



THE DREADED INSURANCE REQUIREMENTS

The only time insurance ever really gets exciting (before a claim) is when you ask contractors for proof of their insurance. A lot of contractors don't think they need insurance "because nothing has ever happened" or think that your requirements are "way too high." We know the answer to the first objection because insurable claims caused by contractors happen all the time. The second objection is a little more complicated because most District's do impose a "one size fits all" approach to insurance requirements. The Fund's position is that we want the District to be protected from claims caused by your contractors and requiring them to carry insurance is a big step in accomplishing that goal. The other indispensable measure to protect the District is your contract with the contractor that contains hold harmless and indemnification provisions, insurance, and safety requirements. The insurance requirements and other provisions the Fund recommends will be the focus of this discussion.

The starting point for consideration of the contractor's insurance is the risk they create for the District. Before considering any contractor's request for relief from the District's requirements an analysis of risk posed by the work and operations of the contractor should be done. Key questions include:

- What is the exposure to injuring people from the job the contractor will do for the District? Is the work near a school, church, homes, or other public facilities with large concentrations of people?
- Will the work impede traffic or access to businesses?
- What is the value of buildings or equipment that could be damaged or destroyed by the contractor's work?
- Could that damage shut down District operations or their ability to supply water or wastewater treatment?
- Could that damage impair the District's revenues?
- What is the "worst case scenario" from a contractor's mistake or accident?
- Is there a potential environmental impairment exposure from the contractor's operations?

If the contractor is small and the answers to the risk related questions show minimal exposure, exceptions to insurance limits of liability requirements might be made. Exceptions may also need to be made if:

- Sole source contractors or vendors (elevator repair, IT consulting) that say, "agree to make concessions on insurance requirements or we don't do the work."
- True emergency requiring immediate response

- Inability to get the coverage or limits of liability you would like to have due to insurance market conditions

Some variation is acceptable for smaller contracts or less hazardous work including:

- Contracts less than \$50,000 or \$100,000 and non-hazardous work (arbitrary limit)
- Office services, maintenance (mowing, landscaping, janitorial)
- Small-scale remodeling
- Vendors servicing vending machines or providing supplies like paper or coffee (note: suppliers of chemicals and other supplies used in water or wastewater treatment should not be eligible for lower limits of liability)
- You want to help a small contractor stay in business so they will continue to be able to do the work larger contractors won't do for you
- Smaller contractors often provide lower prices but may not have the higher limits of liability the larger contractors do

Sometimes insurance market conditions may restrict the availability of coverage, specific endorsements, or limits of liability. Coverage may become more expensive or unavailable at any cost. Usually though, coverage remains available, but it may only be offered by smaller insurance companies that do not have a strong financial underpinning. This is another area where judgement and the risk to the District come into play to make exceptions or go to a larger contractor that can better absorb the risk and provide the required insurance.

Shown below are the Fund's recommended coverages and limits of liability. The limits of liability set out what an insurance company will pay for one *occurrence* and the limit of all money they will pay during a policy year for all claims – the *aggregate*. Both limits may be exhausted by large or multiple claims. That's one reason the District should hold to its limit requirements unless there is a very good reason to lower them. The potential for severe or frequent claims is also a reason for requiring higher limits than the standard requirements.

Recommended **General Liability** insurance limits are:

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

*Any contractor that has more than one job going at the same time should provide an endorsement to their General Liability that provides separate **aggregate limits per job** or an automatic replenishment of the aggregate if exhausted by large or multiple claims.*

The contractor should also purchase and maintain **Automobile Liability** insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of **any** motor vehicle (including rented or non-owned vehicles). The automobile liability policy must be written on an occurrence basis.

Automobile Liability		Policy limits of not less than:
Bodily Injury		
Each Person		\$1,000,000
Each Accident		\$1,000,000
Property Damage		
Each Accident		\$1,000,000
[or]		
Combined Single Limit		
Combined Single Limit (Bodily Injury and Property Damage)		\$1,000,000

Both the contractor’s General Liability and Automobile Liability should include an additional insured endorsement naming the District or Authority, a waiver of subrogation in the District’s favor and a 30-day notice of cancellation or non-renewal to be sent to the District.

Workers’ Compensation provisions are shown in the next table.

Workers’ Compensation		Policy limits of not less than:
Workers’ Compensation		Statutory
Employer’s Liability		
Each accident		\$1,000,000
Each employee		\$1,000,000
Policy limit		\$1,000,000

Note: Contractor work performed over water on barges or work boats requires Federal United States Longshoreman’s and Harbor Workers Act coverage. Most larger contractors carry the \$1,000,000 limits but \$500,000 limits are standard on the statutory policy and may be acceptable for smaller jobs.

Workers’ Compensation issues will probably be the most common plea for exceptions. Texas Workers’ Compensation law does not require owners, partners, or executive officers of corporations to cover themselves. So, if a contractor has no employees beyond these three groups, you can waive the Workers’ Compensation requirement. If they have employees and are doing construction work for the District or Authority, Texas law requires them to carry Workers’ Compensation. (Labor Code, Chapter 406.096). Non-Subscriber type insurance on employees is not acceptable.

The Workers' Compensation policy should also be endorsed for a waiver of subrogation and the 30-day notice of cancellation or non-renewal.

Umbrella or Excess Liability: A contractor may be required to purchase and maintain umbrella or excess liability insurance written over the underlying commercial general liability, automobile liability, and employer's liability insurance described in the paragraphs above. The coverage afforded must be at least as broad as that of each one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

Note: Examine the potential for significant loss of life or damage to property that may arise out of a particular job. Are there nearby schools or high value buildings or other installations that could be affected by a catastrophic event at your job site? If so, raise the limits for the Umbrella or Excess.

An Umbrella policy "follows form" of the underlying liability policies. That means that if it's covered in the general liability, automobile liability or employers' liability, it's covered by the umbrella. The umbrella also requires certain limits of liability in the underlying. If the General Liability, Automobile Liability, or Employer's Liability limits aren't high enough there could be a large gap with no coverage. The Fund does not issue umbrella policies but provides separate higher limits of liability up to \$10,000,000. Specific coverages may also be required for contractors using aircraft or marine vessels or with a significant environmental impairment exposure.

Remember, both the Fund's underwriting staff and risk management consultant will help you review any questions about your insurance requirements or requests for exceptions from any size contractor.