

## **SPO 150 - Insurance Requirements for Contracts**

Okay hi everyone. My name is Tracy Kitaoka. I'm the state risk management officer and thank you for joining today's presentation, insurance requirements for contracts, SPO 150.

Okay so let's start off with the presentation. The agenda: we'll go through the course objectives the purpose of the certificate of insurance. The insurance requirements for the state contracts go through all the optional coverages. We'll go through every line item of the certificate of insurance and I'll start to answer any questions that we may have at that time too.

Today's objective - number one we have to understand why there are insurance requirements for state contracts. We'll also get to find out who establishes the insurance requirements for these contracts and know the required components of the certificate of insurance.

What is the purpose of insurance? Basically insurance is a transfer of risk. To give you a kind a good example of this is you may pay your automobile insurance company premiums and for that premium they will cover you and pay for any liability damages that you may cause as a result of an accident. So you're basically having the insurance company be responsible for any damages or losses that you may have.

Who establishes insurance requirements for contracts? This comes from the state comptroller's office and it's in the form of a comptroller memorandum Number 2010-06. This comptroller memorandum basically tells you that if we are going to have insurance contract through a RFP or a IFB, the general liability insurance requirement should be \$1 million per occurrence, \$2 million in the aggregate, and it also states that the automobile insurance should be no less than a million dollars per accident.

There's also another comptroller memorandum, 2010-08, which actually goes over the insurance requirements for any group individual companies that may want to use our state facilities and grounds. Those limits are lower than limits that we have established for our normal contracts so keep that in mind. Another comptroller memo is 2010 which basically goes over some of the elements that we require for our vendors to provide on the certificate of insurance and the certificate of insurance we'll go through that item a lot more in detail towards the end of the presentation. And all these comptroller memo's that I've listed here are all listed under the comptroller website for you to take a look at and to print it out there.

Okay so the question comes up why do we have these insurance requirements and basically it's an instrument that we use to create a financial buffer between a vendor and the State of Hawaii. So if we hire a vendor and due to their operation someone gets hurt or they damage property. This insurance that we require will be the insurance that kicks in, pays for these claims so that the state doesn't have to get involved or spend any of our public funds on these losses.

A little about the certificate of insurance. Usually these documents are the documents that's going to evidence what we require in our contract. Like I talked about earlier we require general liability for certain limits. We require automobile insurance for certain limits. So this document will show you what the coverages are what the limits are so that we can make sure they are in compliance with the requirements. They're usually issued by the vendors insurance agent or sometimes the vendor themselves may get it from their agent and send it to you directly. These certificate documents, one of the major things that we need to make sure of is the State of Hawaii is listed as an additional insured. You'll also have to take a look at the term of the policy. It's usually one year at a time to make sure that

## **SPO 150 - Insurance Requirements for Contracts**

time period sits within our state contract. Of course it'll list all the different types of insurance and all their limits. Of course you'll probably need to match that up with these listed Comptroller memo's to make sure they are in compliance with them.

Okay now to go over the type of insurance that we requiring, let's talk about the general liability insurance policy. What is general liability insurance? It's basically a policy that will cover an entity for bodily injury, property damage, contractual obligation that they may have which they may become legally liable due to their negligence. There's other parts of the general liability policy that basically goes over some of the coverage like products and completed operations, fire damage, personal injury, advertising injury, so forth. We'll go through that type of coverage further in the presentation.

General liability as set forth in 2010-06 Comptroller Memo, I already went over briefly what this means \$1,000,000 per occurrence and two million aggregate for GL. There's other types of coverages that you may want to consider, and it's going to be listed on the certificate of insurance sub-coverages under this policy. One is for personal injury, the other is for products and completed operations, and all these types of coverages if we require them should have these types of limits. Now the Comptroller memo 2010-06 does not specifically note these types of coverages like the personal injury and products completed operations. However usually if somebody does have the GL policy, it will list these types of coverages.

Other types of coverages that we should at least understand have been placed on noticed on that we in the future maybe requiring this on our comptroller memo. Just to let you know I am working on doing some consolidations of these memos to put it all in one and require more specific types of insurance coverages in our insurance requirement so I'm in the process of doing that and hopefully sometime maybe before my next SPO presentation will have new documents and new limits to take a look at. But other types coverage you should be aware of is in the general liability policy there's a products and completed operations which probably will pertain to a lot of the construction contracts that we may have. And that's basically saying that that coverage is going to take care of any liabilities from operations provide us a product like building a building for us in the construction project or if we're putting a restaurant into one of our spaces that you know if they are serving food that's their products so that's the type of coverages that they'll have. Of course contractual liability is another one. Going back to our construction project independent contractors they're using either subs or independents to make sure that they cover these types of contractors that work under them and the others are listed here. Personal injury explosion, collapse. Not very common coverages but coverages that you should know about.

