
Contracts: Transferring and Financing Risk

Table of Contents

| | |
|--|----|
| Preface | 6 |
| Contracts | 7 |
| Evaluating Risk in a Contract | 8 |
| Types of Contracts | 9 |
| Goods and Services Agreement..... | 9 |
| Personal Services Contracts | 10 |
| Leases with outside entities | 11 |
| Interagency Agreements | 14 |
| Public Works Contracts..... | 15 |
| Contractual Risk Transfer Agreements | 20 |
| Hold Harmless and Indemnity Agreements | 21 |
| Types of hold Harmless and Indemnity Agreements..... | 21 |
| Sample Hold Harmless and Indemnification Agreements..... | 22 |
| Can You Assume Liability? | 26 |
| Insurance | 30 |
| Additional Insured Status | 32 |
| Liability Insurance | 33 |
| Claims-made vs. Occurrence Coverage | 34 |
| When Should I Ask the Contractor to Buy Insurance?..... | 36 |
| Self-insurance | 37 |
| Property Insurance | 41 |
| Building and Personal Property Coverage (BPP) | 41 |
| Builders Risk Insurance | 42 |
| Boiler and Machinery Insurance..... | 42 |
| Performance Guarantees | 45 |
| Bonds | 45 |
| Letter of Credit..... | 46 |
| Savings Account Assignment..... | 46 |

| | |
|--|----|
| Monitoring Contractor Compliance | 49 |
| Certificates of Insurance..... | 49 |
| When Should You Ask For More Information?..... | 50 |
| Letters of Coverage..... | 50 |
| Sample Insurance Specifications | 53 |
| General Suggestions | 54 |
| Basic Insurance Specifications | 61 |
| General Liability and Workers Compensation Exposure..... | 61 |
| Use of Vehicles | 66 |
| Contracts With Licensed Professionals | 68 |
| Property Exposure | 71 |
| Public Works Contracts | 72 |
| Pollution Exposure | 74 |
| Glossary | 76 |
| Appendices | 82 |

Preface

The Department of General Administration, through its Division of Risk Management (DRM), created this manual to assist agency staff who draft and review contracts to:

- Evaluate risk
- Transfer or accept risk
- Finance risk

The manual explains how to transfer risk when drafting a solicitation or contract. When you transfer risk, you transfer the obligation to pay for losses. Consequently, we also explain how to make sure those losses will be paid, which we refer to as risk financing. Risk is generally transferred by contract terms, using a hold harmless and indemnity agreement. Risk financing is usually accomplished through the purchase of commercial insurance by the contractor. These methods work together to protect the assets of the State of Washington.

This manual provides guidelines and tools for managing risk when you contract on behalf of the State of Washington. We have defined important terms and concepts in the Glossary at the end of the manual. These terms are shown in **boldface** occasionally throughout the manual.

We suggest wording for contract specifications throughout this manual. Suggested wording is italicized for ease of identification.

We offer advice and guidelines, but the final decisions on risk transfer and risk financing methods rest with you and your agency. If you decide to use other methods to manage risk, we recommend that you consult with your agency management and Assistant Attorney General. We, at DRM, are also available to explain the coverage provided by the Self Insurance Liability Program (SILP) and to discuss alternative methods of managing risk and financing loss payments.

Contracts

Black's Law Dictionary says, ". . .a contract is an agreement between two or more persons, which creates an obligation to do or not to do a particular thing." A contract is usually in writing, although it can be oral. A contract is binding and enforceable if there is:

- **Agreement:** An agreement consists of an offer by one party and acceptance by another party
- **Competent parties:** The legal capacity of the parties must not be restricted by age, insanity or intoxication
- **Consideration:** Both parties must receive or give up something
- **Legal purpose:** The contract must have a legal object consistent with public policy
- **Genuine assent:** The decision to contract must not be affected by fraud, duress, concealment or mistake

Contracts create obligations and can, consequently, create risk for your agency. Every time your agency enters into a contract, it should:

- Evaluate the risk(s) the agreement presents to the agency
- Decide whether to accept the risk or transfer it to another party
- Determine how the risk will be financed, either by your agency or by the contractor

The first part of this manual will focus on the types of contracts and how to evaluate risk. Part two will describe methods to transfer risk. Finally, we will explain how your agency can finance risk by requiring contractors to buy insurance or show that they have the financial resources to pay for claims that arise from their activities.

Evaluating Risk in a Contract

Read the terms of a contract carefully. A contract may appear to include standardized (“boilerplate”) language, yet contain obligations that your agency may not want to assume. We suggest that you review the contract and anticipate events or situations that could happen which may be affected by the contract, such as:

- What type of work will be done by the contractor?
- What types of losses could occur?
- In terms of financial loss to your agency, what is the “worst case scenario”?
- Can you protect your agency?

Pay particular attention to clauses labeled *Damages*, *Hold Harmless*, *Indemnity*, or *Insurance*. They may obligate you to indemnify another party for property or liability losses.

If you think creatively, you may find it easier to identify terms and conditions that can create undesirable **exposure** to financial loss for your agency. If you believe a contract contains unfavorable provisions, we recommend that you contact your Assistant Attorney General and ask for legal advice.

Types of Contracts

The majority of state and public entity contracts fall into five general categories; goods and services agreements, personal services contracts, leases with non-state entities, inter-agency agreements and public works contracts. We will discuss each of these categories of contracts.

GOODS AND SERVICES AGREEMENT

The State enters into many contracts to purchase finished products, including supplies and equipment. Except for some agreements made by higher education institutions, the purchase of goods and services are administered by the Department of General Administration through its Office of State Procurement (OSP). OSP can delegate authority to individual agencies to acquire goods and services.

Agreements to acquire goods and services result in several risk management issues. First, when does ownership transfer to the State? Second, if the product proves defective, who pays to correct the defect? Finally, who pays for **bodily injury** or **property damage** to a third party if a product harms someone?

At common law, risk of loss to property moves with title to property. Accordingly, knowing the point at which title changes is important to managing loss **exposures**. For example, when buying electronic equipment, it is wise to say in the contract that ownership does not change until the equipment is installed, has passed a series of operational tests, and has been formally accepted by the State.

Once title has changed, the State may be responsible for repairing or replacing property unless the vendor has agreed to repair it or such work falls within the terms of the warranty. Many products have a warranty, and your contract should say who will repair defective equipment.

We recommend that agencies require the vendor to assume responsibility for repairing or replacing defective equipment. The vendor may, in turn, transfer this responsibility to the manufacturer.

PERSONAL SERVICES CONTRACTS

Chapter 39.29 RCW provides legal guidance on contracting for personal services. Another source of information on personal service contracts is the Office of Financial Management (OFM). OFM has published a comprehensive *Guide to Personal Service Contracts*, which is available electronically at <http://www.wa.gov/ofm>. When contracting for personal services, we suggest that you consult these sources of information.

According to RCW 39.29.008, an agency can enter into a personal service contract if it can document that:

- The service is critical to agency responsibilities or operations, or is mandated or authorized by the Legislature
- They do not have the staff or expertise to perform the service
- Other qualified public resources are not available to perform the service

Many personal service contracts are performed off-site. Often, they may have the following types of loss exposures:

- **Automobile:** Vehicles may be used to provide a service. Negligent operation of a vehicle could cause injury to a third party
- **General liability:** The contractor's premises are used to provide the service. For example, a client of the state may become injured on the premise of a service provider
- **Employers liability:** Employees of the contractor may become injured and elect to sue for negligence, based on the contractor's common law liability
- **Professional liability:** The contractor may deliver the work product or deliver the service negligently or with errors or omissions, which causes financial harm to the State
- **Workers compensation:** Employees of the contractor may become injured.

We suggest that you analyze the service(s) provided by the contractor and evaluate the **exposures** to financial loss that could affect your agency. Generally, we suggest that you ask for a hold harmless and indemnity agreement and evidence the contractor is self-insured or has bought commercial insurance. Depending on the nature of the service(s) provided, you may decide to ask the contractor to buy general liability, employers liability, business auto, or professional liability insurance. Most professionals who are either certified or licensed can buy professional liability insurance. We also recommend that you request evidence that the contractor is complying with state workers compensation laws.

LEASES WITH OUTSIDE ENTITIES

The most common types of leases the State enters into are building, equipment, and automobile leases. When the State leases property it does not assume some of the loss exposures of ownership. For example:

- Often the owner buys **property insurance** for leased buildings, relieving the lessee (the State) from the obligation to repair or replace damaged property
- The lessee is usually not responsible for **liability** arising out of the condition of real property unless the area is in its control by the terms of the lease

Lease agreements may not contain standardized terms and conditions. It is important to read all lease agreements carefully. Pay particular attention to clauses labeled *Abatement of Rent, Damages, Hold Harmless, Indemnity, or Insurance*. They may obligate your agency to indemnify another party for property or liability losses. Also, look at clauses such as *Maintenance, Repair, Termination or Warranty*. They may require your agency to return leased property *in the same condition as received*, excluding wear and tear. This means your agency must pay for **property damage** caused by any **peril**.

Equipment Leases

The State leases many types of equipment for a variety of uses. If your agency leases equipment, it will probably be expected to repair or replace the equipment if it is damaged or destroyed. The owner may also require your agency to pay for lost income (loss of use) while the equipment is out of service.

Practical Considerations

Assumption of liability: If your agency is leasing equipment and an operator is provided by the lessor, do not assume **liability** for negligent operation of the equipment in a **hold harmless** and **indemnity agreement**. The lessor should be responsible for the acts of its operator. If your agency is leasing equipment without an operator, avoid assuming liability for *all losses* arising out of the use of the equipment. These terms may obligate your agency to pay for losses arising out of faulty equipment or **products liability**, which traditionally are the responsibilities of the owner, lessor, or manufacturer.

Finally, be aware of what is covered and is not covered by the State's Self Insurance Liability Program (SILP). We have included a Summary in the Appendix. Your agency will pay for losses out of its operating budget if you agree to assume liability exposures that are not covered by this program.

Damage to property: Often, an automobile or equipment lease says that the renter or lessor must repair damage to property. If you agree to these terms, your agency must decide whether to purchase commercial insurance or pay for losses out its operating funds.

Property value: Be clear on the method of valuation because it will be used to settle losses if they occur. Avoid vague terms in the lease agreement, such as agreeing to cover property for the *full insurable value* – which may mean either **replacement cost** or **actual cash value**. As a lessee, your agency’s financial obligations are bigger if you agree to pay for the replacement cost of property. Be clear on the obligations you have agreed to assume.

Loss of use: Determine who pays loss of use of equipment if it is damaged or destroyed.

Subrogation: When an insurer pays a claim, it has a legal right to recover from the person or entity who caused the loss. For example, if an owner (lessor) buys insurance and the lessee (your agency) damages equipment, the insurer will pay the owner and then attempt to recoup the costs from your agency. If your agency is leasing equipment, ask the owner for a waiver of subrogation. This agreement will prevent an insurer from attempting to recover claim payments from your agency.

Building Leases

The Department of General Administration, through its Division of Property Development (DPD), acts as the leasing agent for most state agencies. When leasing property, we recommend that you work closely with your leasing agent from the DPD.

Since DPD acts as a leasing agent, many state leases contain standardized terms and conditions. If your agency is a tenant and a property lease has been drafted by an outside entity, such as a real estate organization, you should read the lease very carefully. Real estate organizations represent the owner of the property. Do not hesitate to ask for changes if you decide the terms are unfair.

When your agency is leasing property, it is very important to review what responsibility the owner (lessor) is asking you to take. Avoid assuming **liability** for:

- All damage that occurs to the property. Often the owner will buy **property insurance**, but insurance does not cover all types of losses. When leasing property, we suggest that you avoid assuming responsibility for losses that cannot be commercially insured by the owner (lessor) or by your agency under DRM’s insurance policies
- All liability (“**tort**”) losses. First, when leasing real property (buildings), your agency should not be held liable for an unsafe condition on the property, unless your agency has altered the property and made it unsafe. Second, be aware of what is and is not covered by the State’s Self Insurance Liability Program. We have included a Summary in the Appendix. Your agency will pay for losses out of its operating budget if you agree to assume liability exposures that are not covered by this program

Practical Considerations

Common areas: A property lease should specify who is liable for maintaining common areas, such as parking lots. If your agency is the tenant (lessee), try to avoid assuming responsibility for common areas.

