RISK

MANAGEMENT, commercial general liability insurance—commercial automobile insurance—professional liability insurance—excess liability insurance--umbrella liability insurance—fidelity bonds—commercial property insurance

INSURANCE commercial automobile liability insurance—professional liability insurance—excess liability insurance—umbrella liability insurance—fideilty bonds—crime insurance—inland marine

and

PUBLIC commercial property insurance—boiler & machinery insurance—workers' compensation insurance—employer's liability insurance--aircraft liability and hull insurance—director's and officer's liability insurance—medical malpractice insurance—performance bonds—payment bonds—watercraft insurance

PROCUREMENT

A Guidebook for the Virginia Public Procurement Professional

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(Excerpt)

COMMONWEALTH OF VIRGINIA AGENCY PROCUREMENT AND SURPLUS PROPERTY MANUAL

Standards of Conduct

The laws of this Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally because of the extraordinary trust and responsibility exercised by public officials conducting procurement transactions, and because of the legitimate expectation of the public that his trust and responsibility be exercised property.

Public officials must be cognizant of these laws which include the Virginia Public Procurement Act, the State and Local Government Conflicts of Interest Act and the Governmental Frauds Act. All public employees having official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. Transactions requiring the expenditure of public funds require the highest degree of public trust.

PREFACE

Much of the material presented here relates to Virginia state agency and local government procurement experience. The Virginia Public Procurement Act (VPPA) and the Agency Procurement and Surplus Property Manual (APSPM) published by the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, were ever present in the experiences that went into this manual. To this is added the experience of numerous state and local procurement professionals and their multitude of good ideas and best practices. Errors, of course, are my own.

The term “your entity” occurs a lot. That is because it is difficult to find a satisfactory general name for a public organization given their diversity; states, counties, cities, towns, boards, commissions, authorities, instrumentalities and other public bodies. Insurers love the term “municipality”, but that really doesn’t work. If “entity” doesn’t work for you, substitute your own descriptive.

You will also find certain terms in bold when you first encounter them. This indicates a definition of the term can be found in the glossary.

A discussion of risk transfer starts the guidebook followed by a ten step program to administer the insurance requirements in public procurement contracts. The largest part of this guidebook is devoted to preparing the insurance specifications, with subjects ranging from hold-harmless clauses to issues with deductibles to additional insured endorsements. Certificates of Insurance are always of interest and are given their due. Insurance specifications for common exposures include suggested requirements for working with contractors, construction contractors and suppliers. Special insurance situations, such as professional liability and hazardous material exposures are discussed, followed by a description of the types of insurance typically found in public procurements. There is some discussion on what happens after the award is made. There is also a working glossary of terms that should prove useful. Finally, this is not a legal document nor regulatory in any way.

CONTENTS

FORWARD

Public Purchasing and Risk Management

The concepts of public purchasing and contract management are indissolubly linked with risk management. The risks that arise during the execution and management phase of a public purchase may be due to either the inability of the contractor to fulfill his contractual obligations, the inability of the entity to effectively manage the contract, or factors beyond the control of the two parties. The effort here is to provide sufficient information and assistance to enable a successful procurement with a minimal consequence of risk.

It is intended that this manual serve as a basic risk management and insurance guide for the Virginia public purchasing professional in preparing and evaluating requests for proposals or invitations to bid, or reviewing contracts. This manual discusses how to establish insurance requirements for contracts with vendors, contractors, tenants and users of public property, and how to monitor their compliance with those requirements both during the term of the contract and following its expiration.

It should be noted that risk management is more art than science, and therefore, although this manual will provide guidance in most cases encountered by the user, there will be exceptions to the rules found here. You many not agree with everything presented here. Should situations arise that may question or fall outside this guidebook's recommendations, please contact your insurance advisor or legal counsel. This is not legal advice. The effort here is to provide the information, tools and resources to assist the use of the best insurance and risk management practices in public purchasing.

Remember, insurance is only one way that a contractor can indemnify your entity. Non-insurance sections of the contract are also important to the risk management process. Make sure your indemnity language is strong, and if the contractor does not have sufficient or the correct insurance to cover their obligations to your entity, make certain they do have the assets to indemnify those uninsured and underinsured areas.

It is not your problem if the contractor’s insurance does not cover all of their indemnity exposures; that is their problem to solve. There should always be a section in the contract that states that the lack of insurance does not negate the contractor’s obligations under the contract.

Everyone wants the contractor to succeed. Your entity needs the contractor to succeed. Attentive public purchasing coupled with attentive risk management will make it happen.

I always enjoyed the inquiry into procurement and purchasing. To me, procurement is an idea translated into reality that brings about, and will effect, the act of buying; that is, purchasing. Success requires philosophy and planning, clarity, negotiating skills and balance.

Public purchasing, insurance and risk management are not cookbook-type of operations. Much is subjective and open to discussion. Much relies on experience, intuition and sometimes, a guess. That’s what makes it interesting and fun.

INTRODUCTION

CONTRACTS AND RISK

Every organization, public or private, enters into contracts. A written contract describes:

- The purpose of a business relationship,
- The responsibilities of each party to the contract,
- The amount of money to be exchanged,
- The time period, and
- Other key terms and conditions.

Procurement contracts for construction, goods and services, leases and major equipment purchase are increasingly filled with risk-related provisions. Some typical contact headings with risk provisions include:

- Indemnity/Hold Harmless
- Insurance
- Risk of Loss
- Title
- Casualty Damage
- Limit of Liability
- Consequential Damages
- Force Majeure

Risk-related goals in contracting include:

1. Accept no risk that cannot be reasonably insured or otherwise financed.

2. Transfer the risk to another party.

These may be difficult goals to achieve. Like any other feature of the contact, risk allocation is negotiable and should be reviewed in the context of the entire agreement.

1

RISK TRANSFER

One standard of good risk management practice is to transfer the risk of loss through contracts. Public procurement plays a key role in the protection of your entity and its assets; principally through well structured purchasing contracts requiring the transfer of risk.

This transfer of risk is achieved by requiring suppliers, contractors, tenants and users of public facilities to protect themselves and your entity against claims or judgments arising from their products, services, activities or use of your facilities. Usually the best way to assure that the transfer actually takes place is to require insurance.

Your entity's standard requests for proposals, invitation for bids, bid specifications and contracts should contain a description of the required insurance. In addition, they should contain appropriate hold harmless and indemnification clauses. These are the legal instruments of the risk transfer while insurance is the financial guarantee.

The insurance that financially supports the hold harmless and indemnification agreements does not automatically become effective upon execution of the contract. Coverage applies only when the other party's insurance company issues the required insurance policies or endorse existing policies to conform to your entity's requirements. Because the insurance does not come automatically, good business practice says your entity should require proof that the insurance is in effect before the contract is accepted.

As proof of coverage, most insurance agents and brokers will provide a document called a **Certificate of Insurance**. This certificate serves as evidence that the contractor has a policy of insurance, however, it does not guarantee that the required policy provisions are in place, nor does it tell all the exclusions or limitations that may be found in the policy. This is discussed more fully in Chapter 4.

Most contracts involve risk transfer, some of it being more inherent in the basic nature of the contract. Contracts of insurance are a major device for the transfer of risk in business and government. Insurance helps regularize income, inserts predictability into the business process, removes risks too expensive or large to prevent or avoid, and provides a number of important services—third party claims management, loss reduction, risk analysis, etc.

Contracts other than insurance that include some risk transfer include construction contracts, leases, agreements with bailees and carriers, contracts of sale, supply and service and contracts of suretyship. Indeed, the possibilities for valid transfer or risk are as broad as the ingenuity of the contract writer.

Possible problems in risk transfer are legal enforceability, inability of contractors to manage the risk and absorb losses, and the cost of the risk transfer itself. To overcome these problems risk transfer agreements should have the following characteristics; clarity and specificity; transference to financially responsible parties; transfer to parties able to effectively manage the risks transferred; efficiency, and a price that is acceptable to each party.

A Word on Self-Insurance and Risk Transfer

Self-insurance, the planning and paying for losses out of one's own funds instead of purchasing insurance, is very popular among large private organizations and public entities. Self-insurance, however, complicates risk transfer. It is critical to undertake a review of the self-insured contractor in order to obtain assurance of its ability to meet its financial obligations,

2

ADMINISTERING INSURANCE REQUIREMENTS IN CONTRACTS

Within the maze of rules, regulations, ordinances and laws impacting public procurement, it is often an advantage to develop within this a clear set of self-instructions. These instructions, or steps, can enable you to better assist yourself in the preparation of the contract, better assist potential contractors and develop better relations with those finally awarded the contract and their insurers.

STEP ONE: Develop Clear Specifications

The first step is to develop a clear set of specifications describing the insurance to be provided by the contractor. Don't use ambiguous terms. Get familiar with insurance. Use current and correct insurance terminology in the specifications. Don't demand what can't be provided.

STEP TWO: Inform Contractors Early

Inform contractors of the insurance requirements early in the bid process. In large contracts inform them <u>at least</u> ninety to one hundred twenty (90 - 120) days in advance. Small contracts should use at least sixty (60) days notice.

STEP THREE: Review All Documents Promptly

Review all the forms and documents promptly. Ask questions of the contractor or their insurance agent or broker. Get answers and document them. Document. Document. Document.

STEP FOUR: Save Everything.

Save everything, especially any signed document. Claims may be presented years after the work is completed. These forms and information may end up being your only proof of coverage.

STEP FIVE: Report Claims

Some liability insurance policies require reporting of accidents or other covered losses as soon as it is practicable to do so. Others require reporting of accidents immediately, but leave the term undefined. Some insurance policies written on a **claims-made** form impose strict deadlines on reporting.

It is a best practice to report incidents or claims to the insurance company as soon as possible.

Most policies require reporting of incidents or claims to the insurance company, however, it is customary and generally accepted to report such events to the contractor's insurance agent or broker to pass the information along to the insurer.

While convenient, this practice does not fulfill the insured's contractual obligations to report events to the insurer. Therefore, the safest practice is to report the event, in writing, directly to the insurance company, with secondary written notification to the insurance agent or broker. Formally document any report made to the insurance company.

IMPORTANT! There should be a clear understanding within the organization of who will do the formal reporting of losses to the insurance company and who will maintain all records relating to the loss.

3

PREPARING INSURANCE SPECIFICATIONS

1. Evaluate the Risk

Before determining the types and limits of insurance to be required, you should have some idea of the types of loss that could arise from the activities contemplated under the contract.

Most public entities have a template for their contracts. The template typically includes boiler-plate language for the general terms and conditions as well as **indemnification** and **hold-harmless** clauses. Indemnification and hold-harmless sections of a contract are key elements in effectively controlling your organization's exposure to risk while also enabling the transfer of risk in the event of a loss. Boiler-plate language will not be applicable to each and every contract or agreement, but it will make the process of entertaining exceptions a manageable task.

Losses or issues to be contemplated include:

- What type of activities will take placed during the contact term?
- Who or what could be harmed by these activities?
- What property could be damaged, and how severely?
- What is the maximum probable loss in dollars for each activity?
- Is there a possible pollution exposure?
- Are crowds likely to be involved?
- Will inherently dangerous activities (blasting, etc.) be involved?
- Is the risk sufficient to reject bids not meeting specifications?
- Should we agree to a **Waiver of Subrogation**?
- Are the inventories correct?

The identification of risks involved in the contract is possibly the most important part of the process of managing risk in contracts. It requires time and thought. If you need help to do this, get help.

2. Insurance Requirements

Insurance requirements in a contract confirm that the organization you are contracting with will have adequate assets available in the event of a loss arising out of the work performed for your entity.

The use of insurance, however, is not the only way of guaranteeing that an organization will have adequate resources. Many large organizations choose to self insure their liabilities. In that event, you may need to examine the organization's balance sheet, financial records or receive a letter of credit from a bank guaranteeing the adequacy of their assets.

Remember, requiring insurance in a contract is not a way of obtaining free insurance. Contractors required to include a special insurance purchase or modify an existing policy will generally include a charge within their proposed fee.

Insurers typically provide their insurance on an annual basis. Overly stringent requirements asking them to change the structure of their existing policies may reduce or eliminate their competitive position. Avoid such things as short-term policies.

It is not necessary for policies to be concurrent with a contract as long as the policy expiration date extends to or past the contract expiration date. This may require a mid-contract renewal or a special endorsement. It is not difficult. The contractor should agree to this.

The insurance market is far from static and the current insurance market, which often reflects the economy, should be reflected in the insurance requirements. If prices are high everywhere, you can expect insurance prices to be high. Think of higher deductible requirements or lower policy limits as alternatives to forcing a contractor to procure unaffordable insurance.
There are occasions when a risk can be managed more cost effectively by retaining it instead of requiring another party to acquire insurance for it. Know your organization's insurance and risk management program and what it does.

3. Insurance Terms and Meanings

This repeats some of Step One of the preceding chapter, but is very important to the contractor and their insurers. Avoid using phrases which do not have a specific meaning. For example, the term "public liability" does not have a definite meaning in common usage in the insurance industry. "Public liability" is an ambiguous term. Your Entity may intend that a relatively broad coverage be provided, yet a limited form would still comply with the written requirements. This ambiguity can be removed by stating the titles or exact types of coverage to be maintained. Take advantage of the numerous glossaries and dictionaries available on the internet. Find out.

