

Risk Talk: Insurance Requirements in Contracts

Megan Dobbyn, Procurement & Support Services

Michael Beatty, Enterprise Risk Management



Agenda

- Insurance Requirements in Contracts Overview
- SF State's Insurance Requirements
- Indemnification Language
- Roles of Procurement and Risk Management
- Exceptions & Determining Factors



Insurance Requirements in Contracts

Why do we have them?

- To ensure the other party is financially able to fulfill the requirements in the contract should there be a loss.
- When an injury occurs, and a claim is brought, the contract, insurance requirements and supporting documents will be crucial to the determination of fault and financial responsibility.

Example: Santa Monica Farmers Market

- The City cosponsored a small city farmers market with the Bayside Corporation (non profit)
- The City required Bayside to have \$1,000,000 in limits
- A driver drove through the Farmers Market, killing 10, injuring 63
- City is deep pocket
- Settlement of \$27,000,000 resulted due to contractual relationship and other factors of the case



Example: SF State Contractor Equipment



Example: SF State Contractor Equipment

- Contractor's equipment damaged SF State employee automobile
- Employee filed claim with CSU against SF State for repair costs
- Vendor contract requires SF State et al to be named "additional insured"
- Claim tendered to contractor and accepted
- Claim paid by contractor's insurance company (no cost to SF State)



Example: CSU Campus Fundraising Lunch

- Campus auxiliary organization held donor fundraising lunch
- Organizer asked friend to set up A/V equipment for nominal fee (no contract, no insurance)
- Elderly donor tripped on extension cord and broke hip
- Six-figure claim against the auxiliary organization that would have been covered by the “friend’s” insurance if proper protocols were followed



Example: Afrikan Black Coalition Conference

Afrikan Black Coalition Conference – January

- Co-sponsored event – ABC and SF State Black Student Union
 - 1,000 attendees from throughout the state
 - High profile speakers
 - Dozens of classrooms/buildings being utilized
 - MLK Weekend
- ABC did not have insurance; BSU is a RSO without insurance
- Too many concerns about risk for Campus comfort




Co-sponsoring events

- Assigning fault or negligence always gets murky when an event has co-sponsors
- One way to mitigate disagreements and the legal costs associated with them is to purchase a special event policy insuring the event and the co-sponsors.
- The Campus will always be viewed as the deep pocket.



SF STATE'S Insurance Requirements



Requirements for Most Contracts

Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:



- 1. Commercial General Liability:** on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence.
- 2. Automobile Liability:** owned, hired, and non-owned autos, with limit no less than **\$1,000,000** per accident for bodily injury and property damage

Requirements for Most Contracts

Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:



3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor's profession with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate

Requirements for Most Contracts

Other Insurance Provisions

- **Additional Insured Status:** The State of California, the Trustees of the California State University, San Francisco State University, and the officers, employees, volunteers and agents of each of them must be listed as additionally insured.
- **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII
- **Verification of Coverage:** Contractor shall furnish the Campus with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) to Campus **before work begins.**



Indemnification Language

The Tie that Binds



Indemnification Language is Key!

- An indemnification provision, also known as a **hold harmless** provision, is a clause used in contracts to shift potential costs from one party to the other.
- The primary benefit of an indemnification provision is to protect the indemnified party against losses from third party claims related to the contract.

Indemnification language binds the indemnifying party to responding and paying claims. Insurance documentation confirms that the indemnifying party has adequate financial means to pay.



Procurement and Risk Management

A hand holding a puzzle piece with the words 'WIN WIN' written on it. The puzzle piece is part of a larger, faintly visible puzzle in the background.

Working with Procurement

It all starts with the **Requisition**

- Vendor 204 Form
- **Certificates of Insurance / Additional Insured Endorsement**
- Proposal(s) and SOW or other supporting documentation attached
 - Informal Proposal Documentation Checklist



Independent Contractor < \$50,000

- Create a Requisition in CFS
 - Attached proposal and insurance documentation (204 goes to Fiscal Affairs)
- Procurement will prepare the Independent Contractor agreement, send to the vendor for signature, then execute for the University
- Once executed, Procurement will issue a Purchase Order to encumber fund for payment



Independent Contractors < \$50,000

- Independent Contractor Status Determination Statement
- Scope of Work and Proposal
 - SOW should have deliverables
 - Firm Price vs. Hourly Rate; Hourly rate must include estimated total hours
- Vendor 204 Form
- **Insurance**
 - **If Independent Contractor is unable to provide proof of coverage that meets the University's requirements, an Independent Contract Insurance Waiver Request Form must be submitted to Risk Management**



Exceptions and Determining Factors



There is room for flexibility

1. Commercial General Liability
2. Automobile Liability
3. Workers' Compensation
4. AM Best Rating
5. Professional Liability
6. Insurance Limits
7. Additional Insured Endorsement



Questions to Ask Yourself

- What could go wrong?
- How likely is an accident?
- How severe are the likely outcomes of an accident?
- If it went wrong, how many people would be affected?
- What property could be affected?
- Why doesn't a business have insurance or appropriate limits?



Contract Value

- Contract value has no impact on the exposure
- Small contract, big exposure:
 - Bus Charter
 - Supervision of Minors
 - Events taking place on City roads
 - Small roofing and tree-cutting contracts



Best Practices



Best Practices

- Notify the other party of the requirements early
- Obtain coverage verification before contact signed
- Maintain records



