

# MANAGING RISK IN PUBLIC PROCUREMENT

STACY GREGG, NIGP-CPP, CPPO, CPPB

1

## DEFINING RISK

### **Risk**

The chance of injury, damage, or loss; the probability of some occurrence (e.g., a failure) and the consequences and impact of the occurrence.

### **Risk Analysis**

The stated findings of a factor, element, or cause involving uncertain harm or loss.

2

## DEFINING RISK



### **Risk Management**

The process of identification and analysis of risk; and the decision to either accept or mitigate the exposure to such risk when compared to the potential impact on the achievement of the entity's objectives.

3

## DEFINING RISK



### **Why address risk?**

- Contract administration challenges
- Performance issues
- Greater expense

4

## DEFINING RISK



“The procurement manager must ensure that the risks associated with each procurement action have been identified, assessed, and mitigated to the practicable maximum extent, while taking cost and other factors into consideration.”

*Elisabeth Wright, Ph.D., CPCM – Risk Management in Public Contracting*

5

## RISK IDENTIFICATION

Occurs as a pre-solicitation activity:

- Market research
- End-user
- Existing solicitations/contracts
- Governance
- Yourself

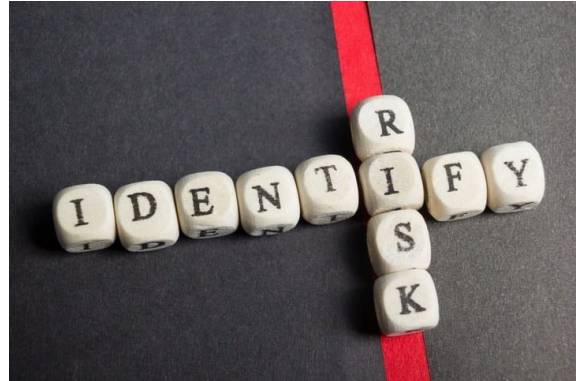


6

## RISK IDENTIFICATION

Types of Risk:

- Proposal Risk
- Schedule Risk
- Contractual Risk
- Performance Risk
- Price Risk



7

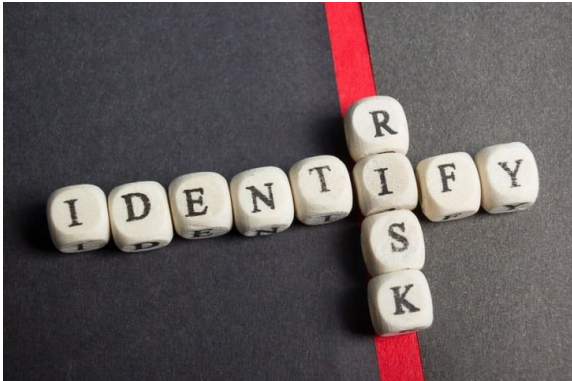
## RISK IDENTIFICATION

| Proposal Risk           | Schedule Risk |
|-------------------------|---------------|
|                         |               |
| Contractual/Performance | Price         |
|                         |               |

8

| RISK IDENTIFICATION  |   |
|--|---|
| <b>Proposal Risk</b> <ul style="list-style-type: none"> <li>➤ Contractor doesn't know who to contact for emergencies.</li> <li>➤ Contractor underbids.</li> <li>➤ Contractor is not prepared for the size.</li> <li>➤ Contractors bid over budget</li> </ul> | <b>Schedule Risk</b> <ul style="list-style-type: none"> <li>➤ Contractor vacuums during school day.</li> <li>➤ Contractor is late to open the building.</li> <li>➤ Contractor leaves early on basketball game night.</li> </ul> |
| <b>Contractual/Performance</b> <ul style="list-style-type: none"> <li>➤ Student falls on wet floor.</li> <li>➤ Bathroom remains uncleaned.</li> <li>➤ Employees wear inappropriate clothes</li> </ul>  | <b>Price</b> <ul style="list-style-type: none"> <li>➤ Contractor presents insufficient invoices.</li> <li>➤ Contractor invoices do not reconcile.</li> <li>➤ Minimum wages may change.</li> </ul>                               |

9

| RISK IDENTIFICATION  |  |
|--|--|
| <b>Additional Risks</b> <ul style="list-style-type: none"> <li>➤ Sensitive data</li> <li>➤ Vulnerable population</li> <li>➤ Political concerns</li> <li>➤ Expensive/Valuable equipment</li> <li>➤ Chemicals</li> </ul> |  |

10

## RISK ASSESSMENT



“Phase 2 requires that an assessment be conducted to show the degree of risk that exists for each identified risk type.”

