SNOW START UP

ISSUE #2: FOCUS ON **RISK MANAGEMENT**

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DELICATE BALANCING ACT

It all comes down to the contract. What you promise to deliver, how you structure your portfolio of work and what type of liability you're willing to accept all contribute to the risk you're willing to shoulder as a snow and ice management contractor.

Types of contracts

In the snow and ice management industry, the favored types of contracts vary by market, client type and location. But ensuring that the expectations, terms and conditions are clearly defined and priced accordingly — regardless of the contract type — is essential to good business practice.

Readiness costs money

It is critically important that we as an industry align with the true value and service we provide, which goes beyond the actual act of snow and ice removal. Accounting for those costs in the price of your contract will position you as a professional that your client can count on.

With most traditional contract models, there is almost always a perceived winner and loser. Therefore, contractors and clients are positioned at opposite ends of the success spectrum, establishing a combative relationship before the snow even falls.

Instead, strive for a mutually beneficial agreement whenever possible. This is achieved by adopting contract models that incentivize efficiency and result in predictable and repeatable revenue for you and expenses for your clients, allowing them to more accurately budget — regardless of the snowfall totals.

Diversification offers protection

Many important factors contribute to the long-term success of a snow company's business, the desired objective being profitability, and a minimum result being financial viability. Don't confuse the two. Viability is the ability for an entity to

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RISKS & REWARDS OF TRADITIONAL CONTRACT MODELS

CONTRACT	RISKS	REWARDS
Per occurrence	High risk of revenue problems in low-snow years; clients may exhaust budgets in high-snow years, causing them to rethink this type of contract	Strong revenue potential in high-snow seasons; easy to allocate costs given the detail-oriented billing required
Per event	High risk of revenue problems in low-snow years; clients may exhaust budgets in high-snow years, causing them to rethink this type of contract	Strong revenue potential in high-snow seasons with many short events. Revenue balanced with frequency of events due to aggregated billing of the whole event
Time & Materials	High risk of revenue problems for contractors in low-snow years; clients may question pricing and imply gouging	Strong revenue potential in long-duration storms; easy to allocate costs given the detail-oriented billing required
Seasonal	Costs to deliver service may exceed the total of the seasonal payments in a heavy snow year; clients may feel cheated in a low-snow year	Consistent and equal payments throughout season cover costs and aid cash flow; often used in multi-year agreements; profitable in lighter snow years

As you can see, these contracts on their own can pit contractors and clients against each other, depending on the season — with no mutually beneficial outcome. Instead, consider building a portfolio that balances contracts that incentivize performance and preparedness (see chart on page A4).

MAKE SURE YOU'RE COVERED

Obtaining proper insurance for snow plow operations can be difficult (and expensive) since many insurance companies are skittish about insuring companies in a volatile, high-risk industry. Here's what you need to know about the types of insurance that will ensure you're properly covered:

Commercial General Liability (CGL): This critical insurance (usually required by your customers) will reimburse you or your customers for damage to their property or for injury to people on their premises after you have performed your work; damage to premises that you rent, etc.

Commercial Auto: This insurance coverage protects you against loss from damage to your vehicles and damage caused to others while using the vehicle for driving and as equipment to perform your work. Coverage may include liability (loss to others), personal injury protection for drivers and passengers, collision (damage to your vehicles), and comprehensive (damage to your vehicles that doesn't occur from collision).

Property: This insurance and various endorsements (e.g., equipment breakdown, crime, etc.) is for buildings and personal business property that do not leave the premises. A business interruption clause or endorsement on your property policy protects the insured for losses of business income as a result of direct physical loss, damage or destruction to the insured property.

Inland Marine: This insurance is for computers, communications equipment and property that leave the premises. It should include items that, in the aggregate, would be expensive to replace but may not be worth insuring individually.

