

Hoffer, Mark

From: Kahn, Lawrence [lkahn@law.nyc.gov]
Sent: Monday, June 10, 2002 12:40 PM
To: 'markh@dep.nyc.gov'
Subject: FW: Downtown Building Cleaning

-----Original Message-----

From: Kahn, Lawrence
 Sent: Monday, June 10, 2002 12:18 PM
 To: 'mhoffer@dep.nyc.gov'
 Cc: Rubin, Gail
 Subject: FW: Downtown Building Cleaning

Per our discussion, the "duplication of benefits" provision Gail Rubin cites below is the source of the requirement that FEMA has imposed upon us to require the beneficiaries of federal assistance to seek any available compensation, including insurance proceeds, and reimburse the City (which in turn would reimburse FEMA). I assume the language proposed by FEMA and in substance included in the exterior license agreement (see the paragraph toward the end of the 4/16 e-mail from Gail Rubin below, beginning with "Licensor shall reimburse licensee for the removal of the debris accumulations provided for in this License Agreement . . . ") will be included in the interior cleaning licenses. As suggested in my earlier e-mail, we would like to broaden this by adding: "and for any other debris removal performed to date."

Also, per Gail's request below, could you please send us a copy of the letter sent to the State with respect to the exterior cleaning project agreeing to indemnify it and the draft of any similar letter with respect to interior cleaning.

Any progress on insurance?

Thanks.

-----Original Message-----

From: Rubin, Gail
 Sent: Friday, June 07, 2002 6:33 PM
 To: Kahn, Lawrence
 Subject: FW: Downtown Building Cleaning

Here is the correspondence on the license agreement for the earlier exterior debris removal project. My understanding is that the State required a letter representing our agreement to indemnify them. I would like to have a copy of that letter, by the way, and I assume a similar letter will have to go out on the interior removal project. Russ Pecunies was dealing with this, I believe.

The STafford Act, 42 USC 5155, "duplication of benefits", provides that a person receiving federal assistance is liable to the US to the extent such assistance duplicates benefits available to the person for the same purpose from another source. It also says the President shall assure that no person will receive federal assistance for any loss for which he received financial assistance from another program or from insurance or any other source. FEMA implements this by requiring recipients of federal funds to agree to reimburse it in circumstances like the ones described below. The necessary language now appears in the exterior cleaning license agreement.

-----Original Message-----

From: Rubin, Gail
 Sent: Tuesday, April 16, 2002 1:20 PM
 To: 'Pecunies, Russ'
 Cc: Levi, Steven; Michele Levine (E-mail)
 Subject: RE: Downtown Building Cleaning

Hi Russ, thanks for the drafts. In order to be FEMA reimbursable, the building owner or the City must agree to indemnify the State (who has already agreed to indemnify the FEMA). Obviously, it would be preferable if the building owner would provide the indemnification, but if this is not feasible, then the City must provide it. This should either be incorporated into the License Agreement, so the owner will indemnify the State, or the City has to do so.

Second, in order to get the FEMA money, you need to insert their suggested paragraph re insurance proceeds. It is similar to their standard paragraph, but you might limit the first sentence to compensation received for "debris removal", or phrase it another way, because your license agreement doesn't use that term. You seem to use "removal of foreign material". The way the FEMA-drafted paragraph would work is that a licensor who receives money from any other source would have to reimburse us, rather than requiring only a licensor who receives money for debris removal from any other source to reimburse us. Their standard language is limited to the second situation.

Third, you might wish to insert a paragraph requiring owner cooperation. The standard FEMA "right of entry agreement" provides for owner assistance in marking sewer lines, water lines, utility lines, etc. You may want owner cooperation on other issues.

Fourth, the standard FEMA "right of entry agreement" provides that the owner will hold harmless the City doing the work, its agencies, contractors, etc. Obviously this will make owners less likely to sign. You have to decide if this is something you need; obviously from a risk perspective it would be nice to have. The theory here is that you are doing the owners a favor by doing work on their buildings, so they should hold us harmless. Of course, they will not be happy with that.

As for the letter, I have some hesitation to say that DEP will pay the fees and expenses of the contractor if you have to go after the insurance proceeds. You might say DEP will pay the expenses "in the first instance."

I hope these comments are helpful.

-----Original Message-----

From: Pecunies, Russ [mailto:russp@dep.nyc.gov]
 Sent: Monday, April 15, 2002 2:40 PM
 To: 'Patricia.Trask@fema.gov'; 'Adrian.Sevier@fema.gov';
 'jean.cox@semo.state.ny.us'; 'lilan@cityhall.nyc.gov';
 'lyee@oem.nyc.gov'; 'slevi@law.nyc.gov'; 'grubin@law.nyc.gov';
 'samron@law.nyc.gov'
 Cc: Hoffer, Mark; Gilsenan, Michael; Radhakrishnan, Krish
 Subject: Downtown Building Cleaning

To update everyone concerning the downtown building cleaning issue... Bids for all three contracts have been opened and three low bidders have been identified. The contracts have not been awarded pending changes to the insurance specifications and resolution of outstanding issues regarding the letter and license agreement.

I have attached the current drafts of the letter and license agreement. I think the letter is pretty close to being done. Please advise if you have any additional comments.

As for the License Agreement, the new draft incorporates several comments from Steve Levi of NYC Law Dept. You will note that there is no

indemnification clause of any kind. This is because I am getting conflicting signals on who needs to be covered by whom and for what. So far it appears that FEMA and SEMO require some kind of language for the City to indemnify NYS from claims arising out of the debris removal so that NYS can indemnify FEMA and Fed Govt from such claims. A question has also been raised as to whether the building owners should be indemnifying NYC. Please provide any and all comments with regard to the issue of indemnification so I can try to pull something together that will satisfy everyone.

Also: FEMA has proposed the addition of the following paragraph:

Licensors shall reimburse Licensee for the removal of the debris accumulations provided for in this License Agreement from any compensation it receives from any other source including, but not limited to, the Small Business Administration, private insurance or any other local, state or federal assistance program. Licensors shall make claim for any applicable insurance coverage for these premises and shall report to Licensee any insurance settlements or other source of funding for debris removal that has been performed at Licensee's expense.

Please comment.

Finally, as I mentioned above, we are amending the insurance specs which were included in the bid package. Please provide comments as to who (other than NYC, which is already named) should be named as additional insureds.

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