**Ten Tips For Transferring Contractual Risk**

The “[Contractual Risk Transfer” Manual](https://www.permarisk.gov/wp-content/uploads/Manual_RiskControlTransfer_2023_1.pdf) on PERMA’s website provides a significant amount of information on risk transfer. The manual explains how to establish insurance requirements for most contracts, including those with contractors, professional service providers, tenants, vendors, and users of public property, and how to verify their compliance with those requirements during the term of the contract. Below are basic tips to follow.

Tip 1 – Indemnity and Hold Harmless Language

An indemnification and hold harmless agreement represents the core of contractual risk transfer by placing the legal and financial obligation on a contractor (vendor). Indemnification also replaces the contracting party (agency) as the financial source for legal liability. The written indemnity clause in the contract is the real trigger for coverage as your contract, under normal circumstances, is an “Insured Contract” as defined under the Commercial General Liability policy (CGL).

Tip 2 – Waiver of Subrogation – Known as Waiver of Transfer of Rights of Recovery Against Others to Us

Insurance companies use subrogation as a strategy to recoup the money paid for a claim by legally pursuing payment from another party affiliated with the loss. Adding a waiver of subrogation to a contract prevents a contractor (vendor) insurer from seeking reimbursement on a settled claim from an entity. If your Entity is named as an “additional insured” on the contractor (vendor) liability policy, current case law holds that it is against public policy to allow an insurer to subrogate against its own insured, even an “additional insured.”

Tip 3 – Additional Insured Endorsement

Additional insured endorsements provide the agency with insurance coverage through the contractor (vendor) liability policy. This coverage amendment prevents subcontractors and other third parties from seeking financial contribution from the agency’s insurance if a policyholder generates the loss in whole or in part. Additional insureds also can file claims for which they are not solely at fault under the named insured’s policy. This status gives the agency direct rights under the contractor (vendor) insurance and greatly increases the agency’s chances of recovery, especially for the agency’s legal defense.

Tip – 4 Primary and Non-Contributory

One party is not always solely responsible for a claim. A primary and non-contributory endorsement specifies usage order when multiple policies get triggered by the same event. The clause should state that the contractor (vendor) policy is primary to the loss without seeking contribution from the additional insured’s policy. This ensures the contractor (vendor) policy applies in full before pursuing any financial contribution from your agency.

Tip – 5 Completed Operations

Specify the duration of the coverage when requiring an additional insured endorsement. Without a specific requirement, insurers may limit coverage to “ongoing” operations, which only includes the named insured’s active work on a project. Extend coverage to finished work by requiring the endorsement include “completed” operations. This is an important distinction because negligence or faulty work often is not discovered for months, or even years, after a contractor (vendor) job ends. The agency may be responsible for a loss related to a contractor’s (vendor) poor performance if the additional insured endorsement does not cover completed work.

Tip – 6 Blanket Endorsement Language

Blanket endorsements provide coverage under a contractor (vendor) or other third party’s insurance policy to any contractually required entity without being specifically named. For a contractor (vendor) associated with hundreds of projects a year, a blanket endorsement offers an expedient way for adding additional insureds. One of two conditions must exist for blanket endorsement coverage: 1) a direct (executed) contract between the named insured and the additional insured, or 2) the contract specifies all parties required as additional insureds. For example, a general contractor’s agreement with a subcontractor must state that the property owner be added as an additional insured on the subcontractor’s policy since a direct contract does not exist between the property owner and subcontractor.

Tip – 7 Types of Coverage

Specify the types of insurance coverages required in the contract. Depending on the project and scope of work, this may include Commercial General Liability, Professional Liability, Auto Liability, Workers’ Compensation, Cyber, Property, or Pollution coverage, among others. Insurance policies are not one size- fits-all, so fully covering a project or property likely requires multiple policies. A major paint spill covered under a Contractor’s Pollution Liability policy may not receive coverage under Commercial General Liability, which could leave the upper tier entity responsible for the clean-up costs rather than the subcontractor.

Tip – 8 Set Coverage Limits

Designate required coverage thresholds for each policy. The coverage amount required by the contract should equal or exceed the contractor (vendor) insurance limits. This may require that the contractor (vendor) purchase an umbrella policy to bridge any financial gaps. When a contractor (vendor) or other third party fails to have an ample coverage amount, the agency is forced to pay out-of-pocket costs or use its own insurance policy for the financial overage in the event of a loss and then attempt to recover against the contractor (vendor).

Tip – 9 Grades Matter

Insurance in name only is no good. Far too many insurance companies lack the financial solvency for covering major claims and losses. When that happens, the agency pays the price even when they bear no fault for the incident. Who a contractor (vendor) insurance provider is matters. Contractually require that contractor (vendor) insurers hold an A- or better rating by AM Best, a top tier credit rating agency for the insurance industry.

Tip – 10 Review and Retain Insurance Documents

Certificates of Insurance (COIs) confirm that contractors, vendors, and other service providers carry the insurance required for working on a project. Request and review a COI from every third party before work begins. Verify coverages, limits, and other insurance specifications required by the contract. As a best practice, review COIs monthly for active coverage. Maintain copies of COIs and signed contracts. In the event of a claim, insurers will verify contractual obligations when assessing their responsibility for addressing a loss.