

Insurance Language in Contracts and Indemnification Agreements

Office of State Procurement
Agency Training

Insurance Language in Contracts and Indemnification Agreements

Procedures Manual Published by
The Office of Risk Management

<http://www.doa.la.gov/orm/PDF/ContractManual2-2018.pdf>

PURPOSE OF THE ORM MANUAL

- Explanation of the need for proper insurance language in bids and contracts
- Explanation of insurance terminology
- Insurance requirement recommendations
- Assessment of compliance & monitoring

GOAL

To limit your organization's liability using appropriate contract wording



ORM Recommendations

- ORM manual is a guide for recommended coverages and limits.
- The coverages, limits, and additional wording recommended may be altered when circumstances warrant.
- Special circumstances and questions should be discussed with entity's legal counsel.

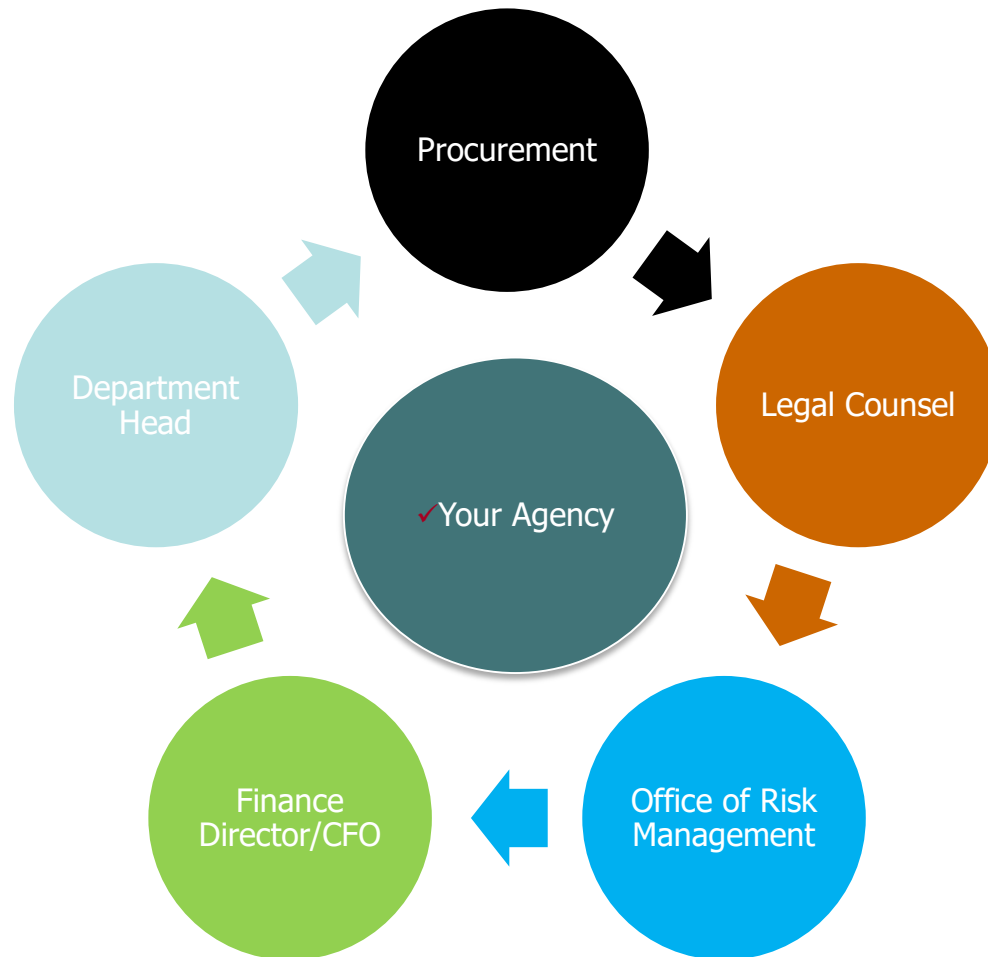
EXAMPLES OF BIDS AND CONTRACTS

- RFP - Request for Proposal
- ITB - Invitation To Bid
- Cooperative Endeavor (CEA)
- Construction Projects
- Leases
- Service (maintenance, consulting)
- Emergency
- Memorandum of Understanding (MOU)

First Things First...

