

Insurance Language in Contracts and Indemnification Agreements



Louisiana Chapter

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Insurance Language in Contracts and Indemnification Agreements

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The Office of Risk Management

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PURPOSE OF THE 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

- This 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
- Construction Projects
- Leases
- Service (maintenance, consulting)
- Emergency

2 Levels of Agency Protection

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

WHAT'S NEEDED

- Insurance Coverage Types
- Insurance Limits for Each Type
- Additional Insured Wording
- 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

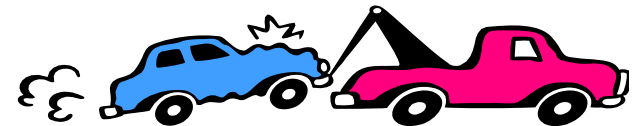
- Provides medical and wage benefits for the Other Party's employees while under contract with you
- Maritime (Jones Act and LHWCA) needed when work is performed over navigable bodies of water
- Employers Liability provides additional coverage for the employer for liability outside of the WC law

COMMERCIAL GENERAL LIABILITY

- Provides coverage for injuries and property damage arising out of the Other Party'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 Other Party's use of automobiles in their work for you
- Automobile designation symbols
 - #1 – Any Auto OR
 - #2, #8, #9 – Owned, hired & non-owned



PROFESSIONAL LIABILITY

- Provides coverage for the errors and omissions of designated professions
 - Accountants
 - Architects
 - Engineers
 - Medical Professionals
 - Attorneys
 - Hazard Experts

BONDS

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

AVIATION

- Provides specialized coverage for the Other Party's use of aircraft in their work for you
- Hull and Liability
- Contact ORM for language

CYBER LIABILITY

- 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

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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.

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."

INDEMNIFICATION-HOLD HARMLESS

- Indemnify = Pay on behalf of
- H-H = Waiver of liability
- Protects the agency from the negligence of the Other Party
- Provides defense of claims/suits and payment of damages

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

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.

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

Certificates of Insurance

- Acord™ Form (ISO)
- Confirms the types and limits of insurance and special wording
- Used in place of reviewing policies
- Must be signed by authorized representative
- Must be requested annually

Certificates of Insurance (Continued)

- Review is essential!
- Verify that all coverages and limits are as requested
- Check A.M. Best ratings on insurance companies
- Verify that the Insured name is correct
- Confirm additional insured status
- Verify that your Agency is listed as Certificate Holder
- Checklist – Manual Page 24

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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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

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*)

Other Insurance Terminology

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

Questions?

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