Damage to property: Make sure the contract (or **hold harmless agreement**) says who will repair damage to property. If the contract is silent, it is the owner (lessor). If the contract says the tenant (your agency) must return the property in the same condition it was received, it is responsible for repairing damage caused by any peril.

Fire Protection Systems: If your agency is a tenant, we suggest that you require that the owner provide a fire protection system that is in good working order.

Property Insurance: Make sure the lease is specific on who is responsible for insuring property. If your agency is a tenant, it is best to have each party provide insurance (or self-insure) their property.

Property value: Avoid vague terms describing how property will be valued if it is damaged or destroyed. We suggest descriptive terms such as **replacement cost** or **actual cash value** be used in the contract.

Rent: Determine who pays rent if a building is damaged or destroyed. Often, an owner will attempt to make the tenant continue to pay rent if the premises are damaged or destroyed. As a tenant, we recommend that you avoid this type of obligation.

Subrogation: If your agency is leasing property, ask for your agency and the State of Washington to be named as an **additional insured** on the owner's (lessor's) property insurance policy. If the insurance company will not add this **endorsement**, ask the owner for a **waiver of subrogation**. Either agreement will prevent the insurer from pursuing subrogation against your agency to recover **claim** payments.

Tenants improvements: As a tenant, your agency may need to modify leased property to fit its occupancy and use. Leases should discuss who is responsible to repair or replace improvements if they are damaged or destroyed. The contract should also list all values to be insured and specify who owns the improvements when the lease expires.

Your Agency as a Property Owner. If your agency is a property owner, you should consider our suggestions, above, from the standpoint of an owner. In addition, we have two other suggestions:

- First, if your agency is a property owner and it is leasing a building to an outside entity, you may want to ask them to buy **property insurance** to cover the full **replacement cost** of the building. This suggestion is most practical if your agency is leasing to one tenant, since that tenant will have custody and control of the entire structure. If this is the case, draft the lease to create responsibility for indemnification for property losses and/or require the tenant to buy property insurance. If a lease is drafted this way, the tenant should be able to obtain property insurance
- Second, we suggest that you require tenant(s) to buy **Commercial General Liability** insurance, and agree to indemnify and hold the State harmless for claims that arise from their use of leased property

INTERAGENCY AGREEMENTS

Your agency may work cooperatively with other state agencies or public agencies. Interagency agreements are governed by the Interlocal Cooperation Act, RCW 39.34. When you enter into interagency agreements, we suggest that you allocate responsibility to pay losses that may occur in connection with these agreements, for several reasons:

- The Self Insurance Liability Program (SILP) will not pay for claims made by one State agency against another State agency
- Tort claims made by third parties to the SILP, which arise out of interagency agreements will affect your agency's self-insurance premiums
- Any claims that are not covered by the SILP will have budget implications for your agency

If your agency enters into an interagency agreement with another state agency responsibility to pay for losses may be allocated to one or both agencies, depending on the nature of the agreement. For example, if one agency derives a clear benefit from an agreement, both agencies may agree on a contract provision such as this:

The [Your Agency] and [Other Agency] are part of the State of Washington and protected by the State's self-insurance liability program as provided by RCW 4.92.130. [Your Agency] and [Other Agency] have entered into an agreement to [Description of Agreement]. This agreement will terminate on [Date]. [Other Agency] assumes responsibility for any losses or claims that arise out of this agreement.

If both agencies derive a mutual benefit from an agreement, both may agree on a contract provision such as this:

The [Your Agency] and [Other Agency] are part of the State of Washington and protected by the State's self-insurance liability program as provided by RCW 4.92.130. [Your Agency] and [Other Agency] have entered into an agreement to [Description of Agreement]. This agreement will terminate on [Date]. Both agencies agree to share responsibility equally for losses that arise out of this agreement.

If your agency enters into an agreement with a public entity that is not state agency, we suggest that you include a hold harmless and indemnity agreement. These agreements are discussed on pages 20-22. Where both the state and local government benefit from an agreement, a limited form hold harmless agreement may be equitable. If local government derives a clear benefit, then we suggest that you use an intermediate form.

PUBLIC WORKS CONTRACTS

Chapter 39.04 RCW describes public works and the bidding process. Chapter 39.80 RCW addresses contracts for architectural and engineering services. The Department of General Administration, through its Division of Engineering and Architectural Services (E&AS), provides architectural and engineering services for most state agencies. We suggest that you use these resources when contracting for public works projects.

Hiring a construction contractor can expose your agency to liability and suits that occur out of the contractor's **negligence**. For example, a contractor's activities may harm its employees, the employees of a subcontractor, pedestrians, or owners of adjoining properties.

As the landowner, the State may be ultimately responsible for **liability** arising out of a construction contract. This liability may arise out of common law or from statutes holding the owner responsible for employing competent contractors and inspecting the work. To protect your agency, your bid documents should include hold harmless and indemnity agreements and insurance requirements.

Practical Considerations

- We suggest that you make the contractor responsible for workplace safety
- In a public works contract, your agency cannot require the contractor to be responsible for the negligence of the State. This is addressed in RCW 4.24.115
- Payment and performance bonds are required for public works contracts. We suggest that you refer to Chapter 39.08 RCW

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Pages 16-19

Contractual Risk Transfer Agreements

Risk is transferred to other entities to control losses and, therefore, save money. Transferring risk to another entity is one of the most important and cost-effective means to control losses. The primary value of a risk transfer is that it may involve little or no cost to your agency.

When equitable, your agency should try to transfer the risk of loss from itself to another party. Risk is transferred to another party through a contractual agreement. For example, you may require a vendor to assume all **liability** for a product they sold to your agency. This transfer of liability to a vendor would usually be written into your contract.

Your ability to transfer risk will depend upon your bargaining position, skill in writing contracts, and the type of business being contracted. You will be dealing with businesses or other public entities when transferring risk. Risk transfer agreements are mutual agreements, and it is not reasonable to try to allocate risk unfairly. Risk transfer may also take a back seat to other management or program considerations, such as:

- Maintaining relationships with customers
- An emergency dictates that equipment or services must be acquired quickly
- Your agency may have another transaction downstream, such as real estate it wants to buy, that must be considered in this solicitation process
- The ability (or inability) of the entity you contract with to finance loss payments

These considerations may influence your decision to retain risk that you otherwise might transfer to another party.

Hold Harmless and Indemnity Agreements

Hold harmless and **indemnity agreements** transfer risk. These agreements may be identified in a contract as hold harmless, waiver and release, save harmless, or an indemnity agreement. Be sure to read each contract carefully, since they may be included in a contract without any identification.

In a hold harmless agreement or an indemnity agreement, one party assumes, by contract, the **liability** of another party. These terms are often used interchangeably; however, they differ in the manner and extent to which liability is transferred.

Hold harmless (waiver and release) agreements are primarily directed at claims between the parties to the contract. A waiver is a relinquishment of a known right. In these agreements, one party agrees to waive liability of another party for claims related to the contract. The types of claims normally waived in hold harmless agreements are:

- Damage to property owned by one party
- Consequential losses, such as lost income as a result of property damage
- **Subrogation** between parties associated with third party claims

Hold harmless agreements are nearly always combined with indemnity agreements because third parties can sue one or all parties for negligence, either jointly or separately. Without an indemnity agreement, a party that is held harmless by the entity they are contracting with may end up paying damages to a third party claimant.

Indemnity agreements allocate risk and responsibility to pay third party (tort) claims. The purpose of an indemnity agreement is to establish the right of one party (indemnitee) to be reimbursed by another party (indemnitor) for losses, claims and expenses to settle a claim for damages made by a third party. Without such an agreement, each party may be responsible for its negligence and share of joint negligence.

To be valid and useful, a hold harmless and indemnification agreement should be specific in allocating responsibility. When transferring risk with hold harmless and indemnity agreements, there are several points to cover before you execute the contract. We suggest you:

- Clearly describe each party's obligations in the contract
- Verify the other party can back up their commitment to assume risk, either by use of their assets or through the purchase of commercial insurance

When contracting, be fair and reasonable in the allocation of risk and legal responsibilities. We suggest that your agency develop a policy that allocates risk fairly between all parties and do not attempt to transfer too much liability in an agreement.

TYPES OF HOLD HARMLESS AND INDEMNITY AGREEMENTS

Broad: One party agrees to assume all responsibility for its own negligent acts and the negligent acts of another party, even when the other party is solely responsible for a loss. We do not suggest that you use this type of agreement in your contracts.

Intermediate: One party agrees to assume responsibility where both parties to the contract may be negligent and jointly liable, except for the "sole" negligence of the other party. We suggest this type of hold harmless and indemnity agreement be used in most contracts.

Limited: One party agrees to assume responsibility to the extent it is negligent or jointly liable for damages. This type of agreement should be used for public works contracts subject to RCW 4.24.115. A copy of RCW 4.24.115 is included in the Appendix. It may also be appropriate when contracting with professionals, since professional liability insurance covers the negligent acts of the contractor when rendering professional services. These policies often only pay damages to the extent of the insured's negligence.

SAMPLE HOLD HARMLESS AND INDEMNITY AGREEMENTS

The hold harmless and indemnity agreements are made up of two parts. The first part transfers risk:

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims arising out of or resulting from the performance of the contract. "Claim" as used in this agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

The second part says how much risk will be transferred. This is where you choose between intermediate or limited hold harmless and indemnity provisions.

Intermediate: We suggest that you use this provision in most contracts. You may find, however, that some contractors will insist that a limited form hold harmless agreement be used (an example is provided below). If this happens, then you must evaluate the risk to your agency and determine if the terms are acceptable to you and your program.

Contractor expressly agrees to indemnify, defend, and hold harmless State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

Limited: We suggest that you use this provision in public works contracts subject to RCW 4.24.115. This may also be an option when entering into an interagency agreement, which is described on page 13 or when contracting for professional services.

Contractor expressly agrees to indemnify, defend, and hold harmless State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Finally, we also suggest that you insert a sentence so that the contractor waives immunity under Title 51 RCW in all contracts.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

Practical Considerations

- A **hold harmless** and **indemnity agreement** will not work unless the party who accepts risk has the financial resources to back up their commitment. When transferring your risk to another entity, make sure they are aware of the transfer and have the financial resources or appropriate insurance coverage(s) to finance loss payments.
- An indemnity agreement does not excuse your agency (the indemnitee) from **tort** liability. The agreement provides that the other party must pay **damages** and other costs and expenses related to legal liability to a third party. If the indemnitor is bankrupt and uninsured, or if a court does not uphold the indemnity agreement, your agency or the State may remain legally obligated to pay a damaged third party
- You should use a limited form indemnity agreement when contracting for a public work. With a public works contract, you should consider amending the last sentence to read as follows: To the extent RCW 4.24.115 applies (statute incorporated by reference), Contractor shall be required to indemnify, defend, and hold harmless State only to the extent claim is caused in whole or in part by negligent acts of Contractor
- If insurance is used to finance loss payments, it is critical that the State of Washington be named as an **additional insured** on the policy. Additional insured status requires, among other things, that the insurer pay the full cost of defense and any liability for damages
- Requiring contractors or service providers to buy insurance is a means to finance loss payments. However, insurance is not a perfect financing method. Insurance policies have **exclusions** and will not cover all types of losses
- Professional liability policies often will only pay to the extent of the insured's negligence. An intermediate form hold harmless and indemnity agreement will often create obligations that are broader than the scope of the contractor's insurance coverage.

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Pages 24 - 25

Can You Assume Liability?

The entities you contract with may ask your agency to accept risk by indemnifying and holding them harmless. Should you do it? It is unclear whether the State can indemnify a third party due to a court decision.¹ For this reason, we suggest that you contact your agency management, Assistant Attorney General, or Division of Risk Management if your agency is asked to indemnify a third party. Apart from the legal question, from a risk management perspective, we do not recommend that you assume liability; however, there may be unique circumstances where a credible reason exists to consider this alternative.

Assumption of liability will have budget implications for your agency. If you assume liability, losses that result may be paid out of your operating budget. The Self-insurance Liability Program (SILP) will only pay for certain types of **tort** claims against the State. If you agree to pay for losses that are not covered by the SILP, you should consider the effect loss payments may have on other programs in your agency.