4. Acceptability of Insurers

An insurance policy has little value if the insurance company is unable or unwilling to pay claims. For this reason it may be beneficial to include clauses in the contract reserving the right to reject coverage written by unacceptable insurers or imposing eligibility criteria on the insurers.

It is important to be familiar with the major sources of financial information of insurers, such as A. M. Best Company, Standard and Poor's. Duff & Phelps, Moody's Investors Service, Ward Financial Group and Demotech. These companies have good web sites and provide a lot of information. The A. M. Best Company allows free access to the financial rating of all insurers. In a major project, it is advisable to review more than one source.

It is not recommended to require insurers to be admitted or domiciled in the state. This requirement eliminates surplus and excess lines of insurers—a large market specializing in large account and high risk coverage. Insurance regulators follow these companies, and a surplus lines tax is imposed on their policies.

If in doubt, use the services of the agent or broker and have them provide a written guarantee that the insurers are financially sound enough to underwrite your needs. Why not check references?

5. Occurrence and Claims-Made

Commercial General Liability Insurance and **Commercial Automobile Liability Insurance** should be written on an **Occurrence** basis. **Professional Liability Insurance** is usually available only on a claims-made basis as this coverage typically is for individuals such as physicians, engineers, architects, lawyers, accountants and other specialized professionals, rather than entities or organizations.

- Occurrence basis policies provide coverage for events occurring while the policy is in force, regardless of when a claim is made.

- Claims-Made policies provide coverage for events occurring while the policy is in force, and the claim is also made while the policy is in force.

6. Deductibles and Self-Insured Retentions

If the contractor maintains large **deductibles** or **self-insured retentions (SIRs)**, you entity must seek reimbursement directly from the contractor in accordance with the indemnification or hold harmless clause of the contract. Should the contractor be financially unable to reimburse your entity, or if the indemnification clause is set aside by a court, your entity would bear the amount of the deductible or SIR.

Therefore, you should require disclosure and approval of deductibles and SIRs. If the deductibles and SIRs are substantial, you can request the contractor to post a bond guaranteeing payment of losses and legal costs within the deductible layer. As an alternative, the contractor's insurer may agree to reduce the deductible as respects your entity's interests.

The deductible ties the contractor and the insurance company to a much greater degree than does the self-insured retention. Smaller or mid-size contractors are more financially secure with deductibles.

7. Additional Insured

It is recommended that your entity, its officials, employees, agents and volunteers be named as an **Additional Insured** on the contractor's general and auto liability policies when:

1. They are contractor or vendor working on your behalf.
2. They are directing or controlling the work of any of your employees in a situation where injury might result.
3. They are leasing space in a building or on property you own,
4. They are conducting a special event, i.e. meetings, conferences, shows, etc. and utilizing your agency's property or facilities.

Standard contract conditions should specify that your entity be added by endorsement as an insured on all liability policies, except Workers' Compensation and Professional Liability policies.

> Use the term "additional insured". The term "named insured" should be avoided. Most policies impose duties on every "named insured", including payment of premium.

In projects involving the use of subcontractors, you should require the contractor to include all subcontractors as insured under the contractor's insurance policies if at all possible. In the alternative, the contractor should furnish your entity with the required endorsements or evidence of insurance from each subcontractor which names your entity as an additional insured.

> To be added as an additional insured on liability policies, there must be an endorsement to the policy. Notice on a Certificate of Insurance is not sufficient.

If your entity is named as an Additional Insured, the policy endorsement should clearly state you are an additional insured and for what purpose. Contractors who work on numerous projects should provide endorsements for *"Any and all work performed"* also known as "*blanket endorsement*," to ensure that documents are not missed on an individual contract.

8. Use of Indemnification/Hold Harmless Agreements

The action transferring a risk from one organization to another is commonly referred to as an indemnification or **hold harmless** clause or agreement. The purpose is to expand, if not clarify, the degree to which one party indemnifies the other party under the agreement. The language should specifically spell out the responsibilities of each party. The language will identify which types of losses the parties to the agreement will be responsible for.

Often, the language will be a mutual hold harmless which is a frequent practice when two or more public entities are involved. This practice is not highly recommended when you are dealing with private organizations. Contracts with private organizations should require the contractor to assume all of the liability imposed by the actions of the agreement. This type of action is recognized in the legal system as long as the inherent risk transferred is commensurate with the compensation to the contractor.

Sample Hold Harmless Language

The following hold harmless language is provided for example only. Drafting hold harmless language in contracts is a critical part of the risk-transfer process and should not be undertaken without the advice and assistance of legal counsel.

Example 1 – Strict or Type I Language

Contractor shall hold harmless, defend and indemnify Entity and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or will misconduct of the Entity.

CAUTION: this type of agreement provides the broadest protection but is easy to challenge in court because it purports to indemnify the entity for losses for its active negligence.

Example 2 – Intermediate Form

Contractor shall hold harmless, defend and indemnify Entity and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorneys fees arising out of the performance of the work described herein, caused in whole or in party by any negligent act or omission of the contractor, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the Entity.

In this form the entity receives indemnity if it was not negligent or if its negligence was only passive. This or similar language is preferred.

Example 3 – Limited Form

Contractor agrees to protect, indemnify and save harmless Entity and is officers, officials, employees and volunteers from and against all claims, demands and causes of action by contractor's employees or third parties on account of personal injuries or death or on account of property damages arising out of the work to be performed by contractor hereunder and resulting from the negligent act or omissions of contractor, contractor's agents, employees or subcontractors.

This form only provides indemnity to the extent of the contractor's negligence or negligence of subcontractors. Under this type of agreement, any negligence on the part of the entity, either active or passive, will bar indemnification under the contract, even if the contractor was also negligent. This type of clause is not recommended because it does not provide protection to the entity.

9. Primary Insurance

Require the contractor's insurance to be primary. To simplify loss adjustment and to eliminate the possibility that the contractor's insurer will seek contribution from your entity, your standard requirements should state that the contractor's insurance is to be the program will not be called upon to contribute to a loss that should otherwise be paid by the contractor's insurer. Make sure this condition is endorsed to the contractor's insurance policy.

10. Endorsed to the Policy

Any agreement or condition that is to be permanent should be endorsed to the contractor's insurance policy. If an agreement, such as being added as an additional insured, is merely stated in your contract, or cited in the certificate of Insurance, and is not endorsed on the policy, the agreement is not binding on the insurer. See "**Endorsement**" in the glossary

11. Cancellation

Your entity's standard insurance requirements should state that the policies are to be endorsed to require the insurer to provide at least ninety (90) days written notice of cancellation. Insurers try to provide no more than thirty (30) days, but this can be easily negotiated.

Statements made on a Certificate of Insurance regarding cancellation notice do not have the same effect as a statement made in an insurance policy or on an endorsement to the policy. Insurance industry-supplied Certificates of Insurance only say that the insurer or its agent will "endeavor to" provide the required number of day's notice of cancellation. You should presume that the Certificate of Insurance does not grant any conditions not contained in the policy.

> The nature of the contact should dictate the amount of time needed by the contractor to replace the policy should the insurer cancel midterm. Advance written notice as long as 120 days can be negotiated, as can notice by certified mail.

12. Admitted Insurers

An admitted insurer is licensed to write insurance policies and issue them directly to insureds within the admitting state. An admitted insurer is required to contribute to the state guaranty, or insolvency fund, which provides some protection for claimants in the event an admitted insurer becomes insolvent. Best's Key Rating Guide lists each state in which a rated insurer is admitted.

Not all insurance can be obtained from admitted insurers. With much of the insurance market now in reinsurance companies and Lloyd's of London and similar insurers, it may become impossible to deal only with admitted insurance companies. This is common, but calls for a tight contract with your agent or broker to ensure they are protecting your entity from unstable insurers. This is especially true of large policies placed by large national and international brokers.

> Don't limit your program to admitted insurers. In today's market much of the product needed can only be found in the excess and surplus lines market. Non-admitted insurers pay taxes to the states.

13. Insurer Ratings

The ratings given by A. M. Best & Co. and Standard and Poors are widely used as standards for measurement of insurer acceptability. Best's rating is a two-part ranking; the first portion is their assessment of the quality of overall management, the second, given as a Roman numeral ranging up to XV, indicates financial size by policyholder's surplus. Plus or minus signs indicate the relative position within the class. Stand and Poors uses a single rating scheme measuring an insurers overall financial strength. Examples of <u>top</u> ratings include:

Best Ratings	Standard and Poors
A++:XV	AAA

Insurance should be placed with companies that have a minimum Best's rating of at least A: VII and a Standard and Poors rating (if rated) of at least A-, unless specific approval for a lower rating has been granted by your entity.

This requirement does not guarantee that the insurer will be solvent when called upon to pay a loss, but it does reduce the probability of coverage being placed with a clearly unqualified insurer.

In some cases, Best or Standard and Poors do not assign a rating. Best uses not-rated categories from NA-1 to NA-11. Companies with ratings of NA-11 (Rating suspended) should be considered unqualified. An NA-9 rating can also indicate a problem. Standard and Poors uses an NR to indicate companies not rated.

Sometimes a contractor may not be able to obtain insurance from a company that meets your rating requirements. In such cases, your entity may wish to review the financial history of the available insurer, determine how long the company has been providing coverage and establish whether or not the insurer is admitted in the state.

14. Insurance Limits

Setting adequate insurance limits can be difficult. Judgment and experience are required to effectively set required limits. This is an area that frequently sees disgruntled contractors complaining about "unnecessary" insurance limits. Nevertheless, it is common practice among businesses to underinsure.

Remember that the insurance limits set in most procurement manuals are a <u>minimum</u> limit. The $1,000,000 suggested liability limit is a minimum practical limit to require. Often, attempts to require higher limits often meet stiff resistance. That being said higher limits are still necessary and should be required for any hazardous activity, such as blasting, use of dangerous materials or chemicals, or where the activity has a severe loss potential, such as construction and work close to highways, utility lines or high-valued property.

You should consider the loss exposure, not the value of the contract, in determining appropriate limits. Some jobs, such as spraying of pesticides or backhoe operation near utilities involve substantial potential liabilities even though the contract may involve only a small expense.

Aggregate Limits

Many liability insurance policies impose **aggregate** (total of all claims) limits on all losses paid by the policy for the policy period (usually one year). There are three types of aggregates: (1) a products and completed operations aggregate, (2) a personal injury and advertising liability aggregate, and (3) a general aggregate for all other types of losses.

If a contractor purchases a Commercial General Liability policy, any losses arising out of project for that Contractor's other clients would also reduce the aggregate limit available for losses arising out its work for your entity. Therefore, you may wish to require:

- A higher aggregate limit which is a multiple of the occurrence limit (for example, a $1 million per occurrence limit with a $2 million aggregate), or
- A separate aggregate limit for your project or lease, or
- A policy dedicated to your contract.

None of these solutions is a perfect answer. Higher aggregate limits may be insufficient if the contractor experiences a large number of substantial claims. A possible solution may be to require the contractor to provide higher limits through a combination of excess and primary policies. In this case, evidence of excess insurance should be required on the same Certificate of Insurance. On large projects, this may be the most feasible.

The insurer may decline to provide a separate or higher limit for your entity's project. If the insurer is willing to provide a higher limit, the contractor may be required to pay an additional premium. The cost of this premium may be passed along to your entity.

Note that jury verdicts and recent changes to coverage forms make higher limits advisable. Recent changes to Commercial General Liability policy definitions may bring defense costs within the limit of insurance, further eroding available coverage.

15. Duration of Coverage

It should state in the contract that the required insurance must be in effect prior to awarding the contract and that no work can commence until there is evidence of insurance being in place and that a successor policy must be in place for the duration of the project or lease.

A clause in the contract should state that maintenance of proper insurance is a material element of the contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated by your entity as a material breach of contract.

> The maintenance of proper insurance and providing evidence of that insurance should be a material element of the contract.

16. Evidence of Insurance

Any contract imposing insurance requirements should include a provision requiring evidence that the requirements have been met.

The type of evidence depends on the nature of the contract, the value of the contract and the level of security required by the contract.

1. At the lowest end of the security scale would be a requirement that a Certificate of Insurance be provided.

2. The next level of security would require a Certificate of Insurance with certain specified attachments. Minimally, these attachments would include copies of the **Declarations** page of each policy and a copy of each Endorsement to the policy that validates coverage for specific requirements from the contract.

> This could include endorsements showing additional insureds, special requirements such as pollution, marine (Jones Act, Harbor & Longshoremen's Act) and rail.

3. A higher level of security would include a specimen policy along with the previous documents and a coverage letter from the agent or broker confirming the policy.

4. The most comprehensive security would be to obtain a certified copy of the insurance policy, complete with all endorsements.

At the same time it is not always advisable to require the contractor to provide actual copies of the policies. There are reasons for this:

1. Insurers often fail to issue policies until late in the policy period and the contractors or their brokers may not have them.

2. A **"binder"** will substitute until policies are issued.

3. Obtaining and reviewing all policies would be an administrative burden and failing to identify and question certain aspects of policies not in compliance with contract requirements could waive a right to assert a breach of contract.

Strong consideration should be given to requiring the contractor to provide copies of require insurance policies <u>upon request.</u>   This would ensure the ability to obtain copies of policies in the event or a future dispute over coverage.

