



Reciprocal News

Contractual Risk Management - October 2010.

Do you provide services for certain municipal operations, such as water billing, meter reading, street light maintenance, or tree trimming? Do you have a written contract/agreement to provide these services? Was that contract/agreement reviewed by your legal counsel? Has MEARIE been notified you provide these services?

Contractual risks can be divided into two categories

1) Legal Risks: Such as claims, warranty problems, default terminations, intellectual property infringement charges, alleged confidentiality disclosures, disputes and litigation

2) Business Risks: Such as poor relationships, failure to obtain objectives, negative public relations, declining morale, instability, weakening of brand, integrity, loss of good will and reduced revenue or profits

Contracts will often include an indemnification agreement. Indemnification is a promise or contractual provision protecting one party from financial loss. The indemnification clause states which party will be liable in the event of a loss. Many times the indemnification agreement will include a long list of provisions including bodily injury, property damage, breach of contract, breach of fiduciary duties, violations of laws, conflict of interest and assumption



Handling and resolving contractual disputes can drain precious resources and increase project costs

of all liabilities. The indemnification clause in a contract can often be bewildering. Due to the complexity of the indemnification clause, it may not be thoroughly reviewed or properly analysed. You may be agreeing to accept responsibility for liabilities that are not yours and may not be covered by the MEARIE Liability policy. Every contract should be reviewed by your legal counsel. You should not accept liability for the negligence of others.

MEARIE claims experience arising from Subscribers providing contracted services to municipalities has highlighted numerous issues and potential problem areas to avoid.

When considering providing contracted services to the Municipality OR if needing to renew contracts for existing services, please consider the following:

Risk management lessons learned

Have a written contract, including an indemnification clause, that specifically outlines who is responsible for each aspect of the service. Using meter reading as an example, the contract should clearly define who is responsible for matters such as: meter ownership,

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meter accuracy, meter testing and calibration, meter reading, billing software, data reconciliation, billing reconciliation, who is responsible for billing errors and what actions are to be taken in the event of billing disputes.

Are you contracting for or assuming unintended liabilities? Know what you are contracting for! Do not be afraid to ask for changes if the demands are unreasonable, such as requesting your company assume all liabilities.

Indemnification Agreements should be reviewed thoroughly by legal counsel as once signed, you may become contractually obligated to terms and conditions not desired or not covered by your insurance. When in doubt ask MEARIE.

Have every contract reviewed by your legal counsel

Generally the LDC will be insured for the negligent acts or omission of their employees arising out of Operations Covered (all of your operations must be declared and stated to MEARIE).



Document, document and document. Excellent recordkeeping can be a beneficial asset should a claim arise

The MEARIE Liability policy does not cover unjust enrichment. (MEARIE policy Section 3.8 Personal Advantage Exclusion)

The MEARIE Liability policy does not cover breach of contract. (MEARIE policy Section 3.21 Breach of Contract Exclusion)

If there is no negligence, there may not be coverage.

In conclusion, MEARIE recommends you review every contract carefully with legal counsel, understand what you are contracting for and do not assume the liability of others. If you would like to discuss contracts, indemnification or hold harmless agreements, please contact:

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