*Elisabeth Wright, Ph.D., CPCM – Risk Management in Public Contracting*

11

## RISK ASSESSMENT

### Factors for Consideration:

- Likelihood
  - ✓ Not Likely
  - ✓ Somewhat Likely
  - ✓ Moderately Likely
  - ✓ Highly Likely
  - ✓ Certain

- Probability
  - ✓ Frequent
  - ✓ Occasional
  - ✓ Uncommon
  - ✓ Remote

12

# RISK ASSESSMENT

## Factors for Consideration:

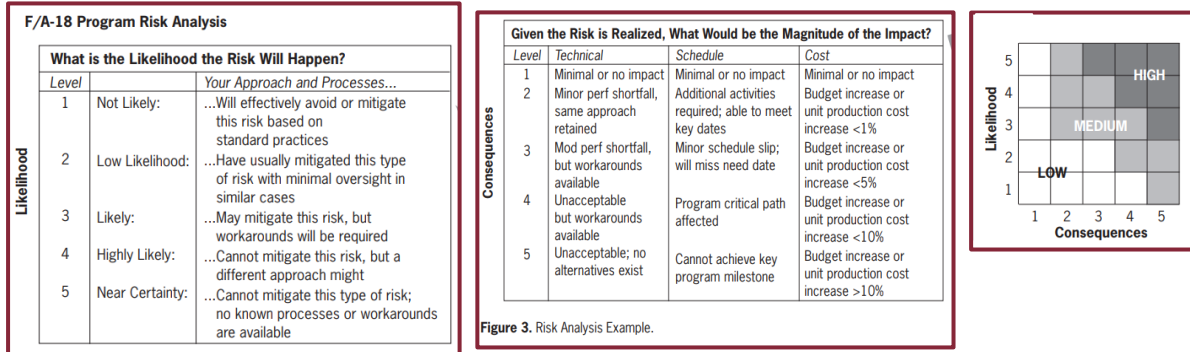


Figure 3. Risk Analysis Example.

Elisabeth Wright, Ph.D., CPCM – Risk Management in Public Contracting

13

# RISK ASSESSMENT



## ACTIVITY:

Take a few minutes to make your own chart and analyze the risks you identified previously.

14

## RISK ASSESSMENT

### Sample Analysis:

| Type    | Risk                            | Likelihood | Impact               | Consequences   |
|---------|---------------------------------|------------|----------------------|----------------|
| Special | Abuse of sensitive information  | Not likely | Unacceptable         | High           |
| Special | Abuse of vulnerable population  | Not likely | Unacceptable         | Ultimate       |
| Special | Personnel fear of outsourcing   | Certainty  | Moderate             | Medium         |
| Special | Theft/pilfering                 | Likely     | Minor - moderate     | Low - Medium   |
| Special | Exposure to hazardous chemicals | Certainty  | Minor - unacceptable | Low - Ultimate |

15

## RISK MITIGATION

“Risk mitigation is, in effect, a type of risk control and is achieved by planning for emergencies and measuring and controlling the identified risks so that appropriate action can be taken.”



16

## RISK MITIGATION

- Add 2 additional columns to your chart
  - ✓ Bearer (us, them, both).
  - ✓ Manner.



17

## RISK MITIGATION

| Type    | Risk                            | Likelihood | Impact               | Consequences   | Bearer | Manner  |
|---------|---------------------------------|------------|----------------------|----------------|--------|---|
| Special | Abuse of sensitive information  | Not likely | Unacceptable         | High           | Them   | Include appropriate clause (insurance and liability) in boilerplate.  |
| Special | Abuse of vulnerable population  | Not likely | Unacceptable         | Ultimate       | Them   | Require background checks. No violent offenders. No sex offenders. No drug offenses within the last 5 years.. |
| Special | Personnel fear of outsourcing   | Certainty  | Moderate             | Medium         | Us     | Keep existing staff through attrition.  |
| Special | Theft/pilfering                 | Likely     | Minor - moderate     | Low - Medium   | Us     | Work with legal for consequences. Entity has final authority on personnel matters.                            |
| Special | Exposure to hazardous chemicals | Certainty  | Minor - unacceptable | Low - Ultimate | Both   | Supplier submit MSDS to entity for approval.  |

