

The Q & A's of contracts

By Carlene Brown

An essential way to protect your entity and mitigate legal risk is by embracing contracts. In other words, any time a member agrees to engage with another party in activities including but not limited to sharing resources and/or activities with another entity, hiring an independent contractor to perform work, leasing property, or pursuing ongoing services, a written agreement should be created.

The following are some common questions that WCIA has received from members over the past years involving contracts along with our advice on these issues.

Q: Are certificates of insurance sufficient to provide proof of additional insured status?

A: Unfortunately, no, which is why WCIA recommends a copy of the actual additional insured endorsement be provided by the other party. It's best to verify that the endorsement does indeed cover your entity as sometimes brokers make mistakes and provide the wrong endorsement. Moreover, certificates of insurance are not legally binding contracts. Certificates are provided for informational purposes only and cannot legally amend or change an insurance policy. You will see the following disclaimers used on most insurance certificates:

"If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed."

"This Certificate is issued as a matter of information only and confers no rights upon the Certificate Holder. This Certificate does not amend, extend or alter the coverage afforded by the policies below."

These statements only verify that the insured has purchased the insurance stated on the Certificate. The Certificate Holder (e.g., your agency) has no legal right to be covered by the insurance unless they are provided additional insured status either by separate endorsement or as provided in the policy itself. WCIA recommends that copies of the additional insured endorsements be required along with the insurance certificate to verify coverage.

Q: We are hiring someone to redesign our website, is it okay to waive the auto liability?

A: It is best practice to always require auto liability in your contracts and then you can always agree to remove the requirement only if there is no driving as part of the scope of work.

Q: Can we take out the word “defend” in the indemnification clause?

A: We strongly recommend not taking out the word defend from the indemnification clause which requires the other party to defend, indemnify and hold harmless the municipality. Without the word defend, the member will have to pay for its legal defense up front and the contractor may very well take the position they have no duty to incur the defense costs, or that they are only going to reimburse a portion of the costs based upon what they determine was reasonable.

Q: Is it okay to have a contract for over 10+ years?

A: It is preferred to not have a contract over a lengthy period of time since it does not allow you to change the terms of the agreement and the insurance limits. With that said, if you are going to have a lengthy contract, it may be prudent to have something written in the contract saying that the member will review the contract every five years and reserves the right to amend the insurance requirements based on the risks presented at the time the document is being revised.

Q: If the contractor’s insurance does not meet the criteria in our insurance requirement specifications, should we alter the requirements to fit the contractor’s insurance?

A: No. The insurance requirements language has been carefully worded to afford your agency as much protection as possible given the nature of the risk and current claim values. It is not the responsibility of your agency to tailor your requirements to what insurance the contractor carries. The contractor should procure insurance to meet your specifications.

Q: If we require \$3 million of insurance for Commercial General Liability (CGL) and the contractor has \$1 million CGL and a \$2 million Excess/Umbrella, can they be combined to equate the required amount for CGL?

A: Yes. If the primary insurance limits are insufficient, you can combine the primary and excess or umbrella insurance limits to equate the required amount for the CGL. In addition, if the primary insurance limits on the underlying policy are exhausted in a particular year, the excess/umbrella policy limits may then be available for additional claims in that same policy period. The primary purpose of excess/umbrella liability is to offer an added layer of protection in the event the underlying insurance is insufficient or exhausted. In some instances, the excess/umbrella policy may also provide additional types of coverage.

Q: Why do we need an indemnity clause in our contract when we are added as an additional insured on the contractor’s liability policy?

A: These are two different protections; one is a legal right of recovery based in contract regardless of insurance and the other, additional insured status, is provided through insurance coverage. If you have an indemnity provision in your contract with the contractor, that contractor is obligated to indemnify your agency regardless of whether its insurance covers the loss. In other words, it strengthens your position in pursuing a claim for damages against the party you are contracting with, giving you the ability to pursue a claim under the indemnification portion of

a contract regardless of insurance. Make sure your indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations to your agency, that they have the assets to indemnify your agency for a potential loss.

ADM.21 in the WCIA Liability Resource Manual provides the latest and greatest indemnification and insurance requirements language that can be used by members in drafting agreements. ADM.21 contains a variety of different types of template language for contracts. The Liability Resource Manual is located on the [WCIA website](#). Your assigned WCIA Risk Management Representative can also provide you with guidance in determining the appropriate insurance coverage requirements to minimize potential risks.

WCIA also offers a training class several times a year which addresses these issues titled *Taking the Mystery out of Insurance and Indemnity Requirements for Contracts*. The WCIA training calendar on the website, along with emails from Member Services, will alert you to the next opportunity. Hope to see you there!