



## **Contractual Risk Transfer**

A webinar presented by AEGIS Insurance Services, Inc.



### **Disclaimer**

Please note this presentation is an educational tool and general in nature. The opinions or statements expressed in this presentation do not necessarily reflect the views of the companies whose representatives are presenters. Furthermore, the following is not a substitute for legal advice. All users are urged to consult with their own legal counsel to ensure their commercial objectives will be achieved and legal interests protected.

## **An Approach to Management of Contractual Risk Transfer Issues**

**Managing Insurance Related Contract Risks**

**Michael S. Kaminski**

Manager, Corporate Risk Management

Wisconsin Energy Corporation

## **Contractual Risk Transfer Process**

- Insurance risk management as key coordinator
  - Coordination among stakeholders
    - Legal
    - Supply chain
    - Engineering / operations
    - Real estate
    - Energy / fuel procurement
    - Environmental

## Contractual Risk Transfer Process

- Insurance risk management as key coordinator
  - Establishment of guidelines
  - Exposure identification
  - Act as advisor and expert resource

## Contractual Risk Transfer Evaluation Process

- Establish relationship with each stakeholder
  - Educate on issues of concern
    - Key contract provisions
      - Indemnification
      - Risk of loss
      - Limitation of liability
      - Damages / remedies

## Contractual Risk Transfer Evaluation Process

- Establish relationship with each stakeholder
  - Educate on issues of concern
    - Exposure identification
      - Differentiation based on size and type of exposure (e.g., environmental, design work, aircraft, delay)
      - Size of contract
      - Nature of work (e.g., services vs. construction)

## Contractual Risk Transfer Evaluation Process

- Standardize requirements
  - Manage by “exception”
    - *Resource constraints preclude review of all contracts*
      - Majority of agreements can be executed with standard provisions
      - Risk management consulted for non-standard or large exposure agreements

## Contractual Risk Transfer Evaluation Process

- Standardize requirements
  - Review and control process for most “routine” agreements can be delegated to stakeholders
    - Requires risk management to provide
      - Well written guidelines
      - Standardized contract language
      - Education & training for those executing agreements

## Contractual Risk Transfer Guidance

*Identify types of third party vendors / contractors*

- Services, construction
- Agreements
  - Large construction agreements
    - Engineer procure & construct (EPC) agreements
  - Real estate
    - easements, lease arrangements
  - Pole attachment agreements
  - Energy agreements
    - Power purchase agreements (PPAs), bilateral sale / purchase agreements

## Contractual Risk Transfer Guidance

### *Written guidelines*

- Standard language for indemnification, risk of loss, insurance provisions
- Insurance requirements
  - Coverage & limits (based on type & size of exposure)
    - General liability, auto, workers' compensation, other
  - Additional insured?
  - Proof of insurance requirements
    - Review and handling

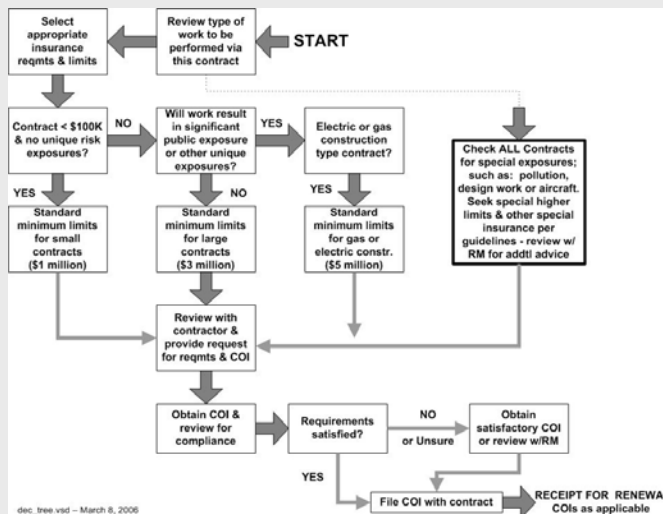
## Contractual Risk Transfer Guidance

### *Written guidelines*

- Exception guidelines
  - Large contracts
  - Small contractors
  - Services vs. construction
  - Unusual exposures

