



Purchasing Forum & Trade Show

Understanding Insurance Requirements in Your Contracts

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Contract Risk Management

- The “contractor” is the entity doing work for the State.
- New York State is “self-retained” – we do not purchase insurance unless required by contract. For example, the State owns close to 19,000 buildings; those buildings are not insured.
- Contract Specifications/Insurance Requirements make prime contractors responsible for the risks associated with the work that they perform under the contract and the work of the subcontractor.
- In order to ensure the contractor is able to fund its liabilities that result from claims, the contract requires the contractor to have **INSURANCE.**

Coverage Found in State Contracts

- **Commercial General Liability**
- **Business Automobile Liability**
- Professional Errors and Omissions (E&O)
- Data Breach/Cyber Liability
- Technology E&O
- Environmental Liability
- Marine Protection & Indemnity
- Crime Insurance
- Garage Liability
- Garage Keepers
- Builders Risk
- Aviation Liability
- Umbrella/Excess
- **Workers Compensation**
- **Disability**



Commercial General Liability (CGL)

“Protects against liability claims for bodily injury (BI) and property damage (PD) arising out of premises, operations, products, completed operations; and advertising and personal injury (PI) liability.” www.irmi.com



Commercial/Business Automobile Liability Insurance (CA)

Policy provides both liability and physical damage coverage. Liability coverage responds to third party claims arising out of the ownership, maintenance, or use of automobiles, personal injury protection, and uninsured/underinsured motorists,

Physical damage is first party coverage that insures against two primary types of loss:

- Collision: Covers loss to a covered auto and its equipment resulting from collision or overturn
- Comprehensive: Covers loss to a covered auto and its equipment resulting from any cause other than collision or overturn, except those losses that are specifically excluded



Umbrella/Excess Liability

Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies.

Umbrella liability is “designed to provide protection against catastrophic losses. It is generally written over various primary liability policies, most commonly the business auto policy and commercial general liability policy. An Umbrella / Excess policy can also be written over other types of liability policies, including watercraft and aircraft liability polices...” (www.irmi.com)



Workers Compensation (W/C) & Disability Insurance

Workers Comp - A form of insurance providing wage replacement and medical benefits to employees injured in the course of employment. This coverage is required by statute.

Disability – Provides partial replacement of income lost due to illness or injury for off the job injury or illness. This is also required by statute.



STOP, think... do you have these RISKS

Professional Errors and Omissions (E&O) – “Protects professional advice- and service-providing individuals and companies...” (www.irmi.com)

Data Breach/Cyber Liability – “Most notably, but not exclusively, cyber and privacy policies cover a business’ liability for a breach in which a firm’s customers’ personal information (social security, credit card) is exposed or stolen...” (www.irmi.com)

Tech E&O – designed to cover professional advice and services of the technology industry

Environmental Liability – Covers the polluting party and pays for damages.

Marine Protection & Indemnity – Insures bodily injury or property damage arising out of use, or ownership of declared vessels.



STOP, think... do you have these RISKS

Crime Insurance – Covers loss by theft. First party coverage is for the insured. If the contractor is entering State property, you want Third Party Fidelity to cover theft of your property.

Garage Liability – similar to commercial general liability in that it covers bodily injury and property damage, but resulting from the operations of an auto garage (commonly purchased by auto dealerships and repair shops).

Garage Keepers – Covers a customer's vehicle or equipment while awaiting service and repair.

Builders Risk – Protects insurable interest in materials, fixtures and/or equipment (at the site, while temporarily stored elsewhere, and while in transit) being used in the construction or renovation of a building or structure should those items sustain physical loss or damage by a covered occurrence.

Aviation Liability – Covers hull losses as well as liability for passenger injuries. Coverage typically extends to environmental and third-party damage caused by aircraft accidents.



Basic Insurance Requirements – How we Request Insurance Evidence & Carrier Strength

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

The Bidder shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance [shall/should] be provided at the time of Bid submission;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.



Basic Insurance Requirements – Clarify Expectation of Insurance Evidence

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.



Basic Insurance Requirements – General Compliance

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.
- 2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis.
- 3. Certificates of Insurance/Notices.** Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name The New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.



Basic Insurance Requirements – Certificate of Liability Requirements/Expectations

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., a certificate of liability);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section: Additional insured protection afforded is on a primary and non-contributory basis.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.



Basic Insurance Requirements – Importance of Primary and Non-Contributory Requirement

OGS generally requires Contractors to submit only *certificates of insurance and additional insured endorsements*, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. Primary Coverage. All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.



Basic Insurance Requirements – Breach of Contract & Self-Insured Retentions/High Deductibles

5. Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.



Basic Insurance Requirements – Contractor's Responsibility for Subcontractor & Waiving Subrogation

7. Subcontractors. Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor.

8. Waiver of Subrogation. For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurers right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.



Basic Insurance Requirements - Additional Insured

9. *Additional Insured.* The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this Attachment had Contractor obtained such insurance policies.



Basic Insurance Requirements – Excess/Umbrella Policies & Notice of Cancellation/Non-Renewal

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. Notice of Cancellation or Non-Renewal. Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.



Basic Insurance Requirements – Policy Renewal/Expiration

12. Policy Renewal/Expiration Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.



Basic Insurance Requirements – Setting Clear Deadlines

13. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the OGS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.



Basic Insurance Requirements – OGS Minimum Requirement Limits

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	Not less than \$1,000,000 each occurrence	At time of Bid submission and updated in accordance with Contract
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
Business Automobile Liability Insurance	Not less than \$2,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		



Basic Insurance Requirements – CGL Requirements

1. Commercial General Liability Insurance: Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and [**explosion, collapse & underground coverage.**]



Basic Insurance Requirements – CGL Requirements

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three [1-3] years, commencing upon acceptance of the work, as required by the Contract;
- **[Explosion, collapse and underground hazards; and]**
- **[Contractor means and methods.]**



Basic Insurance Requirements – CA Requirements

2. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.



Basic Insurance Requirements – CA Requirement

Exceptions

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.



Basic Insurance Requirements – wc

3. Workers' Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals.

Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS. Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of Bid submission, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**



Basic Insurance Requirements – Evidence of W/C

Proof of Compliance with Workers' Compensation Coverage Requirements:

- **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- **Form C-105.2 (9/07)**, *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- **Form SI-12**, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- **Form GSI-105.2**, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.



Basic Insurance Requirements – Evidence of Disability

Proof of Compliance with Disability Benefits Coverage Requirements:

- **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- **Form DB-120.1**, Certificate of Disability Benefits Insurance, sent to OGS by the Contractor's insurance carrier upon request; or
- **Form DB-155**, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.



Forms Typically Required to Provide Evidence of Insurance

- Certificate of Liability Insurance
- General Liability *and* Auto Liability Additional Insured (AI) Endorsements
- Certificates of NYS Workers Compensation *and* Disability Insurance Coverage
- Primary and non-contributory additional insured endorsements. These endorsements amend the “Other Insurance” provision found in liability policies to confirm the order in which the policies will respond. “Primary and non-contributory” simply means the contractor’s coverage must be exhausted before the State is looked to for “contribution” to a claim’s resolution.



Reference Materials

- Guidelines for Insurance Requirements in Contracts provided by the Council of Contracting Agencies and New York State Procurement Council can be found at <http://ogs.ny.gov/BU/DC/Docs/PDF/CCAGuidelines.pdf>
- Basic Insurance Requirements Reviewed in this Presentation
- Business Automobile Attestation Sample



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