



Procedures Manual
For
Insurance Language in Contracts
And
Indemnification Agreements

Revised December 2019

PREFACE

This manual has been developed to provide useful information on insurance language to use in agency contracts with outside vendors, contractors or lessees. It acts as a guide for recommended limits, coverage, and language. Any unique circumstances or demands that necessitate deviation from these recommendations should be discussed with ORM and/or agency legal counsel. The manual does not supersede higher insurance limits required by state statute for certain types of contracts.

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INTRODUCTION TO THE MANUAL

DISTRIBUTION

This manual should be distributed to agency personnel who

- (1) Prepare RFP or Bid Documents
- (2) Negotiate Contracts
- (3) Review Certificates of Insurance
- (4) Prepare Indemnification/Hold Harmless Agreements

PURPOSE

The State of Louisiana, all State Departments, Agencies, Boards and Commissions (herein after referred to as Agency) must require suppliers, contractors, subcontractors and tenants (herein after referred to as the Other Party to the Agency contract) to maintain insurance covering the Other Party against claims or judgments arising from their products, operations, actions or activities while under contract for the Agency. The Agency must also require that the Other Party add the Agency as an "additional insured" to their insurance policies to protect the Agency, its officers, officials, employees and volunteers against any negligence of the Other Party. A Certificate of Insurance submitted from the Other Party to the Agency is a practical way to confirm that appropriate coverages and additional insured terms are in force.

This manual explains how to establish insurance requirements for contracts with contractors, tenants and vendors and how to monitor their compliance with those requirements. It will provide guidelines and specific wording

CHAPTER 2

CONSIDERATIONS FOR DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

Review the language as shown in Chapter 6, Insurance and Indemnification found in this manual.

1. Determine

B. COMMONLY ENCOUNTERED INSURANCE COVERAGES

1. Commercial General Liability Insurance

This coverage provides protection against bodily injury and property damage claims arising from the operations of a contractor, supplier or tenant. Coverage applies to premises

U.S. Longshore and _____: Applies to workers who load or unload vessels and repair or build vessels, and perform these duties on or over navigable waters of the U. S., including any adjoining pier, wharf, dry dock, terminal, marine railway or similar facility normally used to load or unload ships and vessels and to repair or build vessels.

Defense Base Act (DBA): Applies to overseas civilian workers providing services on public work contracts.

C.

insurance and an indemnification/hold harmless agreement. If the Other Party is a residential tenant, they may provide a renters policy, which is commonly referred to in the insurance industry as an HO-4 policy, along with the indemnification/hold harmless agreement.

Case #2 Other Party Owns Building and Leases It to Agency

If the Agency leases a building from an Other Party, the Other Party (owner of the building) shall provide coverage on the building structure and all of the non-state owned contents. The Agency shall provide coverage for State-owned contents only. Again, an indemnification/hold harmless agreement should be required from the Other Party to protect the Agency from the negligent actions of the Other Party.

Case #3 Other Party Owns Building on Agency Land

The Other Party shall provide proof of insurance as follows:

- a. Property coverage using, at least, the Causes of Loss-Basic Form (sometimes referred to as fire and extended coverage) with the covered perils defined as fire, lightning, explosion, windstorm, hail, smoke, aircraft or vehicles, smoke, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action, and
- b. Insure the building and contents to at least 90% of the replacement cost.
- c. The Agency should also be added as an additional insured on the Other Party's commercial general liability policy and the Other Party shall issue an indemnification/hold harmless agreement protecting the Agency from the negligent actions of the Other Party.

Case #4 Agency

The Agency should request an indemnification/hold harmless agreement from the owner of the land (Other Party) for the negligent actions of the Other Party not relating to occurrences which are the negligence of the State.

9. Builders Risk

This provides property coverage for buildings under construction. It protects both the owner and the contractor because b167()-167uteW* 1 108.00 Gr(u)-9(4 f 262.25 T0/11 0 0 12)-8(ere18.7

Surety: Guarantees that the Other Party will meet its financial obligations (paying employees, subcontractors, suppliers, etc.) during the term of the contract

Fidelity (Dishonesty)
employees

Performance

The type of work being done will dictate which bonds are applicable. L.R.S. 38:2241(A)(2) requires that a surety bond be provided by the contractor for all public construction contracts over \$25,000.

