

Tender beware

By Drew Brien

Public work projects can vary in size, and it's not uncommon for our members to hire contractors for projects when they become very large or need a specific expertise. One member had a large public works project, which included upgrades to the sewer main, water main, storm water and roadway. The member put the project out to bid and hired a contractor to complete the project. Per usual, the member was listed as an additional insured on the contractor's commercial general liability insurance policy for the duration of the project.

One morning, a citizen living on the road where construction was taking place called the member to advise that her basement was beginning to back up with sewage. The member's inspector had the contractor expose the claimant's side sewer lateral at the main, which had just been connected to the new PVC sewer main. The connection and pipe were sound but they did see a slow trickle coming from the claimant's lateral, leading them to believe this was a private issue and unrelated to the current project.

Later that day the claimant hired a plumber to inspect her side sewer to investigate the cause of the backup. While snaking the line, the plumber located a hard blockage out in the right-of-way. The contractor again exposed the main sewer line and continued exposing downstream, where the existing main had yet to be upgraded, and finally located a section of sewer main that had collapsed. This was then promptly replaced that same day by the contractor.

Thankfully the claimant's homeowner insurer covered the damage to her basement caused by the sewer backup. Her insurer eventually filed a claim seeking subrogation for the damages it had paid. Since the collapsed sewer main was within the construction site, and more likely than not caused by the construction taking place, we tendered the claim to the contractor's insurer. The insurer eventually responded, denying the claim due to the member not qualifying as an additional insured because it was not required as part of the construction contract. Unfortunately, we learned that the member used an old contract, which lacked risk transfer language requiring the contractor to provide additional insured coverage through their commercial general liability policy.

While we were still able to deny the claim – as it was likely the sewer line collapsed due to the work being done by the contractor and the City did nothing negligent to contribute to the loss – this serves as a good reminder that all public work contracts should have standalone indemnification and hold harmless language that allows our members to transfer the risk in these types of incidents.