

HOLD HARMLESS PROVISIONS

and

INSURANCE SPECIFICATIONS

in Contracts



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CONTRACTUAL RISK TRANSFER

What Is A Contract?

A contract is an agreement between two or more parties which creates an obligation to do or not to do a particular thing. The document containing such an agreement is usually in writing, although a contract can be oral.

Contractual risk transfer is the process by which an organization assigns risk to independent contractors that it chooses to do business with. The guidelines in this document address hold harmless provisions and insurance provisions in contracts as a way to transfer risk and protect the state from tort liability. These guidelines are not a substitute for sound legal advice.

The Risk Management & Tort Defense Division recommends that each agency establish a process by which contracts are reviewed and approved by an attorney or someone else who understands contracts and is familiar with the information provided in this document.

Contractual Risk Transfer

Contractual risk transfer is a method of allocating risk to independent contractors through hold harmless provisions and insurance specifications.

The question is often asked, why transfer contractual risk, why doesn't the state just assume it? A few of the more important reasons are summarized below:

1. The state is self-insured. Liability may fall upon the owner of a contract (i.e.state) absent appropriate language.
2. The potential loss stemming from performance of many contracts is too large for the state to assume.
3. The contractor is in a better position to assimilate the loss because of:
 - Experience.
 - Financial capacity.
 - Ability to control the work.

Contractual Transfer Concerns

There are a number of potential concerns which may arise with respect to contracts or contractor insurance unless appropriate indemnity provisions and insurance specifications are established:

- Contractor purchases the wrong type of insurance.
- Contractor provides insurance which is excess of any other insurance, including the state's insurance.
- Contractor purchases claims made insurance coverage versus occurrence coverage.
- Contractor fails to specifically name the state as an additional insured under its insurance policy.
- Contractor's insurance lapses and the contractor is rendered insolvent.
- Contractor's employees are injured and have no insurance.
- Inadequate contractor insurance limits. If the contractor has an aggregate insurance policy limit and prior losses, the

state may not be protected in the event of contractor negligence.

- Insurance policy exclusions.
- Contractor failure/insolvency.
- Contractor's insurance company becomes insolvent.

Most of these concerns are avoided through appropriate contract language and are addressed in subsequent sections.

How is Risk Transferred?

Risk transfer can usually be accomplished in two ways. These methods are not mutually exclusive. Successful risk transfer includes a combination of both:

- Carefully worded hold harmless and indemnification language.
- Contractual requirements for the contractor to purchase insurance. Appropriate insurance coverage becomes especially important when the contractor has agreed to hold harmless, defend, and indemnify the state.

DEVELOPING CONTRACTS

This section provides a framework for developing contractual agreements. Agency contracts may differ substantially based upon type of contract, industry standards, or specific federal or state regulations.

For those agencies that do not have access to legal counsel, a sample contract may be found in the appendices on page 15.

Hold Harmless/Indemnification Clauses

A hold harmless/indemnification clause in a contract is a transfer mechanism where the contractor agrees to assume, by contract, the liability associated with the work performed or services provided.

Hold harmless/ indemnification agreements differ considerably in the way that they are worded and to the extent that they transfer liability. To be valid, a hold harmless/indemnification clause must be specific.

Hold harmless/indemnification agreements should have appropriate contract language and require the contractor to defend (pay legal costs) and indemnify (pay settlements or judgments) for activities of the contractor associated with performance of the contract.

Hold harmless/indemnification agreements are useful to clarify and pinpoint accountability. Their value without insurance or other secured financial transfer devices may be limited.

The type of hold harmless/indemnification clause obtained by each state agency will depend on negotiating abilities, skill in writing contracts, and the bargaining position of the parties.

A brief explanation of the various types of hold harmless/indemnification agreements is provided below: For sample language, please see the section entitled 'Sample Specifications', Page 9.

- **Limited Form** - Requires the contractor to be responsible for his/her own negligence.

Under a limited form hold harmless/indemnification agreement, the contractor agrees to hold harmless, defend, and

indemnify the agency for liability arising out of the negligent acts or activities of the contractor.

- **Intermediate Form** - Requires the contractor to be responsible for his/her own negligence or the joint negligence of the contractor and the state.

Under an intermediate form agreement, the contractor agrees to hold harmless, defend, and indemnify the agency for all liability arising out of the project, except that arising out of the sole negligence of the agency.

- **Broad Form** - Requires the contractor to be responsible for all liability arising out of the project (including the sole negligence of the agency).