11. Crime Coverage

This protects the Other Party from the loss of property or money due to the criminal actions of a third party. Examples include break-ins where there is obvious forced entry and hijacking of armored cars transporting money. Policy limits are determined based on the estimated maximum amount of property/funds that would be targeted for theft at any one time.

12. Cyber Liability

This provides coverage for security breaches of confidential data, including inadvertent release, hacking, viruses, improper destruction, etc. Data includes corporate confidential info (CCI), personal financial info (PII), personal health info (PHI), and payment card info (PCI) stored in electronic format. The coverage would pay for not only liability for a third-

15. Waiver of Subrogation

Waiver of subrogation means that one party relinquishes the right to seek reimbursement for a loss they have paid from the party responsible for that loss. It is often required that a waiver of subrogation be added to a Contractor's workers compensation policy to prevent the workers compensation insurer from paying the claim of

CHAPTER 4

GUIDELINES FOR DETERMINING WHICH EXHIBIT TO USE

Although the Agency may enter into a variety of contracts each year, most of these contracts may be grouped into a few categories for insurance purposes. The Exhibits at the end of this manual provide standardized forms suitable for most contracts. This chapter provides guidelines for the exhibits.

The first two (2) sets of insurance specifications at the end of the manual have been developed for the most common situations that the Agency will encounter:

- Exhibit A - Insurance Requirements for Contractors
- Exhibit B - Insurance Requirements for Lessees

Exhibit A is the broadest set of requirements. While its requirements are broader than needed for tenant or other similar contracts, it can be used in those situations also. For example: Exhibit A requires Automobile insurance. Automobile insurance is not customarily required in some contracts. Exhibit B is identical to Exhibit A, but deletes the Automobile requirement.

If the scope of the contract fits into more than one category, use the broadest applicable language. For example, if a vendor will install and maintain the product or perform other services for the Agency, the vendor should be considered as a contractor for the purpose of insurance requirements and the broader language of Exhibit A should be used.

When the agency is entering a joint venture (Exhibit C), contact for special wording during the preparation of the joint venture contract or any RFP or bid specifications related to it. The Indemnification Agreement for joint ventures needs to be drafted separately because of the

EXHIBIT A

Janitorial Services
Movers
Equipment Maintenance
Road Maintenance
Towing Services
Tree/Landscape Services
Minor
Construction/Remodeling
Welding
Plumbing
Painting
Electrical
Fireworks
Engineers*
Attorneys*
Architects*
Consultants*
Concessionaires
Supplies
(Installation required)
Most Cooperative Endeavor
Agreements (CEAs)

EXHIBIT B

Leases
Tenants
Renters

Use of Premises for:
Weddings
Club Functions
Meetings
Dances
Craft Exhibits
Classes
Animal Shows

*Use of Property for
Recreational Activities:*
Sporting Events
Picnics
Camping

EXHIBIT D

Large New Construction
Building Additions
Building-wide Renovations

* Additional insurance language may be needed. See Chapter 5.

(C) is a result of the contract. When the joint venture (C) subcontracts with either Subcontractor D or E, then the Subcontractor should provide insurance coverage(s) as in any standard contract in favor of the Joint Venture (C). A problem arises when the Other Party (B) enters into a contract with Subcontractor (E) that has nothing to do with the Joint Venture (C). The Other Party (B) should hold harmless the joint venture for its contractual relationships directly with Subcontractor (E) for operations which do not arise out of the Joint Venture (C). Any work done by a contractor/subcontractor on behalf of the joint venture should be contracted for/by the joint venture and not the individual parties.

With respect to the Joint Venture, if it can be determined that the claim or occurrence was a direct result of a negligence of the Other Party (B) then the Other Party

CHAPTER 6

INSURANCE AND INDEMNIFICATION

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 24 months from the expiration date of the policy, if the policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium.

