



Construction Insurance and Contract Bonds

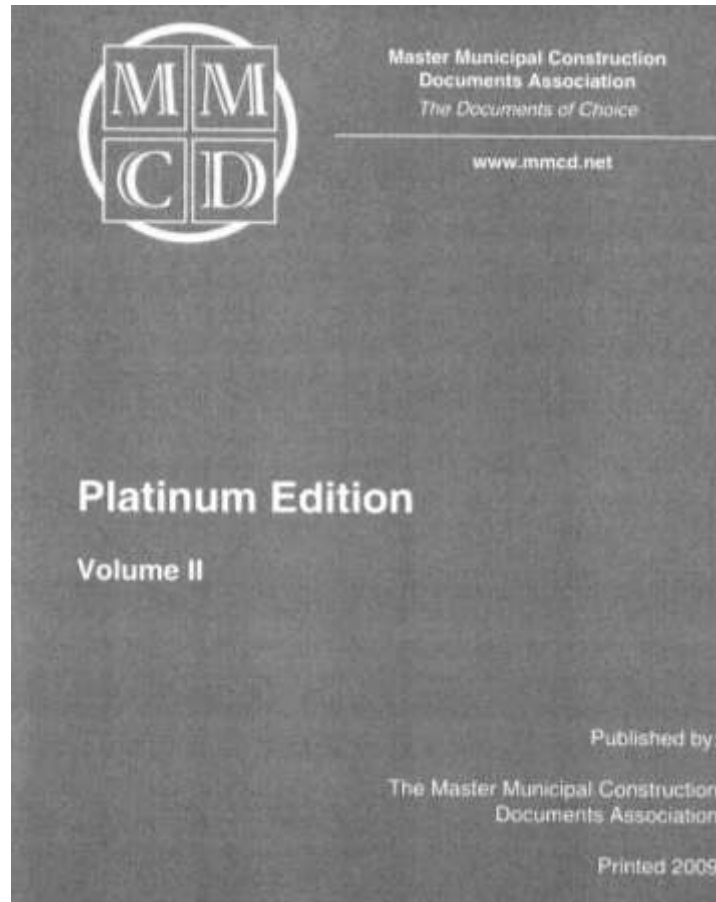


Ted Murray
CMW Insurance
Services Ltd.

Outline of Topics

- ◆ MMCD 2009 Insurance Requirements
- ◆ Construction Insurance
- ◆ Contract Bonding

MMCD - 2009



MMCD - 2009

- “Contractor will carry the following insurance”
- Comprehensive General Liability
- Course of Construction Builders Risk
- Contractor Supplied Equipment

24.0 INSURANCE

24.1 Required Insurance

24.1.1

Contractor will at the *Contractor's* expense, carry with an insurance company or companies and under policies of insurance acceptable to and approved by *Owner* the following insurance with limits not less than shown in the respective items:

(1) Automotive Liability Insurance (Owned and Non-Owned Units)

Limits: Bodily Injury and Property Damage – inclusive each accident \$3,000,000

The *Contractor* shall, at the *Contractor's* expense, throughout the term of the *Contract*, maintain such insurance as required under the Insurance (Motor Vehicle) Act of British Columbia. The *Contractor* shall provide the *Owner* with a Certificate of Insurance, I.C.B.C. form No. APV 47, for owned or leased vehicles as evidence of third party motor vehicle insurance coverage.

(2) Comprehensive General Bodily Injury and Property Damage Liability Insurance

Limits: Bodily Injury and Property Damage - inclusive \$5,000,000

The insurance shall include *Contractor's* Contingent Liability, and Contractual Liability of sufficient scope to include the liability assumed by the *Contractor* under the terms of this *Contract*, and Completed Operations Liability. The policy shall include the *Owner* and the *Contract Administrator* as additional insured's with a cross liability clause. Any property damage deductible shall be for the account of the *Contractor* and shall not exceed \$2,500.00 for any one occurrence.

(3) Course of Construction Builders' Risk Insurance

Coverage on an "All Risks" basis in the amount of not less than the amount of the *Contract Price*; subject to a deductible provision for the *Contractor's* account not exceeding \$2,500.00 each loss. Coverage to include the *Owner* as an additional insured.

(4) Insurance on *Contractor* supplied Equipment

Equipment rented or owned by the *Contractor* to its full insurable value.

