



# Protecting the District: Insurance Requirements for Small Contracts

3<sup>rd</sup> Edition

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## INTRODUCTION

Out of necessity, school districts contract for a wide array of services. Carpentry, plumbing, painting, electrical, roofing and tree trimming are examples of some of the obvious services needed to keep school sites in good condition. Schools may also outsource certain professional services such as building inspections, architecture, nursing, or physical therapy.

In contracting for services, the district receives the benefit of tasks performed by individuals schooled and trained in a particular craft. It is expected that these specialty contractors bring a high level of expertise, to ensure that quality work is performed.

### Exposures

In spite of the best efforts to procure qualified contractors, problems still tend to arise. These problems can cause injuries to staff, students, or third parties, or damage to property belonging to the district or to third parties.

In the ideal contract, nothing goes wrong – but districts need to be protected when things do not go as smoothly as planned. If work performed on your behalf by outside contractors results in bodily injury or property damage to third parties, the district can be held liable, even if the contractor is negligent. A “bargain” contract is no bargain if the district is held responsible for damage caused by the contractor's mistakes.

### Risk Reduction

How can you protect your district? By doing some “up-front” work before the contract is finalized:

1. Screen contractors carefully
2. Require the contractor to have insurance
3. Enter into agreements that limit your liability

Many districts have undertaken large construction projects and are quite familiar with the above processes. Unfortunately, the need to follow the same steps for small contracts is often overlooked.

To reinforce the importance of taking the same precautions in small contracts as we do for large contracts, here is a look at a few real-world examples of small contracts that went awry:

## The Plumber

A school district hired a local plumbing firm to connect a pipe to the main line. This required the digging of a trench, which took the better part of a day. The contractor intended to return the following morning to complete the job.

During the night, two young people gained access to district property with their all-terrain vehicle and in the darkness drove into the trench. The riders were severely injured. The plumber had no insurance coverage and the district was held responsible for the injuries (in spite of the fact that the plumber had assured the district that barriers and warning markers would be in place before the plumber left the site.)

## The Roofer

A district hired a small roof contracting firm to replace a worn section of a roof. The job required the contractor to remove shingles and felt paper, exposing the building to the elements overnight.

An unexpected storm hit during the night, accompanied by freezing temperatures. The roof had not been protected in any way when the contractor left for the day. Rain entered the building and damaged equipment, furnishings and books. The damage was over \$100,000. The contractor had no insurance; the district's own insurance paid the loss.

## The Painter

Heating, air conditioning and duct work on top of the district's two story building needed repainting. A painter was brought in for this small job; the painter had done numerous jobs for the district in the past.

A sprayer was used for the project. Several blocks away, a car dealer's inventory of luxury vehicles was damaged by the over spray; laboratory tests proved it was the same paint used at the district site. Three hundred cars were damaged and; the contractor was uninsured and the district paid.

Sadly, there are many more stories about districts bearing the cost of the mistakes of others. Do not let your district become the next scapegoat. It will almost always be cheaper to use an uninsured contractor, but remember:

“Cheaper” does not always mean “Less Expensive”

## DETERMINING THE STATUS OF THE CONTRACTOR

Some individuals that call themselves contractors may, in actuality, be contract employees.

An employee is:

1. Any worker who is an employee under common law rules
  - a. A common law employee is an individual who is hired by an employer to perform services and the employer has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the most important factor in determining the relationship
2. Any worker whose services are specifically covered by statutes.

Characteristics of an employment relationship:

1. The worker previously performed the same or similar services for the district as an employee,
2. The district instructs or supervises the person while s/he is working,
  - a. Including the time work begins and the time work ends,
3. The worker can quit or be discharged at any time,
4. The work being performed is part of normal district operations,
5. The district has employees who do the same type of work,
6. The work is considered unskilled or semi-skilled labor,
7. The worker is paid a salary or an hourly wage,
8. The worker believes that s/he is an employee.

If multiples of these characteristics are true, the worker is very likely an employee, not a contractor.

Note: If a worker is an employee, the district is obligated to collect and remit all employment taxes and to provide workers' compensation benefits.