Maintain Records

Keep in perpetuity originals and copies of policies, endorsements, certificates, bid documents, specifications and pertinent communications between your office and insurers. Claims can take years to surface and your records may be the only thing you have to ascertain coverage.

Any procurement and all of its records should be ready to audit at any time.

17. SELF-INSURANCE

Self-insurance, the planning and paying for losses out of one's own funds instead of purchasing insurance, is very popular among larger private companies and public entities.

Self-insurance injects complications into the contract.

Most states require self-insured workers' compensation to meet minimum standards and to be regulated. Most other self-insured risks—liability, property—remain unregulated.

It is therefore important to undertake a review of the self-insured contractor in order to obtain assurance of its ability to meet its financial obligations. For example, if the program is pre-funded (and most are not), the adequacy of reserves should be considered. Other considerations include total assets, profitability and reputation.

For simplicity it may be beneficial to categorically reject self-insurance as a means of complying with the insurance requirements, with the possible exception of workers' compensation.

Where self-insurance is not categorically rejected, certain steps can be taken to obtain reasonable assurances of the contractor's financial responsibility for damages.

> First, a subjective evaluation of the self-insurance program—its total assets, reserve adequacy—may provide some assurance of the contractor's ability to pay.
>
> Second, if excess or umbrella insurance is used to limit the self-insured's risk, it may be possible to obtain an additional insured status on that excess or umbrella policy.
>
> Third, evidence of financial stability can be used. This would include letters of credit and documented evidence of adequate funding and reserving of the self-insurance program.

Workers' Compensation is the insurance most often self-insured.

4

CERTIFICATES OF INSURANCE

You will receive Certificates of Insurance from a variety of sources—tenants, vendors and contractors. They will come in a variety of forms displaying a variety of insurance coverages. Consequently, it is essential that you be able to read these certificates, understand the information provided and compare the information on the certificates to the applicable insurance requirement in the contract or lease.

A. GENERAL INFORMATION

What is a Certificate of Insurance?

A Certificate of Insurance is a document that gives evidence of the insured's financial ability, through an insurance policy, to respond to a claim. The Certificate conveys no authority; it merely confirms that the subject organization carries insurance.

Why are Certificates needed?

Certificates give evidence that the Contractor, or other named party, has appropriate insurance to cover the claims for which they are responsible under the contract or lease.

When are Certificates needed?

Certificates are need when another party, such as the Contractor, performs services on your behalf or has your property in their care, custody and control.

Who should provide the Certificates?

The Contractor's, or other party's, insurance agent or broker

What should a Certificate include?

1. The name and address of the insurance company issuing each policy;
2. The Named Insured;
3. The address of the Named Insured;
4. Description of coverage, including of type of policy;
5. Policy numbers;
6. Policy periods, effective dates;
7. Coverage type (Occurrence vs. Claims-Made);
8. Limits of liability;
9. Deductibles or Self Insured Retentions (SIRs);
10. Name and address of Certificate holder;
11. Description and location of operations;
12. Notice of cancellation provisions; and
13. Authorized signature and date of issuance.

If coverage is Claims-Made, the Certificates will also include the following:

1. Retroactive date; and
2. Length of time allowed as extended reporting period.

B. SPECIFIC INFORMATION

(1) **PROPERTY INSURANCE CERTIFICATE**

This certificate is needed when another party has been made responsible for providing insurance on property you own or for which you are responsible.

The certificate of property insurance should show:

> ***Property Covered*** – This would include an appropriate description of all property for which insurance is required;
>
> ***Limits*** – Show evidence of appropriate amounts of coverage for the property and applicable deductibles;

Coverage – Appropriate coverage for the risk of loss to which the property is subject. Often, this is expressed as "all risk".

Interest – The certificate should indicate the nature of your interest, i.e. owner, lender or landlord in the insured property.

Loss Payee – If you are named as a Loss Payee, the certificate should clearly state you are a Loss Payee and for what purpose. By being named a Loss Payee, you will have the right under the policy to be reimbursed for a loss to your property. Usually, in the event of a covered loss, the insurer will issue payment jointly to the Loss Payee and the Insured.

(2) **LIABILITY INSURANCE CERTIFICATE**

Certificate of General Liability Insurance

Basis **–** Whether coverage is being applied on an occurrence basis or a claims-made basis. Most General Liability policies are occurrence based, while Professional Liability policies are written on a claims-made basis.

Limits – Specify amounts of coverage conforming to the requirements of the contract.

Coverage – The certificate should specify what type of policy is providing the coverage and whether the special coverage required by the contract have been included.

Certificate of Excess Liability

Limits – If the contractor's insurance provides less than the limits required by you, the certificate may (and should) give evidence of an excess policy to provide the additional limits.

Coverage – The certificate should state whether the Excess Liability coverage is provided on an excess form or an umbrella form.

(3) **WORKERS' COMPENSATION CERTIFICATE**

You should always require evidence of workers' compensation coverage from your vendors and subcontractors. Note that you cannot be added as an Additional Insured on a workers' compensation policy.

Limits – The certificate should specify that the policy provides the statutorily required benefits of workers' compensation and the minimum amount of Employer's Liability required by your contract.

Waiver of Subrogation – The policy should be endorsed with a waiver of subrogation in favor of your agency. This language protects your Entity from claims for contribution resulting from injuries sustained by contractor employees.

(4) **AUTOMOBILE LIABILITY CERTIFICATE**

Limits – The certificate should indicate amounts of auto liability insurance consistent with the contract requirements.

Coverage – Identify the categories of automobile to which the coverage applies and any additional coverage endorsed to the automobile liability policy, for example: owned, hired or borrowed vehicle.

(5) **POLLUTION LEGAL LIABILITY CERTIFICATE**

The vendors and contractors should be carefully reviewed to determine when it is prudent to request this coverage.

Limits – Limits should be clearly stated. Many of these policies have a significant deductible or SIR which should also be clearly stated.

Coverage – This type of insurance is not as stand as Auto or Workers' Compensation, so the types of coverage provided by this policy should be clearly stated.

Additional Insured – Most often, only the insurance company will issued endorsements naming other parties as an additional insureds, so any certificate issued by the agent or broker should be carefully reviewed to determine that they have the appropriate authority to grant this status.

IMPORTANT! The language of the certificate does not control the terms of an insurance policy.

C. QUICK HIT SUMMARY

- The Certificate of Insurance is **not** a contract. It is for information only.
- The "Description of Operations" block should not be left empty. There should be no confusion about what job or contract the Certificate applies to. Cite a contract number, a job or project name and/or location and description of the contract as a way of tying the insurance to the contracted work.
- The Certificate of Insurance does not give the specifics of coverage. The only way to know if you are protected is to read the policy
- The Certificate of Insurance should contain no language stating the entity waives subrogation.
- The disclaimer wording in the Cancellation box should be, as a rule, unacceptable.
- Certificates of Insurance should be hand signed by an authorized representative of the insurance company (usually an agent or broker), not just the name of the insurance company. Often "hand-signed" is a name stamp and is acceptable.

5

SPECIAL INSURANCE SITUATIONS

A. Professional Services Contracts

Professional liability insurance protects against losses occurring when a professional fails to practice his or her art to the standards usual and customary to that profession. These types of loss are usually excluded from general liability policies, thus professional liability insurance is needed, especially for licensed and certified professionals.

The entity will not be made an additional insured under a professional Liability insurance policy. This is common for these policies and not A problem.

When contracting for professional services, you should ensure that that the contractor (consultant or professional) carries sufficient professional and general liability insurance to protect against losses that may result from their negligent acts or omissions.

Personal injury lawsuits arising out of work done for your entity will name the consultant, your entity and any other connected party or employee as defendants. Even if the consultant is the liable party under the law, your entity, in the event of even the slightest joint liability, could still be required to pay for all or a part of a loss if the consultant carries insufficient or inadequate insurance or was uninsured. This can make the entity what is commonly called the “deep pocket” exposure.

Because either professional liability or general liability may ultimately pay for the loss, <u>both types of coverage should be required</u> from the consultant. If the consultant will be using an automobile in any phase of the work performed for your entity, you should also require evidence of automobile liability insurance.

Unless the consultant is a sole practitioner, evidence of workers' compensation insurance should be provided.

Even though the contract with the consultant may make clear that the consultant is hired as a contractor and not as an employee, the courts could find a way to make your entity the employer for workers' compensation purposes should a contractor's employee be injured and the consultant has failed to purchase the necessary insurance.

IMPORTANT! Your consultant's work assignments and performance standards need to be reviewed. In a dispute or serious claim, the Internal Revenue Service may ultimately make the determination whether or not a consultant should be considered an employee. Carefully review all agreements to avoid a ruling you are responsible for benefits, payroll taxes, social security and Medicare payment as a result of the consultant's function.

WHO IS AN INDEPENDENT CONTRACTOR?

A general rule is that you, the payer, have the right to control and direct the result of the work to be done by the independent contractor and not the means and methods of accomplishing the result.

WHO IS AN EMPLOYEE?

A general rule is that anyone who performs a service for you is your employee if you can control what will be done and how it will be done.

In reviewing contracts, it is not only important to understand the hold harmless and indemnification clauses and bonding requirements of a contract, but also look further into the agreements. Why? For example:

Special care is needed in drafting indemnification requirements for the contract with the consultant. Most professional liability insurance excludes liability assumed under contract. However, most general liability polices automatically provide coverage for bodily injury and property damage liability assumed under contract.

As stated above, contractually-assumed responsibility for indemnification of your entity for the consultant's professional acts, errors or omissions (such as design errors) is often not insurable. In such case your entity would be relying entirely on the consultant's own assets to pay the promised indemnity. Note, however, that your entity should not be liable for such a loss as the concept of professional liability applies to a practitioner of that profession. Your entity could be liable for a professional error if the entity negligently chose the consultant or negligently signed off on or negligently approved a design or work product.

You should pay special attention to the appropriateness of insurance limits selected for the consultant's specification. There may be no insurers willing to write insurance to your standards. The cost of the insurance may be prohibitive to small professional organizations or sole practitioners.

In such case you must sometimes be willing or relax your standard insurer rating requirements. You should still try to evaluate the financial strength of the insurer, find our how long it has been writing this type of insurance and maybe find some references.

Because professional liability insurance is almost always written on a claims-made basis, you should look to requirements that have the consultant providing insurance into the future through extended reporting period, or "tail" coverage.

If the project is large enough, the consultant's insurer may provide a project policy in the name of the entity with a built-in tail. Such an arrangement provides the greatest protection, but such a separate policy requires an additional premium. This is only cost effect on large million dollars plus contracts.

Professional liability insurance does not lend itself to the application of hard-and-fast rules. Flexibility and the exercise of discretion are needed to protect your entity.

B. PROPERTY INSURANCE

There are two primary situations where responsibility for property loss should be clearly spelled out; (1) buildings in the course of construction, and (2) leases involving extensive tenant improvements and betterments.

Builder's Risk Insurance or Course of Construction

Insurance for property under construction is called course of construction insurance or more commonly, builder's risk insurance. This insurance covers property in place but under construction as well as the equipment and materials to be installed. Pricing takes into account changing values as construction nears completion. Your entity should arrange for builder's risk on construction projects through the contractor. Items to consider include:

- Perils

  Coverage should include all risk insurance.

- Deductibles

  Deductibles should be reasonable in relation to the financial ability of the parties and the size of the project.

- Property Covered

  At a minimum, the insurance should cover the full insurable value of the construction or improvements.

- Loss Payments

  Depending on the contract, you may prefer that any loss payments be made to your Entity.

- Valuation Basis

  Coverage can be written based on the completed value of the project or by reporting changes in value on a monthly basis. Usually, the former method is preferred as it is less complex and there is less a chance of error.

As Builder's Risk Insurance is written specifically for the project, you should receive a copy of the policy from the contractor. Your copy of the policy should be complete with all endorsements and changes.

Tenant's Improvements and Betterments

Property insurance should be required where your entity has a continuing interest in improvements or betterments installed by a tenant in one of your properties. Many leases require that such improvements revert to the property owner at the completion of the lease. The value of the improvements is often figured into the cost of the lease. In such cases you should require the tenant to provide insurance sufficient to cover the full replacement cost of the imporvem5tns, with your entity named as loss payee on the policy. You should also require a copy of the policy for your review.

It is also important to include a waiver of subrogation on property risks whenever you are in a tenant-landlord situation. The major benefits of a joint waiver of subrogation clause are:

- No need to buy separate fire legal liability insurance.
- No dispute over cause of loss between tenant and landlord.
- You are not requiring someone else's policy not do you have to verify the adequacy of coverage as respects your property.

C. MAJOR CONSTRUCTION CONTRACTS

Large-scale contraction projects include numerous contractors, subcontractors, consultants and other parties, all subject to a variety of risks arising out of the work. The numerous parties involved pose certain technical and logistical problems.

One approach often advocated to deal with these complexities is the use of what is called an **Owner-Controlled Insurance Program (OCIP)**, or a **Contractor Controlled Insurance Program (CCIP)**, or simply a “**wrap-up**”.

Planning for an OCIP or CCIP requires much coordination between all parties to the contract as well as the agents, brokers and insurers. The potential of cost savings often makes such a program worth considering. See the section on Wrap-Ups in the next chapter on Commonly Encountered Insurance.