18

## RISK MITIGATION

➤ Special Considerations (Surety):

- ✓ Performance Bond
- ✓ Payment Bond
- ✓ Bid Bond
- ✓ Insurances



19

## RISK MITIGATION

### SC Procurement Code – Construction

- II-35-3030 Bond and Security (1) Bid Security.
- II-35-3030 Bond and Security (2) Contract Performance Payment Bonds.
- II-35-3035. Errors and omissions insurance.
- II-35-3037. Other forms of security.
  - ✓ (a) operations period surety bonds
  - ✓ (b) letters of credit
  - ✓ (c) appropriate written guarantees

<https://www.scstatehouse.gov/code/t11c035.php>

[Website Verification for Surety Companies](#)

#### WEBSITE VERIFICATION FOR SURETY COMPANIES

- 2019 Edition
- A. NOTES:**
1. On the SC Department of Insurance website, be extremely careful when checking the name of the surety company to ensure the correct company is checked.
  2. On the A.M. Best website, enter the surety company's name exactly as shown on the bond.
- B. INSTRUCTIONS FOR VERIFICATION**
1. Access the South Carolina Department of Insurance website at [www.doi.sc.gov](http://www.doi.sc.gov)
  2. At the Department of Insurance website home page, under "Companies," click on "Company Information." Next click "General Information." Finally click "List of Insurance Companies and Health Maintenance Organizations Authorized to Transact Business within the State of SC."
  3. A list of insurance companies authorized to transact business in South Carolina will appear. Verify that the surety company's name is on the list.
  4. Go back to the SC Department of Insurance page. Click "Government and Industry Resources" on the light grey menu bar on the left side of the web page.
  5. Click "A.M. Best Company" or go directly to the A.M. Best home page at [www.ambest.com](http://www.ambest.com). Note: You may be required to register at your first search.
  6. Enter the company name in the box labeled "Ratings & Analysis" and then click on "Go."
  7. Select the exact company name as it appears on the Bond Form to view the Best Ratings.
  8. To be acceptable, a Bid Bond shall:
    - a. Be written on the latest available edition of the AIA A310 or the equivalent (An equivalent form will have verbiage that states that it is in the form of the AIA A310 or its).
    - b. Be issued by a surety company licensed to do business in South Carolina;
    - c. Be issued by a surety company having, at a minimum, a "Best Rating" of "A" (Note: In the case of a construction contract under \$100,000, the agency may, upon written justification and with the approval of the OSE, allow the use of a "B" rated bond.);
    - d. Have a minimum "Best Financial Strength" of no less than five (5) times that portion of the contract price that does not include operations, maintenance, and finance;
    - e. Be accompanied by a certified and current power of attorney by the attorney-in-fact who executes the bond on behalf of the surety company; and,
    - f. Be enclosed in the bid envelope at the time of the Bid Opening, either in paper copy or as a Bid Bond authorization number provided on the Bid Form.
  9. To be acceptable, the Performance and Labor and Material Payment Bonds shall:
    - a. Be written on the most current editions of the SF-355, Performance Bond, and the SF-357, Labor and Material Payment Bond;
    - b. Be issued by a surety company licensed to do business in South Carolina;
    - c. Be issued by a surety company having, at a minimum, a "Best Rating" of "A" (Note: In the case of a construction contract under \$100,000, the agency may, upon written justification and with the approval of the OSE, allow the use of a "B" rated bond.);
    - d. Have a minimum "Best Financial Strength Category" of "Class V" and in no case less than five (5) times that portion of the contract price that does not include operations, maintenance, and finance;
    - e. Be accompanied by a certified and current power of attorney by the attorney-in-fact who executes the bond on behalf of the surety company;
    - f. Display the Surety's Bond Number; and,
    - g. Remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
  10. Information on A.M. Best financial Strength Ratings can be found here: <http://www.ambest.com/ratings/guide.asp>

20

## RISK MITIGATION

➤ Special Considerations (Liquidated Damages):

- ✓ Defined in contract
- ✓ Calculated for actual damages
- ✓ Cannot be punitive



21

## RISK MITIGATION

➤ Special Considerations (Governance Docs):

- ✓ Construction related contracts
- ✓ Labor related contracts



22

## RISK OUTCOMES & MONITORING

- Develop a plan for monitoring. Assign responsibilities.



23

## RISK OUTCOMES & MONITORING

- Formal documentation of all risk management activities leaves an important paper trail.



