

Food Trucks, Shared Use Agreements and Jazzercise, Oh My

By Jason Barney

Public works contracts for buildings, bridges, or road construction are often reviewed carefully through the open bidding process for necessities like contractual indemnity and naming the City as an additional insured by the contractor or vendor's insurance company. Given the large scale of the work performed under these contracts, accidents giving rise to claims are eventualities causing the need for contractual indemnity or insurance to protect the City from claims made by third parties arising from the contractor's alleged negligence.

Small vendors or those from the small works roster deserve the same review. Examples include junior league sporting activities, music or food festival vendors, adult fitness/boot camp instructors, or small ad hoc public works projects. For example, in 2011 a small works contractor working in the City right-of-way caused an accident that resulted in a seven figure verdict against the City that will be paid by the contractor's insurer. A 2014 claim against a parks district involved a bicycle injury accident caused by a food vendor because its employee strung a cable across a parking lot entrance—a claim successfully referred to and paid by the vendor's insurer. A Member used a school district's gyms for a city youth basketball program. A twelve-year-old participant fell into a volleyball standard stored in the corner of the gym and suffered permanent hearing loss. The shared use agreement between the City and the school district was used to apportion some responsibilities. An older exerciser was injured helping the Jazzercise instructor moving a table in setting up the room for class. The old Jazzercise contract was expired and it used old, less effective risk transfer language in the contract. The Jazzercise franchise owner had changed and the new Jazzercise owner had not contracted with the City Parks and Rec department. The older exerciser likes the instructor and blames the City for not having the room set up. With risk transfer, Jazzercise and its insurer would handle the claim on behalf of the instructor and the Parks Department. Without risk transfer it may become the blame game.

As you can see, we get a lot of claims involving your contracted vendors.

The insurance portion of this risk transfer mechanism is important because it provides for the financial ability for the contractor to meet its obligations to the City and to those injured from acts arising out of the contractor's operations. Without contractual indemnity, a written agreement to provide the City with additional insured status, and a certificate of insurance naming the City as an additional insured, the City may be obligated to defend or pay claims that would otherwise be satisfied by the vendor or the vendor's insurance.

While WCIA coverage extends only to the Member, its employees and volunteers, the contractor's insurance can satisfy—or defend against if necessary—claims brought against the Member for acts of the contractor or within the contractor's area of control. This contract requirement should be part of the initial paperwork review checklist. It is smart risk management to review small vendor contracts for these important elements of risk transfer when the contracts are started and renewed. If you have any questions or if you need guidance on implementing these elements, call your WCIA Risk Management Representative for assistance.