



# The Role of Bonds and Insurance in Procurement

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## **PRACTICE AREAS**

- Facilities and Construction
- Business and Operations
- Real Estate and Land Development
- Purchasing and Contracts
- Technology and E-Rate
- Tax Incentive Agreements
- Eminent Domain



# What are the goals of vendor insurance requirements?

## Manage

### Manage risk of damage to:

- The governmental entity's property
- The vendor's property
- The property of third parties
- Physical injuries or death

## Ensure

### Ensure financial coverage for:

- Personal injury or death your employees or third persons
- Personal injury or death to vendors

## Mitigate

### Mitigate the entity's financial damage resulting from:

- Negligent or wrongful acts and omissions of anyone involved with a contract
- Direct losses, financial losses, defense costs

# Common Types of Insurance Required from Vendors

- **General Liability/Commercial General Liability**
  - *Covers losses to property and bodily injury/death caused by vendors*
- **Builder's Risk**
  - *Covers losses to construction site while work is in progress*
- **Professional Liability/Errors and Omissions**
  - *Covers damages caused by negligence or malpractice by professionals or providers*
- **Workers Compensation**
  - *Covers injuries to vendor employees in while performing contract*
- **Auto**
  - *Covers damage caused by vendors to property and bodily injury/death while using their owned or rented vehicles*
- **Cyber-insurance**
  - *Covers losses to governmental entity resulting from security breaches involving vendors*

# Key Terms

- **Occurrence Limit** – amount of coverage per incident
- **Aggregate Limit** – amount of coverage for all claims per policy period
- **Sublimit** – caps on coverage for certain types of losses
- **Deductible/Retention** – what the policyholder pays before coverage kicks in
- **Exclusions** – things the policy does not cover
- **Endorsements** – additional coverage purchased by the policy holder
- **Additional Insured** – another party who has the same status as the policyholder
- **Loss Payee** – the party entitled to the payment of proceeds for a loss
- **Subrogation** – the right of the carrier who pays the loss to seek reimbursement from another responsible party (or their insurance company)
- **Umbrella Insurance** - additional coverage for multiple categories to kick in if limits are exhausted

# General Liability and Commercial General Liability

- Coverage is typically “per occurrence,” meaning that the limit applies to each incident
- To be covered, the incident must have occurred during the policy term
  - **Example: You discover in 2021 that a contractor damaged an underground pipe in 2018. The claim is made under the contractor’s 2018 policy.**
  - Coverage is limited to what remains under the aggregate limit for that policy year (claims paid to others under the 2018 policy period)
  - Sub limits may apply (i.e., fire, medical payments, etc.)
- So even if a contractor is out of business; provided the carrier is still active, a claim is possible
- Does not cover breach of contract or bad performance; covers damage to persons or property
  - **Example: Delivery of defective product is not covered by GL insurance; but damage caused to your building while installing a product is covered**
  - Failure to preform may be covered by surety bonds
  - Does not cover defective performance

# Builder's Risk



- Covers perils that damage the work, equipment or tools during construction (*i.e., fire, named storm, theft, vandalism*)
- Limits and deductibles are per occurrence
- Typically provided by the contractor; can be provided by the owner
- Solicitation and contract documents should clarify, so pricing can be included in bids/proposals
- Deductibles, if used, typically charged as a project cost in the absence of negligence by contractor
- Replaced by owner's property insurance upon substantial completion