Under a broad form agreement, the contractor agrees to hold harmless, defend, and indemnify the agency for all liability arising out of the project.

The clause does not guarantee the following:

- That the contract itself is good, or that the courts will enforce the clause if it is against public policy.
- That the party who assumes the liability will be financially able to pay damages or respond.
- That the insurer of the assuming party will cover loss due to exclusions under the contractual liability coverage.

Examine Carefully

- The sole negligence of the contractor and the joint negligence of the contractor and the agency.
- All liability arising out of the project, not just bodily injury and property damage.
- Damages or injury to:
 1. Contractor's employees and agents.
 2. Contractor's property.
 3. Third parties.

Hold harmless/indemnification language, in and of itself, is usually insufficient to protect the state in the event of a loss for the following reasons:

- ◆ Where the state and the contractor have both signed hold harmless/indemnification agreements or liability is in question, the courts may turn to the contractor's/contractee's insurance policies for recovery.
- ◆ In the event of a large loss, the contractor may become insolvent and in the absence of insurance, the courts may look to the state for recovery.

When transferring risk through the use of a hold harmless/indemnification clause, there are a number of points to discuss thoroughly before executing the contract. The major points are:

- Clearly delineate each party's obligations.
- Make certain that the other party has the financial ability to assume the liability, either through their own resources, or through insurance to back their commitment.

A hold harmless/indemnification agreement does not excuse the state from liability. The agreement simply provides a contractual right to pursue recovery from the other party assuming the liability.

CONTRACTOR INSURANCE

In addition to hold harmless/indemnification language, insurance is a vital mechanism whereby risk is transferred from the state to the contractor's insurer by requiring the contractor to purchase insurance coverage.

Insurance becomes especially important when the contractor has agreed to defend and indemnify the state. We have outlined on the next page some of the basic types of insurance that agencies should typically require of a contractor by contract type. **Note: state agencies and universities perform many activities and provide many services that may necessitate other types of contractual insurance not found on page 5. Please contact the Risk Management & Tort Defense Division if you need assistance.**

INSURANCE COVERAGE BY CONTRACT TYPE

Type of Contract	General Liability	Vehicle Liability	Professional Liability	Fire & Extended Coverage or All Risk	Workers' Compensation Coverage
Construction Contracts	✓	*	✓	✓	✓
General Services Contracts (e.g. housekeeping, maintenance, etc.)	✓	*			✓
Lease (tenant of entire building or ground lease with building reverting to agency)	✓			✓	✓
Traditional professional service contracts (i.e. architects, accountants, engineers, doctors, lawyers, Medical, etc.)	✓	*	✓		✓
Other professional service contracts (i.e. non-traditional etc.)	✓	*	*		✓
Transportation contracts or contracts that require substantial use of an automobile.	*	✓			✓

* Optional – where there is an exposure or risk that would warrant insurance.

✓ Usually required.

Where insurance is required of a contractor, it is important that agencies: 1) require the contractor to name the state as an additional insured where feasible; 2) obtain certificates of insurance - proof of contractor's insurance coverage; 3) specify via insurance/bid requirements what type of coverage is required given the risk; and 4) obtain written copies of the

endorsement and/or certificates of insurance from the contractor and/or its insurer prior to provision of a service and/or procurement of a product.

Additional Insured Provisions

Typically, the named insured in an insurance contract is the independent contractor.

An additional insured is a person or organization, other than the named insured, which is protected under the terms of the contract (i.e. the state).

State agencies should require each contractor to name the state as an additional insured, where feasible, in the contractor's certificates of insurance and under the contractor's insurance policy via endorsement to the policy.

The most common reasons for requiring the contractor to name the state as an additional insured are listed below:

- ✦ The contractor's obligations are not dismissed due to bankruptcy.
- ✦ Coverage is provided for the state's defense expenses and other claims costs.
- ✦ The insurer may not subrogate claims against the state.
- ✦ The contractual liability insurance affords a degree of indirect financial security to the state (i.e. there is another entity, the insurer, to whom the state can go for coverage of claims and related expenses mentioned in the hold harmless agreement.)
- ✦ Being an additional insured is not a substitute for a hold harmless agreement because it protects only against perils covered in the insurance policy. Both are needed in the agreement for financial insured considerations.

How do state agencies request to be named as an additional insured under the contractor's policy? When executing bid specifications, under insurance coverage's required, request to be named as an additional insured (see sample specifications page 9).

Certificates of Insurance

As previously stated, one-way to ensure compliance of the hold harmless clause is the financial strength of the party to whom the risk is transferred. This can be done by asking for a certificate of insurance.