A contractor is:

1. An individual or company who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

Characteristics of a contract relationship:

1. A contractor has a separately established business,
  - a. A contractor provides the same type of services to multiple clients or customers,
2. A contractor typically has a contractor's and/or a business license,
3. A contractor is free to make business decisions which affect his or her ability to profit from the work,
4. A contractor has a substantial investment which would subject him or her to a financial risk of loss,
5. A contractor furnishes the tools, equipment, and/or supplies needed to perform the work.

## SCREENING THE CONTRACTORS

Simply stated there is no better means to protect the district than to deal with a safety conscious contractor who prevents or minimizes injuries and damage through safe work practices.

- ☐ Deal only with reputable firms.
- ☐ Check references.
- ☐ Verify licenses where applicable.
- ☐ Determine the contractor's knowledge level relevant to local regulations, codes and ordinances.
- ☐ Inquire about prior claims made against them.
- ☐ Use written contracts and build safe practices into the contract; explain your expectations.
- ☐ Limit your search to vendors who carry appropriate insurance.
- ☐ Require bonds per County Office of Education guidelines.
- ☐ Check with the California Department of Industrial Relations (Cal/OSHA) or other appropriate state agencies for records of safety violations.
- ☐ If paints, solvents, or other potentially hazardous materials will be used, obligate the contractor in writing to dispose of waste materials in compliance with existing laws. In addition, the contractor should be required in writing to notify the district immediately if the presence of hazardous material is discovered during performance of the contract.

Licenses can be verified by the California Department of Consumer Affairs, Contractors State License Board:

800-321-2752

[www.cslb.ca.gov](http://www.cslb.ca.gov)

Follow the “Instant License Check” link

## REQUIRE YOUR CONTRACTORS TO CARRY INSURANCE

In the examples of claims caused by the plumber, roofer and painter, the school district was forced to pay damages caused by the contractor's error. Had those contractors been required to have insurance coverage, the districts and/or their insurance carriers would not have been forced to assume responsibility for someone else's negligence.

It cannot be stressed enough: no contract is a bargain if the district will potentially be responsible for out-of-pocket claim costs, deductibles, and increased loss ratios under the district's insurance program.

Small contractors frequently argue that they cannot readily obtain insurance, or that the insurance is too expensive. This may have some validity if the contractor concentrates on residential projects, but insurance programs for contractors who perform work for institutional, industrial, and commercial entities are widely available. The typical cost for general liability insurance for a very small contractor can range between \$1,500 and \$2,500 per year, depending on the type of policy and coverage. A reputable contractor, even a small one, should be able to recoup the cost of insurance coverage through a year's worth of contracts.

Occasions may arise in which there are valid reasons to relax the insurance requirements and the district certainly has the right to exercise its discretion. However, bear in mind that this could be interpreted as a discriminatory practice. Your representatives at the Ventura County Schools Self-Funding Authority can assist you in making these judgment calls.

### Verifying the Policy

Policies can be verified by placing a telephone call to the insurance carrier or broker of the contractor.

### Terms of Cancellation

The contractor must provide, in writing, 30 days advance notice of cancellation, amendment, or renewal of any insurance policy.

A discussion of appropriate types and amounts of insurance follows.



## DETERMINING THE APPROPRIATE TYPE OF INSURANCE TO BE PROVIDED BY YOUR CONTRACTORS

The focus of this guide is contracts that do not involve structural improvements or renovations. The element of risk and complexity of new construction, reconstruction (i.e. renovations, remodeling, etc.) and demolition operations raises the degree of potential liability; those contracts are subject to additional contractual requirements. Such risks should be addressed with the help of experts in the field of construction, such as architects, attorneys, risk management consultants, qualified insurance brokers, etc.

TWIW Insurance Services has compiled information for addressing issues of large contracts. Please refer to “VCSSFA Insurance Construction Issues.”

The following guidelines will work well for site repairs, such as plumbing, painting, concrete repair, locksmiths, and various types of service contracts, including janitors, movers, exterminators, tree maintenance, drug dogs, and alarm companies. Certain professional service providers, such as architects, nurses, physical therapists and consultants, will require professional liability coverage, also discussed in this section.