Workers' Compensation: This covers costs incurred due to employee workplace injury, including an employee's lost income. This is required by US law in all states. The limits of coverage are described by statute, and premiums are determined by past employee injury expenses and current payroll.

Umbrella: This insurance adds additional liability protection for general liability, auto liability and some miscellaneous types of liability. It is usually purchased in "layers" of $1 million. An umbrella policy is typically required for larger contracts and some aggregators.

As your business grows, you'll want to consider additional policies or endorsements (e.g., cyber crime, employer's practices, environmental, etc.) that will protect you and your company in the event of such a loss. Remember, too, if you are a small company that operates out of your home, a home-based business policy or rider will be necessary since your homeowner's insurance will not provide adequate coverage.

STANDARD VS. EXCESS LINES

A standard carrier is an insurance company that has received a license for the authority to write specific lines of insurance. They are bound by rate and form regulations and are strictly regulated. Standard carriers often can be more competitive; offer broader coverage forms; have internal claims and loss control divisions; and have a higher likelihood of combining core and non-core business segments under one insurance program.

Excess & Surplus lines allow policyholders, agents, brokers and insurance companies to design specific coverage and negotiate pricing based on the risks to be secured. Some lines are unlicensed and non-admitted; these will typically fall outside of the state insurance department's authority, leaving no leverage to assist if a loss occurs and coverage is declined. Higher-risk businesses (e.g., poor claims history, weak contracts and higher-risk exposures) may find E&S lines are the only option.

***Disclaimer:** This article is designed to provide an insurance overview and is not all-encompassing. Work with your insurance agent to determine proper coverage, limits and endorsements for your business. Canadian readers should contact an agent to determine requirements in their province.*

BEST PRACTICE: Select an insurance agency/agent that understands the industry or is willing to learn. They should understand your client base; portfolio balance and contract types; payroll and sales volume; service verification methods; and your training, health and safety policies.

KEY SNOW ENDORSEMENTS

Hold harmless and indemnification provisions have become the means by which liability is transferred from the property owner to the snow contractor. Obtaining key endorsements (additions to the insurance policy) properly transfers liability and finances the risk of snow and ice services:

Additional insured. Allows a person or organization to be insured under an insurance policy (i.e., contractor additionally insures the client), in addition to whomever originally purchased the policy. The most common endorsements in the snow industry are CG2010 (coverage for ongoing operations) and CG2037 (coverage for completed operations). Most snow contracts require both endorsements.

Snowplow completed operations. An unendorsed general liability policy specifically excludes bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, auto or watercraft. The CG2292 Snow Plow Completed Operations endorsement provides coverage for an auto used for snow plowing.

Primary/Noncontributory wording. Protects the financial resources (and insurance limits) of the property owner or general contractor from the contractor's individual or joint negligence that causes injury or damage to a third party. Primary = your insurance policy will pay first in the event of a claim. Non-contributory = your policy will pay the full amount of the claim until limits are exhausted without your client contributing to the loss with their own insurance. Some carriers may be unwilling to provide this endorsement on general liability, business auto or both.

Waiver of subrogation. An endorsement to a property liability policy whereby a snow contractor's insurer waives their right to subrogate against the property owner (or general contractor) and will not seek to recover funds even if the other party was at fault.

DOCUMENT & VERIFY

Data is key in defending your company against claims

Liability is the ugly monster that can cause insurance rates to skyrocket or make it unaffordable (if the insurance company is even willing to offer a policy). The defense of slip and falls or other lawsuits is a costly and time-consuming task. The best defense is by going on offense and implementing a process of recordkeeping and service verification. The proof will be in the details:

Contracts. It all starts here. Do not perform any services without a written contract signed by you and your client that clearly outlines the level of service and scope of work to be performed. Question unrealistic or unacceptable expectations that will put you at risk.

Subcontractor agreements. If you use subcontractors, require them to sign a contract outlining their duties and require them to provide proof of insurance coverage.