¹ *Barendregt v. Walla Walla School District*, 26 Wn.App. 246, 611 P.2d 1385

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Page 27-29

Insurance

Insurance is a contractual arrangement to transfer and distribute risk in exchange for a fixed charge (called a premium). The purchase of commercial insurance is one way a contractor can finance risk. Risk financing activities are part of financial management. Risk financing activities include:

- Arranging for sources of funds to pay for losses that may occur
- Using those fund sources when needed

When your agency transfers risk to a contractor or other entity, you must make sure they can pay for any losses that arise out of their operations. Contractors and other entities that you deal with have two basic risk financing options. First, they can finance losses through a **funded self-insurance** program, similar to the State's Self Insurance Liability Program (SILP). Second, they can buy commercial insurance.

Many contractors will buy insurance to finance risk. Coverage under an insurance policy is dependent on several things, including:

- The contract transferring liability (**hold harmless** and **indemnity agreement**) is executed before any loss occurs
- The loss is insured, and not subject to an **exclusion** in the insurance policy
- The **insured** (contractor) fulfills its obligations under the policy

While not perfect, insurance is often the most reliable risk financing method available. We will now describe:

- The importance of status for the State as an additional insured under an insurance policy
- Some common types of commercial insurance contractors often buy

Additional Insured Status

The term **additional insured** is not defined in most insurance policies. An **additional insured** is an entity who is added to and protected by the terms of an insurance policy. If your agency is named an additional insured on a liability insurance policy the contractor buys, the insurer:

- Must provide a defense if your agency is named in suit
- Must pay your agency's defense costs along with providing liability insurance
- Cannot dismiss its obligations to your agency or a third party claimant due to bankruptcy of the **named insured** (contractor)
- Cannot subrogate against your agency, even if it is legally liable for the loss
- Will most likely include coverage for **personal injury** losses under general liability

Status as an additional insured is not a substitute for a **hold harmless** and **indemnity agreement**, for several reasons.

- Insurance will only pay for claims that are covered by the terms of the policy.
- Insurance policies have a limit of liability. The limit of liability is the most an insurance policy will pay for a loss.
- If a claim is not covered or the contractor does not have enough insurance, the hold harmless and indemnity agreement gives your agency the right to be reimbursed by the contractor.

Your agency will have more financial security if you combine hold harmless and indemnity agreements with insurance.

How do you ask the contractor to name your agency as an additional insured under their insurance policy? When executing your bid specifications, we suggest that you add a provision under required insurance coverages that says:

The State of Washington, [Your Agency], its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies.

You should receive, along with your **certificate of insurance**, evidence of your agency's status as an additional insured. It may be written in the certificate itself or added by an **endorsement** to the policy(ies). If you do not receive this information, the contractor should be asked to provide it immediately.

Either status as an additional insured or a **waiver of subrogation** is acceptable for a **Business Auto Policy** (BAP). The BAP has a very broad definition of insured that includes anyone liable for the conduct of an insured (the contractor) to the extent of that liability. Consequently, your agency would automatically be an insured if it is liable for the conduct of the contractor. A waiver of subrogation would prevent the insurer from attempting to recover loss payments from your agency if it caused the loss. Please refer to our Insurance Specifications for Other Activities for additional information.

Liability Insurance

Liability insurance is **third party insurance**. Liability insurance is third party insurance because the coverage arises from the filing of a **claim** by a third party. Usually, claims are filed because the third party believes another party (the insured) has been negligent and they (the claimant) are entitled to compensation, as **damages**.

As mentioned previously, insurance is not a perfect financing method because insurance policies contain **exclusions** and do not cover all types of losses. For example, notable exclusions in the **Commercial General Liability** (CGL) policy include losses arising out of:

- Injury expected or intended by the insured
- Liquor liability
- Obligations under workers compensation laws
- Pollution
- Property damage to the insured's product (the insurer will not repair or replace the insured's product)
- Property damage to the insured's work (the insurer will not fix the insured's faulty work)
- Product recall
- Loss of use of property that is not physically damaged

Exclusions illustrate the need to combine insurance with hold harmless and indemnity agreements. If an insurer denies a claim, a hold harmless and indemnity agreement allows your agency to recover losses directly from the contractor, vendor or lessee if they have the financial resources to pay for the loss.

It is very important that liability insurance provides coverage for **contractual liability**. Contractual liability insurance covers liability assumed by a contractor under a contract, such as liability assumed under a hold harmless and indemnity agreement. When contractual liability coverage is provided, insurance will pay for many losses transferred in hold harmless and indemnity agreements.

It is also important to make sure that liability insurance provides coverage for **cross liability**, which is often found in a **separation of insureds** condition in the policy. Cross liability coverage has two basic benefits:

- Cross liability coverage means that the insurance applies separately to each insured against whom claim is made or suit brought, and each insured is entitled to a separate defense. Consequently, the State, as an **additional insured**, is entitled to coverage even if another insured has done something to cause the insurer to deny their coverage
- Cross liability coverage allows one insured to make a claim against another insured. This coverage is very important if the State is named an additional insured under a policy. Without cross liability coverage, the State (as an additional insured) would not be indemnified by the contractor's liability insurance coverage if the state made a claim against the contractor

There are two ways you can easily verify that coverage for cross liability and contractual liability is provided:

- If a **Commercial General Liability** (CGL) policy or **Business Auto Policy** (BAP) was written by the **Insurance Services Office** (ISO), these coverages are provided. ISO is an insurer-owned association that drafts and publishes standard insurance contracts. ISO's contracts are insurance industry benchmarks, and can be used to establish minimum coverage guidelines in insurance specifications. Where possible, DRM's insurance specifications refer to ISO forms
- **Certificates of insurance** usually say whether contractual liability insurance is provided. If coverage is not shown, contact the contractor and ask for written verification from the contractor's insurance **agent, broker** or company that liability assumed under a contract is covered by the insurance policy(ies). We suggest that you obtain verification of coverage before the contract is approved and work started

CLAIMS-MADE VS. OCCURRENCE COVERAGE

Most general liability policies provide **occurrence coverage**. This means that a **claim** can be made today for an **injury** or damage that occurred 20 years ago. The insurer will investigate and settle the claim as long as the injury or damage occurred during the policy period and it is covered by the terms and conditions of the policy. For these reasons, occurrence coverage is usually the best option.

Claims-made coverage is much different from occurrence coverage. If a contractor or vendor or lessee buys claims-made coverage, *the claim must be first made during the policy period* or an **extended reporting period** described in the policy. Additionally, the injury or damage must occur before the end of the policy period and after the **retroactive date**, if any. If the policy has a retroactive date, claims for injury or damage that occurred before that date will not be covered by the policy.

Retroactive Dates

The retroactive date is important. If a contractor had occurrence coverage until January 1, 1992, and then converted to claims-made coverage, the retroactive date should always be January 1, 1992. If it is advanced to a later date, there will be a coverage gap between the occurrence and claims-made policies.

Occasionally, an insurer may exclude coverage for specific incidents that occurred in the past. This will happen if an insurer is aware of an incident that has not yet resulted in a claim. This will generally occur at renewal, when the insurer will advance the retroactive date or attach a limiting endorsement to the policy. A limiting endorsement is a specific exclusion for a specific incident. A limiting endorsement is often preferable to advancing the retroactive date, because a limiting endorsement usually applies to one event. If the retroactive date is advanced, all events which occur prior to the new retroactive date would be excluded.

Extended Reporting Periods

Many claims-made policies are sold with a basic extended reporting period at no extra cost. For example, the ISO commercial general liability claims-made form provides an additional 60 days to report claims. This basic extended reporting period is not long enough to ensure that claims arising out of a contract will be paid. We suggest that you ask contractors who are insured by claims-made policies to buy a supplemental extended reporting period.

The supplemental period is usually a minimum of 12 months, and may be unlimited for certain claims-made policies. For example, the ISO CGL claims-made form provides an unlimited time in which to report claims. Other types of policies, such as professional liability or pollution legal liability policies will probably offer shorter periods to report claims.

Professional liability insurance and **pollution legal liability insurance** usually provides claims-made coverage. Some **excess** and **umbrella** policies also provide claims-made coverage. If you must accept claims-made coverage, we suggest that you request:

- A two year supplementary extended reporting period (a shorter period may be the only option in some cases).
- A retroactive date that corresponds to the date the first claims-made policy was issued. This date should be available unless the insured has switched insurance companies. Alternatively, you may ask for a retroactive date that corresponds to the first date the State entered into a contract with the contractor or service provider
- If you request professional liability insurance, coverage for all prior acts (no retroactive date) may be available. Such coverage would be advantageous if your agency has had a long term relationship with a contractor

If coverage is provided by a combination of CGL and excess or umbrella insurance, we suggest that you require the **coverage trigger** be the same for the underlying and excess or umbrella policies. This requirement will help avoid gaps in coverage. For example, if the underlying CGL policy has an occurrence coverage trigger, it would be unwise in many cases to have a claims-made coverage trigger under the excess or umbrella policy.

WHEN SHOULD I ASK THE CONTRACTOR TO BUY INSURANCE?

- **Commercial General Liability** insurance covers **bodily injury** and **property damage** to third parties. We recommend that you require it when:
 - A contractor will be working near people who could become injured or property that may be damaged
 - The contractor often has clients of the State on their premises who could be injured
 - A completed work (such as a building) may fail, causing bodily injury or property damage to others. The contractor will provide a product or goods, such as food or supplies, that could cause bodily injury or property damage to others
 - A contractor is likely to subcontract out part of the work

These are only a few examples of situations where general liability insurance is needed. We suggest that you request it any time a contractor could cause bodily injury or property damage by **negligence** or carelessness.

- A **Business Auto Policy** should be required any time a contractor, its employees, or a subcontractor will operate, maintain, load or unload vehicles as part of the contract work. Examples include:
 - A contractor who transports materials to a work site
 - A contractor who transports clients of the state (children, families, the elderly)
- If your agency requests high limits of liability coverage, often the contractor will have to buy **umbrella Insurance**. An umbrella insurance policy serves three main functions: It normally provides:
 - High limits of excess insurance coverage over primary coverage
 - Broader coverage than the primary insurance coverageexcess of a self insured retention
 - A drop-down feature that automatically replaces primary coverage when underlying (primary) **aggregate limits** of liability insurance are reduced or exhausted by losses. This feature distinguishes umbrella insurance from **excess insurance**.
- **Professional Liability insurance** should be required when the professional's activities or advice could do harm. Examples include:
 - Activities with state clients that involve health or behavioral care
 - Any construction or design of real property
 - Bridge inspectors
 - Computer programmers
 - Environmental remediation contractors

Self-insurance

Self-insurance is the planned assumption of risk. An organization self-insures by establishing a program to identify, evaluate, and fund its losses. Self-insurance programs are frequently structured to retain losses up to a specific limit, and then commercial insurance is purchased above that level. An example of a self-insurance program would be the State's Self-insurance Liability Program (SILP).

Large organizations may self-insure their liability exposures and issue certificates of **self-insurance**. Usually, self-insured entities have a funded program to provide financing to pay claims.

Many self-insured entities have financial information that is a part of the public record. We recommend that you become familiar with the financial condition of the companies, public entities or quasi-public entities that you deal with. Sometimes the reputation of the company or public entity is enough to give you confidence about their ability to pay claims.

If an entity is self-insured and its financial position is not well known, we suggest that you obtain part or all the following information:

- A description of their self-insurance program
- Financial statement
- Pre-funded escrow account
- Letter(s) of credit
- Financial guarantee

Reserved for Future Use

Pages 38-40

Property Insurance

Some agencies are property owners. Property is either real property or personal property. Real property is land and permanent structures that are attached to land. Personal property consists of all other property, including vehicles, furniture and electronic data processing equipment.

If your agency owns property, it can sustain a property loss. A property loss is any loss that results from the damage, destruction, taking, or loss of use of property. Examples of property loss include fire damage to a building or theft of computer equipment.

If your agency owns property and leases it to another entity, you should consider asking the tenant (lessee) to buy **property insurance**. As an owner, your agency should also evaluate whether or not it should commercially insure its property.

Property insurance provides **occurrence coverage**. Covered losses must occur during the policy period. The limits of coverage generally apply per occurrence or, in the case of boiler and machinery insurance, per accident.

There are several types of property insurance. We provide brief descriptions of each.