- F. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the

0.00000912 0 612 792 reW* nBT/F3 9.96 Tf1 0 0 1 108.02 60000912 0 612 792 reW* nBT/F3 9.96 Tf1 0 0 1 1

the

- K. The acceptance of the completed work, payment, failure of the Agency to require proof of -compliant certificate of insurance shall not release the Other Party from the insurance requirements and indemnification agreement obligations.
- L. Additional insurance may be required on an individual basis for hazardous activities and specific service agreements. If such additional insurance is required for a specific contract, that requirement should be added to the list of required coverages found in the appropriate Exhibit.
- M. If the Other Party does not continue to comply with all of the insurance requirements at any time during the contract or at contract renewal, the Agency has the following options:
 - 1. Payments to the Other Party may be withheld until the requirements have been met;
 - 2. The Agency may pay any renewal policy premiums and withhold such payments from any monies due the Other Party;
 - 3. The Agency may suspend, discontinue or terminate the contract.

CHAPTER 7

OBTAINING PROOF OF COMPLIANCE

It is standard practice for the Other Party to submit a Certificate of Insurance as proof of compliance with insurance requirements contained in any RFP, widely accepted form in the insurance industry. Other forms are acceptable if approved by the Department of Insurance. Contact ORM if you have questions regarding the acceptability of a form. The Certificate must be signed by an authorized representative of the Other Party's insurer and sent to the Agency before work can begin.

The Certificate is for informational purposes and it imparts no rights upon the Certificate Holder that have not already been provided in the actual insurance policy. The insurance codes of some states limit Certificate H Certificate H
the Agency should also obtain a signed Indemnification/Hold Harmless Agreement in addition to Certificates.

Items that must be added by endorsement to the Other Party's insurance are not automatic, including naming the Agency as an additional insured, providing a waiver of subrogation in favor of the Agency, and any specific notification requirements. The Other Party's insurance agent should obtain all necessary endorsements first and then issue the Certificate of Insurance describing the coverage that has already been put in place.

LA R.S. 22:890 and the Louisiana Department of Insurance (LDI)

Also, an example of a standard Certificate of Insurance is included to illustrate the recommended insurance coverages and limits.

Certificate Review Checklist

No**	Yes	
		Date of issue is current

Producer: Name and contact information of the insurance broker/agency is listed

Example Certificate of Insurance

[Click here for Example Certificate in pdf format](#)

EXHIBITS

The following exhibits are encouraged to be used as is, with as few modifications in wording as possible.

- Exhibit A - Insurance Requirements for Contractors
- Exhibit B - Insurance Requirements for Lessee (No Auto Risks)
- Exhibit C - Insurance Requirements for Joint Ventures
- Exhibit D - Insurance Requirements for New Construction, Additions and Large Renovations
- Exhibit E - Indemnification/Hold Harmless Agreement

EXHIBIT A
INSURANCE REQUIREMENTS FOR CONTRACTORS

the Agency, its officers, agents, employees and volunteers

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for

EXHIBIT C

INSURANCE REQUIREMENTS FOR JOINT VENTURES

The Contractor which enters into a joint venture with the Agency shall purchase and maintain for the duration of the joint venture insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. **Workers Compensation**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of . 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.

2. **Commercial General Liability**

Commercial General Liability insurance

primary. If it is not clear as to the negligent party in the event of a loss to the negligent act that caused the loss, both the Agency's insurance shall share equally in the payment of the claim.

2. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Agency, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor in conjunction with the Joint Venture.

3. All Coverages

- a. All policies must be endorsed to require 30 days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits.
- b. The acceptance of the completed work, payment, failure of the Agency to require proof of

copies of all required insurance policies at any time.

4. Upon failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at

the insurance limit. Example: Renovation on a \$33,000,000 building would have a calculated \$3,000,000 combined single limit of coverage (33,000,000 times .10 = 3,300,000 and then rounding down to \$3,000,000). If the calculated limit is less than the minimum limit listed in the above chart, then the amount needed is the minimum listed in the chart. Maximum per occurrence limit required is \$10,000,000 regardless of building value. The per project aggregate limit is then calculated as twice the per occurrence limit.

3. **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.

4. **Excess Umbrella**

Excess Umbrella insurance may be used to meet the minimum requirements for Commercial General Liability and Automobile Liability only.

5. **Builder's Risk**

a.

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).

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. 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.

- b. Neither the acceptance of the completed work nor the payment thereof shall not release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Agency for payment of premiums or for assessments under any form of the policies.
- d. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, its officers, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

- 1. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers ~~with a Best's Rating of (A) or higher. The total reimbursement shall be \$4,000,000 per year for compensation coverage only.~~

G.

EXHIBIT E