The applicability of some insurance coverages may not be evident based upon the name of the coverage. Here is a brief explanation of commonly required coverages and coverage features:

### 1. Commercial General Liability Insurance

This coverage provides protection against bodily injury and property damage claims arising from the operations of a contractor, supplier or tenant. This type of policy provides coverage for premises and operations, use of independent contractors, products and completed operations.

#### a. Contractual Liability Insurance

This coverage provides protection for liability assumed under a written contract or agreement; it is usually available as an addition to the commercial general liability policy. This coverage should be required from all contractors or suppliers (but need not be requested from tenants of district properties, as commercial general liability insurance includes contractual liability assumed in leases).

#### b. Personal Injury Liability

Personal injury coverage provides protection against injuries of a non-physical nature such as:

- 1) False arrest, detention or imprisonment;
- 2) Libel, slander or defamation; and

- 3) Wrongful entry or eviction. Coverage may also be expanded to include acts involving employment discrimination or sexual harassment.

c. Broad Form Property Damage

This coverage provides important additional protection to contractors for liability arising out of damage they may cause to property they are working on. Districts should require broad form property damage coverage from contractors working on district premises

Typically, these policies contain the following major exclusions:

- 1) ownership, maintenance or use of watercraft, automobiles and aircraft;
- 2) pollution;
- 3) intentional acts; and
- 4) medical malpractice.

2. Automobile Liability Insurance

This coverage insures against liability claims arising out of the contractor's or supplier's use of automobiles. Automobile coverage should extend to owned automobiles, non-owned automobiles and hired automobiles.

3. Workers' Compensation Insurance

This coverage provides protection against bodily injury, sickness or disease sustained by employees in the scope of their employment. Coverage is mandated by the State of California for all employees. Generally, the owner(s) of a business is not required to insure themselves under workers' compensation. However, if an owner, partner or sole proprietor will be working on your behalf, we strongly recommend that the contractor has a workers' compensation policy in force, evidenced by a Certificate of Insurance.

Note: If the district does not adhere to this, it is possible that the district may find itself in an employer/employee relationship and responsible for the payment of workers' compensation claims.

4. Fire Legal Liability

This insurance provides protection to the insured against liability incurred when his or her negligent actions result in the destruction of property which is in his or her care, custody, or control.

It is possible a type of fire coverage to be included in a Commercial General Liability policy. Fire coverage in a Commercial General Liability policy should be verified.

#### 5. Pollution Liability Insurance

Contractors Pollution Liability insurance helps protect a wide range of pollution risks associated with construction projects.

Contractors Pollution Liability insurance provides:

- a. Third-party claims for bodily injury and/or property damage
- b. Remediation costs stemming from pollution incidents resulting from the contractor's covered operations

Pollution risks include, but are not limited to:

- c. Contaminated soil disposal and
- d. The accidental release of fuel oil, chemicals and toxic gases from broken pipelines, utilities, and stationary and mobile fuel tanks

#### 6. Professional Liability Insurance

Professional liability insurance is designed to protect the professional person against his/her liability for damages (and the cost of defense) based on his/her alleged or real professional errors and omissions or mistakes. Some of the specialty forms available include:

- a. accountants;
- b. architects/engineers;
- c. medical malpractice;
- d. attorneys;
- e. law enforcement officers;
- f. appraisers; and
- g. consultants.

#### 7. Property Insurance

Property insurance protects against losses to the policyholder's own property, such as buildings, equipment, tools and furnishings. Contractors, service providers, and tenants should be required to cover their own property.

### “Claims Made” vs. “Occurrence” Forms of Coverage

Usually, commercial general liability insurance policies allow for claims to be filed even after the policy expires. This is called “occurrence coverage.” For example, consider a policy issued for the period July 1, 2010 to July 1, 2011. If a claim is submitted on August 1, 2011 for injuries

which occurred as a result of an accident which occurred on May 15, 2011 (during the policy period), the insurance carrier would still honor the claim.

