INSURANCE REQUIREMENTS IN CONTRACTS

A Procedure Manual for California Entities

Revised Edition Date: January 2007

This manual was originally developed and placed in public domain to benefit public agencies. Work on the original manual was done by a number of entities and persons including Warren, McVeigh & Griffin, Erin Oberly, Driver Alliant, Bickmore Risk Services, and others. Sections of this current edition have been updated by Bickmore Risk Services. This manual is intended to provide general guidelines. Bickmore Risk Services does not warrant or guarantee the legal effect or the appropriate use of the contents. Bickmore Risk Services recommends that users consult with their legal counsel when considering contractual language.

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INSURANCE REQUIREMENTS IN CONTRACTS

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FOREWORD

THE PURPOSE OF THIS MANUAL IS TO SERVE AS A GUIDE IN DEVELOPING EFFECTIVE TRANSFER OF RISK TECHNIQUES AND INSURANCE REQUIREMENTS IN CONTRACTS TO PROTECT THE ASSETS OF THE ENTITY AND ITS RISK SHARING POOL. THE INFORMATION CONTAINED HEREIN IS INTENDED TO PROVIDE RECOMMENDATIONS ONLY AND NOT "BLACK AND WHITE" MANDATES. This manual explains how to protect your entity by transferring the risk of liability; establish insurance requirements for contracts with contractors, tenants, vendors and users of public property; and monitor compliance with these requirements during the term of the contract.

It should be noted, however, that risk management is more of an art than a science; therefore, although this manual will provide guidance in 90% of the cases encountered by the user, there will also be exceptions to the rules discussed here. This manual will not answer every question regarding risk allocation or risk transfer in contracts. If the user encounters situations that fall outside of the manual's recommendations, the user should call their legal counsel or insurance advisor. As one author has stated, "The insurance market is far from static, and the current status of the insurance marketplace should also be reflected in insurance requirements."

Due to these ever-changing market conditions and the fact that the Insurance Services Office (ISO) has revised some of the standard insurance coverage and endorsement forms, some of the forms referred to in this guide may not be current. Also, due to the revisions and the myriad of possible circumstances, we have omitted specific insurance forms previously included in this updated edition. Copies of specific forms can be obtained from your insurance advisor or Bickmore Risk Services (BRS). Comments on changes to the forms with recommendations on which to use and when are provided when appropriate. It is important that the user check the edition date of the forms supplied by contractors, tenants, vendors, and users of public property, and/or their agents and brokers to make sure they are the forms recommended. The edition date will be found in the lower left-hand corner of the forms, in parentheses, following the form number. To avoid any confusion in the bidding process, it is important to include language stating that a certain form "or its equivalent" is required or words to that effect.

Non-insurance sections of the contract are also very important to the risk management process. It is not your entity's problem if the contractor's insurance does not cover all of their indemnity exposures with you; that is their problem to solve. Having clear, consistent, and unambiguous language in your contracts will give everyone notice of the requirements. Moreover:

- ✓ There should always be a section in the contract that states that the lack of insurance does not negate the contractor's legal obligations under the contract.

- ✓ ***BRS is not a law firm and, therefore, recommends that the user of this manual consult with the entity's attorney for specific language in any contract. This manual is not to be considered a substitute for competent legal advice on the drafting and enforcement of contracts.***

Always remember that insurance is only one way that the contractor can defend and indemnify your entity for liability claims. Commercial insurance (or sufficient funded reserves) is simply the financial guarantee of the contractual obligations. Therefore, the indemnity language in the

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contract or bid specifications must be strong. If the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, make certain they do have the assets to indemnify the uninsured or underinsured areas. Your ultimate goal is to be able to tender the defense of a claim back to the contractor or consultant so that the entity, or its liability pool, does not have to spend money and resources defending itself due to an act or omission of the other party to the contract.

Finally, we have included a section containing some commonly-asked questions from manual users over the years. We have included this section as a resource to illustrate that risk management is not a cookbook-type process and to encourage you to contact your insurance or legal advisor when you encounter an "outside-the-box" situation. Insurance policies, endorsements, and coverage situations are complex; however, the risk of paying more on claims than necessary will increase if you do not at least have a working knowledge of the basics behind insurance and non-insurance risk transfer techniques.

It is important to understand that it is not the size or nature of the individual contract that matters as much as the amount of the potential exposure to the entity. Most of the time, that potential exposure can only be assessed by the particular entity involved. This manual is intended to address many questions and issues that may arise when attempting to transfer the risk of liability to another entity, person, or organization. In our experience, most of your questions can be answered by a review of Chapters One (1) through Four (4) regarding risk transfer and insurance requirements. The rest of the manual is intended for specific situations that require specific remedies or a more complicated analysis.

The professionals at BRS are committed to providing proven recommendations based on their experience and dedication to excellence. To further assist you, BRS has staff dedicated to responding to your questions on risk transfer and insurance coverages to protect your entity. We encourage you to take advantage of this valuable resource.

For a copy of this manual in either electronic format or hard-bound copy, please contact BRS.

FREQUENTLY ASKED QUESTIONS

The following questions represent those often asked by users of this manual. If you have questions that are not addressed in this section, please contact your insurance advisor or BRS.

1. ***If a lessee or contractor is a large one, do I still need to insist on the insurance requirements?***

   Yes. You would have no way of verifying that their assets were available for losses that might occur whereas you would have more confidence in an insurance carrier with a quality AM Best's Rating.

2. ***Is it acceptable if the contractor alters the indemnification language?***

   No. The indemnification language has been carefully worded to afford your entity as much protection as legally possible, and it has been tested in court. Altering the language would weaken your entity's protection. However, there will be special situations in which the entity can negotiate other indemnification language that is acceptable to all parties to the contract.

3. ***Can we require an AM Best's Rating for a company that is "admitted" in California, or is this against the law?***

   Yes, unless the company is a surety company. The law you refer to requires construction owners to accept surety bonds from any surety company in an effort to improve minority contractors' chances in successfully bidding a job. If it is a federally-approved surety, you are obligated to accept the surety. For more information, visit http://fms.treas.gov/c570/index.htm.

   Remember, just because an insurance company is "admitted" does not assure you that it has the assets required by your contract. The financial strength of the company to respond to claims may be more important than whether it is an "admitted" insurer. Your broker or risk management advisor would be in the best position to advise you on this. The advantage of a California-admitted carrier is that they pay into a fund which has some assets available for your protection in the event of the carrier's default.

4. ***Why should we ask for property insurance on tenant improvements and betterments instead of just adding them to our property insurance policy?***

   Because unless the lease specifically states that your entity gains ownership of these improvements as soon as they are installed, your entity has no insurable interest in them and, therefore, you cannot insure them under your policy.

FREQUENTLY ASKED QUESTIONS

5. If the contractor's insurance does not meet the criteria in the insurance requirements in contracts specifications, should we alter the requirements to fit the contractor's insurance?

No. The insurance requirements language has been carefully worded to afford your entity as much protection as legally possible, and it has been tested in court. Altering the language would weaken your entity's protection. It is not the responsibility of your entity to tailor your requirements to fit; rather, you are doing the contractor a favor in showing them the proper coverage they need in order to protect their business and "win" the contract.

This manual, however, provides only recommended guidelines. There will be times when you can negotiate or accept lesser requirements if a smaller trade contractor is unable to secure the required insurance and the evaluated maximum exposure is not significant. This should be determined on a case-by-case basis and is basically a "business decision" whether to accept less protection. You should consult your insurance advisor, legal counsel, or BRS if you have any questions.

6. Does the "edition date" on the suggested ISO endorsements matter?

Yes. There have been significant reductions in the coverage afforded to additional insureds by "updated" ISO versions of these endorsements. The 2004 ISO Additional Insured Endorsement is an example. A further discussion regarding these changes is contained in the section of the manual on endorsements.

7. Are changes to a certificate of insurance, such as an agent or broker changing the word "endeavor" to "will provide" in the notification section or changing the notice of cancellation provision, effective in altering the policy?

No. Always remember that Certificates of Insurance DO NOT alter the insurance coverage, and any changes that are necessary need to be endorsed onto the policy with a copy of the endorsement provided to your entity. Agents and brokers will sometimes try to convince you that endorsements are unnecessary when the Certificate of Insurance has had its wording changed. When this occurs, you need to point out the box in the upper right-hand corner of the Certificate which states the Certificate DOES NOT amend or alter the insurance policy.

You should require that an applicable additional insured endorsement contain specific language that will provide at least thirty (30) days' written notice of cancellation or non-renewal. This gives the entity direct rights under the policy, including being informed of any change in the status of the coverages.

FREQUENTLY ASKED QUESTIONS

8. Can lower limits be permitted when we are dealing with small contractors, vendors or artisans, and we are only using them for small jobs?

Generally, the answer is no. However, there may be situations where some small trade contractors, local vendors, or artisans provide a service to your community and the cost to obtain the recommended insurance requirements may be too much for the vendor to afford. Again, you should always evaluate the potential of the loss, the potential of the benefit to the organization for the service provided and, finally, the vendor or contractor's financial capacity to purchase coverage at reasonable rates. The dollar amount of the contract or agreement should never be the sole determining factor on the amount of insurance required, but these are most likely the very people you want the limits from, as you can be relatively sure they do not have the assets needed to indemnify your entity in the event of a serious underinsured loss. The risk management profession teems with stories of entities which allowed underinsurance because a job being done was small, only to suffer large uninsured losses that the entity had to absorb. (Small jobs can cause big fires.) Ultimately, your entity can do what it deems best; however, any loss to your entity or its pooled liability program should be anticipated if it is to be managed.

9. The contractor's broker or agent states it cannot get the endorsements as required by the Insurance Requirements in Contracts specifications. What can we do?

In many instances, the agent or broker has not even approached the insurance company with your request – they are merely trying to discourage you from asking so that they will not have to bother. We recommend you contact the broker or agent directly. By informing them of the needs and requirements of your entity, they will typically provide you with the necessary endorsements. If this tactic does not work, please call your insurance advisor for confirmation of the potential unavailability of endorsements. There will be situations where smaller trade contractors are unable to secure the recommended insurance requirements. You should evaluate the reputation of the contractor or vendor in the community, its financial strength, whether you want to use this particular contractor or not, and the reputation of the broker. One tactic is to inform the broker that he or she would not want the contractor (his or her client) to be in breach of contract with the agency by not providing the required insurance.

10. How do we determine the proper limits of liability for any given job?

Ask yourself how much damage the contractor could cause if they totally botched their work, including potential damages to third parties. Include in your estimate lost time, wages, extra expense incurred for repairing or replacing the work, and any future impact. If this amount is more than the suggested amounts shown in the specifications in this manual, use a greater amount. The contract price is not an accurate figure to determine potential liability limits.

FREQUENTLY ASKED QUESTIONS

11. Can we accept an insurer with less than A.M. Best's Rating A-VII or Standard & Poor's Rating BBB?

Yes. Keep in mind, however, that the rating gives your entity some confidence in that insurer's ability to cover all of its claim liabilities, including your potential claim. By accepting lower A.M. Best's or Standard & Poor's Ratings, you are exposing your entity to the possibility that the insurer will be unable to pay any claim you or a third party may present. As an aside, major insurance brokers and agents also insist on placing clients in companies with high A.M. Best's and Standard & Poor's Ratings as a way of protecting themselves against potential E&O claims from their clients. Explanations of both A.M. Best's and Standard & Poor's Ratings are included in a later section of this manual.

12. How do we discover what the rating of an insurer is?

You can subscribe to the A.M. Best's free on-line service at www.ambest.com. You can also call your risk management or insurance consultant and they will research it for you. For a Standard & Poor's rating, please visit www.standardandpoors.com and look for a "Find a Rating" link in the margin or header.

13. What do these financial ratings mean?

These ratings give your entity a picture in time of the strength of the management and finances of the insurance company that is guaranteeing the contractor's ability to reimburse and/or protect your entity in case of a loss. The meaning of the specific ratings is discussed later in this manual. The insurance is the financial guarantee of the contractor's covered legal obligations in the contract.

14. Does a contractor need professional liability coverage?

It depends; only if the contractor is expected under their contract with your entity to provide your entity with "professional" services. The simplest way to decide is to determine whether the nature of the services provided entail brain work or physical work. If it is only physical work, then a commercial general liability policy (CGL) and/or automobile policy will most likely cover all your exposures to loss. However, if the work or a portion of the work is expected to involve primarily thinking or providing "professional services," professional liability insurance is required. As an example, if a contractor is merely following blueprints in constructing a building, it would involve only physical work and a CGL policy will work. However, if that contractor decides that they know a better way to construct part of the building and they alter the blueprints, then they have crossed the line over into "professional" services, and they would then need professional liability coverage to cover a potential subsequent loss due to their change in the blueprints.

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15. How long a period of time do we require the claims-made professional liability to be carried after completion of the project?

For as long as possible. Remember that "claims-made" coverage will only respond to a claim that is presented while the policy is in force. Therefore, it is imperative that your entity be protected as long as possible after the completion of the project so that any claims caused by faulty design or other professional services (see Question 14) will be covered by the responsible party. Keep in mind that the regular liability policy may not cover professional liability losses and, therefore, your entity may have to retain the loss in the event of a claim arising out of professional services rendered on the project. Normally, professional liability policies can be purchased with a three-year "tail" which will allow claims to be presented up to three years after the professional liability policy expires. The three-year "tail" coverage is not automatic and must be purchased by the consultant at the time the policy is non-renewed. This is a complicated area of insurance coverage, so you should consult your insurance advisor or legal counsel.

16. Does a contractor need proof of automobile liability insurance when they are hired to work on the premises?

Yes, for the very simple reason that the contractor has to use some means of transportation to reach your premises and to transport tools, supplies, and materials. If the contractor is engaged in business on your entity's behalf when they are involved in an automobile accident, your entity may be held vicariously liable under a peculiar risk or non-delegable duty doctrine. In that case, the contractor's automobile insurance would respond since your entity would be considered an insured under the policy.

The standard auto liability policy should also provide "additional insured" protection under the definition of "Who is An Insured" if providing the auto coverage is a requirement in the contract.

17. Should we ask to be named as an additional insured on the contractor's professional liability policy?

No. The contractor's professional liability insurer would not do so, nor would any professional liability insurer. The reason is that the underwriters for the insurer would not want to pick up your entity's professional liability hazards, which it might be required to do if you were an additional insured. Professional liability policies are written to specifically cover individuals who are individually underwritten based on their professional history.

Keep in mind that potential liability of your entity for a public works project may not arise out of an error by the professional but may be related to an act or omission of your entity that contributes to the loss or damage. The entity must be proactive in determining its own liability coverages in addition to obtaining a professional liability policy from such professionals.

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18. What can be done if we do not have the proof of insurance when it is time to start the work?

There is very little that can be done at this point in the process, and that is why we recommend that the insurance specifications contained in this manual be sent out with the pre-bid package. There are no good choices when this situation occurs; you must either delay the work while you wait for the proof (which has a way of really upsetting your construction people) or you must, in effect, "self-insure" the contractor until the proof is received and accepted and hope that the contractor's insurance meets your specifications and that no exposures occur in the interim. It is important that a specific person in your entity be designated as the one who will monitor compliance of the insurance requirements. Many entities have dropped the ball by not ensuring that the proof of insurance or the additional insured endorsement is in their possession before the project beginning. It can be quite costly.

19. Do we need to diary the date of the expiration of the policy in the event that construction has continued past that date?

Yes. To not do so would be the same as having not transferred the risk at the initial phase.

20. Why can't we accept a Certificate of Insurance as proof of the entity being named as an additional insured?

It is really rather simple. In the upper right-hand corner of the ACORD Certificate of Insurance are the following words**: "This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy below."** If any agent or broker tries to convince you that the certificate really does confer rights or coverages and that you do not need the endorsements you are requesting (and some will), you can read this to them out loud. This is more fully discussed in the next section.

21. Why do we need an indemnity clause when we are added as an additional insured on the liability policy?

Always remember that insurance is only one way to ensure that the contractor has the financial capability to indemnify your entity. The indemnity provision in your contract means that the contractor is obligated to indemnify your entity whether their insurance covers the loss or not. This puts the burden on the contractor rather than your entity to make certain that their coverage is sufficient and current. If the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, make sure they have sufficient assets to indemnify those uninsured or underinsured exposures.

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22. Should we ask for a Waiver of Subrogation from the contractor's insurer?

Yes. In the case of Workers' Compensation and property insurers, if your entity does not do so, the contractor's insurance company can look to your entity for reimbursement of any claims costs incurred defending or indemnifying their insured on your project. Subrogation is the transfer to the insurance company of the contractor's right to collect damages from another party – in this case, your entity. Although you may have protected your entity from the contractor itself looking to your entity's indemnification, you have not protected your entity from the contractor's insurance company's ability to do so unless you also get a Waiver of Subrogation from the contractor. Most contractors, brokers, and insurers will agree to this provision. It is not uncommon for parties to agree to mutual waivers.

In the case of liability insurers, however, a waiver of subrogation may not be necessary if your entity is an additional insured on the contractor's Commercial General Liability (CGL) policy. An insurer cannot sue one of its own insureds for a covered claim. As an additional insured, you are an insured under the policy. This is why it is important to get copies of the additional insured endorsement. Even with this situation, we recommend that the entity require the Waiver of Subrogation in its contract.

23. If a hold harmless agreement may not necessarily be legally binding in certain circumstances, why do we need to include it?

A properly worded hold harmless agreement usually does not relieve your entity of legal liability for your entity's own negligence or creation of a dangerous condition, but it does transfer the costs of liability from the entity arising out of the contractor's negligence. The hold harmless agreement actually strengthens the protection afforded by your additional insured status.

24. Should our organization require bonds in contracts that are not construction-related?

Yes. There are a number of situations where your organization may want to require bonds (*e.g.,* vendors that provide personalized products such as customized information systems, specific equipment designed and built for your organization, or specific services provided for your organization). Although these may not be required on all vendor agreements, it is important to understand how these bonds may save your organization in the event the vendor fails to deliver or lacks the funding to finalize their product.

25. What other kinds of bonds should we request?

In construction projects, a payment bond is a surety bond whereby the surety promises to make payments to subcontractors for their work if the general contractor fails to do so. A recent appellate court decision found a county liable for failing to obtain and/or require a payment bond on a public construction project. California Civil Code section 3251

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makes it illegal for a public entity to pay a contractor unless the payment bond is filed. A performance bond insures the completion of the project in conformance to the specifications.

26. Should our organization require that contractors provide proof of terrorism coverage in their insurance programs?

Maybe. The federal government has mandated that all insurers offer coverage for terrorist acts for an additional premium. This coverage is currently available, but many insureds are declining this coverage. It is unclear to what extent a contractor could be responsible for any act of terrorism that occurs while performing tasks for your organization.

For the protection of your entity's property, you may consider obtaining coverage on construction projects which may be impacted as a result of a terrorist attack. As with any exposure, you must identify the potential for risk. If the project is politically sensitive or considered highly visible, the inclusion of terrorist coverage may be warranted.

