

February 10, 2015

Common Council
City of West Allis

RE: Insurance Requirements

Dear Mayor and Alderpersons:

In all of our contracts for public works improvements, outside consultants, etc., we require that the contracting party provide various policies of insurance. In particular, we have required General Liability, Automobile, Worker's Compensation, and in some instances Professional Liability. In addition, it has been the policy to require that the contractor provide us with Certificates of Insurance that name the City as an Additional Insured. This policy has come under a great deal of fire from the insurance industry for the last several years and has created a great deal of work for the Engineering Department and the City Attorney's Office in attempting to secure appropriate Certificates of Insurance or other suitable proof of insurance. In addition, we have been waiving the requirement that the City be named as an Additional Insured on Worker's Compensation Policies. As we are not the employer of the workers, we cannot be named on the policy. Similar objections have been raised with regard to the Automobile and Professional Liability Coverage.

The purpose of this letter is to inform you of this situation and to afford you the opportunity to approve the proposed changes. In addition to dispensing with naming the City as an Additional Insured for Worker's Compensation Policies, we propose to eliminate naming the City as an Additional Insured with regard to Automobile and Professional Liability Policies. The contractor will still be required to have these insurance policies and to provide us with an appropriate Certificate of Insurance. However, the City will not have to be named as an Additional Insured. As there are no circumstances in which City employees will be operating contractor's vehicles, there is no need for us to be named as an Additional Insured for Automobile Liability Coverage. With regard to Professional Liability Insurance, the insurance companies have objected that by naming the City as an Additional Insured, engineers (for example) of the City are now insured for their own professional errors and omissions. The insurance companies balk at doing this, as they have no control over such City employees. This is a reasonable objection. In addition, it has been suggested that by not being named as an Additional Insured on this policy, the City will then be in a position to make a claim on the policy whereas we cannot if we are a named insured. While this argument may have some merit, I don't believe it is a controlling factor in this matter. Any claim of the City would be based on the contract that we have and the work not being done in a workmanlike manner together with the other

warranties that are provided. The insurance policy is for a civil action based upon tort (a civil wrong) damages. Therefore, I do not think that this ability to sue the insurance company is all that great. However, by eliminating the City being named as an Additional Insured, it does avoid the bona fide complaints of the insurance companies that they are now insuring City employees who they have no control over.

In the end, I believe that these changes will make administration of contracts much easier for the various departments and will not diminish the insurance coverage provided to the City. The City Administrative Officer, the Engineering Department and the City Attorney's Office have reviewed this proposal. All are in agreement that this is the optimum way to proceed with regard to insurance coverage.

If you have any questions or concerns regarding these proposed changes, please feel free to contact me.

Sincerely,

Scott E. Post
City Attorney

SEP:da

H/Scott/Corr/CC-Insur Requirements

cc: Paul M. Ziehler
Michael Lewis
John F. Stibal