Now just some major things that to make sure you understand what's not covered by the general liability policy. One, that first block is basically auto liability. If they have a company vehicle or a fleet of company vehicles they have a separate policy but keep in mind there are special types of auto coverages that can be added onto the general liability, a very limited amount of coverage, but it is possible. And of course anything having to do with an airport they are excluded from a general liability policy so those operations will have to get their own aviation type liability policies. Workers compensation any of their employees getting hurt on the job you have a special coverage for that. That's not covered under the general liability policy. And of course if our own liability policy, we can't file a claim against our own liability policy ticket to get our building or state car repair those are all not included. And of course any type of liability from our retirement program.

## SPO 150 - Insurance Requirements for Contracts

A little bit about the automobile side. We have in the comptroller memo basically stated that should be no less than a million for accident and earlier I talked about me some changes to this memo and it will state more specific types of insurance requirements like requiring bodily injury and property damage and listing it separate with these million dollar limits.

So when we do list in our contractor requirements we need to make sure that we ask for these types of specific automobile coverages which is there's basically categories of how you cover what type of automobile. So owned of course that's self-explanatory. Non-owned and hired they tend to refer to any rental or lease type vehicles. And earlier I talked about limited amount of coverage that you can add to the general liability policy and this last bullet point basically refers to that. If a vendor that we hire may not have a huge fleet of vehicles or may not have their own automobile policy. This hired and non-owned liability coverage can at times be placed onto the general liability policy or be made by it separately. It all depends on what kind of pricing that they can get through the agent and the insurance company so keep that in mind I know a lot of departments that they have smaller contracts with individuals that may not have that big commercial auto policy. They can add this type of coverage to their GL and that has taken care of our insurance requirement at times.

Let's go over the first quiz that I have up here: so what's the purpose of insurance and why are the insurance requirements for state contracts important? Again the purpose of insurance is to transfer risk from the state to the vendor and/or their insurance company and its very important that we have this in our contracts because when claims come up as a result of executing the contract all of this can be used to protect the state from any funds that we may have to pay out for claims, push it onto either the vendor and/or their insurance company.

Now at times we may have vendors that may come in and show us they can't comply with the limits, the million dollar limits that we require and there is an umbrella or excess liability policy that vendors can purchase which actually sits over general liability and auto and work comp coverage. So conceptually this diagram on the bottom basically shows...let's say the vendor only has five hundred thousand dollars of general liability or five hundred thousand dollars for an auto policy but we require a million. If they purchased this umbrella policy of a million dollars that basically will have that vendor in compliance with our million dollar requirement. But keep in mind that this umbrella policy will be used to protect three of these types of policy so it'll share so if each of these policies have a million dollars each it may use up this umbrella liability limit so keep that in mind.

Let's get back to the umbrella liability policy so yes basically it'll be sitting over these three types of primary insurance policies and it can be used to comply with our state limit.

So as we talked about in this slide in addition to the three insurance policies that we would like to be named as an additional insurer. Even the umbrella should have this requirement also. So in your contracts please request that besides the general liability auto and/or work comp to make sure that the umbrella liability is required to state that the State of Hawaii is an additional insured. Keep in mind people do get confused with this umbrella liability. It is an amount...whatever amount that they state for this coverage you add that on to the existing general liability or work comp. So if the umbrella liability policy is 500,000 and the other policies is 500,000 also you have a total of a million dollars worth of coverage.

## **SPO 150 - Insurance Requirements for Contracts**

Okay other optional coverages that do come in too. It's pretty common that we see people need to know about is professional liability or errors and omissions usually these types of policies are required when a licensed vendor needs to do work for us. And a good example is either attorneys we hire attorneys, we're hiring engineers and architects, any industry that requires a license to operate their business. And if we do require this professional liability policy, it should be for limits of a million per claim and then aggregate of two million.