D. INDIVIDUALS AND PERSONAL LINES

Personal lines insurers may balk at signing custom endorsements designed for commercial business. Much of the recommendations and suggestions here may not be useful. You would likely have to modify your contract language when dealing with private parties.

Occasionally, your entity will enter in contract with private individuals. As private individuals do not normally purchase commercial liability insurance, other forms of financial guarantees may be needed. You may have to reevaluate your requirements or accept an endorsement to the homeowners or tenants package policy. Another alternative would be the purchase of a special event policy.

Another problem is the issue of limits. Most individuals do not carry large amounts of liability insurance. Unless the homeowner purchases personal umbrella liability coverage, the limits on the homeowner’s policy may not be sufficient. The risks in a private party event may be as severe as those in a commercial contract. Crowd exposures and food poisoning are examples.

E. ENVIRONMENTAL CONTRACTORS

Environmental issues are a major concern and responsibility of government both as the owner of potentially contaminated property and as the jurisdiction responsible for the permit process. Public entities can be both the generator and transporter of hazardous materials and pollutants.

There are few insurance companies underwriting these unusual risks. Careful research and compromise is recommended.

Often the standard insurance requirements set for in the insurance requirements may not be achievable for environmental contractors and consultants. If you cannot verify the A. M. Best rating of the insurance company, or if the coverage is written by a Risk Retention Group or captive insurance company, you may want to check their references and financial status carefully.

Note: Automobile, Pollution, Asbestos Pollution and/or Errors & Omissions insurance carriers may not name the entity as an additional insured. If you cannot be named as an additional insured, you should request a letter from the insurance company, not the agent or broker, confirming their position.

F. TRANSPORTERS OF HAZARDOUS MATERIALS AND WASTES

Public entities are increasingly recognizing their exposure as generator and transporter of hazardous materials and pollutants. It is important to know that all motor carriers and drivers involved in the transportation of hazardous materials must comply with requirements contained in federal and state regulations and must apply for any obtain a hazardous materials transportation license. In additional, transporters of hazardous wastes are required to carry the MSC-90.

The MSC-90 is a required endorsement of a business automobile policy for hazardous waste/material transporters it originated in response to the Motor Carrier Act of 1980. Its purpose is to ensure funds are available for damages arising from a trucking accident involving hazardous materials.

What is a Hazardous Material?

A hazardous waste is a waste or combination of wastes that because of its quantity, concentration or physical, chemical or infectious characteristics may do either of the following:

- Cause or significantly contribute to an increase in serious irreversible illness or death; or

- Pose a substantial hazard to human health or the environment when improperly treated, stored, transported or disposed of.

A hazardous substance is any substance or chemical product for which any of the following apply:

- The substance is listed as hazardous by the U. S. Department of Transportation;

- The substance is listed as radioactive by the Nuclear Regulatory Commission; or

- The manufacturer or producer is required to prepare a Material Safety Data Sheet (MSDS) for the substance.

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COMMONLY ENCOUNTERED INSURANCE

1. Aircraft/Airport/Aerial Application Liability Insurance

Aircraft Liability insurance protects owners and operators of aircraft against liability for injury to other people and damage to property arising out of the ownership or use of aircraft. Airport Liability insurance protects airport tenants against claims arising out of operations at an airport. Aviation Excess Liability Insurance is also available. It can “follow form” of a primary insurance policy. Related insurance includes Aircraft Aerial Application Liability covering liability for injury and damage caused by aerial application of seeds, fertilizers or chemicals.

2. Automobile Liability Insurance

This insures against liability claims arising out of the contractor’s use of automobiles. The term “Auto” is defined in the ISO Commercial Auto Coverage policy as a land motor vehicle trailer or semi-trailer designed for travel on public roads but does not include “mobile equipment” or “contractor’s equipment”. Automobile coverage should be waived only when the contractor’s work clearly does not involve the use of any owned, leased, borrowed or non-owned vehicle,
Should any doubt exist, this insurance should be required.

3. Bailee’s Customers Insurance with Valuable Papers Coverage

Baliee’s Customer Insurance covers loss to property in a bailee’s care, custody or control, whether or not the bailee is legally liable for the loss. If the property is damaged by a covered peril, the insurance pays for the loss. Used when reproduction of lost data in a vendor’s care, custody or control is a risk associated with the contract.

4. Builder's Risk Insurance

A type of insurance that addresses the special needs of construction projects, including renovations and large equipment installation, by insuring property already in place but under construction, as well as equipment and materials to be installed.

5. Commercial General Liability Insurance (CGL)

This form of insurance provides protection against bodily injury and property damage claims arising from the operations of a contractor or tenant. This policy provides coverage for premises and operations, use of independent contractors, and products and completed operations.

The CGL policy is the most commonly used liability insurance form. It limits all loss payments to two aggregate limits; one for products and completed operations and one for all other loss.

The form can be written on an occurrence or claims-made basis. The current policy form supersedes the earlier "Comprehensive" General Liability policy. Because the earlier form is still in use, although rarely, it is important that you are certain that in your contract, attorney fees and litigation expenses are assumed by the contractor in the indemnity and/or hold-harmless section of the contract. Failure to do so will result in these expenses not being covered.

The CGL policy also restricts defense coverage to only those suits, involving issues that are covered perils under the contractor's insurance. Therefore, it is important that your indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations, they have the assets to indemnify those uninsured and underinsured areas.

The duty to defend by the insurer also exists only when the contractor and its indemnitee (your city) are *both* being sued. There must be no apparent conflict of interest between the two parties.

Your entity should require a Commercial General Liability insurance policy or equivalent, from all contractors, vendors and tenants. Other more limited forms such as the Owners, Landlords and Tenants Liability, are not recommended for acceptance.

6. Employee Benefits Liability and Fiduciary Liability Insurance: Most employers provide noncash benefits as a part of the total compensation for their full time employees. These include retirement plans, 401(k) plans, group life insurance, group disability, educational assistance plans, and others.

Employee Benefits Liability Insurance covers an employer against liability claims alleging improper advice or other errors or omissions in the *administration* of the employer's employee benefit plans.

Fiduciary Liability Insurance: In addition to facing claims for errors or omissions, fiduciaries can be sued if they breach fiduciary duties involving *discretionary* judgments. Most insureds carry the duplicate coverage.

7. Employment Practices Liability Insurance (EPL): Coverage under the EPL form does not apply to all employment practices; rather the policies specify the exact types of claims that are covered. Claims by employees alleging discrimination, sexual harassment and wrongful termination are typically included. Claims-made form with available extended reporting periods.

8. Errors and Omissions Liability Insurance. Errors and Omissions Liability Insurance: Policies generally available to the various professions that require protection for negligent acts and/or omissions resulting in bodily injury, personal injury and/or property damage liability to a client. Think of medical malpractice, architect's & engineer's liability, public official's liability, law enforcement liability, educator's legal liability.

9. Excess Insurance

This is insurance coverage above the primary amount of insurance. Typically, excess insurance follows the form of the primary insurance. It can be liability or property insurance.

10. Garage keeper's Legal Liability Insurance

This protects parking lot operators and other who provide valet parking, car dealers and garage owners against liability for damage to vehicles in their care, custody and control. The garage keeper who accepts another's property for repair or keeping becomes a **bailee.**

11. Marine Insurance

Marine Protection and Indemnity Insurance is for use when contract services involve use of a vessel on navigable waters. Coverage is for a wide range of exposures; liability of a vessel owner for damage to property struck by his ship, such as wharves, piers and other structures along waterways; damage to its cargo; injury or illness of crew or passengers; injury to persons on other vessels struck by the ship. Note: CGL would still be necessary for shore side liabilities. Most pollution is excluded. Written on a claims-made basis.

12. Motor Truck Cargo and Liability Insurance

There are exceptions to the liability put upon common carriers by the workings of common law. These exceptions, plus the Interstate Commerce Act create the possibility of loss without recovery from the common carrier. To protect both buyers and sellers transportation insurance can be obtained on an annual basis, or for a specific trip or specific shipment. The policies available include:

1. Motor Truck Cargo Policy. This policy protects the transporter for responsibility in the event of damaged or lost freight. Pricing largely depends on the type of cargo.

2. Transportation Policy. This is written for the buyer or the seller and covers the property while enroute in the custody of a common or contract carrier.

. Primarily Liability, or Trucker's Insurance insures the trackman, common or contract carrier) for damage to goods and merchandise while being transported in the trucker's vehicles.

The basic coverage of these policies includes the perils of transportation, including fire, lightning and windstorm. collision or overturn of carrying conveyance, collapse of bridges, theft of entire shipping package, strikes, riot, civil commotion. This insurance can be purchased on an all risk basis, meaning everything is covered except for the commissions. This is a form of Inland Marine Insurance.

13. Pollution Liability Insurance. The CGL policy form excludes most pollution liability claims. Most organizations obtain pollution liability insurance in order to satisfy financial reporting requirements imposed by statutes and government rules and regulations. Because of the potential severity, only a few companies write pollution liability insurance (also known as Environmental Impairment Liability insurance). Often the forms of coverage for this type of insurance are independently developed. Nevertheless, the ISO has two versions of a pollution liability coverage policy, titled as follows:

1. Pollution Liability Coverage Form (designated sites)
2. Pollution Liability Limited Coverage Form (designated sites)

Both forms cover bodily injury and property damage liability. The broader of these forms also covers government-mandated cleanup costs. The limited coverage form does not cover cleanup costs. This policy can cover sudden and accidental pollution, or gradual pollution, or both.

Interesting exclusions include: products and completed operations, closed waste sites, rolling stock (rail cars), wells and failure to comply with environmental laws. The policies are claims-made with rather restrictive tail, or extended reporting period, provisions.

A separate policy is needed for **Underground Storage Tanks (UST) liability**. In some states this is offered through a state fund. In others UST liability insurance is sold by commercial insurers. ISO has developed a policy for this exposure.

14. Professional Liability Insurance

This type of policy, errors and omissions, provides limited protection against claims for damages arising out of the insured's negligence, acts, mistakes or failure to take appropriate action in the performance of business or professional duties. Examples include design errors of architects or engineers resulting in property damage and malpractice of doctors or lawyers—allegations that improper or insufficient care on the part of professionals resulted in injury or loss.

Because of the highly personal nature of the Professional Liability policy (the insurance company insures the professional's competence) insurers generally will not add additional insureds to the policy unless they are employees or subsidiaries of the insured.

15. Property Insurance

This insurance protects against financial loss resulting from destruction of property from insured perils such as fire, windstorm and flooding. This is different from property damage liability insurance which protects the insured's legal liability for damage to other's property.

Property insurance should be required when your entity has a financial interest in property leased to others. Generally, your entity should handle the property insurance (or self-insurance) when it owns the building, or it is in your care, custody and control, rather than requiring the tenant to purchase coverage on behalf of your entity. The advantages are assuring the coverage is correct, affordable and premiums will be paid.

If the tenant owns the building (on land owned by your entity) you may wish to have the tenant purchase the insurance and name your entity as a loss payee on the policy. Use replacement cost insurance, not coinsurance. If coinsurance is used, it should never be less than 90% of replacement cost.

16. Protection and Indemnity Insurance

This protects boat owners or permitted boat users against liability arising out of use of the boat. Tenants who own boats or contractors who use a boat in their operations for your entity must provide evidence of this type of insurance. This could be persons leasing slips and moorings; Marina Operators and others such as salvage and repair operators. For private vessels, watercraft liability insurance is also acceptable.

17. Surety

Surety is a three-party contract wherein a person or entity agrees to be responsible for the contractual obligations of another should those obligations not be met.

A surety bond is a contractual agreement under which the surety company guarantees the performance of certain obligations of the principal for the benefit of another. In public works contracts, for example, the surety company guarantees the completion of the construction project by the contractor for the benefit of the public entity.

Essentially, the surety company stands behind the bonded contractor and guarantees the completion of the bonded work. This is similar to insurance, but a bond differs from insurance in two fundamental ways: (1) the number of parties to the agreement, and (2) the surety's right of indemnity.

Insurance has two parties to the agreement; the insurer and the insured (policyholder). A bond has three parties to the agreement; the bonding company (surety), the entity or person being bonded
A surety company has the right of indemnity from the principal. If a surety is called upon to make a payment on a bond because the principal failed to meet a bonded obligation to the obligee, the surety may recover the amount of loss from the obligee.

Fidelity Bonds protect the entity from dishonest employees. These bonds guarantee that the surety will pay the insured entity for money or other property lost because of dishonest acts of bonded employees, either named individually, by position or on a blanket basis. The fidelity bond covers all dishonest acts such as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction or willful misapplication, whether employees act alone or as a team.

The various types of crime covered include:

- Burglary
- Robbery
- Theft
- Wrongful Abstraction
- Misappropriation
- Embezzlement
- Forgery
- Larceny

What is called Commercial Crime Insurance is the more common approach today. It is more insurance than bonding in that it uses terms like "insured" rather than "oblige" and is written for a fixed term like an insurance policy rather than being continuous.

A *Faithful Performance of Duty Bond* covers loss the entity or the public suffers because the bonded employee or official failed to faithfully perform his or her duty. In other words, the faithful performance of duty bond will protect against losses caused either by dishonesty (as a fidelity bond), but also other types of employee malfeasance, willful neglect of duty, bad faith of negligence.