24

## RESOURCES

The Division of Procurement Services has prepared guidelines and related materials for evaluating risk when contracting, and for determining whether to limit a contractor's liability. In addition, the Division has approved three new clauses. The guidelines, clauses and guidance, and clause text are below.

- [Risk Analysis Framework for Service Contracts, version 1.1](#)
- [Risk Analysis Table](#)
- [Basic Guideline for Using Limitation of Liability Clauses, version 1.1](#)
- [Risk Analysis and Limitation of Liability \(Single and Multi-Agency\) Clauses and Guidance](#)
- [Risk Analysis Framework for Service Contracts, version 1.1](#)
- [Risk Analysis Table](#)
- [Basic Guideline for Using Limitation of Liability Clauses, version 1.1](#)
- [Risk Analysis and Limitation of Liability \(Single and Multi-Agency\) Clauses and Guidance](#)

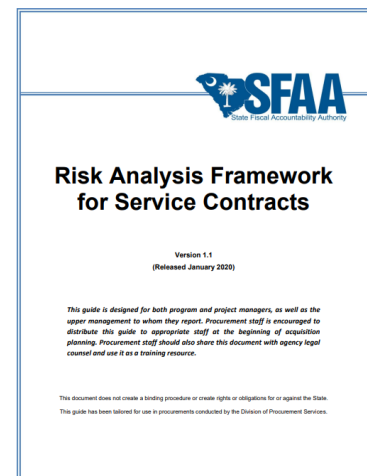
<https://www.procurement.sc.gov/legal/proc-docs#ditem-2449>

25

## RESOURCES

“As with any undertaking, contracts for services contain risks. Some risks are trivial and may be ignored; others are so catastrophic that they may cause a party to demand expensive concessions or back out of a proposed deal. But typically, the risks are manageable with enough foresight, planning, and careful negotiation. So how do you determine the degree of risk, and whether that risk may be tolerated, managed, or avoided altogether?”

<https://www.procurement.sc.gov/files/Risk%20Analysis%20Framework%20Ver.%201.1%20%282020%29%20FINAL.pdf>



26

## RESOURCES

### SC Regulations 19-445.2145.

#### C. Bonds and Security.

(1) Bid Security. Bid Security required by Section 11-35-3030 shall be a certified cashier's check or a bond, in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements - Part II, provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

(2) Contract Performance and Payment Bonds. Unless waived pursuant to Section 11-35-3030(2)(iii), the contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements-Part II. Each bond for construction exceeding \$50,000 shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Where the agency requires a payment bond for construction of \$50,000 or less, the bond must be issued by a surety meeting the requirements of Section 29-6-270. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

<https://www.scstatehouse.gov/coderegs/Chapter%2019.pdf>

27

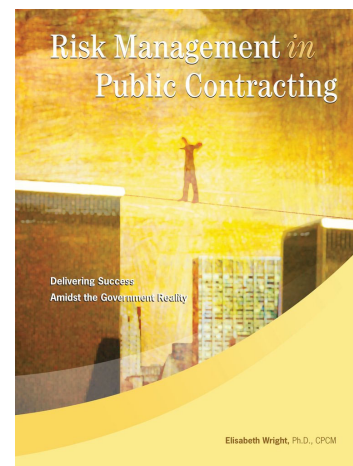
## RESOURCES

### Risks Management in Public Contracting

In *Risk Management in Public Contracting*, Elisabeth Wright, Ph.D., CPCM, offers a concise yet thorough overview risk and risk management in public sector contracting. Emphasizing the fluid environment of contracting and contract management, Ms. Wright underscores how planning, monitoring, anticipating change, and proactive oversight immediately impact the success of a contract stated outcomes. *Risk Management in Public Contracting* not only defines risk in the procurement cycle; but provides a theoretical background for understanding the nature of risk. Identifying a framework and methodology for managing risk ensures the success of both the public agency and the government supplier.

NIGP, 2007, 94 pages, softbound

[Risk Management in Public Contracting - NIGP Bookstore \(nigp-bookstore.myshopify.com\)](http://Risk Management in Public Contracting - NIGP Bookstore (nigp-bookstore.myshopify.com))



28

QUESTIONS?

Stacy Gregg, NIGP-CPP, CPPO, CPPB  
stacygreggcppo@gmail.com

**Stacy Gregg, CPPO, CPPB**