Keep in mind that professional liability policies will have larger deductibles than what you normally see but as a rule we like to keep the limit of these deductibles to be at an affordable rate of twenty five thousand dollars. Once again these are just guidelines. Nowhere in any Comptroller memo where it's a required amount but these are things that just you need to keep in mind just so that when there's a claim we want to make sure that the vendor would be able to afford paying their deductible before the insurance kicks in. And usually this professional liability policy will be made on a claims made basis as opposed to what you seen under general liability and auto coverages their based on a occurrence basis. So the difference between the two is basically how you file claims on each insurance policy. A claims made basis basically works when the claim is made. So if an accident occurred on January 1st but claim is made on July 1<sup>st</sup>, the policy that is covering the July 1st date is when you will trigger that insurance. As opposed to their current basis is whenever the accident occurred. That's when that policy will kick in. This is another tricky area of insurance where we ask to be an additional insured on someone's policy. For the most part, professional liability policy cannot be listed as an additional insured. Sometimes you know, very few cases they will allow that but most of the time they won't so keep that in mind. So on your contract language, if you were to ask to be an additional insured on a professional liability policy, most insurance companies will come back tell you that they can't do that.

Another type of policies is a crime or fidelity bond. These are insurance policies that cover you for any type of money handling operation. If you require this coverage the most important part of this coverage is you want to request that the state require them to have this policy to include third-party liability. So basically that allows the state to be covered by that policy if you were to ask for that coverage. So this type of coverage is basically is what we call first party coverage. It covers just the company, the vendor, themselves so that's why we have to ask for this third-party liability to be endorsed in there so entities like the state of Hawaii can be covered.

Builders risk insurance will probably pertain best to construction projects. And basically this type of coverage will give you protection for any inventory that is on site that is ready to be put into a building or be used to get the project done. And if something happens while on premise or in storage this type of insurance policy will cover the damages so that the state doesn't have to go and buy more material for the contractor. So until the project is signed off and we accept it this type of insurance will cover all this material and/or the uncompleted part of the construction project.

Here is a chart that gives a basic scheme of what type of insurance you can ask for for different types of contracts that you get into. So you can refer to this and if you don't see any type of activity and or insurance coverage that you're concerned about, by all means please feel free to contact me at my office and I will be definitely be able to help you with that.

## SPO 150 - Insurance Requirements for Contracts

So just some review: what are the minimum limits of insurance required by comptroller memo 2010-06? It's basically, for right now it's the GL one mil per occurrence and two mil aggregate and auto just one mil per accident.

Before I go on further let me just address one question here that we have on professional or E&O liability insurance. Let me go through this question real quick. So the question basically is on these E&O or professional liability policies, once the contract is over, is there a certain number of years after the end of the contract that we will require the vendor to keep...there are certain types of projects that you may want to do that for. Like if we're doing a construction project that deals with maybe some pollution issues in the in the future, or construction defects in the future, or any financial type dealings, and yes you can ask for a policy to extend further than when the contract is over. Now whether the vendors is going to agree to that that's another story but we basically can set the rules and ask for insurance policies to stay in place further. Now keep in mind that once a contract is over, you might have a hard time trying to establish the compliance to your rules because there's no contract for you to buying these people out. If you can add that in your normal scope of contract then any way you can you can set the rules and if they agree to it then it's just a matter of compliance and making sure that they have it going into the future. That's the most important thing is to its follow them and ensure that they have it.

Going further why do we have these risks transfer provisions? Basically we want to be fair and transfer all these risks not from a stand point of they have to protect the...even on the state's negligence but these rules and these requirements that we have just basically to ensure that the state doesn't have to step in when it's not the states fault in any of our contracts. And of course the main reason behind all these insurance requirements is to protect the State.

Here's another item that is not included on these current comptroller memos which is pretty important and I already see a lot of these certificates that come in from other departments, and we are asking for this, but it's called the waiver of subrogation. The waiver of subrogation basically the concept behind this is anytime an insurance policy kicks in from the vendor or any payment from the vendor themselves if they waive this right to subrogation is basically saying if they pay out a claim they waive the right to come back after the State for that reimbursement. It's important for the State to get this agreed upon by the contractor and or their insurance company because yes they have this insurance policy out there, they'll pay claims just want to ensure that they don't try to come back to us later on. If you establish this waiver of subrogation in your contract and or have it endorsed on the GL auto and especially the work comp policy, that eliminates the fact that they may come back to us later on. The other thing is the insurance companies when you set this rule or this request for waiver subrogations sometimes these insurance companies may say that something is paid or they waive the contract, they waive this right, that they may not get coverage from their initial insurance policy so it's up to the usually if you request this waiver of subrogation either the vendor and or the insurance company will come back and state that they cannot get this and so at that point departments have contacted me and I've worked with their agents and their insurance companies to see how we can work this out because we don't want to request for the waiver subjugation if that's just going to totally eliminate all of their other insurance coverage from their policy. And usually these things have to be endorsed onto the insurance policies to be accepted and there may or may not be an additional premium to it. So how we manage that premium that contract cost will come into play so by all means for this type of coverage if we asked for it and you get problems with it please give me a call at my office.

