

Liability Insurance FAQ'S

1. If a lessee or contractor is a large one, do I still need to insist on the insurance requirements?

Yes; you normally have no way of verifying that their assets are sufficient for losses that might occur, whereas you could be confident in an insurance carrier with a quality A.M. Best Rating.

2. Is it all right if the contractor alters the indemnification language?

No; indemnification language is carefully worded to afford the district as much protection as legally possible, and usually the exact language has been tested in court. Altering the language would weaken the district's protection and should only be undertaken on advice of legal counsel.

3. Can we require an A.M. Best Rating for a company that is "admitted" in California, or is this against the law?

Yes; unless the company is providing a surety bond. State law requires owners to accept surety bonds from any surety company, in an effort to improve small firm contractors' chances in successfully bidding a job. If it is a federally approved surety company, you are obligated to accept the surety company.

Remember, just because an insurance company is "admitted" does not ensure they have the financial strength to engage in contracts with the district.

4. If the contractor's insurance does not meet the criteria in our insurance requirement specifications, should we alter the requirements to fit the contractor's insurance?

No; the insurance requirements language has been carefully worded to afford the district as much protection as possible. Altering indemnification would weaken the district's protection. It is not the responsibility of the district to tailor its requirements to that of the contractor; instead, it is the responsibility of the contractor to procure insurance that meets the needs of the district.

5. If the agent or broker changes the word "endeavor" to "will provide" in the notification section of the certificate of insurance, are we okay?

No; Certificates of insurance DO NOT alter the insurance coverage, and any changes that are necessary need to be endorsed onto the policy with a copy of the endorsement provided to the district. Agents and brokers will sometimes try to convince you that endorsements are unnecessary when the certificate has its standard wording changed; if so, you need to point out the box in the upper right hand corner of the certificate, which states that it DOES NOT amend or alter the insurance.

To ensure that the burden is on the insurance company to notify you of a change in status of coverage, you must receive an endorsement to this effect. Being named as an "additional insured" obligates the insurer to inform you of any status change in the policy.

6. Can lower limits be permitted when we are dealing with small contractor, non-profits or artisans, and we are only using them for small jobs?

Yes; there are some small vendors, non-profits agencies or artisans that may provide a service to the district and the cost of obtaining standard limits may not be possible for them. We will always evaluate the potential of loss, potential benefit to the district for the service provided and finally, the vendor's financial capacity to purchase coverage at reasonable rates.

7. The contractor's agent says that we cannot get the endorsements as required by the Insurance Requirements in Contracts specifications; what can we do?

In many instances, the agent or broker has not approached the insurance company with your request – the agent or broker is merely trying to discourage you from asking so that it will not have to bother. In such cases, please contact the Risk Management department. I will inform the agent or broker of the needs and requirements of the district, and ask that he or she provide the necessary endorsements as required.

8. Do we need and additional insured endorsement on an automobile liability policy?

An additional insured endorsement is no longer required on most business auto policies because the standard ISO forms now include coverage for "anyone held liable for the conduct of an insured is also considered an insured". Many times general and auto liability coverage are issued on a package policy and the additional insured endorsement can apply to all coverage's.

9. How do we determine the proper limits of liability for any given job?

The standard requested limits of General Liability to \$5 million for contracts with construction risks and to \$2 million for other contracts. The Risk Manager, in conjunction with the director or project supervisor will evaluate whether contract requirements meet the suggested limits or if a different amount is required. A major capital outlay project may require even higher limits, and, some smaller contracts such as facility use agreements may not merit \$2 million in coverage, and a lesser amount may suffice.

10. Can we accept an insurer with less than an A.M. Best Rating A: VII or Standard & Poor's BBB?

Yes; but keep in mind that the rating gives the district some confidence in that insurer's ability to cover all of its claim liabilities, including your potential claim. By accepting lower A.M. Best or Standard & Poor's ratings, you may be exposing the district to the possibility that the insurer will be unable to pay any claim you or a third party may present.

11. How do we discover what the rating of an insurer is?

A.M. Best ratings can be accessed over the internet for no cost at www.ambest.com. Go to the "Member Center" of the website to register for access to the ratings.

You also can go to the Standard & Poor's website to obtain the rating of a specific insurance company. You must register for access, although this is free of charge. Go to www.standardandpoors.com and look for a "Find a Rating" link in the margin or header.

14. What do the A.M. Best or Standard & Poor's Ratings mean?

Simply, the Standard & Poor's or A.M. Best rating gives a sense of the financial strength of the insurance company that is insuring the contractor.

15. Does a contractor need professional liability coverage?

A contractor needs professional liability coverage if expected under contract to provide "professional" services. The simplest way to decide is to determine whether the nature of the services provided entail "brain work" or "physical work". If it is only physical work, then a liability policy, general and/or automobile will most likely cover all your exposures to loss. However, if the work or a portion of the work is expected to involve the use of professional knowledge, professional liability insurance is required. As an example, if a contractor is merely following blueprints in constructing a building, it would involve only physical work and a general liability policy will suffice. However, if the contractor is a "design-build" firm, or decides that it knows of a better way to construct part of the building, and it alters the blueprints accordingly, then it has crossed the line over into providing "professional" service and would then need professional liability coverage to cover a subsequent loss.

16. How long of a period of time do we require the claims-made professional liability insurance to be carried after completion of the project?

