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GREENER ON THE OTHER SIDE:
A CFM’s Role in Mitigating Risk

However, green-built and LEED-certified projects are fraught with risks that differ from those of traditional projects, including pollution and environmental hazards associated with brownfield sites, unique safety considerations surrounding vegetative roofs, and the use of untested sustainable materials. These significant risk exposures must be considered in order to maintain profitability.

To achieve optimum ROI, contractors must mitigate the inherent risks associated with sustainable building. By paying careful attention to the additional risks involved in green building, CFMs can help provide stronger assurance that their companies’ project investments are protected.

Collaborate before bidding

Whether a project is being built to meet LEED standards or achieve LEED certification, the CFM must have a clear view of the hurdles on the horizon. The first step upon receiving bid documents is to identify the inclusion of a LEED Charrette – an initial collaborative session during which your company and project engineers meet with the architect and project owner to discuss potential solutions to any foreseeable design challenges.

As sustainability standards and expectations are heightened across the country, more contractors are seeking sustainable projects that will either build to Leadership in Energy and Environmental Design (LEED) standards or achieve certification.

Participation in green-built projects can reflect positively on a contractor’s commitment to supporting the environment, open doors for future green construction opportunities, and offer the allure of increased profitability.
With green-built projects, there are critical components within the insurance program that must be identified and addressed in order to mitigate risk. Although every insurance program is unique, the most common components to address in addition to standard property and casualty coverages include builder’s risk and professional liability coverage.

Green construction has created new property exposures that are not adequately covered by a traditional builder’s risk policy. Several green construction enhancements that are becoming more popular and readily available (e.g., “green building coverage” endorsements and “green builder’s risk” forms) can include coverage for the:

- Increased cost of removing debris to a recycling facility instead of a landfill following a loss.
- Increased cost to restore indoor air quality following a loss.
- Cost to recertify a building to the level it was prior to a loss.
- Increased cost of having to purchase electricity from the power grid vs. the renewable energy source that has been damaged during the course of construction.

Many of the coverages will be provided with a sublimit of insurance, which may be significantly less than your actual exposure, so it is important to carefully review these limits.

**Delay in Completion Coverage**

Another green building coverage enhancement available is delay in completion coverage. This enhancement provides coverage for the loss of net income due to the delay caused by having to recertify a building’s green status. It may also cover the loss of energy generating income or the surplus power that could have been resold to the power grid during the delay period, had a loss not occurred.

**Professional Liability Coverage**

Another vital coverage recommended for any contractor that designs green systems is professional liability coverage. A standard general liability (GL) policy provides coverage for bodily injury, property damage, and personal and advertising injury but *not* for economic losses that could arise out of a green building not performing as designed.

For example, if a contractor makes a design modification to a hot water circulating system resulting in increased utility and operating expenditures, this could lead to an economic loss type of claim. A professional liability policy would provide coverage for this type of economic loss scenario, while a standard GL policy would not.

**Soft Cost Endorsement**

Another important consideration with the builder’s risk policy involves soft costs incurred as a result of a delay caused by damage covered by the policy. Damaged property and the cost of restoring the damaged property back to the condition prior to loss are generally covered under the builder’s risk policy; however, soft costs must be carefully determined and included to cover any other financial loss that would occur as a result of the project delay.

Such key items as additional financing costs, taxes, marketing and promotional expenses, lease commissions and fees, and other costs incurred by contractors may be required. A properly structured soft cost endorsement on a builder’s risk policy can cover these expenses to ensure the project can continue on budget despite the loss.

**Safety Concerns**

The stringent LEED credit system offers contractors guidance to produce a sustainable facility, but there are also safety concerns that must be addressed in order to avoid costly insurance claims.

Be sure to involve your company’s safety consultant and insurance broker early in the process by informing them of the green design elements planned for your project. Your safety consultant can provide adequate training, and your insurance broker can supplement your own training and leverage the resources that it can bring to the table.

In particular, there are four loss control considerations that you should discuss with your safety consultant and insurance broker:

**Site Selection**

To obtain maximum site sustainability credits, project owners often seek out locations that have been declared brownfield sites (abandoned or underused industrial and commercial facilities available for reuse) and also consider population density, sites with proximity to mass transportation, and accommodations for electric vehicles and bicyclists.

