



November 15, 2019

TO: District Superintendent's
Chief Business Officials

FROM: Robert J. Kretzmer
Director, Property & Liability

SUBJECT: Insurance requirements for vendors

Frequently, SISC will receive inquiries related to insurance requirements for vendors. The attached three memos have been written to help our member agencies when entering into agreements with entities seeking to do business with your district.

It is important that your district request all vendors and service providers' insurance policies to name the district as an "additional insured." The policies afforded should have policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Auto policies should afford coverage with policy limits of not less than \$1,000,000.

Course of Construction/Builder's Risk Insurance is afforded by SISC when the district is acting as its own construction manager and if notice is given to SISC of the pending project. Notice can be provided by calling SISC Safety & Loss Control services at 661-636-4604.

Districts that diligently impose the "additional insured" status requirement with their vendors and service providers will receive the substantial rights and benefits gained from having that status. These rights and benefits include, but are not limited to, receiving a defense to a lawsuit under the vendor or service provider's policy.

Please take time to review the attached three memos listed below and have them distributed to the key personnel within your administrative offices that deal with vendor and service provider agreements.

- Recommended Guidelines for Non-Construction Contractor, Vendor and Service- Provider maintained policies
- Recommended Guidelines for Construction Contractor-Maintained Insurance Policies
- The Nuts and Bolts of "Additional Insured" Status

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RECOMMENDED GUIDELINES FOR CONSTRUCTION CONTRACTOR-MAINTAINED INSURANCE POLICIES

1. Any construction contractor, at the contractor's expense, should be required, as a condition to the District's/Agency's agreeing to enter into the Contract, to obtain and maintain insurance both at all times during the prosecution of the Contract and, where "completed operations" coverage is appropriate, for ten (10) years thereafter. The insurer should be with companies approved by the District or Agency, and with limits no less than those stated hereinafter. Such a condition should be expressly included in the Contract between the District or Agency and the contractor.
2. The required insurance should preferably be written by a Best Key Rating Guide "A" VII or better-rated carrier admitted to write insurance in the state where the work is located at the time the policy is issued.
3. Also as a condition of the Contract, Contractors should secure coverage for the District/Agency, its agents, and employees as "additional insureds" with respect to both "Ongoing Operations" and "Completed Operations" coverages.
4. Districts/Agencies should be diligent in confirming receipt and maintenance of documentation demonstrating their additional insured status including, as appropriate:
 - a. Requiring regular provision and reissuance of certificates of insurance on long-term projects;
 - i. The identification of the District/Agency as an "additional insured" under the relevant policy(ies);
 - ii. Limits of liability;
 - iii. "Completed operations" coverage;
 - iv. To the extent that coverage is limited to specific locations or operations, any such limitations;
 - v. That the policy(ies) provide a thirty (30) day NOTICE OF CANCELLATION provision entitling the District/Agency to notice prior to cancellation.
 - b. Contractors shall regularly obtain reissued certificates of insurance, such as on an annual basis, on multi-year contracts. Acceptance of Certificates of Insurance shall not relieve or decrease the liability of the Contractor.
 - c. Including contract provisions imposing penalties where Contractor fails to provide appropriate documentation demonstrating the District's/Agency's "additional insured" status to the District/Agency, including language making the Contractor ineligible to bid on future/additional projects with the District/Agency.
5. Contractors should be required to provide insurance coverage meeting at least the following criteria:
 - a. Commercial General Liability

Coverage shall be written on an occurrence, rather than on a "claims made" form, with policy limits not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 aggregate per project for BI ("Bodily injury") and PD ("Property damage"), and shall include coverage for the following:

 - i. Premises – operations;
 - ii. Contractual liability;
 - iii. Products liability;
 - iv. Completed operations;
 - v. Where appropriate, coverage provided should include X (explosion), C (collapse), and U (underground excavation) coverages for property damage hazards;
 - vi. Personal injury