The certificate of insurance provides evidence of contractor insurance and should indicate the type of coverage, limits of liability, and term of insurance. A certificate should be signed by an authorized agent of the insurer or an officer of the insurance company.

A certificate of insurance is not a contract--only evidence of coverage at the time the certificate is issued. Having a certificate is no guarantee that the policy is currently in force or that coverage is as requested.

In addition to certificates of insurance, state agencies should require and obtain copies of the appropriate endorsements or policy language prior to the provision of the service or procurement of the product.

Policing Certificates

The certificates of insurance supplied by many companies and insurers are not adequate. Following is a checklist of what a certificate should contain:

- * Limits of liability requested in the specifications.
- * A clear description of the general nature of the coverage and the extension endorsements (i.e. general liability, automobile liability, worker's compensation, employer's liability etc.).
- * A statement that the policy will stay in force and that no material change will take place to the policy without prior written notification.
- * A statement that the state is named as an additional insured.

DETERMINING APPROPRIATE INSURANCE REQUIREMENTS

In an effort to allow greater flexibility in establishing appropriate insurance requirements, the Risk Management & Tort Defense Division has developed the following guidelines in selecting insurance requirements for bids and proposals.

STEP ONE: Determine what type of insurance should be required.

There are primarily five separate types of insurance requirements that agencies should evaluate to fit specific insurance needs; General Liability, Automobile Liability, Professional Liability, Workers' Compensation, and Property. For contracts with insurance requirements that fall outside of these insurance requirements, please contact the Risk Management & Tort Defense Division.

For contracts that fall under the purview of the Montana Procurement Act, agencies should work with the State Procurement Bureau or agency legal counsel to determine which insurance types should be included in the solicitation document for all bids and proposals. The State Procurement Bureau will contact the Risk Management and Tort Defense Division (RMTD) if questions arise about coverages, endorsements, and/or certificates of insurance.

For all other proposals agencies should work with legal counsel and the Risk Management & Tort Defense Division directly. The five types of insurance are:

- **Commercial General Liability Insurance:** should be required when contractors perform work on state premises or property, other than the routine delivery of supplies. This coverage should also be required where bodily injury or property damage may occur as a result of the service being provided and in most traditional (i.e. accountants, architects, engineers, doctors, lawyers, etc.) professional liability contracts.
- **Commercial Automobile Liability Insurance:** should be required if the contractor will be transporting state employees, state guests, state clients, or state products as part of the contract.
- **Professional Liability Insurance:** should be required in most traditional professional liability contracts (i.e. accountants, architects, doctors, engineers, lawyers, etc.) and in all other professional liability contracts where errors and omissions may result in significant economic damages for anyone who gives advice or provides services on which others have reason to rely and may be subject to legal action if the advice or service proves faulty.
- **Property Insurance:** should be required in any contract that involves renovation or construction of state buildings.
- **Workers' Compensation insurance or an exemption:** should be required in all contracts.

STEP TWO: Evaluating risk and determining insurance limits.

The Risk Management and Tort Defense Division recommends that state contracts require minimum limits of \$1,000,000 per occurrence /\$2,000,000 per aggregate since these limits most closely coincide with the state’s tort damage caps.

However, RMTD recognizes that the state enters into contracts in which these standard levels of coverage may be excessive or inadequate. The size of the contract in and of itself should not determine coverage limits. Rather, the risk associated with the product or service provided under contract should govern the limits of insurance that are required. RMTD has developed the following table as an aid in determining appropriate insurance requirements for various risk levels.

TYPE OF INSURANCE	LEVEL OF RISK		
	Low	Moderate (combined single limits, except for auto)	High
General Liability	\$300,000 per occurrence	\$500,000 per occurrence	\$1,000,000 per occurrence
	\$600,000 aggregate	\$1,000,000 aggregate	\$2,000,000 aggregate
Auto	Split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage); OR Combined single limits of \$1,000,000 per occurrence to cover to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.		
Professional Liability	\$300,000 per occurrence	\$500,000 per occurrence	\$1,000,000 occurrence
	\$600,000 aggregate	\$1,000,000 aggregate	\$2,000,000 aggregate
Property	Replacement Cost	Replacement Cost	Replacement Cost
Workers’ Compensation	Statutorily Defined	“ “	“ “

Note: the level of risk may vary within the same contract if more than one type of insurance is required. The insurance limits stated in these specifications are recommended minimums and may need to be increased or reduced to reflect the risk associated with performance of the contract.