BUILDING AND PERSONAL PROPERTY COVERAGE (BPP)

The BPP policy is used to cover buildings and their contents. If needed, we suggest that you ask for **all risk coverage** in your insurance requirements. All risk coverage avoids the need to guess which perils are insured. An all risk policy covers every **peril** that is not specifically excluded by the contract. If your agency is leasing property, we also suggest that you require:

- Full **replacement cost** coverage rather than **actual cash value** coverage.
- A waiver of any **coinsurance** requirement.

Most policies provide coverage for indirect losses as well, including debris removal, costs to protect covered property while it is being moved, fire department service charges, and limited pollutant cleanup and removal coverage.

Like all insurance policies, the BPP has **exclusions**. Common exclusions are:

- Increased cost of construction due to ordinance or law
- Flood
- Earthquake
- Water damage that occurs over a time
- Steam boiler explosion
- Maintenance (“wear and tear”)

This list of exclusions is not all inclusive. We intend it to illustrate that all **exposures** are not insurable. If you require property insurance in your contracts, some losses may not be covered.

BUILDERS RISK INSURANCE

Some state agencies contract to build public works. Buildings under construction can be commercially insured under a builders risk policy. If contracting for public works, your agency should consider requiring the contractor to buy builders risk insurance. Builders risk insurance covers similar types of losses (**perils**) as a Building and Personal Property (BPP) coverage. However, since builders risk insurance covers buildings in the course of construction, there are some coverage differences, including:

- Builders risk policies cover the building and other structures on site during the course of construction, including building supplies and other materials that will become a part of the structure
- Personal property owned by the insured is generally not covered
- The policy is generally issued with a limit equal to the completed value of the building with the equivalent of a 100% **coinsurance** clause

BOILER AND MACHINERY INSURANCE

A boiler is a closed vessel constructed of cast iron or steel. In this vessel, water is heated by combustion to form steam or hot water. Many buildings contain heating boilers or air conditioning equipment, both of which are covered by boiler and machinery insurance.

Boiler and machinery insurance covers loss to boilers and other property that is damaged by mechanical breakdown. For example, a boiler may accidentally explode during its operation, damaging both the boiler and adjacent property. These types of losses are not covered by most commercial property insurance policies, and must be insured under a boiler and machinery policy. Boiler and machinery insurers also provide inspection costs and loss control services at no extra charge.

Reserved for Future Use

Pages 43-45

Performance Guarantees

Often, contractor should be asked to buy bonds. Payment and performance bonds are required by Chapter 39.08 RCW, and bid bonds are required by some agencies.

A **bond** or **letter of credit** is a performance guarantee – not insurance. In different ways, they guarantee performance of the principal (contractor).

BONDS

A bond is a three-party agreement involving the principal, surety, and obligee. The principal is obligated to perform in some way to the benefit of the obligee. The surety guarantees to the obligee that the principal will fulfill the underlying obligation. In other words, the promise of the principal becomes the promise of the surety. On the other hand, if the principal can rightfully refuse to perform, the surety is also released from performance.

If the principal fails to perform its obligation, the surety must perform. The obligee can request performance from a surety when the first substantial failure to perform by the principal becomes apparent. The surety can perform the obligation itself or pay the loss up to the bond limit. A surety will always pick the least expensive option.

There are several types of bonds that may be useful to include in your contract specifications:

- **Bid bond:** Before issuing a call for bids, you may require each bidder to provide a bid bond. A bid bond guarantees that the bidder will enter into the contract at the bid price. If the principal (bidder) fails to fulfill its obligation, the surety will pay the obligee (State) the difference between the amount of the principal's bid and the bid finally accepted or the penal amount of the bond. A note of caution: A bid bond may not respond if the bidder has legitimate reasons to withdraw a bid – such as a mistake. A significant court decision on this issue is [Puget Sound Painters v. State](#), 45 Wn.2d 819
- **Performance bond:** Once the contract is awarded, the principal (now, contractor) should provide a performance bond. The performance bond guarantees the State will be indemnified for losses if the contractor fails to perform “the work” according to the contract, plans, and specifications at the agreed price in the time allowed. If the contractor defaults, the surety will be responsible for completing the work or paying the penal amount to the State. Many performance bonds automatically include a maintenance bond (described below) for one year without additional charge
Often, obtaining a bid bond pre-qualifies the bidder for a performance bond. Why? If a surety issues a bid bond, it has determined that the principal has the resources to bid on a contract. If a surety backs a bid, it probably will issue a performance bond as well.
- **Payment bond** (also called a labor and materials bond): A payment bond guarantees that the contractor will pay all labor and material bills arising out of the work the contractor is obligated to perform

We suggest that you require all these bonds when drafting specifications for a public works contract. There may also be times where you may want to require a separate maintenance bond. This bond guarantees the contractor's work against defects in workmanship or material for a specified time after the project is completed. Many performance bonds automatically include this coverage for one year. If you need a workmanship guarantee that lasts more than one year, you may want to ask the contractor to buy a separate maintenance bond.

LETTER OF CREDIT

A **Letter of Credit** (LOC) is an extension of credit by one party to another in support of a business transaction. A LOC may substitute for a bond where not prohibited by statute and if it guarantees an amount equal to the full contract price.

LOC's are three party agreements; a buyer, an issuer (bank) and the beneficiary in whose favor it is drawn. A LOC is established for a specified sum, written on bank stationery and signed by a bank officer. It is written in favor of the beneficiary, and should contain an "Evergreen Clause" that provides for automatic renewal. If used as a substitute for a **surety bond**, the LOC should be irrevocable and allow the beneficiary to draw funds at will. Letters of Credit are regulated by Title 62A RCW, Article 5.

SAVINGS ACCOUNT ASSIGNMENT

A Savings Account Assignment is a contract where one party (the assignor) transfers title to a saving account to another party to guarantee performance on contract. A Savings Account Assignment is established as a specified sum. The assignee can draw funds from the bank after giving notice to the Assignor. A Savings Account Assignment is similar to an escrow account, and serves as similar function as a LOC.

Reserved for Future Use

Pages 47-48

Monitoring Contractor Compliance

Some entities consider providing evidence of insurance to be a low priority task. It is important to inform entities you contract with about your insurance requirements in the solicitation process. If they do not provide evidence that all required insurance has been bought, we suggest that you reserve the right to:

- Refuse to sign or award the contract
- Terminate the contract

When entering into a contract or agreement, these suggestions may help protect the State and your agency against potential loss:

- Develop appropriate, clear and reasonable insurance specifications
- Request evidence of insurance coverage and that the State is named as an **additional insured** under general liability, umbrella, excess, or property insurance policies
- Verify the State will be notified if the **policy** is canceled or non-renewed
- Review the insurance documentation promptly and notify the other party if it is incomplete
- Review policy expiration dates. If any expire during the contract term, keep a copy of the **certificate of insurance** in suspense to verify renewal or replacement coverage
- Retain the insurance documents with the contract file for at least 10 years. A claim may develop years after the policy expires. These forms may be the only evidence insurance coverage existed
- Promptly notify the contractor or vendor of potential **claims**. Insist that they put the insurance carrier “on notice” immediately. Ask the contractor or vendor to provide a copy of the claim notice if you question whether the claim has been filed

CERTIFICATES OF INSURANCE

Evidence of insurance is frequently provided as a certificate of insurance. A **certificate of insurance** is not a contract; rather, it is evidence of coverage at the time the certificate is issued. It does not guarantee that coverage is currently in force or that coverage is as broad as requested. It should, however, provide sufficient evidence of coverage in most cases. A sample certificate is provided in the Appendix.

A certificate of insurance should include:

- The name and address of the **named insured**
- **Limits of liability** for each policy
- Types of policies issued to the named insured (for example, Commercial General Liability, Employers Liability, Business Auto Policy, etc.)
- Types of coverage, such as **occurrence coverage** or **claims-made coverage**, or covered autos under the Business Auto Policy
- Policy effective dates and expiration dates
- Information about cancellation or non-renewal notice
- Contract specific information, including identification of the projects or operations for which the certificate of insurance is issued and that the State has been named an **additional insured**

WHEN SHOULD YOU ASK FOR MORE INFORMATION?

Ask for more information when a certificate of insurance does not provide enough information about insurance coverages. For example, exclusions could eliminate important coverage. Certificates may also contain disclaimers. For example, a certificate may say that payment of claims may reduce the limits of coverage. If the contractor's aggregate limits have been depleted under a general liability policy, a certificate of insurance could be issued but no coverage available. These limitations highlight the importance of a strong hold harmless and indemnity agreement as your agency's first line of defense.

LETTERS OF COVERAGE

Large companies and public or quasi-public entities are often asked to provide evidence of insurance. In response, they may provide a form letter signed by either their chief executive officer or risk manager instead of a **certificate of insurance**. This letter will describe the insurance coverages the entity has in place.

The drawbacks to a letter of coverage include:

- Often, your agency will not be named as an **additional insured**. As a result, the insurer may not pay your agency's defense costs or agree to waive the right of **subrogation** if you are responsible for a loss
- There may be no verification that **contractual liability** is covered by insurance. Accordingly, insurance may not cover the obligations transferred in a hold harmless and indemnity agreement
- You will not receive notice of cancellation or non-renewal

We do not recommend accepting a letter of coverage unless the entity providing the letter addresses these drawbacks. If you have obtained a hold harmless and indemnity agreement and you are certain the entity has the financial resources to pay losses, the letter of coverage may be adequate. A sample letter of coverage is included in the Appendix.

Reserved for Future Use

Pages 51-52

Sample Insurance Specifications

GENERAL SUGGESTIONS

Below are general insurance requirements. We have attempted to make these provisions universal in application. Where this objective was not possible, we have written them from the standpoint of agreements with a public works contractor. You may have to modify some of them if you are dealing with a personal services contract, a lease or a vendor agreement. When deciding whether to modify them, we suggest you look at several areas, including:

- Who are you contracting with?
- What type of contract is it?
- Who could be harmed by the actions of the contractor?

Drafting Note: Throughout these provisions, we refer to “State” as an abbreviation for the State of Washington. If you use this abbreviation, we recommend that you define the “State” as the State of Washington, its elected and appointed officials, agents and employees in the contract.

Contractor Must Maintain Required Insurance: These are general statements that we suggest you consider for your contracts.

Compliance with insurance requirements does not limit the State’s rights of recovery under the **hold harmless** and **indemnity agreements**. We suggest that you insert this disclaimer:

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to State in this contract.

We suggest the following as general lead-in language for insurance requirements:

The limits of insurance, which may be increased by State of Washington, [Your Agency], as deemed necessary, shall not be less than as follows:

You may want to reinforce the fact the Contractor should maintain insurance throughout the term of your contract. If so, this option may work as a lead-in for your insurance requirements:

Contractor shall, at all times during the term of the contract at its cost and expense, buy and maintain insurance of the types and amounts listed below.

You may want to remind the Contractor that the State has a remedy if the Contractor fails to maintain insurance:

Failure to buy and maintain the required insurance may result in the termination of the contract at State’s option.

Company Rating It is important that the Contractor buy insurance from financially sound companies. Consequently, we recommend that the financial condition of the insurer be verified through Best's Reports. Best's Reports is an independent financial rating service that evaluates the financial condition and operating performance of insurance companies. These are our suggested minimum financial requirements:

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by [Your Agency] Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted.

Occasionally, insurance will be placed with non-admitted markets, often called **surplus lines**. This often occurs when high limits of insurance are requested, or the insured (contractor) has a history of losses or risky operations. If it becomes necessary to accept insurance from surplus lines markets we suggest that you add the following provision:

If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

These statutes and regulations require, among other things, that a **broker** cannot knowingly place surplus lines insurance with a financially unsound company.

Contractor Must Provide Evidence of Insurance:

We suggest that evidence of insurance should be delivered to the State promptly after the Contractor's receipt of the Authorization to Proceed, or with the bid specifications if required. This will allow you time to review the documentation. Such evidence should:

- Confirm the existence of all required insurance
- Describe the terms and conditions of all required insurance

Before starting the work, Contractor shall furnish State of Washington, [Your Agency], with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the bid document and contract.