- Who are the parties? What are they called in the contract? (*Contractor, Indemnitor, etc.*)
- What role does your entity play? (*ex:Lessor/Lessee*)
- What is the contract for?
- Who drafted the contract?
- Has the contract already been executed, or are the parties still negotiating?
- What are the surrounding circumstances? (*Take it or leave it job, two equal parties, etc.*)
- **What is the worst thing that can happen???**

Parties Involved in the Contracting Process

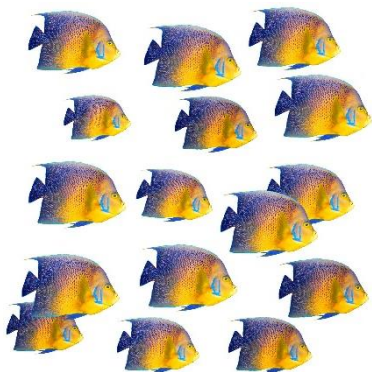


2 Levels of Agency Protection

1. Contractor's Insurance
Including Agency as Additional Insured
2. Indemnification/Hold Harmless Agreement

Liability Food Chain

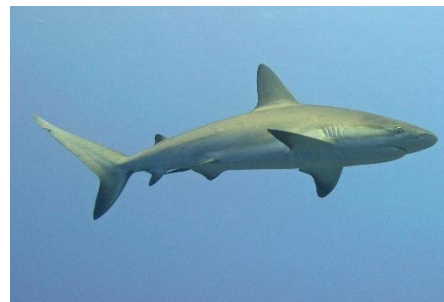
✓ Sub-subcontractor



✓ Subcontractor



✓ General Contractor



✓ Owner



WHAT'S NEEDED

- Insurance Coverage Types
 - Tailored to the kind of work being done and the exposures inherent in each contract
- Insurance Limits for Each Coverage
- Additional Insured Wording
 - Ongoing and Completed Operations
 - By Endorsement
- Indemnification/Hold-Harmless Agreement

REQUIRED TYPES OF INSURANCE COVERAGE

- I. Required in all contracts
 - Workers Compensation and Employers Liability
 - Commercial General Liability
 - Automobile Liability

- II. Required when needed
 - Workers Compensation Maritime
 - Professional Liability (Medical Malpractice)
 - Owners Protective Liability (OPL)
 - Surety, Fidelity, Performance Bonds
 - Pollution Liability
 - Wet Marine Vessel & Liability
 - Aviation Hull & Liability
 - Cyber Liability

WORKERS COMPENSATION

- Provides medical and wage benefits for the Contractor's employees while under contract with you
- Maritime (Jones Act and LHWCA) needed when work is performed over navigable bodies of water
- Employers Liability provides additional coverage for the employer for liability outside of the WC law

SPECIAL WORKERS' COMPENSATION ISSUES

- Exemption of Owners from Coverage
 - Corporate officers, LLC members, partners in partnership, sole proprietors
 - If performing work on the site at any time, must elect to provide coverage on themselves
- Indemnity if No Coverage:
 - Contractor will not have a cause of action or assert a claim against the State
 - State shall not be considered the employer or statutory employer of Contractor or its employees
 - Contractor will indemnify and hold harmless the state from any assertion or claim arising from performance of the contract

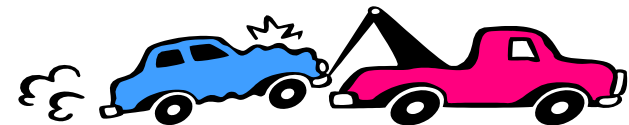
COMMERCIAL GENERAL LIABILITY

- Provides coverage for injuries and property damage arising out of the Contractor's operations and work for you
- Policy is broad:
 - On and Off Premises Operations
 - Products and Completed Operations
 - Liability assumed in contracts
 - Personal Injury and Advertising Liability
 - Broad Form Property Damage
- Exclusions

