Guidance from the WV Division of Purchasing for state agencies for insurance requirements for contract bidders/vendors

Insurance Requirements for Contract Bidders/Vendors

Vendor insurance requirements are a vital part of any procurement process to ensure that the vendor is responsible for its own acts of negligence or for a contract violation, and not the State[1]. Requiring a vendor to have insurance coverage is the most common method for providing the needed protection and is preferable to suing a vendor and trying to collect a judgment when the vendor fails to act as you expect.

While certain limits of liability will be suggested in this document, we recognize that each situation is different. If you find that our suggestions effectively limit the availability of vendors for a given procurement, we ask that you call us to discuss the matter and we will give you specific guidance to address the particular situation.

Insurer Rating

Insurers are graded based on their financial strength and ability to pay claims. A.M. Best is a U.S. based rating agency that has been designated as a National Recognized Statistical Rating Organization and is the organization used most frequently to judge the financial strength of an insurer. A vendor's chosen insurer must have the ability to pay a claim if one is made. We believe that the successful bidder should present evidence that its insurer(ers) has at least a 'A-VII' rating by A.M. Best.

Here is some information to help you understand what the ratings actually mean:

The ratings scale includes six "Secure" ratings:

- **A++, A+** (Superior)
- **A, A−** (Excellent)
- **B++, B+** (Good)

The scale also includes ten ratings for companies deemed "Vulnerable":

- **B, B−** (Fair)
- **C++, C+** (Marginal)
- **C, C−** (Weak)
- **D** (Poor)
- **E** (Under Regulatory Supervision)
- **F** (In Liquidation)
- **S** (Rating Suspended)

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[1] As this was written for use by the State of West Virginia, 'State" is used to mean the purchaser of goods or services. To the extent that another public body attempts to use these guidelines, 'State' can be replaced with the name of the body who is making the purchase.

To enhance the usefulness of ratings, A.M. Best assigns each rated (A++ through D) insurance company a **Financial Size Category** (FSC). The FSC is based on adjusted policyholders' surplus (PHS) **in U.S. dollars and may be impacted by foreign currency fluctuations**. The FSC is designed to provide a convenient indicator of the size of a company in terms of its statutory surplus and related accounts.

Many insurance buyers only want to consider buying insurance coverage from companies that they believe have sufficient financial capacity to provide the necessary policy limits to insure their risks. Although companies utilize reinsurance to reduce their net retention on the policy limits they underwrite, many buyers still feel more comfortable buying from companies perceived to have greater financial capacity.

Class	**Adj. PHS ($ Millions)**	**Class**	**Adj. PHS ($ Millions)**
I	Less than 1	IX	250 to 500
II	1 to 2	X	500 to 750
III	2 to 5	XI	750 to 1,000
IV	5 to 10	XII	1,000 to 1,250
V	10 to 25	XIII	1,250 to 1,500
VI	25 to 50	XIV	1,500 to 2,000
VII	50 to 100	XV	2,000 or greater

Occurrence v. Claims Made Insurance Coverage

Insurance policies are generally sold based on what triggers a claim and are one of two types. Occurrence coverage is triggered based on when the claim occurred. Claims Made coverage is triggered based on when the claim is first reported.

With occurrence coverage, it doesn't matter when a claim is reported as long as the occurrence giving rise to the claim happened during the policy period. An occurrence based policy in effect for the period of the contract being entered into with the vendor will respond to claims that occur during the contract period regardless of when they are actually presented.

With claims made coverage, it doesn't matter when the claim occurred[2]; what matters is that the claim is first presented during the policy period.

If the vendor presents you with evidence of a claims made policy, any claim must be presented during the policy period. If you only contract with a vendor for one year and the insurance provided is for claims made coverage for the same period, that insurance will not apply to claims that are made after the contract ends. If a vendor has claims made coverage, you should insist that they provide evidence of an extended reporting period (or 'tail') of at least three years after the end of the contract.

Coverage Term

The insurance coverage needs to be in place for the complete term of the contract. If the insurance expires during the contract year, a new certificate must be provided to the State at least ten (10) days prior to the expiration of the current policy. The new insurance must still meet the original terms of the contract. A contractor may possibly choose a different insurer each year, so the insurance coverage must be assessed with each change.

The vendor should have continuous insurance coverage throughout the life of the contract. Coverage that was only in force at the time of contract execution does not provide the needed protection and is not acceptable.

Cancellation

The vendor must be required to notify the State within five (5) days of any cancellation, non-renewal or material change to the required insurance coverage. Should the vendor fail to keep the specified insurance coverage in effect at all times, the State may, in addition to any other remedies it may have, terminate the contract.

Deductibles

The vendor is solely responsible for any deductible or self-insured retention contained within its program of insurance.