- 24.1.2 The above insurance policies listed in this GC shall have the right of subrogation waived as against the Owner and its respective employees, servants and agents.
- 24.1.3 Prior to commencement of any Work, the Contractor shall provide the Owner with satisfactory evidence that the insurance required to be provided by Contractor under this GC is in full force and effect.
- 24.1.4 The Owner makes no representation or warranty with respect to the extent or adequacy of the insurance protection afforded by the policies above. It shall be the full responsibility of the Contractor to determine their own additional insurance coverages, that are necessary and advisable for its own protection or to fulfil its obligations under this Contract. Any such additional insurance shall be provided and maintained by the Contractor at the Contractor's own expense.
- 24.1.5 All policies referred to in this GC shall provide that thirty (30) days notice of cancellation will be given in writing to each insured, including the Owner, otherwise the policies to remain in full force and effect until the Work has been completed. Notwithstanding the foregoing, the Comprehensive General Bodily Injury and Property Damage Liability Insurance referred to in GC 24.1.1.b) shall remain in full force and effect from the commencement of the performance of the Work for a period of not less than twelve (12) months following Total Performance, and with respect to completed operations coverage for a period of not less than 24 months following Total Performance.
- 24.1.6 The Contractor is responsible for ensuring that its Subcontractors comply with the same insurance requirements as outlined in this GC.

MMCD - 2009

- Insurance Requirements Often Amended by Supplementary General Conditions
 - Delete GC 24.1.1 and substitute with the following:

Liability Insurance

Liability

- Commonly known as Comprehensive General Liability Policy (CGL)
- Referred to in contract as General Liability Insurance
- Annual policy
- Covers all of the operations of the contractor

Liability

- Third Party Property Damage
 - Damaging someone else's property
 - Damage due to negligence of insured
 - Excludes damage to project or work
- Bodily Injury
 - Includes death
- Insured Must be legally liable

Liability

- Compensatory damages only
 - No punitive damages paid
 - Maximum amount is limit of insurance
- Defense costs!
 - Legal bills to defend an action add up quickly

Liability

- Occurrence Based Coverage
 - Responds to claims where the occurrence is within the policy period
 - No matter when the problem manifests itself
 - Hidden water damage in a structure
 - Never throw a liability policy out!
- Named Insured
 - Controls policy
 - Can cancel or amend coverage

Liability

- Additional Insured
 - Adds other parties onto the liability policy
 - Owner
 - Consultant
 - City or other public body
 - Provide coverage only for liability arising out of the operations of the named insured
 - Defense costs

Liability

- Completed operations coverage
 - Coverage for liability arising from past work
 - Past work could have been done many years previous

Liability

- Rating
 - Annual policy
 - Premium based on annual revenue of company
 - Different rating applied to different types of work (even when done by the same contractor)
 - Work done under wrap up vs. done under own insurance

Liability

- “Wrap Up” Liability
 - Project specific general liability coverage
 - Does not cover off site occurrences
 - All contractors, subcontractors and consultants are insured
 - Often provides 24 month completed operations coverage
 - Project Wrap Up policy premium based on contract value
 - \$1.00 - \$1.75 per thousand of construction cost per year

Builder's Risk

Also known as

Course of Construction

Builder's Risk (COC)

- Also known as:
 - Course of Construction insurance (COC)
- Insures the “work” (property under construction)
 - in the control of the contractor
 - materials going into the work
 - on site, and while in transit to site

Builder's Risk (COC)

- Insures against All Risks (perils)
 - If a peril is not excluded it is covered
 - fire, water damage, explosion, etc.
- Exclusions
- Exceptions to exclusions

