

Small Business Insurance Requirements Guide

for Local Government



Small
Business
Commissioner



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Councils can help provide opportunities for small business to participate in local government projects. Complex tender documents and insurance requirements are often barriers to small businesses successfully winning work from local government.

The purpose of this guide is to provide Councils with a better understanding of insurance types and considerations that may be taken into account in preparing tender documents and contracts, as well as helping determine reasonable insurance levels for individual procurements. It has been developed based on State and Federal Government insurance best practice principles, however the guidelines are not exhaustive or prescriptive.

Note – Construction-related procurement is excluded from this guide.



The three common types of insurance relevant to the purchase of goods and services are:

- Public liability
- Product liability
- Professional indemnity

Workers Compensation is compulsory by Law.

There are quick tools for Councils at the back of this guide.





2. Why is insurance necessary?

Insurance is one of the most important expenses that any business needs. Insurance protects the business, the business owner, its customers, Council and its employees, and the general public.

Business insurance is also important as a form of protection against personal liability where a business owner can be held personally responsible for injuries or damages.



Insurance Council of Australia estimates that 70% of under insured and uninsured small businesses affected by a major event never recover. Understanding the correct type and level of insurance is very important.

The main reasons for requiring a supplier to have insurance are:

- to reduce the risk of the supplier not having sufficient financial resources available to meet a liability.
- to ensure that the supplier will receive financial support to fund its own insurable losses and liabilities and still be able to perform its obligations under its contract.



Insurance The existence of insurance does not remove the liability of a party for its actions. It is only an agreement for the insurer to meet some or all of the financial costs of the insured where the insured is liable for such costs.


3.

Types of insurance

The three common types of business insurance relevant to procurement are:

► Public liability insurance

Public liability insurance covers claims relating to personal injury or property damage due to a breach in a supplier's duty of care to third parties. Public liability insurance is important when a supplier is engaged by a Council to provide a good or a service that interfaces with the general public.

 **EXAMPLE Public liability** A supplier providing a service to a Council results in an injury to a member of the public who sues the Government and supplier for loss and damages. Assuming the council is not at fault, then the supplier's insurance cover should respond to both the claim against the supplier and any costs incurred by the council in defending its position.

► Product liability insurance

Product liability insurance covers personal injury, property damage and other losses caused by a defective product. Defects in products can include design defects, manufacturing defects, and instructional errors such as inadequate labelling that could render the product dangerous.



EXAMPLE Product liability A supplier provides a Council with a faulty chair that causes injury to a person who sues the Council and the supplier for loss and damages. Assuming the Council is not at fault, then the supplier's insurance cover should respond to both the claim against the supplier and any costs incurred by the Council in defending its position.

► Professional indemnity insurance

Professional Indemnity insurance covers breaches of professional duty including, misleading and deceptive conduct claims, defamation (libel/slander), and dishonesty of the supplier's employees. It might be required when the procurement involves professional advice, designs, specifications or project management.

The national framework of professional standards legislation allows approved professional associations and other occupational groups (e.g. accountants, engineers, surveyors) to limit or cap their members' liability. Members of a scheme must disclose limitation of their liability to their clients.



EXAMPLE Professional indemnity A supplier trains accounting staff in new accounting practices and the use of new software. The supplier was negligent in the advice given, resulting in significant accounting errors occurring causing large financial losses and reputational loss. The Council could seek compensation for losses from the supplier. The supplier's Professional Indemnity policy would respond.



Indemnity levels can be affected by:

- The profession/industry type and business.
- The size of the business – the more work delivered and larger number of employees, the higher level of risk.

Workers compensation insurance

Workers compensation insurance (also known as employers liability insurance) provides cover for a business's employees in the event of a work-related injury or illness. All Australian jurisdictions have a statutory requirement for an employer to maintain workers compensation insurance.



EXAMPLE Workers compensation is mandatory for all employers under NSW legislation. Although it is required by law, this type of insurance must also be specified in the contract.

Combined liability policies

It's common for businesses to choose a policy that combines liability insurances. Generally the policy will still have two limits (one for public liability and one for products liability). A policy will usually cover all claims made during the period of the policy up to the specified limit, e.g. \$10,000,000 for any claim for public liability for an unlimited number of claims. Claims for products liability will usually be covered up to an aggregate limit - meaning all claims arising from products cannot exceed the limit issued e.g. \$10,000,000 during the period of insurance. Once claims that arise out of products liability reach that limit, the policy will not pay any further claims.

