



POLICIES AND PROCEDURES MANUAL

SUBJECT <p style="text-align: center;">Risk Management <u>and Insurance Requirements for Consultants</u></p>	DEPARTMENT <p style="text-align: center;">Administration & Finance <u>Administration</u></p>	DEPARTMENT IDENTIFICATION <p style="text-align: center;">1100</p>		
	SECTION <p style="text-align: center;">1102</p>	PAGES <p style="text-align: center;">1-3</p>	EFFECTIVE DATE <p style="text-align: center;">1/1/82</p>	REVISION DATE <p style="text-align: center;"><u>04/08/14</u> <u>CC Action</u></p>

1.0 PURPOSE:

To describe the liability claims management, insurance, administrative and risk management guidelines and policies of the City of West Allis.

2.0 ORGANIZATIONS AND PERSONS AFFECTED:

This policy applies to all City of West Allis departments, divisions, boards, commissions, employees, and the general public.

3.0 POLICY:

It is the policy of the Department of Administration & Finance to have a risk management program, including (1) City internal administrative guidelines, (2) City claims management guidelines, and (3) the Cities & Villages Mutual Insurance Company guidelines on liability risk management and liability claims quality control.

4.0 REFERENCES:

Section 2.69, City of West Allis Revised Municipal Code.

5.0 PROCEDURES:

5.1 RESPONSIBILITY

The City Administrative Officer and the City Attorney shall be responsible for City risk management program, to minimize the costs to the City of all activities related to the control of accident loss. The City Administrative Officer and the City Attorney shall develop and recommend loss prevention, loss control, and loss transfer methods, procedures and programs for all City departments. The City Administrative Officer shall arrange appropriate insurance contracts, subject to approval by the Common Council, to the extent any risk of loss cannot reasonably be assumed by the City. The placement of insurance may be by private negotiation rather than competitive bid. The City retains an insurance/risk management consultant to advise the City on such matters.

5.2 GENERAL POLICIES

- 5.2.1 Worker's Compensation. It is the policy of the City to be self-insured in regard to Worker's Compensation coverage up to the first \$500,000. The City also carries excess Worker's Compensation coverage. The City retains a claims administrator to assist in processing and settling claims.
- 5.2.2 Liability. It is the policy of the City to carry excess general liability and auto liability (personal injury and property damage) and errors and omissions insurance coverage, with a self-insured retention of \$150,000 per occurrence, \$600,000 aggregate including defense costs. The City excess liability coverage is \$5,000,000 through the Cities & Villages Mutual Insurance Company. The City retains a claims administrator to assist in processing and settling claims. The City may also carry an additional \$5,000,000 depending on market conditions.
- 5.2.3 Property Insurance. Blanket coverage is provided through the Local Governmental Property Insurance Fund.
- 5.2.4 Paramedics/EMT Liability Insurance. It is the policy of the City to carry malpractice insurance on City paramedics on the first \$150,000 per occurrence, \$600,000 aggregate, which is self-insured for all other liability purposes.
- 5.2.5 ENERGY SYSTEMS (Boiler and Machinery) Insurance. The City carries boiler and machinery insurance coverage for direct damages (example = breakdowns), and indirect damages (costs caused by a breakdown).
- 5.2.6 Crime, Fidelity, Faithful Performance. A Crime, Fidelity, Faithful Performance policy is carried on all City employees.
- 5.2.7 Health Insurance. It is the policy of the City to be self-insured in regard to health insurance and also to provide at least one clinic and one physician health maintenance organization. The City retains a third party administrator to handle self-insured claims.
- 5.2.8 Dental Insurance. Dental coverage is provided under either a self-insured plan or a dental HMO. The City retains a third party administrator to handle self-insured claims.
- 5.2.9 Unemployment Compensation. It is the policy of the City in regard to unemployment compensation, to pay actual claims.