27. Can the entity sometimes waive certain insurance requirements, such as "products/completed operations" coverage?

Yes. Whether a smaller trade contractor (or its broker) can obtain such coverage may depend on the prevailing market, the size of the contractor, the size of the contract, and the particular carrier involved. Some contractors are simply unable to obtain such coverage. Some carriers are unwilling to cover liability arising out of "your work" (the contractor's or subcontractor's work) but will insist on the language of "ongoing operations." This may preclude insurance coverage for the contractor (and the entity as an additional insured) for the completed operations loss.

We recommend that you consult with your insurance advisor, your legal counsel, and/or BRS before you waive this requirement.

28. The contractor states that they are self-insured for liability, auto, and workers' compensation and that they cannot provide a Certificate of Insurance.

In the State of California, organizations that are self-insured for workers' compensation must have a Certificate of Consent to Self Insure issued by the State of California. They must also have authorization from the state to self-insure their auto liability exposures. You should obtain copies of all the documents granting them authority to self-insure. In addition, you should also obtain a letter from the organization which satisfies you that the organization is in compliance with your insurance requirements. You should next confirm that the organization has sufficient assets to cover losses, should they occur. This may include a review of audited financial statements, balance sheets, profit and loss statements, tax returns, etc. Finally, you might require the contractor to post a performance bond, a line of credit, or obtain a fronting policy in an amount to cover potential losses.

FREQUENTLY ASKED QUESTIONS

29. The contractor states that he/she is a sole proprietor, has no employees, and does not carry workers' compensation coverage. Is this acceptable?

Yes. Many small contractors and vendors are either sole-proprietors or partnerships and have no employees. As such, they are not required to purchase workers' compensation coverage for their business. It is prudent in this situation, however, to require a letter from the contractor that states the exact nature of their business entity and that they have no employees which exempts them from carrying workers' compensation insurance coverage.

CHAPTER ONE
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In the practice of good risk management, your entity will often attempt to transfer the risk of accidental loss through contracts. Usually, your entity requires the other party to a contract (contractor or vendor) to assume some of your entity's liability arising out of the activity described in the contract. This transfer, generally, is appropriate as the contractor is most often the party in the best position to control loss.

This intended transfer of risk is achieved by requiring suppliers, contractors, tenants, and users of public facilities (*i.e.,* the other party to most entity contracts) to protect themselves and your entity against claims or judgments arising from their products, activities, or use of your facilities. Usually the best way to assure that the transfer actually takes place (*i.e.,* that the loss will be paid by someone other than your entity) is to require insurance. The insurance should include the protection of the entity, its officers, officials, employees, and volunteers.

Your entity's standard requests for proposal, bid specifications, and contracts should contain a description of the required insurance. In addition, they should contain hold harmless and indemnification clauses in a separate section from the insurance requirements. Hold harmless and indemnification clauses are agreements by which one party assumes certain liability exposures of another and agrees to defend them in the event of a claim. These are the legal instruments of the risk transfer while the insurance is the financial guarantee. The hold harmless and indemnification clauses should be written to take effect immediately upon execution of the contract. They should contain provisions that the entity be held harmless, defended and indemnified, and should describe the extent of such indemnification.

The insurance policy which financially supports the hold harmless and indemnification clauses 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 endorses existing policies to conform to your entity's requirements. As the insurance coverage does not become effective automatically, your entity should require proof that the insurance is in effect and that your entity is named as an additional insured before the contract is accepted.

As proof of coverage, most insurance agents and brokers will provide a document called a Certificate of Insurance. Issuance of a certificate only serves as evidence that the contractor has a policy of insurance at a certain point in time. The certificate does not modify the insurance policy itself, it does not guarantee that the required policy provisions are in place at the time the project begins and does not tell the reader what exclusions or limitations may be found in the contractor's insurance policy. Therefore, your entity must receive and review a copy of the policy or the endorsement amending the policy to make sure that the required coverage are in effect. Although not always feasible, it is a good practice to obtain and review the actual policy or endorsement before work begins pursuant to the contract.

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CERTIFICATE OF INSURANCE GUIDELINES

You will receive certificates of insurance from various sources - from tenants, vendors, and from contractors hired for activities such as tenant improvements, alterations, and additions work. Consequently, it is essential that you be able to read these certificates and compare the information provided to the applicable insurance requirements in a lease or other contract

This guideline is designed to assist you with this process.

GENERAL INFORMATION

What is a certificate?

As a general rule, certificates of insurance do not amend, extend, or alter the coverage of the insurance policies they supposedly document. It is simply a document that gives evidence of the insured's financial ability (via an insurance policy) to respond to a claim. Under most circumstances, no coverage benefits are afforded to the certificate holder by this certificate; the certificate merely confirms that the subject company carries the type of insurance with the coverage amounts listed.

Why are certificates needed?

Certificates give evidence that the other party has appropriate insurance to cover claims for which they are responsible.

When are certificates needed?

Certificates are needed when another party (such as a contractor, janitorial service, security service, etc.) performs services on your behalf or has your property in their care, custody, and control (*e.g.,* leasing your premises or your equipment). You should have a copy of a certificate of insurance before the contractor or vendor begins the work for you or when you entrust property to them.

Who should provide the certificate?

The other party's insurance agent, broker, or risk management department should provide the certificate to you.

What should a certificate include?

1. Name of insurance company issuing each policy;
2. Name of the broker or "producer";
3. Named insured;
4. Address of named insured;

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5. Description of coverage;
6. Policy numbers;
7. Policy periods;
8. Name of any additional insured; and
9. Coverage type (occurrence form vs. claims-made form).

If coverage is provided by a “claims-made” policy, it is required that the certificate include the retroactive date and the length of time allowed for any extended reporting period.

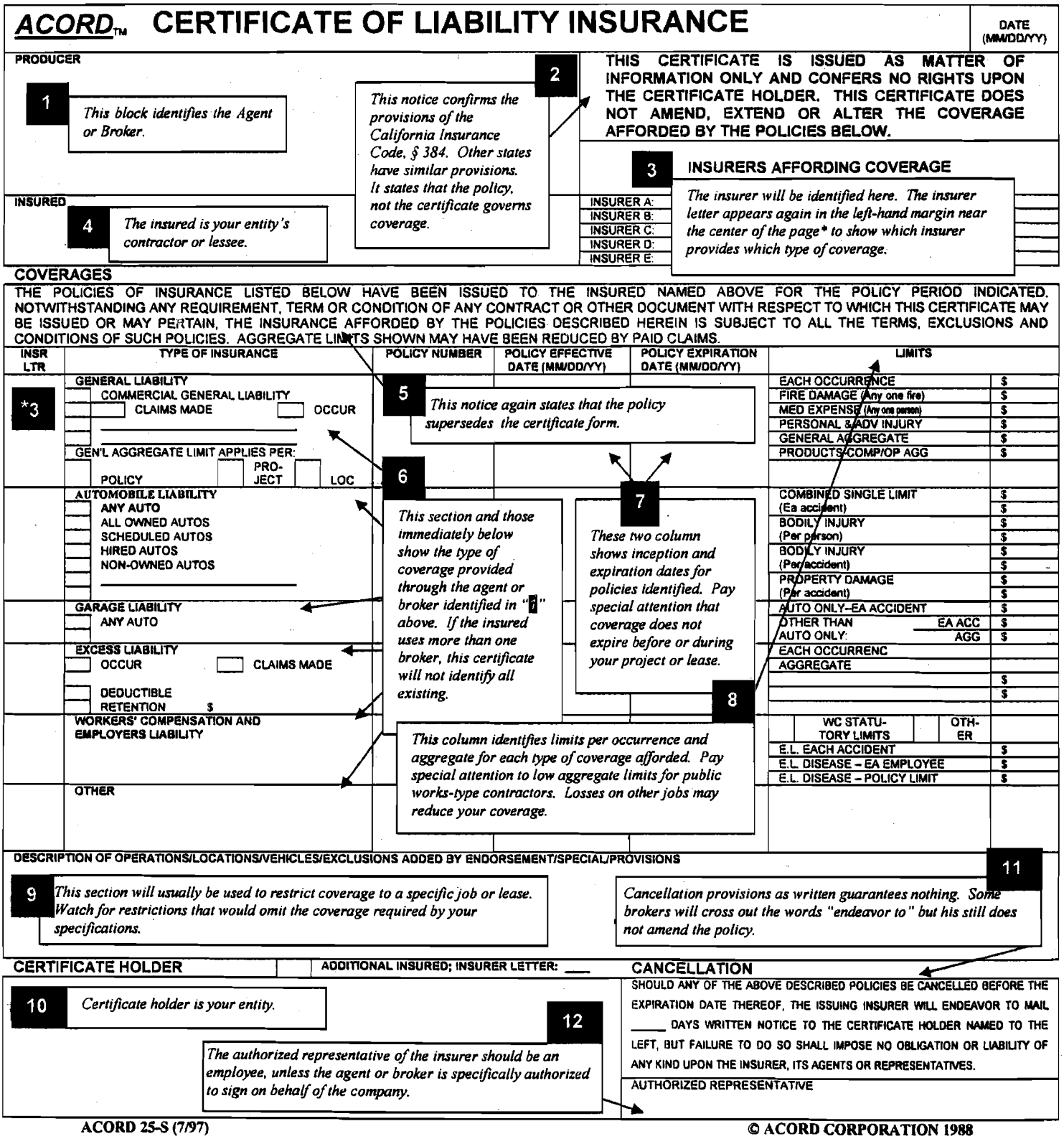
The following information is required on all certificates:

1. Limits of liability;
2. Deductibles (or SIRs);
3. Description and location of operations;
4. Name and address of certificate holder;
5. Notice of cancellation provisions; and
6. Authorized signature and date of issuance.

An annotated ACORD Certificate of Liability Insurance is provided on the next page for your review.

A sample Checklist for Evidence of Insurance and sample Follow-Up Letter are also provided for your reference.

ANNOTATED ACORD CERTIFICATE OF LIABILITY INSURANCE



ACORD™ CERTIFICATE OF LIABILITY INSURANCE — DATE (MM/DD/YY)

PRODUCER

1 *This block identifies the Agent or Broker.*

2 *This notice confirms the provisions of the California Insurance Code, § 384. Other states have similar provisions. It states that the policy, not the certificate governs coverage.*

THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

3 INSURERS AFFORDING COVERAGE

The insurer will be identified here. The insurer letter appears again in the left-hand margin near the center of the page to show which insurer provides which type of coverage.*

INSURER A:
INSURER B:
INSURER C:
INSURER D:
INSURER E:

INSURED

4 *The insured is your entity's contractor or lessee.*

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
*3	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☐ PRO-JECT ☐ LOC				EACH OCCURRENCE $ FIRE DAMAGE (Any one fire) $ MED EXPENSE (Any one person) $ PERSONAL & ADV INJURY $ GENERAL AGGREGATE $ PRODUCTS-COMP/OP AGG $
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) $ BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY-EA ACCIDENT $ OTHER THAN AUTO ONLY: EA ACC $ AGG $
	EXCESS LIABILITY OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENC AGGREGATE $ $
	WORKERS' COMPENSATION AND EMPLOYERS LIABILITY				WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT $ E.L. DISEASE - EA EMPLOYEE $ E.L. DISEASE - POLICY LIMIT $
	OTHER				

5 *This notice again states that the policy supersedes the certificate form.*

6 *This section and those immediately below show the type of coverage provided through the agent or broker identified in "3" above. If the insured uses more than one broker, this certificate will not identify all existing.*

7 *These two column shows inception and expiration dates for policies identified. Pay special attention that coverage does not expire before or during your project or lease.*

8 *This column identifies limits per occurrence and aggregate for each type of coverage afforded. Pay special attention to low aggregate limits for public works-type contractors. Losses on other jobs may reduce your coverage.*

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL/PROVISIONS

9 *This section will usually be used to restrict coverage to a specific job or lease. Watch for restrictions that would omit the coverage required by your specifications.*

11 *Cancellation provisions as written guarantees nothing. Some brokers will cross out the words "endeavor to" but his still does not amend the policy.*

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER: ___

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL ____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

10 *Certificate holder is your entity.*

12 *The authorized representative of the insurer should be an employee, unless the agent or broker is specifically authorized to sign on behalf of the company.*

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ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A:	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

INSURED

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurence)	$
		CLAIMS MADE OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		POLICY PRO-JECT LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		ANY AUTO				BODILY INJURY (Per person)	$
		ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
		SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
		HIRED AUTOS					
		NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		OCCUR CLAIMS MADE				AGGREGATE	$
							$
		DEDUCTIBLE					$
		RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

CHAPTER ONE
INTRODUCTION

A "Checklist" of Evidence of Insurance

- ☐ Coverage is as specified in the contract; (*e.g.*, only "Commercial General Liability" insurance should be accepted for compliance with the general liability insurance requirements. Other forms, such as Owners Landlords and Tenants forms (OL&T) are not acceptable.)
- ☐ Names are correct on the policy, endorsements, and certificate.
- ☐ General Liability is on an "occurrence" basis, not "claims-made" (unless a Professional Liability policy)
- ☐ Policies are current and will be scheduled for renewal follow-up if the contract period runs beyond the policy expiration date.
- ☐ Limits are at least as high as the minimum required in the contract.
- ☐ The insurer's A.M. Best's or Standard & Poor's rating meets or exceeds the entity's minimum requirements.
- ☐ Whether the insurer is admitted in California, is a "non-admitted" insurer, a captive or risk retention group
- ☐ Primary and excess liability policies have concurrent coverage periods.
- ☐ All self-insured retentions on liability policies or self-insured coverages have been disclosed and approved.
- ☐ The entity has received evidence for each type of insurance required.
- ☐ Evidence provides for 30-day notification to entity of changes, nonrenewal or cancellation.
- ☐ Evidence is in proper form, *i.e.*, certificates, endorsements, or policies as appropriate.
- ☐ The entity, its agents, employees, officers, officials and volunteers have been added to the appropriate policies as an additional insured and copies of all endorsements have been received.
- ☐ Auto liability covers "any auto" (or non-owned or hired if the contractor has no autos).
- ☐ Required waivers of subrogation provided.
- ☐ Documents include proper signatures.
- ☐ Description of operations, locations, etc., is correct.

CHAPTER ONE
INTRODUCTION

Sample Follow-Up Letter

Date of Letter

ABC Construction Company
_____
_____
_____

Re: Compliance with Insurance Requirements

To Whom It May Concern:

The documents you have submitted in compliance with the specifications in contract _____ are being returned to you for the following reasons:

- ☐ Need original (or certified copy) or (certificate) / (endorsement) / (policy)
- ☐ Need original signature
- ☐ Additional insured incorrect; should read _____
- ☐ Description of (operation) / (location) incorrect
- ☐ Insufficient limits
- ☐ (Deductible) / (SIR) not approved
- ☐ Wrong coverages, *i.e.*, _____
- ☐ Wrong forms, *i.e.*, _____
- ☐ Insurer does not meet minimum requirements (please refer to the contract)
- ☐ Policy has expired or is about to expire
- ☐ Required waiver of subrogation not included
- ☐ Primary language required
- ☐ Thirty (30) day notice of cancellation or coverage change required
- ☐ Other information:

  _____
  _____
  _____

Please make the necessary changes and return the correct documentation to the entity. No order to proceed will be issued until the correct forms have been submitted and approved.

Sincerely,

_____
Entity Representative

CHAPTER ONE
INTRODUCTION

Additional Insured (Liability Policies)

If you are named as an additional insured, the endorsement should clearly state you are an additional insured and for what purpose. Contractors who work on numerous projects may provide a "blanket" or "automatic" additional insured endorsement form that covers any person or entity required to be an additional insured by contract for "any and all work performed." These are normally acceptable to the entity.

You should strongly consider being named as an additional insured on the other party's policy when:

1. They are a 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; and/or
4. They are conducting a "special event" (*i.e.,* wedding, youth events with alcohol, parades, festivals, farmers' markets, etc.) and they will be utilizing your entity's roads, facilities, personnel or permit process.

Primary Language

All policies for general liability should be endorsed to state that their insurance is primary and that any insurance coverage obtained by, or on behalf of, your agency, whether provided by an insurance company or risk sharing pool, will be considered as excess and non-contributory to the underlying contractor's policy.

PROPERTY INSURANCE CERTIFICATES

Certificate of Property Insurance

This certificate is needed when another party is responsible for providing insurance on property you own or for which you are responsible. In the case of tenants, a certificate is needed where it is specifically required contractually.

A certificate of property insurance should show:

Property Covered - The certificate should provide an appropriate description of all property for which insurance is required;

Limits - The certificate should evidence appropriate amounts of coverage for the property and applicable deductibles;

Coverages - The certificate should provide appropriate coverages for the risk of loss to which the property is subject. Most often, this is expressed as all risks or special form;

CHAPTER ONE
INTRODUCTION

Interests - The certificate should indicate the nature of your interest in the insured property (*i.e.,* owner, lender, or landlord) and your status under the property; and

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 as a loss payee, you will have the right under the policy to be reimbursed directly by the insurance carrier for a loss to your property. Usually, in the event of a covered loss, the carrier will issue a payment jointly to the loss payee and the insured.

For those agencies that have an ownership interest in the property, they should be also added as an additional insured. If they are a lender such as under a redevelopment program or agency, then a lender's loss payable should also be requested.

LIABILITY INSURANCE CERTIFICATES

Certificate of Liability Insurance

Basis - The certificate should indicate whether coverage is being provided on an occurrence basis or on a claims-made basis. Most general liability insurance policies are written on an occurrence basis.

Limits - The certificate should specify amounts of coverage conforming to the requirements of your contract.

Coverages - The certificate should specify whether coverage is provided by a comprehensive general liability policy or a commercial general liability policy. It should also indicate whether special coverages required by the contract have been included.

Certificate of Excess Liability

Limits - If the other party's general liability, automobile, and/or employer's liability, etc., policies provide less than the limits required by you, the certificate of insurance may (and should) give evidence of an excess policy to provide the additional limits.

Coverages – The certificate should indicate whether the excess liability coverage is provided on an excess form or an umbrella form.

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INTRODUCTION

WORKERS' COMPENSATION CERTIFICATES

Almost always, you should require evidence of workers' compensation coverage from your vendors and subcontractors. Please note that you cannot be added as an additional insured to 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 coverage required by your contract. You should require notification of any cancellation or non-renewal.

Waiver of Subrogation – The policy of insurance should be endorsed with a waiver of subrogation in favor of your entity. This language protects your entity from claims for contribution resulting from injuries to the contractor's employees. Existing case law provides that you can be subject to exposure for an employee's injury on the job if you were not diligent in assuring that the vendor/contractor (employer) had valid coverage.

AUTOMOBILE LIABILITY CERTIFICATES

Again, this coverage is important from vendors and contractors.

Limits - The certificate should indicate amounts of automobile liability insurance consistent with the contract requirements.

Coverages - The certificate should identify the categories of automobile to which the coverage applies and any additional coverage endorsed to the automobile liability policy (*e.g.,* owned, hired, or borrowed vehicles). You should require notification of any cancellation. We recommend coverage for "any auto." This protects your entity in situations where the contractor uses an owned vehicle that, for some reason, is not scheduled on the policy.