## Contractual Risk Transfer Guidance

### Guideline Examples



## Contractual Risk Transfer Guidance

### Guideline Examples

- Types of insurance coverage
  - Commercial general liability
  - Automobile liability
  - Workers' compensation
  - Employer's liability
  - Longshore & harbor workers
  - Professional liability
  - Environmental impairment
  - Transit
  - Miscellaneous / unique

## Contractual Risk Transfer Guidance

### *Guideline Examples*

- Contract insurance provisions FAQs
  - What limits should be requested for insurance coverage?
  - Why do we ask for higher limits on some contracts and when should we do so?
  - Why ask to be named as an additional insured?
  - When should we ask for professional liability coverage?
  - What about other coverages?
  - What if the contract contains provisions limiting the contractor's liability?

## Contractual Risk Transfer Guidance

### *Guideline Examples*

- Contract insurance provisions FAQs
  - What if the contractor is small (one or two employees) and does not carry workers' comp?
  - What if small contractors don't carry other requested coverage?
  - How should we file the certificates?
  - When should we ask for new certificates?
  - How do I interpret the data reported on the certificate of insurance (COI)?
  - What if I have other questions?

## Contractual Risk Transfer Guidance

### *Education & Training*

#### Agenda

- Introduction – Supply Chain – 30 Minutes
- Basic Contract Principles – Legal-Contracts – 1-1/2 Hours
- Ins Risk Mgmt Issues/Provisions – Ins Risk Mgt – 1 Hour
- Claims – Legal-Claims – 45 Minutes
- **Lunch** – 30 Minutes
- Environmental – Legal-Environmental – 45 Minutes
- Litigation – Legal-Litigation – 45 Minutes
- Liens – Legal-Contracts – 15 Minutes
- Summary – Supply Chain – 1 Hour
- Q&A – All – 45 Minutes



## Contractual Risk Transfer Process

- Key success factors
  - Support from stakeholders
  - Establishment of clear guidelines
  - Manage by “exception”
  - Training and education
  - Act as advisor and expert resource

## Questions



## Owner Controlled Insurance Programs (OCIPs)

**William A. Persyn**

Group Leader – Risk & Insurance Management  
Arizona Public Service Company

## Agenda - OCIPs

- Owner Controlled Insurance Program “OCIP”
  - OCIP versus traditional insurance
  - Why choose an OCIP?
  - OCIP considerations
  - OCIP pros and cons
  - OCIP pitfalls to avoid

## Agenda - OCPs

- Owners and Contractors Protective Liability “OCP” Insurance
  - What is an OCP?
  - OCP limitations

## OCIP Versus Traditional Insurance

	OCIP	Traditional
Insurance Protection	Owner purchases the on-site coverage, therefore is assured their interests are covered.	Each contractor purchases own insurance and “proves” coverage exists with a certificate of insurance. Must rely on the contractor’s insurance for protection with no guaranty coverage will not be cancelled or premiums will be paid.
Safety Program	One coordinated safety program is used by all contractors to meet owner’s requirements.	Each contractor’s insurer requires the contractor have their own safety program in place to use for their work performed onsite.
Capitalizing on Safety	The sponsor and the owner receive the economic benefit of operating safely with minimal risk.	Insurers and contractors receive the economic benefit of operating safely.
Economic Benefit	Purchasing “bulk” plus ability to select large deductible provides opportunity to reduce insurance cost.	Contractor includes insurance & broker cost PLUS their profit margin in bids.

## OCIP versus Traditional Insurance

	OCIP	Traditional
Stability of Coverage	Sponsor and owner are assured that coverage exists if subcontractor becomes insolvent.	Insolvency of contractor impacts coverage availability.
Insurance Carriers	Owner can select carriers of the highest quality.	Little control over the quality of insurance carriers the contractor selects.
Legal Liability Disputes	One insurance company insures all enrolled contractors on the jobsite—claim is paid without disputes over legal liability.	Each contractor buys own insurance and must be found legally liable before their insurer pays the claim. Claims involving several contractors can become lengthy and lead to litigation.
Policy Terms and Conditions	Broadest possible coverage for sponsor, owner, and all contractors.	Each contractor negotiates own coverage (unknown exclusions).

