

## Risk Management Office Contract Insurance Guide

Insurance (Purchasing: Chapter 6, Appendix A, pages 6-51,52)

### A. The [contractor][vendor] shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts (as appropriate for the [contractor][vendor] operations:

- *The State's purpose in contractually requiring appropriate vendor insurance is to guarantee service performance, provide a means for protection against third party claims, and insure that the State is contracting with responsible vendors (those financially able to perform). The reality of our litigious society makes the State a likely target of a lawsuit whenever a vendor injures a third party during performance. The following points should be considered when any vendor is being evaluated for insurance exposures:*
  - *The extent to which performance of the agreement may pose a risk of damage to State property or injury to personnel;*
  - *The nature of the [contractor][vendor] business operations, including whether a motor vehicle is used to provide services or products under the contract.*
  - *The length of time that the contractor will be on State property during performance of the work, and the nature of the services being performed there, (e.g. handling hazardous equipment or materials);*
  - *Whether the vendor will be interacting with State clients, students, and/or persons entrusted to the State's care;*
  - *The likelihood, that regardless of the nature of the performance, that the vendor may be publicly perceived as being an agent of the State, or otherwise identified with the State program.*
- *We recommend that you consult with your servicing legal counsel in cases where there may be questions about requiring insurance in any particular procurement, modifying or waiving standard insurance language, or accepting "self insurance" as alternatives to standard insurance coverage. Risk Management Office personnel may also be of assistance.*
  - *There are situations (very few) where the State may want to assume a risk, following a careful review. For example, the risks to the State may be low, and coverage may be cost prohibitive to an individual. If such an arrangement is being contemplated, all relevant information (such as a description of the work to be done, the location where the work will be performed, a description of the oversight to be performed by the state, and contact information for the State employee responsible for oversight) should be obtained.*
  - *Many professional [contractors][vendors] resist traditional contractual indemnification clauses. The result is the inability of the State (in some cases) to successfully demand desired limits of insurance liability and indemnification. The alternative is to accept [contractor][vendor] indemnification limited to the dollar value of the contract in question.*
    - *Suggested contract language to deal with this conflict: "Except for damages and claims arising out of bodily injury (including death) and damage to tangible property, the contractor's maximum liability to the State arising for any reason relating to Contractor's performance of this Agreement, pursuant to the indemnification obligation in Special Provisions paragraph 3, shall be limited to the total fixed price for services provided in this agreement".*

- 1) **Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.**
  - o *Employer's liability is a standard part of worker's compensation (WC) coverage.*
  
- 2) **General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage:**
  - *"Bodily injury" means bodily harm, sickness, or death. "Personal Injury" may involve damages of a physical, emotional or financial nature. "Property damage" means damage to or loss of use of tangible property.*
  - *"Automobile Liability" coverage is separate from coverages found in a CGL policy. If a motor vehicle is used to provide services or products under the contract, the vendor/contractor should have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business.*
  - *The Commercial General Liability (CGL) policy (designed to protect the insured from third party claims resulting from the insured's negligent behavior or those for whom the insured is responsible) replaced in 1986 the comprehensive general liability policy. Available in both occurrence and claims-made forms, it includes liability coverages for bodily injury, property damage, personal injury, products and completed operations. Coverage is provided for most of the premises, products, completed operations, personal injury, advertising, and contractual liability exposures of an organization. Unlike older forms that required endorsements to broaden coverage, the CGL provides very broad coverage that can be narrowed by endorsement.*
    - o *Products-Completed Operations: Pertains to injury or damage resulting from the use of a product, or improperly performed work.*
    - o *A Homeowner Liability policy with a "Home Business Extension" may suffice as a viable substitute for a CGL policy in special circumstances involving sole proprietors.*
  - *Owners & Contractor's Protective liability coverage provides a separate limit of liability for the State, and could be an adequate substitute for an additional insured endorsement.*
  - a) **Combined single limit of \$600,000 (\$1,000,000) if written on an occurrence basis.**
    - *Combined Single Limit (CSL) means the dollar amount indicated pertains to the maximum limit of liability for an insurance policy, whether the loss exposure is bodily Injury, property damage, or any combination thereof.*
    - *Occurrence Basis: The term occurrence refers to incidents that occur during the policy period (regardless of whether the policy is still in effect at the time the claim is made), and policy limits that are not diminished by claims (example: a vendor may experience 10 accidents during a one-year policy term, and the \$1,000,000 occurrence limit would apply separately to each accident).*
    - *The CGIA (Colorado Governmental Immunity) limits of \$150,000/\$600,000 are not practical increments for insurance purchases.*
  - b) **Any aggregate limit will not be less than \$1,000,000 (\$2,000,000).**
    - *The insurance industry standard is \$2,000,000 for aggregate limits.*
    - *The term aggregate (annual) refers to the fact that a policy limit of \$1 million may be reduced by claims presented against the policy. For this reason, vendors may be required contractually to purchase additional coverage to replenish the available limits to \$2million if claims reduce the annual aggregate below \$600,000.*

