FINANCE AND ADMINISTRATION CABINET
AGENCY USER GUIDE FOR INSURANCE COVERAGE IN COMMONWEALTH CONTRACTS

BASIC INSURANCE CONTRACT PROVISION – APPLICABLE TO ALL CONTRACTS UNLESS EXEMPT FROM INSURANCE	AGENCY GUIDANCE ON COVERAGE AMOUNT Limits should consider the potential risk of loss as well as the contract value.	BASIC INSURANCE PROVISION IS APPLICABLE UNLESS:
10.32 Insurance Requirements (All other required insurance coverages should be included below in section 10.32 E.) ** Proof of all required insurance coverages should be provided prior to award.** **Commercial General Liability** **A. Required Coverage** During the entire term contract and throughout any renewal, the awarded vendor(s) shall be responsible for maintaining and not altering the following insurance coverages, types, and limits of liability. Commercial General Liability Insurance with minimum limits of liability of $1,000,000.00 per occurrence, $2,000,000.00 aggregate. **B. Evidence of Insurance Coverage** The successful bidders shall provide evidence of insurance coverage, and such proof should be provided prior to the award of the contract. The Contractor shall maintain all required insurance according to the provisions of 10.32 and failure to do so shall constitute a material breach of this Contract, which may result in immediate cancellation of the Contract. Contractor should furnish the Certificate of Insurance prior to award and shall, upon request of the Commonwealth at any time during the contract term, provide a current, valid Certificate of Insurance. A Certificate of Insurance (COI) on an ACORD or equivalent form is required unless approved by the Commonwealth of Kentucky. Contractor and/or its insurer shall provide immediate notice of nonrenewal or cancellation of coverage during the course of the Contract. For all required insurance coverages, during the course of the Contract, the awarded vendor shall not be self-insured or have a self-insured retention greater than ten percent (10%) of the required policy amount or utilize a captive insurer or a fronting policy that shifts risk back to the awarded vendor without prior review and consideration of the proposed coverage by the Commonwealth of Kentucky. The agency's consideration may require additional financial review, proof of funds, or bonding requirements sufficient for the risk associated with the services covered by the Contract, and the agency reserves the right to determine the evidence of insurance coverage is insufficient for the Contract. Further, the awarded vendor shall not utilize an insurer or similar entity not in good standing with the Insurance Commissioner to fulfill the insurance requirements of the contract without prior written approval by the Commonwealth of Kentucky. All Certificates of Insurance must be signed by an authorized representative of the insurance agency. All insurers shall be authorized with a certificate of authority issued by the commissioner to transact insurance in the Commonwealth. The insurer shall have an AM Best rating of B+ or higher. Visit www.ambest.com for verification. Failure to meet this requirement may result in the bid being deemed non-responsive. A list of authorized companies can be found at https://insurance.ky.gov/ppc/Company/Default.aspx. The certificate holder shall be listed as: **[INSERT YOUR AGENCY NAME AND ADDRESS]** Certificate of Insurance for Commercial General Liability must contain the following language in the Description of Operations box: "The Commonwealth and its agents are Additional Insureds regarding any issued commercial general liability policy for the contract resulting from the solicitation. Additional insured protection afforded is on a primary and non-contributory basis." **C. Subcontractors** If the contract allows for Subcontractors and utilizes Subcontractors, prior to the commencement of any work by a Subcontractor. • The primary Contractor's Certificate of Insurance must identify coverage that meets or exceeds the insurance requirements defined in this contract and that covers Subcontractor and its work in support of the Contract or the Subcontractor must submit and maintain a Certificate of Insurance that also meets or exceeds the insurance requirements of the Primary Contractor defined in this contract, with an Additional Insured Endorsement. • OPS reserves the right to request copies of all Subcontractor's Certificate(s) of Insurance at any time. **D. Other Insurance Coverage Required:** [Agency to add additional required insurance provisions here or state "N/A"]	The standard amount of CGL is typically $1 million per occurrence and $2 million aggregate. Agencies may increase these minimum limits but if lowering them from the standard should first consult with the FAC Office of Procurement Services before the Agency makes a final decision. Send requests for consultation to FinanceOPSContrMgt@ky.gov. Agencies should consider all the following when setting minimum limits: • Industry Risk • Who are the potential third parties and in what scenario are they benefiting from the contract • Potential for multiple claims • Value of the contract • Additionally, agencies should consider whether higher limits are necessary in light of impact on bidder pool, i.e. in some industries bidder pools are limited and contract requirements could reduce an already limited pool.	