

State Risk Management and Insurance Administration

Insurance Requirements for Contracts SPO-150

Presented By:

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Agenda

- I. Introductions
- II. Course Objective
- III. Purpose of Certificate of Insurance
- IV. Insurance Requirements for State Contracts
- V. Optional Coverages
- VI. Anatomy of a Certificate of Insurance
- VII. Questions & Answers

Course Objectives

- 1. Understand why there are insurance requirements for State contracts
- 2. Know who establishes the insurance requirements for State contracts and what they are
- 3. Know the required components of a certificate of insurance

What is the Purpose of Insurance?



Insurance transfers the risk, or chance or loss, from one party (the insured) to another party (the insurer), in which the insurer promises to pay the insured, or others on behalf of the insured's behalf, an amount of money for a loss.

Who Establishes Insurance Requirements for Contracts

- 1. The State Comptroller establishes the types and amounts of insurance coverages required for State Contracts.
- 2. The current requirement as set forth by Comptroller's Memorandum 2010-06 is as follows:
 - a. General Liability; \$1 million per occurrence and \$2 million in the aggregate (during policy term)
 - b. Automobile Insurance: no less than\$1 million per accident

Who Establishes Insurance Requirements for Contracts

- 3. Comptroller's Memorandum 2010-08 Insurance Requirements for Use of State Facilities and Grounds.
- Comptroller's Memorandum 2010-39
 Certificate of Insurance Requirements for Contracts.

These documents are listed on the Comptroller's (DAGS) website.

Why Have Insurance Requirements for Contracts

- Requires the vendor or contractor's insurance to be liable for any damage caused by their negligence up to the required coverage limits protecting the State.
- 2. This creates a financial buffer between the vendor and the State of Hawaii.

Certificate of Insurance (the Certificate)

- Issued by a contractor or vendor's insurance agent
- 2. The Certificate documents:
 - a. The State as an additional insured
 - b. The term of the insurance policy
 - c. The types and amounts of coverage
 - d. Compliance with Comptroller's Memorandum 2010-06 and 2010-39

What is General Liability Insurance?

Coverage for liability that arises out of the conduct of a business. The insurer agrees to "Pay on Behalf" of the Insured all sums for Legal Liability arising out of premises and operations including Products and Completed Operations, Fire Damage Legal Liability, Personal Injury and Advertising Liability, and Employee Benefits Liability.



General Liability

Required Limits of Liability, per Comptroller's Memoranda 2010-06 shall be:

- Bodily Injury and Property Damage Per Occurrence Limit
 - □ \$1,000,000 per occurrence
 - □ \$2,000,000 aggregate

Additional coverage to be considered:

- Personal Injury
 - □ \$1,000,000 per occurrence
 - □ \$2,000,000 aggregate
- Products and Completed Operations
 - □ \$1,000,000 per occurrence
 - □ \$2,000,000 aggregate



General Liability Coverage

- □ Coverage's should include the following:
 - · Premises operation
 - · Independent Contractors
 - Products and Completed Operations
 - · Contractual Liability
 - · Personal Injury & Advertising Injury
 - Explosion, Collapse and Underground Property Damage coverage, if excluded
 - Severability of Interest (Cross Liability)

General Liability Major Exclusions

- Bodily Injury or Property Damage arising from use of any auto owned or operated by or rented/loaned to any insured
- Aircraft, airfields, runways, hangars and other properties in connection with aviation activities
- Workers Compensation, unemployment and disability law obligations
- Damage to State owned property
- Any liability under ERISA (employee retirement income security act) or similar statutes

Automobile

Coverage for liability arising out of the operation, maintenance, or use of a motor vehicle.

Required Limits of Liability, per Comptroller's Memoranda 2010-06 shall be:

No less than \$1 million per accident or:

- Bodily Injury
 - \$1,000,000 per person
 - \$1,000,000 per accident
- Property Damage
 - \$1,000,000 per accident

Automobile

- Maintain coverage for all Owned, Non-Owned and Hired Automobiles
- ☐ If party does not own autos, they must maintain Hired & Non-Owned Auto Liability. This can be part of a general liability policy if they do not have their own vehicles.

QUIZ #1

□ What is the purpose of insurance?

■ Why are the insurance requirements for State contracts important to the State?