Bonds do not protect the employee or official. Bonds protect the entity and the public. Individuals cannot collect under these specific bonds. Should a bond pay as a result of an employee's dishonesty or malfeasance, funds would be paid to the entity.

IMPORTANT**!** If an employee or official is found guilty of dishonesty or some type of malfeasance such as negligence, the surety has the right of subrogation and recovery against that individual.

All public works contracts should include a requirement that the contactor furnish contract bonds, but you may choose to exercise discretion for certain types of jobs that have inconsequential cost or risk other harm should a contractor fail to complete the work.

The basic bonds related to public work contracts include: Bid Bonds, Performance and Payment Bonds, and Completion Bonds. Collectively they are referred to as Contract Bonds.

A *Bid Bond* is a guarantee by the surety that the bidder for a contract will undertake the job at the quoted price.

A *Performance Bond* guarantees that if the bonded contractor fails to complete the bonded job as quoted, the surety will assume the contractor's financial responsibility to have the work completed.

A *Payment Bond*, or a Labor and Material Bond is a guarantee that the contractor will pay all bills incurred in the work, as provided in the lien laws (subcontractors, suppliers, laborers).

A *Completion* or Subdivision Bond is a guarantee that if a developer or contractor fails to complete improvements in a contract, the obligee will assume the obligation.

The contractor should obtain a Performance and Payment Bond with penalties equal to one hundred percent (100%) of the Contract Price as determined from the prices in the bid. The bond amount may be adjusted from time to time to cover and satisfy all payment obligations arising from the contract. The contactor should file the required bond with the Entity prior to or simultaneous to the execution of the contract.

18. Truckers Coverage

Defends and pays contractor's liability for property damage and bodily injury to others while operating owned and non-owned trucks in the capacity of acting as a common carrier. If a Contractor is hauling a trailer owned by the state, this insurance should include Trailer Interchange Coverage. This is coverage for the legal liability of truckers for loss or damage to non-owned trailers and equipment in the possession of the insured under a written trailer or equipment interchange. A trailer interchange agreement is an arranged whereby one trucker transfers a trailer containing a shipment to second trucker for continued transportation.

19. Umbrella Liability Insurance

An Umbrella Liability insurance policy:

- Raises the limits of all primary liability policies, and

- Provides coverage in some areas not covered under primary policies.

Umbrella policies are sometimes a way for contractor to provide sufficient limits to meet your entity's requirements.

20. Workers' Compensation and Employer's Liability

Workers' Compensation insurance provides statutory protection against bodily injury, sickness or disease sustained by an employee of the contractor while in the course and scope of their employment.

Employer's Liability is included in standard Workers' Compensation policies. It covers common law claims of injured employees made in lieu of or in addition to a workers' compensation claim. If contractor's employee will work around shipyards or docks, then the insurance needed is **US Longshoremen's and Harbor workers'** coverage.
Maritime workers need **Jones Act** coverage.

21. Wrap-Ups

A wrap-up involves the consolidated procurement of the most important lines of insurance used to cover the interests of the various entities brought together for a single purpose. Typically, with wrap-ups, that purpose is a construction project.

A wrap-up allows the consolidating entity to control critical elements of project risk and create economies of scale in the financial treatment of these risks. The consolidating entity is typically the project owner, construction manager or general contractor and is usually called the controlled insurance program (CIP) sponsor.

This approach usually involves procurement by either the project owner or the contractor of certain insurance which protect both parties. These coverages include general liability, professional liability, workers' compensation, umbrella liability and builder's risk insurance. The owner or contractor provides loss control services beyond that offered by the insurer.

These programs work best for large projects such as those exceeding $100 million hard costs where there are a number of contractors, where the project is labor intensive, where construction takes place in a limit geographical area and where all parties are committed to safety and loss control as well as top quality claims management.

Owner sponsored wrap-ups are called "**Owner Controlled Insurance Programs" (OCIPs)**, while contractor sponsored wrap-ups are called **"Contractor Controlled Insurance Programs" (CCIPs)**. Regardless of who initiates or sponsors the program, the consolidation of insurance coverage is the heart of the wrap-up.

Other wrap-up terms include:

- **Contractor Insurance Program for Operations (CIPO)** – Another name for a "maintenance wrap-up".

- **General Liability Only Wrap-Up** – Most typically used for residential construction projects.

- **Environmental Controlled Insurance Program (ECIP) –** Wrap-up for environmental remediation projects. Referred to as a 'dirty wrap-up. Can be contractor controlled, but owner controlled is more common.

- **International CIP or CIPO** – Any form of a wrap-up used in projects outside the United States. Usually does not include workers injuries due to multiplicity of laws applicable in different jurisdictions.

- **Maintenance Wrap-Up** – An ongoing wrap-up for contract work on operating facilities. This is placed indefinitely and contracted work is simply added as it occurs. Also known as a CIPO, "perpetual wrap-up" or "gate wrap-up".

- **Residential Wrap-up** – A CIP implemented for a residential development project to provide commercial general liability and umbrella/excess liability insurance for the contractors. Unlike most CIPs, these wrap-ups usually do not include workers' compensation.

- **Rolling Wrap-Up or Rolling OCIP (ROCIP)** – Ongoing CIP, usually used for programs that insure multiple construction projects.

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AFTER THE PROCUREMENT

Entities should have in place arrangements and processes meeting all management and reporting responsibilities. This includes deliverables provided to the required standard, within the agreed time frame and achieving value for money. All of this affects the long term risk of the procurement as well as the risk in the procurement. Following the procurement certain key tasks become obvious, or not so obvious from a risk management perspective. These tasks include:

- Identify and manage risks.
- Identify and assign responsibilities.
- Identify and involve stakeholders.
- Manage relationships.
- Manage contract start-up.
- Administer the contract.
- Manage contractor performance.
- Manage contract disputes.
- Discharge the contract.
- Behave ethically.
- Keep records.

Risks identified previously may be more relevant at this stage of the contract cycle and should be carefully considered. Risks to the management to the contract after the purchase can include:

- Failure to have sufficient resources, including insurance, to transfer, change or mitigate exposures to risk.
- Lack of recognition of the importance of contract, and risk, management.
- Failure to act on the nonperformance or misrepresentations or contractors. This includes notifying insurers and bond carriers where necessary.

- Failure to comply with all ongoing contract provisions regarding maintenance of sufficient and proper lines of insurance through the completion of the contract.
- Fraud and/or unethical conduct by the contractor.

Ensuring that any identified risk is dealt with appropriately may require a specific risk mitigation plan to be developed for the life of the contract following its actual purchase. Such a plan need not be long and cumbersome, but may consist of a simple checklist, or it can be a detailed plan requiring periodic review and updating throughout the life of the contract.

In addition, consideration should be given to the need for appropriate contingency plans to address unplanned or unexpected events.

One good idea; identify and assign responsibilities for the various tasks required to finalize the contract. Make sure everyone understands their role.

Contract Documentation

It is important that the most up to date documents illustrating fully the type of insurance and bonds be presented. In small contracts, typically the certificate of insurance may suffice—this is a judgment call based on size, type of work, skills, experience, references and reputation. Major contracts require the Declarations page and any important endorsements to be provided, reviewed and approved. This should be an annual performance immediately before the renewal date.

Contractor Performance

Performance management must be undertaken throughout the life of the contract, whether straightforward or complex. Along with performance indicators and standards for types and limits of insurance and bonds, arrangements for monitoring and assessment of the insurance program should be conducted no less than annually, and in great detail on major or hazardous contracts.

Monitoring focuses on collecting and analyzing information to provide assurance to the entity that progress is being made in line with agreed types, amounts, quality, and timeframes and toward providing contract deliverables. Monitoring can be performed by the acquiring entity or through a third party arrangement.

Contract managers need to have assurance that the information used to assess contract insurance and bond performance is accurate. This material will be used to inform senior management, regulators, legislators or others.

Keep Records

The following lists documents that may be need to be created and retained throughout and following the contract management phase:

- Insurance policies and bonds.
- Certificates of Insurance and all other insurance policy documents and references; Declarations pages, Endorsements, renewals, cancellations, letters, memos, etc.
- Contract management plan (RFP, IFB, other), checklists.
- Analyses of contract conditions and performance.
- Evidence of other indemnities, licenses. Certifications or related documents required under the contract.
- Record of agency-contractor meetings, minutes, discussions relating to insurance, other, provisions of the contract.
- Record of any claims or suits under the contract.
- Record of any disputes and related disagreements.
- Performance reports and assessments.

8

FREQUENTLY ASKED QUESTIONS

How much is enough?

This is perhaps the most frequently asked question about insurance in public procurement. The answer is both easy and not so easy. It is easy in that there simply must be sufficient insurance required of the contractor to protect the contractor, to ensure the completion of the contract, and to protect the public monies that have been invested or paid into the contract. It is not so easy when one considers the answer requires balancing fairness with the needs of the entity and with the financial ability of the vendor. How does a small vendor compete with a larger vendor who can afford the more expensive insurance required? How does the vendor with the right product or service compete if they cannot obtain the required insurance?

An important part of the insurance requirement is its service as a guarantee that the vendor will have the necessary assets to meet the needs of the contract. No one wants a contractor to fail. To fully answer this question there needs to be some homework. As a public entity you need to know your exposures to loss.

- Does sovereign immunity or other similar statutory protections exist that limit your entity's liability?
- What type of work, product or service are you seeking? What are the risk exposures?
- In the event of a suit or claim arising out of the contract, and the vendor has no insurance, or insufficient insurance, your entity may become the "deep pocket" and be named in any litigation or claims. What size of litigation can your entity assume without difficulty? What are its abilities to pay large claims and judgments? What are its abilities to pay legal expenses?

Your exposures may well be "budget-busters" and the only real way to get the job done is to transfer the risk to the vendor.

Remember, the property and liability insurance industry exists because of the need of a diverse population to transfer risk. So make effective use of this critical tool that is also a standard business practice.

There needs to be a starting place, a benchmark. For the state, it was determined that the Virginia Tort Claims Act, sovereign immunity, a conservative court system, a record of excellent legal defense, experienced claims adjusters and sufficient funding of claims and litigation permitted liability insurance requirements in public procurements to start at $1,000,000 per occurrence for the Commercial General Liability policy and for business automobile liability insurance covering vendor vehicles. In today's world one million dollars is not a large amount in a loss involving bodily injury or property damage.

Worker's Compensation, while statutory and compulsory, still needs to be reviewed to determine if there are any necessary endorsements. Are there any contractors working on or around navigable waterways? If so, is the insurance endorsed to include Longshoremen and Harbor Workers Act? Is any class of employee excluded?

Professional liability insurance requirements are a little more diverse. A professional is anything from an Accountant to a heart surgeon. Each exposure is different. Some have severe loss potential in their work; others have long term risk, while others have work with a high frequency of risk. Again, $1,000,000 is the minimum recommended limits for any professional other than medical professionals. For medical professionals the maximum recovery limit for medical malpractice found in § 8.01-581.15 of the Code of Virginia should be the minimum limit of their insurance requirement. Currently, that is $2,000,000 per medical incident. Architects and engineers are recommended to have a minimum of $2,000,000 professional liability coverage.

To summarize, recommended **minimum** limits for vendors are:

- Commercial General Liability Insurance:
  $1,000,000 per occurrence, $2,000,000 general aggregate and products and completed operations aggregate.

- Business Automobile Liability Insurance:
  $1,000,000 Combined Single Limit
- Professional Liability Insurance

  Medical Professionals:
  $2,000,000 per medical incident – Statutory recovery limit

  Architects and Engineers:
  $2,000,000

  All others, including hazardous material/pollution professionals:
  $1,000,000

How frequently should bidding take place?

Unless there is dissatisfaction with the existing program or policy or unless a substantial increase in cost is being proposed, a major insurance placement should not be rebid more frequently than every three years, and preferably five. Insurers understand responsible buyers need to occasionally test the market, but if it becomes an annual affair underwriters can quickly lose interest.

Notwithstanding the three to five year rule, in a hard or difficult market, it may be in your best interests to negotiate with existing underwriters rather than rebid. A hard market threatening the affordability or availability of your insurance can necessitate an emergency procurement.

How should renewals be handled during the years between formal competitive bidding?

Require the insurance agent or broker to submit each renewal proposal at least forty-five (45) days in advance of the anniversary or expiration date of the contract.

Ask for a written analysis of any differences between the expiring and renewing policies. Specifically, they should compare insuring agreements, deductibles, exclusions, cancellation notices, endorsements, terms, rates, premiums and warranties.

Are package policies more desirable than monoline policies?

No. Often package policies, in their rigid combination of coverages, lack flexibility. Use of such a shelf-type product, maybe admirable in its simplicity as to form and rate, often does not provide adequate means of modifying coverages to the buyer's specific needs. Individual policies are frequently more efficient and comprehensive.

What purpose is served by the Boiler and Machinery Insurance policy?

The purpose is to provide coverage on boilers and machinery for explosion or other forms of self-destruction caused by accident. In addition to the insurance protection, the policy also provides a very valuable service in the form of inspection and engineering services. All boilers, machinery and other equipment insured under the policy are routinely inspected by qualified insurance company engineers to determine their operating condition and to be certain such equipment meets the engineering requirements of the underwriters as well as the jurisdictional requirements of the State Department of Labor and Industry. This program is one of the more successful in the insurance industry and many organizations purchase the coverage more for the engineering than for the insurance protection.