Although the Commonwealth enjoys sovereign and qualified official immunity, Commercial General Liability insurance should be considered for the exceptions to that immunity for first party claims but also to provide coverage for any third-party beneficiaries of the services a contractor or subcontractor is providing to the public on behalf of the Commonwealth. **Commercial General Liability is NOT REQUIRED for:** 1. Contracts between State Agencies; 2.Contracts between State Agencies and other governmental entities, including local, quasi-governmental, and special purpose governmental entities; 3. Contracts with any of the State Universities or Community Colleges; 4. Contracts with the Federal Government; 5. Contracts enabling pass through federal or state funding to recipients with individuals/entities, grant agreements; 6. Litigation-related contracts such as contracts to engage Mediators, Arbitrators or Hearing Officers, and Expert Witnesses; 7. Non-Professional Services and Commodities under an agency's small purchase authority; and 8. Conference or training-related contracts such as for speakers or trainers. 9. Contractors paid via W-2. Professional service contracts, when the only deliverable of the contract is a professional service for which appropriate professional service insurance is provided by the contractor, are exempt from general liability insurance. Notwithstanding these exemptions, individual agencies remain responsible for evaluating the risks associated with each procurement and determining whether insurance requirements are appropriate for a specific contract, even when not required by OPS. Agencies should conduct a case-specific risk assessment, in consultation with agency legal counsel, and include appropriate insurance or other risk-mitigation requirements as warranted.

ADDITIONAL MANDATORY PROVISION FOR ALL CONTRACTS	AGENCY GUIDANCE ON COVERAGE AMOUNT Limits should consider the potential risk of loss as well as the contract value.	AUTO LIABILITY PROVISION MUST BE INCLUDED IN THE CONTRACT EVEN THOUGH IT WILL NOT APPLY TO ALL CONTRACTS
Automobile Liability (if applicable) Automobile Liability Insurance is required for delivery, services or events in all situations where the Contractor must drive to any property where Commonwealth operations occur. With regard to delivery, if the items requested in this solicitation will be delivered by the awarded Contractor or Subcontractor, proof of Automobile Liability Insurance must be provided prior to award. ***If items will be delivered by common courier (USPS, FedEx, UPS, Old Dominion Freight Line, etc.), this requirement does not apply.*** The Contractor or Subcontractor must provide a certificate of insurance coverage for any vehicle used in performance of this contract, whether owned, non-owned, or hired, or other vehicles utilized by the Contractor or Subcontractor. Said policy of insurance to have a minimum coverage limit of $1,000,000.00 per occurrence combined single limit for bodily injury, including death, and property damage. Certificate of Insurance must contain the following language in the Description of Operations box: "The Commonwealth and its agents are Additional Insureds regarding any issued automobile liability policies for the contract resulting from the solicitation. Additional insured protection afforded is on a primary and non-contributory basis."	The standard amount of Auto Liability is typically $1 million per occurrence combined single limit, but for situations where Automobile Liability coverage will apply, agencies should consider the following to determine if the coverage amount should be increased: • The risk associated with the contractor driving • Potential for multiple claims • Value of the contract • Potential impact on bidder pool.	Automobile Liability coverage is required when the contract includes the Contractor's delivery or driving to Commonwealth properties as a necessary component of the contract. This requirement does not apply if the Contractor does not own, lease, or hire any automobiles to be used in connection with performance under any Contract resulting from the procurement.