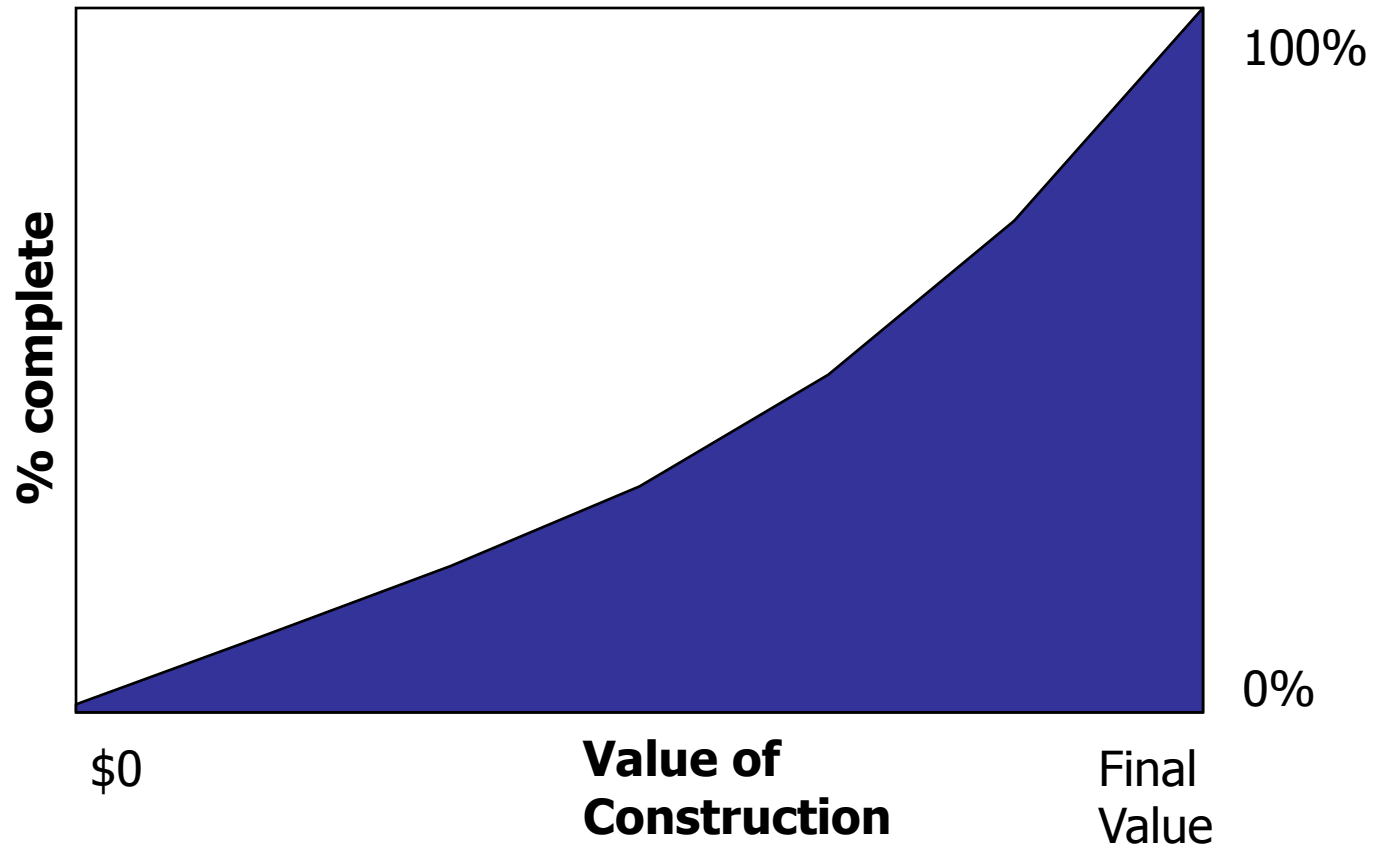
Builder's Risk (COC)

- **Hard Costs**
 - Includes all materials and labour going into the project
 - Coverage includes hoarding falseworks
 - Does not cover equipment on site (tower crane)
 - Insured on site, in transit, temporary location
- Insurance carried is at least 100% of total contract price

Builder's Risk (COC)

- Unique problem of valuation (Hard Costs)
 - Value at beginning is \$0 - nothing to insure
 - As construction progresses value increases
 - At final completion insurance covers full value
- Insurers base rate on total value of contract
- Premium is charged per month of construction duration

Builder's Risk (COC)



Builder's Risk (COC)

- Soft Costs
 - Would have to be incurred again in addition to the Hard Costs
 - Interest
 - Permit and design fees
 - Presale and marketing costs
 - Inflation
 - Owner provides the amount to insure

ENDORSEMENT NO. 8

EFFECTIVE: October 1, 2009

It is hereby understood and agreed that this Endorsement cancels and replaces Endorsement No. 2 of the within policy.

