

RISK TRANSFER FOR CONTRACTORS
DECEMBER 2023

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PRESENTER

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AGENDA

- Contract Clauses
- Insurance
- Indemnification
- Uncontrollable Events/Force Majeure
- Design/Professional Services
- Payment Risks
- Warranties / Workmanship
- Safety/OSHA
- Dispute Resolution

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CONTRACT CLAUSES

- Waiver of Consequential Damages
- Liquidated Damages
- Delays and Extras
- Correction of work
- Withholding of funds for disputed charges or work
- Time to correct work and cure defaults

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INSURANCE

- Waivers of Subrogation
- Additional Insured
- Primary and Non-Contributory Insurance
- Duration of Insurance Coverage
- Confirm you and your subs have the required coverage

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INDEMNIFICATION

- Liability should be limited to the extent of a party's fault
 - Most state laws expressly provide for this.
- Duty to defend
- Required to purchase additional insurance?
- Does the project involve DBE requirements?
- Choice of attorneys

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UNCONTROLLABLE EVENTS

- Sometimes called "Force Majeure"
 - But "force majeure events" are "unforeseeable"
 - "No one thought this would happen."
- In construction, we expect delays and cost increases
- The question is who will bear the risk of those uncontrollable events?

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DESIGN/PROFESSIONAL SERVICES

- Some contracts shift design errors to one party or the other.
- If you will do no design work, make sure design risk is on someone else.
- The party that hires the architect is responsible for the architect's errors.
- Watch for insurance provisions requiring you to have professional liability coverage.

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PAYMENT RISKS

- Pay if Paid
- Bonds
- Certified Payroll / Prevailing Wages
- Retainage
- Termination for Convenience
- Attorneys' fees

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WARRANTIES/WORKMANSHIP

- Residential work has statutory warranties.
- Commercial work does not have statutory warranties.
- Pay attention to the length of warranty you are being asked to provide.
- Negotiate for as much time as you can get to correct work.
- Make sure your subs agree to the same terms

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SAFETY / OSHA

- Watch for duties to comply with an upstream safety program or manual, and meeting/training requirements.
- Who is providing PPE?
- What are project drug policies, particularly regarding cannabis?

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DISPUTE RESOLUTION

- Where will disputes be heard?
 - In Minnesota you cannot be required to litigate or arbitrate in another state.
- What is the dispute resolution method?
- Attorneys' fees

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QUESTIONS?

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