OTHER INSURANCE CONTRACT PROVISIONS – USE THIS LANGUAGE IF THIS COVERAGE IS APPLICABLE	AGENCY GUIDANCE ON COVERAGE AMOUNT Limits should consider the potential risk of loss as well as the contract value.	WHEN CONTRACT PROVISION IS NECESSARY OR RECOMMENDED
Professional Liability Insurance Professional Liability (Error & Omissions) Insurance shall be required for all professional services performed by licensed or certificated individuals or individuals working on behalf of licensed or certificated individuals. The required Professional Liability Insurance shall have a minimum limit of liability of $_____per claim for damages arising out of negligent acts, errors, and/or omissions in the performance of services. If coverage is on a claims-made basis, Contractor shall be required to carry tail coverage for two (2) years after the contract expiration.	The basic minimum coverage required should be $1 million per claim and $2 million aggregate. The minimum coverage should be increased if: • There is a greater risk than usual of financial impact of a loss, e.g. risk of loss of multi-year federal grant due to contractor's services • Whether there is a incidental cyber risk involving personally identifiable information or confidential information that is a part of the professional services being provided.	Professional Liability is required for any Contractor whose business provides specialized services or expert advice as a deliverable and where that business's error, oversight, negligent recommendation could cause financial harm to the Commonwealth. Examples of professional liability or errors & omissions coverage is required for architects, engineers, financial advisors, and other similar professional services.

<u>Cyber Liability Insurance</u> Cyber Liability Insurance limits will consider the level of risk associated with the activities under the Contract: with minimum limits of $_____ per claim, $____ aggregate. Coverage shall include at a minimum the following coverages for first party and third-party losses that result from or are related to unauthorized access, malicious software, digital or cyber extortion such as ransomware attacks, social engineering, denial of service, and other cyber threats: ○ Active breach response including forensic investigation and analysis costs ○ Customer associated costs due to data breach, such as notification, monitoring ○ Business interruption costs ○ Equipment replacement or repair needed because ○ Legal fees associated with a data breach The required policy shall be either occurrence-based or claims-made with a minimum two-year tail following the contract expiration. Sublimits must be proportionate and not materially reduce the effective coverage.	The amount of insurance the agency requires should consider the types of data handled by the vendor, the volume, and the restrictions on access. • **Low Risk** (minimal or no sensitive data, limited access) Recommended minimum: **$250,000 – $500,000** • **Moderate Risk** (PII, internal business data, moderate system access) Recommended minimum: **$1 million – $2 million** • **High Risk** (large volumes of PII/PHI/PCI, deep system integration, business-critical services) Recommended minimum: **$3 million – $5 million** or higher • **Very High Risk / Enterprise-Critical** (public safety, financial processing, large citizen data sets, mission-critical systems) Recommended minimum: **$5 million – $10 million+**, potentially supported by excess coverage layers. Occurrence-based Policies cover incidents that happen while that policy is in effect, no matter when the claim is filed. A Claims-made policy only covers incidents that happen and are reported when the policy is active unless there is extra "tail" coverage for future claims, which generally is an extra cost.	Cyber liability insurance ensures that the vendor can appropriately respond and financially cover losses resulting from a cyber incident involving the Commonwealth's data or systems, without relying on the Commonwealth's resources. Having this type of insurance coverage helps to ensure your vendor is able to continue to provide services despite experiencing a cyber event. Cyber Liability Insurance is key to a prompt response and to sufficiently recover from a cyber related attack. Cyber Insurance generally allows highly skilled cyber attorneys, forensic data specialists, specialized public relations and communications professionals to immediately limit exposure and damages in a cyber event. Cyber Insurance is necessary to cover expenses related to forensics, customer costs, equipment replacement or repair and business interruption. Agencies should work closely with legal counsel, management, and IT/ security stakeholders to tailor the clause to the specific risks of the procurement. Examples of types of contracts that could benefit from this type of insurance are IT procurements and large contracts in which a cyber breach is a serious risk.