“Claims made” coverage has an important difference. A “claims made” policy covering the same period, July 1, 2010 to July 1, 2011, will only honor claims formally filed by July 1, 2011. After the policy expires, coverage may not be available unless special arrangements are made to keep the coverage current.

When contractors are required to provide commercial general liability insurance, “claims made” forms should not be accepted. Rare exceptions may occur, but these should be discussed with your risk management representative or with advisors of the Ventura County Schools Self-Funding Authority.

It is common for professional liability policies to be “claims made” policies. The District can accept these, provided the policy contains an “extended reporting period.” The “extended reporting period” is a designated period of time (usually one or two years) after a “claims made” policy has expired, during which a claim may be made and coverage triggered as if the claim had been made during the policy period. Without an extended reporting period, the professional liability policy does not provide adequate coverage. Liability claims often take months or years to be filed, particularly when injuries involve minors or lawsuits.

If coverage is “claims made,” the carrier is required to clearly specify it on the policy. The standard Certificate of Insurance form used to show proof of insurance will also identify a “claims made” policy form.

### Aggregate Limits

It is common for the policy limit (the amount of insurance available) to apply to “each occurrence.” For example, if an automobile policy has a limit of \$1,000,000 each occurrence, each auto accident within the annual policy period will be covered up to a limit of \$1,000,000; there is no limit to the number of accidents that will be insured in one year.

Please note that some policies have “aggregate limits” in addition to “occurrence limits.” A policy with an occurrence limit of \$1,000,000 might also have an aggregate limit of \$1,000,000. In this scenario, the policy will pay no more than \$1,000,000 – no matter how many accidents occur or how many claims are filed.

It is important to remember that your contractors often perform services for many other customers. A policy that is “capped” with a \$1,000,000 aggregate limit might already be exhausted when the time comes to pay a claim involving your district.

### Additional Insured Endorsement

This addendum to the contractor's insurance policy treats the district as if it were a named insured under the contractor's policy for the purpose of defense and indemnification when a claim is filed against the district for acts arising out of the contractor's operations.

The VCSSFA imposes a \$10,000 deductible for contracts for which the district does not obtain the additional insured endorsement.

## RECOMMENDED COVERAGE LIMITS

Outside parties who perform work for the district under contract should be required to carry sufficient liability and workers' compensation insurance to pay claims that may be filed as a result of their activities.

This section describes the minimum insurance limits the District should require from contractors, professional service providers, suppliers and vendors. By “contractors” we are referring to those contractors not performing structural improvements or renovations; we are referencing those contractors who perform maintenance and repair services for the district.

Contracts involving structural improvements or renovations will generally have higher insurance requirements. Those contracts should be handled on a case-by-case basis with your architect, attorney, facilities manager and/or risk management liaison.

Prior to drafting this document, research was conducted as to the feasibility of the recommendations made herein. After surveying contractors, insurance companies, and insurance brokers, we are satisfied that these recommendations are reasonable and viable. On occasion, exceptions may be warranted. In this event, the District has the authority to exercise its discretion, but we caution against discriminatory practices in selecting contractors.

The following page provides a chart outlining the types and limits of coverage to be required. You may duplicate the chart and provide a copy of it to your prospective contractors. Contractors should provide you with proof of insurance in the form of a Certificate of Insurance (see sample attached in the Exhibit Section). When an “Additional Insured Endorsement” is requested, a copy of the endorsement should be provided; additional insured language typed onto the Certificate of Insurance is not sufficient under most circumstances. Contact your representative at the Ventura County Schools Self-Funding Authority if you have any questions about this recommendation.