Subcontractors: We suggest that you consider requiring the Contractor to include subcontractors as **insureds** under their insurance policies, or provide evidence that the subcontractors have obtained insurance equal to the contract specification.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

Cancellation or Non-renewal of an Insurance Policy: The State should be given notice if the insurance policy is canceled or non-renewed. Notice should be provided in accord with the following requirements:

State of Washington, [Your Agency], shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

a. Insurers subject to 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

b. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Additional Insured: We suggest that the State of Washington be named as an additional insured on most insurance policies.

The State of Washington, [Your Agency], its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies.

The State may waive this requirement where insurance carriers will not add the State as an additional insured. Status as an additional insured should not be requested for **Crime**, **Employers Liability**, and many types of **Professional Liability insurance** (most professional liability policies do not cover claims between insureds). It is also not needed under a **Business Auto Policy**, since the definition of insured is very broad in this policy. If an insurer will not provide additional insured status under a general liability, umbrella, excess or property insurance policy, we suggest you request:

- A **waiver of subrogation**. This should also be routinely requested under a Business Auto Policy
- Higher limits of liability coverage (general liability, excess and umbrella only). Without additional insured status, the insurer probably will not pay your cost of defense under a liability insurance policy

We suggest the following as a sample **waiver of subrogation** provision, as applied to general liability and umbrella insurance. Modification may be needed, depending on the type(s) of policies to which it applies.

Contractor waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this agreement.

Please refer to the suggestions for Use of Vehicles for a waiver of subrogation appropriate for the Business Auto Policy.

“Other Insurance” Clauses: Insurance policies should provide **primary** coverage.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

You may have to accept a pro rata or excess insurance clause if insurance carriers will not provide primary coverage, as in the case with **excess insurance** or some **professional liability** coverages. This should rarely be the case when you are requesting a Commercial General Liability, Business Auto, or Employers Liability insurance.

Self-Insurance: Contractors should provide evidence of and information about their **self-insurance** program.

If Contractor is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Contractor must describe its financial condition and the self-insured funding mechanism.

Entities who are self-insured may not want to name the State an **additional insured**. This is particularly true of public entities. If this is the case, you should evaluate the strength of your hold harmless and indemnity agreement and determine if the risk is acceptable to your program.

Reserved for Future Use

Pages 57 - 58

Putting It All Together

Below is a suggested format for general insurance requirements. You may have to adapt this format to your needs. Some of the general requirements have similar provisions, so you may decide not to use all of them in one contract. Once you have decided what your general insurance requirements should be, your contract might look like this:

A. General Insurance Requirements

- A.10 Contractor shall, at all times during the term of the contract at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the contract at State's option.*
- A.11 All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by [Your Agency] Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.*
- A.12 State of Washington, [Your Agency], shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.*
 - a. Insurers subject to 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.*
 - b. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.*
- A.13 Before starting the work, Contractor shall furnish State of Washington, [Your Agency], with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the bid document and contract.*
- A.14 Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.*
- A.15 The State of Washington, [Your Agency], its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies.*
- A.16 All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.*
- A.17 Contractor waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this agreement.*

- A.18 If Contractor is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Contractor must describe its financial condition and the self-insured funding mechanism.*
- A.19 By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to State in this contract.*
- A.20 The limits of insurance, which may be increased by State of Washington, [Your Agency], as deemed necessary, shall not be less than as follows:*

Basic Insurance Specifications

These are our suggested insurance requirements. We recommend that you require general liability, employers liability, and compliance with workers compensation laws whenever you enter into a contract. We also suggest other insurance requirements for specific activities.

With large contracts, or where the State faces a significant **exposure** to loss, much higher limits of liability insurance should be requested. Think of insurance as a big **deductible** – whatever the insurer pays is money the State saves. If we save money for our agencies and the State as whole, we will be saving money for the public and freeing up funds for other uses.

GENERAL LIABILITY AND WORKERS COMPENSATION EXPOSURE

B.1 Commercial General Liability (CGL) Insurance: We suggest that you request this coverage with every solicitation. These are sample specifications:

a. Contractor shall maintain general liability (CGL) insurance, and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the “each occurrence” limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the “each occurrence” limit.

b. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

B.2 Employers Liability (Stop Gap) Insurance: Employers liability insurance provides coverage for an employer’s common law liability for **bodily injury** to employees arising out of and in the course of their employment. It is intended to cover the gaps between Worker’s Compensation (Title 51 RCW) and CGL insurance, where a worker has a cause of action against the employer for an injury. We suggest that you ask for this coverage with every solicitation. These are sample specifications:

Contractor shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

We suggest that you consider *coordinating the limits of* insurance between the employers liability bodily injury limits and the **each occurrence** limit selected for the CGL. For example, if you request an each occurrence limit of \$5,000,000 in the CGL, you should consider a similar change to the limits for Employers Liability. This coordination of limits may help ensure coverage is adequate for all required types of liability insurance.

Practical Considerations

- We suggest that the general **aggregate limit** apply separately to each project or each location, or be at least *twice* the selected *each occurrence* limit. We suggest that you consider a:
 - *Per project* limit for public works projects. This coverage endorsement is generally available only for large public works projects
 - *Per location* limit when you lease property
 - *Per location* limit if services are provided to your premises
- Products and **completed operations** coverage apply to **bodily injury** or **property damage** that *occurs during the policy period*. Result: A completed operation that causes bodily injury or property damage after the insurance policy expires will not be covered unless the contractor has liability insurance in place when the injury occurs.
- You may not be the only entity that has requested a contractor to provide liability insurance or status as an additional insured. If a contractor is involved in multiple projects, claims from other activities could exhaust all the available liability insurance. If this happens, either the contractor must indemnify you from its funds, or the State will pay for the loss. We suggest that you consider these factors when selecting limits of insurance coverage in your solicitations.
- If you are dealing with a large contract that has the potential to expose the State to significant **liability**, you may want to require:
 - High limits of liability coverage
 - Information about potential impairment of the aggregate limits.
 - A certified copy of the policy
- If the insurer will not name the State an **additional insured** we suggest you consider:
 - Increasing the **each occurrence** and aggregate limits. If the State is not an additional insured, the cost of our defense may be paid out of the coverage limits. This may significantly reduce the amount available to pay claims.
 - If the nature of the contract indicates that coverage for **personal injury** or **advertising injury** losses is needed, we suggest that you request that **exclusion B.2.a.(4)** be deleted from the CGL. This exclusion eliminates **contractual liability** coverage **personal injury** or **advertising injury** losses. If your agency needs coverage for these types of losses, you should ask the exclusion be deleted or determine how the contractor will pay for these types of claims.

C.1 Workers' Compensation Coverage: We suggest that you ask for this coverage with every solicitation. These are sample specifications:

a. Contractor shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of Contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, Contractor waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial general liability or commercial umbrella liability insurance.

b. If Contractor, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Contractor shall indemnify State. Indemnity shall include all fines, payment of benefits to Contractor or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to State by Contractor pursuant to the indemnity agreement may be deducted from any payments owed by State to Contractor for performance of this Contract.

C.2 Longshore and Harbor Worker's Insurance: Occasionally, additional insurance may be needed due to **the Longshore and Harbor Workers Compensation Act** (LHWCA) [33 U.S.C.A., Sec. 901 et seq.]. This Act requires employers to compensate longshoremen and harbor workers who suffer bodily injury. LHWCA benefits apply to employees engaged in maritime employment on navigable waters or on adjoining wharf, pier, dock or similar facility used in the loading, unloading, or building of vessels. These are sample specifications if LHWCA coverage is needed:

Certain work or services under this contract may require insurance coverage for longshore or harbor workers other than seaman as provided in the Longshore and Harbor Worker's Compensation Act [33 U.S.C.A. Section 901 et seq.]. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

C.3 Jones Act: Occasionally, additional insurance may be needed due to the Jones Act [46 U.S.C.A. Section 688]. The Jones Act allows any seaman suffering bodily injury during employment to maintain an action for damages against their employer with a right of trial by jury. These are sample specifications if Jones Act coverage is needed:

Certain work or services under this contract may require insurance coverage for seamen injured during employment resulting from the negligence of the owner, master or fellow crew members as provided in 46 U.S.C.A. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Reserved for Future Use

Page 64

Putting It All Together

This is how our suggested general liability and workers compensation insurance provisions might look in your contract:

B. COMMERCIAL GENERAL LIABILITY (CGL) AND EMPLOYERS LIABILITY INSURANCE

1.
 - a. *Contractor shall maintain general liability (CGL) insurance, and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.*
 - b. *CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.*
2. *Contractor shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.*

C. WORKERS COMPENSATION INSURANCE

1.
 - a. *Contractor shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of Contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, Contractor waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial general liability or commercial umbrella liability insurance.*
 - b. *If Contractor, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Contractor shall indemnify State. Indemnity shall include all fines, payment of benefits to Contractor or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to State by Contractor pursuant to the indemnity agreement may be deducted from any payments owed by State to Contractor for performance of this Contract.*

Use of Vehicles

D. BUSINESS AUTO POLICY (BAP)

If services delivered pursuant to the contract involve the use of vehicles or the transportation of clients, automobile **liability** insurance should be required. We suggest that you ask for this coverage with every contract involving the use of vehicles or the transportation of clients. These are sample specifications:

a. Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto."

b. Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

c. Contractor waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Practical Considerations

- It is generally not necessary to be named an additional insured under a BAP (although no harm is done if additional insured status is obtained). The BAP has a very broad definition of insured that includes anyone liable for the conduct of an insured (the contractor) to the extent of that liability. If you decide to waive the requirement for additional insured status under the BAP, we suggest that you obtain a **waiver of subrogation** so that the BAP insurer cannot attempt to recover loss payments from your agency if it causes a loss. A waiver of subrogation is included in our suggested BAP specification as provision c.
- Insurers use symbols to designate which autos are covered under a BAP. These symbols are often shown on a **certificate of insurance**. Symbol 1, Any Auto, provides the broadest liability coverage, and is the preferred covered auto classification. However, insurers may not offer this option if the **insured** does not own any autos. If coverage for *any auto* is not available, then one or more of these classifications can be used to cover the State's loss **exposure**.

| | |
|----------|--|
| Symbol 2 | Owned Autos Only |
| Symbol 3 | Owned Private Passenger Autos Only |
| Symbol 4 | Owned Autos other than Private Passenger Autos |
| Symbol 7 | Specifically Described Auto (Includes autos described in the policy) |
| Symbol 8 | Hired Autos Only (Includes autos leased, hired, rented or borrowed) |
| Symbol 9 | Non-owned Autos Only (Includes autos owned by employees or partners) |

- The distinction between "private passenger auto" and "any auto" relates to type of vehicle. A "private passenger auto" is, for example, a Ford Taurus or Honda Accord. "Any Auto" includes any type of land motor vehicle, such as private passenger autos, large trucks and delivery vans

- Occasionally, you may decide to accept coverage for certain types of autos. For example, if a Contractor leases vehicles and has employees who use their vehicles during the course of employment, you could amend the last sentence of D.a to say: *Such insurance shall cover liability arising out of hired autos and non-owned autos*
- Coverage for non-owned autos only extends to the liability of an insured (contractor). The BAP will *cover the contractor for its liability* arising out of an employee's use of their own auto on behalf of the contractor. Since the employee is not an insured under the BAP, the policy will not cover the employee for their negligence unless you request additional coverage. If an employee's negligence could cause injury or damage to the State or its clients, we suggest that you consider requesting the contractor to add their employees as insureds under the BAP. This will cost the contractor extra money
- We suggest that you consider coordinating the limits of insurance, as described under Employers Liability, if there is a significant auto liability exposure. For example, if you raise the **each occurrence** limit in the CGL to \$5,000,000, you should evaluate the exposure to loss and consider raising the *each accident* limit under the BAP

Contracts With Licensed Professionals

E. Professional Liability Insurance: If services are provided by a contractor due to an agreement to provide professional services, we suggest that you request professional liability insurance in your solicitation. Professional services include work, assistance, information or advice which is based on specialized knowledge or expertise. Major professions such as medicine, nursing, law, financial consulting, accounting, architecture, and engineering:

- Require formal education
- Emphasize a duty of service to the patient or client
- Have a self regulating code of conduct or ethics

These are sample specifications to use when contracting for professional services:

a. Professional liability insurance is required if services delivered pursuant to this agreement, either directly or indirectly, involve or require providing professional services. Such coverage shall cover injury or loss resulting from Contractors' rendering or failing to render professional services.