## WHY Owners Choose An OCIP?

*4 C's: Cost, Control, Coverage, & Contract Compliance*

- Cost savings
  - Tool to monetize contractor insurance cost and provide a competing alternative to drive best contractor pricing
  - Pools purchasing of insurance – volume discount
  - Allows owner to pay same insurance rate for ALL contractors in OCIP, regardless of individual line of work or loss experience. Contractor-provided insurance would be based on their actual NCCI rate which fluctuates greatly based on line of work, loss history, etc.

## WHY Owners Choose An OCIP?

*4 C's: Cost, Control, Coverage, & Contract Compliance*

- Control
  - Participants retain control over breadth of insurance coverage
  - Reduces litigation and encourages a unified defense to claims
  - Eliminates competing interests of multiple insurance companies each striving to avoid paying their portion of claim



## **WHY Owners Choose An OCIP?**

*4 C's: Cost, Control, Coverage, & Contract Compliance*

- Control
  - Decreases potential for third party over-actions for alleged failure to provide safe workplace; channels all claims to workers' compensation
  - Excellent tool for controlling safety and losses by having owner and one insurer establish and enforce all safety standards



## **WHY Owners Choose An OCIP?**

*4 C's: Cost, Control, Coverage, & Contract Compliance*

- Coverage
  - Ensures coverage remains in place, is not cancelled, and all premiums are paid

## WHY Owners Choose An OCIP?

*4 C's: Cost, Control, Coverage, & Contract Compliance*

- Contract compliance
  - Eliminates significant administrative burden of continually verifying contractors' insurance is in place and meets owner requirements
  - Broadens pool of contractors – ensures any contractor can meet owner's site insurance requirements

## OCIP Program Considerations

- Contractor leverage
  - Threat of an OCIP is a great tool for managing contractor insurance mark-up
  - Challenges arise when dealing with specialty contractors or those for which little competition exists
- Minimum payroll
  - OCIPs typically not cost-effective on projects with annual payroll of less than \$30 million

## OCIP Program Considerations

- Guaranteed cost
  - Ensure broker seeks alternatives for both guaranteed cost and retro programs for workers' comp. Guaranteed cost may well be worth extra cost to reduce long claim tail. LONG TAIL considerations cannot be underestimated!
- Aggregate deductibles
  - Ensure you understand any aggregate deductibles under your OCIP and if it is a rolling or maintenance OCIP, work hard each year to ensure the aggregate remains appropriate

## OCIP Program Considerations

- Project period
  - Given the administrative burden in setting up an OCIP, it is best on projects with durations of three years or more. Anything less than that, and the frictional costs of setting up and managing the OCIP typically will exceed the potential savings.
- Defined project site
  - OCIP s are only effective when losses can be effectively managed. If the project does not have a definable site(s) where access can be controlled, and a safety program administered and enforced, then it may not be effective.

## OCIP Pros and Cons

### Pros

- Consistent coverage without gaps
- Potential for cost savings as insurance is bought in “bulk” and claims managed by Owner
- Dedicated project insurance limits that are not shared with other projects

### Cons

- Extremely long tail – depending upon state workers’ comp laws
- Difficulty obtaining contractor insurance cost and deducts
- Volatility incurred due to losses and deductible payments

## OCIP Pros and Cons

### Pros

- Reduced administrative burden as it is no longer necessary to check contractor insurance certs for contract compliance
- Potentially expands contractor diversity, allowing more bids from small, minority, and women owned businesses who may not have been able to obtain ample insurance on their own
- Decreased risk of cross litigation between contractors & insurers

### Cons

- Administrative burden to enroll and administer OCIP program
- Limits are only the amount which is provided by the OCIP and no contractor coverage is accessible
- Budgeting of project cost can be difficult due to need to estimate contractor’s payroll, which differs greatly from contractor’s invoice amounts

## OCIP Pitfalls to Avoid

- Ensure solid process exists to manage contractor deducts AND that contracts / project management is committed to tracking them down and ensuring appropriate reductions obtained
- Use realistic modeling and cost justification and assumptions
  - Don't assume 100% of contractor deducts, stress test model
  - Factor in time-value of money (premium paid in advance plus loss reserve funding)

## OCIP Pitfalls to Avoid

- Use realistic modeling and cost justification and assumptions
  - Admin support can't be ignored
  - Losses!!! Manage them and consider a maintenance deductible for contractors (\$10,000 - \$25,000) so they keep some "skin in the game"
- Establish enrollment criteria to determine which contractors should participate