Other insurance types

Businesses need to consider other types of insurance such as: building insurance, travel insurance, accident insurance, life insurance, short term disability insurance, income insurance, vehicle insurance, insurance on equipment and supplies, life insurance and health insurance.

What if the supplier does not have insurance?

This doesn't mean the supplier isn't liable if an event occurs, but it does mean that they may be unable to meet any claim costs.

The supplier should be encouraged to arrange insurance, otherwise Council may be exposed to costs that the supplier is liable for but cannot pay. A risk assessment should be undertaken in line with these guidelines and if it is determined that any liability would be minimal, it may be appropriate to accept the risk.



4.

Insurance considerations in contracts

One of the first considerations in the procurement process is to identify the types and levels of risk that could potentially be involved in the contract. Once these are known, you'll need to assess the type and level of insurance required.

Simple insurance checklist:

- type of insurance cover;
- policy number;
- name of the insurer;
- level of cover (sum insured or limit of liability);
- period of insurance cover; and
- scope of cover (note any non standard exclusions/limitations).

As insurance can be a significant cost, suppliers may seek to limit their liability to a specified sum or to a value of cover linked to the contract value. Suppliers may often offer a lower contract price in return for limiting the liability.



Insurance is often a significant cost that is normally passed on to the customer. The level of insurance should be appropriate to the identified risk exposure.



You should request a signed 'Certificate of Currency' from the insurer prior to entering a contract.

This kind of negotiation needs to be considered carefully as it can mean that Council is more exposed to project risk and liabilities. It's also important to understand the extent that a liability cap applies as it may only relate to specific categories of loss in the contract term e.g. consequential loss or it may apply to any loss that arises from the supplier's liability. Uncapped liability for small businesses can be viewed as a significant deterrent to engagement so caution in its use is warranted.



Liability capping refers to limiting the amount of loss that the Council can recover from the supplier and needs to be considered carefully. However, capping may provide benefits including:

- reduced prices for good and/or services;
- encouraging small business involvement in NSW government procurement; and
- other value adding benefits.

Prior to agreeing to any limitation of liability, a risk assessment must be undertaken to ensure that the liability cap proposed takes into consideration the likelihood of all relevant risks that could occur and the financial consequences that could arise from these risks.

Procurement practitioners should seek advice from commercial managers, legal sources and/or consult with risk managers to determine liability capping levels before finalising contractual clauses. Remember to apply commercial reasonableness test to the caps, as this assists small businesses to qualify for tenders..

5. Levels of cover

The contract will often specify the amount of cover needed based on an evaluation of complexity and risk. Suggested insurance thresholds are provided in the tables in Appendix 2.

In some cases, variations to insurance requirements may be required (subject to a risk assessment). This approach recognises the challenges and costs faced by smaller suppliers when obtaining insurance cover as well as the levels of financial risk involved in different contracts.

Typical levels of insurance available in Australia

Public liability

- \$5 million
- \$10 million
- \$20 million



The amount of cover is dependent on certain factors:

- Completion of risk assessment by local council;
- Complexity, value and level of risk of procurement;
- Whilst a small business may be quite safe with a \$5 million policy, a medium to large business with more substantial risks may require cover of \$10 to \$20 million.

Product Liability

- \$5 million
- \$10 million
- \$20 million

Professional indemnity

- \$1M to \$5M Low risk of financial loss
- \$5M to \$10M Medium risk of financial loss
- \$10M to \$20M High risk of financial loss



6.

Risk Management and Assessment

There are always risks associated with the procurement of goods and services and these risks need to be assessed and managed.

Council staff must ensure that only reasonable levels of public/product liability and professional indemnity insurance are required of SMEs, i.e. the levels take into consideration the risk of the contract. Councils should use internal resources and consult with their risk managers when determining these levels.

Insurance is one tool for risk management. A majority of suppliers to government will have some level of insurance cover. The decision to make is whether the supplier's levels of insurance cover are adequate for the procurement risks and not over prescribed.

Mitigating supplier risk

Insurance

Councils should ensure that businesses obtain and maintain appropriate insurance cover. Insurance coverage is usually expected to be maintained throughout the duration of a contract or engagement, and proof of coverage documentation must be available to Councils at all times.

It's not just to create more paperwork, it's to protect the Council, the community and the supplier if something goes wrong. Suppliers must also be careful to ensure that the entity covered by their insurance policies is actually the one contracting with Council, rather than, for example, a trust.

Prequalification schemes

Prequalification schemes help Councils find suppliers that are prequalified to work with government based on certain criteria or guidelines. Schemes will include suppliers that meet the appropriate quality, safety and viability standards.