Service documentation. If you can't prove you did something, you didn't do it. Capture every move you make on a site, including but not limited to start/stop times; services provided with what equipment and by whom; type, amount and timing of deicing/anti-icing materials applied; site hazards; and any areas that were not able to be serviced due to circumstances such as vehicles blocking part of the parking lot.

Weather conditions. Record weather conditions before, during and after the event. Ideally, track any time there are slippery conditions that could lead to a liability issue. Document timing but also what the snow was like and extenuating circumstances that may have impacted your ability to service. Document if it was snowing at the time of service. "Storm in progress" is a strong defense in many states, but it must be documented.

Invoicing. The invoice you submit to your customer should include details outlining your services noted above.

All customer communications. Compliments, complaints, service requests, changes in service levels, closings, hours of operations, etc. Particularly important are to get any changes in service levels or service requests not outlined in the executed contract in writing.

ADDITIONAL RESOURCES

SIMA members have access to insurance-specific resources and companies with experience in the industry. Learn more at *sima.org/insurance*.

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survive, especially during certain periods of stress; profitability speaks to the ability for an entity to actually make a profit.

Periods of stress can challenge a snow startup, especially in an industry where that stress can be present one year and not the next. Diversifying your contracts and the method by which those accounts pay for service may help minimize risk of financial swings, while increasing viability and long-term success.

With a mix of contract models based on your business's tolerance for revenue and profit fluctuation, balance can be created that can help normalize potential swings of light and heavy snow seasons alike.

PERFORMANCE / PREPAREDNESS CONTRACT MODELS

PERFORMANCE-BASED CONTRACTS	PREPAREDNESS CONTRACTS
Incentivize for meeting or exceeding a level of service expectation and efficiency	Incentivize for meeting a minimum state of readiness sets fees or rates
Fixed seasonal contract (i.e., lump sum seasonal): • Normally priced within a range of average to slightly above average winters. • Requires a multiyear/season agreement of at least 3 years and preferably 5 years to pay off for the contractor and client.	**Fee-based contract:** • A preseason fee or an equal monthly installment is paid to the contractor for the fixed overhead expenses it costs for being prepared, no matter how much or little it snows. • In exchange, a lesser hourly or per occurrence rate is negotiated.
Seasonal variance contract (adds floor/ceiling caps): • A base cost is established within the seasonal average range with a floor to provide clients with a negotiated credit for extreme light winter seasons and to provide contractors with additional cost recovery for extreme heavy seasons. • Within this contract model a cap can be set for the floor and ceiling.	**Retainer-based contract:** • A minimum cost for preparedness is established between the contractor and client. This is the minimum retainer to be paid preseason and is deducted from the cost of service throughout the season. • Once the retainer amount has been reached, lower negotiated hourly or occurrence-based rates protect clients from high-season cost fluctuations more effectively than T&M or quantity-based contracts. This model also protects contractors from losing money during extreme low seasons.

VOCABULARY LESSON

SOW VS LOS

➔ Often confused but not interchangeable, every contract should include a detailed scope of work (SOW) that will accomplish the client's desired level of service (LOS).

Scope of Work (SOW)
Defines the service criteria (e.g., snow clearing, ice management, etc.) and specific areas to be serviced on a site or set of sites. The SOW can include any issues that may impact the execution of service (e.g., poor site drainage, slopes/hills etc.).

Level of Service (LOS)
A description of the expected outcome(s) on a site or set of sites from the completed performance of snow and ice management services. LOS typically defines expectations for surface conditions at specific times (completion times) or timeframes, or alternate/additional expectations for events that exceed a defined timeframe and/or a defined amount of accumulation(s).

KEY RESOURCES

SIMA members have access to multiple contract templates and advanced clauses.
my.sima.org

Download SIMA's Glossary of Terms, which includes key definitions of important contract terms and conditions.
my.sima.org

Visit **www.sima.org/startup** for all Snow Startup resources