## OCIP Pitfalls to Avoid

- Ensure limits / capacity provided by OCIP is sustainable. Once contractors have high limits, they won't give them up without a fight.
- Screen contractors and require ex-mod info as part of bid package
- To avoid financial surprises, check OCIP actual performance to forecast regularly and don't forget to account for long tail of claims

## What is an OCP?

- Owners and Contractors Protective "OCP" Liability insurance is an alternative to the traditional approach of pushing liability down to contractors and requiring the owner to be an additional insured on the contractors policy
- An OCP is a special type of general liability insurance providing a specific project cover for the owner's vicarious liability of its contractors and subcontractors
- It is often used when a project is inherently dangerous and / or State / Federal laws impose non-delegable duties upon the Owner (can also be used for professional liability)

## OCP Advantages

- Reduces likelihood coverage can lapse without owner's knowledge
- Contractor responsible for premium payments and can not cancel coverage. Only owner, as the named insured, may cancel coverage.
- Ensures project has dedicated limits and avoids sharing contractor's insurance among several other projects

## OCP Advantages

- Reduces administrative burden of confirming contractor has insurance
- Facilitates accurate allocation of insurance cost to project
- Eliminates risk of owner's cover becoming primary or contributory
- Loss experience is assessed to the project and will therefore not impact the owner's or contractor's CGL loss experience

## OCP Limitations

- OCP insurance requires purchase of a separate OCP policy, adding cost to the project, versus low-cost alternative of being added as an additional insured to contractor's existing policy
- OCP is project-specific insurance
- OCP coverage ends at project completion – thus, completed operations coverage is uninsured and must be addressed through other means

## OCP Limitations

- Commercial General Liability (CGL) insurance is broader than OCP as OCP **does not cover the owner's direct or contributory negligence** – only liability for acts of others
- OCP may be considered “other insurance” and cause contractor's CGL to have a reduced share or even be considered non-contributory

## Questions



## Negotiation Strategies in Contractual Risk Management

**Scott Cruce**

Vice President – Risk Management  
Noble Drilling Services Inc.

## Understand What You Are Negotiating

- What is the purpose of the contract?
  - Description / scope of work
  - Timing and location of project
  - Cost of the project
  - Operational risks involved in the project
- Which party will have effective control of the project?

## Understand What You Are Negotiating

- Which party has the greatest leverage?
  - Sole or limited source issues (competition)
  - Market conditions
  - Timing of the project
  - Size of the project
  - Relationship with the vendor

## Indemnity Provisions

- Why indemnify?
  - Clarifies the responsibilities of the contracting parties without need to determine fault
  - Circumvents costly and time consuming litigation
- Mutual (reciprocal) indemnification agreements
  - Knock – for – knock indemnities
  - You take your personnel and physical property / vendor takes its personnel and physical property
  - Regardless of the negligence of either party (sole, gross, comparative, concurrent, contributory, active and passive)

## Indemnity Provisions

- Third party action over claims
- Anti – indemnity statutes
- Sunset clauses

## Insurance Provisions

- Statutory / compulsory workers' compensation or other "social" insurance
  - Include coverage specifics (USL&H, maritime employer's liability)
- Commercial general liability and excess liability insurance
  - How much is enough
  - Additional coverage requirements (contractual liability, delete watercraft exclusion, sudden pollution, etc.)

## Insurance Provisions

- Automobile liability insurance
  - When to require it
  - How much coverage?
- Specialty coverages dictated by the exposure
  - Marine insurance
  - Professional liability
  - Aircraft

## Insurance Provisions

- Miscellaneous requirements on an “as-needed” basis
  - Waiver of subrogation
  - Additional insured status
    - Supporting the indemnities or separate and distinct from indemnity obligation
  - Inadequate limits / non-payment of claims / bankruptcy does not reduce liability
  - Primary insurance declaration

## Insurance Provisions

- Miscellaneous requirements on an “as-needed” basis
  - Severability of interest or cross liability provision
  - Notice of cancellation
  - Reasonably acceptable insurers
  - Maintain all coverage for entire term of contract
  - Responsibility for payment of deductible or SIR
  - Right to participate in litigation and / or claims resolution
  - Certificates of insurance