Workplace health and safety (WHS)

Councils expect their suppliers to maintain high levels of health and safety standards in the workplace. When suppliers are asked to prove how they manage WHS, the standard expected will depend on the type of work being undertaken and the risks involved.

Expectations may range from a fully certified WHS management system to simply having a one page WHS policy. Councils have the right and ability to audit suppliers' WHS policies and procedures at any time over the life of the contract, and in some instances, can also physically inspect worksites.

Quality assurance

Community expectations of Councils' services are understandably high. This means suppliers to local government must have proper quality assurance processes and procedures in place. As always, the level of quality assurance expected will depend on what is being delivered. The higher the value and risk, the greater the expectation.

7.

Definitions and references

Definitions

Goods: movable personal property, especially general merchandise used in trade or commerce and requiring carriage from one place to another.

Services: the act of helping or doing work for another, assistance or benefit given to someone, the provision of what is necessary for the installation and maintenance of a machine etc. or operation.

Supplier: also called a vendor, is a person or company that provides goods and/or services.

Insurance: an economic device whereby the payment of a premium for an insurance policy substitutes for a possible large economic loss (the contingency insured against).

Indemnity: a general legal principle that holds that the individual recovering under an insurance policy should be restored to the approximate financial position they were in prior to the loss.

Liability: a debt, responsibility or obligation arising from a contract or tort committed.

Liability cap: an arrangement whereby a supplier's liability for damage or loss incurred by the customer is limited to a certain amount.

References

- **buy.nsw**
buy.nsw.gov.au
- **Office of the NSW Small Business Commissioner**
www.smallbusiness.nsw.gov.au
- **NSW Procurement Policy Framework**
<https://info.buy.nsw.gov.au/policy-library/policies/procurement-policy-framework>
- **Insurance Council Of Australia**
www.insurancecouncil.com.au
- **Australian Government Department of Finance**
www.finance.gov.au/procurement

APPENDIX 1

Risk management - assessing insurable risk

The purpose of this section is to provide a simple explanation of assessing insurable risk exposures using the Australian/New Zealand Standard ISO 31000:2018 Risk Management - Guidelines. These guidelines are just one example of a systematic approach to identifying and managing risk and you should consult your Council's risk advisor and/or NSW Procurement section.



Where possible, it is preferable to apply minimum levels of cover to facilitate small business engagement.

It is also possible to relate the selection of cover to the assessment of complexity given the scope of risk factors considered in an assessment.

When should it be applied?

A rigorous assessment of insurable risks should be applied as early as possible in the contracting process to ensure that the level of insurance required in the contract terms is appropriate.

It's important to be aware that even low value contracts can be high risk. Therefore, it is good practice to think about the risks associated with each contract regardless of its value.





The simple guide for a 3-stage process may include:

1

Assess supplier's insurable risk and review possible controls.

- ▶ Determining the level of insurance cover that is adequate and reasonable for a specific contract is not an exact discipline, since it is difficult to foresee every risk or event that could potentially generate a claim.
- ▶ Assess the risk profile of the procurement and the market characteristics in order to determine appropriate levels of insurance before seeking proposals.
- ▶ Question the potential financial impacts of an accident or event arising from or during the course of the contract.

2

Determine the reasonable levels of insurance.

- ▶ The level of cover may need to be higher to reflect an increase in assessment of risk.
- ▶ The tables in Appendix 2 provide a guide to suggested reasonable insurance requirements for each of the levels of risk with basic working examples.

3

Review the terms and conditions of cover.

- ▶ Once the level of cover has been determined, it can be used as a criterion in procuring the particular goods or services.
- ▶ Before a contract is signed with the successful supplier, review the terms and conditions of the supplier's cover to ensure that the insurance protection is adequate for the risk exposures identified.
- ▶ Refer to Appendix 3 for the Insurance checklist guide.

APPENDIX 2

Guide to reasonable insurance requirements

Public and product liability

This table describes the level of risk, rating, examples of contracts and potential risks and suggested **reasonable insurance requirements**.