QUIZ #1

- □ What is the purpose of insurance?
 - Transfers risk from one party to another.
- Why are the insurance requirements for State contracts important to the State?
 - Protects the State from liabilities from the actions of a vendor.

Umbrella or Excess Liability

Umbrella or Excess Policies provide additional limits above the limits of the underlying policies. Traditionally, an Umbrella or Excess will have General Liability, Auto Liability, and Employer's Liability as underlying covers.



Umbrella Liability

- Can be used to meet the insurance requirements
- Endorse the policy naming the State of Hawaii, as an Additional Insured as respects to operations performed for the State of Hawaii.
- Minimum Limits of Liability required:
 - \$1,000,000 per occurrence
 - \$2,000,000 aggregate
- Traditionally, Umbrella coverage provides higher limits of liability for General Liability, Auto Liability, and WC/Employer's Liability.

Optional Coverages

Professional Liability (Errors and Omissions)

- If professional services are required to fulfill any or all of the activities under the Agreement, the Contractor or Consultant and its subcontractors should maintain and keep in force Professional Liability Insurance (E&O) that covers all activities under the Agreement
- Minimum Limits of Liability:
 - \$1,000,000* per claim
 - \$2,000,000 annual aggregate
- Retroactive date, must be prior to start of professional services



*will vary by project, contract may require higher limits or project-specific limit.

Optional Coverages

Professional Liability (Errors and Omissions)

□ Self-Insured Retention (SIR) or Deductible

If it exceeds \$25,000, the State of Hawaii should reserve the right, but not the obligation, to review and request a copy of the Contractor's/Consultant's most recent annual report or audited financial statement

□ Claims-Made Basis

Policy must warrant the Retroactive Date equals or precedes the effective date of the Agreement.

Additional Insured (if available)

Subject to the agreement of the insurer, the policy should name the State of Hawaii, its elected and appointed officials, officers, employees and volunteers as additional insureds and should constitute primary insurance for the State, covering liability arising out of or resulting from occurrences during or in connection with the performance of the Agreement.

Optional Coverages

Crime or Fidelity Bond

- ☐ If required, the Contractor should maintain Commercial Crime Insurance or Fidelity Bond providing Employee Dishonesty on a blanket basis covering all of the Contractor's employees.
- Minimum amount of insurance at least equal to the amount of the contract.
- Endorsed to cover "Third Party Liability" to include property of the State in the care, custody and control of an outside party.

Optional Coverages

JUNDER CONSTRUCTION

Builder's Risk Insurance

- □ For projects that consist of building structures, the Contractor, prior to notice to proceed or commencement of work, whichever occurs first, should procure and maintain an Builder's Risk coverage form providing coverage to protect the interests of the State, Contractor, sub-contractors, architects, and engineers including property in transit on and off-premises, which should become a part of the building or Project.
- Insurance amount at least equal to 100% of the projected completed value of the Project, unless agreed amount is otherwise stated between the State and the Contractor
- All Risk, Replacement Cost, and Completed Value Form basis
- Include Off Site Storage and Transit
- Include the State as Loss Payee
- Coverage should be evidenced on form Acord 27, Evidence of Property Insurance
- Sub-contractors may have Installation Floater coverage instead

Type of Activity	Required Insurance	Recommended Supplemental Insurance (in addition to the Required Insurance)
Construction Projects	(1)	Property, Builders' Risk or Installation Floater for sub-contractors. (Note: add Professional Liability fo Design/Build Projects)
Construction and services contracts, including most construction and remodeling, janitorial service, movers, on-site equipment maintenance agreements, tow service, tree-maintenance, road maintenance, welding, plumbing, painting, electrical work, fireworks exhibits.	(1)	
Professional services, including architects, engineers, consultants, counselors, medical professionals, attorneys, accountants, information systems, artists	(1)	Professional Liability (Errors and Omissions)
Environmental, including asbestos, hazardous chemicals or waste	(1)	Pollution and/or Asbestos Pollution Liability and/or Errors and Omissions
Tenants and concessionaires including food and beverage concessions, gift shops, office space, child care and senior centers, other space rental to lessees who have employees	(1)	Property (all-risks to any tenant improvements or betterments)
Vendors, including vendors who supply equipment or other products to the State who do not perform other functions such as installation and maintenance	(1)	
Space rental, including short-term space rental for special occasions to groups who have no employees such as club functions, weddings, dances, picnics or social dinners, crafts exhibitions or classes, animal shows, recreational activities including baseball and football.	(1)	(Note: Contact State Risk Management Office for special events requirements.)
Other activities not listed		Please consult State Risk Management Office

Note: $\ensuremath{^{(1)}}$ CGL, Auto and WC are required by Comptroller's Memorandum

QUIZ #2

■ What are the minimum limits of insurance required by the Comptroller's Memoranda 2010-06?