5.3 GUIDELINES

- 5.3.1 The attached specific statements shall be the guidelines of the City of West Allis with respect to:
 - a.) Liability Claims Administration. Liability claims shall be referred to the City Attorney for investigation, review, and settlement/recommendation pursuant to the attached Liability Claims Administration policy.
 - b.) CVMIC Guidelines
 - 1.) Liability Risk Management. The City Administrative Officer and City Attorney shall be in charge of the City's risk management program as set forth in the attached Liability Risk Management guidelines.
 - 2.) Liability Claims Quality Control (see attached)
 - c.) Internal Administrative

- 1.) Risk Avoidance. The City Administrative Officer, City Attorney, and, to the extent applicable, Department Heads, shall implement the attached Risk Avoidance guidelines.
- 2.) Risk Transfer. All departments shall work with the City Attorney to ensure that the attached Risk Transfer guidelines are complied with or that a waiver (as set forth in 5.4.2) is obtained.
- 3.) Risk Control (see attached)

5.4 INSURANCE REQUIREMENTS FOR CONTRACTORS

5.4.1 General Insurance Requirements. Except where otherwise specified by ordinance, the following insurance provisions and amounts shall be required of all contractors performing professional services for the City:

[See Attached Document]

5.4.2 Delegation of Authority. The approval as to form and sufficiency of the consultant's insurance and the ability to waive the requirements set forth in Sec. 5.4.1 shall be as follows:

- a.) The City Attorney shall, in writing, signify that the requirements of Sec. 5.4.1 have been met prior to the execution of any contract.
- b.) The City Administrative Officer, City Attorney and Department Head seeking to obtain the professional services, may, upon unanimous agreement, amend or waive the requirements of Sec. 5.4.1 if they are satisfied that the nature of the contract, changing insurance practices, or other extenuating circumstance require alteration and that other provisions adequately protect the City. A written amendment to the terms shall be drafted and the City Administrative Officer, City Attorney and Department Head shall each sign the amendment prior to the City executing the contract.
- c.) Each person set forth in Subsection 5.4.2.b.) may designate one or more staff members to exercise his or her authority with regard to amending or waiving the requirements of 5.4.1.
- d.) If the City Administrative Officer, City Attorney and Department Head cannot unanimously agree on the proposed modification(s) as set forth in Subsection b.), the Department Head may seek the approval of the Administration & Finance Committee. The Committee may make such changes to the standard insurance requirements as it deems appropriate under the circumstances after hearing the reasons/need for making the change and the objections thereto.

INSURANCE REQUIREMENTS FOR CONSULTANTS

A. INSURANCE REQUIRED.

Contractors shall purchase and maintain for the duration of the contract as required by the City or by Law, insurance indemnifying against claims, suits, personal injury, bodily injury to persons, or damage to property which arises from, or in connection with the performance of the work hereunder by the Contractor. Some contracts may require Completed Operations, Professional Liability or other insurance beyond the contract term.

Contractor acknowledges that the insurance coverage and policy limits set forth in this Insurance Requirement section constitute the minimum amount of coverage required. Any insurance policy or other proceeds broader than or in excess of the specified limits and coverage required in this section, which are applicable to a given loss, shall be available to the City. The Insurance Requirements under this Contract shall be greater of (1) the minimum coverage and limits specified in the Contract or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named. It is agreed that these Insurance Requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum Insurance Requirements of this Contract are sufficient to cover the obligations of the Consultant under the Contract.

Any deductibles or self-insured retentions shall be identified to the City; those which exceed \$10,000 must be declared to and approved by the City. City may require a review of the latest audited financial statements of the Contractor. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defenses expenses.

All required insurance under this Contract is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers to be admitted status with the State of Wisconsin, unless otherwise approved in advance by the City. City reserves the right to approve non-admitted carriers with a Best's rating of no less than AX.

Work shall not be commenced under the Contract until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies at any such time. Copies of policies shall be provided by Contractor within 10 days of such request.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. For Worker's Compensation-related risks, only forms approved by the Insurance Commissioner are to be used.

Contractor shall include all subcontractors as insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. Contractor agrees to require in any subcontractor and other agreements to perform any operations under this Contract, or provide products or services in connection with this Contract (parties to such subcontracts and/or agreements collectively shall be referred to as "subcontractors"), that all Subcontractors comply with all of the provisions of this Contract, including the indemnity and insurance provisions to the extent they apply to the scope of the Subcontractor's operations and/or performance under this Contract. Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Contract. No subcontractor shall be permitted to commence work until all required coverage has been obtained and certificates and endorsements thereof are filed with the City. A copy of the Indemnity and Insurance Requirements shall be furnished to the Subcontractors by Contractor upon request.