## **SPO 150 - Insurance Requirements for Contracts**

Indemnification and Defense. All of our contract should have this clause and basically it says that any contractor will protect the state and or even hire attorneys. When they say the Contractor shall defend that's basically having to pay for attorney fees to defend the state in case there's lawsuit.

Indemnifications basically providing coverage by the vendor for any liabilities against the state this is what drives basically this whole presentation or the reason why we ask for insurance from our vendors is once a contractor will indemnify and defend the State, there's financial ramifications for that. So this is where the insurance policies come in and they're used as these financial instruments to uphold this indemnification that they promised to the state. So the insurance policies that we're asking for is just basically to make sure there's money to fulfill this indemnification and defense. You need to require this and then make sure that they have the insurance policies to get that.

Keep in mind for this indemnification, the State basically cannot indemnify any party except the federal government and the counties of Hawaii. So make sure that if we have any vendor that we're working with or any party and they ask for indemnification. If it's a private firm, nonprofit, we cannot indemnify any of those entities. As far as contractors we want to make sure that if they're using subcontractors that either the contractors insurance will cover these subcontractors or the subcontractors will also have their own insurance policies in place.

Another issue on how we transfer risk is this primary and non-contributor wording. This goes back to another comptroller memo where we describe what the requirements are on the certificate of insurance and this wording suggested language here is basically saying that all insurance policies that the vendors have will be the primary insurance policies and the state will come in after that if need be. And of course another way we transfer risks is to get an insurance policy but there are deductibles and self-insured retentions which is basically a deductible applicable to our vendors' insurance policies. Keep that in mind. If we have a project whereby the deductible for that insurance policy is you know two million dollars but our vendor cannot even afford to pay that should you know a claim come up we got to keep that in mind.

Just some rules to be informed of when we do execute a contract we'll probably ask for all this type of insurance policy information and it'll come through the certificate of insurance. And couple of times I already had to address this issue where when we hire vendors they may have a problem with the State obtaining or requesting copies of their insurance policies. Basically this is a very important part where I tend not to waive from. I keep that requirement in there. Basically if they do not comply if we execute a contract and they're not in compliance with it then that is a major breach of the contract and it's up to your department in regards to whether you still want to keep that contract or work with them with their insurance requirements.

Okay another requirement we'll quickly need to go through additional insured issues is this is suggested language but it is on the it is not suggested is required language for how we ask for the state to be an additional insured on other entities policies.

Let's move on - Certificates of Insurance, this is basically the form that most companies will use if not all companies will use. These are some of the areas that you should take a look at. Now the date, of course, it has to be an updated date and within those time frames. Many things can happen to an insurance policy or company's financial status so you tend to want to get a real updated version of their proof of insurance. Okay the vendor that you are hiring should be in this particular box there are times where

## **SPO 150 - Insurance Requirements for Contracts**

you hire a vendor but their insurance program comes under their parent company. They are covered but it may be a different company and you may want to have them list the DBA or subsidiaries name there in that box but keep that in mind. This is another area that we probably will address in the future comptroller memo's and anytime you have insurance companies listed in these particular areas it'll list whose the general liability insurance company, whose the automobile insurance company. We tend to want these companies to have what we call insurance rating. It's called the AM-Best rating and it measures company strength financial strength and this is a guide that we want for all of these insurance companies to be at a rating of A-VII. The ratings of up to A-XV. That's the highest rating you can have but our minimum amount is A-VII. And for the listing or the categories of these insurance companies you can always send these certificates to me and we will find out the financial strength, the AM-Best rating for them. There are at times certificates of insurance come out with these stamps on it that says this insurer is not licensed to do business in the State of Hawaii and that stamp basically is warning you that if they're not licensed in the State of Hawaii they are not part of this guaranteed fund program. So if the company goes bankrupt this fund will kick in to help pay for any outstanding claims or liabilities that the insurance company has to face. However if we were to not accept these companies a lot of our vendors may not have insurance companies to insure them so we've accepted the fact that they're not licensed but as long as they have this AM-Best A-VII minimum rating then I will consider that in compliance to our requirements.