## Limitation of Liability Issues

- Many vendors want to limit their exposure to uninsured events
  - Limited to amount of insurance required
  - Limited to a flat, negotiated amount
  - Limited to amount of purchase order or invoice(s)

## Limitation of Liability Issues

- Resist capping liability for vendor's property and / or employees
- Approach other limitation requests with fairness and an open mind
- Understand the vendor's problem

## A Few Final Thoughts

- Transit risks
  - Who has title and risk of loss
  - Domestic vs. international transits
  - FOB factory vs. FOB job site
- Use master service contracts when possible
  - It's your form, which at a minimum gives you the initial negotiating advantage
  - Allows you to build a substantial list of “pre-approved” vendors
  - BE FAIR!!

## Questions



## Contractual Risk Transfer

Actual contract negotiation as part of the internal team negotiating major industrial contracts

### Kevin Freeman

Senior Attorney  
Alliant Energy

## Three Major Areas of Risk Transfer

- Performance failures / deficiencies
- Liability (physical risk)
- Price increases (financial risk)



## Contract Methodologies

### Risks to owners

	Performance	Price / Cost
Lump sum turn-key Fixed price (traditional EPC)	Lower	Higher-capped
Target price / Cost-reimbursable	Negotiated	High-limited cap
Multiple prime	Higher	Lower-no cap

## Commercial Terms

- Limitation of liability exclusions
  - Fraud
  - Gross negligence
  - Punitive damages
  - Indemnification obligations for third parties
- Dispute resolution

## Commercial Terms

- Schedule / performance liquidated damages
  - Major equipment
  - Balance of plant (BOP)
- Performance security
  - Letters of credit
  - Performance bonds, payment bonds
  - Escrow accounts
  - Parental guarantees
- Contractor's "at-risk" amount

## Management of Costs

- Owner's project controls
- Open book process with contractor / vendor
  - Audit rights
- Incentivize contractor / vendor to limit costs
  - Cost sharing of over runs or under runs
  - Creation of contingency and escalation buckets

## Stakeholder Management

- Disclosure of contract terms to management
  - Clearly describe and define what the contract is and is not
- External confirmation of contract terms
  - Experienced outside counsel
  - Owner's engineer
  - Market conditions

## Questions



## **Contractual Risk Transfer Tools, Tips and Takeaways**

**J. Gary Meggs**

Director – Risk Management  
The Southern Company

## **Demonstrating the Value of Contractual Risk Transfer - Background**

- Difficult to obtain favorable risk transfer provisions
  - Greater awareness of the risks being transferred (e.g., Sarbanes Oxley)
  - Tight labor markets (until recently)
  - Insurers' resistance in granting full additional insured status and waivers of subrogation
  - Larger risk retentions
  - Increased use of alternative risk transfer mechanisms

## Demonstrating the Value of Contractual Risk Transfer - Background

- Plenty of anecdotal evidence to support our recommendations, but little in the way of organized empirical evidence of the value over time of contractual risk and insurance requirements
- Supply chain personnel questioned the value of our requirements and how much effort they should expend in contract negotiations and policing proofs of insurance

## Value of Contractual Risk Transfer Study Scope

- Provisions examined
  - Insurance limits
  - Additional insured status
  - Waiver of subrogation
  - Indemnity language

## Value of Contractual Risk Transfer Study Scope

- Claims examined
  - General liability, business interruption, and property damage
  - Currently open or have been closed within the last ten years
  - Over \$50,000

## Value of Contractual Risk Transfer Findings

- Number of claims
  - 32 general liability claims
    - $\approx$  2 claims per year from 1993 to 2007
    - Steadily increasing in the current environment
  - 0 business interruption claims
  - 0 property damage claims

## Value of Contractual Risk Transfer Findings

- Litigation costs
  - Includes defense and settlement costs
  - ≈ \$2 million per year
  - ≈ \$28.8 million total

## Value of Contractual Risk Transfer - Findings

- Largest claims
  - \$5.75 million – gasket injury
  - \$5 million – aviation fatalities
  - \$3.8 million – electrocution fatality