AUTOMOBILE LIABILITY

- Provides coverage for injuries and property damage arising out of the contractor's use of automobiles in their work for you
- Automobile designation symbols
 - #1 – Any Auto OR
 - #2, #8, #9 – Owned, hired & non-owned
- Waive only when contractor's work clearly does not involve the use of an automobile

Exhibit B: Lessees



PROFESSIONAL LIABILITY

- Provides coverage for the errors and omissions of designated professions
 - Accountants
 - Architects
 - Engineers
 - Medical Professionals
 - Attorneys
 - Hazard Experts
 - Information Technology (Tech E & O)

BONDS

- Types: Surety, Fidelity, Performance
 - Surety: Guarantees that the Other Party will meet financial obligations
 - Fidelity: Protects Agency from dishonest acts of the Contractor's employees
 - Performance: Guarantees Contractor's satisfactory completion of a project
- L.R.S. 38:2241(A)(2) – requires surety bond in all public construction contracts over 25K
- Contact Risk Manager or Legal for language and amounts

POLLUTION LIABILITY

- Provides specialized coverage for hazardous activities that could damage the environment
 - Hazardous materials transport
 - Underground storage tanks
 - Asbestos abatement
 - Spill Clean-up

WET MARINE

- Provides specialized coverage for the Other party's use of water vessels in their work for you
- Hull and Protection and Indemnity (P&I)
- Contact Risk Manager or Legal for language

AVIATION

- Provides specialized coverage for the Contractor's use of aircraft in their work for you
- Hull and Liability
- Contact Risk Manager or Legal for language

CYBER LIABILITY *(TECH E & O)*

- Provides specialized coverage for security breaches of confidential data, including inadvertent release, hacking, viruses, improper destruction, etc.
- 3rd party liability claims / Mandatory compliance fees
- See Chapter 6 of Contract manual for suggested wording

RECOMMENDED MINIMUM INSURANCE LIMITS

1. Workers Compensation = Defined by Louisiana Labor Code; Employers Liability \$1,000,000
2. Commercial General Liability = \$1,000,000 per occurrence, \$2,000,000 aggregate
3. Automobile Liability = \$1,000,000 per occurrence
4. Professional Liability = \$1,000,000 per claim
5. Surety, Fidelity, Performance Bonds = Based on contract value
6. Pollution Liability = \$1,000,000
7. Cyber Liability = \$1,000,000

RECOMMENDED MINIMUM INSURANCE LIMITS (continued)

- Exhibit A – Insurance Requirements for Contractors
- Exhibit B – Insurance Requirements for Lessees
(No Auto Risks)
- Exhibit C – Insurance Requirements for Joint Ventures
- Exhibit D - Insurance Requirements for New Construction, Additions and Large Renovations *(Flood Coverage below the I-10 Corridor has Changed)*

INSURANCE REQUIREMENTS

EXHIBIT A

INSURANCE REQUIREMENTS FOR CONTRACTORS

Workers Compensation

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included. **A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.**

Commercial General Liability

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general annual aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

Automobile Liability

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non owned automobiles.

INSURANCE REQUIREMENTS (continued)

- a. The Agency, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor. **ISO Forms CG 20 10 (for ongoing work) AND CG 20 37 (for completed work)** (current forms approved for use in Louisiana), or equivalents, are to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the Agency.
- b. Insurance shall be placed with insurers with a A.M. Best's rating of **A-:VI or higher**. **This rating requirement may be waived for workers compensation coverage only.**
- c. Contractor shall furnish the Agency with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.