<u>Professional Technology Liability Insurance (Tech Errors & Omissions)</u> Technology Errors & Omissions (E&O) Insurance with minimum limits of $_____ per claim, $____ aggregate. Coverage shall include, at a minimum, the following coverages for first party and third-party losses due to: ○ errors, omissions, and negligence in design, development and/or delivery of technology products and services ○ intellectual property infringement ○ product or service failure ○ misrepresentations ○ unauthorized access or use of computer systems or networks This insurance may also include coverage for unauthorized disclosure, access, or use of Agency Data (which may include, but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data, and Protected Health Information ("PHI")) in any format. Coverage must extend to Business Associates (if applicable) and independent contractors providing Services on behalf of or at the direction of Contractor.	The amount of insurance the agency requires should consider the types of data handled by the vendor, the volume, and the restrictions on access. • **Low Risk** (minimal or no sensitive data, limited access) Recommended minimum: **$250,000 – $500,000** • **Moderate Risk** (PII, internal business data, moderate system access) Recommended minimum: **$1 million – $2 million** • **High Risk** (large volumes of PII/PHI/PCI, deep system integration, business-critical services) Recommended minimum: **$3 million – $5 million** or higher • **Very High Risk / Enterprise-Critical** (public safety, financial processing, large citizen data sets, mission-critical systems) Recommended minimum: **$5 million – $10 million+**, potentially supported by excess coverage layers. Occurrence-based Policies cover incidents that happen while that policy is in effect, no matter when the claim is filed. A Claims-made policy only covers incidents that happen and are reported when the policy is active unless there is extra "tail" coverage for future claims, which generally is an extra cost.	Technology Errors & Omissions (Tech E&O) liability insurance ensures that the vendor can financially cover potential losses resulting from a cyber incident involving the Commonwealth's data or systems, without relying on the Commonwealth's resources. Tech E&O insurance provides coverage for claims arising from actual or alleged errors, omissions, or negligence in the professional technology services or products provided by a company. Work closely with legal counsel, management, and IT/ security stakeholders to tailor the clause to the specific risks of the procurement. Examples of types of contracts that could benefit from this insurance are IT procurements and large contracts in which errors or oversights in the design, development, and/or delivery of technology products and services pose a serious risk.

Environmental Liability - Contractor Pollution Liability (CPL) The Contractor and/or Subcontractor shall provide proof of insurance coverage for Contractor Pollution Liability with a minimum limit of $___ per occurrence with a completed operations period of a minimum of five (5) years. Third party Coverage shall include bodily injury, property damage, and clean-up costs resulting from the release of pollutants including, but not limited to, chemicals, asbestos, oils, or mold arising from the contractor's operations on a job site or during transportation of materials.	The standard minimum coverage should be $1 million per occurrence with a 5-year completed operations period. However, consideration should be given to the following in considering whether to have higher minimum limits: • The level of hazard in the project • The federal, state and local statutory and regulatory requirements	CGL coverage generally excludes environmental and/or pollution claims. Contractor Pollution Liability (CPL) provides coverage for emergency response/clean-up costs, bodily injury and property claims arising from the consequences of pollution incidents that occur during their work. CPL fills the gaps left by standard Commercial General Liability policies that often exclude pollution-related claims. CPL will also cover incidents of spills during transportation. Examples of types of contracts that could benefit from this type of insurance are fuel transport, waste removal of a toxic chemical, delivery of toxic chemicals, pesticide removal, and demolition and renovation.
Directors and Officers Insurance (D & O Liability) Contractor and / or subcontractor shall maintain Directors and Officers Liability insurance with a minimum limit of liability of $_____ per occurrence for damages arising out of negligent acts, errors, and/or omissions from Directors, Officers, the entity, and management level employees in the performance of services.	The standard minimum coverage amount is $1 million per occurrence. This amount is generally sufficient for most contracts where this would be needed.	D&O Coverage provides the vendor company and its directors, officers and managers coverage from claims regarding directors and managerial level decisions. Directors and Officers Insurance cover management decision-making (versus Professional Liability/Errors & Omission coverage provides coverage for service-related mistakes). Types of contracts that should consider whether to require this type of insurance are personal service contracts like consultants, auditors, or management services.