## Value of Contractual Risk Transfer - Findings

- Contractual provisions
  - Strong indemnity - 90.63%
  - Additional insured status -93.75%
  - Paid settlement costs - 65.63%
  - Defense by the contractor
    - Due to the indemnity provision - 75.00%
    - Due to additional insured status - 15.63%

## Value of Contractual Risk Transfer Recommendations

- Focus our resources where they are needed most – high risk, high payoff contracts with the use of
  - Standards and policies for relaxing insurance requirements
  - The contract risk matrix
  - The vendor / contractor risk assessment tool
  - Certificates of insurance value tool: how much effort to expend?
- Document contractual risk transfer claims in RiskMaster

# Standards and Policies for Relaxing Insurance Requirements

**SOUTHERN COMPANY**

*Appendix C-2: Standards and Policies for Relaxing Insurance Requirements*
  
 Last Updated: March 21, 2008

**General Risk Assessment Guidelines**

The following questions will help LSCs and business units identify contractual circumstances in which the insurance requirements may be lowered.

- **What type of risks are involved?**
  - o Injury to persons
  - o Death
  - o Damage to property
  - o Financial / cost
- **Is there a low probability that an accident, damage or financial loss will occur?**
  - o Providing information
  - o Supplying non-dangerous, non-critical equipment or supplies
  - o Not entering company property
  - o Not working on ladders or scaffolding
  - o No hazardous waste
- **Will the activities occur somewhere besides company property or a company work site?**
  - o Projects that are performed on the contractor/supplier's premises or at a location that is not considered company premises or a company work site are typically less risky for the company.
- **Will the activities be performed on an occasional, infrequent basis?**
  - o Activities that do not occur regularly or that are not frequently performed are typically less risky for the company.
- **How long will the project last?**
  - o Projects that will last fewer than several days are typically less risky for the company.
- **Can the Contract Guidance Manual Risk Level matrix be used in assessing the risks of a project (see attached)?**
  - o The risk level of the project may be a helpful place to start the assessment of risks.

Version 2.0  
 03/21/08  
 Appendix C-2

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# The Contract Risk Matrix

Scenario:	Risk Rating By Coverage (1=lowest, 3=highest)			Rationale	Notes	Does Not Include
	General	Auto	Workers Comp			
Light mechanical (small tools, not submittals)	1	1	2	Minor exposure to injuring others, limited auto use, higher risk of injuring self. Insurance adds more than 10% to cost, may be sole source provider	Encourage vendor to secure health insurance	Subcontractor cleaning, such as coil recovery tank cleaning or window cleaning, high elevations
Interior painting, wallcovering, flooring (very low / no elevations)	1	1	2	Minor exposure to injuring others, limited auto use, higher risk of injuring self. Insurance adds more than 10% to cost, may be sole source provider		Projects involving scaffolding, climbing ladders over 6 feet or major lifting
Ductwork installation, office reconfiguration	1	1	2	Minor exposure to injuring others, limited auto use, higher risk of injuring self. Insurance adds more than 10% to cost, may be sole source provider	Encourage vendor to secure health insurance	Projects involving scaffolding, climbing ladders over 6 feet or major lifting
Light electrical, such as interior lighting (very low / no elevations)	2	1	2	Minor exposure to injuring others, limited auto use, higher risk of injuring self. Insurance adds more than 10% to cost, may be sole source provider		Projects involving scaffolding, climbing ladders over 6 feet or major lifting
Locksmith (bonded)	1	1	1	Bonding provides a safeguard, limited exposure for OSHA/OSHC		



# The Vendor / Contractor Risk Assessment Tool

Project: \_\_\_\_\_ Primary Contact: \_\_\_\_\_ Date: \_\_\_\_\_  
Description: \_\_\_\_\_ Extension: \_\_\_\_\_  
E-mail: \_\_\_\_\_

## I. General Liability

1. Will the contractor be working on or around company premises, or doing operational work on our behalf?

*Premises/Operations in a broad sense may include right-of-ways, facilities, operational activities in the field, etc.*

2. Is the nature of the work such that it could pose risk of injury to persons or damage to property?

Consider:

- Work Activities
- Proximity to highly valued company property or employees
- Equipment utilized in performing the work
- Duration of work activities

3. How likely is it that an accident could happen?

Consider realistic loss scenarios.

