

# M E M O R A N D U M

**To:** All Departments  
**From:** David L. Nielsen, City Attorney  
**Subject:** Insurance Review for Public Works Construction Agreements and Project Agreements  
**Date:** September 28, 2011

This Memorandum for Insurance Review supersedes the Memorandum dated September 18, 2006.

The following insurance items are required in PW construction agreements and project agreements entered into by the City:

1. **Commercial General Liability** \$1,500,000 per occurrence  
(bodily injury and property damage) \$3,000,000 aggregate
2. **Products and Completed Operations** \$3,000,000
3. **Automobile Liability** \$1,500,000 per accident  
(all owned, hired, non-owned)
4. **Workers' Compensation** Not less than statutory limits
5. **Employers' Liability** \$1,500,000
6. **Professional Liability (E&O)** \$1,500,000 per claim  
(only if applicable-architects and engineers)
7. **Builder's Risk/Property Insurance** (for buildings) Equal to greater of Contractor's compensation or full replacement (covering all work. buildings, materials and equipment, whether on site or in transit, loss due to fire, lightning, theft, vandalism, malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of laws, water damage, flood if site within a flood plain, repair or replacement costs, testing and start-up costs)
8. **Owner's and Contractor's Protective Liability** \$1,000,000 per occurrence  
(may be waived if no uninsured activity and job-specific) \$3,000,000 aggregate
9. **Contractual Liability Insurance** \$1,000,000 per occurrence  
(covering indemnity obligations and may be part of CGL) \$3,000,000 aggregate

### **Additional Coverage**

Additional coverage may be required in the event of the following:

- 1) crane operating services: add On-Hook Coverage
- 2) transportation services: add \$1,000,000 Transit Coverage

### **Contractual Liability**

Contractual Liability Insurance (CLI) may be included in the Commercial General Liability (CGL) policy but if not will be an endorsement to the CGL. The limits on CLI are part of CGL. On a claim the insurer might pay under CGL first with balance on CLI.

### **Owner's and Contractor's Protective Liability**

Owner's and Contractor's Protective Liability (OCP) has limits over and above CGL and CLI, and is independent insurance. OCP is particularly important for two reasons: 1) whereas the policy limits under CGL are used to cover all other activities of the contractor, the OCP limits are not shared with other external liability exposures and are exclusive to the contracted work; and 2) OCP will cover events that are otherwise excluded in CGL, such as Professional Liability exposures. (See Cloverview case in Billings. CGL did not cover the surveying and engineering design and services).

Surveying, planning and design by contractor is professional services and excluded under normal CGL policies. When professional services are cause of damage, CGL will not cover contractor or owner, nor will CLI, but OCP will.

OCP may be waived by the City Attorney if:

- 1) the CGL policy limits are exclusive to the contracted service, are not shared with other external liability exposures and there are sufficient CLI and CGL policy limits, including umbrella limits;
- 2) the "per occurrence" limit, without defense costs being part of it, exceeds \$1,500,000, or if defense costs are part of the "per occurrence" limit, the per occurrence limits are \$3,000,000 or more; and
- 3) the contract does not include services or activities that are excluded from the CGL coverage, such as professional services.

### **Professional Services Liability**

Professional Services liability coverage is a separate policy from the CGL. CGL does not include professional services and, in fact, excludes coverage for it. Typical professional services coverage only covers the professional from malpractice. It is written on a “per claim” basis rather than “per occurrence.” This means the coverage is determined at the time of the claim and not when the act occurred that caused the injury. Professional service coverage does not provide a duty to defend coverage under the indemnification clause. It will defend the professional, but not the indemnified party.