Contractor shall maintain minimum limits no less than \$1,000,000 per incident, loss, or person, as applicable. If defense costs are paid within the limit of liability, Contractor shall maintain limits of \$2,000,000 per incident, loss, or person, as applicable. If the policy contains a general aggregate or policy limit, it shall be at least two times the incident, loss or person limit.

- b. If professional liability insurance is written on a "claims made" basis, the policy shall provide full coverage for prior acts or include a retroactive date that precedes the effective date of this contract.*
- c. Contractor agrees to disclose the existence and nature of any limiting endorsement that applies to any liability insurance policy purchased in accord with this contract.*
- d. Contractor is required to buy professional liability insurance for a period of 24 months after completion of this contract. This requirement may be satisfied by the continuous purchase of commercial insurance or an extended reporting period.*

Practical Considerations

- Professional liability insurance is available to many types of licensed professionals. Be wary of contractors who say they will have to make a special purchase to do business with the State. If they have to make a special purchase, they will likely cancel the coverage when the contract ends. Since professional liability insurance provides **claims-made coverage**, a claim made after the policy ends may not be covered. You will be safer doing business with professionals who have carried professional liability insurance in the past and, therefore, are more likely to carry it in the future
- Independent professionals (small businesses) may only carry \$300,000 or \$500,000 coverage, since **professional liability** insurance can be expensive. You may not be able to obtain coverage at the higher limits suggested above if you are contracting with a small business
- Most professional liability insurance provides **claims-made coverage**. The coverages and conditions are not standardized, and it is difficult to make comparisons between professional liability policies. The contractor and their insurance agent or broker must be relied upon to provide adequate coverage
- Defense costs, if paid within the **limit of liability**, reduce the amount of insurance available to pay claims. For example, if the limit of liability is \$500,000, and the insurer pays \$100,000 to defense costs, only \$400,000 will be available to pay claims
- Do not expect status as an **additional insured**. Often, professional liability policies exclude coverage for lawsuits between **insureds**. Do not ask to be named an additional insured unless the insurer also deletes the exclusion for suit between insureds

- Do not expect coverage for **contractual liability**. This coverage is generally not available

If professional liability insurance is required we suggest you request these coverage provisions (although they may not always be available):

- **Prior Acts Coverage**, which is equivalent to not having a **retroactive date**. This coverage may be available if the professional does not have knowledge of any pending claims from prior acts.
- **Retroactive Date**. If complete prior acts coverage is not available, the retroactive date should correspond to the date the first claims-made policy was issued. Alternatively, make sure the retroactive date precedes the date of the contract
- **Extended Reporting Period**. The insurance policy should include a two year **extended reporting period**

Property Exposure

F.1 Building and Structures: If you are leasing real property to another entity, you should consider asking them to buy **property insurance** for the structure. These are suggested specifications:

- a. *Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, and tenant improvements and betterment's. Such insurance shall be written on an all risks basis and, at a minimum, cover the perils insured under ISO special causes of loss form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles.*
- b. *Any coinsurance requirement in the policy shall be waived.*
- c. *State shall be included as an insured and a loss payee under the property insurance policy.*

F.2 Boiler and Machinery: Commercial **property insurance** generally does not cover losses arising out of the operations of boilers and machinery unless added by **endorsement**. If you are leasing property to other entities that have boilers, we suggest that you request them to provide boiler and machinery insurance. These are suggested specifications:

Tenant shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering real property, fixtures, equipment and tenants improvements or betterment from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators or pipes.

G.1 Insured Losses – Insurance Proceeds: If the contractor buys insurance, the right to insurance proceeds (claim payments) must be determined in the contract. We suggest that you include this or a similar provision in your contract:

- a. *In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described above, the parties to this Agreement shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which shall be held in trust by State, including interest earned by State on such proceeds, for use according to the terms of this Agreement.*
- b. *The parties agree that such insurance proceeds shall be used to repair and restore damaged improvements to their former condition and usefulness or replacement of the same with equivalent or more suitable improvements.*

G.2 Insured Losses – Reconstruction: Prompt reconstruction is important if a loss occurs during a public works contract. We suggest that you include this or a similar provision in your contract:

When sufficient funds are available, using insurance proceeds described above, the parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

- a. *Repair and restore damaged building(s) and/or improvements to their former condition, or*
- b. *Replace said building(s) and/or improvements with a new building(s) and/or improvements on the premises of a quality and usefulness at least equivalent to, or more suitable than, damaged building and/or improvements.*

Public Works Contracts

H. Bonds: If specified by the contract or required by statute, the contractor should provide a bid bond, performance and maintenance bond, and a payment bond. We include sample specifications for a performance bond, with an option to use a **Letter of Credit** to satisfy the requirement. You may also want to require bid bonds and payment bonds, depending on the nature of the contract.

Contractor must provide a performance bond within ten (10) calendar days after receipt of notice of award of the contract. The bond must guarantee an amount equal to the full contract price. The bond must name State as the obligee. A Letter of Credit may substitute for a performance bond unless prohibited by statute if it guarantees an amount equal to the full contract price, is irrevocable, allows the State to draw funds at will, and names State as beneficiary. A Letter of Credit must comply with Title 62A RCW, Article 5, the contents of which are incorporated by reference.

I. Builders Risk Insurance: This insurance covers property under construction. We suggest that you require the contractor to buy this coverage in your public works bid documents. These are sample specifications:

a. During the period construction is in progress and until completion of the project and acceptance by State, Contractor shall buy and maintain in force builders risk insurance on the entire work. Such insurance shall be written on a completed value form and in an amount equal to the value of the completed building, subject to subsequent modifications to that sum. The insurance shall be written on a replacement cost basis. This insurance shall name as insureds State, Contractor, and all subcontractors and sub-subcontractors in the work.

b. Insurance required in paragraph a. shall be written to cover all risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse.

c. Insurance required in paragraph a. shall cover the entire work at the site identified in paragraph _____, including reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit.

d. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as made legally necessary by the operation of any law, ordinance or regulation.

e. Any deductible applicable to the insurance bought in compliance with paragraph a. shall be identified in the contract documents and the responsibility for paying the part of any loss not covered because of application of deductible(s) shall be the responsibility of Contractor. If any part of any loss is not covered because of the application of a deductible amount not identified in the contract documents, such loss will be paid by Contractor.

f. Contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by State. If testing is being performed, such insurance shall cover such operations. This insurance shall name as insureds State, Contractor, and all subcontractors and sub-subcontractors in the work.

Practical Considerations

- If you are renovating a building, the builders risk policy will exclude the value of the existing property. In such a case, you should ask for builders risk insurance that covers the value of the contract.
- Builders risk insurance generally does not cover losses arising out of the operations of boilers and machinery unless added by **endorsement**. If you are contracting for a public works contract, we suggest that you ask for this coverage to be included as part of the builders risk policy, as suggested in specification f.

Pollution Exposure

J. Pollution Legal Liability Insurance: Pollution legal liability insurance may be needed by your agency if you are entering into an agreement with a waste disposal or treatment facility, a waste hauler, or a remedial action contractor, engineer or consultant who will be involved in the transport or disposal of waste. These are sample specifications:

Contractor shall obtain coverage for the duration of the contract for pollution legal liability, including investigation and legal defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically damaged or destroyed. Such coverage must provide coverage for both on-site and off-site clean-up costs and cover gradual and sudden pollution. Coverage shall be maintained in an amount of at least:

- a. *\$1,000,000 each occurrence for Contractor's operations at the site identified in paragraph _____; and*
- b. *\$5,000,000 each occurrence for all treatment, storage and disposal facilities, including transportation to such facilities*
- c. *If the policy contains a general aggregate limit or policy limit, it shall be at least \$5,000,000*

Practical Considerations

- Insurance contracts that provide pollution coverage are not standardized. You must be very specific about the exposures to loss that your agency wants insured
- Pollution legal liability insurance usually provides **claims-made coverage**. Occasionally, **occurrence coverage** may be available
- If the policy has a **retroactive date**, make sure it precedes the date of the contract
- Coverage often is excluded for **contractual liability**
- A **deductible** of a least \$10,000 will probably apply
- **Blanket coverage** (as opposed to site-specific coverage) is available, and may be preferable to some contractors
- Depending on the nature of the project, a much higher **limit of liability** may be needed

Glossary

Actual Cash Value (ACV): ACV equals the cost to replace damaged property after an adjustment for depreciation is made. Depreciation is an estimate of actual physical depreciation, based on age, condition and obsolescence.

Additional Insured: A person or entity other than the named insured who is protected under the terms of the policy. A policy generally must be endorsed to add an additional insured.

Admitted Insurer: An insurer licensed to do business in a particular state. Refer to *Surplus Lines* for comparison.

Advertising Injury: In liability policies, injury caused by an offense while advertising the named insured's goods, products or services. See definition of *injury*. Covered offenses include: (1) Slander or libel of another entity's products or services; (2) violation of privacy; (3) misappropriation of ideas; or (4) copyright infringement. Does not include bodily injury. This coverage is usually included in a Commercial General Liability (CGL) policy.

Agent: Person who represents insurer(s) to solicit, negotiate or sell insurance.

Aggregate Limit: The maximum amount an insurer will pay on behalf of a policyholder during an annual policy period. An aggregate limit of \$1 million means coverage ends when the total paid for all claims during a policy period equals \$1 million. An insurance policy may have more than one aggregate limit. For example, the standard ISO Commercial General Liability (CGL) policy has two: a General Aggregate that applies to all claims except those that fall into the Products Completed Operations hazard. The Products Completed Operations hazard has a separate aggregate limit.

Agreed Amount Clause: A provision in property insurance policies that suspends the coinsurance clause. It says the insurer agrees the values shown in the policy are adequate to meet the coinsurance requirement.

All Risks Coverage: Insurance that protects against all causes of loss except those perils specifically excluded in the policy. It provides broader coverage than a named peril policy, and places a greater burden of proof on an insurer that wants to deny a claim. Compare with *Named Peril Coverage*.

Best's Reports: A financial rating service that evaluates the financial condition and operating performance of insurance companies.

Bill of Lading: Document that describes the cargo shipment, shipper and receiver of the goods. It also specifies a carrier's liability for loss or damage to those goods.

Binder: A legal agreement issued by either an agent or insurer to provide temporary coverage until a policy can be issued. It should contain a definite time limit, describe the type(s) of insurance, designate the insurer and the limits of liability.

Blanket Coverage: A single amount of insurance covering several items or projects. May be contrasted with specific insurance, which covers one specific property or project.

Bodily Injury: In liability policies, third party insurance that protects an insured against legal liability due to negligence that causes bodily injury, sickness, disease or death of a third party. Compare with *Personal Injury*.

Bond: A three party contract guaranteeing the performance of a contract. A surety will issue a bond that guarantees to an obligee that a principal will carry out the contractual obligations it has agreed to perform. If the principal does not perform, the surety may fulfill the obligation of the contract or pay the penal amount (face value) of the bond.

Broker: Person who represents the insured to solicit, negotiate or buy insurance. A broker may be an agent of the insurer for certain purposes, such as delivery of a policy or collection of premium.

Builders Risk: Coverage for property during construction. Coverage is usually written on an all risks basis. Coverage terminates automatically when the construction project is completed.

Business Auto Policy (BAP): Insurance designed to cover legal liability arising out of the ownership, maintenance or use of vehicles. Liability coverage includes bodily injury and property damage. May also cover physical damage to vehicles owned, leased or hired by the named insured.

Certificate of Insurance: A document that shows a policy has been issued, the amount of coverage and types of insurance provided. It is often used as proof of insurance coverage in loan transactions. It is important to note that an insurance certificate is not a contract and does not place any obligations on the insurance company.

Claim (under an insurance policy): A demand by a person or entity to recover loss(es) that may be covered by the terms and conditions of an insurance policy.

Claims-made Coverage: Insurance policy that covers claims first made (reported or filed) during the policy period. Coverage for prior incidents may be subject to a retroactive date. The insured may have the option to buy an extended reporting period for incidents that occur on or after the retroactive date and before the end of the policy period. See *retroactive date* and *extended reporting period*.

Coinsurance: A provision under a property insurance policy that requires the insured to maintain insurance equal to part of the value of the property covered. The coinsurance percentage is shown in the policy. If the coinsurance percentage is not met, the insured will pay part of the loss.