INSURANCE REQUIREMENTS (continued)

Exhibit D - Insurance Requirements for New Construction, Additions and Large Renovations

A.5. Builder's Risk

a. Builder's Risk Insurance shall be in an amount equal to the amount of the construction contract including any amendments and shall be upon the entire work included in the contract. The policy shall provide coverage equivalent to the ISO form number CP 10 20, Broad Form Causes of Loss (extended, if necessary, to include the perils of wind, earthquake, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The policy must include architects' and engineers' fees necessary to provide plans, specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril, not to exceed 10% of the cost of the repair and/or replacement.

b. Flood coverage shall be provided by the Contractor on the first floor and below for all projects, ~~except as otherwise noted for projects along and north of the Interstate Corridor beginning at the Texas-Louisiana border at Interstate 10, east to the Baton Rouge junction of Interstate 12, east to Slidell junction with Interstate 10 to the Louisiana-Mississippi border.~~ ~~If flood is included in~~ The builder's risk insurance policy, ~~then the~~ sub-limit for flood coverage shall not be less than ten percent (10%) of the total contract cost per occurrence. If flood is purchased as a separate policy, the limit shall be ten percent (10%) of the total contract cost per occurrence (with a max of \$500,000 if NFIP). Coverage for roofing projects shall not require flood coverage.

~~c. On projects south of this corridor, flood coverage shall be provided by the State of Louisiana as the owner. The Contractor will be liable for the \$5,000 policy deductible from the Notice to Proceed date through the date of final payment of the project in the event of a flood loss.~~

d. A Specialty Contractor may provide an installation floater in lieu of a Builders Risk policy, with the similar coverage as the Builder's Risk policy, upon the system to be installed in an amount equal to the amount of the contract including any amendments. Flood coverage is not required.

e. The policy must include coverage for the Owner, Contractor and any subcontractors as their interests may appear.

ADDITIONAL INSURED

- Agency, its officers, agents, employees and volunteers
- ISO Forms CG 20 10 (ongoing operations) and CG 20 37 (completed operations) or equivalent
- Check boxes on certificate
- Wording on Certificate

"The State of Louisiana is added as an additional insured as afforded by written contract."

WAIVER OF SUBROGATION

- SUBROGATION:

The right of one who has taken over another's loss to take over the right to pursue reimbursement from a third-party

- Bi-lateral waiver on Workers Compensation
- Do not waive rights in a contract – mutual waiver
- L.R.S. 38:2195


What is a Certificate of Insurance?

- Snapshot in Time
 - If insurance coverage expires during the contract period, request an updated certificate to make sure insurance coverage has been renewed
- Does not actually convey any rights not granted in the policy or its endorsements
 - ORM also requires policy declarations page and cancellation provisions
- ORM requires that you maintain certificates for at least five years or the applicable prescriptive period
- Payment, acceptance of completed work, failure of Agency to require proof of compliance, or acceptance of non-compliant certificate does not release Contractor from the insurance or indemnification requirements

Let's Review a Certificate of Insurance!

- Verify that the Insured name is correct
- Verify that all coverages and limits are as requested
- Check A.M. Best ratings on insurance companies
- Confirm Agency's additional insured status
- Verify that your Agency is listed as Certificate Holder

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CERTIFICATE OF LIABILITY INSURANCE

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 REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DATE (MM/DD/YYYY) _____

PRODUCER
 Arthur J. Gallagher
 2500 Best Deal Street
 Call Us, La 225-292-3515

CONTACT NAME: Favorite Broker
PHONE (A/C, No, Ext): 225-292-3515
E-MAIL ADDRESS: Favorite_Broker@AJG.com
FAX (A/C, No): _____

INSURED
 Rich Contractor
 123 Main Street
 San Francisco, LA 45678

INSURER(S) AFFORDING COVERAGE

INSURER	NAIC #
INSURER A: CNA	
INSURER B: AIG	1234
INSURER C: LWCC	4123
INSURER D:	3412
INSURER E:	
INSURER F:	

COVERAGES

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 WHICH THIS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CERTIFICATE NUMBER: _____ **REVISION NUMBER:** _____