TYPES OF COVERAGE

Commercial General Liability

Commercial General Liability Insurance protects a vendor against liability claims of bodily injury and/or property damage resulting from the vendor's premises, operations, products and completed operations, as well as from its advertising, and

[2] as long as it is after the Retro Date listed on the policy. The policy will not provide coverage for any event which occurs prior to the Retro Date regardless of when it is reported.

personal injury[3]. We want the vendor to be responsible if its operations or products result in damages to the State. Commercial General Liability is the primary insurance coverage available to address these losses. Specialized coverages addressing limited perils will be discussed later and should be considered as necessary.

All state contracts should require that vendors maintain general liability insurance. In addition, it is recommended that the contract also require the vendor to endorse its general liability policy to include the State as an additional insured. This will ensure that claims made against the State as a result of the work performed by the vendor will be defended and paid by the vendor's insurance company and not the State's insurance.

The minimum limit of liability for this coverage should be $1,000,000 for each occurrence. Higher limits might be called for depending on the size of the contract.

Automobile Liability

Automobile Liability Insurance provides protection to a vehicle owner/driver, for claims made against them resulting from negligent operation of a vehicle that injures someone else or damages their property. If a vendor's operation involves the use of a vehicle for any reason in conjunction with the proposed contract, the vendor must have Automobile Liability Insurance with a minimum $100,000 limit of liability. Depending on the size of the contract and especially if the vendor's vehicles will be used on state property, we suggest the vendor have $1,000,000 limit of liability.

Workers' Compensation/Employer's Liability

Workers' Compensation insurance is mandated by law. It is intended to be the sole remedy for a worker's injuries and lost wages if he or she is injured on the job.

One notable exception to the sole remedy provision is for situations wherein an employer's action, or inaction, is so egregious as to allow for recovery of damages in Court. These rare and very specifically limited claims are called 'deliberate intent' or 'Mandolidis' claims and are not covered by a standard Workers' Compensation policy. Employer's Liability Coverage (which is often sold as a bundled package along with Workers' Compensation Coverage) provides this protection to employers. Vendors entering into state contracts must have Workers' Compensation and Employer Liability Coverages. The vendor must provide Workers' Compensation coverage as mandated by statute and must provide evidence of $1,000,000 per occurrence in Employer Liability Coverage.

Special endorsements may be needed for United States Longshoreman's & Harbor Workers and/or the Jones Act if work is being done on boats, docks, terminals

[3] Personal Injury coverage provides protection for such things as false arrest, malicious prosecution, libel or slander, wrongful entry or eviction, etc.

and other areas adjoining navigable waterways. Please ask for help if you find yourself in this situation.

Cyber Liability

Cyber Liability insurance provides protection from losses relating to Information Technology and other risks that may be associated with the use of the internet. It can provide protection for denial of service attacks, data destruction, hacking, cyber extortion, etc.; as well as needed investigative and public relations services in the event of an incident.

Any purchase involving access to confidential information, such as Personally Identifiable Information (PII), Personal Health Information (PHI) or Payment Card Industry (PCI) information that you maintain must require the vendor to have cyber liability coverage to protect the State if the vendor misuses our information. The vendor should have limits of at least $1,000,000 per occurrence and may need $3,000,000 or $5,000,000 per occurrence for medium or larger size contracts.

Builder's Risk/Installation Floater

This insurance provides protection for an agency's insurable interest in materials, fixtures and equipment used in the construction or renovation of a building. It provides protection until the work is accepted by the State.

During the term of the construction contract, the vendor must maintain in force, at its own expense, Builder's Risk / Installation Floater covering the vendor's (and subcontractors as may be necessary) labor, materials and equipment to be used for completion of the work performed under the contract against all risks of direct physical loss, excluding earthquake and flood, for an amount equal to the full amount of the contract improvements.

Commercial General Liability (GGL) coverage is much like Builders' Risk coverage, and it is possible that GCL would provide the protection needed. However, CGL polices generally have exclusions for property damage to the insured's own products, property and work. If the damage results from the insured's (contractor) work, or poor work, as opposed to a peril covered under a CGL policy – such as fire, wind, etc. – a CGL policy may not respond to that claim for damages. A Builder's Risk policy is meant to address claims resulting from the contractor's 'work' whereas a CGL policy is not. We do not recommend relying on CGL coverage only when undertaking new construction or expensive/extensive remodeling.

Professional Liability

Professional liability coverage protects the State in the event that it receives inadequate advice, services or designs from its vendor. If this exposure is present based on the services being sought, professional liability coverage should be required. Some examples of services that might require Professional Liability insurance would be accounting, architecture, software design, law, medicine, etc., which require the vendor to provide professional expertise to meet the contract obligations.

The vendor must maintain Professional Liability covering any damages caused by an error, omission or any negligent acts. Limits of not less than $1,000,000 must be provided.

Commercial Crime/Third Party Fidelity Coverage

This coverage is intended to protect the State in the event the vendor or one of its employees steals State property.