Level of risk	Rating	Examples of contracts and potential risks (for delivery of goods and services)	Reasonable insurance requirements
Extreme	5	<ul style="list-style-type: none"> ▶ Supplier engaged to run and host a Council celebration which has been designed to attract large numbers of the public. Person severely injured while at the function. Multiple claims or injuries. ▶ Supplier engaged to transport hazardous wastes. Multiple fatalities. 	Greater than \$20 million
High	4	<ul style="list-style-type: none"> ▶ Supplier engaged to host a display of leading NSW art works. Art work not secured which results in a person being permanently or seriously injured. ▶ Supplier engaged to service fire detection equipment. Poor servicing results in damage to property causes interruption of service delivery to multiple users. 	\$10 - \$20 million
Significant	3	<ul style="list-style-type: none"> ▶ Supplier has been engaged to host a small, contained event. Illness or injury to a person requiring medical treatment. 	\$5 - \$10 million
Medium	2	<ul style="list-style-type: none"> ▶ Supplier has been engaged to replace computer software of strategic importance to a business unit. Lost time and re-establishment of data can be handled within Councils' budget 	\$1 - \$5 million
Low	1	<ul style="list-style-type: none"> ▶ Supplier has been engaged to maintain a visitor centre. Minor damage with minimal impact on visitor centre operation. 	\$0 - \$1 million

Simple risk assessment tool to assess liability cover

The second table is a basic risk rating tool to assist in assessing the level of risk for the three types of insurance. Examples are for goods and services and can be used across a variety of procurements.

Cover	Level of Risk (Risk rating)		
	Low to Medium 1-2	Medium to Significant 2-3	High to Extreme 4-5
Occupational health and safety issues (OHS) Relevant insurance cover: Public Liability (impact on persons) Product Liability (impact on use and application)	Low possibility of harm or danger to the public. The supplier's interface with the public is overseen by an officer in the Council (or representative) with responsibility for, or knowledge of, the risks. There are no special skills required to wear specialist clothing or use the special equipment.	There is some possibility of harm or danger to the public. The supplier's interface with the public is overseen by a Council Officer. The supplier has addressed all WHS requirements required by the regulation and the courts. There are no outstanding breaches of legislation or regulations. The supply is of standard equipment however, there are particular requirements/ processes in using the equipment. The clothing supplied has specific limitations in the area for which it can be used.	There is a high possibility of harm or danger to the public. The supplier's interface with the public is not overseen by a Council officer. The supplier is to interface with clients that have physical and/ or behavioural problems. Supplier has a high number of WHS breaches and numerous outstanding remedial action requirements imposed by the courts. The protective clothing and specialist equipment is to be used in high danger situations. The clothing/ equipment is non standard and requires extensive training to use/apply.
Product complexity Relevant insurance cover: Product Liability (impact on performance)	Supply of standard 'off the shelf' items of clothing or equipment. Items are common in the market and have a track record of performance in relation to their application/use. Low, if any, reports of recall. Extensive warranties/ guarantees and after sales service available.	Supply of established, but not common, items of clothing or equipment. There may be some degree of difficulty in obtaining immediate replacement or repair there is a failure to perform. Failure will not have a significant impact on the operation of the Council. Product service is somewhat specialised.	New highly specialised product. Failure would have significant impact on the operation of the Council. There is limited supply of specialists in the field should the system fail.
Insurable timeframes Relevant insurance cover: Public Liability Product Liability Professional Indemnity	Exposure less than two years/or contract terms	Exposure greater than two years but associated with a fixed end date.	Long term exposure, the time frame could be open ended in time and obligation.

Note - An allowance must also be made for the fact that settlement of public liability and professional indemnity claims can occur many years after the event giving rise to the claim, so the level of cover must cater for potential claims inflation and changes in the law in the intervening period.

Professional indemnity

Level of risk	Rating	Examples of contracts and potential risks (Incorrect professional advice resulting in financial loss)	Reasonable insurance requirements
Extreme	5	<ul style="list-style-type: none"> ▶ Consultant engaged to develop new accounting software used by a number of government councils. Significant accounting errors causing loss of information. ▶ Consulting firm engaged to provide an environmental impact statement on the chemical pollutants reaching inland waterways. Incorrect advice resulting in closure of the fishing industry on inland waters. Very serious litigation including class actions. 	Greater than \$10 million
High	4	<ul style="list-style-type: none"> ▶ Consultant information technology firm engaged to advise on software that has the potential to collapse part of the IT system for a few weeks. Incorrect professional advice resulting in major financial loss to multiple users. 	\$5 - \$10 million
Significant	3	<ul style="list-style-type: none"> ▶ Consultant engaged to review the flow of traffic on the highway. Review fails to identify all factors resulting in significant delays to scheduled maintenance. 	\$1 - \$5 million
Medium	2	<ul style="list-style-type: none"> ▶ IT consultant engaged to modify an existing database to enable the collection of additional information. Product fails and has to be reworked. 	\$0.5 - \$1 million
Low	1	<ul style="list-style-type: none"> ▶ Consultant giving advice on alternate policy matters. Incorrect professional advice resulting in small financial loss. 	\$0 - \$0.5 million

