



Advanced Topics on Insurance Requirements in Contracts

Presented by:

Dan Howell, Sr. EVP & Managing Director





Presentation Outline

1. IRIC Manual and Version 2020.1 Update
2. Indemnification Matters
3. Complex Situations
 1. Construction Risks
 2. Technology Risks
 3. Alternative Risk Financing
 4. Special Events
 5. Aviation Risks
 6. Marine Risks

1. The IRIC Manual

- **The basis of the Insurance Requirements in Contracts Manual (IRIC) stems from work by public entity risk managers and consultants since the 1970's**
- **It is relied upon by hundreds of public entities**
- **Alliant has maintained and published the manual as a service to the public entity community**
- **CSAC EIA (STBKNA "PRISM") has partnered with Alliant – engaging Bob Marshburn to work with Dan Howell to edit annual updates**
- **Version 2020.1 Published this week!**
 - Available at EIA website and Alliant Public Entity webpage

IRIC Manual on the Web

Alliant Risk Solutions Employee Benefits Industry Solutions Co-Brokered Solutions

Public Entity

Public Entity Insurance Solutions

Public entities face property risks, liability exposures, and employee benefits needs that are significantly different than those faced by commercial businesses and corporations. Your organization needs an insurance broker that not only specializes in meeting the unique insurance, risk management, and benefits needs of public agencies similar to yours but also one that has earned a reputation for innovation and success in the public sector.

Public Sector Insurance Leader

With more than 30 years of experience in the public sector, Alliant Insurance Services is an industry leader in providing highly successful strategies, services, and products for a complete range of public sector clients. We understand how public agencies are perceived in the insurance marketplace and how the operating environment of these organizations shapes their risk transfer approach and requirements.

What truly sets us apart is our extensive specialized expertise of the public entity insurance business, combined with our focus on developing innovative programs that meet the special needs of public agencies. Our public entity clients benefit from the most effective insurance solutions and comprehensive service in the industry.

Our diverse public sector clients include:

For more information, contact:

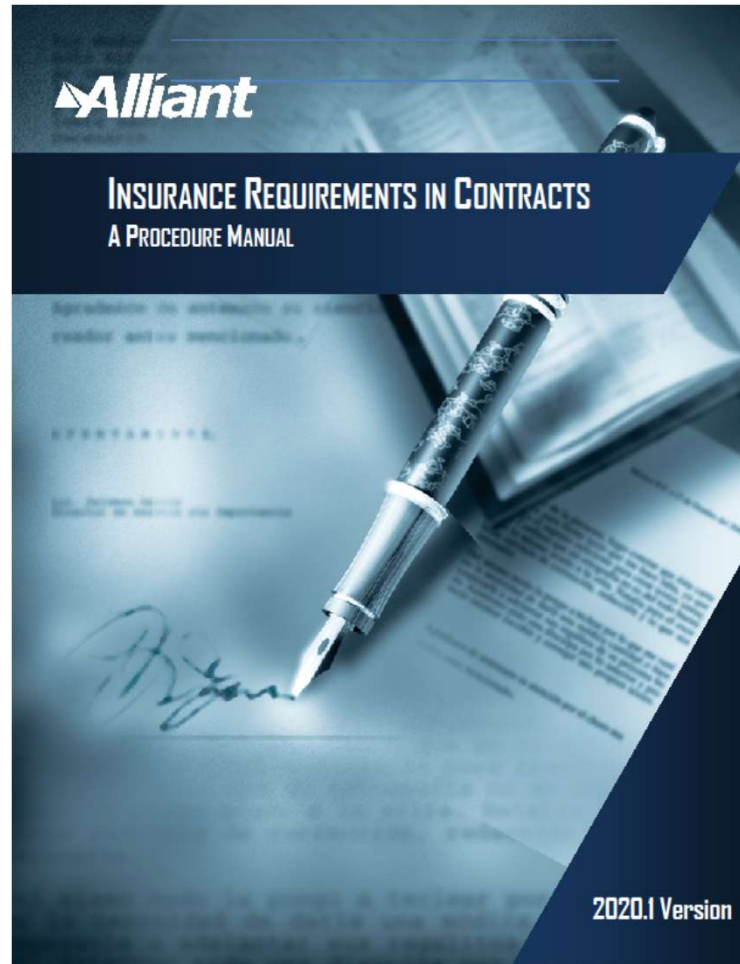
Daniel Howell
(415) 403-1426
Email

Mary Wells
(949) 660-8125
Email

Insurance Requirements in Contracts (IRIC)
Download IRIC:
PDF | Word

- Programs
 - All Programs
 - Automobile
 - Construction
 - Employee Benefits
 - Equipment Maintenance
 - Liability
 - Property
 - Workers' Compensation
- Business Services

IRIC Manual on the Web



Updates – Version 2020.1

- **Three NEW FAQ's to address:**
 - 34. How can we ensure coverage for competed operations?
 - 35. Is my independent contractor really an independent contractor?
 - 36. Dispelling the myth of “following form” excess insurance coverage
- **Chapter 2 now includes discussion on following form excess coverage**
- **Chapter 3 now includes Owners and Contractor's Protective Coverage (OCP) discussion**
- **Chapter 7 now includes discussion on cash receipts & handling with Fidelity Bonds and Crime Insurance**
- **NEW Chapter 8 – Schools and Other Youth Serving Organizations**
- **NEW ISO Forms CG 20 39, CG 20 40, CG 24 53**

2. Indemnification Matters



- **There is no way to trigger coverage without a contractor's obligation to indemnify.**
 - *The indemnification clause language needs to be allowed under the law.*
- **There is no way to trigger coverage without a valid "insured contract."**
- **ISO CG 00 01 defines "Insured Contract" at Paragraph 9. of Section V. Definitions**
 - **Nearly always in writing & always formed in advance of the loss.**



Presentation Outline

1. IRIC Manual and Version 2020.1 Update
2. Indemnification Matters
- 3. Complex Situations**
 1. Construction Risks
 2. Technology Risks
 3. Alternative Risk Financing
 4. Special Events
 5. Aviation Risks
 6. Marine Risks



The discussion that follows will be much more interesting and informative with audience participation and examples!