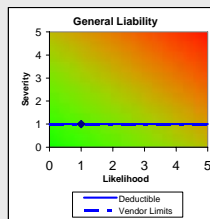
4. Select the magnitude of expected losses:

Consider the worst case that could realistically occur:

- Dollar Impact
- Negative Publicity
- Regulatory Concerns

5. Select the appropriate deductible for your company:

Company	Liability



6. What limits is the vendor offering?



# The Vendor / Contractor Risk Assessment Tool

## III. Workers' Compensation

1. Select the number of contractor employees:

*Employers with less than three employees are not legally required to carry WC insurance, however we may be liable as the 'deep pocket'*

2. Will the contractor be: a. Working on or around company premises?

b. Working on company behalf around third-party persons or property?

c. Providing consulting services?

3. Is the nature of the work such that it could pose risk of injury to persons or damage to property?

Consider:

- Work Activities
- Proximity to highly valued company property or employees
- Equipment utilized in performing the work
- Duration of work activities

4. How likely is it that an accident could happen?

Consider realistic loss scenarios.

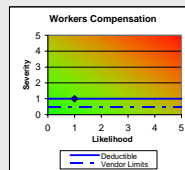
5. Select the magnitude of expected losses:

Consider the worst case that could realistically occur:

- Dollar Impact
- Negative Publicity
- Regulatory Concerns

6. Select the appropriate deductible for your company:

Company	Liability



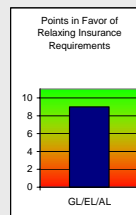
7. What limits is the vendor offering?

## The Vendor/Contractor Risk Assessment Tool

The following questions apply to General Liability, Excess Liability, and Auto Liability:

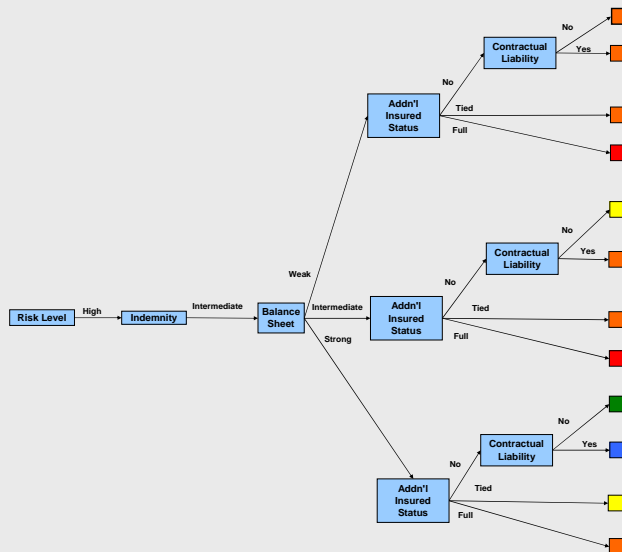
3. Would the contractor have to buy additional coverage exclusively for this project, and pass the costs (uneconomically) to the company?  
*If so, what percentage would it add to contract price?*
4. Is there a compelling business reason to use this supplier?  
*Is it a single-source supplier, or do they have a substantial advantage in costs, ability to meet schedule or capabilities.*
5. Is there another supplier option?  
*Another supplier that could meet your requirements (ie costs, schedule, capability)*
6. In relationship to the company's risk profile, is this work the company would or could self-perform?  
*...and would ordinarily self-insure (assume the risk), consistent with our normal risk profile. If the contractor provides any insurance at all, and it's something we'd ordinarily do ourselves, they're improving our risk profile by providing any insurance.*
7. Looking to the risk profile, are the likelihood and impact of a loss less than or equal to 2?  
*Even if the likelihood of losses is remote, potential severe impact suggests caution in relaxing limits requirements.*
8. Are there other non-insurance methods available to mitigate the risk?