Is it important to carefully check the actual writings, binders, policies, endorsements and other writings of the agent, broker and insurer?

Careful checking is critical. It is incredible the number and size of errors and omissions committed by insurance vendors when comparing their proposals with their produced documents. It is especially critical to review the policies and endorsements to ensure you are getting what you paid for. An error rate as high as 25% is not unusual.

Is it reasonable to ask agents or brokers to disclose the amount of their fees and/or commissions?

Absolutely.

GLOSSARY

ACORD: Association for Cooperative Operations Research (ACORD) is nonprofit insurance association facilitating the development and use of standards and forms for the insurance industry. ACORD standards are used by insurers and reinsurers, agents and brokers, related financial services, software providers and insurance industry organizations worldwide.

ACORD Certificate of Insurance, ACORD 25: A certificate form commonly used by insurance agents on behalf of their clients to indicate the nature and amounts of insurance purchased by the client. The purpose of the form is to standardize insurance information related to liability policies and workers' compensation.

ACORD 28, Evidence of Property Insurance: Banks and lenders and others who provide coverage statements for mortgagees, additional insureds and loss payees who provide mortgages or loans on real property or business personal property insured under a commercial policy, and are named in the policy, are starting to request this form. Problems: This form contains no disclaimer, they say "Additional Interest" instead of "Additional Insured" and the word "endeavor" is removed from the cancellation section of the form. Another new form is **ACORD 813 "Request for Proof of Property Insurance"**, again used largely by lenders. **ACORD 27** is for residential property.

Actual Cash Value (ACV): The Cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence. NOTE: Art and antiques may appreciate in time. To receive full coverage these items must be specifically scheduled to the policy.

Additional Insured: Another person, firm or other entity enjoying the same protection as the named insured.

Admitted Company: An insurance company licensed by the state to conduct business. The company is subject to the state insurance code governing such aspects as company reserves and advertising.

Agent: One who has the authority to act for another. An insurance agent acts for an insurance company by soliciting buyers of insurance and providing them service on behalf of the insurance company.

Aggregate Limit: A cumulative limit that applies to all claims within a given period of time, typically one year, or within the policy term. If a policy has an occurrence limit of $1 million and an aggregate limit of $1 million, the policy could be exhausted by a sequence of losses totaling $1 million, or a single large loss of that amount. Typically found on Commercial General Liability policies.

Alien Company: A company formed outside the United States.

Automobile Liability Insurance (Business): Insurance paying sums the insured must legally pay as damages because of bodily injury or property damage caused by an accident and resulting from the ownership, maintenance or use of a covered auto.

Named Insured: The Business Auto policy covers the named insured, anyone using a covered auto with the insured's permission (with a few exceptions such as garages and valet parking services), and anyone liable for the conduct of the insured.

Covered Automobiles: There is a selection of coverage identified by numerical symbols: These are:

1. Any auto
2. Owned autos only
3. Owned private passenger autos only
4. Owned autos other than private passenger
5. Owned autos subject to no-fault
6. Owned autos subject to no-fault
7. Owned autos subject to compulsory uninsured motorist law
8. Hired autos only
9. Non-owned autos only

Number 1 provides the most coverage for liability.

All Risk: This generic term refers to broad coverage that is used to provide coverage considerably beyond that offered by the basic Fire and extended coverage property insurance policy. An insured All Risk loss would be one in which neither the property damaged nor the peril causing the damage is excluded. There is no standard All Risk policy form. It differs from company to company and should be carefully examined by the buyer.

Aviation Insurance: Aircraft Insurance consisting of two coverages; Hull Insurance and Liability Insurance. Hull insurance is similar to Auto Physical Damage Insurance. Liability insurance is also similar to Auto Liability Insurance.

Bailee: Individual who has temporary rightful possession of another's property.

Binder: A temporary insurance contract providing coverage until a permanent policy is issued.

Bodily Injury: Bodily injury, sickness or disease, including death.

Bond: Form of suretyship. For example a fidelity bond reimburses employer for financial loss due to dishonest acts of an employee.

Broker: One, who, for a commission, from an insurance company, solicits, negotiates and services insurance policies on behalf of the insurance buyer. From a practical standpoint there is little difference between an agent and a broker.

Bureau of Insurance: The authority that administers state laws regarding insurance and licenses insurance companies and their agents. In Virginia, this is a bureau within the State Corporation Commission. Commonly known as insurance regulators.

Business Interruption Insurance: insurance designed for an organization that must shut down operations as the result of damaged property being unavailable for use during the time required to restore or replace such property. See Extra Expense Insurance.

Captive Insurance Company: An entity created and controlled by a parent company whose main purpose is to provide insurance for that parent. Captives are not self-insurance. With self-insurance no entity is created and no monies leave the parent.

Carrier: The insurance company that actually underwrites and issues the insurance policy. The term is used as the insurer assumes or "carries" the risk. There can be primary and secondary carriers.

Casualty Insurance: Coverage primarily for liability from negligent acts or omissions causing bodily injury or property damage to a third party. However, the term is elastic and traditionally has included such property insurance as aircraft, boiler & machinery, glass and crime insurance.

Certificate of Insurance: A document in property and casualty insurance providing evidence of the existence and some of the terms of a particular insurance policy.

Claims-Made Coverage: A type of liability coverage imposing strict deadlines regarding timing, reporting and filing of claims to the insurer. Although not widely used for General Liability coverage, it is common enough that you will occasionally encounter it.

In its most common form, Claims-Made coverage responds to claim made during the policy term, regardless of when the triggering accident or event occurred. However, most Claims-Made policies have a retroactive date. Claims arising before the retroactive date are not covered. Usually the retroactive date is the first date the insurer began providing liability insurance for the insured.

Clearly, occurrence coverage is preferred, as the needed coverage can be arranged and the full cost known in advance of the contract.

While the occurrence form is most common, professional liability risks are almost always written on a Claims-Made basis. Also, hazardous products or activities may be written on a Claims-Made form.

Coinsurance: In property insurance, defines the amount of each loss that the insurer will pay according to the following formula:

$$\frac{\text{Amount of Insurance Carried}}{\text{Amount of Insurance Required}} \text{ X } \text{Amount of Loss} = \text{Insurance Payment}$$

Where:

Amount of Insurance Required = Value of Property X Coinsurance Clause Percent Required
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A building valued at $100,000 carrying insurance limits of $75,000 with a coinsurance percentage requirement of 80% experiences a fire causing $60,000 in damages would recover $56,250 using the formula:

$$\frac{\$75{,}000}{\$100{,}000 \text{ X } 80\%} \text{ X } \$60{,}000 = \$56{,}250$$

Payment can never exceed (1) the dollar amount of the loss, (2) the dollar limits of the policy, or (3) the dollar amount determined by the coinsurance relationship. The lesser of these amounts will apply. <u>Avoid coinsurance requirements.</u> They are usually used on smaller accounts and with homeowners. They can usually be readily replaced by a broad form or all risk property policy.

Commercial General Liability Insurance: This is the basic liability policy for most businesses, it provides separate limits of coverage for general liability, products and completed operations liability, fire legal liability, advertising and personal liability and medical payments. An aggregate limit of liability may be in force for several of its coverages. When total claims for the aggregate areas exceed a given annual aggregate limit, the policy limits are said to be exhausted and no more claims for that year will be paid under the policy.

Common Carrier: A firm offering transportation to the general public on an equal basis with regard to rates, terms and condition.

Common Law: Legal system in the United States, inherited from England, based on court case decisions acting as the precedent, not on written law.

Contract Carrier: A firm that offers transportation pursuant to individual agreements with shippers.

Cover Note: A binder pending issuance of the policy itself. This is first evidence of insurance issued by the surplus lines broker after a placement in Lloyd's. It has all the authority of the policy.

Crime Insurance or Commercial Crime Insurance: Crime insurance covers much of what was formerly sold only through fidelity bonds. It is more insurance than bonding in that it is not typically as broad as a bond nor is it continuous as is a bond. As insurance, it is typically written on a one year term. Optional crime coverages include: Employee Dishonesty, Forgery or Alteration, Theft, Disappearance and Destruction, Robbery and Safe Burglary, Computer Fraud, Extortion, Liability for Guest's Property, Safe Deposit Direct Loss, and Public Employee Dishonesty.

Cut-Through Endorsement: A separate endorsement that grants the insured a right to proceed directly against the reinsurer in the event the primary company should be insolvent or otherwise unable to meet its financial commitments.

Declarations: A page of a section of the policy, usually the first page, in the policy and a part of the contract that contains such information as the name and addresses of the insured, the name, description and location of insured property, period a policy is in force, the amount of coverage, deductibles and premium

Deductible: A provision in the policy whereby the insured is required to pay a specific amount or percentage of a loss, with the insurance company paying over the deductible amount.

Director's and Officer's Liability Insurance: Coverage when a director or officer of a company commits a negligent act or omission or misstatement or misleading statement resulting in a successful libel suit.

Domestic Company: An insurer formed and chartered in the U.S. An insurer chartered and has a home office within a specific state.

Employer's Liability, **or Workers' Compensation, Coverage B.** Coverage in which an employee not covered under workers' compensation laws could sue for injuries under common law liability.

Endorsement: A written agreement attached to a policy to add or subtract insurance coverage. Once attached, the endorsement takes precedence over the original provisions of the policy.

Excess Insurance: Property or liability coverage above the primary amount of insurance. The policy pays benefits only when the primary insurance has been exhausted. See Umbrella insurance.

Excess-Surplus Lines Insurance: insurance that is extraordinary in nature and requires non-standard marketing procedures. Such coverage normally cannot be placed with standard markets because insurers will not or cannot accept the risk. Those insurers are also known as the non-admitted market.
Excess-surplus lines insurers are to some extent regulated by state insurance departments. Much of their coverage is also offered by Lloyd's. Types of coverage offered include:

Non-standard risks and capacity problems
Broad coverage
Unusual risk

Extended Coverage Endorsement. Extension of coverage under the standard fire insurance policy. The endorsement adds riot, riot attending a strike, civil commotion, smoke, aircraft and vehicle damage, windstorm, hail and explosion to the perils of fire and lightning.

Extended Reporting Period (ERP). The purpose of the Extended Reporting Period (ERP), commonly known as "tail" coverage, is to provide some degree of Errors & Omissions protection. Instead of purchasing a new claims-made policy each year an Extended Reporting Period can be purchased that will provide coverage for one to five years following the expiration of the policy. Frequently added to professional liability policies. Three years is a typical amount of extension of reporting period. ERPs can also be endorsed to cover known events, which can be useful in certain circumstances.

Extra Expense Insurance: Insurance designed for organizations that consider it necessary to continue business despite the loss of use of property because a business shutdown would cause a permanent loss. See Business Interruption Insurance.

Faithful Performance of Duty Bond: Coverage that protects the entity from an employee's or official's dishonest acts or malfeasance, willful neglect of duty, bad faith and negligence. Designed for public officials, the bond does not protect the employee; it protects the entity from the dishonest acts or malfeasance of the employee or official.

Fidelity Bond: Coverage that guarantees the insurance company will pay the insured for money or other property lost because of dishonest acts of bonded employees, either named or by positions. All dishonest acts are covered, including embezzlement, larceny, theft, forgery, misappropriation, wrongful abstraction and willful misapplication. Because of the critical nature of bonding to financial institutions, special bond forms are used for Banks, including Savings and Loan Companies; Credit Unions; Finance Companies; Credit Unions, and Stockbrokers.

F.O.B. Destination: "Free on board", here means seller maintains title and all risk of loss until the shipment is delivered to and accepted by the buyer.

F.O.B. Shipping Point: "Free on board": at the factory-named shipping point. The seller loads the merchandise and secures the bill of lading. The buyer is responsible for (a) loss or damage after the bill of lading has been issued to the common carrier. Title and risk passes to the buyer, however, loss within the terms of the bill of lading would be on the common carrier.

Garage Insurance; Garagekeeper's Insurance; Coverage for bodily injury, property damage or destruction, for which the insured garage become legally liable resulting from the operation of the garage. For example, negligent repair to a customer's automobile brakes cause them to fail. The garage faces liability for perhaps three types of damages; special, general and punitive.

General Liability Insurance: Coverage for an insured when negligent acts and/or omissions result in bodily injury or property damage. See Commercial General Liability Insurance.

Gross Negligence: A reckless action without regard to life, health or property; for example, driving 100 miles per hour on a highway.

Guaranty Fund: Also known as an Insolvency Fund. These are funds maintained by contributions of insurance companies operating in a particular state in proportion to their business to pay claims of insolvent insurance companies.

Hold-Harmless Agreement: The assumption of liability through contractual agreement by one party, thereby eliminating liability on the part of another party.

Incurred but Not reported Losses (IBNR): Insured losses that have occurred but have not been reported.

Indemnity: Compensation for loss. The purpose of insurance is to restore the insured to the same financial position after the loss as prior to the loss. But the insured should not profit by damage or destruction.

Independent Agent: A Contractor not controlled by any one insurance company, who represents different insurance companies and who searches the market for the best coverage for a client.