The vendor must maintain appropriate coverage for theft of State-owned property in the care, custody and control of the vendor or for property that may be stolen from the State while the vendor is on State property performing work under the contract. The amount of coverage should be based on the exposure identified, but in no event, less than $100,000 per occurrence when such coverage is called for.

Pollution Liability

This coverage protects the State if damages arise from the handling of hazardous materials or if work performed under the contract could create or exacerbate an environmental hazard. If the contract being contemplated involves, or may involve such an exposure, pollution liability coverage should be required

If Pollution Liability insurance is required, it should provide coverage for the vendor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, arising from the work or services performed under the contract. Coverage must be provided for both work performed on site, and during the transport of hazardous materials. A $1,000,000 limit of liability is the minimum acceptable limit of Pollution Liability insurance and higher limits should be required in cases where higher risks are involved.

Aircraft Liability

This coverage protects the State and its employees and property for damages arising from aircraft accidents. If the contract involves providing services through use of aircraft, including drones, the contractor should have Aircraft Liability coverage.

The vendor must maintain Aircraft Liability with limits of not less than $10,000,000 per occurrence and $1,000,000 per seat for passengers. As drones are a reasonably new exposure, please contact us for additional information regarding drone insurance.

Understanding the Acord Certificate of Insurance

1. Date the Certificate is prepared.

2. Producer is the Insurance broker that wrote the insurance policies for the insured.

3. Insured is the person or entity for whom the insurance policy is written and to which primary insurance coverage is extended and must be the legal name.

4. Insurance company providing coverage. There may be multiple Insurer companies as different types of policies could be issued by different companies.

5. Types of Insurance:
   a. General Liability – Make sure one of the boxes for claims made or occurrence is marked.
   b. Automobile Liability
   c. Umbrella/Excess Liability
   d. Workers Compensation and Employers Liability
   e. Other

6. Policy number – should have a number for each type of coverage

7. Policy Effective and Expiration Dates. If the contract falls beyond the expiration date, remember to request a new certificate for the next period.

8. Limits of Insurance – Must be the same or greater than required by the contract.
   a. General Liability – Per occurrence, damage to rented premises, personal and advertising injury, general aggregate, and products completed operations
   b. Automobile Liability
   c. Umbrella/Excess Liability
   d. Workers Compensation and Employers Liability
   e. Other

9. Description of Operations – This box will contain language if Additional Insured status has been afforded or may provide information regarding events or other type of provisions to the policy. The purpose of being an additional insured on a policy is to provide insurance coverage and rights to defense under the policy.

This provides the coverage necessary if a claim arises from the actions of the vendor, subcontractor, supplier, etc.

10. Certificate Holder is the person or company to whom the Certificate of Insurance is being mailed. No rights, privileges or insurance coverage are extended to a certificate holder. The certificate holder must be named as an Additional Insured in the Description of Operations box.

11. Cancellation Language Outlines the terms for providing notice about cancellation of the policy.

12. Authorized Representative – signed by the authorized representative of the Producer.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER West Virginia Board of Risk & Insurance Management 1124 Smith Street Suite 4300 Charleston, WV 25301 2	CONTACT NAME: PHONE (A/C, No, Ext): 304-766-2646 FAX (A/C, No): 304-558-6004 E-MAIL ADDRESS: brim.underwriting@wv.gov
	INSURER(S) AFFORDING COVERAGE — NAIC #
	INSURER A : National Union Fire Co of Pittsburgh PA — 19445
INSURED SPECIMEN 3	INSURER B : INSURER C : 4 INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS 8	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X WRONGFUL ACT X PROFESSIONAL 5 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC OTHER:			SPECIMEN 6	07/01/2017	07/01/2018 7	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 250,000 $ 0 $ INCLUDED $ NONE $ NONE $
A	AUTOMOBILE LIABILITY 5 ANY AUTO X OWNED AUTOS ONLY X SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			SPECIMEN 6	07/01/2017	07/01/2018 7	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ 8 $ $
	UMBRELLA LIAB OCCUR 5 EXCESS LIAB CLAIMS-MADE DED RETENTION $			6		7	EACH OCCURRENCE AGGREGATE	$ $ $ 8
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below 5	N / A		SPECIMEN 6 STOP GAP	07/01/2017	07/01/2018 7	PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 8 $ 1,000,000
	5			6		7		8

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

SPECIMEN

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CERTIFICATE HOLDER	CANCELLATION 11
SPECIMEN 10	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 12 M. Duke

QUESTIONS CAN BE DIRECTED TO THE WEST VIRGINIA BOARD OF RISK AND INSURANCE MANAGEMENT

(304)766-2646 OR (800)345-4669

OR EMAIL TO:

Robert A. Fisher, Deputy Director: robert.a.fisher@wv.gov

Melody Duke, Underwriting Manager: melody.a.duke@wv.gov

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