### Minimum Recommended Coverage Limits for Small Contractors

Type of Contractor	Recommended Coverage	Recommended Coverage Limits		Other
Maintenance / Repair (painting, plumbing, HVAC, roofing, landscape, etc)	Commercial General Liability (or equivalent which would include products/completed operations, blanket contractual, and broad form property damage and personal and advertising injury)	Each Occurrence General Aggregate Products/Completed Operations Personal and Advertising Injury	\$1,000,000 \$2,000,000 \$1,000,000 \$500,000	Additional Insured Endorsement  Indemnity or Hold Harmless Agreement
Service Providers (copier / fax service, computers security, drug dogs)	Automobile Liability Including: <ul style="list-style-type: none"> <li>Owned Vehicles</li> <li>Non-Owned Vehicles</li> <li>Hired Vehicles</li> </ul> (Required for all vehicles brought onto district property)	Combined Single Limit	\$1,000,000	Indemnity or Hold Harmless Agreement
	Workers' Compensation Employers' Liability (not required for owner and family members)	Each Occurrence	Statutory \$500,000	Indemnity or Hold Harmless Agreement
For the contractor categories below, the following coverages are recommended in addition to those listed above				
Welders, plumbers (work with open flames)	Fire Legal Liability	Each Occurrence	\$1,000,000	Indemnity or Hold Harmless Agreement
Hazardous Materials, Waste haulers, Pest control, etc	Pollution liability (may require project-specific coverage)	Each Occurrence Or as statutorily mandated by regulatory agencies	\$1,000,000	Indemnity or Hold Harmless Agreement
Professional Services (accountants, architects, attorneys, Education consultants, nurses, therapists etc)	Professional Liability (or Medical Malpractice, as applicable)	Each Occurrence	\$1,000,000	Indemnity or Hold Harmless Agreement

Certificates of Insurance are to provide for 15 day advance notice to the district in the event of cancellation of coverage.  
All subcontractors are to be included under the above policies or provide separate evidence of insurance.

## INDEMNIFICATION / HOLD HARMLESS AGREEMENTS

Obtaining evidence of insurance coverage from contractors is an important tool in distancing the district from the financial consequences of a contractor's mistakes. But insurance policies do not cover every exposure to loss, and policy forms vary widely from one insurance company to another.

To close the gaps in protection when insurance coverage is not provided or is insufficient, the contractor should provide, in writing, an agreement which assumes financial responsibility for risks associated with the project. This type of agreement is called an Indemnification and/or Hold Harmless Agreement.

To “indemnify” means to make compensation to an entity for incurred hurt, loss or damage. To “hold harmless” is to assume the liability inherent in a situation, thereby relieving the other party of responsibility.

A written contract is recommended in all circumstances, regardless of the size of the job. Many generic contract forms are available for this purpose; small contracts do not always require the assistance of legal counsel. The VCSSFA provides a model “Services Agreement” for these situations.

In determining the appropriate language for an Indemnification/Hold Harmless Agreement, it is necessary to consider the circumstances. There are three general approaches to indemnification:

1. Broad Form

Requires the contractor to be responsible for all liability arising out of the project, including the sole negligence of the district.

2. Intermediate Form

Requires the contractor to be responsible for their own negligence or the joint negligence of the contractor and the district.

3. Limited Form

Care must be exercised in drafting indemnification agreements to ensure that the contract will be deemed to be enforceable in your jurisdiction. For small contracts, we recommend the "Limited Form."



A sample clause might read:

“Contractor agrees to hold harmless and indemnify the district for liability arising out of the negligent activities of the Contractor.”

Alternatively, a more comprehensive version could be used:

"Contractor agrees to defend, indemnify, and hold harmless the District, its officers, agents, employees, and volunteers from any and all loss, costs, and expense, including legal fees, or other obligations or claims, arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability or damage to property or any other loss, sustained or claimed to have been sustained arising out of activities of the Contractor or those of any of its officers, agents or employees, whether such act is authorized by this Agreement or not; and Contractor shall pay for any and all damage to the property of the District, or loss or theft of such property, done or caused by such persons. District assumes no responsibility whatsoever for any property placed on the premises. Contractor further agrees to waive all rights of subrogation against the District. The provisions of this Agreement do not apply to any damage or losses caused solely by the negligence of the District or any of its officers, agents, employees, and volunteers."

Some contractors may ask the District to provide them with a similar Hold Harmless /Indemnity Agreement to protect them from the negligent acts of the district. This type of reciprocal agreement is acceptable.

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