Inland Marine Insurance: This is a form of insurance against loss or damage to property. The term "inland marine" is not descriptive of the function of this kind of insurance, but is more nearly descriptive of its growth out of ocean marine insurance. Much of this insurance deals with insuring (1) property in transit over land. Or (2) the insuring of property which is mobile by nature and for which there is no situs. There is a third area which has less relation to transportation. This includes insurance for such property as bridges, tunnels, piers and wharves, and stocks of merchandise which are subject to a high probability of loss.

Insurance Information Institute: An organization having as its objective the education of the general public concerning items of concern regarding property and casualty insurers.

Insurance Institute for Highway Safety: An organization whose membership consist of automobile insurers.

Insurance Institute of America (IIA): An organization that develops and publishes education material and administers national examinations dealing with insurance topics.

Insurance Policy: A written contract between an insured and an insurance company stating the obligations and responsibilities of each party.

Insurance Services Office (ISO): Organization that calculates rates and develops insurance policies for its member insurance companies.

Insurers: insurers in the U. S. are divided into sex classes; stock companies, mutual companies, reciprocals, Lloyd's Associations, government insurers and self-insurers

Jones Act (Merchant Marine Act): Federal law allowing any seaman incurring bodily injury as a result of the performance of his or her job to bring suit for damages against the employer. Employers' exposures include negligence, unseaworthiness of the vessel, and disability income for the injured seaman.

Liability, Civil: Alleged torts or breaches of contract, but not crimes. Casualty (liability) insurance provides coverage for an insured in a civil liability suit for alleged negligent acts or omissions, even if the suit is without foundation.

Liability, Legal: Obligations and responsibilities subject to evaluation, interpretation and enforcement in a court of law.

Liability, Limitations on Insurance Companies: There is no obligation for an insurance company to pay a claim if:

1. The loss is not covered by a policy, or a person or organization is not included in the definition of the insured.
2. The loss takes place outside the territorial coverage of the policy.
3. The loss occurs after the policy has expired.
4. The insured involved in the loss was in violation of public law.
5. The insured is in violation of contract law.
6. The limit of coverage under the policy is insufficient to cover a loss.

Liability, Professional: Liability created when an individual who offers services to the general public claims expertise in a particular area greater than the ordinary layman.

Lloyd's, Lloyd's of London: Lloyd's is comprised of over 300 underwriting syndicates and some 15,000 individual investor members or "names". Lloyd's acts as a non-admitted insurer in the U. S. Local agents/brokers contact excess-surplus lines brokers who, in turn may contact a Lloyd's agent, who then contacts a Lloyd's broker. A Lloyd's broker is one who has authority to transact business in the "room". There are 300 such brokers. The broker presents the risk to the underwriter who, if agreeable, simply initials the broker's submission slip with the amount of participations.

Longshoremen and Harbor Workers Act: Coverage under the Workers' Compensation Act for all employees in the maritime industry who perform their functions in navigable U.S. waters, including dry docks, wharves, piers and other docks. This can be endorsed to the Workers' Compensation policy.

Loss: Damage resulting in bodily injury or property damage to a third party; damage to an insured's property; or amount an insurer has a legal obligation to pay.

1. An insurer is legally obligated to pay the least of the following amounts: (a) amount of the loss; (b) limits of coverage; (c) amount resulting from use of coinsurance formula; or (d) amount of pro rata distribution clause.

2. Questions regarding loss coverage include: Is the peril covered? Is the property covered? Is the person covered? Is the policy in force? Are the limits of coverage adequate? Is the location covered? Has the hazard been increased?

3. Steps an insured should take in a loss: (a) Send written notice immediately to insurer and/or its agent; (b) do everything reasonable to protect the property from further damage; (c) separate damaged from undamaged property; (d) provide insurer with a written inventory of damaged or destroyed property; (e) submit within 60 days following the loss, written proof of the loss; and (f) make the damaged or destroyed property available for examination by the insurer.

Loss Reserves: Provision for known claims due but not paid, known claims not yet due, and a provision for incurred but not reported (IBNR) claims. The IBNR is critical because many claims and their resulting settlements may not manifest themselves for years.

Manual Rates: Rates used by insurers to establish the premiums. They are filed with insurance regulators and are in published form. These include statistical averages compiled by the insurers. Manual rates are usually subject to modifications for larger or more hazardous insured's, based on losses related to expected averages; i.e. experience rating, schedule rating, etc.

Manuscript Insurance: Coverage tailored to the particular requirements of the insured, when a standard policy cannot be used.

Marine Insurance: Insurance for vessels. The policy has two sections; (1) Hull Coverage insuring for loss or damaged to the insured vessel itself, and (2) Protection and Indemnity providing liability coverage.

Maximum Probable Loss (MPL): Estimate of maximum dollar value that can be lost under realistic situations.

Memorandum of Insurance (MOI): A relatively new product, the MOI provides on-line information about an organization's insurance program, similar to a Certificate of Insurance. While the MOI provides information that includes policy numbers, limits and effective dates, it does not include signatures, cancellation notice requirements or Certificate Holder information. In an effort to reduce insurer paperwork, the MOI inserts a third party technical company into the equation, requires more work by the insured and provides less information than the Certificate of Insurance.

Motor Truck Cargo Insurance: Coverage required under the Motor Carrier Act of 1935. The policy covers the carrier if it is legally liable for the damage, destruction or other loss of a customer's property being shipped. The types of policies include (1) those that list specific trucks to be covered, and (2) those that cover all the insured's trucks, with no trucks listed specifically.

Mutual Company: An insurer owned and controlled by policyholders and operated solely for the benefit of the policyholders.

Named Insured: A person, business or organization specified as the insured(s) in a property or liability insurance policy.

National Flood Insurance Program: Coverage against flooding for personal and business property under the National Flood Act of 1968 which encourages participation by private insurance companies through the industry flood insurance pool.

Negligence: failure to act with the legally required degree of care for others, resulting in harm to them. *Comparative negligence* provides that in the event of an accident each party's negligence is based on that party's contribution to the accident. *Contributory negligence* recognizes that injured persons may have contributed to their own injury. Negligence of the plaintiff, however slight, that is the proximate cause of an accident, may bar a recovery. Virginia is a contributory negligence state.

Occurrence Basis: A way of writing liability insurance that covers accidents or events that happen during the policy term, even if the plaintiff does not make a formal claim until months or years later.

Occurrence Limit (Per Occurrence Limit): The maximum amount an insurer is obligated to pay all injured parties seeking recourse as the result of the occurrence of an event covered under a liability policy. The policy must have been written on an occurrence basis.

Owners and Contractors Protective Liability Insurance: Endorsement to Owners, Landlords and Tenants Liability and Manufacturers and Contractors Liability insurance policies as well as other liability policies. Coverage is for insureds who are sued because of negligent acts or omissions of an independent contractor or subcontractor resulting in bodily injury or property damage to a third party. Compared with the CGL policy, this is limited coverage specific to covered perils under the contractor's insurance. It is important that the entity make certain that attorney's fees and litigation expenses are assumed by the contractor in the indemnity/hold-harmless section of the contract. Failure to do so may result in these expenses not being covered. There are also specific limitations precedent to litigation defense contained in the policy Supplementary Payments section. Coverage is tied to these restrictions, and ceases when these are violated. If insurance is limited it is also important to verify the contractor has assets to indemnify the uninsured and underinsured areas.

Package Policy: Several basic property and/or liability policies combined to form a single policy.

Payment Bond: A bond guaranteeing that a contractor will pay fees owed for labor and materials necessary for construction of a project.

Performance Bond: A bond guaranteeing that a contract will perform under the contract in accordance with all specifications of the bid submitted.

Permit Bond: Guarantees that a licensed person will perform activities for which the bond was granted, according to regulations governing the license. Also known as a License and Permit Bond.

Personal Injury: Wrongful conduct causing false arrest, invasion of privacy, libel, slander, defamation of character and bodily injury. The injury is against the person in contrast to property damage or destruction.

Personal Property: This is property other than real property; Real property being defined as buildings. The term Personal Property often describes the contents of a building, and includes machinery, equipment, furniture, fixtures, supplies, stock, tools, etc., as well as any chattels in which there is insurable interest.

Premium Tax: insurance placed in the non-admitted or surplus lines market are subject to a surplus lines tax that is paid by the broker or charged back to the buyer and is additional to the premium.

Primary Company: An insurer that is accepting the underlying or first layer of coverage. Additional layers of insurance in the form of excess coverage and reinsurance will follow the terms and conditions of the primary company's policy.

Products and Completed Operations: Coverage that insures against liability for bodily injury or property damage resulting from:

- A product which is sold, handled or distributed by a supplier, or
- Faulty work completed by a contractor.

Your entity should require Products and Completed Operations Liability insurance from all suppliers of hazardous products. Typically, this is included in the Commercial General Liability policy.

Proof of Loss: Documentation of loss required of insured by an insurance company. This can be Fire Marshal's Report, police investigation reports, death certificates, etc. A document that verifies the loss to the insurer.

Property Insurance: Indemnifies an insured whose property is stolen, damaged or destroyed by a covered peril. The term "property insurance" encompasses several lines of insurance.

Pro Rata Distribution Clause: Provision in property insurance that automatically distributes coverage over insured property at various locations in proportion to their value.

For example, an insured has a $100,000 policy covering three properties worth $75,000, $30,000 and $20,000. The insurance, not enough to cover a total loss, would be distributed in the same manner. If the $75,000 property were totally destroyed, the insured would receive $60,000 or 60% of the value of the insurance because that property represents 60% of the covered property.

Reciprocal: An aggregation of individual insurers in which each policyholder or subscriber in the group is insured proportionally by all others. A member's liability is fixed, being assumed jointly and severally by each

Reinsurance, Reinsurer: A form of insurance that insurance companies buy for their own protection. An insurer of insurance.

Replacement Cost: (Less physical depreciation and obsolescence): The sum it takes to replace an insured's damaged or destroyed property with one of like kind and quality.

Self-Insurance: Protecting against loss by setting aside one's own money.

Self-Insured Retention: The amount of loss for which the insured agrees to be responsible before the insurer begins to participate in a loss. Unlike a deductible, the insured is usually responsible for handling claims within the self-insured retention.

Stock Company: An insurer owned and controlled by stockholders.

Surety Bond: A contract by which one party agrees to make good the default or debt of another. Actually three parties are involved: The *principal*, who has the responsibility to perform the obligation; the *surety*, the party with the secondary responsibility of performing the obligation if the principal fails to perform, and the *obligee*, to whom the right of performance (obligation) is owed.

Surplus Lines Broker: State regulators require business placed with approved non-admitted insurers be countersigned by a duly licensed surplus lines agent/broker. This surplus lines agent/broker is separate from the conventional agent/broker.

Tort: A civil wrong, other than a breach of contract, for which a court will provide a remedy in the form of a suit for damages. Torts include negligent acts or omissions. Liability insurance is designed to cover an insured (defendant) for unintentional tort acts.

Transfer of Risk: When there is an arrangement for part of the financial effects of a loss to be borne by someone other than the persons who otherwise would have suffered the full loss, the risk is said to be transferred. Insurance is a prime means of transfer.

Truckers Insurance: A special purposes policy that provides liability and physical damage insurance for owners and operators of trucks while engaged in business. This insurance is often purchased by businesses that employ owner-operators.

Underwriting: The process of examining, accepting, or rejecting insurance risks, and classifying those selected in order to charge the proper premium. The purpose of underwriting is to spread the risk among a pool of insureds in a manner equitable for the insureds and profitable for the insurer.

Waiver of Subrogation: An agreement between two parties to a contract whereby one or both agrees not to (or obligates their insurer not to) pursue legal rights to recovery of a loss. When an insurer pays a loss, and another party's negligence caused the loss, the insurer usually reserves the right to collect from the negligent party the amount paid on the loss. This is called the right of subrogation.

Workers' Compensation and Workers' Compensation and Employer's Liability insurance: Income, medical, rehabilitation death and survivor payments to workers injured on the job. This is a popular coverage for the larger organizations to self-insure. Commercial insurance policies include:

Coverage A: Insurance covering all compensation and all benefits required of an injured employee under the workers' compensation act of the state(s) listed in the policy.

Coverage B: Coverage for situations in which an employee not covered under workers' compensation laws could sue for injuries suffered under common law. Also known as "Employer's Liability".

Wrap-Up Insurance: Insurance that covers exposures for a large group that has something in common.

X,C.U Hazards: X = Explosion, C = Collapse, U = damage to underground property

APPENDIX 1

INSURANCE SPECIFICATIONS FOR COMMON SITUATIONS

This appendix provides insurance specifications for some of the more common situations you many encounter. These include requirements for contractors, contractors with construction risks and suppliers.

It is not possible to categorize each activity, so if the activity or subject of the contract fits into more than one category, use the broadest applicable language. For example, if a vendor will also install or maintain the product or perform other services, the vendor should be considered a contractor for insurance purposes.

While all contracts are critical and may have long term consequences, construction contracts are often among the largest and most complex agreements to be insured. The potential for lass in construction related events can be devastating, if not catastrophic.

Non-insurance sections of the contract are also very important to the risk management process. It is not your entity's problem if a contractor's insurance does not cover all of their exposures; that is their problem to solve.

> There should always be a section in the contract that states the lack of insurance does not negate the contractor's obligation under the contract.