# Professional Liability/Errors and Omissions

- Coverage typically applies on a “claims made” basis, meaning that the claim attaches to the policy in effect at the time a claim is made for the damages
  - Important to require the vendor to renew and keep the policy in effect for the entire possible duration of the vendor’s services
  - May be appropriate to require coverage for the vendor’s subconsultants
    - **Example: Claim for structural design defect on a construction project will first go through the Architect; the Architect may need to be able to tap into insurance of structural engineer in order to fully compensate Owner**
  - \$1 million in coverage required by statute for outside construction program/project managers
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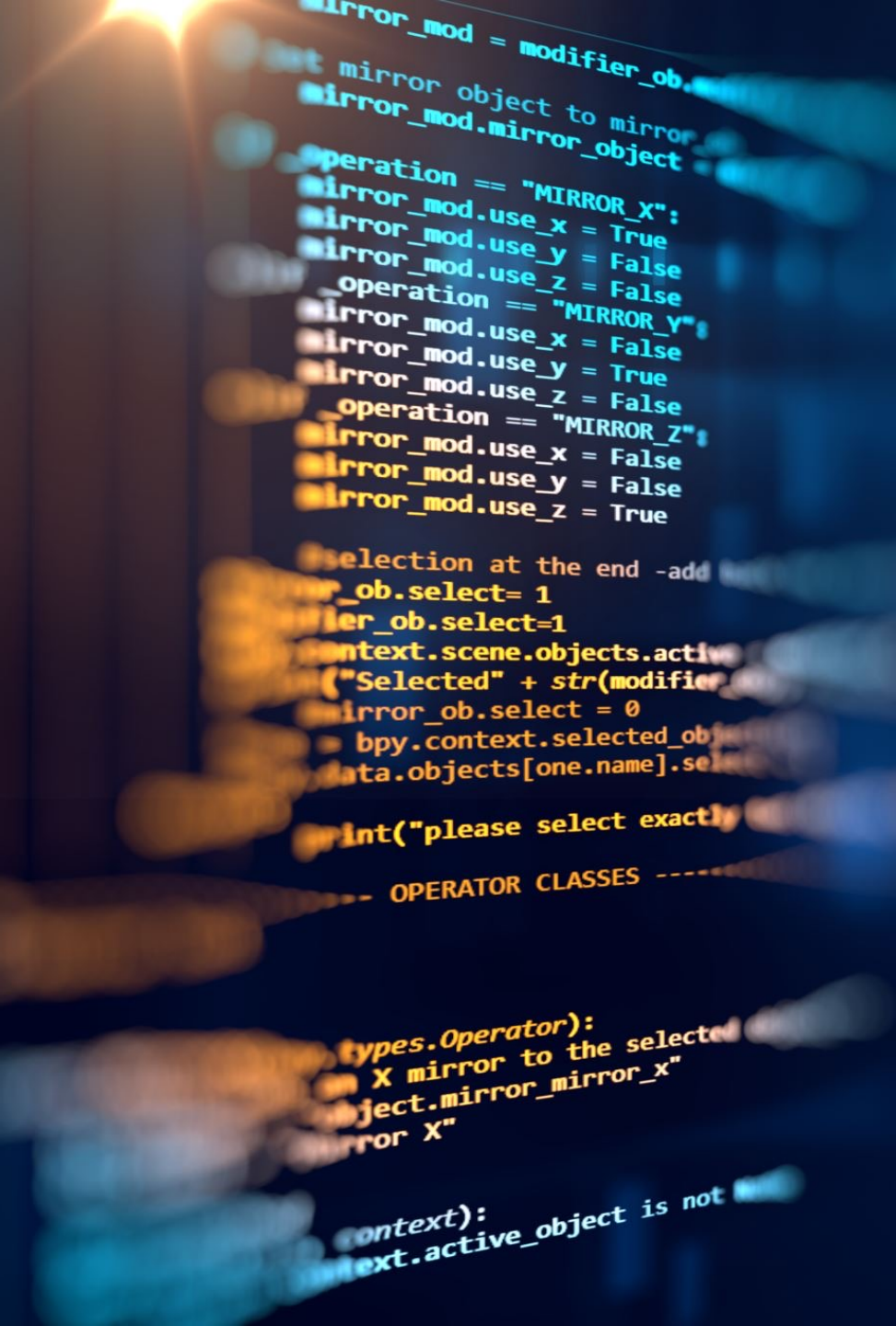


# Workers' Compensation

- Workers compensation for private companies is not mandatory in Texas, **except for companies engaged in providing materials or labor to a government construction project**
- Vendors never coming to your site may seek a waiver
- Sole proprietors with no employees (not providing construction goods or services) may seek a waiver
- **Alternate Employer Endorsement:** Covers the governmental entity from worksite injury claims made by a worker under theory that the governmental entity was a special or temporary employer

# Cyber Insurance

- Types of vendors that might be requested to provide
  - Access to or maintenance of sensitive data (*financial, personnel, health, student/FERPA*)
  - Access to or maintenance of funds
  - Access to or maintenance of control systems, functions and platforms
- May cover:
  - Business interruption
  - Costs to address and rectify breaches
  - Costs to recover data and restore identities
  - Ransom payments
  - Stolen funds



# Proof of Insurance



**ACORD  
CERTIFICATE**



**DECLARATIONS  
PAGE**



**COPIES OF  
POLICY AND  
ENDORSEMENTS**



**RENEWAL  
CERTIFICATES**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	

COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR (INSR, WVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>GENERAL LIABILITY</b>						
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	CLAIMS-MADE OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$
						PRODUCTS - COMPIOP AGG \$
	GENL AGGREGATE LIMIT APPLIES PER:					
	POLICY	PRO-JECT	LOC			\$
<b>AUTOMOBILE LIABILITY</b>						
	ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$
	ALL OWNED AUTOS	SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	HIRED AUTOS	NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
	<b>UMBRELLA LIAB</b>	OCCUR				EACH OCCURRENCE \$
	<b>EXCESS LIAB</b>	CLAIMS-MADE				AGGREGATE \$
	DED	RETENTION \$				\$
<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A			WC STATUTORY LIMITS OTHER \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. EACH ACCIDENT \$
						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

# Common Vendor Questions

- Why do I need all of these coverages for my contract arrangement?
- Why do I (or my subs) need limits this high?
- Do I need these policies in place just to bid, or only if I win?
- Why won't you agree to a waiver of subrogation?
- Understanding and flexibility will increase competition and keep costs down

# Surety Bonds

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**Bid Bond** - Guarantees that the contractor will execute a contract for the bid amount; compensates the Owner if going to the next bidder costs more

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**Payment Bond** - Protects the District from claims for nonpayment of suppliers, and subcontractors

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**Performance Bond** - Protects the District from financial losses arising from default, material breach, termination or abandonment

Texas Gov't  
Code Ch. 2253

- Bid Bonds are permissible, not mandatory under Texas law unless using federal funds
- A Performance Bond is required for public works contract in excess of \$100,000
- A Payment Bond is required for public works contract in excess of \$25,000
- A governmental entity that fails to obtain statutorily required payment bond stands in the shoes of the surety



**QUESTIONS?**

**Thank you for your time!**