- c) **Combined single limit of \$600,000 (\$1,000,000) for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends two years beyond the performance period of the contract.**
  - *Professional Liability E&O coverage protects companies and individuals against loss (damages and defense costs) resulting from acts, errors or omissions in their performance of professional duties. Common claims allege negligence, misrepresentation, design errors, violation of good faith and fair dealing and inaccurate advice. Underwriting for professional policies includes exclusions for "insured vs. insured" scenarios; and does not contemplate the inclusion of exposures beyond the specific insured.*
    - *A "claims-made" policy provides coverage for an injury or loss if the claim is first reported or filed during the policy term. Vendors (usually those with Professional Liability coverage on a project-specific contract) should agree to purchase a two-year extended reporting period following the contract completion date.*
      - *"Malpractice" is the handling of a case by a physician or other professional in a manner not agreeing with accepted methods, and resulting in injury. Also, professional conduct lacking in reasonable skill or judiciousness."*
- d) **If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.**

**B. The State of Colorado shall be named as an Additional Insured on all (CGL and Auto) liability policies.**

- *An "additional insured" endorsement protects against claims presented against the State, which arise out of the vendor's operations. The term is not synonymous with "additional named insured" or "co-insured". Also, a vendor that presents a Professional exposure would not be expected to provide an "additional insured" endorsement.*
  - *"Additional named insured" status is not available in the insurance market. The State requires "additional insured" status, which provides the State protection for claims that arise out of the [contractor][vendor] operations.*
- *Owners & Contractor's Protective liability coverage provides a separate limit of liability for the State, and could be an adequate substitute for an additional insured endorsement.*
- *An "additional insured" endorsement acts as support and validation for the required indemnification element of the contract:*
  - *Chapter 6, Appendix A, page 6-97, Special Provisions*  
*To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.*
    - *This indemnification requirement is in conflict with some professional vendors that limit indemnification to the dollar value of the contract.*
      - *Suggested contract language to deal with this conflict: "Except for damages and claims arising out of bodily injury (including death) and damage to tangible property, the contractor's maximum liability to the State arising for any reason relating to Contractor's performance of this Agreement, pursuant to the indemnification obligation in Special Provisions paragraph 3, shall be limited to the total fixed price for services provided in this agreement".*

- Chapter 6, Appendix A, page 6-57 Governmental Immunity  
Notwithstanding any other provision of this [contract] to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et.seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, et. seq., CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, et. seq., CRS, as now or hereafter amended.
  - *The requirement to include this reference to the Colorado Governmental Immunity Act and Risk Management Act is a tool to counter efforts by the [contractor][vendor] to transfer their exposures to the State by proposing their contractual language.*

**C. The insurance shall include provisions preventing cancellation without 60 (45) days prior notice to the State by certified mail.**

- *CRS 10-4-109.7 specifies 45 days.*

**D. The [vendor][contractor] shall provide certificates showing adequate insurance coverage to the State within 7 working days of award or contract execution, unless otherwise provided.**

- *Most certificates of insurance will be received on a standard ACORD form, (the Association for Cooperative Operations Research and Development is a nonprofit insurance association whose mission is to facilitate the development and use of standards for the insurance) which should be reviewed to determine the following:*
  - *That the type and amount of insurance required has been purchased.*
  - *That the expiration date of the policy has not passed.*
  - *That required coverage (normally built-in to a CGL) has not been deleted by endorsement (for example: Products-Completed Operations (pertains to injury or damage resulting from the use of a product, or improperly performed work).*
  - *Note the existence of "Excess Liability" and "Umbrella" coverage. Both provide a means for an insured to broaden coverage beyond underlying forms.*
  - *That the State is shown as an additional insured. A CGL certificate should reference Additional Insured status at the bottom of the form under the caption "Description of Operations..."*
    - *Watch for certificates that show the State as a "certificate holder", rather than an "additional insured".*
  - *That CGL and WC policies include a Waiver of Subrogation endorsement (if applicable). A certificate should reference Waiver of Subrogation status at the bottom of the form under the caption "Description of Operations..."*
    - *Subrogation pertains to an insurance company standing in the shoes of its insured, in an effort to be reimbursed by a responsible party for claims it has had to pay. Waiver of Subrogation endorsements can be added to Workers' Compensation and Commercial General Liability insurance contracts; and that is a recommended procedure, (as long as it is applied to every insured at a construction site).*
  - *That the agreed upon number of days for Cancellation Notice is indicated in the bottom right corner of the certificate form. Note that the operative phrase in the ACORD cancellation notice block is "the issuing company will endeavor to mail".*