- b. Contractor's Pollution Liability
Shall be written on an "occurrence" as opposed to "claims made" basis with policy limits not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate.
 - i. Where appropriate, coverage shall include "asbestos abatement";
 - ii. Coverage will be indicated on an appropriate Certificate of Insurance.
- c. Course of Construction (COC)/Builder's Risk Insurance As deemed appropriate, such coverage shall be obtained and maintained for the life of the contract.
 - i. For new construction for which the District/Agency is acting as its own construction manager, a COC endorsement may be added to the member's property coverage through SISC;
 - ii. When a general contractor is used for new construction, the contractor shall effect and maintain Builders' Risk coverage through a Best Key Rating Guide "A" VII or better-rated property liability carrier with limits consistent with and to the extent of any co-insurance penalty requirement provided for in the policy.
 - 1. Such coverage shall include the Contractor's interests in items of labor and materials in connection therewith whether in or adjacent to the insured structure;
 - 2. Coverage shall also include materials in place or to be used as part of the permanent construction, including surplus materials, shanties, protective fences, bridges, or temporary structures; miscellaneous materials and supplies incident to the work, and such scaffolding, staging, towers, forms and equipment as are not owned or rented by the Contractor, the costs of which are included in the contract.
- d. Comprehensive Auto Liability Coverage shall provide limits of not less than \$1,000,000.00 CSL ("Combined Single Limit") BI and PD, including coverage for owned, non-owned and hired autos.
- e. Workers' Compensation
 - i. State workers' compensation statutory benefits;
 - ii. Employer's Liability – policy limits of not less than \$1,000,000.00.

**RECOMMENDED GUIDELINES FOR NON-CONSTRUCTION CONTRACTOR, VENDOR
AND SERVICE-PROVIDER-MAINTAINED INSURANCE POLICIES**

1. Vendors or service providers should be required, as a condition to the District's/Agency's agreement to enter into Contract with vendors or service providers, to obtain and maintain insurance at all times during the term in which such services are to be provided, by the vendor or service provider to the District, in companies approved by the District, and with limits no less than those stated below. Such a condition should be expressly included in the Contract between the District or Agency and the vendor or service provider.
2. The required insurance should be written by a Best Key Rating Guide "A" VII or better- rated carrier admitted to write insurance in the state where the work is located at the time the policy is issued.
3. All vendors' and service-providers' insurance policies shall name the District and its agents and employees as "additional insureds" by endorsement with respect to both "Ongoing Operations". Where the nature of the operations performed or services provided by a vendor present the possibility that the District may incur liabilities as a result of those operations or services even after the completion of the vendor's work, an endorsement providing "Completed Operations" coverage is also desirable. In those circumstances, as a condition of the Contract between the District/Agency and the vendor or service provider, per written language set forth in the Contract, the vendor/service provider should likewise secure "completed operations" coverage for the District/Agency, its agents, and employees. It is also advised that the Contract between the District/Agency and vendor/service provider specifically require that vendor/service provider maintain "completed operations" coverage for a reasonable period of time— ideally, a specific period matching the statute of limitations in which a third party might bring suit on account of liabilities arising out of the vendor's operations/services.
4. Districts/Agencies should be diligent in confirming receipt and maintenance of additional insured status including, as appropriate:
 - a. Vendors and service providers shall submit Certificate(s) of Insurance evidencing:
 - i. The identification of the District/Agency as an "additional insured" under the relevant policy(ies);
 - ii. Limits of liability;
 - iii. "Completed operations" coverage;
 - iv. To the extent coverage is limited to specific locations or operations, any such limitations;
 - v. That the policy(ies) provide a thirty (30) day NOTICE OF CANCELLATION provision entitling the District to notice prior to cancellation.
 - b. Vendors/service providers shall regularly obtain reissued certificates of insurance, such as on an annual basis, on multi-year contracts. Acceptance of Certificates of Insurance shall not relieve or decrease the liability of the Contractor.
 - c. Including contract provisions imposing penalties where the vendor or service provider fails to provide appropriate "additional insured" status or coverages to District/Agency and/or provide required Certificates of Insurance, including non- renewal of contract and/or rendering vendor/service provider ineligible to bid on future/additional projects with District/Agency.
5. Vendors and service-providers should be required to provide insurance coverage meeting at least the following criteria:
 - a. Commercial General Liability
Coverage shall be written on an occurrence, rather than on a "claims made" form, with policy limits not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 in aggregate coverage for BI ("Bodily injury") and PD ("Property damage"), and shall include coverage for the following:

- i. Bodily injury;
 - ii. Personal injury;
 - iii. Premises – operations;
 - iv. Contractual liability;
 - v. Products liability (as appropriate);
 - vi. Completed operations (as appropriate);
 - vii. Asbestos abatement coverage (as appropriate).
- b. Comprehensive Auto Liability
Coverage shall provide limits of not less than \$1,000,000.00 CSL (“Combined Single Limit”) BI and PD, including coverage for owned, non-owned and hired autos where vendors’ or service-providers’ contractual obligations require the operation, loading or unloading of automobiles
- c. Workers’ Compensation
 - i. State workers’ compensation statutory benefits – policy limits of not less than \$2,000,000.00;
 - ii. Employer’s Liability – policy limits of not less than \$1,000,000.00.

THE NUTS AND BOLTS OF “ADDITIONAL INSURED” STATUS

The purpose of this outline is to provide a general summary of the reason why Districts/Agencies should consider, as a condition to entering into contracts with contractors, vendors, or service providers, that the District/Agency be included as an “additional insured” on the liability insurance policies which cover the contractor/vendor/service provider. SISC anticipates that some contractors, vendors, or service providers may have different understandings of the purposes of the various insurance coverages and terms sought by Districts and/or Agencies under contracts they propose to enter into. In some cases, contracts, vendors and service providers may object to or otherwise resist the imposition of such requirements or contend that such coverages and requirements are overbroad, burdensome, or unnecessary. While SISC recognizes that all contracts are the subject of negotiation and should reflect the appropriate circumstances and context within which they are made, Districts and Agencies should keep in mind the incentives for contractors, vendors, and service providers in entering into public contracts, and the consequently significant bargaining leverage which Districts and Agencies have when negotiating the specific terms and conditions of such contracts.

Why “Additional Insured” Status?

Insurance policies generally recognize two categories of “insureds”: “named insureds” and “additional insureds.” Typically, the “named insured” is the party purchasing the policy (although in certain circumstances, a policy may be purchased on behalf of a third-party naming that third party as “named insured”). In contrast, an “additional insured” is typically a party which is not a “named insured” but is extended “insured” status by way of either generic descriptive policy language or additional insured endorsement. “Insured” status—whether as “named insured” or as an “additional insured” provides substantial rights and benefits not necessarily available to others, including the right to receive a defense to a lawsuit under the policy, and the right to receive indemnification under the policy for losses which are within the scope of the policy’s coverage.

A. Policies generally recognize two forms of additional insured: “automatic” or “blanket” additional insureds; and “non-automatic” “additional insureds.”

- (1) “Automatic” or “blanket” additional insureds are commonly included by way of policy language or endorsement providing that certain categories or classes of individuals or entities are automatically “additional insureds.”
 - a. For instance, CGL policies commonly “automatically” extend coverage as “additional insureds” to “any person (other than your ‘employee’ or ‘volunteer worker’), or any organization while acting as your real estate manager.”;
 - b. CGL policies may also contain endorsements extending “blanket” additional insured status to contracting parties who require that they be so named; i.e: endorsements written to provide “additional insured” status to “any person or organization you are required by written contract to include as an insured, but only with respect to liability arising out of your work.”
- (2) “Non-automatic” additional insured coverage may be provided, following a request by the named insured, sometimes at an additional premium charge, by specific endorsement naming one or more persons or entities as “additional insureds.”
 - a. Additional insured endorsements are common on both commercial and personal liability policies. The precise language used may vary and may be as simple as an “Additional Insured” endorsement attached to the policy identifying each individual/corporation/entity to whom or to which “additional insured” status is provided. Alternatively, the language may be more specific, providing “additional insured” status only with respect to certain properties or liabilities.