Scoring:

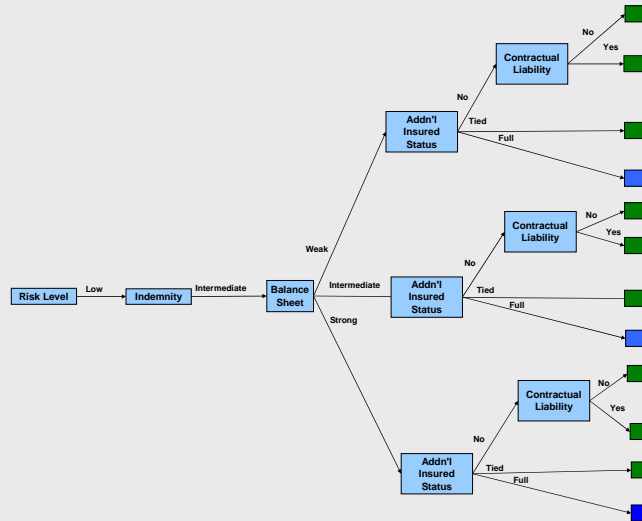


**Total:** 9 Points in favor of relaxing requirements

## Certificates of Insurance Value Tool



## Certificates of Insurance Value Tool



## Additional insured ain't what it used to be!

- Increased resistance to naming us as additional insured (AI) and to waiver of subrogation (WOS)
- Steady efforts by counterparties and their insurers to erode the coverage afforded to additional insureds
- Efforts to link AI to a weakened indemnification clause, leaving you with only contractual liability cover
- Indemnification provisions and AI status can operate independently

## Additional insured ain't what it used to be!

- You may be able to get AI coverage broader than the indemnity
- ISO 2004 form changes and endorsements effectively promulgate a menu of options which, if not effectively selected, may leave coverage shortfalls (e.g., AI but no contractual liability)

## Additional Insured Endorsement Options

- Option 1: CG 20 10 11 85 or equivalent
  - Provides the broadest additional insured coverage, including completed operations
- Option 2: CG 20 10 10 01 with CG 20 37 10 01 or equivalent combination
  - Provides coverage similar to CG 20 10 11 85 by adding completed operations coverage; still contains “arising out of” language which provides broader coverage for the AI

## Additional Insured Endorsement Options

- Option 3: CG 20 10 07 04 with CG 20 37 07 04 or equivalent combination
  - CG 20 37 provides coverage for completed operations, however, the AI will not have coverage for liability resulting from their sole negligence

## What to expect from the “Big Guns”

- They will seek low limits of liability (LOLs), especially for damage to first party property and will try to define owner’s property as not “third party”
- Link AI status to a weakened indemnity provision
- Say that they (especially GE) “don’t want to be your insurer”
- Argue that your demands are unfair and unreasonable

## What to expect from the “Big Guns”

- Demand waivers of subrogation from you, especially for owners property, but not waive their subrogation rights
  - May offer WOS to the extent of contractors negligence, which is worthless

## Dealing with the “Big Guns” If we have any deal leverage, counter with:

- Pushing for higher LOLs
- Offer WOS on a reciprocal basis and cite the mutual advantages
  - We try to preserve our right to recover self insured losses, to the extent practicable
- Respond “likewise, we don’t want to be your insurer,” citing our exposure to contractor negligent damage of our property

## Dealing with the “Big Guns” If we have any deal leverage, counter with:

- That we are not unreasonable in asking the contractor to take on the risk, including our contributory negligence; just as we often do when we provide wrap up coverage to contractors
  - Contractor has the option to insure or self-insure and price the risk in the proposal; then let the competitive chips “fall where they may”
  - Point the contractor to their own requirements of suppliers and contractors:  
[http://www.gepower.com/about/suppliers/en/downloads/std\\_terms\\_purchase\\_revq.pdf](http://www.gepower.com/about/suppliers/en/downloads/std_terms_purchase_revq.pdf)

## Dealing with the “Big Guns” If we have any deal leverage, counter with:

- Price adjust contractors bid against competitors, to reflect the additional risk we would assume, if they don’t meet our insurance and indemnification requirements
- As a last resort, suggest counterparties “put on their big boy / big girl britches;” throw out the insurance language and lean on the indemnity provisions, without LOLs; each party then bears full responsibility for its own negligence

## When the shoe is on the other foot and we are providing indemnity & insurance to others

- Strive for LOLs
- Provide counterparty AI status “to the extent of our indemnity obligations”
- Protect our excess insurers: contractually, provide AI status only to a set limit and show only that limit on the certificate of insurance
- Self-insurance letters should be consistent with the above and include: “consistent with the terms and conditions of our excess policies”

## Questions

