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Risk Management Division

## Risk Management/Insurance

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MINNESOTA STATE

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## Disclaimer

- I am not an attorney
- Consult with either your campus in-house counsel/attorney (if you have one) or Minnesota State Office General Counsel for comments relating to indemnification



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## Session Overview

- What is Risk Management?
  - Why is risk management important
  - Specific coverages and definitions
- Relationship between risk management/insurance and contracts
  - Risk Management Process
- Insurance requirements and Certificate of Insurance
- Value of Risk Management



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## What is Risk Management?

- Risk is any issue that impacts the institution's ability to meet its objectives.
- Essentially, risk management is figuring out what can go wrong and determining what to do about it.



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## Risk Management/Insurance Myths

- There is no risk
- Insurance is only for the institution
- Not coming onto campus so there's no risk



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## Coverages

- **Commercial General Liability** – bodily injury, property damage. (Recommended minimum requirement is \$2M per occurrence/\$2M aggregate)
- **Workers Compensation** – bodily injury to contractor/vendor employees while working on school property. (Statutory requirement, if applicable)
- **Professional Liability** – for errors and omissions in performing professional services. (Recommended minimum requirement is \$2M per claim or event/\$2M aggregate)
- **Umbrella/Excess Liability** – provides additional limits in excess of an underlying liability policy. (usually written in \$1M increments)



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## Definitions

- **Risks** – uncertainty arising from the possible occurrence of given events.
- **Additional Insured** – a person or organization not automatically included as an insured under an insurance policy of another, but for whom the named insured desires or is required to provide a certain degree of protection under its insurance policy.
- **Waiver of Subrogation** – an agreement between two parties in which one party agrees to waive subrogation rights against another in the event of a loss. The intent of the waiver is to prevent one party's insurer from pursuing subrogation against the other party.
- **Indemnification** - the insurer reimburses the insured for claims and claim costs already paid by the insured.



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## What does risk management & Insurance have to do with contracts?

- Entering into a contract creates certain exposures to institutions' resources.
  - Tangible, i.e. facilities
  - Intangible, i.e. reputation
- Insurance provides a financial instrument to ensure that the other party can pay its contractual obligation in the event of a claim AND it provides proof that the contracting party has a better chance of being reputable.



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## Risk Management Process

1. Identify loss exposures
2. Analyze loss exposures
3. Examine feasibility of risk management techniques
4. Select appropriate technique
5. Implement technique



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## Risk Management Process

Step 1 – Understand the scope of work & the objectives

### 1a. Identify potential risks

- What activities will take place?
- Who could be harmed?
- What property could be damaged & how severely?
- What is a maximum likely loss for each activity?



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## Risk Management Process, cont.

Step 2 – Analyze risks

- What is the likelihood of something happening and what is the consequence?

Step 3 – Risk management techniques/treatment

- Avoid the risk?
- Can we remove the risk source?
- Can we change the likelihood or consequences?
- Can we/should we retain the risk by informed decisions?
- Can we share the risk or can we transfer the risk?



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## Risk Management Process, cont.

Step 4 – Contract/Agreement

Step 5 – Risk Control Techniques

- Avoid
- Finance
  - Insurance
  - Retain (self-insure)
  - Indemnity & hold harmless agreements
- Control
  - Claims management & loss reduction
  - Waivers of liability
  - Loss prevention



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## Categories of Risks

### Awful A's

- Athletics
- Assault
- Automobiles
- Alcohol

### Slippery S's

- Slips, Trips and Falls
- Sexual Misconduct
- Suicide

### Dreadful D's

- Damaged Property



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## What do you have to lose?

In other words, what is the worst case scenario?

- Bodily injury
- Physical property
  - Building, computers, furnishings, etc.
- Campus infrastructure
- Reputation
- Intellectual property



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## General Insurance Requirements

[GENERAL INSURANCE REQUIREMENTS](#)



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# Professional/Technical Contract Insurance Requirements



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## P/T Contract Insurance Requirement

### PROFESSIONAL/TECHNICAL CONTRACTS GENERAL INSURANCE REQUIREMENTS

#### Insurance Requirements

A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

- Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:
  - \$100,000 - Bodily Injury by Disease per employee
  - \$300,000 - Bodily Injury by Disease aggregate
  - \$100,000 - Bodily Injury by Accident

If Minnesota Statute 176.011 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that includes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

- Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:
  - \$2,000,000 - per occurrence
  - \$2,000,000 - annual aggregate
  - \$2,000,000 - annual aggregate - Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured



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## P/T Contract Insurance Requirement, cont.

- Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, leased, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:
  - \$2,000,000 - per occurrence Combined Single limit for Bodily Injury and Property Damage

The following coverages shall be included:  
Owned, Hired, and Non-owned Automobile

- Professional Liability, Errors and Omissions Insurance:** This policy will provide coverage for all claims the contractor may become legally obligated to pay, resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

- \$2,000,000 - per claim or event
- \$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

- Network Security and Privacy Liability Insurance (or equivalent):** Contractor is required to maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of test public data, including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance **minimum** limits are as follows:
  - \$2,000,000 per claim or event
  - \$2,000,000 annual aggregate

The following coverage shall be included:

- State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.



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### P/T Contract Insurance Requirement, cont.

- C. Additional Insurance Conditions:
- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract.
  - If Contractor receives a cancellation notice from an insurance carrier affording coverage hereon, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
  - Contractor is responsible for payment of Contract related insurance premiums and deductibles;
  - If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
  - Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits;
  - Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AAM BEST" rating of A- (minus), Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
  - An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.
- D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.
- E. The successful responder is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.



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### Certificates of Insurance (COI)

- Certificates of insurance provide evidence of insurance at the time the form is printed.
- A COI does not replace an insurance policy or guarantee coverage.



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### Example of COI



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## Waiver of Subrogation

- Institutions should seek this clause when a vendor’s employees perform work on the school’s campus.
- This will prevent a vendor’s workers compensation insurer from attempting to collect from the institution for injuries to the vendor employees injured while working at the institution.



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## Vague Terms to Avoid

“ ... reasonable ...”

- *Example:* SCHOOL shall reimburse vendor for **reasonable** travel costs.
- *Instead:* SCHOOL will reimburse vendor **up to \$X per day** for travel costs.



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## Vague Terms to Avoid

“... in amounts that are reasonable and customary ...”

- *Example:* VENDOR shall purchase Commercial General Liability insurance **in an amount that is reasonable and customary** for the services discussed in this agreement.
- *Instead:* Name an exact amount. Such as those listed in our minimum general insurance requirements.



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## Examples of potential “low risk” activities

- Speaker/Lecturer
- Computer Recycler



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## Value of Risk Management

- Creates a more risk aware culture
- Can help reduce, mitigate, and transfer risks
- Ensures that risk controls/safety requirements/engineering controls have been considered
- Financial savings – can save the institution a lot of money!
- Can help limit indemnification obligations
- Through the risk assessment process, you can confirm that the contract is in line with institution objectives



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## QUESTIONS???



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## Who to call?

Keswic Joiner, Director of Risk Management

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651.201.1778



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