QUIZ #2

- What are the minimum limits of insurance required by the Comptroller's Memoranda 2010-06?
 - GL \$1M per occurrence/\$2M aggregate
 - Auto \$1M per accident

Why the Risk Transfer provisions are necessary

- → Allocate risk equitably between the parties.
- → Accept no more risk than the entity can reasonably insure or transfer to other parties.
- → Place responsibility for risk on parties consistent with their ability to control the risk.
- → Provides insurance coverage to shield the State of Hawaii from assuming additional liabilities by contractually requiring adequate insurance coverage.
- → The Certificate of Insurance documents compliance with the contract's insurance provisions.

Contractual Risk Transfer

Waiver of Subrogation

- Contractor should agree by entering into a Contract or Agreement with the State to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor should agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.
- This Waiver of Subrogation requirement should not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a preloss basis.

Contractual Risk Transfer

Indemnification and Defense

The Contractor shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits and demands therefore, arising out of or resulting from the acts or omissions of the Contractor or the Contractor's employees, officers, agents, or subcontractors under this contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this contract.

Contractual Risk Transfer

State cannot Indemnify or Hold Harmless

EXCEPTION: United States (Federal) and County agencies with Governor's approval

Section 29-15.5 HRS – Federal agencies Section 46-71.5 HRS - County agencies – for use of county facilities, assistance, aid, etc. only

Subcontractors

■ If applicable, Contractor should require all subcontractors to name as additional insureds the State, etc.

Contractual Risk Transfer

Primary & Non-contributory wording

Contractor should agree and evidence: "It is agreed that any insurance maintained by the State of Hawaii, shall apply in excess of and not contribute with, insurance provided by this policy."

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions should be declared to and approved by the State. At the option of the State, either: the insurer should reduce or eliminate such deductibles or self-insured retentions as respects the State, its elected and appointed officials, officers, employees and volunteers; or the Contractor should provide a financial guarantee (audited financial statement) satisfactory to the State guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Certificates of Insurance

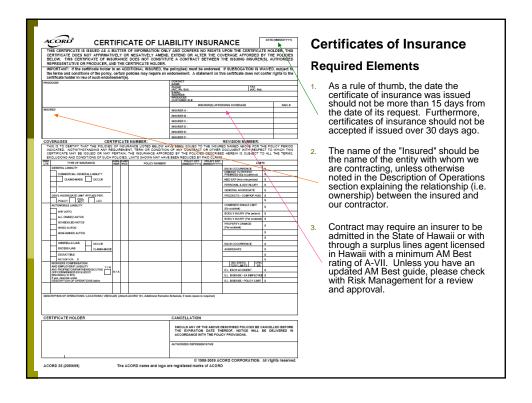
Refer to Comptroller Memorandum 2010-39

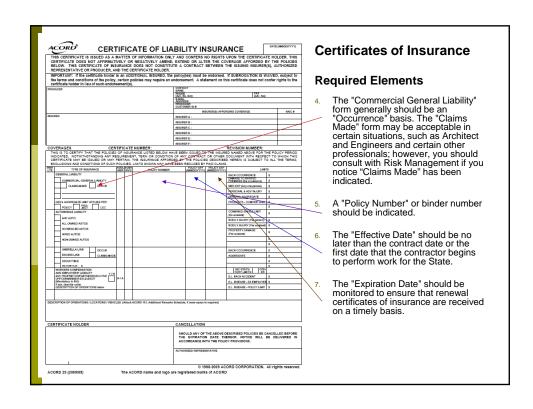
- Prior to issuance of the notice to proceed for the proposed contract, Contractor should provide the State a certificate of insurance completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form
- The State reserves the right to require complete certified copies of all required insurance policies, including endorsements effecting the coverage required at any time.
- Failure to secure and maintain the required insurance should be considered as a major breach of Contract. Should the State be forced to expend funds that would have been covered under the specified insurance, Contractor should agree to reimburse the State for such funds.