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	POLICY NUMBER	POLICY TERM (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC OTHER: _____ AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> ALLOWED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS B <input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE RETENTION \$ _____ C WORKERS COMPENSATION AND EMPLOYER'S LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		123456789	01/01/15	01/01/16	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 COMBINED SINGLE LIMIT (EA OCCURRENCE) \$ 1,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/> EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
			234567891	01/01/15	01/01/16	
			345678912	01/01/15	01/01/16	
			456789123	01/01/15	01/01/16	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 General Liability - Certificate Holder is an Additional Insured Per Attached Form CG 20 38 04 13 Per Written Agreement
 Waiver of Subrogation included. RE: Project #103

CERTIFICATE HOLDER
 Public Entity #1
 #1 Heartbreak Road
 TooManyLawyers, LA

CANCELLATION
 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 _____

Annotations:

- Subcontractor's Insurance Broker (points to PRODUCER)
- Name of contractor (it should match the name as written in the contract). (points to INSURED)
- Claims Made is not acceptable. (points to COMMERCIAL GENERAL LIABILITY)
- Current dates are required. (points to POLICY TERM and POLICY EXP)
- The two "each occurrence" boxes should total at least as much as required in your contract. (points to EACH OCCURRENCE and AGGREGATE)
- The totals in each box should be at least \$1 million. (points to LIMITS)
- This section should reference the job number, project name, and/or location. (points to DESCRIPTION OF OPERATIONS)
- This should name you. (points to CERTIFICATE HOLDER)
- Signed by the broker only. (points to AUTHORIZED REPRESENTATIVE)

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ACORD

CERTIFICATE OF LIABILITY INSURANCE

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 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).

DATE (MM/DD/YYYY)

PRODUCER

CONTACT NAME: _____
PHONE (A/C, No, Ext): _____
FAX (A/C, No): _____
ADDRESS: _____

INSURER(S) AFFORDING COVERAGE

INSURER A: _____ NAIC # _____
INSURER B: _____
INSURER C: _____
INSURER D: _____
INSURER E: _____
INSURER F: _____

COVERAGES

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.

CERTIFICATE NUMBER: _____ **REVISION NUMBER:** _____

INS. LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER _____ <input type="checkbox"/> AUTOMOBILE LIABILITY ANY AUTO <input type="checkbox"/> SCHEDULED AUTOS ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS HIRED AUTOS _____ <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED. _____ RETENTION \$ _____ <input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETORS/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below					EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ _____ MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ _____ GENERAL AGGREGATE \$ _____ PRODUCTS - COMP/OP AGG \$ _____ COMBINED SINGLE LIMIT (Ea accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ EACH OCCURRENCE AGGREGATE \$ _____ PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/> _____ E.L. EACH ACCIDENT \$ _____ E.L. DISEASE - EA EMPLOYEE \$ _____ E.L. DISEASE - POLICY LIMIT \$ _____

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached to this certificate)

THIS CERTIFICATE IS NOT VALID UNLESS SIGNED BY THE PRODUCER OR AN AUTHORIZED REPRESENTATIVE OF THE ISSUING INSURER(S).

PRODUCER: _____

AUTHORIZED REPRESENTATIVE: _____

SIGNED: _____

DATE: _____

This section should reference the job number, project name, and/or location.

General Liability - Certificate Holder is an Additional Insured Per Attached Form CG 20 38 04 13 Per Written Agreement
Waiver of Subrogation included. RE: Project #103

CERTIFICATE HOLDER

Public Entity #1
#1 Heartbreak Road
TooManyLawyers, LA

This should name you.

CANCELLATION

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

Signed by the broker only.

BE POLICIES BE CANCELLED BEFORE NOTICE WILL BE DELIVERED IN PROVISIONS.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/01/2011

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IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must 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 URProtected Insurance Agency Address, City, State, Zip Telephone: (xxx) xxx-xxxx Fax: (xxx) xxx-yyyy		CONTACT NAME: Agent Name PHONE (A/C No, Ext): (xxx) xxx-xxxx FAX (A/C No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:	
INSURED Other Party (Contractor/Lessee) Address City, State, Zip		INSURER(S) AFFORDING COVERAGE NAIC # INSURER A : Number One Insurance Company (A, XV) 1111 INSURER B : Best in Class Insurance Company 9999 INSURER C : 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 SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-ECCT <input type="checkbox"/> LOC	Y	Y	CGL123456	MM/DD/YY	MM/DD/YY	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" 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	Y	Y	AUTO56789	MM/DD/YY	MM/DD/YY	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DEDUCTIBLE RETENTION \$	Y	Y	UMBR3579	MM/DD/YY	MM/DD/YY	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	N/A	Y	WC22446688	MM/DD/YY	MM/DD/YY	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$ \$1,000,000 E.L. DISEASE - POLICY LIMIT \$ \$1,000,000