Commercial General Liability (CGL) Insurance: Third party liability insurance. Provides coverage for liability claims made by third parties for bodily injury and property damage arising out of the premises, ongoing and completed operations, and products, including contractual liability. Personal injury and advertising injury are also exposures normally covered by the CGL.

Completed Operations Hazard: Bodily injury or property damage that arises out of an entity's completed work, including defective parts or materials furnished with that work.

Contractual Liability: Liability assumed under contracts or agreements. Liability is often transferred by hold harmless and indemnity agreements.

Coverage Trigger: The event that must happen for a claim to be covered by an insurance policy.

Cross Liability: Occurs when two or more insureds are covered by the same liability insurance policy. For example, one insured may injure or damage the property of another insured. Most insurance policies include a severability of interests provision, which permits cross liability suits. For this reason, a severability of interests provision is important if you are named as an additional insured. Covered by the CGL and BAP.

Damages: Monetary compensation or indemnity by any entity who has suffered loss through the unlawful act, omission or negligence of another.

Deductible: Portion of an insured loss the insured must pay. A deductible is subtracted from the limit of liability.

Each Occurrence Limit: In liability insurance, maximum amount an insurer will pay for claims growing out of an occurrence, regardless of the number of persons injured or amount of property damaged.

Employee Dishonesty Insurance: May also be referred to as a **Fidelity Bond**. Covers money and securities against loss caused by employee dishonesty. Can also be used to cover other type of crime losses.

Employers Liability (“Stop Gap”) Coverage: Provides coverage for an employer’s common law liability for bodily injury to employees arising out of and in the course of their employment. Intended to cover the gaps between Worker’s Compensation (Title 51 RCW) and CGL insurance, where a worker has a cause of action for an injury.

Endorsement: Form that changes, adds to, deletes, replaces or modifies the coverage, terms or conditions in an insurance policy.

Escrow Account: A bank account held in the name of the depositor (obligor) and an escrow agent that may be paid to a third party (obligee) if the depositor does not fulfill the escrow condition (promise).

Excess Insurance: A policy designed to provide excess limits of coverage above the limits of a primary insurance policy or self-insured retention. May be written as a *following form*, which means it will cover only losses covered by primary insurance. Excess insurance coverage goes into effect when all primary insurance is exhausted, or the insured has absorbed a self-insured retention. Rarely includes defense coverage, even if defense is provided by underlying policy. Compare with *primary insurance* and *umbrella insurance*.

Exclusion: Insurance policy provision that says what the insurer does not intend to cover.

Exposure: Possibility of financial loss.

Extended Reporting Period (ERP): Also known as *tail coverage*. A designated period after the expiration of a claims-made policy when a claim may be reported and coverage triggered. An ERP only covers claims arising out of events that occur before the expiration of the policy and after the retroactive date, if any.

Financial Guarantee: Insurance that guarantees to a third party the insured’s ability to financially perform under the terms of the agreement. Comparable to bonding.

Financial Statement: Often, an **Annual Statement**. Provides information about an entity’s financial condition (or position), or changes in this position, and on the results of operations (profitability).

Fire Legal Liability Insurance: In liability policies, protection against loss arising from fire damage to the property of others in the insured’s care, custody or control due to an insured’s negligence. Usually included in a CGL.

First Party Insurance: Insurance that provides coverage for an insured’s property or person. Compare to *third party insurance*.

Hazard: A condition that increases the probability of loss or likely magnitude of loss arising from some peril.

Hold Harmless Agreement: Contractual arrangement intended to release one party from liability for losses arising from a contractual relationship. For example, a lease may provide that the tenant must hold the owner harmless for any liability the owner might otherwise have for injury to a third party. Often combined with an *indemnity agreement*, since the owner could be named as a sole defendant in a suit by a third party.

Indemnify: To reimburse another entity for a loss.

Indemnity Agreement: Contractual arrangement where one party agrees to indemnify another party for losses that party is legally required to pay to a third party. For example, under an indemnity agreement, if the owner (indemnitee) was sued by a third party, the (tenant) indemnitor would have to pay all costs of investigating, negotiating, defending, and settling the suit.

Injury: Physical harm, mental anguish, fright, shock, humiliation and loss of reputation.

Insurable Interest: Monetary or legal interest in the subject of the insurance policy.

Insurance: A contract. One party (insurer), for consideration (premium), agrees to reimburse another party (insured) for loss to a specified subject (risk) caused by designated hazard or peril.

Insurance Services Office (ISO): An insurer-owned association that collects statistical information, develops expected loss costs for insurance products and files them with regulators, and draft standard insurance forms. Its insurance forms are considered “benchmarks” by the insurance industry. The CGL and BAP are ISO forms.

Insured: The person or persons protected by an insurance policy.

Jones Act: Formally the Merchant Marine Act of 1920. The Jones Act allows any seaman suffering bodily injury in the course of employment to maintain an action for damages against their employer with a right of trial by jury.

Letter of Credit: Extension of credit by one party to another in support of a business transaction.

Liability: Any legally enforceable obligation.

Liability Insurance: Covers legal liability for property damage or injury to another person or entity for which an insured is responsible due to negligence. Also known as third party insurance, liability insurance always involves three parties, the one harmed, the insurer, and the insured who caused the harm. Compare with *Property Insurance*.

Limit of Liability: The maximum amount that an insurance company agrees to pay for any loss.

Lloyds of London: An association of syndicates that assume liability through an underwriter. Each individual or entity in a syndicate assumes a proportionate share of the insurance accepted by the underwriter. Lloyds plays a significant role in the excess insurance market. Lloyds is not an insurance company.

Longshore and Harbor Workers Compensation Act (LHWCA): A federal act requiring employers to compensate longshoremen and harbor workers who suffer bodily injury. LHWCA benefits are much higher than workers compensation benefits in most states. LHWCA benefits apply to employees engaged in maritime employment on navigable waters or on adjoining wharf, pier, dock or similar facility used in the loading, unloading, or building of vessels.

Named Insured: Any person or entity specifically designated by name as the insured in a policy.

Named Peril Coverage: Insurance that protects against loss due to perils specifically named in the policy. Compare with *All Risks Coverage*.

Negligence: A *tort*, and the basis for most lawsuits. Generally, the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. The four elements of tort of negligence are: (1) A legal duty owed to others to use due care; (2) failure to conform to the standard of care required in the situation; (3) causal connection between the negligent act and the harm to others; and (4) harm or damage to others that results.

Occurrence: A defined term in most policies. Defined in the CGL as *an accident, including continuous or repeated exposure to substantially the same general harmful conditions.*

Occurrence Coverage: Insurance that covers claims that occur during the policy period, regardless of when the claim is made. Compare with *claims-made coverage.*

Peril: A cause of loss. Examples include: Fire, collapse, theft and vandalism.

Personal Injury: See definition of *injury.* In liability policies, personal injury includes such offenses as false arrest, malicious prosecution, slander or libel. Does not include bodily injury. This coverage is usually included in a Commercial General Liability (CGL) policy.

Policy: A written contract of insurance.

Policyholder: Person or other entity protected by an insurance policy.

Pollution Liability Insurance: Covers liability arising out of the discharge of pollutants. The CGL excludes claims arising out of the discharge of pollutants.

Primary Coverage: Insurance providing coverage from the first dollar of loss, perhaps after a deductible. Compare with *excess insurance* and *umbrella insurance.*

Product Liability: Bodily injury or property damage that arises out of the manufacture, distribution, or sale of an unsafe or defective product. This coverage is included in the CGL, or can be bought as stand-alone coverage. Insurer will not repair or replace (warranty) the product itself. Under the CGL, bodily injury or property damage must occur away from the insured premises and after the product is out of the insured's possession.

Professional Liability Insurance: Protection against legal liability arising out of the providing of services to others. Often referred to as *errors and omissions insurance.*

Property Damage: In liability policies, third party insurance that covers legal liability for damage to property of a third party, including loss of use of that property.

Property Insurance: Covers the insured's real and personal property. May also cover the property of others left in the insured's care, custody and control. Compare with *Liability Insurance.*

Protection and Indemnity (P&I) Insurance: Third party insurance for a ship owner that covers liability for loss of life, illness or injury to the passengers or crew, and property damage to the cargo, piers, docks or other shore property, caused by the insured's negligence.

Replacement Cost: A defined term in most property insurance policies. Cost to purchase or construct a new item of property to replace an older, used item of property. New property for old property. Insurance coverage on a replacement cost basis is more favorable to an insured than insurance coverage on an actual cash basis.

Retroactive Date: A claims-made policy only covers claims that arise from injuries or damages that occur after a specified date -- the retroactive date. Ideally (but rarely), a claims-made policy will have no retroactive date, and there will be coverage for claims made during the policy period regardless of when damage or injury occurred. Most often, if insurance has been bought continuously through the same insurer, the retroactive date will coincide with the date the first claims-made policy was issued by that insurer. Example: If an insured purchased claims-made CGL insurance with XYZ Insurance Company since January 1, 1992, the retroactive date will always be January 1, 1992. See *Claims-made Coverage* and *Extended Reporting Period.*

Self-insurance: No commercial insurance. A system whereby an entity, by setting aside monies, provides funds to pay for losses that may occur. Usually monies that would normally be used to buy commercial insurance are set aside to pay for losses. State agencies fund a self-insurance program that pays tort claims, called the Self-Insurance Liability Program (SILP).

Self-insured Retention: The amount of each loss for which the insured agrees to be responsible before an excess or umbrella policy participates in the loss. Not a deductible: An excess policy's full limit of liability applies in excess of the self-insured retention.

Separation of Insureds Condition: The liability of one insured to another insured is often called *cross liability*. A separation of insureds condition establishes separate coverage for each insured under the policy -- except for policy limits.

Subrogation: Legal right of one party who has paid an obligation owed by another party to recover the amount they paid. Thus, an insurer may recover from a negligent party the amount it paid to or on behalf of it's insured for a loss caused by that negligent party.

Surety Bond: See *bond*.

Surplus Lines: If insurance not available from admitted carriers, so it is written by non-admitted markets. Lloyd's of London is a non-admitted market. In a non-admitted market, rates and contracts are not regulated by the State Insurance Commissioner.

Tail Coverage: See *Extended Reporting Period*.

Third Party Insurance: Liability insurance. Liability insurance involves three parties: The insured, the insurer, and a third party that is harmed. The insurer provides coverage to the insured against liability to others for negligent acts or omissions that cause harm to a third party.

Tort: A legal wrong against an individual arising from a duty fixed by law.

Umbrella Insurance: Liability insurance affording high limits of excess coverage for many liability exposures, including those not covered by underlying insurance. Many umbrella policies provide broader coverage than the underlying policy. The term *umbrella* is derived from the fact that umbrella insurance is a separate policy above a primary insurance policy. Most umbrella policies cover defense costs. Compare with *primary insurance* and *excess insurance*.

Waiver of Subrogation: Voluntary relinquishment, before a loss occurs, by a subrogee (insurer) of right of subrogation. If an insurance policy covers the interests of two or more parties, the insurer frequently waives, regarding each insured, the rights to which it may become subrogated because of the wrongdoing of another insured.

Workers Compensation Insurance: A statutory coverage designed as the sole remedy for workers who suffer bodily injury in the course and scope of their duties.

Appendices

The following pages are designed to assist in evaluating written contracts for your agency.

- Exposure Checklist: Leases
- Basic Insurance Checklist
- Public Works Contract Checklist
- Personal Services Contract Checklist
- Sample Certificate of Insurance
- Sample Letter of Coverage
- Sample of RCW 4.24.115
- Summary of Coverage: Self Insurance Liability Program

Exposure Checklist: Leases

Check those that apply

Contract Type

State is: Lessor Lessee

Risk Transfer

- Hold Harmless and Indemnification Agreement
- Intermediate form
- Waiver of subrogation:
 - Lessor
 - Lessee
 - Both parties

Insurance Analysis

Lessor Lessee

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Who insures premises (structure)? |
| <input type="checkbox"/> | <input type="checkbox"/> | Who insures tenant's improvements/alterations? |
| <input type="checkbox"/> | <input type="checkbox"/> | Who insures contents? |
| <input type="checkbox"/> | <input type="checkbox"/> | Who determines the value of property? |
| <input type="checkbox"/> | <input type="checkbox"/> | Who determines amount of property insurance to carry? |

Exposure Analysis

Lessor Lessee

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Who is responsible for common areas (third party liability)? |
| <input type="checkbox"/> | <input type="checkbox"/> | Are there any hazardous conditions or operations on the premises? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have you been asked to assume liability under a contract? |
| <input type="checkbox"/> | <input type="checkbox"/> | Who is responsible for damage to buildings? |
| <input type="checkbox"/> | <input type="checkbox"/> | Who is responsible for damage to contents? |

Property Insurance Specifications

- \$_____ Per occurrence
- Replacement cost basis?
 - All risk policy
 - Boiler and machinery
 - Contents coverage
 - Flood
 - Earthquake
 - Additional insured status
 - Co-insurance – If so, state percentage: _____%
 - Agreed amount coverage

Refer to contract manual for a description of coverages and additional suggestions.

