Other Issues

Under the Americans with Disabilities Act, municipalities have an obligation to ensure that all its vendors, suppliers and contractors comply with the employment requirements of the Act. Failure to do so may result in the municipality receiving a claim of discrimination.

Conclusion

It is very important to follow proper procedures when selecting contractors. You should review your safety procedures to ensure that they are adequate to provide appropriate supervision of contractors and subcontractors. In addition, you should seek legal counsel before entering any contractual arrangements.

For more information contact:



Important Telephone Numbers

Michigan Dept. of Labor, CET Division	517/322-1809
MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-2726

Note: *This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their procedures with an expert or a competent attorney who is knowledgeable about the topic.*



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SELF ASSESSMENT

CERTIFICATE OF INSURANCE

WORKERS' COMPENSATION	Copy Received	Date
	LIABILITY	Copy Received
	1. Limits of a Million or More	
	2. "A" Rated Company	

LOSS HISTORY

Provided by Agent	Copy Received	Date
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SAFETY PROGRAM

		Yes	No
1.	Familiar with MIOSHA Regulations?		
2.	Are safety standards used daily?		
3.	Written safety program?		
4.	Safety Coordinator?		
5.	Right-to-Know Program?		
6.	Confined Space Entry Program?		
7.	Power Lockout/Tagout Program?		
8.	First aid trained personnel on site?		
9.	Emergency preparedness plan?		
10.	Fire safety and suppression plan?		
11.	Personal protective equipment used?		
12.	Auto safety a. MVR checks b. CDL certifications?		
13.	Proper DOT roadway procedures, including flagging and barricading?		
14.	Proper trenching/excavation procedures, including contacting MISS Dig?		
15.	Preventive maintenance program?		
16.	Process safety management of highly hazardous chemicals (when applicable)?		

I attest that the above responses are true to the best of my knowledge.

WITNESS (MUNICIPAL REPRESENTATIVE)	DATE
CONTRACTOR OR REPRESENTATIVE	DATE
TITLE	STATE/CITY CONTRACTOR LICENSE NUMBER

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