SAMPLE SPECIFICATIONS FOR STATE CONTRACTS (RMTD and Insurance Consultant Guidelines)

Proposed Contractual indemnity and Insurance Language

DEFENSE, INDEMNIFICATION / HOLD HARMLESS (Consult with Your Attorney)

Contractor shall defend, indemnify and hold harmless the State of Montana and the contracting agency hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Contractor's or its subcontractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting or allegedly resulting in whole or part from (i) the services performed or products provided or (ii) other acts or omissions of Contractor and/or its agents, employees, representatives, assigns, and subcontractors.. The contractor shall provide evidence of the contractual endorsement for indemnification

OR

Duty to Defend. Contractor, at its sole cost and expense, shall defend the state of Montana and the contracting agency or other instrumentality of the state of Montana, and their employees, officers, officials, agents, and volunteers (collectively, Indemnitees) from and against all claims, allegations, lawsuits, or any other action (Claim or Claims) relating to personal injury, death, damage to property, financial loss or other obligation arising or allegedly arising out of or in connection with Contractor's duties under this agreement.

Duty to Indemnify. Contractor shall indemnify the Indemnitees against losses, liabilities, damages, judgments, settlements, penalties, fines, reasonable attorney/expert fees, expenses, and court costs, arising from the Claims.

Notice of Claim. State shall give Contractor prompt notice of any Claim, and at Contractor's expense, State shall cooperate in the defense of the Claim. Contractor acknowledges that under Montana law, the Montana Attorney General may participate in an action involving the state of Montana.

State Reimbursement. If Contractor fails to comply with its defense obligations under this section, State may undertake its own defense. If State undertakes its own defense, Contractor shall reimburse State for all costs to State resulting from (i) settlements, judgments, losses, damages, liabilities, and penalties, fines, and (ii) defense of the Claim, including but not limited to attorney fees, court costs, and the costs of investigation, discovery, and experts.

The contractor shall provide evidence of the contractual endorsement for indemnification

REQUIRED INSURANCE

NOTE TO AGENCIES: Insert for all insurance types

For purposes of this contract "state" means the State of Montana, or any office department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state in accordance with 2-9-101 (7), MCA. If the contractor maintains higher limits than the minimums required in this contract, the state shall be entitled to coverage for the higher limits maintained by contractor.

NOTE TO AGENCIES: Insert for commercial general liability, automobile liability, and may apply to other commercial specialty liability insurance

Primary Insurance. All insurance maintained by the contractor, or any subcontractor as required by this contract shall be primary insurance for the contractor's negligence as respects the state its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the state, its officers, officials, employees, or volunteers shall be excess of the contractor's insurance and shall not contribute with it.

General Requirements. Contractor shall maintain for the duration of this contract, at its cost and expense, insurance protecting the state, its elected and appointed officials, agents, and employees against claims for bodily injury, death, personal injury, property damage, and contractual liability, which may arise from or in connection with the negligence of the contractor, its employees, agents, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

NOTE TO AGENCIES: Insert for commercial general liability only

Specific Requirements for Commercial General Liability. The contractor shall purchase and maintain liability coverage on Insurance Services Office Form CG 00 01 covering CGL or its equivalent on an "occurrence" basis including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2 million aggregate (limits may be lower or higher depending on the risk) to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns, or subcontractors.

Note: The limits for political subdivisions of the state (i.e., counties, cities, towns, and school districts) are prescribed under §2-9-211, MCA at \$750,000 per claim and \$1,500,000 per occurrence and lower or higher limits may not be imposed. The language above may be used for political subdivisions of the state if "**purchase and**" plus "**on Insurance Services Office Form CG 00 01 covering CGL or its equivalent on an "occurrence" basis including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2 million aggregate (limits may be lower or higher depending on the risk):**" are deleted and "**as prescribed by "2-9-211, MCA at \$750,000 per claim and \$1,500,000 per occurrence"** are inserted after "**maintain liability coverage.**"

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including materials, parts, or equipment furnished in connection with such activities; products and completed operations; and premises owned, leased, occupied, or used. **Note:** This additional insured provision may not be imposed in contracts with political subdivisions of the state (i.e., counties, cities, towns, and school districts) under 2-9-211, MCA).

NOTE TO AGENCIES: Insert for automobile liability only – where automobiles are utilized to transport goods and persons or to otherwise provide services as specified by contract.