WARRANTIES CLAUSE FOR WOOD FRAME CONSTRUCTION PROJECTS

ATTACHED TO AND FORMING PART OF THIS POLICY.

It is understood and agreed that, otherwise subject to the terms, exclusions, provisions and conditions contained in the policy or endorsed thereon, the Insurers shall indemnify the Insured for loss or damage directly or indirectly caused by fire, theft, vandalism or explosion, provided that:

1. Video Surveillance Warranty

The Insured shall maintain a contract for the services of a centrally monitored video surveillance system at the project location during the period from the commencement of framing of wood-framed structures until the insured project ceases to be the subject of this insurance. The provider is Sonitrol, and this service provider shall not be changed, nor the service provider's contract reduced in scope, without the prior written permission of Allianz Global Risks US Insurance Company.

This warranty applies to new construction over \$2,500,000 and unoccupied projects.

This warranty does not apply to Building Envelope Remediation projects below \$2,500,000, for entities financed by the British Columbia Housing Management Commission and to whom a certificate has been issued on behalf of the Insurers.

2. Open Flame Warranty

Where a propane gas heater or open flame heating device is used, the device will be positioned on fire resistive drywall board, tied off to a wall or floor with not less than three (3) feet of clear space surrounding it.

3. Fence Warranty

The site is to be fenced and access controlled.

This warranty applies to new and unoccupied projects.

This warranty does not apply to Building Envelope Remediation projects below \$2,500,000, for entities financed by the British Columbia Housing Management Commission and to whom a certificate has been issued on behalf of the Insurers.

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- (iii) grinding operations that generate sparks;
 - (iv) torch-on roofing operations;
 - (v) roof tarring operations.

FAILURE TO COMPLY WITH THIS WARRANTY THAT HAS A MATERIAL CONTRIBUTION TO ANY CLAIM SHALL RENDER ALL INSURANCE UNDER THIS POLICY NULL AND VOID.

Builder's Risk (COC)

- Delayed Opening Coverage
 - Purchased along with COC policy
 - Provides money to make up for the lost revenue caused by the delay
 - Triggered by a claim under the Course of Construction insurance
 - Crucial in multi family residential (rental) or multi tenant retail projects

Builder's Risk (COC)

■ Rating

- Premium calculated per \$100 of insured value and charged per month
 - Fire resistive (masonry, steel stud, structural steel) .6 - 1.5 cents per \$100 per month
 - Wood frame 4 – 12 cents per \$100 per month
 - Civil work 2 – 4 cents per \$100 per month

Builder's Risk (COC)

- Installation Floater
 - Blanket Insurance for “Contractors Work”
 - Used to insure smaller and renovation type projects
 - Usually a small limit, less than \$500,000
 - Stand alone COC is put in place on larger projects.

Machinery Breakdown Insurance

This is not required in the MMCD spec

Machinery Breakdown

- Insures mechanical and electrical equipment
 - Damage caused by failure or derangement
 - Plugs a gap in builders risk insurance
 - Example: Transformer incorrectly wired causing catastrophic failure. Damage is \$87,000

Certificates of Insurance

Certificates of Insurance

- Evidence of insurance
 - Shows insurer, limits and type of coverages
 - Should be required on every project
 - Contractors give to owners
 - Owners give to contractors
 - Coverage subject to terms and conditions of the policy

Certificates of insurance

- Adding entities as additional insured
 - “Only with respect to liability arising out of the operations of the named insured”
 - Provides for the cost of defending the additional insured if sued because of insured’s negligence



**CERTIFICATE
OF INSURANCE
No.23**

CMW Insurance Services Ltd.
700-1901 Rosser Avenue
Burnaby, BC V5C 6R6
Phone: 604-294-3301
Fax: 604-294-3003

To: The Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC)
400-3585 Gravely Street
Vancouver, BC V5J 5J5

The policy(s) of insurance as herein described have been issued to the Named Insured below and are in full force at this date.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy(s) below.

This is to certify that the policy(s), designated below is/are in force as of this date and provides the type of insurance set forth opposite the policy number, subject to the terms and conditions of the policy(s). Limits shown may have been reduced by paid claims.

Name Insured and Mailing Address:

Anyone Contractors Ltd.
6855 Material Avenue
Burnaby, BC V5J 4M5

Policy Period: **From:** February 1, 2009 **To:** February 1, 2010
Both Dates to 12:01 am Standard Time at the address of the Insured as shown above.