A "claims-made" coverage will only respond to a claim that is presented while the policy is in force or during an extended reporting provision. Therefore, it is important that the district is protected for as long as possible after the completion of a project so that any claims caused by faulty design or other professional services will be covered by the responsible party. Keep in mind that the district's regular liability policy will not cover professional liability losses, and therefore the contractor may face exposure in the event of a claim arising out of professional services rendered on a project.

Normally, professional liability policies can be purchased with a three year (tail) reporting period, which will allow claims to be presented up to three years after the professional liability policy expires.

17. Does a contractor need proof of automobile liability when hired to work on the premises?

Yes; for the simple reason that the contractor has to use some means of transportation to reach his worksite, and to transport tools, supplies, and materials. If the contractor is determined to be engaged in business on the district's behalf when they are in an automobile accident the district may be liable. Further, since owners of vehicles are required to carry insurance anyway, this requirement carries little burden to the contractor.

Should we ask to be named as an additional insured on the contractor's professional liability policy?

No; the contractor's professional liability insurer will not comply with such a request. Professional liability policies are specifically underwritten based on the professional history of the contractor. A contractor's insurer is not interested in underwriting the district's professional risk, and therefore will not add FUSD as an additional insured on the contractor's policy.

19. What can be done if we don't have the proof of insurance when it is time to start the project?

There is very little that can be done at this point in the process, which is why insurance specifications should be sent out with the pre-bid package. There are no good choices when this situation occurs; either the work must be delayed the work while you wait for the proof, or the district must assume some risk until the proof is received, and hope that the contractor's insurance meets our specifications.

20. Why can't we accept a certificate of insurance as proof of the district being named as an additional insured?

In the upper right-hand corner of the ACORD Certificate of Insurance are the following words:

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 policy below.

If any agent or broker tries to convince you that the certificate truly does confer rights or coverages, and that you therefore do not need the endorsements you are requesting (and some will) you can direct their attention to this statement, or have them contact Risk Management.

21. Why do we need an indemnity clause in our contract when we are added as an additional insured on the liability policy?

Insurance is only one way that the contractor can financially guarantee its liabilities. If you have an indemnity provision in your contract with the contractor, that contractor is obligated to indemnify the district whether or not its insurance covers the loss. This puts the burden on the contractor rather than the district to make certain that its coverage is sufficient and current. Therefore, we must make sure our indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations, it does have the assets to indemnify those uninsured or underinsured exposures.

The written indemnity clause in the contract is the real trigger for coverage as your contract, under normal circumstances, is an “Insured Contract” as defined under the Commercial General Liability policy (CGL). The CGL confers automatic coverage for “Insured Contracts,” but the Entity must have a written contract containing indemnity language in your favor prior to the loss in order to trigger coverage. As a result, the indemnity clause is crucial to trigger coverage.

22. Should we ask for a waiver of subrogation from the contractor’s insurer?

In the case of workers’ compensation and property insurers **yes**; if the district does not does not do so, the contractor’s insurance company can look to the district to reimburse any claims cost that they have incurred defending or indemnifying its insured on your project when there is contributory negligence by the district. “Subrogation” is the transfer to the insurance company of the contractor’s right to collect for damages from another party, in this case, the district.

In the case of liability insurers **no**; but this is true only if the district is named as an “additional insured” on the contractor’s liability policy. Current case law holds that it is against public policy to allow an insurer to subrogate against its own insured, even an “additional insured.” As long as the district is diligent in securing and confirming its additional insured status (by insisting on receiving a copy of the additional insured endorsement), there is no reason to require a waiver of subrogation on a liability policy.

23. If a hold harmless agreement is not necessarily legally binding, why do we need to include it?

A hold harmless agreement usually does not relieve the district of legal liability for its own negligence, but it does relieve legal obligations arising out of the contractor’s negligence. Without the hold-harmless agreement, the district’s ability to be protected by its additional insured status is weakened.

24. Should we require bonds in contracts that are not construction related?

Yes; there are a number of situations when we may want to require bonds. Bonds may be considered when dealing with certain types of vendors, such as vendors that provide personalized products such as customized information systems, those that supply specific equipment designed and built for FUSD or vendors that provide specific services to us. Although bonds may not be required on all vendor agreements, it is important to understand how they may save the district in the event that a vendor fails to deliver or lacks the funding to finish its project.

25. What do I do if my contractor states that they are self-insured for liability, auto, and workers' compensation, and they cannot provide a certificate of insurance?

In the State of California, organizations that are self-insured for **workers' compensation** must have a Certificate of Consent to Self-Insure issued by the State of California Department of Industrial Relations. They must also have authorization from the State to self-insure their auto exposure, but this is not the case for general liability. First, obtain copies of their documents granting them the authority to self-insure for workers compensation and automobile liability. Second, obtain a letter from the contractor that clearly states all of the requirements in your agreement apply to their self-insurance. Next, you will need to confirm that the contractor has assets available to cover any losses in the event they occur. This would normally include the review of their independently audited financial statements. Finally, you may require the contractor to issue a bond or a letter of credit to your Entity in an amount necessary to cover any losses.

26. The contractor states that he is a sole proprietor and does not carry workers' compensation insurance as he has no employees, is this acceptable?

Yes; many contractors are either sole proprietors or partnerships. You should receive a letter from the contractor stating they are either the owner of the organization or a partner, and are exempt from the State's workers' compensation requirements because they have no employees.