The development of brownfields may be complicated by real or perceived environmental contamination. The land is often contaminated by low concentrations of such hazardous compounds as lead, polychlorinated biphenyls, mercury,
hydrocarbons, and asbestos. In addition, such sites often pose
unique pollution exposures created by working near subways,
railroads, and waterways.

Because site selection hazards are almost always present,
contractors need to evaluate the numerous insurance prod-
ucts available to address environmental liabilities arising
from projects constructed on remediated properties. Various
forms of coverage can be pursued to insure against existing
and unknown pollution conditions as well as pollution condi-
tions arising out of the construction work being performed.
These coverages include Pollution Legal Liability, Contractor's
Pollution, and Owner's Environmental Protective.

Pollution Legal Liability
This policy provides both third-party liability and first-party
site clean-up coverage for property owners for claims result-
ning from pollution incidents at a covered site. On a brown-
field redevelopment project, or any green building project,
an improperly negotiated Pollution Legal Liability (PLL)
policy could cause the owner significant delays obtaining
financing or to lose financing that has already been obtained,
which could be extremely costly to a contractor that has
already mobilized equipment, resources, and materials.

Contractor's Pollution
This policy provides third-party liability coverage for con-
tractors for claims arising out of pollution incidents at their
jobsites. This includes claims for bodily injury, property dam-
age, and clean-up costs. This coverage can often be com-
bined with professional liability coverage in a single policy.

Owner's Environmental Protective
Owner's Environmental Protective (OEP) policy is a relatively
new product offered by a few insurance markets in an attempt
to fill the void of (not replace) the now defunct Remediation
Cost Cap (RCC) policy.

An OEP policy is purchased either by the contractor or
owner strictly for the benefit of the owner and is designed to
cover economic damages suffered by the owner because of an
environmental de-sign professional’s error on a remediation
project. This coverage is excess of the environmental design
professional’s own errors and omissions coverage.

Each of these insurance products deserves consideration
depending on the specifics of the work and the selected
project site. Contractors must pay particular attention to the
contractual obligations being placed on them with regard to
environmental issues. It is not uncommon for professional
service firms (such as environmental remediation firms) to
attempt to limit their liability to a specific dollar amount,
which could leave other contractors on the job exposed and
responsible.

Other important coverage considerations include (but are
not limited to) contractual liability and additional insured
coverage, naturally present pollutants, Natural Resource
Damage, transporting of waste offsite to disposal sites, and
lead and asbestos.

Material Reuse
LEED credits are offered for building material reuse, which
often requires some of the materials to be abated of lead paint
(e.g., steel beams or exposed wooden beams) or stripped
of hazardous compounds (e.g., mercury in reused electrical
devices). Your company’s insurance broker can advise on
best practices and on American Conference of Governmental
Industrial Hygienists (ACGIH) and OSHA standards for pro-
tecting employees during this phase of construction.

Vegetative Roofing
Vegetative roofs are an ideal way to maximize LEED credits
for reducing heat island effects, utilizing maximum green
space, and capturing and reusing rainwater. However, they
also present a unique condition for worker fall protection
during construction. The lack of exposed concrete and steel
on a rooftop creates new challenges in providing construction
workers with fall-arrest anchor points, as well as falling-object
protection for those below.

Indoor Air Quality Control
During the final phases of construction and just prior to
occupancy, the U.S. Green Building Council and Sheet Metal
and Air Conditioning Contractors’ National Association place
minimum expectations for continuous air exchanges. This
challenge creates new ventilation demands during such final
construction activities as painting, installing drywall and
plastering, installing floors and carpets, and waterproofing.

While such activities may not have posed concern under
traditional building conditions, the progressive LEED require-
ments for ventilation may now present a new series of occupu-
ational health concerns.

TRUST A GREEN TEAM
It’s not always greener on the other side. Although many of
the aforementioned coverages are not exclusive to green
building projects, there are specific exposures unique to
green construction that must be addressed in traditional
insurance policies. If you don’t take the precautions necessary to mitigate risk, then green-built and LEED-certified projects can have your company seeing red.

A CFM must be actively involved in both the planning and bidding process, as well as in the insurance/safety program. It is also important that your company’s broker understands the risks associated with green-built construction in order to properly structure the insurance coverages for these projects. Keeping your broker informed will result in a more comprehensive insurance program to address these green-specific exposures.

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