Additional insured status - the standard automobile liability policy confers "insured" status when this coverage is required in a contract. So, if a contractor or its employee is driving a covered vehicle in the course and scope of the work performed under the contract, you may not need an additional insured endorsement in this situation. Please confer with your insurance or risk advisor when this situation arises.

CONTRACTOR'S POLLUTION LIABILITY (ENVIRONMENTAL)

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

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INTRODUCTION

Limits - The limits should be clearly stated. Some statutes require certain limits of more than $1 million per occurrence. Many policies of this type have a significant deductible or SIR which should also be clearly stated.

Coverages - This type of insurance policy is not as standard as automobile or workers' compensation so the types of coverage provided by the policy should be clearly stated.

Additional Insured - Most often, only the carrier or an exclusive agent will issue endorsements naming other parties as an additional insured so any certificate issued by the normal agent/broker or an insured's risk management department should be carefully reviewed to determine that they have the appropriate authority to grant this status.

CHAPTER TWO
ADMINISTERING INSURANCE REQUIREMENTS IN CONTRACTS
- AN OVERVIEW -

SUMMARY

This chapter describes the basic steps in administering insurance clauses in contracts where the other party is required to provide insurance to protect your Entity, its officials, employees and volunteers. The five basic steps are:

1. *Develop correct insurance specifications.*
2. *Inform bidders of the insurance requirements early in the bid process and distribute forms promptly.*
3. *Review the completed insurance documentation promptly. Notify the other party immediately if paperwork is not correct.*
4. *Save the signed forms indefinitely.*
5. *Inform the other party's insurer immediately, in writing, of incidents or claims that may be covered by the insurance.*

Step 1: Develop Correct Insurance Specifications

The first step is to develop a clear set of specifications describing the insurance to be provided by the other party. These specifications should be included in the contract between your entity and the other party. Chapter Three explains the fundamentals of drafting insurance specifications. Sample sets of insurance specifications that have been developed for the most commonly encountered situations appear in Chapter Five.

The specification exhibits contain only insurance requirements. You will also need to include a hold harmless and indemnification clause in the contract developed by legal counsel. Appendix C provides sample clauses appropriate for many situations. You should also be requesting waivers of subrogation on liability coverage due to recent changes in the Additional Insured Endorsements. **H*owever, the actual clauses used should be developed by your entity's legal counsel, risk manager or insurance advisor to verify that they are appropriate for your specific contracts.***

The glossary (Appendix D) contains insurance terms that you may encounter in administering insurance requirements in contracts, including a discussion of claims-made coverage.

CHAPTER TWO
ADMINISTERING INSURANCE REQUIREMENTS IN CONTRACTS
- AN OVERVIEW -

Step 2: Inform Contractors of the Insurance Requirements Early in the Negotiation Process and Distribute Forms Promptly

Some entities use their own forms to have the contractor, broker or insurer complete and execute. Others rely on the standard industry forms provided by ISO and others. Some brokers and insurers will resist your requirement to use you own form and others will flatly refuse to provide the information on your entity forms. Whether you use your own forms or standard industry ones in bid situations, specifications and forms may be attached as appendices in the request-for-bid package. This accomplishes two goals. First, it eliminates any questions that the bidder may have about the nature of the required forms. Second, the bidder has the opportunity to forward the forms to the insurer or agent for approval before the bid is submitted eliminating delay after the bid is awarded. As recommended earlier, the language should include wording to the effect that certain forms are required "or its equivalent."

Step 3: Review the Completed Forms Promptly

The review of the forms to be provided should be completed in full and be signed by an authorized representative. None of the required items should be crossed out or altered. Note the expiration date of the policies. If any policies will expire during the term of the contract or project, you should set up a suspense file for forty-five (45) days before the expiration of the insurance. At that time, if you have not received proof of renewal or replacement of coverage, you should send a letter to the other party stating that your entity requires receipt of a new set of forms before expiration of the existing coverage.

See the sample Checklist for Insurance Requirements discussed earlier. This checklist can be used to compare the entity's specific requirements to the actual coverages and endorsement being provided. If there is a discrepancy, you should contact the contractor or broker and obtain the required information. You should always seek the assistance of your insurance advisor or BRS in monitoring this process.

Step 4: Save the Signed Forms

Save the forms indefinitely, as claims may be presented many years after the work is completed. The forms may be your entity's only proof of coverage. This is especially true in case of the often frequent turnover of personnel in the risk management function.

Step 5: Inform the Other Party's Insurer Immediately in Writing, of Any Incidents or Claims Arising Out of the Work

Some liability insurance policies require reporting of accidents or other covered losses as soon as it is practical to do so and do not impose any specific deadline. Others require reporting of accidents immediately but, again, leave that term undefined. Some policies written on claims-made forms impose strict deadlines on claim reporting. As you may not have immediate access

CHAPTER TWO
ADMINISTERING INSURANCE REQUIREMENTS IN CONTRACTS
- AN OVERVIEW -

to the policy's notice-of-claim requirement clause, you should assume the worst case scenario and report incidents or claims to the other party's insurer immediately. If you have a copy of the policy, follow the reporting procedures explicitly.

Usually, the insurance agent fills out the certificate form and includes the name, address, and telephone number of the agency. If the entity's endorsement forms are used, the insurance company's name, address, and phone number should also be included. Insurance industry standard endorsement forms usually do not include this information.

Most insurance policies require reporting of incidents or claims to the insurer; however, it is customary with most insurance buyers to report such events to the insurance agent and to allow the agent to pass the information along to the insurer. While convenient, this practice does not fulfill the insured's contractual responsibility to report events to the insurer. Therefore, the safest practice is to report the event to the insurer with secondary notification to the agent. If you report by telephone, make a note of your report (document your file) and include the date and person you spoke to. Follow up in writing as soon as possible.

CHAPTER THREE
DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

SUMMARY

This chapter describes basic considerations in drafting insurance specifications. Sample specifications are included as exhibits in Chapter Five.

EVALUATE THE RISK.

Before determining the types of insurance to be required, you must have some idea of the types of harms that could arise from the activities contemplated under the contract. Remember that the type of exposure to your entity is more important than the size or price of the contract.

Every organization should implement a system that establishes procedures for developing and approving contracts. We recommend that your entity create a template for all contracts that may be used within your organization. This template should include the terms and conditions and the tested boiler-plate language for indemnification and hold harmless clauses. These two separate sections within your contracts are key ingredients to effectively managing your entity's risks and provide the foundation for proper transfer of risk in the event of a loss. While boiler-plate language will not apply to every situation, it will make the process for entertaining exceptions or waivers more manageable.

You should determine such issues as:

- ✓ What type of activities will take place during the term of the contract?
- ✓ Who could be harmed by these activities?
- ✓ What property could be damaged, and how severely?
- ✓ What is the maximum likely loss for each activity?
- ✓ Is there a possible pollution exposure?
- ✓ Are crowds likely to be involved?
- ✓ Will inherently dangerous activities, such as blasting, be a part of this project?
- ✓ Is the risk sufficient to reject bids not meeting specifications exactly?
- ✓ How likely is it that my entity would be a defendant in the event of a loss?
- ✓ Should we agree to a waiver of subrogation?

CHAPTER THREE
DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

To obtain answers to some of these questions, you may need to confer with your entity's legal counsel or risk management advisor. The identification of risks involved in the contemplated activity is possibly the most important part of the process of managing risks in contract situations. It requires time and thought.

Be as Specific as Possible in Describing the Types of Insurance Required.

CREATE HOLD HARMLESS/INDEMNIFICATION LANGUAGE FOR YOUR AGREEMENTS.

The avenues that transfer risk to another entity or organization are commonly referred to as the indemnification/hold-harmless clauses. The language of these clauses should specifically spell out the responsibilities of each party to the contract. The language should also identify the types of loss for which each party will be responsible. See the discussion at the end of this manual on the types of indemnification forms.

INSURANCE REQUIREMENTS

For purposes of this manual, we focus on insurance and bonds as the means for effective risk transfer. It is worthy to note at this time, however, that insurance is not the only means of guaranteeing that an organization will have adequate resources to protect your entity in the event of a loss. Larger organizations may choose to self-insure their liability or they may have large deductibles. In those situations, you will need to examine the financial records of the organizations to verify their financial ability to pay potential future claims. Some residential builders are forming "group captives" with the added protection of re-insurance over a certain amount. There may be situations where it is acceptable to agree to this form of coverage. These group captives (or "risk retention groups"), however, are not admitted or licensed in California, are not regulated by the Department of Insurance, are not part of the California Insurance Guarantee Fund (CIGA), and promote claims-made policies. Please consult your insurance advisor, legal counsel, risk manager, or BRS if presented with this form of coverage. With respect to insurance requirements in a contract, these requirements assure that the contractor you are contracting with will have adequate assets available in the event of a loss arising out of the work performed for your entity. As mentioned several times, it is the financial guarantee of the legal obligations in the contract.

Avoid using phrases which do not have a specific meaning or are out of date. This often creates unnecessary obstacles for contractors and their brokers in complying with contract terms. For example, the term "public liability" does not have a specific or definite meaning in common usage or within the insurance industry and is, therefore, ambiguous.

Your entity may intend that a relatively broad coverage be purchased but a limited coverage form would comply with the ambiguous written requirement. This ambiguity could be eliminated by clearly stating the titles or exact types of coverage forms to be maintained. With respect to out-of-date terms, the term "comprehensive general liability" has been replaced with "commercial general liability." The outdated 1986 CGL form policy included the contractual liability endorsement, the broad form property damage endorsement, and the explosion,

CHAPTER THREE
DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

collapse and underground coverage ("X, C, U") within its standard terms, and provided for a "combined single limit." The updated form no longer provides for a "combined single limit" for the coverage. Chapter Six describes specific types of insurance that may be needed for special situations.

Your entity should require that liability insurance be written on an occurrence basis. Claims-made coverage should be accepted only on an exception basis after verifying that occurrence coverage is not available. Professional liability insurance is usually available only on a claims-made basis. See the glossary for a discussion of claims-made coverage.

DESCRIBE MAXIMUM DEDUCTIBLES OR SELF-INSURED RETENTIONS THAT THE OTHER PARTY MAY MAINTAIN.

If the other party maintains substantial deductibles or self-insured retentions (SIRs), and the loss amount is completely or partially within that SIR, your entity must seek reimbursement directly from the other party in accordance with the indemnity or hold harmless clause of the contract. If the other party is financially unable to reimburse your entity or if the indemnification clause in the contract is set aside by a court, your entity would bear the entire amount of the exposure within the deductible (or retention). Also, some policies with SIRs do not require the insurer to provide legal defense. In such cases, your entity might have to pay for its own defense and seek reimbursement from the contractor. Therefore, you should require disclosure and approval of deductibles or SIRs. If deductibles or SIRs are substantial, you can request the other party to post a bond (or other form of funding) guaranteeing payment of losses and defense costs within the deductible layer. As an alternative, the other party's insurer may be willing to reduce the deductible as respects your entity's interests. You should review the contractor's use of deductibles or SIRs and discuss them with your risk management advisor if necessary.

REQUIRE THE ADDITION OF YOUR ENTITY, ITS OFFICIALS, EMPLOYEES AND VOLUNTEERS AS INSUREDS TO ALL REQUIRED LIABILITY COVERAGES.

Standard contract conditions should specify that your entity, its officials, employees, and volunteers will be added by endorsement as insureds to all liability policies, except workers' compensation or professional liability (errors and omissions) policies. In projects involving the use of subcontractors, you should require that the general contractor include all subcontractors as insureds under the contractor's policies. In the alternative, require that the contractor furnish your entity with the required endorsements or insurance policies from each subcontractor which names the entity, its officials, employees, and volunteers as insureds. It is common practice to require a contractor to furnish these endorsements.

REQUIRE THAT THE OTHER PARTY'S INSURANCE BE PRIMARY.

To simplify loss adjustment and to eliminate the possibility that the other party's insurer will seek contribution from your entity, your entity's standard requirements should state that the other party's insurance is to be "primary," and that your entity's self-insurance program will not be

CHAPTER THREE
DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

called upon to contribute to a loss that should otherwise be paid by the other party's insurer. Make sure that this condition is endorsed on the other party's insurance policy. Some argue that the endorsement is unnecessary since the CGL normally applies as primary insurance. The purpose of the condition in the contract is to clearly communicate the intent and to prohibit the other party from modifying its insurance to be excess. The requirement of the primary insurance agreement in your contract may not be binding on the insurer unless it is endorsed on the policy.

REQUIRE THAT POLICIES BE ENDORSED TO GIVE YOUR ENTITY AT LEAST 30 DAYS' NOTICE OF CANCELLATION OF INSURANCE COVERAGE.

Your entity's standard insurance requirements should state that the policies are to be endorsed to require the insurer to provide at least a thirty (30) day written notice of cancellation. A sixty (60) day notice is even better.

A statement made on a certificate regarding cancellation notices does not have the same effect as the same statement made in an insurance policy or endorsement. Insurance industry-supplied certificates of insurance usually only state that the insurer or its agent will "endeavor to" provide the required number of days' notice of cancellation. Sometimes the words "endeavor to" may be crossed out on the certificate form, but this change has no practical effect because even if the notice is not sent, the coverage still terminates. You should presume that the certificate does not grant any conditions not contained in the policy. Your entity's standard requirement should be a minimum thirty (30) day written notice of cancellation be given to you.

SPECIFY THAT THE INSURANCE IS TO BE PLACED WITH INSURERS THAT MEET A CERTAIN MINIMUM RATING, UNLESS OTHERWISE ACCEPTABLE TO YOUR ENTITY.

The ratings given by A.M. Best & Co. and Standard & Poor's are widely used as a standard for measurement of insurer acceptability. Best's rating is a two-part ranking separated by a colon (*e.g.,* A:VII). The first part is Best's assessment of the quality of overall management and is broken down into "Secure" [A++ to A+ = "superior;" A to A- = "excellent;" and B++ to B+ = "very good"] and "Vulnerable" [B and below]. The second part, given as a Roman numeral ranging from I to XV, indicates financial size by policyholders' surplus (measurement of whether the company has sufficient financial capacity to pay claims now and in the future): Class I is the lowest range category (surplus of under $1 million); Class VII is mid-range (surplus ranges from $50 million to $100 million) and Class XV is the highest range category (surplus of over $2 billion). Standard & Poor's uses a single rating scheme measuring the companies' overall financial strength.

CHAPTER THREE
DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

Best's Rating		Standard & Poor's Rating	
A++, A+	Superior	AAA	Extremely Strong
A, A-	Excellent	AA +/-	Very Strong
B++, B+	Very Good	A+/-	Strong
B, B-	Good	BBB +/-	Adequate
C++, C+	Fair	BB +/-	Less Vulnerable
C, C-	Marginal	B +/-	More Vulnerable
D	Below Minimum Standards	CCC +/-	Currently Vulnerable
E	Under State Supervision	CC +/-	Currently Highly Vulnerable
F	In Liquidation	R	Under Regulatory Supervision

+ / - : These signs following the letter rating indicate the relative position within the class.

The above analogy between Best's ratings and Standard & Poor's ratings is not an exact analogy. Each rating system has its differences, and the ratings are based on slightly different criteria and/or weighting. The use of both rating systems provides a better understanding of the strength or weakness of the company.

BRS recommends that insurance be placed with companies that have a minimum A.M. Best's rating of at least A:VII and a minimum Standard and Poor's rating (if rated) of at least BBB unless specific approval for a lower rating has been granted by your entity. This requirement does not guarantee that the insurer will be solvent if and when called upon to pay a loss, but it does reduce the possibility of coverage being placed with a clearly unqualified insurer.

In some cases, A.M. Best and/or Standard & Poor's do not assign a rating, but instead assign a category. The categories for insurers for which no rating is assigned are:

NA-1 Special Data Filing
NA-2 Less than Minimum Size
NA-3 Insufficient Operating Experience
NA-4 Rating Procedure Inapplicable
NA-5 Significant Change
NA-6 Reinsured by an Unrated Reinsurer
NA-8 Incomplete Financial Information
NA-9 Company Request
NA-11 Rating Suspended

Companies with ratings of NA-11 should be considered unqualified. The fact that A.M. Best has suspended the insurer's rating is a sign of trouble. Likewise, NA-9 should be viewed as an indication of problems because the insurer has most likely requested it not be rated as an alternative to a low rating. Some of the remaining categories, however, deserve further investigation. Although A.M. Best does not rate very small companies or recently formed companies, these insurers may be otherwise satisfactory if a better alternative is unavailable.

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DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

For the categories of NA-2 and NA-3, A.M. Best provides a financial performance index (FPI) rating. Those categories for this rating are:

8 or 9	Strong
6 or 7	Above Average
4 or 5	Average
2 or 3	Below Average
1	Not assigned

Standard and Poor's uses the acronym "NR" to indicate a company that is not rated.

In some cases, a contractor may be unable to obtain coverage from a company that meets the rating requirements of your entity. Under these circumstances, your entity may wish to review the financial history of the available insurer, determine how long the insurer has been providing the coverage and whether or not the insurer is admitted in the State of California. 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 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.

Your entity should only accept a non-admitted or lower-rated insurer if no other insurer will provide the coverage. Be aware, however, that there may be a significant risk that the insurer will not be able to pay a claim for which your entity may then become responsible. As always, contact your insurance advisor, legal counsel, or BRS prior to approving alternative insurance carriers.

FIT THE INSURANCE LIMITS TO THE SITUATION.

This is the most difficult principle of all to apply effectively. Judgment and experience are required to effectively set required insurance limits. Precedent also plays a significant role. It becomes difficult to require $5,000,000 limits from one contractor if the entity has previously required only $1,000,000 for similar projects. Nevertheless, it is a common practice among businesses to underinsure. If most contractors carry limits less than you think are appropriate, it is possible that they are underinsuring their risks.

The $1,000,000 limit recommended in the sample insurance requirements is generally a minimum practical limit to require although it is really too low for businesses today. It is recommended that the language for limits include the phrase "not less than $1,000,000" or something to that effect. Attempts to require higher limits will often meet stiff resistance. Despite such resistance, higher limits should be required for any hazardous or "high-risk" activity, such as blasting, or where the activity has a severe loss potential, such as construction 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 as the value of the contract is generally not an appropriate measure of the potential exposure. Some jobs, such as spraying

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of pesticides or backhoe operation near utilities, involve substantial potential liabilities even though the contract may involve only a small expense. Checklists are included at the end of this manual that will help identify hazardous exposures.

AGGREGATE LIMITS

Many liability insurance forms in use today impose aggregate (total of all claims) limits on all losses paid by the policy during the policy period (usually one year). There are usually three types of aggregates: a products and completed operations aggregate; a personal injury and advertising injury liability aggregate; and a general aggregate for all other types of losses. If the contractor purchases a Commercial General Liability policy, any losses arising out of projects for that contractor's other clients would also reduce the aggregate limit available for losses arising out of its work for your entity. Therefore, you may wish to require:

- ✓ A higher aggregate limit which is a multiple of the occurrence limit (*e.g.,* a $1,000,000 per-occurrence limit with a $2,000,000 aggregate); or
- ✓ A separate aggregate limit for your project or lease; or
- ✓ A policy dedicated to your project.
- ✓ At the very least, check to see what amount, if any, is reserved or incurred against the aggregate on the policy at the time of the award of contract.

