George Harms Construction Completes 55 Years In Construction
INSURANCE PRICING IS STABILIZED, BUT BEWARE OF OTHER CHALLENGES

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For all the challenges of doing business as a contractor in the current regulatory and economic environment, there has been one area that has been generally favorable to contractors — obtaining competitively priced insurance coverage that offers broad protection. However, despite somewhat stable pricing in the market, exclusive of New York, there are still some challenges to be aware of.

Workers Compensation Costs

The cost of Workers Compensation insurance remains one area where there is consistent pricing pressure. Almost everyone is aware of increasing health care costs and this has a direct impact on your Workers Compensation insurance. In addition, an aging workforce and a higher dependence on prescription drugs are causing systematic cost increases. Insurance companies have been trying to dig out of the hole that was left during the Great Recession where written premiums were at their lowest levels in over a decade, which resulted in some of the highest loss ratios on record.

At one point during the Great Recession, for every $1.00 written in premium, the insurance industry was spending almost $1.20 in claims, administrative and operating costs. By applying consistent rate pressure for several years, at the end of 2013 the industry was only spending about $1.01 for every $1.00 collected in premiums. That is a remarkable turnaround, but unfortunately it was achieved on the backs of policyholders who paid higher rates. And despite the improved results, we are continuing to see insurance companies take a much harder stance on Workers Compensation, as companies along with the State Workers Compensation Bureau, have been much more diligent in making sure payrolls are assigned to the correct Class Codes. This has caused some insurors to experience a much larger increase in Workers Compensation costs retroactively, which has not been contemplated in their bid pricing. Workers Compensation insurance is going to remain a challenge for years to come.

Unfavorable Case Law

Courts across the country continue to challenge liability coverage provided for construction risks. Some cases are at odds with the traditional understanding of how policies are interpreted and how coverage is provided. Various jurisdictions seemingly have a different viewpoint on how an occurrence is defined and how the primary versus excess limits apply. By meshing with the definition of an occurrence, the courts have turned on its head what we would traditionally expect a General Liability policy to cover in the areas of Faulty Workmanship and Resulting Damage. In addition, state anti-indemnity statutes that limit the amount of contractual risk that can be transferred are being extended to also limit the additional insured coverage being required of subcontractors. This was described last year in a series called, “Contractual Risk Transfer.”

The resulting lack of clarity and understanding you might have with respect to the risks you may be assuming or transferring for any given project can impact your business. It is no longer only important to make sure your contracts are well-written and combined with broad liability coverage, but now it is equally important to understand the jurisdictions in which you are working and their interpretations of insurance policies.

Additional Insured Coverage

One of the standard insurance provisions in any contract is the requirement to add other parties as an Additional Insured. As discussed in the “Contractual Risk Transfer” series, Additional Insured endorsements have gone through a transition over the past several years. There are hundreds of different variations of Additional Insured endorsements in use, each with its own pitfalls. The problems we’ve seen with the Worker Compensation coverage are endorsements that require a direct contract requirement between the contractor and the Additional Insured in order for coverage to apply. Oftentimes a contract between two parties also require numerous other entities be included as Additional Insureds, such as various governmental entities, engineering firms, funding sources, etc. Additional Insured endorsements requiring a direct specific Excess policy. The former could make your bid uncompetitive compared to another contractor who does not have to go get that project specific Umbrella policy because their insurance is with an approved insurance company.

Employment Practices Liability

An area of exposure that probably doesn’t get a tremendous amount of attention in the contracting community is Employment Practices. Unfortunately, New Jersey is usually regarded as the second worst state in the country, only behind California, in terms of the legal regulatory environment and Employment Practice claim activity. This is causing many insurance companies to either pull out of the state completely or significantly increase both premiums and deductible levels. This is a problem that is not going away anytime soon and most contractors don’t have robust Human Resource Departments to adequately address Employment Practice issues.

Contractors and their insurance brokers should be aware of these potential insurance-related issues that are prevalent in today’s marketplace. This way you will be able to take a proactive approach in addressing and the consequences of these issues before it costs you a job or places an unnecessary financial burden on your business.

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