- B. There are advantages and disadvantages to each method of securing additional insured status.
- (1) “Automatic” or “blanket” additional insured language generally absolves the named insured of having to verify that each person or entity to whom such additional insured coverage was promised is individually added by the insurer.
 - (a) Thus, “blanket” status is commonly used where there may be many potential “additional insureds,” such as in commercial construction projects.
 - (2) However, “automatic” or “blanket” additional insureds are usually unknown to the insurer. Thus, the insurer is generally absolved of obligations which it might otherwise have to identified “insureds,” such as the obligation to send notices of the policy’s mid-term cancelation (e.g., for non-payment of premium) to additional insureds.
 - (3) In contrast, “non-automatic” additional insurance requires that each person or organization to be covered as an “additional insured” be specifically identified to the insurer as a party to be named as an “additional insured”. Consequently, it is possible to verify that such coverage is being provided, as the name of “non-automatic” “additional insureds” will appear in the endorsement.
 - (4) Consequently, non-automatic endorsements lend themselves to more tailored coverages for the additional insured;
 - (5) “Additional Insured” coverage may come with important limitations or exclusions;
 - (a) As a general rule, “additional insureds” are not entitled to greater rights or more coverage under a policy than are “named insureds”; thus, exclusions or limitations in the policy which apply to the named insured will also apply to the additional insured(s);
 - (b) “Additional insured” endorsements may further limit coverage for the insured to “that required by contract” such that no coverage is available to an additional insured beyond the extent of coverage which is specifically called for in the contract that which is explicitly called for in the contract between the named insured and additional insured or the amount of such coverage; this is so even if coverage available to the named insured under the policy is broader or in a sum greater than that called for in the contract between the named insured and the additional insured.
 - i. For instance, where a contract calls for the named insured contractor to name the District as an “additional insured” on Commercial General Liability policies with limits of liability of “at least \$1,000,000,” and the general contractor provides such coverage under a policy providing a limit of liability for the named insured general contractor in an amount of \$2,000,000, coverage available to the additional insured may be limited to \$1,000,000 notwithstanding that the policy provides \$2,000,000 in coverage to the named insured.
 - (c) Many policies contain an “Insured vs. Insured” exclusion precluding coverage for the liability of one insured to another. Depending on their language, these exclusions may operate to preclude a duty to defend or indemnify any claim between a named insured and an additional insured, or between additional insureds;
 - (6) It is also important to note that a “Certificate of Insurance” identifying the District/Agency as an “additional insured” does not guarantee coverage. Such certificates are typically issued by insurance brokers—not the insurer itself—and thus in some instances may not accurately reflect the coverage(s) available under the policy. Because “Certificates of

Insurance” are for informational purposes only and do not bind an insurer, a representation contained on a “Certificate of Insurance” may have no legal effect in the event proper coverage was not secured under the policy. Accordingly, in addition to requesting regularly updated “Certificates of Insurance,” where the District/Agency is to be named as an “additional insured” by endorsement, a copy of the “additional insured” endorsement itself should also be requested and provided by contractors, vendors and service-providers.

Other Comments

Although California law forbids insurers from subrogating (seeking recovery from) “insureds” for sums spent by the insurer on behalf of the insured for covered claims, an insurer can seek recovery from an “insured” for sums expended on account of non-covered claims. Accordingly, while the identification of the contracting District or Agency as an “additional insured” should preclude an insurer from subrogating against the District or Agency on account of covered claims, it is also advisable that Districts or Agencies include a contractual “waiver of subrogation” clause in any contract between the District or Agency and a contractor, vendor or service provider, to ensure that the parties (and their insurers) have contractually waived any right to assert claims against one another for losses for which one of them is at “fault,” regardless whether “covered” or “non- covered,” and regardless whether the vendor or service provider fails to properly secure “additional insured” status for the District or Agency.

Finally, it bears noting that the provision of “additional insured” coverage to a contracting District or Agency does not alter the fundamental character of a contractor’s, vendor’s or service-provider’s business or its relationship with the contracting District or Agency. Rather, “the “additional insured” endorsement serves not only to establish that adequate coverage is available to both the contractor, vendor or service provider and the contracting District or Agency in the event of loss, but also to satisfy the basic contractual obligation undertaken by the contractor, vendor, or service provider to the contracting District or Agency. Vendors/service providers should look at “additional insured” endorsements as a convenient mechanism by which to protect themselves from liability in the event of accidents, errors, omissions, or other losses which arise out of their work. In this manner, by providing “additional insured” coverage to a contracting District or Agency, such contractors, vendors and service-providers may prevent losses from becoming a source of dispute or litigation between themselves and contracting Districts or Agencies.