None of these solutions is a perfect answer. Even a higher aggregate limit may still be insufficient if the contractor experiences a large number of substantial claims during the coverage period. One possible solution is to require that the contractor provide higher limits through a combination of primary and excess (or reinsurance) policies. In this case, evidence of excess coverage should be required on the same certificate form. This approach may be the most feasible on large projects.

An insurer may decline to provide a separate or higher limit for your entity's project. If an insurer *is* willing to provide a separate or higher limit, the contractor may be asked to pay an additional premium. The cost of this premium may be passed along to your entity if the contractor must obtain this coverage in order to receive the contract award. Of course, if this requirement is in the contract and bid specs, all contractors bidding on the project will be aware of the insurance requirements.

The insurer will probably use ISO forms or the equivalent to provide any additional coverage.

They may include:

- **ISO endorsement CG 25 04 11 85** (Amendment—Aggregate Limits of Insurance, Per Location) applies to tenants who rent multiple locations. This form provides a separate aggregate limit for all locations occupied by a tenant. If a tenant obtains this endorsement because of your entity's insurance requirements, the tenant may attempt to

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pass the cost along to your entity, such as a request for reduced rent. While this endorsement may be desirable from your entity's point of view, make sure that your entity does not absorb the cost for this increased coverage, including the cost for increased coverage on locations belonging to your entity.

- ✓ **ISO form number CG 25 03 11 85** (Amendment—Aggregate Limits of Insurance, Per Project) applies to contractors who perform multiple projects simultaneously. Again, make sure you are not paying for increased aggregate limits at locations your entity does not own. Additional notation: There is only a general aggregate – not a products/ completed aggregate. This is not commonly accepted by insurers.

- ✓ **ISO form number CG 25 01 11 85** (Amendment of Limits of Insurance, Designated Project or Premises) can be used to amend policy limits for a specified project or location. The intent of this form appears to be to establish separate limits for the designated project only, which would solve the potential cost problems created by the two forms discussed above. The form, however, states that its limits are inclusive of and not in addition to the limits that it replaces. Therefore, if the aggregate limit indicated on the endorsement is the same as the aggregate limit on the policy declaration page (a common practice), then the limits wording of the endorsement appears to eliminate any additional coverage intended. If you encounter this form, make sure that either (1) a higher aggregate is provided on this form or (2) that the language on this form is amended to clearly indicate that the aggregate limits applicable to your project will not be diluted by claims at other locations.

The discussion above applies to coverage under the current ISO Commercial General Liability policy form. You may also encounter an older policy form known as Comprehensive General Liability coverage. This older form has an aggregate limit that applies only to products and completed operations. Some insurers still use this older form, but may modify it with general aggregate limitations. The most restrictive alternative is ISO endorsement form GL 99 16, entitled Amendment of Limits of Liability (Single Limit) (Policy Limit). This endorsement imposes one aggregate limit for all bodily injury and property damage claims, including products and completed operations liability. Other variations of endorsements adding aggregate limits exist. You should watch out for these forms when evaluating aggregate limits on your contractor's liability policies.

HOW MUCH IS ENOUGH?

Note that increasing jury verdicts and recent changes to coverage forms make higher limits advisable. Studies have shown that jury verdicts against public entities have risen more than 50% in recent years (see www.iii.org). Additionally, recent changes to the definition of an "insured contract" in the CGL coverage form may bring defense costs within the limit of insurance (*e.g.,* if there is a conflict or your entity selects separate counsel), eroding the coverage available.

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SPECIFY THAT THE INSURANCE MUST REMAIN IN EFFECT FOR THE DURATION OF THE PROJECT OR LEASE.

You should state in the contract that the required insurance must be in effect prior to awarding the contract and that it or a successor policy must be in effect for the duration of the project or lease. A clause in the contract should state that maintenance of proper insurance coverage 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.

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SUMMARY

Your entity should require the responsible party to submit acceptable proof of insurance before work can begin or premises be occupied. As proof of coverage, most insurance agents are accustomed to preparing, signing, and submitting an insurance industry-designed certificate of insurance. Your entity may require that the insurer use forms provided by your entity. If the insurer insists on use of insurance industry-provided forms, the forms must be modified to comply with entity insurance requirements. To the extent possible, you should require endorsements to the policy AND certificates of insurance. For major projects, or to be as certain as possible about coverage and compliance with requirements, you should obtain a copy of the complete insurance policy and read it carefully.

OBTAINING VERIFICATION OF COMPLIANCE

The California Insurance Code clarifies the role of certificates of insurance in relation to the insurance policies that they describe. According to California Insurance Code section 384 (which became law on January 1, 1979):

> "A certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual copy of the insurance policy shall contain the following statements or words to the effect of:
>
> "This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies."

This wording means that if the certificate is not accurate, the insurer is not required to conform to the certificate. Also, any statements made on the certificate, such as cancellation notice provisions, do not affect the policy. Arguably, this would include a request to xxxxx out the word "endeavor to" or the phrase outlining the obligation or liability of the insurer.

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Occasionally, insurance agents or insurers may make errors when issuing certificates of insurance. The most common errors involve description of additional insureds and notice of cancellation. When errors on the certificate conflict with terms found in the policy, the policy governs according to California law. Use of standard industry forms signed by the insurer's representative provides greater assurance that coverage is in force.

Also, standard forms simplify paperwork for your entity and for the insurer as:

- ✓ The standard forms eliminate the need for the insurer to analyze your entity's contract to draft specific compliance language and

- ✓ The forms set forth all of the coverage requirements in the language most acceptable to your entity eliminating the need for a detailed review by your entity.

To implement some of the insurance clauses in the sample specifications, the contractor's insurance broker or agent must request the insurance company to amend the contractor's insurance. The forms should be completed by the insurance company but may be completed by the agent only if the agent is an authorized representative of the insurance company with authority to issue such forms. The forms must be signed by the underwriter or other authorized representative of the insurer. The original signed forms should be returned to your entity before work begins.

It is up to each entity to decide whether to accept only its own special forms; however, an insurer may insist on use of its own forms. In fact, some insurers will not accept entity forms and will provide their own ISO or manuscript forms. In this situation, the entity's representative needs to "pick his or her battles." For example, with respect to workers' compensation coverage verification, the State Compensation Insurance Fund does not accept custom workers' compensation insurance certificates. Instead, it issues a package of four endorsements that achieve the same result. The Fund's forms can be used to accomplish the same purpose as the custom forms recommended in this manual.

While many of the requirements recommended in the insurance specifications may already be found in the other party's insurance (*e.g.,* types of coverage and limits may already comply with the specifications), many of the requirements recommended are not automatic and must be added by the insurer via an endorsement, such as protection for claims arising from the contractor's work (few contractors have insurance policies that would automatically protect your entity for these claims) or an agreement to notify your entity of coverage cancellation. Therefore, your entity should require that the insurer add your entity as an additional insured and to have the policies endorsed to satisfy these requirements.

The ISO and the ACORD Corporation, two insurance industry service providers, have developed forms that accomplish some of the amendments recommended in this manual. In this situation you must carefully review each form and compare it against the insurance requirements in your contract specifications. In addition, accepting a variety of forms complicates the compliance monitoring process and adds to the paperwork. If possible, it is

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better to insist that the contractor's insurer use your entity's insurance forms. If you don't have any such forms, you should consider using the standard ISO forms.

To simplify acceptance by insurers, the required general liability endorsements are based on widely-used insurance industry forms, with modifications to meet your entity's needs. The modifications provide additional important protection for your entity, so when you receive the endorsement, if the insurer uses its form rather than one sent out by the entity, check to make sure that all modifications have been included.

If your entity is unable to have its own form completed, you may require a complete copy of the contractor's policy, including all of the required endorsements, for review to determine if all required conditions apply. Note: All general liability insurance policies are NOT the same. Some insurers have modified basic ISO forms and, occasionally, you will encounter a completely custom form (also called a "manuscript" form).

Failure by your entity to require correct insurance coverages or failure to monitor compliance with coverages could result in significant financial loss to your entity and your property and/or workers' compensation and liability self-insurance pools.

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CHANGES IN ENDORSEMENT FORMS:

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (FORM B)

Additional Insured Issues

A. The older CG 20 10 11 85 or the CG 20 10 10 01 ***and*** the CG 20 37 10 01 provide the most protection to your entity.

These forms give the entity coverage for:

1. Products and completed operations;
2. Ongoing operations; and
3. Direct access to insurance coverage

B. The new less-preferred forms (ISO 2004 editions):

- Attempt to limit entity's coverage to vicarious liability for loss covered in whole or in part by contractor's negligence (*i.e.*, no more coverage for additional insured if your entity is solely negligent).
- Can get project specific completed operations coverage with the 20 37 form.

C. More detailed information is available from BRS or other industry references.

D. Summary – in order of preference:

- ***Best:*** CG 20 10 11 85 covers all bases and provides additional insured coverage to your entity for "the work" of the contractor
- ***Acceptable:*** CG 20 10 10 01 **and** 20 37 10 01
- ***Least Advisable:*** CG 20 10 07 04 and 20 37 07 04

The new ISO endorsement forms were changed *materially* since 1985. The issue surrounds coverage for a "completed operations loss," which is a loss that occurs years after the project has been completed, accepted by your entity and put to its intended use. Ideally, you want the insurer for the contractor at the time of the damage or loss to defend and indemnify you for the loss that might have been caused by the faulty work of the contractor done at the time of the project.

The old form number is CG 20 10 11 85 (the 11 85 in the number sequence is the "edition date" – November 1985). Updates and changes restricting coverages to your entity occurred in October 1993 (CG 20 10 10 93), March 1997 (CG 20 10 03 97), October 2001 (CG 20 10 10 01), and July 2004 (CG 20 10 07 04). Form CG 20 10 03 97 only changed the title by adding "scheduled person or organization" and deleting "(Form B)." Copies of these forms can be

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provided by your own insurance or coverage advisor or legal counsel. BRS also has on-line access to the ISO and ACORD forms.

The material change is contained in the second paragraph of the endorsement. The 1985 version is worded:

> **WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "*your work*" for that insured by or for you. (Emphasis added.)
>
> (The phrase "*your work*" has been interpreted by the courts to include the completed operations loss protection for the additional insured).

The 1993, 1997, and 2001 versions read:

> **WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "*your ongoing operations*" performed for that insured. (Emphasis added.)

The 2001 version added language excluding coverage for the completed operations loss.

This change is significant because the altering of the wording "*your work*" to "*your ongoing operations*" effectively eliminates any possible coverage under this endorsement for products-completed operations exposures. Until this "rewording", Form B contained no exclusion for completed operations, and could therefore be called on to cover your entity for liability arising out of the products-completed operations hazard created by your contractor.

The new versions have also increased the necessity for subrogation waivers on liability policies, in light of the Montrose pollution cases.

The 2004 changes to these forms (July 1, 2004, for the CG 20 10 form) further restrict the protection to the additional insured to apply only when the named insured (the contractor) has some fault for the injury or damage and effectively eliminates any coverage if the contractor has no fault or if the additional insured (your entity) is solely negligent for the damage or loss. The changes are clearly intended to limit coverage to an additional insured for its vicarious liability or comparative negligence only.

We are therefore recommending that your entity continue to request wording such as "arising out of your work," "work done on your behalf," or words to that effect. In the current insurance market, this may be difficult, if not impossible, to obtain. You may find that the contractor's insurance company will refuse to do so because they are beginning to understand the implications of using the wording in the 1985 form. In that case, be certain that your indemnification language obligates the contractor to cover the products-completed operations exposure specifically for a certain number of years (three to five years) after the project is completed and that your entity be included on that renewed policy as an additional insured.

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Including the language of "or its equivalent" may be more important in obtaining successful bidders on construction projects than requiring a specific form with a specific edition date. An example is to require the CG 20 10 11 85 "or its equivalent."

For most construction risk contracts, you should require an additional form – Form CG 20 37 10 01 – ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS – in addition to the CG 20 10 form. The specific project is "scheduled" on the form. In this endorsement, the definition of an "insured" is amended to include the person or organization shown in the schedule (your entity), but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard."

> **WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard."

The wording (which is similar to the CG 20 10 11 85 form) will give your entity added protection for the completed operations loss. Beware! The endorsement form CG 20 33 07 04 – ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU does not provide protection for the entity for the completed operations loss.

SUMMARY

For contractors, we recommend two forms used together: CG 20 10 10 01 for the ongoing work exposure and CG 20 37 10 01 for products-completed operations / completed operations loss exposure.

For the use of property (owners/lessees exposure), Form CG 20 10 10 01 may be sufficient by itself.

The contract for construction risks should include language to the effect of:

> "_____ (your entity) shall be included as an additional insured under the CGL using ISO additional insured endorsement forms CG 20 10 and CG 20 37 or its equivalent language, which endorsement shall include coverage for _____ (your entity) with respect to liability arising out of the work of the Contractor, or work done of its behalf, which coverage shall be maintained in effect for at least three (3) years following the completion of the work specified in the contract. Additional insured coverage shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Contractor."

The number of years following the completion of the project is negotiable in the contract, and two to three years is reasonable. Most reputable businesses carry liability insurance on an

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ongoing basis, so this should not be a burden on the contractor. Due to market conditions, some insurers may refuse to provide the forms that you require or request. It may insist on CG 01 30 09 97 in lieu of CG 20 10 10 01. This will force you to make a decision, since this alternative form will not protect the entity for the completed operations loss.

However, keep in mind that the coverage for the "completed operations" loss was never meant to be a warranty or guarantee of the contractor's work. Essentially, it is designed to make sure that a contractor working on your current project has insurance coverage for prior work, so as not to interfere with the construction of your project.

There is also an ISO form for adding a public entity as an additional insured. An insurance carrier may require this form, Form CG 01 30 09 97, in lieu of Form CG 20 10 10 01. Please note it is not preferred as it has additional exclusionary language. We do not recommend this form.

For specific ISO or manuscript forms that change over time, we recommend that you contact your broker or BRS.

CHAPTER FIVE
SPECIFICATIONS FOR COMMON SITUATIONS

SUMMARY

Although your Entity may enter into a wide variety of contracts each year, many of those contracts may be grouped into a few categories for insurance purposes. The exhibits at the end of this chapter provide standardized specifications suitable for many contracts. This chapter provides guidelines for the use of the specifications. See Chapter Six for consultant and environmental insurance specifications.

The various sets of insurance specifications at the end of this chapter have been developed for the most common situations your entity staff will encounter. These exhibits are:

Exhibit 1	Insurance Requirements for Contractors
Exhibit 2	Insurance Requirements for Contractors (with Construction Risks)
Exhibit 3	Insurance Requirements for Lessees (No Auto Risks)
Exhibit 4	Insurance Requirements for Suppliers

Exhibits 1 and 2 are the broadest requirements. While Exhibit 1 can be used for tenant or supplier contracts, its requirements are broader than usually needed for such agreements. For example, the exhibit requires automobile insurance. Automobile insurance is not required in most tenant situations.

Exhibit 3 is identical to Exhibit 1 but deletes the automobile insurance requirement. It should be used for most tenant situations, provided the tenant does not use or commercially park vehicles on the leased premises.

Exhibit 4 is intended for contracts that involve only the purchase of equipment or supplies which do not require installation or maintenance by the vendor. It is identical to the first exhibit, except that both the auto insurance requirement and the workers' compensation insurance requirement are deleted.

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 for your Entity, the vendor should be considered as a contractor for the purpose of insurance requirements. Instead of using Exhibit 4, the broader language of Exhibit 2 should be used.

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Following are some guidelines for determining which set of specifications to use or if special language is needed.

TYPE OF ACTIVITY	*SPECIFICATIONS AND LIMITS*
Construction and services contracts, including most construction and remodeling, janitorial service, movers, on-site equipment maintenance agreements, tow service, tree maintenance, road maintenance, welding, plumbing, painting, electrical work and fireworks exhibits.	**Use Exhibit 1**, with a limit of no less than $1 million. Major public works projects should require substantially higher limits. Also, see the discussion on builder's risk insurance in the Glossary. If the contractor is required to buy the builder's risk insurance, **use Exhibit 2**. Remember to base the required limits on the amount of damage that may occur, not on the contract price.
Construction projects	**Use Exhibit 2**. Construction projects will usually require course of construction (builder's risk) property insurance. Major construction projects, especially those which involve many subcontractors, may call for special insurance requirements. One such option is called wrap-up or consolidated insurance program. This type of insurance is purchased by the project owner and covers all contractors and subcontractors for liability.
Professional services, including architects, engineers, consultants, design professionals, counselors, medical professionals, hospitals, clinics, attorneys and accountants.	**Use Exhibit 5** (Chapter Six). Your entity should require proof of professional liability insurance.
Environmental risks, including asbestos, hazardous chemicals or waste, and nuclear risks. *[**Reminder:** Your entity has limited or no pollution coverage through its primary liability insurance or risk pool. If you don't transfer the risk, your entity could be totally responsible for a loss.]*	**Use Exhibit 6 (Chapter Six); however, coverage specifications and limits should be developed to fit the circumstances of the situation.** Generally, limits should be no less than $1 million. Special insurance is available for nuclear risks and may be available for asbestos removal/containment or waste handling.
Aircraft, watercraft and airports operated under contract, including charter of aircraft or watercraft by your entity or by another party in performance of work for your entity. *[**Reminder:** Your entity's primary liability insurance or risk pool program may not cover aircraft or airports. If you don't transfer the risk, your entity could be totally responsible for a loss.]*	**Exhibit 5** may be appropriate if additional specialized liability insurance requirements are added. For aviation exposures, limits should be $100 million or more. If the tenant is a marina operator or boat or airplane repairer, marina operator or ship repairer's or hangar keeper's liability is required. Limits should be large enough to cover the value of the most expensive object in the tenant's custody and three or four surrounding objects.
Tenants and concessionaires including food and beverage concessions, gift shops, office space tenants, childcare centers, senior centers and other space rental to lessees who have full-time or part-time employees.	**Exhibit 3** can be used if no autos are used or commercially parked on the premises. If autos are used or parked, **Exhibit 1** should be used. If the tenant's activities include valet parking, either with or without fee, **Exhibit 1** may need to be supplemented by additional coverage called garagekeeper's legal liability. The required limit for this coverage should be equal to the value of the maximum number of automobiles that may be in the tenant's custody.