Basic Insurance Checklist

Check those that apply

Hold Harmless and Indemnification Provisions

- Hold Harmless and Indemnification Agreement** _____
- Intermediate form _____
- Limited _____

Insurance

- Commercial General Liability** _____

\$ _____ Per occurrence _____

\$ _____ General aggregate _____

\$ _____ Products/comp. oper. aggregate _____

- Continuing comp. oper. coverage _____ years _____
- Per project general aggregate _____
- Additional insured status _____
- Contractual liability _____
- Separation of insureds condition _____

- Workers Compensation** _____

- Compliance with Title 51 RCW _____

- Qualified self-insurer _____

- Longshore and harborworkers coverage _____

- Jones Act: Maritime coverage _____

- Employers Liability** _____

\$ _____ Employers liability limits _____

\$ _____ BI by disease/employee _____

\$ _____ BI by disease/policy _____

\$ _____ BI by accident _____

- Automobile Insurance** _____

\$ _____ Each accident _____

- Additional insured status/waiver of subrogation _____
- Contractual liability _____
- Separation of insureds definition _____
- "Covered pollution cost or expense" _____

Refer to contract manual for a description of coverages and additional suggestions.

Public Works Contract Checklist

Check those that apply

Hold Harmless and Indemnification Provisions

- Hold Harmless and Indemnification Agreement** _____
- Intermediate form _____
- Limited form (Public Works Contract subject to RCW 4.24.115) _____

Insurance

- Commercial General Liability** _____
 - \$ _____ Per occurrence _____
 - \$ _____ General aggregate _____
 - \$ _____ Products/comp. oper. aggregate _____
- Continuing comp. oper. coverage _____ years _____
- Per project general aggregate _____
- Additional insured status _____
- Contractual liability _____
- Separation of insureds condition _____
- Workers Compensation** _____
- Compliance with Title 51 RCW _____
- Qualified self-insurer _____
- Longshore and harborworkers coverage _____
- Jones Act: Maritime coverage _____
- Employers Liability** _____
 - \$ _____ Employers liability limits _____
 - \$ _____ BI by disease/employee _____
 - \$ _____ BI by disease/policy _____
 - \$ _____ BI by accident _____
- Automobile Insurance** _____
 - \$ _____ Each accident _____
- Additional insured status/waiver of subrogation _____
- Contractual liability _____
- Separation of insureds definition _____
- "Covered pollution cost or expense" _____

Refer to contract manual for a description of coverages and additional suggestions.

- Umbrella/excess** _____
\$ _____ Per occurrence _____
- Commercial General Liability** _____
\$ _____ Per occurrence _____
- Contractors Pollution Liability** _____
\$ _____ Per occurrence _____
- Builders Risk** _____
\$ _____ Completed value _____
- All risk _____
- Owner provides _____
- Contractor provides _____
- Flood _____
- Earthquake _____
- Collapse _____
- Boiler and machinery _____
- Additional insured _____
- Other requirements _____
- Insurance proceeds _____
- Reconstruction _____
- Professional Liability** _____
\$ _____ Per incident, loss, person _____
_____ Retroactive date _____
_____ Year extended reporting period _____
- Defense costs as supplementary payments _____

Waiver of Subrogation (if not named an "additional insured")

- General Liability _____
- Auto liability _____
- Employers liability _____
- Umbrella/excess _____
- Builder' risk _____
- Other _____

Refer to contract manual for a description of coverages and additional suggestions.

Personal Services Contract Checklist

Check those that apply

Hold Harmless and Indemnification Provisions

- Hold Harmless and Indemnification Agreement** _____
- Intermediate form _____
- Limited form _____

Insurance

- Commercial General Liability** _____
- \$ _____ Per occurrence _____
- \$ _____ General aggregate _____
- \$ _____ Products/comp. oper. aggregate _____
(review definition of coverage to evaluate need)
- Per location general aggregate _____
- Additional insured status _____
- Contractual liability _____
- Separation of insureds condition _____
- Workers Compensation** _____
- Compliance with Title 51 RCW _____
- Qualified self-insurer _____
- Employers Liability** _____
- \$ _____ Employers liability limits _____
- \$ _____ BI by disease/employee _____
- \$ _____ BI by disease/policy _____
- \$ _____ BI by accident _____
- Automobile Insurance** _____
- \$ _____ Each accident _____
- Additional insured status/waiver of subrogation _____
- Contractual liability _____
- Separation of insureds definition _____
- "Covered pollution cost or expense" _____

Refer to contract manual for a description of coverages and additional suggestions.

- Umbrella/excess** _____
- \$ _____ Per occurrence _____
- Professional Liability** _____
- \$ _____ Per incident, loss or person _____
- Claims made coverage _____
- _____ Retroactive date _____
- Claims prior acts coverage _____
- _____ Year extended reporting period _____
- Defense costs as supplementary payments _____
- Pay on behalf of coverage _____

Waiver of Subrogation (if not named an "additional insured")

- General Liability _____
- Auto liability _____
- Employers liability _____
- Umbrella/excess _____
- Other _____

Refer to contract manual for a description of coverages and additional suggestions.

CERTIFICATE OF INSURANCE

Issue Date

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.

COMPANIES AFFORDING COVERAGE

INSURED:

- Company A
- Company B
- Company C
- Company D

COVERAGES

THIS IS TO CERTIFY THAT 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 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 COINDITIONS OF SUCH POLICIES.

| CO LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE | POLICY EXPIRER DATE | ALL LIMITS IN THOUSANDS | |
|--------|---|---------------|-----------------------|---------------------|----------------------------------|-----------|
| A | GENERAL LIABILITY: <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNERS & CONT.'S PROT <input type="checkbox"/> CONTRACTUAL | | | | GENERAL AGGREGATE | \$ |
| | | | | | PRODUCTS-COMP/OPS AGGREGATE | \$ |
| | | | | | PERSONAL & ADVERTISING INJURY | \$ |
| | | | | | EACH OCCURRENCE | \$ |
| | | | | | FIRE DAMAMGE (ANY ONE FIRE) | \$ |
| | | | | | MEDICAL EXPENSE (ANY ONE PERSON) | \$ |
| A | AUTOMOBILE LIABILITY: <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT | \$ |
| | | | | | BODILY INJURY (PER PERSON) | \$ |
| | | | | | BOIDLY INJURY (PER ACCIDENT) | \$ |
| | | | | | PROPERTY DAMAGE | \$ |
| A | EXCESS LIABILITY: <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBR FORM | | | | EACH OCCURRENCE | AGGREGATE |
| | | | | | \$ | \$ |
| A | WORKERS COMP AND EMPLOYERS LIABILITY: <input type="checkbox"/> WORKER'S COMPENSATION <input type="checkbox"/> EMPLOYERS' LIABILITY | | | | STATUTORY | \$ |
| | OTHER: | | | | | |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

State of Washington, Department of General Administration, is named as additional insured. Cross liability insurance is included under General Liability and Auto Liability coverages.

CERTIFICATE HOLDER:

State of Washington
 Department of General Administration
 P O Box 41000
 Olympia WA 98504-10000

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL NOT IMPOSE OBLIGATION OR LIABILITY OF ANY KIND UPON THE STATE, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE:

SAMPLE LETTER OF COVERAGE

XYZ CORPORATION

18 EMPIRE DRIVE
SEATTLE WA 98111

Dear Sir or Madam:

XYZ Corporation has streamlined its administrative processes related to providing proof of insurance. As a replacement for the certificate of insurance your organization has requested, we are providing a letter of coverage which explains our insurance coverage.

XYZ Corporation is self-insured for the first \$100,000 of each loss. XYZ Corporation purchases and maintains an excess policy to provide protection against catastrophic loss. XYZ feels this approach is prudent due our strong financial conditions. As evidence of our financial condition, we cite our most recent annual report, which listed XYZ's net worth at the net of 1996 as \$25 million dollars.

Our excess insurance policy provides coverage as broad as the most recent Commercial General Liability and Business Auto policies published by the Insurance Services Office, including contractual liability coverage. Defense coverage for your entity is not provided by our excess policy; however, XYZ Corporation has the financial ability to respond to any contractual agreements we have made.

Sincerely,

Richard Smith

Richard Smith
Chief Financial Officer
XYZ Corporation

RCW 4.24.115 Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate. A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property:

(1) Caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable;

(2) Caused by or resulting from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees, and (b) the indemnitor or the indemnitor's agents or employees, is valid and enforceable only to the extent of the indemnitor's negligence and only if the agreement specifically and expressly provides therefore, and may waive the indemnitor's immunity under industrial insurance, Title 51 RCW, only if the agreement specifically and expressly provides therefore and the waiver was mutually negotiated by the parties.

This subsection applies to agreements entered into after June 11, 1986. [19856 c 305 601; 1967 ex.s. c 46 2.]

NOTES:

Preamble—Report to legislature—Severability—1986 c 35: See notes following RCW 4.16.160.

SELF INSURANCE LIABILITY PROGRAM

Self Insurance Liability Program Financing

Method of Premium Allocation

The liability account is financed through annual premiums determined by the State Risk Manager, with consultation and advice of the Risk Management Advisory Committee and concurrence of the Office of Financial Management. The State Risk Manager determines the formula for allocating costs to participating state agencies based on an independent actuarial study of the state's projected liabilities.

Decisions on self-insurance retention levels, deductibles, coverages, limits, caps, loss control credits, or other planned changes affecting premiums are submitted to the Risk Management Advisory Committee for review and consultation prior to adoption.

Premiums are computed annually for each state agency, board, and commission based on a combination of risk exposures (FTEs) and experience (last five years of tort losses). An annual actuarial review is conducted to ensure that future premiums reflect changes in total state liability, employee growth, and current pay-out history.

Participation

Coverage is provided to the State of Washington, its agencies, governing bodies, boards, and commissions, all as now exist or shall exist, including all state employees, elected appointed officials, members of boards or commissions, volunteers, and reserve officers, all while acting within the scope of their employment.

Coverage is not provided for the University of Washington in its entirety, students at the community colleges, technical colleges, and universities (unless in the capacity of employees or under the guidance and direct supervision of college or university employees), college and university foundations, and foster parents.

Summary of Coverage

Self Insurance Liability Program - Coverages

The liability account is used to pay tort claims, judgements, and settlements arising from general liability and vehicle accidents for which the state is found to be wholly or partially negligent. Coverage is provided up to \$5 million for each claim with no deductible.

Coverage is provided for claims arising from bodily injury, personal injury, and property damage to a third party, including:

- bodily injury or property damage to a state employee or third party
- vehicle liability
- public officials liability
- liquor liability
- violations of civil rights
- sudden and accidental pollution
- certain areas of medical malpractice
- marine docks, quays, shoreside facilities, floats, and buoys, and vessels that are a maximum of 26 feet in length and which are human powered or a maximum of 50 horsepower motors

Self Insurance Liability Program – Exclusions

Excludes and will not pay claims arising from the following, including self insurance retention and deductibles:

- marine hull and protection and indemnity exposures relative to vessel operations
- marine hull and protection and indemnity, docks, quays, shoreside facilities, floats, and buoys relative to the Department of Transportation Marine Division
- aircraft and aviation hull and liability exposures
- employee fidelity
- damage to state owned facilities and property
- foreign liability
- intercollegiate athletic activities
- student sponsored events
- injuries to employees under workers' compensation, US Longshore, and Harborworkers' or Jones Act
- student medical malpractice during required practicums under outside hospital supervision
- University of Washington and Medical School