Remember that insurance is only one way the contractor can indemnify your entity. Use clear and strong indemnity language in the contract. If the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, they should have the assets to indemnify those uninsured or underinsured areas.

Exhibit 1

CHECKLIST FOR EVIDENCE OF INSURANCE

____ Coverage is as specified in the contract (For example, only Commercial General Liability insurance meets requirements. Other forms, such as Owner's, landlords and Tenants forms (OL&T) are not acceptable).

____ Names are correct on policy, endorsements and certificates.

____ General Liability is on an "occurrence" basis.

____ Policies are current and will be suspensed for renewal follow-up if the contract period runs beyond the policy expiration date.

____ Limits are at least as high as the minimum required.

____ The insurer's Best rating meets or exceeds requirements.

____ Primary and excess (umbrella) policies have concurrent coverage periods.

____ There is no self-insured retention on liability policies. Any self-insured retention must be disclosed.

____ Evidence has been received for each type of insurance required.

____ Evidence provides for a minimum 30-day notification to Entity of cancellation.

____ Evidence is of proper form, i.e. Certificates of Insurance, policies or endorsements as appropriate.

____ The entity has been added to the appropriate polices as an additional insured. A Certificate of Insurance does not accomplish this.

_____ Liability insurance layers have concurrent policy dates.

_____ Auto liability covers “any auto” or “non-owned” if the Contractor has no autos, or “hired”.

_____ Required Waivers of Subrogation are provided.

_____ Documents include proper signatures.

_____ Descriptions of operations, locations, etc., are correct.

Exhibit 2

INSURANCE REQUIREMENTS FOR CONTRACTORS (WITHOUT CONSTRUCTION RISKS)

General Insurance Requirements

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office (ISO) Commercial General Liability coverage (Occurrence Form CG 0001)

2. ISO Form Number VA 0001 covering Automobile Liability, Code 1 (any auto).

3. Workers' Compensation insurance as required by the Commonwealth of Virginia and Employer's Liability Insurance.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 per occurrence.

Coverage is to include bodily injury and property damage, personal and advertising injury, products and completed operations and contractual liability. If a general aggregate is used, either the general aggregate limit shall apply separately to this contract, lease, project, or location or the general aggregate limit shall be twice the required occurrence limit.

Hazardous and special risk contracts may require a larger per occurrence limit. Set the limits required by the contract to the risk exposures in the contract work, not based on the size or price of the contract.

2. Automobile Liability — $1,000,000 per accident for bodily injury and property damage, to include non-owned autos.

3. Workers' Compensation — As required by the Commonwealth of Virginia

4. Employer's Liability — $1,000,000 per accident for bodily Injury or disease.

5. Builder's Risk or Course of Construction — Completed value of the project with no coinsurance provisions.

If the contractor maintains higher limits than the minimum shown above, the entity shall be entitled to coverage for the higher limits.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the entity. At the option of the entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity; or the contractor shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related claim and legal expenses.

Waiver of Subrogation

Contractor agrees to waive subrogation which any insurer of contractor may acquire from contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A: VII unless otherwise acceptable to the Entity.

Verification of Coverage

Contractor shall furnish entity with original Certificates of Insurance, and requested Declarations pages and Endorsements effecting coverage required by this contract. All certificates, requested declarations pages and endorsements are to be received and approved by the entity before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The entity reserves the right to request and receive complete, certified copies of all required insurance policies, including endorsement affects the coverage required by these specifications at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated hereunder.

Builders Risk

Contractors may submit evidence of builders risk insurance as evidence of course of construction coverage. The insurance protects the parties to the agreement from financial loss during the construction process. Multiple parties may have financial interest in the process and may include the owner of the project, a lender and contractors. You must review the policy language provided for termination events such as substantial completion, owner occupancy and full completion. These times and dates will be important to coordinate with your existing property policies to guarantee no gaps in coverage will occur.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The entity, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising our of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. Liability coverage shall be provided in the form of an Additional Insured endorsement to the policy using ISO Form CG 20 10 11 85 or its equivalent.

2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the entity, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the entity for itself, its officers, officials, employees and volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

Exhibit 3

INSURANCE REQUIREMENTS FOR CONTRACTORS (With Construction Risks)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the worker hereunder by the Contractor, his agents, employees, representatives or subcontractors.

Minimum Scope of Insurance

1. ISO Commercial General Liability coverage (occurrence form 0001) or ISO form G0009 11 88 Owners and Contractors Protective Liability coverage form—Coverage for Operations of Designated Contractor.

2. ISO Form Number VA 0001 covering Automobile Liability, Code 1 (any auto).

3. Workers' Compensation insurance as required by the Commonwealth of Virginia and Employer's Liability Insurance.

4. Builder's Risk Insurance or Course of Construction insurance covering all risk of loss less policy exclusions.

5. Surety bonds as described below.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

Commercial General Liability: $5,000,000 per occurrence.

Coverage is to include bodily injury, personal injury and property damage, advertising injury, products and completed operations.

If policy includes a general aggregate, either the general aggregate shall apply separately to this contract/lease/project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:	$1,000,000 per accident for bodily injury and property damage. To include non-owned autos.
Workers' Compensation:	As required by the Commonwealth of Virginia.
Employer's Liability	$1,000,000 per accident for bodily injury or disease.
Builder's Risk or Course of Construction:	Completed value of the project with no coinsurance penalty provisions.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the entity. At the option of the entity, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers; or the contractor shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related claim and legal expenses.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A. M. best's rating of no less than A: VII, unless otherwise acceptable to the entity.

Verification of Coverage

Contractor shall furnish the entity with Certificates of Insurance and requested Declarations pages and Endorsements effecting coverage by this contract. All Certificates, requested Declarations and Endorsements are to be received and approved by the entity before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

The entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time.

Waiver of Subrogation

Contractor agrees to waive subrogation which any insurer of contractor may acquire from contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the contractor, its employees, agents and subcontractors.

Subcontractors

Contractor shall required and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. A bid bond assuring control.
2. A performance bond.
3. A payment bond.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The entity, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of the work or operations performed on behalf of the contractor, including materials, parts or equipment furnished in connections with such work or operations.

General liability can be provided in the form of an endorsement to the contractor's insurance or as a separate owner's policy.

2. For any claims related to this contract, the contractor's insurance shall be primary insurance as respects the entity, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the entity shall be in excess of the contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be canceled by either party, except after a minimum of thirty (30) day's prior written notice has been provided to the Entity.

4. Builder's Risk or Course of Construction insurance shall contain the following provisions: "The entity shall be named as loss payee."

Exhibit 4

INSURANCE REQUIREMENTS FOR SUPPLIERS

Vendors shall procure and maintain for the duration of the contract insurance against claims for injuries to persons and damages to property which may arise from or in connection with the products and materials supplied to the entity. The cost of such insurance shall be borne by the vendor.

Minimum Scope of Insurance

Coverage shall be at least as broad as ISO Commercial General Liability coverage (Occurrence Form CG 0001) and including products coverage.

Minimum Limits of Insurance

Vendor shall maintain limits no less than $1,000,000 for bodily injury and property damage, and an aggregate limit of $1,000,000.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the entity. At the option of the entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity; or the vendor shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related claim and legal expenses.

Verification of Coverage

Vendor shall furnish the Entity with Certificates of Insurance, requested Declarations pages and Endorsements effecting coverage required by this clause. All Certificates and requested Declarations pages and Endorsements are to be received and approved by the entity before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

The entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Waiver of Subrogation

Vendor hereby agrees to waive subrogation. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the vendor, is employees, agents or subcontractors.

Other Insurance Provisions

The policy or policies are to contain, or be endorsed to contain, the following provisions:

1. The entity, its officers, officials, employees and volunteers are to be covered as insured as respects products and services of the vendor.

2. The vendor's insurance coverage shall e primary insurance as respects the entity. Any insurance or self-insurance maintained by the entity shall be excess of the Vendor's insurance and shall not contribute with it.

3. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be canceled, except after a minimum thirty (30) days prior written notice has been provided to the entity.

Vendor Exceptions

There are a number of organizations and companies that provide services to the entity that will not have formal contracts in place. These include, but are not limited to, United Parcel Service, Federal Express, the U. S. Mail, and for-hire interstate and intrastate truck lines as examples.

Although these companies may provide vendor services to your entity, typically they do not require formal contracts, and will not require evidence of insurance. All companies listed are required to be licensed under the Department of Transportation rules and regulations which also require specific limits of insurance.

Exhibit 5

COMMONLY UNRECOGNIZED INSURANCE RISKS

While developing insurance specifications you will notice a number of risks that are not recognized or addressed by standard insurance products. Should these risks be pertinent to the contract they can be added by endorsement, new policies, addendums or contractual agreements. These risks include:

1. Liability for discrimination, harassment and other employment practices.

2. Liability for acts of independent contractors.

3. Environmental impairment or pollution liability.

4. Coverage for non-owned auto, aircraft and watercraft.

5. Automobile liability limits required by law are inadequate.

6. Responsibility for ownership, maintenance and use of autos.

7. Business interruption and loss of cash flow after damage to property or assets.

8. Excess or Umbrella liability.

Exhibit 6

RISK RULES

- Don’t risk more than you can afford to lose.
- Don’t risk a lot for a little.
- Consider the odds of an occurrence.
- Have clearly defined objectives.
- Never depend upon someone else’s insurance.
- Verify the accuracy of all relevant information received.
- Read every Certificate of Insurance carefully.
- Primary and excess insurance policy periods should coincide.
- Eliminate coinsurance clauses.
- Risks accepted under contract are not always covered by contractual liability insurance.
- Know the implications of “claims-made” and “occurrence” based insurance.
- Modify the “notice” provision of an insurance policy to mean a specific person.
- Common sense is still the most important ingredient.

Exhibit 7

A SUCCESSFUL PUBLIC PURCHASE
Measured from a Risk Management Perspective

- The risk retained is appropriate and affordable.
- Risk, as an element of the overall procurement, is incorporated at the onset.
- Insurance, indemnity and other pertinent conditions are not so onerous that their negotiation unnecessarily (1) delays transactions, or (2) necessitate the use of second-rate vendors or service providers.
- Contractual conditions allocating risk are not so onerous that a court disallows their operation on the contract, or at a future date.
- Insurance requirements are clear, using recognized industry terms that can be readily interpreted both at the time the procurement is negotiated and in possible future disputes.
- Insurance and other indemnity support is in place when a loss occurs.
- A working insurance monitoring process is maintained to verify the service provider is at all times compliant with the contract.
- The performance of the contract is regularly monitored and evaluated.

Exhibit 8

Hard Insurance Markets and Soft Insurance Markets

"Hard market" refers to the overall state of the insurance marketplace, or the condition of a particular segment of it. It is a "seller's" market Signs that a consumer is facing a hard insurance market include:

- Premium increases may be unrelated to loss experience. During a hard market cycle, even insureds with a good loss experience may face steep increases in annual premiums, reflecting the insurer's need to generate revenue in order to compensate of losses and poor investment outcomes.

- Insurance Companies Become Unpredictable. During a hard market, it is not unusual to see insurers pack up and leave certain geographical areas, or decide not to offer certain lines of insurance (e.g. medical malpractice, etc.), or not insure certain classes of insureds (e.g nursing homes, jails, etc.)

- New coverage restrictions, exclusions or requirements may be applied. Coverage that was readily accessible on a year ago may be only available under severe restrictive terms or not available at all.

"Soft market" is perhaps easiest to define by describing some of its common characteristics. For example, those things that indicate that it is a "buyer's" or "soft" market include:

- Insurance is relatively affordable. Insurance is always expensive, without doubt, but if you're facing only single digit or flat premium increases despite some losses, you're benefiting from a "soft" market.

- You can buy coverage for just about anything. During a soft market insurers work hard to compete for business. They tout "better" or "improved" coverage. Many of these additional lines of coverage reflect remote areas of risk.

- Competition is in the air. During a soft market insurers may be inspired to identify new coverage needs and design new lines of coverage or insurance products. Insurers may be willing to expand the breadth of coverage by deleting exclusions that are common during hard market conditions. A variety of “add-ons” may be offered; automatically offering additional property coverage, etc.

Despite the unpredictability of the insurance markets, there are a number of practical steps you or your clients can do to improve the odds in a bad market.

1, Understand the coverage. Understand the scope of your insurance program and that of your vendors. Are you aware of areas where there is exposure in your contract but no coverage? This may require reading the certificates and even some of the policies.

2. Identify a competent insurance professional and team up for best results.

3. Find out if you’re protected. State law requires most insurers to give commercial policyholders advance notice of nonrenewal or a change in coverage terms. Clarify the notice terms of each policy.

4. Keep up with the Jones’s. One of the best sources of information about insurance is your existing network of procurement and risk management professionals. Take advantage of this.

5. Know the insurance company. Obtain an agreement in the contract that the agent or broker will notify you immediately of any change in the ratings for the insurers on your contract. Insurers are like banks. They hold your money in anticipation of future payments under specific contingencies. Check A. M. Best, Moody’s, and Standard & Poor’s.

6. Take risk management to heart. Most strategies in this area cost nothing to implement. There’s no time like the present to address nagging concerns. Find answers now. Don’t wait to thoroughly examine what happened and why it happened.

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