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Vendors, including vendors who supply equipment or other products to your entity and who do not perform other functions, such as installation or maintenance.	**Exhibit 4** can be used.
Space rental, including short-term space rental for special occasions to groups who have no employees, such as club functions, weddings, dances, picnics or social dinners, crafts exhibitions or classes, animal shows and recreational activities, including baseball and football.	**Exhibit 3** may be used. *[**Reminder:** A special events policy may be available for member entities. Contact your risk manager or broker for details.]*
Property risks: These insurance specifications presume that all supplies and equipment to be installed remain the property of the other party until the project is complete and accepted by your entity. Likewise, for suppliers, it assumes that the goods remain the property of the supplier until delivered to the receiving location at your entity. Property insurance should be required when your entity has a financial interest in the continued existence of tenant-constructed buildings or improvements.	If the other party's property might be construed as being in the custody of your entity, such as storage of tools and equipment on entity-owned or controlled premises, this risk may be mitigated by a properly worded hold harmless agreement. If entity property is to be in the custody of a supplier, for example, a shipment sent F.O.B. the supplier's warehouse, your entity may arrange for transit insurance or request the supplier to do so. When required for tenant's improvements, the amount should equal the replacement cost of the property. A Waiver of Subrogation may be appropriate. Your entity should be named as loss payee.
Transportation of Hazardous Materials	**Use Exhibit 6.**

Construction contracts are often the largest and most complex agreements that your organization will create. The potential for loss in construction-related events can be devastating and will usually exceed your SIR. The size and nature of most construction agreements give you a significant advantage in the negotiation process for requiring insurance. You need to carefully examine all of the exposures to risk in the construction agreement and then must require specific insurance for each exposure.

The discussion on construction agreements will provide a baseline for the majority of agreements that will be created for your organization. Discussion on the specifics of the project should occur early on in the design process. This will better position your organization to develop your requirements and provide the bidding contractors with all of the requirements at the time the bids are submitted. It should be made clear during the pre-bid meetings that your organization has specific contractual requirements and contractors should be encouraged to contact their brokers/carriers as they are developing their quotes. Your entity should also specifically advise bidding contractors that you will not accept change orders that are based on insurance costs not appropriately considered before submitting a bid.

For contracts with construction risk we have added coverage requirements for professional liability. The professional liability coverage is necessary where the contractor is expected to provide engineering and architectural services.

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SPECIFICATIONS FOR COMMON SITUATIONS

EXHIBIT 1
Insurance Requirements For Contractors
(Without 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 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 00 01).
2. Insurance Services Office (ISO) Form CA 00 01 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1.	General Liability: (Including operations, products and completed operations.)	**$1,000,000**	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2.	Automobile Liability:	**$1,000,000**	per accident for bodily injury and property damage.
3.	Workers' Compensation:	**As required by the State of California.**	
4.	Employer's Liability:	**$1,000,000**	per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the entity shall be entitled to coverage at the higher limits maintained by the contractors.

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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 (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b) the contractor shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The general liability policy is 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 work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided with two endorsement forms: 1) in the form of an additional insured endorsement to the Contractor's insurance, or as a separate owner's policy (CG 20 10 11 85 or its equivalent language) and 2) a CG 20 37 10 01 endorsement form or its equivalent language. A later edition of the CG 20 10 form along with the CG 20 37 coverage form will give some protection to the entity for specific locations.
2. For any claims related to this project, 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, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Waiver of Subrogation

Contractor hereby 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 effect this waiver of subrogation.

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The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the contractor, its agents, employees, independent contractors and subcontractors.

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. This is only a recommendation. The entity may decide to accept an insurer with a rating of less than A:VII depending on various circumstances.

It is also recommended that the insurer for the contractor/consultant/vendor/lessee be "admitted" in California. This means that the insurer is licensed to do business in California, is subject to his insurance regulations and contributes to the guarantee fund. However, there may be situations where a non-admitted insurer will have more financial strength (and the ability to respond to claims) than some admitted insurers. Please contact your broker, legal counsel or BRS when faced with this situation.

These recommendations are applicable to almost any risk and exposure discussed in this manual.

Verification of Coverage

Contractor shall furnish the entity with copies of original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. The endorsements should be on forms provided by the entity or on other than the entity's forms, provided those endorsements or policies conform to the requirements. All certificates 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 effecting the coverage required by these specifications at any time.

Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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SPECIFICATIONS FOR COMMON SITUATIONS

EXHIBIT 2
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 work hereunder 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 00 01) *or* ISO form (Form CG 00 09 11 88 Owners and Contractors Protective Liability Coverage Form – Coverage for Operations of Designated Contractor
2. Insurance Services Office Form CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Builder's Risk (Course of Construction) insurance covering all risks of loss less policy exclusions.
5. Surety bonds as described below.
6. Professional Liability (if *Design/Build*).

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1.	General Liability: (Including operations, products and completed operations.)	**$1, 000,000 (please note that limits of no less than $5, 000, 000 is often recommended)**	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2.	Automobile Liability:	**$1,000,000**	per accident for bodily injury and property damage.
3.	Workers' Compensation:	**As required by the State of California**	

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SPECIFICATIONS FOR COMMON SITUATIONS

4.	Employer's Liability:	**$1,000,000**	per accident for bodily injury or disease.
5.	Builder's Risk:	**Completed value of the project with no coinsurance penalty provisions.**	
6.	Professional Liability:	**$1,000,000**	as needed for design/build.

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 (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b) the Contractor shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

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 work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage 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 project, 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, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

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SPECIFICATIONS FOR COMMON SITUATIONS

Builder's Risk (Course of Construction) Insurance

Contractors may submit evidence of Builder's Risk insurance as evidence of course of construction coverage. The insurance protects the parties to the agreement from financial loss during the construction process. There may be multiple parties that have a financial interest in the process and may include the owner of the project, lenders, 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 that no gaps in coverage will occur.

Builder's Risk policies shall contain the following provision:

- ✓ The entity shall be named as loss payee.

If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors or Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the entity for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability shall not contain a mold exclusion, and the definition of "pollution" shall include microbial matter including mold.

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 by entity. Please review the earlier discussion on the decision to use only California admitted insurers.

Verification of Coverage

Contractor shall furnish the entity with original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. The endorsements should be on forms provided by the entity or on other than the entity's forms, provided those

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SPECIFICATIONS FOR COMMON SITUATIONS

endorsements or policies conform to the requirements. All certificates 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 effecting the coverage required by these specifications at any time.

Waiver of Subrogation

Contractor hereby 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 effect this waiver of subrogation.

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the contractor, its agents, employees, independent contractors and subcontractors.

Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

Bonds

Public construction projects require the use of bonds to ensure performance by the contractor, to assure that the goods and services are being provided, and to guarantee the bid as submitted. Surety companies carefully underwrite applicants for bonds by examining the contractor's management structure and financial strength, and its ability to undertake and complete the job. Thus, the requirement for surety bonds may also serve to eliminate incompetent contractors from the bid process.

There are three primary elements (the three "Cs") involved in surety bond prequalification: capital, capacity, and character. Capital refers to the financial strength of the contractor and the financial ability to complete the project. Capacity is the ability of the contractor to perform based on the requirements of the agreement. Character addresses the references and reputation of the contractor. These three "Cs" provide a form of guarantee that the contractor will perform. You should check with your legal counsel to determine which bonds should be included in the bid documents.

Surety Bonds

Contractor shall provide the following surety bonds: Bid Bond; Performance Bond; and Payment Bond

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SPECIFICATIONS FOR COMMON SITUATIONS

EXHIBIT 3
Insurance Requirements For Lessees
(No Auto Risks)

Lessee 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 Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office (ISO) Commercial General Liability coverage (occurrence form CG 00 01).
2. Workers' compensation insurance as required by the State of California and Employer's Liability insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1.	General Liability: (Including operations, products and completed operations.)	**$1,000,000**	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2.	Employer's Liability:	**$1,000,000**	per accident for bodily injury or disease.
3.	Property Insurance:	**Full replacement cost with no coinsurance penalty provision.**	

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 (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b)

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SPECIFICATIONS FOR COMMON SITUATIONS

the Lessee shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is 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 ownership, maintenance or use of that part of the premises leased to the lessee.
2. The lessee'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, its officers, officials, employees or volunteers shall be excess of the lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the entity.

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 accepted by entity.

Verification of Coverage

Lessee shall furnish the entity with copies of the original certificates and endorsements, including amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the entity or on other than the entity's forms, provided those endorsements or policies conform to the requirements. All certificates 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 effecting the coverage required by these specifications at any time.

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SPECIFICATIONS FOR COMMON SITUATIONS

Exhibit 3
Insurance Requirements For Lessees
(No Auto Risks)
Exceptions For The Civic Center Act

"**The Civic Center Act**" in Education Code section 40000, *et seq.,* states which groups are entitled to the use of school district facilities free of charge and identifies those groups which the district can elect to charge for a fee for use of the facility.

With respect to the insurance requirements and indemnification language, there are differences in what the district can require depending upon whether the user is a free of charge user or a paying user.

Free of Charge Users – Groups entitled to use school facilities free of charge under section 40043 (a) must be able to demonstrate the following:

1. There is no other suitable meeting place available;
2. The group is a nonprofit organization; and
3. The group is organized to promote youth and/or school activities.

For Free of Charge Users, the school district is liable for any injuries resulting from the negligence of the district and the maintenance of those facilities and grounds. This cannot be transferred. The user shall be liable for any injuries resulting from the negligence of that group during the use of those facilities or grounds.

The Other Insurance Provisions – Clause 1 on the previous page needs to be amended to state that:

> "1. The District, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of negligence of the user during the use of the facilities or grounds."

Clauses 2 and 3 should remain unchanged.

This exception applies only to Free of Charge Users.

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SPECIFICATIONS FOR COMMON SITUATIONS

EXHIBIT 4
Insurance Requirements For Suppliers

Vendor 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 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 Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) and including products coverage.

Minimum Limits of Insurance

Vendor shall maintain limits of no less than $1,000,000 per occurrence 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 (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b) the vendor shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

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 insureds as respects products of the vendor.
2. The vendor'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, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the entity.

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 by entity

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SPECIFICATIONS FOR COMMON SITUATIONS

Verification of Coverage

Vendor shall furnish the entity with original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. The endorsements should be on forms provided by the entity or on other than the entity's forms, provided those endorsements or policies conform to the requirements. All certificates 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 effecting the coverage required by these specifications at any time.

Waiver of Subrogation

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

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the vendor, its agents, employees, independent contractors and subcontractors.

Vendor Exceptions

There are a number of organizations and companies that provide services to your entity that will not have formal contracts in place. These include, but are not limited to, United Parcel Service, Federal Express, United States mail, and for-hire interstate trucking companies. Although each of these companies may provide vendor services to you, you may typically not require formal written contracts or evidence of insurance. All of the companies listed above are required to be licensed under the Department of Transportation rules and regulations, which also require specific insurance requirements and limits.

CHAPTER SIX
SPECIAL SITUATIONS / CLAIMS HANDLING PROCEDURES

SUMMARY

This chapter provides general information about special insurance situations. These include:

Contracts for consultants such as architects, engineers, auditors and others.

Major construction projects.

Contracts with private individuals.

Environmental services contracts.

PROFESSIONAL SERVICES CONTRACTS

Professional liability insurance protects against losses that occur when a professional fails to practice his or her art to the standards usual and customary to that profession. The types of losses that can occur under such circumstances are often excluded in general liability policies. Thus, professional liability insurance is needed. The entity will not be made an additional insured under a professional liability policy.

When contracting for professional services, your entity should ensure that the other party to the contract (consultant) carries sufficient professional and general liability insurance to protect against losses that may result from their negligent acts or omissions. Personal injury liability lawsuits arising out of work done for your entity will name the consultant, your entity and any other connected party as defendants. Even though the consultant may be the party liable under the law, your entity, in the event of even the slightest joint liability, could still be required to pay for all or part of a loss if the consultant carried insufficient insurance or was uninsured. This is an example of what is commonly referred to as the “deep pocket” exposure.

As either general liability, professional liability, or both types of insurance may ultimately pay for the loss, your entity should require both types of coverage from the consultant. If the consultant will use an automobile in any phase of the work performed for your entity, you should also require evidence of automobile liability insurance. In some cases, the consultant will own no automobiles and therefore may not purchase automobile liability coverage. In that event, the consultant can obtain an endorsement to the general liability policy which provides coverage for nonowned and hired automobiles. The consultant should have this coverage anyway, so your entity’s requirement does not pose a hardship.

Unless the consultant is a sole practitioner, your entity should require evidence of workers’ compensation insurance. 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 may find a way to provide

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SPECIAL SITUATIONS / CLAIMS HANDLING PROCEDURES

workers' compensation coverage through entity resources in the event that a consultant's employee is injured and the consultant has failed to purchase the necessary insurance.

The special work assignments and performance standards need to be reviewed. The Internal Revenue Service and the courts are still wrestling with the determination of when a consultant should be considered an employee. Your entity should carefully review with your legal counsel all consultant agreements to determine the status of that person under the law so as to avoid a ruling that you are responsible for benefits, payroll taxes, Social Security and Medicare payments as a result of the consultant's function. *The following excerpts are taken from the Internal Revenue Service Industries/Professions section:*

Who is an independent contractor?

As a general rule, when you, the payer, are concerned only with the result of the work done, and do not attempt to control of the means and methods of performing the work, that person is an independent contractor.

Who is an employee?

Generally, anyone who performs service for you is your employee if you control what will be done and how it will be done.

In the process of reviewing contracts, it is not only important that you understand the indemnification/hold-harmless clause, the insurance requirements, and the bonding provisions, but you must look further into the agreements to effectively manage all the potential loss exposures to your entity.

Special care is needed in drafting indemnification requirements for the contract with the consultant. Many professional liability insurers exclude liability assumed under contract by their insureds. On the other hand, most general liability policies in use today automatically provide coverage for bodily injury and property damage liability assumed under contract. Therefore, the indemnity agreement should be carefully worded so that the consultant agrees to indemnify your entity for bodily injury or property damage arising out of the consultant's negligent acts or omissions in performance of the work. This assumption of liability is insurable under general liability policies.

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 would seldom be liable for the loss, as the concept of professional liability applies to a practitioner of that profession. The only way your entity could be directly liable for a professional error is if it negligently chose the consultant or negligently signed off on or negligently approved a design or work product.

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Exhibit 5 (at the end of the chapter) is a sample set of specifications for consultant insurance requirements. Limits required by these sample specifications are $1,000,000. You should pay special attention to the appropriateness of limits selected for the specifications. In some cases, smaller consulting firms may be unable to obtain (or afford) a limit of $1,000,000 for professional liability, although that amount should be available for general liability coverage. On large projects, or those with significant potential for loss such as bridges or dams, higher limits are appropriate.

You must also exercise judgment on the subject of minimum acceptable insurer requirements. For some professions, limited insurance markets exist for professional liability coverage. There may be no insurers meeting your entity's standard insurer requirements that are willing to write the particular kind of coverage required. Certain specialty insurers or captive insurers formed to write professional liability insurance only, may not be rated, or may have received conditional or preliminary ratings. Where a highly rated professional liability insurance carrier is available, the rating may be due to A.M. Best's practice of fleet rating, or ascribing to a subsidiary the rating of its parent. Such an insurer may not provide the best coverage. A lower-rated company may provide broader coverage.

In such cases, you must sometimes be willing to relax standard insurer rating requirements. When doing so, you should attempt to evaluate the financial condition of the insurer, determine how long it has been writing the kind of professional liability in question and determine whether or not the insurer is admitted in California. Many carriers writing this coverage are nonadmitted. Contact your risk management advisor for assistance.

Because professional liability insurance is almost always written on a claims-made basis, entities that hire architects or engineers should have concern about coverage for latent defects or design errors that may result in future claims after the current coverage has expired. One solution to this problem is to require the design professional to agree to maintain coverage for a specified period after the project has been completed (extended reporting period, or tail, coverage). However, this requirement may be very difficult to enforce. If the project is large enough, the architect's or engineer's insurer may provide a project policy in the name of the entity, with a built-in tail. The policy may cover all design professionals on a project. This arrangement affords greater protection for the entity's interests but one disadvantage of a separate project policy is an additional premium. This is only cost effective on large projects (when architects and engineering fees exceed $1 million).

The area of 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. Although there are no absolute guarantees to assure that your entity will not be forced to pay a loss due to errors or omissions of its consultants, the practices described above can help provide a reasonable measure of protection.

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PROPERTY INSURANCE

Transfer of responsibility for loss occurs in most contracts. Responsibility for damage to property owned by one of the parties is also dictated in some contracts, although this activity is less frequent. There are two primary situations where responsibility for property loss should be clearly spelled out: Buildings in the course of construction and leases involving extensive tenant improvements and betterments.

- ✓ Builder's Risk (Course of Construction)

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

- ✓ Perils

  Coverage should include "all risk" insurance. Earthquake coverage is optional based on the needs and location of the project. For example, earthquake coverage must be included if a grant funding the project or financing arrangements (*i.e.*, bonds) require it.

- ✓ Deductibles

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

- ✓ Property Covered

  At minimum, the insurance should cover the full insurable value of the improvements. It may, at your entity's option, also include consequential loss insurance, if your entity could be harmed financially because of delay due to an insured loss. Coverage is available for both loss of revenue (rents or earnings) and for additional interest costs or expenses.

- ✓ Loss Payments

  Depending on circumstances of the contract, your entity may prefer that any loss payments be made to your entity.

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- ✓ 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 as there is less of a chance of error resulting in inadequate insurance.

As Builder's Risk insurance is written specifically for the project, you should receive a copy of the policy. It is not necessary to provide endorsement or certificate forms, but requirements for the coverage should be stated in the bid documents.

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. Often the value of these improvements is factored into the lease cost. In such cases, you should require the tenant to provide sufficient insurance to cover the full replacement value of the improvements, and to name your entity 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 purchase separate fire legal liability
- ✓ No dispute over cause of loss between tenant and landlord
- ✓ Existing property policy may have built in language that allows you to waive subrogation in writing as either a tenant or landlord
- ✓ You are not relying on someone else's policy nor do you have to verify the adequacy of their coverage as respect to your property

An example of language for a waiver is as follows:

> "Tenant and landlord agree that insurance carried or required to be carried by either of them against loss or damage to property by fire, flood, earthquake, acts of terrorism, acts of war or other casualty shall contain a clause whereby the insurer waives its right to subrogation against the other party, its elected officials, directors, employees, volunteers, and agents, and each party shall indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver."

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MAJOR CONSTRUCTION CONTRACTS

Construction contracts may vary widely in scope and in degree of risk involved. Simple remodeling projects or building repairs can be addressed through the appropriate specifications as presented in the exhibits in Chapter Five. Larger projects may require more sophisticated insurance techniques.

Large-scale construction projects involve numerous contractors, subcontractors, consultants and other parties, all subject to a variety of risks arising out of the work. Because of the numerous parties involved, assuring adequate insurance protection for all concerned poses certain technical and logistical problems. An approach often advocated to deal with these complexities is called the Consolidated Insurance Program (CIP).

CIP usually involves procurement by the project owner or general contractor of certain insurance policies which protect both the project owner and various contractors and subcontractors involved in the construction. A CIP purchased by the general contractor is often called a wrap-up. These coverages may include general liability, professional liability, workers' compensation, umbrella liability and builder's risk. The owner or general contractor arranges for safety and loss control services, if any, beyond those provided by the insurer. CIP works best on large projects such as those exceeding $100 million, where there are a number of contractors, where the project is labor intensive, where construction takes place in a limited geographical area, and where the owner or general contractor is committed to safety and loss control, including top quality claims management.