Specific Requirements for Automobile Liability. The contractor shall purchase and maintain liability coverage on ISO Form Number CA 00 01 (or its equivalent) covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage (limits may be lower or higher depending on the risk) to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns, or subcontractors.

Note: The limits for political subdivisions of the state (i.e., counties, cities, towns, and school districts) are prescribed under §2-9-211, MCA at \$750,000 per claim and \$1,500,000 per occurrence and lower or higher limits may not be imposed. The language above may be used for political subdivisions of the state if "**purchase and**" and "**on Insurance Services Office Form CG 00 01 covering CGL or its equivalent on an "occurrence" basis including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2 million aggregate (limits may be lower or higher depending on the risk):**" are deleted and "**as prescribed by "2-9-211, MCA at \$750,000 per claim and \$1,500,000 per occurrence"** are inserted after "**maintain liability coverage.**"

Additional Insured Status: The state, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by the contractor. **Note:** This additional insured provision

may not be imposed in contracts with political subdivisions of the state (i.e., counties, cities, towns, and school districts) under 2-9-211, MCA.

NOTE TO AGENCIES: Insert for workers' compensation only

Specific Requirements for Workers' Compensation. The contractor, its employees and agents, and its subcontractors' employees and agents are not employees of the State. The contractor shall maintain workers' compensation and employer's Liability insurance or an independent contractor's exemption covering Contractor and its employees and agents while performing work for the State of Montana in accordance with §39-71-120/401/405, Montana Code Annotated. Employer's Liability will have a limit of not less than \$1,000,000 per accident for bodily injury or disease. This insurance/exemption must be valid for the entire contract period. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the state for all work performed by the Contractor and its employees.

NOTE TO AGENCIES: Insert for professional liability only - where a professional service is offered and/or a licensed professional is providing services by contract.

Specific Requirements for Professional Liability relevant to Contractor's profession. The contractor shall purchase and maintain professionally liability insurance with combined single limits of \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate (limits may be lower or higher depending on the risk) to cover such claims as may be caused by any act, omission, negligence of contractor . Note: If "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide "claims made" coverage provided the following conditions are met:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work.

NOTE TO AGENCIES: Insert for crime only – where a contractor has a fiduciary responsible for physical or monetary assets of the state by contract.

Specific Requirements for Crime. The contractor shall purchase and maintain a commercial crime insurance policy in the amount of \$1,000,000 per occurrence (limits may be lower or higher depending on the risk) that provides coverage for employee dishonesty, forgery or alteration, burglary and theft of money and securities (inside and outside premises), computer fraud, and other dishonest acts of any employee, agent, or independent contractor whose duties are to receive, handle, or have custody of physical assets, money, checks, securities, electronic funds, or account for supplies or other property of the State. Coverage is to include client coverage endorsement and name the state as a loss payee. The coverage must apply to any individual that certifies, signs, or countersigns checks, drafts, warrants, vouchers, orders, electronic documents, or other documents and who provides for the disbursement or delivery (including electronic transmission) of money, funds, securities, supplies, or other property. This insurance must remain in effect for the entire contract period. Note: Certain sole proprietors may be unable to obtain crime insurance for only one employee in which case the state may allow the contractor to obtain a letter of credit or other financial guarantee with prior approval.

NOTE TO AGENCIES: Insert for cyber/data information security insurance – where a contractor is responsible for private information of the state of a sensitive nature that may disclosed in an authorized manner in violation of state or federal law. Certain types of contracts may require specialty coverage 'add ins' such as technology, errors & omissions, pollution, aviation, marine (i.e., water), etc.

Specific Requirements for Cyber/Data Information Security. The contractor shall purchase and maintain comprehensive cyber insurance with combined single limits of \$2 million per occurrence (limit may be lower or higher depending on the risk) to respond to claims involving security breach, system failure, data recovery, business interruption,

cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines, and penalties as well as credit monitoring expenses. If any of the contractor's policies provide coverage on a claims-made basis, the following conditions must apply:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Vendor must purchase "extended reporting" coverage for a minimum of three(3) years after completion of contract work.

NOTE TO AGENCIES: Insert for property only – where a contract requires the renovation or construction of a state-owned structure.