Once again an important box is general liability policies. The box is checked off as an "Occurrence" basis. Course, the policy number goes there. The effective dates on when the policy starts and ends are in these boxes. And of course the limits whether it's per accident or aggregate limit, it will all be listed in those boxes. From the next box below is the automobile liability box and where we talked about all the different types of categories that an insurance auto insurance company covers or insures by will be listed here. Of course the best box they have is any auto. If that's checked there then we know whatever auto they use whether its hired, rented, leased or whether they own it they're all covered. Again all these particular limits you take a look at and if they're not in compliance this is where our umbrella liability insurance policy can sit above that and/or these other areas that we need to be additional insured. Workers compensation of course this is an area that we will be looking at in further defining. One requiring it and two all these different limits we'll probably ask for a million dollars. We may ask for 500,000 I'm still doing some research on that what is the best for workers comp limits. Industry standard usually ask for a million dollars.

So if we're asking for special or unique insurance coverages like the professional builders risk this is where it's going to be listed. They don't have a specific box cause it's not the most commonly asked for insurance but this is where you see it with other coverage that gives you that description. Again this is an area where we ask to be additional insured. Those two columns next to each other basically is where we ask to be additional insured. So they can check off that area usually you see an X there and that designates that the State of Hawaii is an additional insured. Next to that is the waiver of subrogation so those two boxes we tend to well in compliance to our comptroller memos currently additional insured box needs to be checked off and/or you will see the description and/or verbiage that says that State of Hawaii is an additional insured here on the bottom description box. So there's two different areas that you can document that.

## **SPO 150 - Insurance Requirements for Contracts**

And at the bottom the certificate holder should be the State Department that's asking for the certificate of insurance and tend to want to have that as a State of Hawaii then your department listed under there. That way it's much broader description as to who's getting it and who's covered. This is where the insurance agent for the insured is going to have to stamp their name. And keep in mind this form is actually filled out by the insurance broker or the insurance agent. You may get it directly from your vendor but that's because the agent basically is the only person authorized to complete this so that's why they have to sign it at the bottom.

I see we have lots of questions so let me wrap up this particular area and we'll get to those questions. What is the purpose of a certificate of insurance? Once again it's to provide evidence what type of insurance that the vendor has so we can compare to see if they're in compliance. What you should consider when determining the type of coverage and this when you make this determination it starts off prior to you putting your contract together you got to know the scope of your work that you're requesting and that'll help dictate what kind of insurance and what limit that you should ask for.

And of course you always need to have some flexibility on some of this language so that it gives you and/or the vendor some flexibility in how we ask for this type of insurance. Some of this stuff like limits we got to be specific so those things we need to list down. Usually if there's going to be some conflict in a lot of this insurance requirements that we ask we usually see the vendor and/or the agent come to us and ask for clarification.

That's all for now so let's go through this certificate of insurance. This exercise basically lists all of the information that you would probably see when someone submits a certificate of insurance. So take a look at all the boxes that we went through and see what you think might be wrong with any of these pieces of information that was provided. I know some of you probably were looking at this while we were addressing some of these questions so I'll give the ones that didn't a few seconds to take a look at it. Let's go through with this exercise; it's the last part of our presentation. Thought I'd give you some common errors that you should be able to pick up on. One here is the producer or the agent is actually listed there. Keep in mind the agent is not an insurance company so their name should not be listed in that portion of the certificate. And under the GL policy it should be checked off as a current type not a claims made. Again where the State of Hawaii is not listed as an additional insured which they can check off that particular box or list it down on the bottom in the description box. For the auto coverage, policy number not listed. And because the limits of insurance were below our minimum standards the next step is to check, hey they have umbrella liability so how much do they have maybe that might help push them up to our required limits but in this situation they didn't list their limits there so we have to make them request for them to have that listed. Of course the waiver of subrogation we noted in the work comp box but going forward I'll probably make a requirement to have that listed on the GL and auto as well. So keep in mind up until this new version of the comptroller comes out, you still comply with 2010-06. In this description box it would be very helpful that they list which contract or some description as to what the certificate of insurance pertains to, which contract or which project. And of course the State of Hawaii's information is incomplete. I guess what's very important here is to make sure that the agency or the brokers authorized signature is there.

Okay well that concludes that exercise. I guess this concludes the presentation for the insurance requirements and here in front of you is information that you can use to contact me and/or my staff should you have any questions about what we went over today. So for those of you who attended today

## **SPO 150 - Insurance Requirements for Contracts**

thank you very much if you have any questions suggestions comments by all means please refer them to Procurement Office and/or my office.