

Why State Contracts Have Insurance Requirements

As with most contracts for goods, services, IT and construction; state contracts have an Indemnity section where the contractor agrees to hold the state harmless and defend the state against any loss caused by the contractor related to activities performed under their contract. The contractor also agrees to indemnify or reimburse the state from a loss the contractor is responsible for. This may include legal defense costs, as well as money to make the state whole from the loss.

In order for a contractor to satisfy the agreement to hold harmless, defend and indemnify the state, it requires financial resources most businesses do not have on their own. This is why the state requires contractors to carry certain insurance.

The state views contractors as valuable resources that provide important services. These services help support the state in its fulfillment of duty to the citizens and clients of the state. For the continuation of these duties, it is important to ensure a contractor's business is financially stable and available – otherwise there can be a serious disruption in business and services to the state and its clients.



It is in the Contractor's Best Interest

- The contractor has made a promise under the Indemnity section of the contract to defend, hold harmless and indemnify the state related to the services they are providing under the contract. Meeting Insurance requirements assures fulfillment of this promise.
- Should a contractor cause a loss they are responsible for, the state is bound to pursue recovery from any available means under [ORS 278.052](#). This may include the contractor's personal assets – such as equity in their home, savings, retirement, etc.
- Waiving insurance requirements does not help the contractor. Again, without the financial backing from insurance, the contractor could be putting their personal assets at risk. Furthermore, a judgement may impede the contractors ability in securing future business loans and hinder future business ventures.
- By not having proper insurance, the contractor is in harm's way, as is the state.

Fair, Honest, and Ethical Contracting

[ORS 279A.015 - Policy](#). *It is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:*

(2) *Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.*

Whether ORS 279A.015 applies to your agency, the state and all state agencies should act in a fair, honest, and ethical manner when contracting for services.

Points to consider:

- Is it fair, honest and acting in good faith when the contractor has agreed to our indemnity language, the state is required by ORS 278.052 to pursue recovery from any available means for a loss, but then requirements for insurance are waived?
- Waiving or not requiring insurance could result in a contractor going out of business if a claim is made against them. How will a contractor be replaced if they have been put out of business due to an uncovered claim?
- It is important to consider what could go wrong. A small job or service, does not mean the risk is also small. Small jobs or services have the potential for a big risk.
- Insurance helps to safeguard **both** parties from certain damages.

RiskWise



A Guide to Controlling Risk

Why State Contracts Have Insurance Requirements

- It is in the Contractor's Best Interest
- Fair, Honest and Ethical Contracting
- Determine The Right Insurance to Require
- CGL Vs. PL Insurance
- Additional Resources, Links and Information

Fair, Ethical and Honest Contracting (Continued)

- A viable business should already have insurance, including small sole proprietors. Since a contractor should already have insurance, little or no cost is added through the state's insurance requirements.
- The state and state agencies have a responsibility to vet the contractors they use. Insurance is available and affordable. So when an agency finds that a contractor doesn't have the required Insurance, It could be for many different reasons. Some reasons of particular concern would include:
 - * The contractor has not obtained insurance because they do not recognize the need and importance.
 - * They are not a good risk because they do not have good operating procedures.
 - * They are not a good risk because they have a number of claims against them.



If any of these reasons are true, should the state or state agencies conduct business with this contractor? Would the statutory requirements of ORS 279A.015 for Fair, Ethical and Honest contracting be met?

Determine The Right Insurance to Require

To determine what insurance and coverage amounts are required for a contractor, a risk assessment should be completed for each contract. An insurance requirement exhibit should also be included with each contract.

To learn more about how to perform a risk assessment and determine insurance requirements for a contractor, visit the [DAS Risk Management contracts and risk assessment overview website](#). It provides easy access to a complete list of tools and templates for use with contracts. It also offers an iLearn training opportunity with how use the tools.

Commercial General Liability (CGL) vs. Professional Liability (PL)

Q: If we require PL, do we need to also require CGL?

A: YES. PL and CGL do not cover the same things. In fact, PL excludes coverage for CGL exposures, and vice versa. Though sometimes CGL exposures seem minimal on the surface, the exposures are very real.

Examples:

- The contractor leaves out an extension cord or briefcase creating a trip/fall.
- The contractor leaves a water faucet on causing water damage.
- The contractor makes a remark causing someone to believe their civil rights have been violated.
- The contractor publishes private information on social media.
- The contractor violates a trademark.

These types of things – and more – are covered under a CGL policy.

Many claims may appear unfounded. Unfortunately, such claims do get filed, which then requires legal defense cost of potentially \$100,000 to \$1,000,000 or more. Without the right types of insurance, the contractor's personal assets may be at risk to cover these costs?

In Summary CGL is *always* required.

In Addition:

- Auto liability is almost always required.
- Other insurance, such as Professional Liability, Abuse and Molestation, etc. may also be required based on the risk assessment.

Additional Resources, Links and Information

A licensed insurance agent who assists business owners is an important resource for a contractor. It may be necessary for them to work with an agent who specializes in business insurance.

If a contractor does not know how to locate an insurance agent, they can consider contacting one of the professional associations linked below. These resources are not insurance agents, but may be able to refer a contractor to an insurance agent.*

[Professional Insurance Agents – Western Alliance](#)

[BIG i \(Independent Insurance Agents & Brokers of America, Inc.\)](#)

*NOTE: The state and state agencies cannot advise contractors. It is the contractor's own choice to contact one of these organizations and their responsibility to identify a licensed insurance agent they wish to work with.

DAS RISK MANAGEMENT

www.oregon.gov/das/Risk/Pages/Index.aspx

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