



Start Risk Transfer with the RFP

Water Districts and Authorities use the Request for Proposals process for more complex contracts for services or construction. The RFP document must meet many criteria to describe the service or project, provide a fair and open process for respondents and make an award that is advantageous to the District. An RFP establishes the qualifications for bidders that include experience, credentials, resumes of key personnel, compliance with federal laws regarding discrimination, minority owned business, tax delinquency, and the bidder's capacity to do the work being proposed. The bidder must be able to meet the requirements set out in the RFP and make a comprehensive proposal to be considered for the work. An important part of that proposal should address risk management issues that could affect the District after the bid is awarded and the work begins.

The contract negotiated after the bid award between the service provider or contractor and the District locks in the risk management provisions outlined here. However, none of them should be a surprise to the bidders if included in the RFP documents. Risk management elements in the RFP should include provisions for indemnity and hold harmless agreements, safety requirements including qualifications of the bidder's safety officer, and comprehensive insurance. The RFP requirement that the service provider/contractor include a certificate of insurance can help convey their ability to meet your requirements.

Indemnification and hold harmless language that is included in your standard contracts can be included in the RFP. Safety record information is also frequently required through inclusion of experience modifiers and incident rates. For larger construction jobs the requirement for safety responsibility on the job site includes a statement of experience of the safety officer and a statement of the contractors' safety program. Through the service provider's or contractor's acceptance of the indemnification agreement they also agree to fund the payment of claims for bodily injury or property damage they cause in performing their work. This transfer of risk is accomplished through their insurance.

Basic insurance requirements for any service provider, vendor, or contractor doing work awarded through the RFP process (or any work they are doing for the District) should include the following coverages, limits of liability and special endorsements.

General Liability

\$1,000,000 occurrence, \$2,000,000 aggregate for premises/operations

\$1,000,000 occurrence, \$2,000,000 aggregate for products/completed operations

Automobile Liability

\$1,000,000 combined single limit for bodily injury and property damage, hired and non-owned autos included.

Workers' Compensation

Provides unlimited medical coverage and statutory benefits for time lost from work for employees injured on the job. The policy will also include Employer's Liability for actions against the employer which do not fall under the statute. Actions for loss of consortium, consequential injury or third-party actions come under Employer's Liability.

Employer's Liability Limits (included as part of the Workers' Compensation policy)

\$500,000 per occurrence bodily injury

\$500,000 per occurrence bodily injury by disease

\$500,000 policy limit for bodily injury by disease

(Note: These are Employer's Liability limits and do not affect the payment of medical expenses or lost wages to injured employees.)

Professional Liability if professional engineering, architectural, or other professional services are included.

\$1,000,000 occurrence, \$2,000,000 aggregate

Umbrella Liability

Provides an additional limit of liability above the occurrence and aggregate limits of liability in the General and Automobile Liability coverages listed above. Limits should reflect the hazardousness and size of the project. A \$5,000,000 limit is common.

Special provisions as part of the coverages required include:

An "**additional insured**" endorsement naming the District is included for the contractor, service provider's, or vendor's General Liability and Automobile Liability policies. (Not required for Workers' Compensation or Professional Liability).

A "**waiver of subrogation**" endorsement in favor of the District is required for the contractor or service provider's Workers' Compensation, General Liability, and Automobile Liability policies.

A **30-day notice of cancellation or non-renewal to the District** is required if the contractor or service provider's insurance is canceled or non-renewed.

Aggregate Limits per project or location is a common endorsement for contractors that may have multiple jobs going at the same time. The aggregate limits in the General Liability coverage are the most the insurance company will pay in any policy year and can be exhausted by other claims. The endorsement applies an aggregate limit to your project and helps prevent other claims from eliminating the limits of liability available to pay claims on your project.

A **certificate of insurance** from the contractor or service provider is required and the District may also request copies of the contractor or vendor's insurance policies.

In addition to these requirements, the RFP may require bid, payment and performance bonds, builders risk coverage, and possibly contractor's equipment coverage:

Bid bonds guarantee that the bidder will be able to provide payment and performance bonds if awarded the work.

Payment bonds guarantee that the contractor or service provider will pay for materials, labor, and their subcontractors.

Performance bonds guarantee that if the contractor is unable to complete a job, the surety (bond insurance company) will step in and hire someone else to finish the work.

Builders Risk provides property coverage for the value of the work being done at any stage during construction. This is very similar to the coverage the District has on its own buildings and contents. It is usually an "all risk" coverage that may include flood and earthquake coverage. Payment is based on the value of completed construction at the time of the loss. In the event of serious damage to the project while it is under construction the Builders Risk policy will pay for the damage and help make sure that the project is completed.

Contractor's Equipment coverage is for a contractor's or service provider's vital equipment that will be used to complete the project. If equipment is damaged and that delays construction, the Contractor's Equipment coverage would help repair or replace it so construction can continue. This could also apply to a vendor or service provider's equipment necessary to carry out their work.

The existence of all these insurance coverages benefits the District by paying for the transfer of risk to the contractor or service provider by their insurance company and helping assure that they can finish the job. We can also help you counter any arguments being made by the contractor or service provider about why they don't need or can't get these coverages. If you have questions, please call or e-mail Richard Wigzell, Risk Management Consultant for the Fund at (518) 429-9974 or richard.wigzell@sedgwick.com.