- E. If the contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance.**
- **Other public entities should be reminded of like interest reciprocity.**

### **Builder's Risk Information**

#### What is Builder's Risk coverage?

Builder's Risk coverage is referred to in the State's property policy as "Property in the Course of Construction". Generally, it provides protection against the same perils (fire, wind, hail, theft, etc.) as found in most property insurance policies. However, it pertains only to buildings under construction (being built) and additions to existing buildings. Also, it extends coverage to such things as materials, architect/engineer fees and testing; and deals with "permission to occupy" issues. Projects valued at less than \$1,000,000 are generally considered to be of a "remodeling" variety.

#### Evaluation of Need

When a State agency is structuring construction project needs, the following variables and alternatives should be considered:

- Is the project valued at more than \$1,000,000? If so:
  - the contractor could provide the Builder's Risk insurance policy for the State.
    - deductibles and policy limits would be agreed upon contractually.
    - The contractor would be required to protect the state's interest by including the State as an additional insured in a policy purchased by the contractor (pursuant to contract).
  - an additional premium could be paid by the State agency to expand coverage under the State's master property policy.
    - the State manager would have to contact and provide project details to the State's broker , Elma Kinnard, Marsh, Inc., (303) 308-4500.
    - claims would be subject to a \$10,000 deductible, and losses would not diminish the aggregate deductible.
  - the State agency could purchase a separate insurance plan.
    - the State manager would have to contact and provide project details to the State's broker, Elma Kinnard, Marsh, Inc., (303) 308-4500.
    - the \$10,000 deductible may be reduced to a lesser amount.
- Is the project valued at less than \$1,000,000? If so,:
  - The State's master property insurance policy provides coverage for Builder's Risk exposures. However, there must be compliance with the conditions listed below to validate coverage:
  - Claims would be subject to a \$10,000 deductible, and losses would not diminish the aggregate deductible.
  - The vendor contract would have to clarify that:
    - the State would provide the "Builder's Risk" coverage.
    - what the deductible and limit amounts were to be.
    - contractor and sub-contractor identification would have to be provided to the State's broker for inclusion in the State policy as additional insured parties.

# ACORD CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)  
08/02/00  
On Insur. May

**PRODUCER**  
HRH of Denver  
720 S. Colorado Blvd Ste PH N  
P.O. Box 469025  
Denver, CO 80246-9025

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.

**INSURED**  
Premisys Support Group, Inc.  
747 Sheridan Blvd. #1A  
Lakewood, CO 80214

**COMPANIES AFFORDING COVERAGE**

COMPANY  
A Ohio Casualty Insurance Company

COMPANY  
B California Indemnity Insurance

COMPANY  
C

COMPANY  
D

**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.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT <input checked="" type="checkbox"/> PD Ded:500	52186424	08/24/00	08/24/01	GENERAL AGGREGATE \$2,000,000 PRODUCTS-COMP/OP AGG \$2,000,000 PERSONAL & ADV INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$100,000 MED EXP (Any one person) \$5,000
A	<input checked="" type="checkbox"/> 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	52186424	08/24/00	08/24/01	COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY-EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
A	<input checked="" type="checkbox"/> EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	BX) 52186424	08/24/00	08/24/01	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
B	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input checked="" type="checkbox"/> EXCL	E1064605A	05/01/00	05/01/01	<input checked="" type="checkbox"/> STATUTORY LIMITS EACH ACCIDENT \$100,000 DISEASE-POLICY LIMIT \$500,000 DISEASE-EACH EMPLOYEE \$100,000
	OTHER				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**  
re: Telecommunication-Network & Premise Wiring

**CERTIFICATE HOLDER**  
State of Colorado  
State Purchasing Office  
225 E. 16th Ave. #802  
Denver, CO 80203

**CANCELLATION**  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.  
AUTHORIZED REPRESENTATIVE  
*Julia N. Weiss*

45  
by  
5/11/00