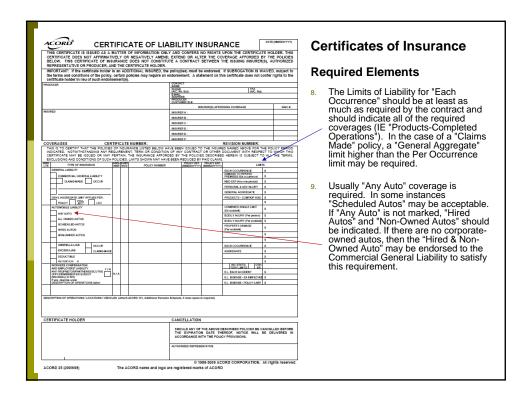
Certificates of Insurance (cont.)

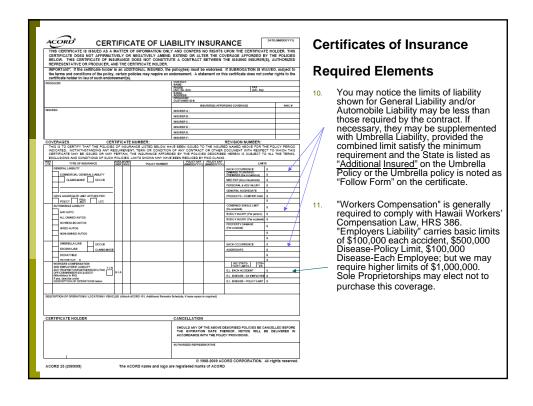
■ Additional Insured language per Comptroller's Memo 2010-39 is as follows:

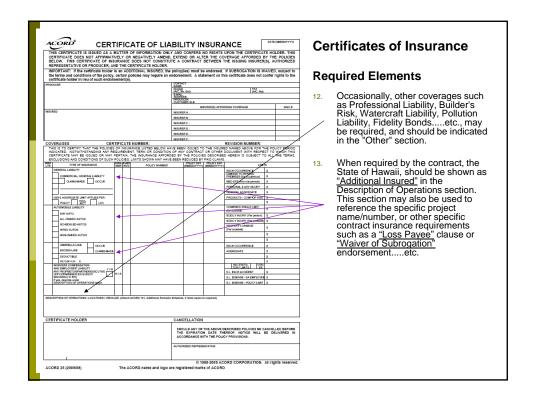
"The State of Hawaii is named as additional insured as respects to operations performed for the State of Hawaii".

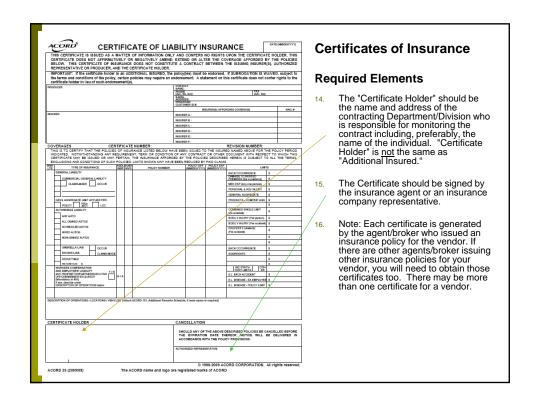












QUIZ #3

- What is the purpose of a certificate of insurance?
- What should you consider when determining the type of coverage and limits for a contract?

QUIZ #3

- What is the purpose of a certificate of insurance?
 - Provide evidence that the vendor has complied with the insurance requirements of the contract.

QUIZ #3

- What should you consider when determining the type of coverage and limits for a contract?
 - The type of work being performed and its potential risk for property damage or bodily injury to others or the State.

Flexibility on required insurance language

- Keep the underlying business transaction in mind
- □ Eliminate unnecessary or redundant requirements
- Establish preferred insurance language but have a fall back position
- □ Risk transfer is affected by custom and practice
- Insurance is preferable to relying on indemnification clause