Theoretically, the CIP concept should provide for cost savings to the owner due to purchasing economies of scale, cash flow advantages from controlling premium payments, potential for dividend returns and potential for savings due to coordinated loss control. In practice, however a number of factors can reduce or eliminate these potential savings. Some of these factors may include:

- ✓ Insufficient contractor motivation to control losses. Many contractors do not realize that workers' compensation losses on a CIP project will affect the contractor's experience modifier. The contractor may therefore be more highly motivated to complete the project ahead of schedule or under budget than to pay attention to safety.

- ✓ Inclusion of contractor insurance charges. Depending on the competitive environment, contractors may include the cost of insurance in its bid pricing. Additionally, the contractor may feel it necessary to charge for difference in conditions coverage to fill any gaps in the owner's insurance program as it applies to the contractor.

- ✓ Inclusion of non project-related claims. If a contractor has employees assigned to the project who also work on other projects for the contractor, it is possible that workers' compensation claims not related to the project may show up on the owner's loss runs.

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- ✓ Increased administrative costs. In order to obtain the cost-saving benefits of the concept, the owner of a CIP project must provide superior loss control services either through staff or contractors. Keeping track of various workers' compensation insurance policies and other paperwork adds administrative expense to the project.

To a certain extent, all of the above factors can be controlled. If properly administered, the CIP concept should generate cost savings, some of which may be realized by the project owner. Because of the variables cited above, and other factors, precision in estimating savings usually is not possible.

Other than possible savings, reasons for using CIP include better control of claims involving potential multiple defendants, and the comfort of knowing that adequate insurance is in place. Because there is a single policy for liability insurance, limits and breadth of coverage under a CIP are known and uniform, rather than a patchwork quilt of different insurance that might be purchased by the various contractors. A CIP eliminates much of the need for establishing insurance specifications in each contract with each contractor, as the owner provides the insurance. Also, the paperwork burden of keeping up with certificates is greatly reduced.

California statute (Government Code section 4420) prohibits entities from requiring contractors to participate in owner-controlled insurance programs except for builder's risk and owner-protective policies. There are certain exceptions for transit guideway systems. Thus, for most entities, consolidated insurance programs must usually be arranged by the general contractor.

CONTRACTS WITH PRIVATE PARTIES

Occasionally, your Entity will enter into contracts with private individuals. A common example may be rental of a facility for private usage, such as a park, meeting hall or historic building for holding a wedding or other private gathering. Another example is rental of a booth at a community fair. As private individuals (and some small nonprofit organizations) do not normally purchase commercial liability insurance, other forms of financial guarantee may be needed.

Some homeowner insurers will provide additional insured coverage to another party if requested. Thus, an individual who purchases a homeowner's policy or tenant's package policy might be able to ask their insurance agent to provide the additional insured endorsement.

Personal lines insurers may balk at signing custom endorsement forms designed for commercial liability insurance or to name your entity as an additional insured. So, the suggested forms in Chapter Four may not be useful. Your entity could either modify the custom forms or accept an endorsement to the homeowners or tenant's package policy provided by the insurer.

It is important here to understand that you should not automatically accept the word of the private individual, or their broker or agent that the special event will be covered by the homeowner's liability insurance policy. In fact, most of the time, the entity will not be protected and will not enjoy additional insured status. The entity may end up absorbing the entire loss.

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Another problem in this situation is the issue of limits. Most private individuals do not carry large amounts of liability insurance. Unless the homeowner purchases personal umbrella liability coverage, limits on the homeowners or tenant's package policy are likely to be in the vicinity of $300,000 to $500,000. However, the risks involved in a private party event may be just as severe as those in a commercial contract. Crowd exposures, youth events with alcohol and food poisoning are examples.

One possible alternative to endorsement on a homeowner's policy is to require the purchase of special event coverage. For those entities that frequently rent or lease facilities, special event coverage may be attractive. Coverage is negotiated by your entity, and a master policy is issued to your entity by the insurer. Each tenant applies for and pays the premium on coverage for the special event. The insurer issues a binder for that event only. Coverage applies to the event holder as well as the entity. The advantage of special event coverage is that your entity can determine coverage and limits. Contact your risk management advisor for information concerning the availability of a special events insurance program for your entity.

ENVIRONMENTAL CONTRACTORS AND CONSULTANTS

Environmental issues are becoming an increasing concern and responsibility of municipal risk managers both as the owner of potentially contaminated property and as the jurisdiction responsible for the permit process. Entities are increasingly recognizing their exposure as generator and transporter of hazardous materials and pollutants. Entities are involved in issuing encroachment permits for access to their property involving both groundwater and soil contamination testing and potential cleanup of pollution generators within their communities.

Exhibit 6 (at the end of the chapter) addresses the availability of coverage for the unique risks associated with environmental issues in today's insurance market. When testing and cleanup are either mandated or desired, a common public goal must be met. There are very few insurance companies underwriting these unusual risks, and they are reluctant to amend the policy conditions. Careful research and compromise on the part of the risk manager is recommended.

Many times the standard insurance requirements as set forth in other sections of this manual may not be achievable for environmental contractors and/or consultants. An example is the issuance of encroachment permits relating to environmental work. The most prudent solution is to include appropriate requirements in original bid specifications, but this only applies when the entity is the owner. The encroachment or other permit process must be handled differently. Frequently contractors and consultants are not made aware of the entity's requirements when responding to the private sector and many times the contractor's insurance companies will not comply with standard requirements. Therefore, these standards must be flexible to allow for compliance by the few professional firms experienced in environmental testing and cleanup, since they will not typically be aware of your entity's specific requirements until they have been hired by the private sector firm to conduct testing. Without preventing the needed testing or cleanup, the entity must recognize how to transfer risk with the best protection for the entity while still reaching the common goal.

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Exhibit 6 contains insurance requirements appropriate for environmental contractors and/or consultants. If you cannot verify the A.M. Best's rating of the company, or if the coverage is written by a risk retention group or captive insurance company, you may want to check with your program director for further information about the market.

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

TRANSPORTERS OF HAZARDOUS MATERIALS AND WASTES

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 transportation of hazardous materials must comply with requirements contained in federal and state regulations and must apply for and obtain a hazardous materials transportation license. Additionally, transporters of hazardous wastes are required to carry the MSC-90.

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

What is a hazardous material? The California Waters Bill defines hazardous material as "any material that, because of its quantity, concentration or physical or chemical characteristics, poses a significant presence or potential hazard to human health and safety, or to the environment." Hazardous materials include, but are not limited to, hazardous substances and hazardous wastes. However, it only applies to vehicles subject to financial assurance requirements of the Act; that is, those that are subject to Federal jurisdiction. It may not provide coverage in situations where substances are transported that do not specifically fall within the definitions contained in the Act.

A hazardous waste is a waste or combination of wastes that because of its quantity and/or concentration, or its physical, chemical and/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 applies:

- ✓ The substance is listed as hazardous by the US Department of Transportation;

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- ✓ The substance is listed on the so-called "Director's List of Hazardous Substances," which is maintained by CalOSHA;
- ✓ 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.

Exhibit 6 contains insurance requirements appropriate for environmental contractors and/or consultants. These same insurance requirements are appropriate for transporters of hazardous wastes.

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EXHIBIT 5
Insurance Requirements For Consultants

Consultant 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 work hereunder by the Consultant, his/her agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1.	General Liability: (Including operations, products and completed operations.)	**$1,000,000**	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2.	Automobile Liability:	**$1,000,000**	per accident for bodily injury and property damage.
3.	Employer's Liability:	**$1,000,000**	per accident for bodily injury or disease
4.	Errors & Omissions Liability:	**$1,000,000**	per occurrence.

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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 (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b) the consultant shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The commercial 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 as respects: liability arising out of work or operations performed by or on behalf of the consultant; or automobiles owned, leased, hired or borrowed by the consultant.

2. For any claims related to this project, the consultant'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, its officers, officials, employees or volunteers shall be excess of the consultant's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the entity for review.

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5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "pollution" shall include microbial matter including mold.

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

Consultant shall furnish the entity with original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. The endorsements should be on forms provided by the entity or on other than the entity's forms provided those endorsements conform to entity requirements. All certificates 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 effecting the coverage required by these specifications at any time.

Waiver of Subrogation

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

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the consultant, its agents, employees, independent contractors and subcontractors.

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EXHIBIT 6
Insurance Requirements For
Environmental Contractors And/Or Consultants

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. With respect to General Liability, Errors & Omissions and Contractors Pollution and/or Asbestos Pollution Liability coverage should be maintained for a minimum of five (5) years after contract completion.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001 or Claims Made Form CG 0002).
2. Insurance Services Office Form CA 0001, covering Automobile Liability, Code 1 (any auto).
3. Workers' compensation insurance as required by the State of California and Employer's Liability insurance.
4. Contractors Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1.	General Liability: (Including operations, products and completed operations.)	**$1,000,000**	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2.	Automobile Liability:	**$1,000,000**	per accident for bodily injury and property damage.
3.	Employer's Liability:	**$1,000,000**	each accident, **$1,000,000** policy limit bodily injury by disease, **$1,000,000** each employee bodily injury by disease.

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4.	Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions	**$1,000,000**	each occurrence / **$2,000,000** policy aggregate, including Errors & Omissions if professional services are included under the contract.

Deductible and Self Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the entity. If possible, 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 evidence satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

A. The General Liability, Automobile Liability, Pollution and/or Asbestos Pollution 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 work or operations performed by or on behalf of the contractor including materials, parts or equipment furnished in connection with such work or operations; Contractors Pollution and/or Asbestos Pollution. No policy shall contain an “Insured v. Insured” exclusion.

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

   3 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by the insurer except after thirty (30) days’ prior written notice has been given to the entity.

   4 Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

B. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.

C. If General Liability, Contractor’s Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

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1 The "Retro Date" (retroactive date) must be shown, and must be before the date of the contract or the beginning of contract work.

2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

4 A copy of the claims reporting requirements must be submitted to the entity for review.

5 If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "pollution" shall include microbial matter including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted. If Contractors Pollution Liability, Asbestos Pollution and/or Errors & Omissions coverages are not available from an "admitted" insurer, the coverage may be written by a non-admitted insurance company. A non-admitted company should have an A.M. Best's rating of A:X or higher. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

Verification of Coverage

Contractor shall furnish the entity with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the entity, unless the insurance company will not use the entity's form. All 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. As an alternative to the entity's forms, the contractor's insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Waiver of Subrogation

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

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The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the contractor/consultant, its agents, employees, independent contractors and subcontractors.

Subcontractors

Contractor/consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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CLAIMS HANDLING PROCEDURES FOR INSOLVENT, REHABILITATED AND/OR LIQUIDATED INSURANCE CARRIERS

Carrier Insolvency, Case-by-Case

The first thing to know about insurance carrier insolvency is that various state insurance commissioners handle these on a case-by-case basis; no two are handled alike. With that said, there are no real set guidelines from which to approach this issue. Here is some basic information and guidelines to follow:

Notice to Policyholders, Creditors, and Shareholders

When an insurance carrier develops severe financial problems, the Insurance Commissioner applies to the Superior Court of California for a conservative order to place the financially-troubled company into conservatorship. Once the Insurance Commissioner is appointed conservator, an investigation by the Conservation and Liquidation Office (CLO) is initiated to determine if the company can be rehabilitated. If it is determined that the company cannot be saved, the Insurance Commissioner will apply for a court order to liquidate the company.

Liquidation and How It Is Achieved

When a liquidation order is issued, the insurance company is closed, all outstanding policies are cancelled, and the process of selling off any remaining company assets begins. The proceeds from the assets sale, if any, will be used to pay off the company's debts and outstanding insurance claims.

Once the court issued the liquidation order, the CLO publishes a notice to the company's policyholders, creditors, and shareholders, and all parties interested in the company's assets. In the notice, policyholders are required to submit a proof of claim form in order to seek compensation for claims under their policy. The notice will state the deadline for submitting the proof of claim form.

Contacts

The California Department of Insurance may be contacted by calling 1-800-927-4357. For non-California insureds, contact the department of insurance in the state where your business resides. You may also contact your broker or BRS with questions.

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Aircraft/Airport Liability Insurance

Aircraft liability insurance protects owners and operators of aircraft against liability for injury to other people or damage to the property of others arising out of the ownership or use of aircraft. Airport liability insurance protects airport tenants against claims arising out of operations at an airport.

Automobile Liability Insurance

This coverage insures against liability claims arising out of the contractor's use of automobiles. The scope of coverage is defined by the symbol used in the policy. Exhibit A-1 at the end of Appendix A provides descriptions of automobile designation symbols quoted from standard language used by insurers. Generally, you should require Code 1 (any auto), which is the broadest code. The term "auto" is defined in the Insurance Services Office 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 "contractors equipment." Automobile coverage requirements should be waived only when the other party's work clearly does not involve the use of an automobile. Should any doubt exist, this coverage should be required.

Builder's Risk Insurance

Also referred to as "Course of Construction" insurance, Builder's Risk insurance is a type of property insurance that addresses the special needs of construction projects by insuring property already in place but under construction, repair, or renovation, as well as equipment and materials to be installed. *Installation Floater* insurance is closely related, covering equipment during transit, installation, and/or testing.

Commercial General Liability Insurance

Commercial general liability coverage was introduced in 1986. The Commercial General Liability form provides protection against bodily injury and property damage claims arising from the operations of a contractor or tenant. This type of policy provides coverage for premises and operations, use of independent contractors, and products and completed operations. Major exclusions include liability arising out of the ownership, maintenance, or use of watercraft, aircraft, and automobiles. These exposures are normally covered by other insurance policies.

Commercial General Liability is probably the most commonly used liability insurance form for business today. It limits all loss payments to two aggregate limits – one for products and completed operations and one for all other loss. This form can be written on either a claims-made or an occurrence basis. The name of this form is similar to that of an older form (described below), so care must be used when distinguishing between these forms.

Comprehensive General Liability (1973 form) is the older form and it is still in use in some areas. It also provides protection against bodily injury and property damage claims. Generally,

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it does not have an aggregate limit except for products and completed operation liability, although an aggregate limit for other areas may be added by endorsement.

The last edition of the Commercial General Liability form prior to the 1996 addition was the 1976 form. This coverage form has changed ***materially*** since the 1976 edition.

AS A RESULT OF THESE CHANGES, IT IS IMPERATIVE THAT THE USER MAKE CERTAIN THAT 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.

Also, be aware that the changes have also restricted defense coverage to only those lawsuits involving issues that are covered perils under the contractor's insurance. Therefore, it is also imperative that your indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, they do have the assets to indemnify those uninsured or underinsured areas.

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

The remaining caution pertains to the obligation of the additional insured (your entity) to allow the contractor's insurance company to control the lawsuit. These conditions precedent to litigation defense are contained in the Supplementary Payments – Coverages A and B Section, on page 6 of 13; specifically 7f and following. The coverage is integrally tied to these restrictions, and ceases when they are violated. We urge the user to have their entity's attorney review these restrictions.

We are therefore recommending that your entity continue to request the 1976 edition when specifying this coverage form. You may find that the contractor's insurance company refuses to do so, because they understand the implications of using the 1976 form. In that case, be certain that you follow the above guidelines.

The Broad Form Comprehensive General Liability (BFCGL) endorsement is a composite endorsement which includes 12 add-on items that expand the coverage of the Comprehensive General Liability Coverage.

Commercial General Liability Coverage Endorsements

1. Contractual Liability

2. Personal Injury and Advertising Injury Liability

3. Premises Medical Payments

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4. Host Liquor Law Liability

5. Fire Legal Liability - Real Property

6. Broad Form Property Damage Liability (Including Completed Operations)

7. Incidental Medical Malpractice Liability

8. Nonowned Watercraft Liability (under 26 feet in length)

9. Limited Worldwide Liability

10. Additional Persons Insured

11. Extended Bodily Injury

12. Automatic Coverage – Newly Acquired Organizations (90 Days)

Most of these coverage extensions are automatically included in the newer Commercial General Liability form. The Broad Form Comprehensive General Liability (BFCGL) endorsement should be required if the contractor's insurer uses the old Comprehensive General Liability form (1973).

Your Entity should require a Commercial General Liability insurance policy or equivalent, from all contractors, vendors, and tenants. Other (more limited) forms such as Manufacturers and Contractors Liability and Owners, Landlords and Tenants Liability forms should not be accepted unless specifically approved by your entity.

Garagekeeper's Legal Liability Insurance

This protects parking lot operators who provide valet parking, car dealers, and garage owners against liability for damage to vehicles in their care, custody, or control. The garagekeeper who accepts another's property for repair or keeping becomes a bailee. The law imposes certain legal responsibilities on a bailee. These responsibilities are normally excluded by General Liability policies under the care, custody, and control exclusion. Accordingly, this coverage is needed.

Marina Operator's Legal Liability Insurance

This coverage is another form of bailee liability insurance that protects marina operators against liability for damage to boats in their custody. Tenants who berth at the marina are potential claimants for damage to their boat while in its slip.

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Owners and Contractors Protective (OCP) Insurance

OCP policies, an often-proposed solution to the aggregate limits problem with General Liability policies, provide limited coverage for the entity's interests only. They insure only the entity's liability arising out of operations performed by the contractor for your entity at the project location, or liability arising out of acts or omissions in connection with the general supervision of the project. OCP policies do not, for example, provide coverage for contractual liability, injury resulting from the entity's activities beyond the general supervision of the contractor's operations, and claims alleging joint liability or sole liability of the owner.

OCP policies are not widely used in California, but are widely used in some other states. If the insurer is not willing to provide an additional insured endorsement with the required modifications shown in the Exhibits to this manual, then an OCP policy would be an acceptable alternative

Professional Liability Insurance

Professional liability insurance provides limited protection against claims for damages arising from negligent acts, and/or errors or omissions of the insured party. Examples of such claims include design errors of architects or engineers resulting in property damage, and malpractice of doctors, lawyers, realtors, and financial consultants – allegations that improper or insufficient care on the part of those professionals resulted in injury or loss. Other types of professionals may also purchase special liability insurance.

Coverage provided by Professional Liability insurance policies differs from coverage provided by General Liability insurance. General Liability policies exclude professional exposures such as design errors. General Liability policies are also limited to claims for bodily injury, property damage, advertising injury, and personal injury. Professional Liability policies often cover a broader range of economic loss. Because of the highly personal nature of Professional Liability insurance (the insurer insures the professional's competence) insurers generally will not add additional insureds to the policy unless they are employees or subsidiaries of the insured.

As a general rule, the insurer for a professional contractor or consultant will not name your entity as an additional insured; so it is best not to require it in your contract.

Property Insurance

Property insurance protects against financial loss resulting from destruction of property by insured perils such as fire. This is different from property damage liability insurance, which covers the insured's legal liability for damage to others' 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, rather than requiring the tenant to purchase coverage on behalf of your entity. The advantages of your entity providing property insurance include assurance that

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adequate coverage is afforded and assurance that premiums will be paid, thus avoiding cancellation for nonpayment of premium.