3.1 Construction Risks

- **Alternative Delivery Methods and Indemnification**
 - *The indemnification clause language needs to be legally allowed under the law.*
- **P3 Projects – Construction vs Ongoing Operations**
 - Very Long Term Agreements
- **OCIPS, CCIPS, OPPI, CPL, COC & MBR**
- **Nuances of Using New ISO Forms**

New ISO Forms – Construction



- **Old Way:**

- Combine the AI for ongoing operations CG 2010 or CG 2026 (construction) plus the CG 2037 (for completed operations).
- Note: Your entity has to be scheduled (shown) on the 2010 or 2026 & 2037, and should be shown as named in the underlying contract.

- **New Way:**

- Combine the CG 2033 (Blanket ongoing operations) with **NEW** CG 2039 (Blanket completed operations in WRITTEN construction agreement).
- Note: Your entity does not have to be scheduled on these endorsements as they apply on a blanket basis.

New ISO Forms - Subcontractors



- **Privity of contract – Your entity does not directly have a contract with the subcontractor**
 - Your contract with prime must require subcontractors of every tier to indemnify and have insurance for entity.
- **New Way:**
 - Combine the **RELATIVELY NEW** CG 2038 (Blanket ongoing operations, contract not with you) with **NEW** CG 2040 (Blanket completed operations, contract not with you).
 - Note: Your entity does not have to be shown on these endorsements as they apply on a blanket basis where required by “other parties when required in a written construction agreement.”

New ISO Form - Subrogation



- **“Waiver of Transfer of Rights of Recovery Against Others to Us”**
 - AKA “waiver of subrogation.”
- **Old Form – CG 24 04 – Scheduled**
- **New Form – CG 24 53 – Automatic (blanket)**
- **Nuance: Under the Builder’s Risk (COC), what property is a covered part of a project vs. contractor damage to other property of the Entity?**

3.2 Technology Risks

- Is this agreement for a physical product or installation? *See Exhibit 8.*
- Is this agreement for technology consulting or software, or software as a service? AKA Technology Professional Liability (E&O) *See Exhibit 7.*
- Coverage for intangible property (data) provided under Cyber policies – usually not under Tech E&O.
- Vendor standard agreements and negotiating clout
- Coverage for losses caused by vendors under your entity's own "Cyber" Insurance.
- Special Note: **Funds Transfer Fraud.**

3.3 Alternative Risk Financing



- **Evaluating a contractor's self-insurance or captive insurance program**
- **Declaration of self-insured retentions**
 - Insurer must allow for third party satisfaction of SIR to trigger coverage.
- **When your organization is the contractor:**
 - Does your entity have traditional insurance, self-insurance, or pool coverage? Most likely a combination of all 3 types of risk financing.

3.4 Special Events

- If the user is providing insurance via ongoing insurance program, use standard insurance provisions such as \$1 million per occurrence, \$2 million annual aggregate.
- If a special events policy is providing coverage no split annual aggregate is needed as the policy is dedicated to that event (i.e. accept \$1 million per occurrence).
- **Special Special Events:**
 - *The reason the premium is so high is that underwriters have seen higher claims from this type of event.*

3.5 Aviation Risks

- **Some nuances:**
 - Airport Liability Policy
 - Aviation Liability Policy
 - Coverage for Fixed Base Operators
 - Hangarkeeper's Liability
- **Your Entity's leased facilities and lessor's expensive contents – AKA private jet aircraft**
- **Contractors & Unmanned Aerial System exposures**
- **See Exhibits 9, 10 & 11.**

3.6 Marine Risks

- **Some nuances:**
 - Marine General Liability Policy – no standard forms, broader than CGL
 - Specialty coverage terms for Terminal Operators, Wharfinger's Liability (berthing), Charterer's Liability, Marina Operator's Liability, Stevedores Liability (cargo loading and stowage), Tower's Liability, Bumbershoot (umbrella), Maritime Employers Liability (esp. for divers)
 - Pollution Exposures
 - Contingent United States Longshore and Harborworkers applicable to navigable waterways
- **Construction above, below and near water**
- **Protection & Indemnity, Hull & Machinery, Vessel Pollution Liability**
 - knock-for-knock principle (each vessel responsible for own loss)
 - Pay to be paid rules (club member must pay first to trigger reimbursement by PI Club)
- **Misdirected Arrow Clause – Not an Addl. Insured**

Final Reminder!

- All older agreement forms and purchase order forms have positively got to be updated in very strong and clear language to show that:
 - Required Limits are **MINIMUMS**
 - Your entity is entitled to **ANY** insurance available to the contractor.



NEW THIS YEAR – Surveys on the App

Find the App, Click on Events, Click on Browse by Day, Click on the Specific Session, Click on Rate Event. See Below for Screen Shots.