If any part of a loss is not covered because of the application of a deductible or retention, said loss shall be born by the general Contractor and not the City. Failure to maintain the required insurance may result in termination of this Contract at the option of the City.

It is Contractor's responsibility to ensure its compliance with the Insurance Requirements of the Contract. Any actual or alleged failure on the part of the City to obtain proof of insurance required under the Contract shall not in any way be construed to be a waiver of any right or remedy of the City, in this or any regard.

B. GENERAL ENDORSEMENTS.

The protection afforded by the required insurance policies under this Contract shall include, but shall not be limited to, the following:

1. Occurrence Based Policies. All required Liability insurance under this Contract shall be written on an "occurrence" form, except separately approved Professional Liability Policies.
2. Representation of Coverage Adequacy. By requiring insurance for this Contract, City does not represent or warrant that coverage and limits will be adequate to protect the Contractor, subcontractor, their agents or any project engineer.
3. Cross-Liability Coverage. If the Contractor's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
4. Cancellation. The insurer shall endeavor to give the Director of Public Works/City Engineer at least ten (10) days prior written notice of any suspension or cancellation of the policy, or any reduction in coverage or in limits. In addition, the Contractor shall immediately notify the Director of Public Works/City Engineer whenever it receives notice from the insurer that the policy has been cancelled or suspended or there has been a reduction in coverage or limits. Cancellation or suspension of the policy or reduction in coverage or limits shall constitute a material breach and is grounds for immediate termination of the Contract. Upon notice to the Contractor by the City upon the City's learning of said breach, the Contractor shall immediately cease all Work on the Project.
5. Additional Insured's. The City, its officers (elected and appointed), employees, agents and volunteers must be named as additional insured's as their interests may appear on the Contractor's General Liability insurance policy. Additional insured status shall be endorsed onto the insurance policy by the appropriate ISO Endorsement Form approved by the City and executed by duly authorized agents of said carrier.
6. Primary Insurance. Contractor's insurance shall provide primary insurance to the City, to the exclusion of any other insurance or self-insurance programs the City may carry. Any insurance or self-insurance maintained by the City shall be excess of the Contractor's insurance and shall not contribute to it.
7. Waiver of Subrogation. Contractor waives all rights against the City, its officers, employees, agents and volunteers for recovery of damages to the extent these damages are covered by the insurance the Contractor is required to carry pursuant to this Contract.
8. Reporting. Failure to comply with any insurance policy reporting provisions shall not affect coverage provided to the City.
9. Cross Liability. The required insurance coverages shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.
10. Indemnification. The policies shall contain an acknowledgement by the underwriters that, to the fullest extent permitted by law, the Contractor shall indemnify and save harmless the City

against any and all claims resulting from the wrongful or negligent acts or omissions of the Contractor or other parties acting on its behalf under the Contract; and that the hold harmless assumption on the part of the Contractor shall include all reasonable costs necessary to defend a lawsuit including actual reasonable attorney fees. The obligation to indemnify and defend the City as set forth herein shall survive the termination or completion of this Contract for the full period of time allowed by law. The parties agree that if any part of this indemnification provision is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally allowed and shall be legally binding upon Contractor.

C. MINIMUM LIMITS AND OTHER PROVISIONS.

1. WORKER'S COMPENSATION INSURANCE.

Workers Compensation Insurance:

Wisconsin statutory limits for all employees of the bidder to whom the award is made.

All subcontractors and materialmen shall furnish to the Contractor and the City certificates of similar insurance for all of their respective employees, unless such employees are covered by the protection afforded by the Contractor.

2. GENERAL LIABILITY INSURANCE.

a. Coverage. Coverages must include, but are not limited to the following: "Occurrence" Coverage Form must be as broad as Insurance Service Form (ISO) (form CG 00 01) and include the following:

- Premises and Operations
- Products and Completed Operations, applicable for at least three years following acceptance of the work
- Personal Injury with Employment Exclusion deleted
- Unlicensed Mobile Equipment
- Explosion, Collapse and Underground Hazard Coverages
- Blanket Contractual (Independent Contractor's Protective)
- Contractual Liability coverage at least as broad as coverage provided by the ISO CG 00 01 policy form must be included and shall not limit by any modification or endorsement, coverage for liabilities assumed by Contractor under this Contract.
- Broad Form Property Damage
- Contingent Coverage for Subcontractors
- Care, Custody and Control Coverages for City Owned or Purchased Materials at the Work Site

b. Minimum Limits of Liability:

Per Occurrence Limit:	\$1,000,000
Policy Aggregate Limit:	\$2,000,000
Personal Injury Limit:	\$1,000,000
Fire Damage Limit:	\$50,000
Medical Expense Limit:	\$5,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

a. Coverage. Coverage must be as broad as ISO CA 00 01 - Occurrence Form Code No. 1, "any auto" and include the following: Comprehensive Coverage for all Owned, Non-Owned or Hired Motor Vehicles driven by the employees of the Contractor or Subcontractors, including vehicles and equipment owned by the City if used exclusively for the project.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

Transportation by insured vehicles of pollutants, or toxic wastes (as determined by the EPA) shall require a minimum of the Pollution Liability Endorsement (CA9948) and/or the Motor Carrier Act Endorsement (MCA90) to address damages and clean-up costs.

b. Minimum Limits of Liability:

Per Occurrence/Accident for Bodily Injury and Property Damage: \$1,000,000

4. PROFESSIONAL LIABILITY/ERRORS & OMISSIONS COVERAGE.

a. Coverage. Standard form; coverage provided on a claims – made basis with at least three years extended reporting period; to include all liability assumed by Contractor for the project. The minimum three year extension shall be for at least three years after all operations and/or performance under this Contract are complete, and additional claims-made coverage requirements apply as described below: For any coverage that is provided on a claims-made form (which type of form is permitted only where specified above):

1. The retroactive date must be shown and must be before the date of the Contract, and before the beginning of any operations and/or performance related to this Contract;
2. Insurance must be maintained and Certificates of Insurance must be provided to the City for at three years after termination or completion of the Contract or completion of the contract work;
3. If coverage is cancelled or not-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract, Contractor must purchase an extended reporting period for a minimum of three years after termination of this Contract or completion of contract work.

b. Minimum Limits of Liability: Minimum \$1 Million (project specific).

5. UMBRELLA LIABILITY.

~~Five-Two~~ million dollars (~~\$52,000,000~~) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. If excess or umbrella policies are used to meet the Insurance Requirements of this section, they shall provide coverage at least as broad as specified for the underlying coverages, and the full limits of the umbrella or excess coverage shall be available to the City. Such policy or policies shall include as insured's those covered under the underlying policies, including additional insured's, with a severability of interests provision applicable to the additional insured's. Such policy or policies shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis to the City before the City's own primary liability policy or self-insurance shall be called upon to protect it as a named insured. Coverage shall apply on a "pay on behalf" basis.

IV. CONTRACT BONDS

After opening of bids, but before signing of contract, the bidder to whom award is made shall have executed, through a surety company authorized to do business in the state of Wisconsin and acceptable as surety to City, bonds in the form included in the contract documents for the faithful performance of the contract and payment for all work and labor performed and materials furnished to

complete the work. The bonds shall be for the full amount of the contract and shall be adjusted to incorporate all extras, credits and change orders through final payment.

Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his Power of Attorney indicating the monetary limit of such power.

Bidder shall pay the cost of the bonds.

V. INTERPRETATIONS AND ADDENDA

All questions about the meaning or intent of the contract documents are to be directed to the City Engineer. Interpretations or clarifications considered necessary by the Engineer in response to such questions will be issued by addenda mailed or delivered to all parties recorded by the Engineer as having received proposal forms. Questions received less than ten (10) days prior to the date for opening of bids may not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may also be issued to modify the contract documents, as deemed advisable by the Board of Public Works or the City Engineer.

NON -DISCRIMINATION STATEMENT

The City of West Allis does not discriminate against individuals on the basis of race, color, religion, age, marital or veteran's status, sex, national origin, disability, or any other legally protected status in the admission or access to, or treatment or employment in, its services, programs or activities.

LIMITED ENGLISH PROFICIENCY STATEMENT

It is the policy of the City of West Allis to provide language access services to populations of persons with Limited English Proficiency (LEP) who are eligible to be served or likely to be directly affected by our programs. Such services will be focused on providing meaningful access to our programs, services and/or benefits.

Rev 4/2014

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L:Scott/Contracts/Contractor ContractRev2014