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

CERTIFICATE HOLDER State of Louisiana Agency Name, Its Officers, Agents, Employees and Volunteers Address, City, State, Zip Attn: Project # 12345678-AA-09	CANCELLATION 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 Insurance Agent/Broker Signature
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CG 20 37

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location described in the Schedule of this endorsement performed for that "products-completed operations hazard".

Additional insured only applies to the extent permitted

Additional insured is required by a contract or agreement, but the additional insured will not be broader than that which you are required to provide for such additional insured.

For these additional insureds, the following is added

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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Certificate of Insurance Checklist

- Current date of issue.
- Insured name must be the same as in the written contract.
- "Occurrence", rather than claims-made, box is marked
- The "Per Project Aggregate" box must be checked.
- All policy periods must be active and the contract date should fall within them. (Insurance Monitor should diary for policy expiration.)
- All coverages required by the RFP or bid specifications are listed.
- Limits for each policy must total amount of coverage required in contract.
- Description of operations must detail project, location and/or project number.
- Additional Insured and Waiver of Subrogation boxes are marked and language is included under "Description of Operations."

Checklist Continued...

- Certificate Holder must list your Agency name and address.
- Policy numbers are listed for each coverage.
- "Any proprietor/partner/executive officer/member excluded?" is marked No or excluded persons are listed under "Special Provisions" and not allowed on site.
- The Certificate should have an original signature from the Broker, not the Insured, as Authorized Representative.
- The Certificate must be accompanied by a separate "Additional Insured" Endorsement on Forms CG 20 10 and CG 20 37.
- The policy number referenced on the Additional Insured Endorsement should be the same as on the General Liability line on the Certificate.
- The Named Insured on the Additional Insured Endorsement should be the same as on the Certificate and as in the contract.
- A Primary Insurance Clause should be typed on the bottom of the Additional Insured Endorsement or CG 20 01.

Certificate of Insurance Reminder



✓ = Nothing



✓ = Piece of Paper with Your Name On It



✓ = Additional Insured Status Under Policy's Insured Contract Provision

A.M. Best Ratings

- Insurer rating company
- Financial Strength Rating: A++ to F

Secure

A++, **A+** (Superior)

A, **A-** (Excellent)

B++, **B+** (Good)

Vulnerable

B, **B-** (Fair)

C++, **C+** (Marginal)

C, **C-** (Weak)

D (Poor)

E (Under Regulatory Supervision)

F (In Liquidation)

S (Rating Suspended)

NR=Not Rated

A.M. Best Ratings (continued)

- Financial Size Category: I to XV

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
VIII	100 to 250		

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UNACCEPTABLE INSURANCE

- Limits do not meet insurance requirements
- No additional insured endorsement
- Company's A.M. Best rating below insurance requirements
- Risk retention groups (*unless A.M. Best rated*)
- Self-insurance funds (*except WC*)
- Claims-made coverage (*some exceptions*)

INDEMNIFICATION-HOLD HARMLESS

- The Trinity:
 - Indemnify = Indemnitor will **directly reimburse** Indemnatee for any payments made
 - Defend = Indemnitor/Insurer will **provide legal defense or pay defense costs** for Indemnatee
 - Hold Harmless = Indemnitor will **pay losses on behalf of** Indemnatee and will hold Indemnatee harmless from any financial loss (waiver of liability)

INDEMNIFICATION-HOLD HARMLESS (Cont)

- *"The Contractor agrees to save and hold harmless, protect, **defend**, and indemnify the State of Louisiana, Agency Name, its officers, agents, employees and volunteers..."*
- Both parties can agree to share responsibility when both contribute to a loss
- L.R.S. 38:2195 – State cannot assume another party's negligence

✓ Should defense be its own requirement?