If the tenant owns the building (on land owned by your entity), your entity may wish to have the tenant purchase the insurance and name your entity as a loss payee. Also, the tenant's policy should, at the very least, provide coverage against fire and the extended coverage perils (defined in insurance policies as windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke) AND should insure the building to at least 90% of its replacement cost.

Protection and Indemnity Insurance

This coverage protects boat owners or permitted boat users against liability arising out of use of a boat. Tenants who own boats or contractors who may use a boat in their operations for your entity must provide evidence of this type of insurance. These individuals include persons leasing private slips and moorings, marina operators and others providing services involving the use of boats such as salvage and repair operators. For private vessels, watercraft liability coverage is also acceptable.

Ship Repairer's Legal Liability Insurance

This is another type of bailee liability insurance that protects against claims from those who leave boats in the ship repairer's repair yard or otherwise in the repairer's custody.

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. In this way, the surety bond is a risk transfer technique similar to but different than insurance. 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 insuring agreement: The insurer and the insured (policyholder). A surety bond, however, has three parties to the surety agreement: The bonding company (surety), the entity being bonded (principal), and the entity who benefits in the event of a bonded default (obligee).

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A surety company also 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 obligor.

Surety bonds are designed to help the obligee ensure that the contractor will complete the job in accordance with the contract. If a bonded contractor defaulted on any obligation of a bonded job, the surety may seek to recover any amounts it paid to the obligee (the entity) from the principal (the bonded contractor). Thus, the bonded contractor has a punitive incentive through the legal constraints of the bond to complete the work expected by the obligee.

Further, surety companies carefully underwrite applicants for bonds by examining the contractor's managerial, financial ability, to undertake and complete a job. Thus, the requirement for surety bonds may also serve to eliminate unqualified contractors from the bid process.

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

The basic surety bonds related to public work contracts include Bid Bonds, Performance Bonds, Payment Bonds, Labor and Material Bonds, and Completion Bonds. Collectively, these bonds are referred to as Contract Bonds.

- ✓ A *Bid Bond* is a guarantee by the surety that the bidder for a public works project will undertake the job at the quoted price.

- ✓ A *Performance Bond* is a guarantee that if the bonded contractor fails to complete the bonded job as quoted, the surety will assume the contractor's financial responsibility to complete the work.

- ✓ A *Payment Bond* is a guarantee that the contractor will pay all the bills incurred on the work, as provided in the lien laws of the State of California. As noted earlier, your entity may be liable for failing to require such a Payment Bond.

- ✓ A *Labor and Material Bond* is a guarantee of the furnishing and delivery of labor or materials and supply at an agreed price. These bonds are typically written for subcontractors on the job.

- ✓ A *Subdivision or Completion 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 Bond and a Payment Bond with penalties equal to one hundred percent (100%) of the contract price as determined from the prices in the bid form. The bond amount may be adjusted from time to time as necessary to cover and satisfy all payment obligations arising from the contract.

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The contractor should file the required bond with the public entity prior to or simultaneous to the execution of the contract.

Although bonds are most commonly used in construction agreements, there are specific agreements where performance bonds may be used by your agency. Purchase agreements for specific items such as software development or other products specifically engineered by the vendor may incorporate language requiring a Performance Bond and/or a Material Bond.

Performance Bonds and Payment Bonds should be submitted on forms provided by the public entity. The surety should possess a minimum rating from A.M. Best Company of A:VII. Also, the surety or co-sureties should be listed as an acceptable surety on federal bonds by the United States Department of the Treasury, subject to the maximum amount shown in the listing. If co-sureties are used, their bonds shall be on a joint and several basis. In California, the only requirement by law is that the surety needs to be an admitted carrier with a valued surety license.

Umbrella Liability

An Umbrella Liability policy raises the limits of all primary or underlying liability insurance policies and provides coverage in some areas not covered under primary policies.

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

Workers' Compensation and Employer's Liability Insurance

Workers' compensation insurance provides statutory protection against bodily injury, sickness, or disease sustained by employees of the other party in the scope of their employment. It should be required of any contractor performing work for your entity.

Employer's liability coverage 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 against their employer. If the contractor's employees will work around shipyards or docks, then US Longshoremen's and Harbor Workers' coverage is required. Maritime workers need Jones Act coverage.

APPENDIX A
COMMONLY ENCOUNTERED INSURANCE COVERAGES

Performance Bond

Bond No.: _____
Premium: _____

WHEREAS The _____, (hereinafter designated as "Obligee") and _____ (hereinafter designated as "Principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, and identified as project _____ is hereby referred to and made a part hereof; and

WHEREAS, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement;

NOW, THEREFORE, We, the principal and _____ as surety, are held and firmly bound unto the hereinafter called "The Obligee," in the penal sum of _____ dollars ($_____) lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally firmly by these presents.

The condition of this obligation is such that if the above-bound principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to abide by, and well and truly keep and perform the covenants, conditions, and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and perform and at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Obligee, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by Obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above-named on

By: _____
Principal

By: _____
Principal

By: _____
Attorney-In-Fact

APPENDIX A
COMMONLY ENCOUNTERED INSURANCE COVERAGES

Payment Bond Public Works

Bond No.: _____

KNOW ALL MEN BY THESE PRESENTS, That we, _____ as Principal, and _____, incorporated under the laws of the State of _____ and authorized to execute bonds and undertakings as sole surety, as Surety, are held and firmly bound unto any and all persons named in California Civil Code section 3181 whose claim has not been paid by the contractor, company or corporation, in the aggregate total of _____ dollars ($_____), for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by the present.

The Condition of the foregoing obligation is such that; where the above-bounden Principal has entered into a contract dated _____, with the _____ to do the following work, to-wit:

NOW THEREFORE, if the above-bounden Principal contractor, person, company or corporation, or his or its subcontractor, fails to pay any claimant named in section 3181 of the Civil Code of the State of California, or amounts due under the Unemployment Insurance Code, with respect to work or labor performed by any such claimant, that, the Surety on this bond will pay the same, in an amount not exceeding the aggregate sum specified in this bond, and also in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit.

This bond shall inure to the benefit of any person named in section 3181 of the Civil Code of the State of California so as to vie a right of action to them or their assignees in any suit brought upon this bond.

This bond is executed and filed to comply with the provisions of the act of Legislature of the State of California as designated in Civil Code sections 3247-3252, inclusive, and all amendments thereto.

Signed and sealed this _____ day of _____, 200___.

By: _____

By: _____
Attorney-In-Fact

APPENDIX A
COMMONLY ENCOUNTERED INSURANCE COVERAGES

EXHIBIT A-1

CODES USED IN BUSINESS AUTO POLICIES

1. **ANY AUTO**. (This is the broadest coverage and includes all other categories shown below.)

2. **OWNED AUTOS ONLY**. Only those autos owned by the named insured (and, for liability coverage, any nonowned trailers while attached to power units owned by the named insured). This includes autos acquired after the policy begins.

3. **OWNED PRIVATE PASSENGER AUTOS ONLY.** Only the private passenger autos owned by the named insured. This includes those private passenger autos acquired after the policy begins.

4. **OWNED AUTOS OTHER THAN PRIVATE PASSENGER AUTOS**. Only those autos owned by the named insured which are not of the private-passenger type (and, for liability coverage, any nonowned trailers while attached to owned power units). This includes autos, not of the private-passenger type, acquired after the policy begins.

5. **OWNED AUTOS SUBJECT TO NO-FAULT**. Only those autos owned by the named insured which are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes autos whose ownership entitles the named insured to have no-fault benefits in the state where they are licensed or principally garaged.

6. **OWNED AUTOS SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW**. Only those autos owned by the named insured which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists insurance. This includes autos acquired after the policy begins, provided they are subject to the same state uninsured motorist requirement.

7. **SPECIFICALLY DESCRIBED AUTOS**. Only those autos described in the policy for which a premium charge is shown (and, for liability coverage, any nonowned trailers while attached to those described power units).

8. **HIRED AUTOS ONLY**. Only those autos leased, hired, rented, or borrowed by the named insured. This does not include any auto leased, hired, rented, or borrowed from employees or members of their households.

9. **NONOWNED AUTOS ONLY**. Only those autos owned, leased, hired or borrowed by the named insured which are used in connection with business. This includes autos owned by the named insured's employees or members of their households, but only while used in the named insured's business.

APPENDIX B
COMMON INSURANCE INDUSTRY FORMS

- ✓ ACORD Certificate of Insurance
  - Standard form
  - Annotated form
- ✓ Two ISO standard endorsements used to add Entities as insureds on Contractors' Liability insurance:
  - Additional Insured - Owners, Lessees or Contractors, (Form A)
  - Additional Insured - Owners, Lessees or Contractors, (Form B)
- ✓ ISO endorsement: Waiver of Transfer Rights of Recovery Against Others
- ✓ ISO endorsement: Waiver of Subrogation
- ✓ Four ISO endorsements used to amend policy limits:
  - Amendment of Limits of Insurance (Designated Project or Premises)
  - Amendment of Limits of Insurance
  - Amendment - Aggregate Limits of Insurance (Per Project)
  - Amendment - Aggregate Limits of Insurance (Per Location)
- ✓ Four State Compensation Insurance Fund Forms:
  - Certificate of Workers' Compensation Insurance
  - Additional Insured Employer
  - Waiver of Subrogation
  - Certificate Holders' Notice (Cancellation notice)
- ✓ ISO policy which can be issued by the entity as an acceptable alternative to an Additional Insured Endorsement on a Contractor's Insurance policy:
  - Owners and Contractors Protective Liability - Coverage for Operations and Designated Contractor (11 88 addition date)
  - Owners and Contractors Protective Liability - Coverage for Operations and Designated Contractor (01 96 addition date)
- ✓ ISO policy for General Liability on an "Occurrence" basis
- ✓ Form MCS-90 – Endorsement for Motor Carrier Policies of Insurance for Public Liability

APPENDIX B
COMMON INSURANCE INDUSTRY FORMS

Changes in Endorsement Form:

Additional Insured - Owners, Lessees Or Contractors (Form B)

This endorsement form has changed ***materially*** since the last edition of this Manual.

The old form number is CG 20 10 11 85 (the 85 in the number sequence is the "edition date") and the updated form number is CG 20 10 10 93. A new form (CG 20 10 03 97) has been issued but only changes the title by adding the wording "scheduled person or organization" and deleting the wording "(Form B)." We have included these forms in the Manual on the following pages so that the user can see the changes for themselves.

The material change is contained in the second paragraph of the endorsement. The 1985 version, the version we are recommending your entity continue to request, is worded:

> WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "***your work***" for that insured by or for you. (Emphasis added.)

The 1993 and 1997 versions read:

> WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of **your ongoing operations** performed for that insured. (Emphasis added.)

This change is significant because the altering of the wording "your work" to "your ongoing operations" effectively eliminates any possible coverage under this endorsement for products-completed operations exposures. Until this rewording, Form B contained no exclusion for completed operations and could therefore be called upon to cover your entity for liability arising out of the products-completed operations hazard created by your contractor.

The 1993 and 1997 versions have also increased the necessity for subrogation waivers on liability policies, in light of the Montrose cases, previously referenced. We are therefore recommending that your entity continue to request CG 20 10 11 85 when specifying Form B. You may find that the contractor's insurance company refuses to do so because they understand the implications of using the 1985 form. In that case, be certain that your indemnification language obligates the contractor to cover the products-completed operations exposure specifically and that your entity is included on that policy as an additional insured.

The 2004 ISO additional insured endorsements forms clearly state that there is no "completed operations" loss coverage for the additional insured. In addition, there is no coverage for your entity as an additional insured if the underlying named insured contractor/consultant is not

APPENDIX B
COMMON INSURANCE INDUSTRY FORMS

negligent in the performance of the work or the ongoing operations that led to the loss to which your entity is now exposed.

This is a very complicated area of insurance coverage. You must consult with your own legal counsel, broker or BRS when deciding on the appropriate language for this protection. The idea that completed operations coverage was never intended to be a warranty or guarantee is discussed elsewhere.

Please be advised that, in today's commercial insurance market, most insurers refuse to provide the CG 20 10 11 85 coverage form. Whether to "force the issue" or to negotiate some lesser form of coverage becomes a "business decision" that requires advice from legal counsel.

APPENDIX B
COMMON INSURANCE INDUSTRY FORMS

Changes in Endorsement Form:

Waiver Of Transfer Of Rights Of Recovery Against Others To Us

This endorsement form has changed since the last edition of this Manual.

The old form number is CG 24 04 11 85 (the 85 in the number sequence is the “edition date") and the new form number is CG 24 04 10 93

There are no material changes between these two editions; therefore, either form can be accepted by your entity. The wording changes clarify the insurer’s intent to include losses that fall under the products-completed operations hazard.

APPENDIX B
COMMON INSURANCE INDUSTRY FORMS

Liability
Waiver Of Subrogation

Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide Comprehensive General and Automobile Liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to entity, on behalf of any insurer providing Comprehensive General and Automobile Liability insurance to either Contractor or entity with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against the entity by virtue of the payment of any loss under such insurance.

Owners And Contractors Protective Liability
Coverage Form - Coverage
For Operations Of Designated Contractor

This coverage form has changed materially since the last edition of this Manual.

The old form number is CG 00 09 11 88 (the 88 in the number sequence is the “edition date") and the new form number is CG 00 09 01 96.

The material changes are contained in 1A, 2, 2a & b; “Supplementary Payments,” 8a, b, c, d, e, f, 2a & b; and a & b (following) of the coverage form. The remainder of the changes are additions of words and phrases, which are immaterial.

We highly recommend that the user review these new sections so that they understand the “import” of the changes. Although we highlight the significance of the changes here, we believe that the user will gain a better understanding through actually reviewing the sections for themselves or by having their entity’s attorney do so.

AS A RESULT OF THESE CHANGES, IT IS IMPERATIVE THAT THE USER MAKE CERTAIN THAT 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.

Also, be aware that the changes have also restricted defense coverage to only those lawsuits involving issues that are covered perils under the contractor’s insurance. Therefore, it is imperative that your indemnity language is strong and, if the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, the contractor has the assets to indemnify those uninsured or underinsured areas.

APPENDIX B
COMMON INSURANCE INDUSTRY FORMS

The remaining caution pertains to the obligation of the additional insured (your entity) to allow the contractor's insurance company to control the lawsuit. These conditions precedent to litigation defense are contained in the Supplementary Payments section, 8f and following. The coverage is very specifically tied to these restrictions and ceases when these are violated. We urge the user to have their entity's attorney review these restrictions.

We are therefore recommending that your entity continue to request CG 00 09 11 88 when specifying this coverage form. You may find that the contractor's insurance company refuses to do so because they understand the implications of using the 1988 form. In that case, be certain that you follow the above guidelines.

APPENDIX C
SAMPLE HOLD HARMLESS AGREEMENTS

The following indemnification clauses are provided as samples only. Innumerable alternatives to these forms are possible with each alternative having a different purpose depending upon the needs of the parties. Drafting hold harmless or indemnification language in contracts is a crucial part of the risk transfer process and should not be undertaken without the advice and assistance of legal counsel.

Indemnity and hold harmless provisions are regulated by the California Civil Code and case law interpreting the Code Sections. Under Civil Code Section 1668:

> All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Under Civil Code Section 2773:

> An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

Civil Code Section 2782(b) provides:

> Except as provided in Sections 2782.1, 2787.2, and 2782.5, provisions, clauses, covenants or agreements contained in, collateral to or affecting any construction contract with a public agency which purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency shall be void and unenforceable.

Section 2782.1 makes an exception where the contract is not being performed for the public agency, but the public agency as an accommodation allows the contractor to enter upon its property or adjacent to its property. Section 2782.2 permits the owner of a project to indemnify a professional engineer if certain conditions are met. Section 2782.5 permits parties to a construction contract to negotiate and expressly agree with respect to the allocation, release, liquidation, exclusion, or limitation as between the parties of any liability (a) for design defects, or (b) of the promisee to the promisor arising out of or relating to the construction contract.

California case law has analyzed indemnity clauses as falling under three classifications discussed below.

APPENDIX C
SAMPLE HOLD HARMLESS AGREEMENTS

Example 1 - Strict or Type I Indemnity Language

> Contractor shall indemnify, defend, and hold harmless 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 willful misconduct of the entity.

In the first example, the contractor agrees to assume all risk of loss resulting from the project, including losses caused by the joint negligence of your entity and the contractor or its subcontractors, and or for the entity's sole negligence. *Caution: While this type of agreement provides the broadest protection for the entity, it would be subject to challenge under Civil Code section 2782 (a) and (b).* Civil Code section 2782 (a) and Section 2782.8 prohibit the transfer of the entity's sole negligence or willful misconduct to another person or entity in a construction contract. Civil Code section 2782 (b) specifically prohibits the transfer of a public entity's active negligence. If you have a construction contract (as defined in Civil Code section 2783), Example 2 (below) should be used instead.

Example 2 - Type II - Intermediate Form

> Contractor shall indemnify, defend, and hold harmless entity and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the contractor, any 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 second example, the entity receives indemnity if it was not negligent or if its negligence was only passive. There is a great deal of case law on the active/passive distinction. Essentially, active negligence is affirmative participation in causing the harm or a failure to prevent a known danger whereas passive negligence is failure to detect a danger which the entity is under a duty to detect, such as a dangerous condition on its property created by the contractor. There is a great variety of language used to arrive at this type of intermediate form, because any indemnity contract which does not specifically refer to the indemnitee's negligence will be construed as this type of general clause, not providing indemnity for active negligence. So, if the contract promises indemnity for losses howsoever may be caused, regardless of responsibility for negligence, arising from use of the premises, facilities or services, or caused by any person or persons whomsoever, the wording will be interpreted as a general indemnity clause.

APPENDIX C
SAMPLE HOLD HARMLESS AGREEMENTS

Example 3 - Limited Form (Comparative Fault)

> Contractor agrees to protect, indemnify and save harmless entity and its 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 example is the most limited type of indemnity agreement because it 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 sufficient protection to your entity. At the very least, if this form is used, it should be modified so that contractor and entity shall mutually indemnify and hold harmless each other for their respective negligent acts.*

AB 573 ADDING CALIFORNIA CIVIL CODE SECTION 2782.8 EFFECTIVE JANUARY 1, 2007

This new legislation purports to limit the type of indemnity language that public agencies can require in contracts, or amendments to existing contracts, with "design professionals," as that term is defined in the new law. We strongly urge you to consult your legal counsel before preparing any new language in your contracts. This is (and will be in the future) a contentious issue with various interests having differing opinions. The sponsor of the legislation representing the interests of design professionals argues that a public entity can no longer transfer its own passive negligence onto the design professional. However, the new law makes no mention of how the issue of "passive" negligence is to be treated. It simply says that any contracts that purport to indemnify the public agency against liability claims brought against it must arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional. The Type II Intermediate form seems to comply with the intent of the new law.

BRS has always advised our clients not to use the Type I Strict indemnity language. We recommend (do not mandate) that entities continue to ask for Type II – Intermediate form language in their contracts. Any negotiation from this position must be done only after seeking advice from your own legal counsel. Ultimately, this is a legal matter.