Medical Professional Liability Insurance Contractor and / or subcontractor shall maintain Medical Professional Liability insurance with a minimum limit of liability of $_____ per claim and $_____ aggregate for damages arising out of negligent acts, errors, and/or omissions in the performance of services.	Consider contract amount, specific services and recipients	Medical professional liability insurance protects physicians and other licensed healthcare professionals from liability associated with wrongful practices. This is an Errors & Omissions policy covering financial harm.
Medical Malpractice Insurance Contractor and / or subcontractor shall maintain Medical Malpractice insurance with a minimum limit of liability of $_____ per claim and $_____ aggregate.	Consider contract amount, specific services and recipients	Medical malpractice insurance covers physical losses such as bodily injury and death associated with a patient's treatment, which has led to a claim or lawsuit.
Garage Liability Insurance The Contractor and/or Subcontractor shall maintain Garage Liability insurance with minimum limits of $____per occurrence. Coverage shall include bodily injury and property damage arising out of garage operations, including premises-operations, and products-completed operations.	Typical coverage limits for Garage Liability are $500,000 to $1 million.	CGL policies often have an automobile exclusion. Garage liability protects business operations and accidents that occur at the contractor's garage. It covers bodily injury to third parties, third-party property (excluding vehicles), and accidents deriving from mechanic test driving. Garage liability does not cover customer vehicles in their care, theft, fire, or vandalism at the garage. Types of contracts that should require this type of insurance are contracts with repair shops, body shops, towing companies and dealerships.
Garagekeepers Legal Liability The Contractor and/or Subcontractor shall maintain garagekeepers legal liability with the minimum limits of $____per location / vehicle. Coverage shall include physical damage to or theft of Commonwealth vehicles while in the care, custody, and control of the Contractor.	Typical coverage limits for Garagekeepers Liability are $30,000-50,000 per vehicle times the number of vehicles the location usually has in capacity.	Garagekeepers liability can be an endorsement (most common) or a stand-alone policy. It provides coverage for physical damage to vehicles under the contractor's custody, care, or control. Coverage includes theft, vandalism, fire, or accidental damage to their customer's vehicles parked at their garage. Types of contracts that should require this type of insurance are repair shops, body shops, towing companies and dealerships.

Aviation Liability Insurance The Contractor shall provide proof of insurance coverage for Aviation Liability Insurance including coverage for bodily injury and property damage with the minimum limits of $_____ combined single limit.	The common minimum for Aviation Liability is $1 million combined single limit. However, consideration should be given to the following factors to determine whether a higher limit should be required: • Number of passengers • The individuals being carried • Whether the policy's defense costs draw down the combined single limit rather than being in addition to the combined single limit	Standard CGL policies generally exclude aircraft. If a Contractor is providing transport of passengers with owned or rented aircraft, Aviation Liability coverage should be required. Aviation Liability coverage covers bodily injury, death and third-party property damage caused by a vendor's aircraft. It usually has sublimits per passenger and a medical payments limit for medical expenses of third-party passengers.
Aviation Hangarkeepers Liability Insurance The Contractor and/or Subcontractor shall provide proof of insurance coverage for Hangarkeeper's Liability Insurance with a minimum limit of $___ per occurrence, $___ aggregate. Coverage shall include, but not be limited to, physical damage to, or destruction of, aircraft and aircraft equipment belonging to the Commonwealth while such property is in the care, custody, or control for purposes of storage, repair, or safekeeping.	The common minimum for Aviation Hangarkeepers Liability is $1 million per occurrence and $2 million aggregate. Consideration should be to the value of aircraft and the type of work being conducted on the state-owned aircraft when determining whether to increase those minimum limits.	Aviation Hangarkeepers Liability is necessary only when contracts require vendors to work on state-owned aircraft. It generally covers repair or replacement costs for the damages to aircraft while on the vendor's property.

