



# Procurement and Certificates of Insurance: Understanding the Basics

***This information is for general informational purposes only. Depending on the nature and scope of the procurement, you should seek advice from your risk management professional, attorney, insurance professionals, and any other appropriate local government staff regarding specific insurance requirements. Every procurement is unique, and there is not a one-size-fits-all for contracts, as there is extreme diversity in contracting and unique parties have differing tolerance for risk. This is not an exhaustive list of coverages available nor an exhaustive list of considerations. Your project may require additional protections, procedures, or safeguards.***

Once a local government hires a contractor or vendor, there can be exposure to liability for the wrongful acts committed by the contractor or vendor or arising from the vendor's activities, even if the local government is not at fault. Let's discuss a method to help mitigate this exposure through procurement practices aimed at transferring risk.

During the procurement process, establish minimum insurance requirements based on the scope of the work being solicited. Those minimum requirements include, but aren't limited to, the type of services, complexity, duration, cost, the risk involved, technology impact, potential impact to citizens, etc. Some common minimum insurance requirements are:

- **Commercial general liability insurance on an occurrence form.** Commercial general liability insurance includes bodily injury and property damage liability, personal and advertising injury liability, and products and completed operations. Liability limits should not be less than \$2 million combined single limit for each occurrence.
- **Automobile liability insurance.** Automobile liability insurance should be \$2 million combined single limit for each accident for bodily injury and property damage. It includes coverage on all owned, hired and non-owned automobiles.
- **Workers' compensation/employers' liability insurance.** Workers' compensation/employers' liability insurance must meet the statutory limits in compliance with the workers' compensation laws of the State of Florida. The employers' liability limits are \$1 million for each accident and \$1 million for each disease.

Depending on the type of contract or vendor, the following types of more specialized insurance may also be recommended:

- **Cyber liability insurance.** Cyber liability insurance is an emerging risk. When procuring services or products in the technology space, including payment processing vendors, you may want to require the vendor to carry cyber liability insurance with at least a \$2 million limit per claim. If prospective vendors cannot comply with this requirement, another method is to transfer cyber risks, such as data breaches, through contractual terms and conditions, which can be introduced during the solicitation phase.
- **Professional Liability (or E&O - Errors and Omissions).** Professional Liability provides coverage for errors in professional judgment that lead to damages to your entity or others. When procuring technology and professional services contracts, particularly with licensed professionals such as architects, engineers, attorneys, accountants, and/or insurance brokers, it is recommended that the vendor carry Professional Liability with at least a \$2 million limit per claim.
- **Builder's Risk Insurance (Course of Construction).** Builder's Risk protects the contractor and owner during construction projects by covering the under-construction property and the related equipment and materials. It is recommended that this coverage be written on an all-risk basis, including earthquake and flood, to include a maximum number of covered perils. The limit is often tied to the value of the project. You should request that your entity be added as a loss payee for any property that your entity may have an interest in related to the project.
- **Pollution Liability.** Pollution liability is recommended if there is an environmental risk related to the project, whether that is construction, transport, or involves a vehicle/vessel, which could cause environmental damage. It is recommended vendors carry at least a \$2 million limit per claim, where this type of coverage may be applicable.

After vendor selection, gathering certificates of insurance from the vendor(s) (including subcontractors) is an important next step.

### **What Is a Certificate of Insurance and How Does it Work?**

A certificate of insurance (COI) is a document generated by an insurance company or an agent that shows pertinent information about the insurance policies. COIs contain the following information:

- Name of insured
- Policy number
- Policy term period

- Name of the insurance company
- Limits and deductibles
- Certificate holder information

A COI is a document furnished by Party A to Party B, showing that Party A has certain insurance coverages and limits for a special operation that Party A is performing for Party B or is doing on Party B's property. The COI is normally produced by Party A's insurance agent(s) and is given to Party B before the start of the event or at the beginning of the service.

If Party A has coverages with more than one agent, each agent will provide a certificate when its respective coverages apply. The certificate furnished to you by the vendor/contractor should list your entity as an additional insured.

Additional insured status gives you immediate rights to obtain paid legal defense in the event a covered claim is alleged against the public entity, and greatly increases your chances of recovery should any claim remain. In the event of a claim, the vendor/contractor's insurance policy will cover the municipality for the service being performed by the vendor/contractor. This same principle is true when an individual or group wants to rent one of your facilities, so it is ideal to always seek Additional Insured status on the insurance policies of those with whom the public entity has dealings.

### **Other Insurance Considerations**

There are also some special considerations to take into account when discussing contractual insurance requirements, including the following:

- Required insurance should be verified to be in place. The risk manager/insurance coordinator should receive a COI 15-20 days before the start of the project.
- Your entity should be given 30 days' notice before any cancellation or significant modification of the other party's insurance. Include this element among the insurance requirements of the solicitation.
- Your entity should be listed as an additional insured for general and automobile liability coverages. Verification of additional insured status is recommended and is generally done by viewing the endorsement adding your entity as an additional insured or by reviewing the appropriate policy language.
- You should require the contractor to be responsible for ensuring that all subcontractors comply with all insurance requirements.
- An appropriate indemnification and hold harmless clause should be made a provision of any contract resulting from the procurement or purchase.

- Examine applicable deductibles to make sure the contractor or vendor is capable of paying the amounts required before insurance coverage may be applicable. This is more important where a large deductible or typically even larger self-insured retention (SIR) is in play, as the insurer may not even have an obligation to defend or pay damages until the costs and expenses of any claim are great enough to erode or trigger this SIR.
- If the policy in question is a claims-made policy, any claims must be made during the coverage period (typically one year) while the current policy is in effect. It is most prudent to require proof of ongoing coverage, as in some instances, a claim may develop years later. It is most prudent to require proof of ongoing coverage, as in some instances, a claim may develop years later. Alternatively, you should insist upon vendors or sellers to provide evidence of Occurrence-based coverage, which will respond to any claim that accrued during the time the policy covered the risk or activity.
- It is also beneficial to require that your vendor's insurance coverage be the Primary Coverage for any claim related to the contract. This means that the vendor's coverage would be the first to cover any claim, and that your coverage would only be applicable if the vendor's coverage is exhausted. Request the complete policy from your vendor or contractor so the policy can be reviewed for applicable coverages, limits, and exclusions.
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## **Conclusion**

Request that your local government be added as an additional insured on the vendor's certificate of insurance and request a copy of the additional insured policy endorsement. Certificates of insurance alone cannot legally amend or change your vendor's insurance policy, so it is best to request the additional insured policy endorsement for confirmation that your organization has been added to the vendor's policy.

This step is critical and is often overlooked after the vendor selection process is complete. Note that some insurers will charge an additional premium for this endorsement, and vendors may want to transfer the cost to your organization. The requirement to be added as an additional insured to the vendor's policy, at no additional cost, should be included as a requirement in the procurement solicitation document. Upon receiving the endorsement, review it carefully to understand the policy conditions including, but not limited to, limits and sub-limits available.