Indemnification-Hold Harmless Agreement

Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.

Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent.

Indemnification-Hold Harmless Agreement

Type of Contract: Computer Software Services provided by an Agency to a Company

Agency agrees to indemnify, defend and hold harmless Company and its officers, directors, employees, **contractors, subcontractors**, and agents (the "Company Indemnified Parties") from and against any and all third party claims, demands, costs, damages, settlements and liabilities (including all reasonable attorneys' fees and court costs) of any kind whatsoever, arising directly or indirectly out of (a) the alleged infringement or misappropriation of intellectual property by Agency in the performance of the Services **or arising from Company's use of the Deliverables**; (b) the gross negligence or willful misconduct of Agency; and (c) **a breach of this Agreement by Agency**.

Company Indemnified Parties shall provide Agency with prompt written notice of any such claim. **Company** shall have the authority to provide **the defense counsel of their choice at Agency's sole cost and expense** for the defense of any such claim. Agency and Company Indemnified Parties must participate in the defense of any claim through their own counsel, and at their own expense.

Indemnification

- As a general rule, you want to make sure that **someone** is responsible for the damages
 - If everyone just indemnifies each other, leave it up to the court to interpret
- Absent exceptional circumstances, the person who is **legally** responsible for the damages should also be the person who is **factually** responsible for the damages
 - Don't take on liability that you don't create if you don't have to (ex: take it or leave it with limited bargaining power)
 - Beware of relying on a contract that puts too much of your fault on someone else

COMMON ERRORS

- Neglecting to review certificates
- Incomplete insurance requirements
- Using outdated insurance requirements
- NO insurance requirements in bid
- NO indemnification/hold-harmless agreement
- Insurance Company A.M. Best Ratings - taking company's word on it
- Not enforcing insurance requirements

Other Insurance Terminology

- See Manual Chapter 3, Page 6
- Occurrence vs. Claims-Made Policies
- Insurance Coverage Definitions & Examples
- Indemnification Agreement Explanation

OSP Agency Training - Office of Risk Management

Additional Tools

Insurance Language in RFPs, Bids & Contracts					
Use Insurance Requirements for Contractors Exhibit A. Add wording to Section A. Minimum Scope and Limits of Insurance when warranted.					
	<u>Question:</u>	<u>If No:</u>	<u>If Yes:</u>	<u>Limits:</u>	<u>Wording to be added to Exhibit A, Section A:</u>
1	Is contractor providing professional services, including architect, engineer, lawyer, CPA, but excluding direct medical providers?	Professional Liability is not needed	Add Professional Liability wording	Minimum \$1,000,000	<u>Professional Liability (Errors and Omissions):</u> Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 36 months from the expiration date of the policy, if the policy is not renewed.
2	Is contractor providing professional services of direct medical providers?	Professional Liability is not needed	Add Professional Liability wording	Minimum \$1,000,000	<p>If contractor is providing medical malpractice coverage, use the following: <u>Professional Liability (Errors and Omissions):</u> Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$1,000,000. Claims-made coverage is acceptable. Coverage through the Patients' Compensation Fund (PCF) is also acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 36 months from the expiration date of the policy, if the policy is not renewed.</p> <p>If the State is providing medical malpractice coverage, use the following: <u>Professional Liability (Errors and Omissions):</u> Professional Liability will be provided through the State of Louisiana Medical Malpractice Act (LA R.S. 40:1237.1 et seq) and is subject to all the terms and conditions of the Act.</p>
3	Is contractor providing IT consulting services?	Professional Liability is not needed	Add Professional Liability wording	Short-term contract, very limited scope, low cost \$1,000,000 1 year+ contract, broad scope, very high cost \$3,000,000	<u>Professional Liability (Errors and Omissions):</u> Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 36 months from the expiration date of the policy, if the policy is not renewed.

Questions?

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