The following coverages are not separate policies but, when determined by the agency to be needed, must be added by the Contractor as endorsements to the Commercial General Liability policy

ADDITIONAL INSURANCE CONTRACT ENDORSEMENTS – USE THIS LANGUAGE IF THE ENDORSEMENT IS APPLICABLE	AGENCY GUIDANCE ON AMOUNT Limits should consider the potential risk of loss as well as the contract value.	WHEN INSURANCE ENDORSEMENT IS NECESSARY OR RECOMMENDED
On-Hook Towing Insurance Endorsement On-Hook Towing Insurance including liability coverage for Bodily Injury and Property Damage with limits of a minimum $____ combined single limit.		Standard Auto liability, garage liability, and garagekeepers policies do not cover vehicles in transit. Adding an On-Hook Towing endorsement provides coverage for vehicles in transit, it also provides coverage for collision, fire, theft, explosion, or vandalism that occurs to the vehicle while it is attached to a tow truck. Types of contracts that should require this type of insurance are those in which the Commonwealth's vehicle or equipment will be towed by the Contractor.
Care, Custody, or Control (CCC) Endorsement "Bailee's Endorsement" The Commercial General Liability shall be endorsed to provide coverage for "Property of Others in the Care, Custody, or Control of the Insured" with the minimum limits of $____ per occurrence, $____ aggregate. This endorsement shall waive or delete the standard "Care, Custody, or Control" exclusion to ensure coverage for damage to third-party personal property while in the Contractor's possession or under their supervision.		The Care, Custody, or Control (CCC) coverage endorsement modifies a standard Commercial General Liability (CGL) policy to cover property damage to a customer's personal property that is in the insured's temporary physical possession for the purpose of the insured's work or services. A standard CGL policy typically has an exclusion for property damage to personal property in the insured's "care, custody, or control". The terms are generally defined as: • Care: The insured (vendor) has temporary charge or supervision over the property. • Custody: The insured (vendor) is responsible for keeping or guarding the property safely. • Control: The insured (vendor) has the power or authority to manage or direct the property.

Completed Operations Endorsement "Products-Completed Operations Coverage" The Commercial General Liability shall be endorsed for Completed Operations with the minimum limits of $____ per occurrence, $___aggregate. The contractor shall maintain the Completed Operations Endorsement for a minimum of ___ years after the final completion and acceptance of the work.		Completed Operations Endorsement provides coverage for third-party claims of bodily injury or property damage that occur after a project is completed. Types of contracts that should require this endorsement include service and installation contracts, machinery repair, landscape, installation/ repair of appliances, security systems, fixture installation, and auto repair. (Time for this normally ranges from 2-5 years.)
Liquor Liability Endorsement The Commercial General Liability shall be endorsed to provide coverage for Liquor Liability with minimum limits of $_____ per occurrence, $_____ aggregate. This endorsement shall provide coverage for bodily injury and property damage arising from the selling, serving, or furnishing of any alcoholic beverage by the contractor or its employees and agents.		A Liquor Liability Endorsement removes the liquor liability exclusion found in most standard Commercial General Liability policies that exclude coverage for alcohol-related bodily injury or property damage. This endorsement provides coverage for claims arising from contributing to a person's intoxication or serving minors. This coverage also provides the vendor coverage for legal fees, settlements, and medical costs caused by an intoxicated customer causing bodily injury or damage to the property. Types of contracts that should require this endorsement include event planners, facility rentals, fundraisers, and food service contracts that include alcohol being served.
In-Transit (Inland Marine) Insurance The contractor shall maintain In-Transit (Inland Marine) Insurance on a "Special Form" coverage basis with minimum limits of $_____ per occurrence. Coverage shall include all property, equipment, and materials against all risks while in transit to, from, or between destinations. Coverages shall be extended to include loading, unloading, theft, weather damage, and temporary in-transit storage.		In-transit insurance, sometime referred to as Inland Marine insurance, covers products, materials, or equipment while in transport over land or being temporarily stored by a third party. Standard property insurance only covers items at a fixed location. Types of contracts that should require this type of insurance are contracts that are transporting Commonwealth property on behalf of the Commonwealth. Note: If insurance is needed to ship Commonwealth property, contact State Risk.