Re: **Various Projects**

Interest Insured & Limit(s) of Liability:

A. Property & Business Interruption:

\$ 130,050. Contractor's Equipment Floater
\$ 85,000. Miscellaneous Tools & Equipment (Maximum \$2,500. per tool)
Conditions: "All Risks" Replacement Cost Valuation up to 10 Model Years, all others Actual Cash Value
80% Co-Insurance

B. Commercial General Liability

\$ 5,000,000. Inclusive each bodily injury/property damage per accident or occurrence and in the aggregate with respect to Products and Completed Operations.
\$ 5,000,000. Non-Owned Automobile Liability

C. Excess Liability

\$ 5,000,000. In Excess of Commercial General Liability Policy noted above

Effective Date: March 2, 2009

Additional Insured: It is hereby understood and agreed that **The Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC)** is added as an additional Insured but only with respect to liability arising out of the operations of the Named Insured.

Special Conditions: Should any of the policy(s) described herein be cancelled before the expiration date thereof, the issuing company will endeavour to provide 30 days written notice of cancellation to the certificate holder named above.

Insurer:

<u>Insurer:</u>	<u>Interest</u>	<u>Section</u>	<u>Policy Number</u>
Great American Insurance Companies	100%	A	5073762
GCAN Insurance Company of Canada	100%	B, C	TBA

The Insurance described above is subject to the limitations, exclusions and conditions contained in the policy(s).

Authorized Representative:

March 2, 2009
E&OE/ CENT-01/TED/MB

CMW Insurance Services Ltd.

THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE

Construction Contract Bonds

Contract Bonds

- Outline of Topics
 - The Bond Facility
 - Bid Bonds and Consents of Surety
 - Performance and Labour & Material Payment Bonds (L&M)

The Bond Facility

The Bond Facility

- Bonds are not insurance!
 - 3 party agreement (Obligee, Principal and Surety)
 - Guarantee of performance
 - Irrevocable; non cancelable
 - Once they are issued in place until the contract is complete

The Bond Facility

- Analysis of financial strength
- Outline of experience
- Adequate infrastructure
- Good character
- 3 C's of Surety
 - Capital
 - Capacity
 - Character

The Bond Facility

- Indemnity Agreement!
 - Principal owner(s) and spouse(s)
 - Corporate
 - Operating company
 - Holding company(s)
- Set up once then maintained
 - Interim financial information
 - Annual financial statements
 - Quarterly updates

Bid Bonds and Consents of Surety

Bid Bonds & Consents of Surety

- Available only after a contractor has qualified for a bond facility
- Issued at the tender stage
- Acts as a pre qualifying tool for the owner

Bid Bonds & Consents of Surety

- Bid Bond
 - Included with tender
 - Bond penalty is (usually) 10% of contract price
 - Bid bond guarantees bidder will enter into a contract if awarded. If not....
 - Bond is called and money is paid to owner to ensure it gets lowest bid price

Bid Bonds & Consents of Surety

- Consent of Surety
 - Sometimes called “Agreement to Bond” or “Undertaking of Surety”
 - “Promise” from bonding company they will issue the performance and labour & materials payment bond
 - Untested in the courts

Performance Bonds

Performance Bonds

- Guarantees the contract will be completed
- Usually in the amount equal to 50% of contract value
- Runs concurrent with life of contract including maintenance provisions

Performance Bonds

- Default of contract triggers bond claim
- Bonding company must step in to either:
 - Remedy the default or,
 - Complete the contract or,
 - Pay out the bond penalty
 - Last resort
- Will not act if not clear default

Labour & Material Payment Bonds

Labour & Material Payment Bonds

- Ensures payment to sub trades and material suppliers
- Protects the owner from liens due to general contractor not paying bills
- Claimant must have a direct contract with contractor

Labour & Material Payment Bonds

- Federal government projects require “broad form” L&M bonds
 - Additional tier of claimant (sub of a sub)
- Only issued in conjunction with Performance bond
- Typically where the most claims arise

Performance and L&M Bonds

■ Rating

- Premium always based on per \$1,000 of contract price
- \$6 for the Performance bond
- \$4 for the L&M bond
- Rates are for 12 month term
- Better rates for large, well financed contractors – Volume discount