Simple risk assessment tool to assess professional indemnity cover

Cover	Level of Risk (Risk rating)		
	Low to Medium 1-2	Medium to Significant 2-3	High to Extreme 4-5
<p>Credibility of the supplier in the conduct of the procurement activity</p> <p>Relevant insurance cover:</p> <p>Professional Indemnity</p>	<p>The complexity of the procurement activity is assessed as transactional.</p> <p>The supply arrangement involves common 'off the shelf' products or routine services that do not impact on Council decision making.</p> <p>The supplier has a track record in the market, is familiar with government procurement requirements and is fully compliant with relevant regulatory requirements.</p>	<p>The complexity of the procurement activity is assessed at the upper level of transactional but is more likely to have been assessed as leveraged.</p> <p>The supply arrangement involves potential interface with clients of the department or community.</p> <p>The supplier has a track record in the market and is predominantly compliant with all related regulatory obligations.</p>	<p>The complexity of the procurement activity is assessed as focused or strategic.</p> <p>The supply arrangement has a direct impact on Council service delivery.</p> <p>Service failure would generate significant negative media coverage for government or pose a risk to the public.</p>
<p>Stakeholder exposure</p> <p>Relevant insurance cover:</p> <p>Professional Indemnity</p>	<p>Contract is managed at the business unit level and is not required to be reported or signed off at senior management level. There is no interface with clients of the Council or general public.</p>	<p>The product, but more likely the service, has some impact on the decision making within the Council. Any failure could have repercussions on performance of the department.</p>	<p>The product/service is critical to decision making by senior management. The advice is relied on for making high level/ critical investment decisions by government. Failure at the government level has significant flow on effect to the business community and the general public.</p>
<p>Service complexity</p> <p>Relevant insurance cover:</p> <p>Professional Indemnity</p>	<p>Routine common service available from multiple players in the market place. The service has little, if any, bearing on the decision making within the Council. The level of complexity is assessed as transactional.</p>	<p>The level of complexity is assessed as leveraged. The service/information provided has impact on the operation of the Council but is not related to strategic decision making or investment. The service is generally available from the market but the level of expertise is higher than required for routine common services.</p>	<p>New service with limited availability and support in the market. Failure or poor advice will have significant impact on the Council and decision making.</p>
<p>Supplier resources and expertise</p> <p>Relevant insurance cover:</p> <p>Professional Indemnity</p>	<p>Extensive experience in the area relevant to the procurement activity. Supplier can demonstrate excellent supply chain relationships. Minimal staff turnover and strong retention of core expertise.</p>	<p>Sufficient experience in the area relevant to the procurement activity. Some incidence of industrial relations issues but little reported evidence of cost overruns or service delivery delays.</p>	<p>Supplier has little experience at the level of complexity assessed for the procurement activity. The supply arrangement is a recently formed consortium comprising very different levels of expertise even though all areas of need are covered.</p> <p>The principle supplier has a poor record in supply chain management evidenced by extensive legal claims for payment.</p> <p>Evidence of having a poor record in managing industrial relations issues resulting in significant cost overruns and delays.</p>

APPENDIX 3

Insurance Checklist Guide

This insurance check list guide can be used when working through the pre- and post-procurement consideration stages.

✓	
	All insurance options have been considered (professional indemnity, public, product liability, motor vehicle third party property damage, workers compensation).
	All insurable risks have been identified and assessed.
	Risks identified through past experiences were reviewed when considering an amount for public/product liability and professional indemnity insurance.
	Insurance is in place before the commencement of the contract and evidence of the supplier's insurance has been obtained.
	The insurer is a registered insurer with the Australian Prudential Regulation Authority (APRA).
	The insurance period takes into account the type of policy (occurrence or claims-made).
	Advice from Council risk advisor (or delegate) has been sought if there is any desire to limit liability by the sharing of risks in complex, high-risk projects.
	Liability has not been limited for personal injury, loss of, or damage to, tangible property or infringement of the intellectual property and other rights of third parties.
	If uninsured, the supplier has the experience to adequately fulfil the obligations of the contract and the associated risk is considered very low.
	Dates have been set for monitoring the requirements of the contract including review of Certificates of Currency.
	The terms and conditions, including pricing, from which risk allocations have been determined have been carefully monitored to ensure that they reflect value for money.



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The information contained within does not guarantee accuracy, currency
or completeness of any material contained in the Small Business
Insurance Requirements Guide for Local Councils.

The Insurance Requirements guide is purely published for guidance and
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