Specific Requirements for Property, The contractor shall purchase and maintain builder's risk (course of construction) coverage for all new structures and buildings, materials, supplies, and equipment and the value of improvements to any existing structures and buildings, on and off of the premises and include coverage for property damage for any building, structure, machinery or equipment damaged, impaired, broke or destroyed during the performance of this Contract , including during transit, installation and testing at the worksite. The builder's risk policy shall conform to the following terms and conditions:

1. Limit of insurance shall be the full contract amount with no co-insurance penalty provisions.
2. Term of coverage shall be from notice to proceed until completion and acceptance by the state.
3. Loss settlement valuation for all risks shall be 100% of replacement cost.
4. Coverage shall be "special form" ("All Risk) and include coverage for structure, supplies, materials, and all other improvement on and off the premises while in temporary storage and while in transit
5. Earthquake coverage is to be included if the shaking level is 10g or above as provided for in the Montana Seismic Hazard map at <http://rmtd.mt.gov/aboutus/publications.mcp>.
6. Flood coverage is not required unless so noted.
7. Water damage coverage is required including damage caused by water which backs up from sewer or drain and by rain, snow, sleet, or ice whether driven by wind or not.
8. Protected interests shall be those of the owner, contractor, sub-contractors, architect, and engineer. The State shall be named as loss payee.
9. Coverage for property at temporary storage locations shall be provided.
10. Coverage for property in transit shall be provided.
11. The policy shall include boiler & machinery/mechanical breakdown coverage.
12. The policy shall allow for partial utilization and occupancy by the owner
13. Contractor hereby agrees to waive rights of subrogation which any insurer of contractor may acquire from contractor by virtue of the payment of any loss. The contractor agrees to obtain any endorsement that may be necessary to effectuate this waiver of subrogation.
14. The contractor is responsible for payment of all deductibles.

NOTE TO AGENCIES: Insert for all insurance types.

Subcontractors. The contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and/or that the subcontractor is included in the contractor's insurance. Contractor shall assure that the State is an additional insured on insurance required from subcontractors and a waiver of subrogation is provided (for workers' compensation).

Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured

retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond or letter of credit guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

NOTE TO AGENCIES: If you are not using eMACS, insert your agency information for receiving certificates.

Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A-, VII, indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. **Note:** Best's ratings do not apply to political subdivisions of the state (i.e. counties, cities, towns, and school districts) under §2-9-211, MCA. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies and the waiver of subrogation for workers' compensation.* Contractor must notify the state immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

APPENCIES

GLOSSARY

ADDITIONAL INSURED - A person other than the named insured who is protected under the terms of the contract. Usually, additional insured's are added by endorsement or referred to in the wording of the definition of "insured" in the policy itself.

AGGREGATE LIMIT - Usually refers to liability insurance and indicates the amount of coverage that the insured has under the contract for a specific period of time, usually the contract period, no matter how many separate accidents may occur.

BODILY INJURY LIABILITY - A legal liability that may arise as a result of the injury or death of another person.

BROAD FORM PROPERTY DAMAGE - An endorsement to a general liability policy that deletes the exclusion referring to property in the care, custody, or control of the insured and replaces it with a less restrictive exclusion.

CLAIMS-MADE COVERAGE - A policy written on this basis covers only those claims, which occur during the policy period and are reported during the policy period; however, when the insured renews the claims made form, coverage for prior acts is provided back to the retroactive date (the effective date of the original claims made policy with the same insurer).

CERTIFICATE OF INSURANCE - A form, which verifies that a policy has been written and states the coverage in general, often used as proof of insurance in loan transactions and for other legal requirements.

COMBINED SINGLE LIMIT - A single limit of protection for both bodily injury and/or property damage, contrasted with split limits, where specific limits apply to bodily injury or property damage separately.

COMPREHENSIVE GENERAL LIABILITY POLICY - This policy covers the insured against liability for all general liability exposures, unless excluded by the policy. Examples of exposures covered are premises and operations, products and completed operations, independent contractors, and designated contractors.

HOLD HARMLESS AGREEMENT - A contractual arrangement whereby one party assumes the liability inherent in a situation thereby is relieving the other party of responsibility.

INSURED - The party to an insurance arrangement whom the insurer agrees to indemnify for losses, provide benefits for, or render services to.

LIMITS OF LIABILITY - The maximum amount for which an insurer is liable as set forth in the contract.

NAMED INSURED - The party whose name appears on the face of the insurance policy.

OCCURRENCE COVERAGE - A liability provision which specifies that coverage applies to all injuries arising out of occurrences during the policy period regardless of when the claim is made.

REPLACEMENT COST - The price of purchasing or constructing a new item of property to replace an older, used item of property.

Sample Contract(s)

Visit the State Procurement Bureau's website at

<https://spb.mt.gov/Procurement-Guide#accordion1-panel1>