APPENDIX C
SAMPLE HOLD HARMLESS AGREEMENTS

Release Agreements

If you have a defined group of persons who might be exposed to a harm (*e.g.,* participants in an athletic event on entity property), a release agreement can and should be prepared. Generally, a release agreement exculpating a tortfeasor from liability for future negligence or misconduct must be clear, unambiguous, and explicit in expressing the inherent risks and the intent of the parties. This means releases and agreements must not be general exculpatory statements, but rather must clearly notify the prospective releasor or indemnitor of the effect of signing the agreement. In addition, language must be prominently displayed, no smaller than 8- to 10-point type, not overly complex, and not buried in other verbiage. A standard release might read as follows:

> In consideration of the acceptance of my application for entry into the above event, I hereby waive, release and discharge any and all claims for damages for death, personal injury or property damage which I may have, or which hereafter accrue to me, against the entity as a result of my participation in the event. This release is intended to discharge the entity, its officers, officials, employees and volunteers, any other involved municipalities or public agencies from and against any and all liability arising out of or connected in any way with my participation in the event, even though that liability may arise out of the negligence or carelessness on the part of persons or entities mentioned above. I further understand that accidents and injuries can arise out of the event; knowing the risks, nevertheless, I hereby agree to assume those risks and to release and to hold harmless all of the persons or agencies mentioned above who (through negligence or carelessness) might otherwise be liable to me (or my heirs or assigns) for damages. It is further understood and agreed that this waiver, release, and assumption of risk is to be binding on my heirs and assigns.

The above language was adapted from a case which cited release language with approval. It should be noted, however, that the release may be circumvented by a plaintiff if the injury occurs in an unforeseeable way, not typical or common to the activity.

The enforceability of waivers and releases has been the subject of recent appellate court decisions. Therefore, you need to consult with your legal counsel on drafting clear and, unambiguous and fair documents. Many times, the claimants and/or their attorneys will be dissuaded from pursuing a claim due to the signing of the waiver and release documents.

At the very least, the language in the waiver and release document must alert the participant, vendor, and/or the parents of the need for safety, common sense and reason during the activity, the specific dangers and exposures, and the possible health and safety consequences.

APPENDIX D
GLOSSARY

ACORD Insurance Certificate: A certificate of insurance commonly issued by insurance agents on behalf of their clients to indicate to other interested parties the nature and amounts of insurance purchased by the client. The ACORD certificate form was developed by the insurance industry in an attempt to standardize and simplify this type of insurance documentation. This form does not provide insurance coverage. An endorsement or insurance policy is needed for that purpose.

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

Aggregate Limit: A cumulative limit that applies to all claims within a given period of time, such as within one year, or within the policy term. For example, 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 by one big loss of that amount. It is recommended that the aggregate be at least twice the amount of the occurrence limit.

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

Broker: Someone who, for a commission from the insurance company, solicits, negotiates, and services insurance policies on behalf of the insurance buyer. From a practical standpoint, there is little or no difference between a broker and an agent in terms of providing insurance to a California insured.

Claims-Made Coverage: A type of liability coverage which imposes strict deadlines regarding timing of claims by plaintiffs and reporting of accidents and claims to the insurer. Although not widely used for General Liability coverage, it is common enough that you can expect to encounter some of your entity's contractors' and vendors' insurance written on these forms.

In its most fundamental form, Claims-Made coverage responds to claims made during the policy term, regardless of when the triggering accident or event happened. In the case of an injured child, for example, the policy that would respond would be the policy in effect at the time that the child made a formal claim, even if years after the event (minors may present claims after reaching their majority). However, most Claims-Made policies have a retroactive date. Claims arising from events that occurred before the retroactive date are not covered. Usually the retroactive date is the first date that the insurer began providing Liability insurance for that insured. Renewal policies often keep the same retroactive date as the expiring policy.

While the restrictions may vary somewhat from insurer to insurer, and the forms allow some exceptions, one common version of Claims-Made coverage applies only to claims that are submitted to the insurer during the policy term or within sixty (60) days thereafter. Therefore, if your entity's protection is to be preserved under this policy form, claims made against your entity, either orally or in writing, must be reported immediately to the insurer at the address on

APPENDIX D
GLOSSARY

the endorsement form. If the coverage has expired, or is about to do so, send notice by the fastest possible means, to reduce the possibility of missing a deadline.

A common Claims-Made version also makes an exception for claims arising out of incidents that have been reported to the insurer during the policy term or within sixty (60) days thereafter provided that the claim is made within five (5) years after the policy term. In other words, if an incident is reported to the insurer that may generate a future claim, coverage is locked in for five (5) years. If the incident is not reported (*e.g.,* if you don't know about it), then if the claim is submitted after the policy term, the policy does not cover it. Therefore, you should also report incidents that might result in claims to the insurer immediately.

Clearly, when your entity arranges to be protected under a Contractor's Liability insurance for claims arising out of a particular project, occurrence coverage is preferred, as the needed coverage can be arranged and the full cost known in advance of the project.

Professional Liability risks are almost always written on a Claims-Made basis, especially Professional Liability of architects, engineers, medical professionals and consultants. Also, hazardous products or activities, such as asbestos removal contracting, may be written on a Claims-Made form. However, most types of commercial business insurance are usually written on an Occurrence form.

Cross Liability Clause/Separation of Insureds Clause/Severability of Interest Clause: Various names for language found in liability policies which states that the terms of the policy apply separately to each insured, as though a separate policy had been issued to each. An exception is made for policy limits – the policy limits apply collectively to all insureds.

Deductible (clause): A provision in an insurance 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.

Named Insured/Insured/Co-Insured: The term "named insured" and the term "insured" are both defined in liability policies. The term "co-insured" is not commonly used in insurance policies and is a misnomer. Insurance specifications should use the two terms which have specific meaning in insurance policies.

Named insured is the person or organization named as such in the declarations of the policy. That item is usually typed in on the front page or, if lengthy, added by endorsement. The named insured has the duty to pay the premium. Also, the first named insured generally receives notices from the insurer, such as a Notice of Cancellation. Such notices are sent to the address shown for the named insured.

An insured is any party protected by the insurance, as defined by the policy, or specifically added. For example, your entity could be an insured for losses arising out of a contractor's work if:

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- ✓ The contractor's policy states that it automatically includes as insureds any other parties for whom the contractor is required to provide such insurance AND the contractor has signed a contract with such a requirement; or
- ✓ The contractor's insurance, has been specifically endorsed to add your entity as an insured as respects the contractor's work.

Insureds are generally not required to pay premium if the named insured fails to do so. Insureds do not automatically receive notices, such as a Notice of Cancellation. Any such requirement must be specifically stated and must include the name and address of the party to which notice is to be sent.

Occurrence-Based Coverage: 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. For example, a child injured in an accident may, under certain circumstances, be allowed to make a formal claim for damages years later, after reaching age eighteen. The insured (*e.g.,* the contractor or your entity) would be protected against this claim by the policy in effect at the time of the accident.

Personal Injury: As used in insurance policies, this term usually applies to injuries of a nonphysical nature, such as:

- ✓ False arrest, detention, or imprisonment;
- ✓ Libel, slander, or defamation; and
- ✓ Wrongful entry or eviction.

Personal Injury Liability insurance should always be required of anyone who may deal with the public, such as contract security guards. It is typically included in the Commercial General Liability coverage and in the older Broad Form Comprehensive General Liability Endorsement, or it can be written as a separate coverage.

Technically, for coverage purposes, the terms "bodily injury" and "personal injury" are not the same.

Products and Completed Operations: As used in insurance policies, applies to 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 coverage from all contractors and from suppliers of hazardous products, such as guns and ammunition. Typically, this coverage is included in Comprehensive General Liability coverage and in Commercial General Liability coverage.

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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.

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 to its insured, and another party's negligence caused the loss, the insurer usually reserves the right to collect from the negligent party the amount it has paid on the loss. This right is called the right of subrogation. When your insurer pays you for damage to your car, then collects from the other party that caused the accident, your insurer is exercising its right of subrogation.

When two parties enter into a contractual agreement, they usually attempt to agree between them as to which party's insurance will cover each type of loss. This agreement may be defeated if the insurer can pay the loss, then collect from the party that intended to transfer the loss through the contract. To prevent this unintended result, contracts will sometimes contain a Waiver of Subrogation provision through which the insurer's right to subrogate will be waived. This requirement must be implemented by a policy endorsement. Liability and workers' compensation sample endorsements appear in Appendix B.

An example of such a waiver is sometimes found in lease agreements. The landlord and tenant may agree that the landlord's insurance should cover property losses. To make sure that the landlord's insurer does not attempt to charge the tenant for losses the insurer has paid, the contract may require that the landlord obtain a Waiver of Subrogation from the insurer, and provide evidence of the waiver to the tenant.

Waivers should be used with caution. Some insurance policies void the coverage if the insured agrees to waive the insurer's subrogation rights without prior approval. Other policies permit waivers. You should carefully review the policies and/or call your risk management advisor for assistance when dealing with waivers of subrogation.

X, C, U Hazards:

X = explosion
C = collapse
U = damage to underground property

Comprehensive General Liability and Commercial General Liability policies usually automatically insure liability for these risks, as defined in the policy. However, certain contractors must pay additional premiums to obtain these coverages or the underwriter will issue the policy excluding X, C, and U perils.

APPENDIX E
SAMPLE CHECKLISTS

These checklists are included in the manual as examples of how the user might wish to organize their contract and specifications review.

We would like to thank Joseph Risser of the California State University system for his self-designed checklist entitled “Project Name/Purchase.”

Project Name/Purchase Checklist

Contract Review Checklist

Potential High Risk Situations or Special Insurance Required Checklist

Severity-related Questions for the Contract Risk Analyst

Risk Analysis Worksheet

APPENDIX E – PROJECT NAME / PURCHASE CHECKLIST

Project Name/Purchase _____

Check One: ☐ Construction ☐ Services (specify) _____

☐ Purchase ☐ Lease (specify) _____

Insurance Company Ratings, Coverage and Limit Guidelines

BEST Secure Ratings						**NOT RECOMMENDED**		
Superior	A++	A+	Excellent	A	A–	**Very Good**	**B++**	**B+**

BEST Financial Size Categories		**NOT RECOMMENDED**
Class XI – XV	Class VII – X	**Class I - VI**

Coverage **Minimum Limit Guidelines**

Form	**Basis**	**High Risk**	Medium Risk	**Low Risk**	**NOT RECOMMENDED**		Approved Amount	N/A
CGL	Occurrence	$5 million	$2 million	$1 million	**$500,000**	**$250,000**		
	Aggregate	$10 million	$5 million	$2 million	**$1 million**	**$500,000**		
BAC	Occurrence		$2 million	$1 million	**$500,000**	**$250,000**		
WC and EL		Statutory Limits						
		$1 million			**$500,000**	**$250,000**		
++++ Option for sole proprietors and excluded employees ++++								
	Health Ins	Employment related injuries not excluded						
	Disability	Comparable to Statutory limits						
CC/BR		Completed Project Value						
Property		Full Replacement-No Coinsurance						
E&O/PL	Occurrence*	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
	Aggregate	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
Pollution	Occurrence*	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
	Aggregate	$10 million	$5 million	$1 million	**$500,000**	**$250,000**		
*Claims Made			5 year tail	3 year tail	**1 year tail**	**no tail**		

Indicate approved amount unless recommended coverage is not applicable

Recommendation _____ Date _____

Project Manager/Purchasing Agent

Approval _____ Date _____

Director Facilities Planning/Director Support Services

Contract Review Checklist

HOLD HARMLESS / INDEMNIFICATION REVIEW

1. Contract Date/Parties:
2. Party(ies) Accepting Risk:
3. Type of Risk Accepted ☐ Negligence ☐ Other
4. Breadth of Risk Accepted ☐ Own ☐ Joint ☐ Sole
5. Nature of Damage/Injury Accepted: ☐ Direct ☐ Consequential
   Property Damage: ☐ Our property ☐ Other party's property ☐ Property of third persons
   Bodily injury/personal injury: ☐ Our employees ☐ Other party's employees ☐ Third party employees

INSURANCE REVIEW

No answer means either it is not mentioned in the contract or it is specifically rejected.

		Required of you		Required of Other Party	
1. Liability Insurance		YES	NO	YES	NO
a. Is it required?					
b. Limits of Liability		$	$	$	$
c. Special coverages required					
d. Occurrence vs. claims made coverage					
e. Named as additional insured					
f. Cross liability					
g. Contractual limits required					
h. Cancellation notice	# of days:				
i. Certificate or other evidence					
j. Other: _____					
2. Workers' Compensation		YES	NO	YES	NO
a. Is it required?					
b. Contractor's employee / borrowed servants					
c. Waiver of subrogation					
d. Federal acts					
e. All states and employer's stop gap					
f. Cancellation notice	# of days:				
g. Certificate or other evidence					
h. Other: _____					
3. Property Insurance		YES	NO	YES	NO
a. Is it required?					
b. Valuation method required		☐ ACV	☐ RV	☐ ACV	☐ RV
c. Additional named insured / additional insured					
d. Waiver of subrogation					
e. Cancellation notice	# of days:				
f. Certificate or other evidence					
g. Other: _____					
4. Automobile Liability Insurance		YES	NO	YES	NO
a. Is it required?					
b. Valuation method required					
c. Additional named insured / additional insured					
d. Waiver of subrogation					
e. Cancellation notice	# of days:				
f. Certificate or other evidence					
g. Other: _____					

APPENDIX E – POTENTIAL HIGH RISK SITUATIONS OR SPECIAL INSURANCE REQUIRED CHECKLIST

Potential High Risk Situations or Special Insurance Required

- ❑ Crowd exposures
- ❑ Plumbing
- ❑ Work involving vehicles
- ❑ Work involving watercraft
- ❑ Medical services
- ❑ Legal services
- ❑ Other professional services
- ❑ Zoning or planning services
- ❑ Use or serving of alcohol
- ❑ Work with natural gas
- ❑ Work near railroads
- ❑ Work near waterways
- ❑ Any pollution or environmental exposure
- ❑ Maintenance or inspection services
- ❑ Use of caustics, flammables explosives
- ❑ Work involving utilities/provision of service
- ❑ Heavy equipment
- ❑ Computer hardware or software
- ❑ Work near water, docks, wharves
- ❑ Work involving aircraft
- ❑ Marine work of any kind
- ❑ Construction management
- ❑ Handling of funds or assets
- ❑ Inspection services
- ❑ Electrical work
- ❑ Work near roads
- ❑ Work near airports
- ❑ Underground work or excavation
- ❑ Design engineering or architectural services
- ❑ Surveys, soil engineering, topographical surveys
- ❑ Armed guards, use of armored cars
- ❑ Work involving boilers, pressure vessels, turbines

APPENDIX E – SEVERITY-RELATED QUESTIONS FOR THE CONTRACT RISK ANALYST

Severity-related Questions for the Contract Risk Analyst

- How many persons will be involved in the activity?
- What will be the nature of their work?
- How many are exposed to injury from one event?
- Can persons not associated with the project/activity be harmed?
- What is the exposure to natural disaster (earthquake, flood, windstorm, etc.)?
- What effects would a disaster have on the property or people involved?
- What would be the economic consequences of a delay (to the city)?
- What is the value of city property associated with the activity?
- Can other businesses or entities by harmed/shut down by an occurrence?
- What is the value of the property adjacent to or affected by the activity?
- What types of vehicles will be used, if any? Do they carry passengers?
- How many people will occupy/use the finished product/structure?
- How many could be harmed from an occurrence at the site?
- Could injuries result later from latent defects or poor design?
- Is there any exposure to disease, carcinogens, structural failure, crowd panic, fire, crashes, explosions or other occurrences with catastrophic potential?

The objective of these questions is to find the lurking catastrophe in the contracted activity or its aftermath. Some real-life examples of extremely severe loss incidents could include:

- Communicable disease (such as Legionnaire's disease) distributed by a ventilating system.
- Collapse of a structure (such as the 1981 Hyatt-Kansas City skywalk).
- Multiple casualties from riots such as at various popular music concerts or international soccer games.
- Plane crashes.
- Ferry sinking.
- Failure of parking structures during earthquakes.

Risk Analysis Worksheet

Activity Contemplated in Contract	General Liability	Automobile Liability	Workers' Comp.	Errors & Omissions	Builder's Risk	Aircraft Liability	Special Coverage
Advertising; publication	✓ (1)		✧ (Statutory)			✓ (10)	
Aircraft; use, ownership or maintenance of							
Animals; care use of , maintenance of	✓ (1)		✧ (Statutory)				✖ (?)
Caustics; use or handling of	✓ (3)	✧ (1+)	✧ (Statutory)				✖ (3+)
Child care	✓ (5)	✧ (1)	✧ (Statutory)				✖ (5+)
Construction, remodeling	✓ (5)	✖ (5)	✓ (Statutory)	✖ (1+)	✖ Value		
Crowd (more than 10 persons)	✓ (5+)	✧ (1)	✧ (Statutory)				
Docks/wharves; use, ownership or maintenance of	✧ (5)	✧ (1)	✧ (Statutory)				✓ (5)
Electricity; use of, electrical work, repair	✓ (3)	✧ (1)	✧ (Statutory)		✧Value		
Emission or discharge of potentially	✓ (5)	✧ (1)	✧ (Statutory)				✓ (5+)
Explosives; use of, storage, transportation or handling	✓ (10)	✧ (1)	✧ (Statutory)		✧Value		✖ (5)
Flammables, usage of	✓ (5)	✧ (1)	✧ (Statutory)				
Food; service, sales	✓ (3)	✧ (1)	✓ (Statutory)				
Medical services, skilled	✧ (1)	✧ (1)	✧ (Statutory)	✓ (3+)			✖ (?)
Nuclear/radioactive material; use of	✓ (1)						✖ (5)
Plumbing/sewer; maintenance, construction, repair	✓ (3+)				✧Value		
Professional services, other than medical or design	✧ (1)	✧ (1)	✧ (Statutory)	✓ (1+)			
Professional services; engineering, architectural	✧ (1)	✧ (1)	✧ (Statutory)	✓ (1+)	✧Value		
Railroads; use, ownership or maint. of, operations near							✓ (RR sets)
Toxics; use or handling of	✓ (1+)	✧ (1)	✧ (Statutory)				✖ (5+)
Trucking, transportation, solid waste hauling	✧ (1+)	✓ (5+)	✧ (Statutory)				
Tunneling; excavation	✓ (10)	✧ (1+)	✧ (Statutory)		✧Value		✖
Watercraft; use, ownership, maintenance of	✧ (1)		✧ (Statutory)				✓ (1+)
Weapons; use, ownership or maintenance of	✓ (5+)	✧ (1)	✧ (Statutory)				✧ (?)
Welding, cutting with torch	✓ (5)	✧ (1)	✧ (Statutory)		✧Value		

Key: ✓ = Required ✖ = Probably required ✧ = May be required *Courtesy of the California Joint Powers Risk Management Authority*

Identify the types of risks involved in the contract you are analyzing.
For each required category of insurance, use the activity with the highest risk number to determine limits to require.