Determining insurance requirements in procurement

Office of the Chief Advisor - Procurement

This document will be progressively reviewed as part of Buy Queensland 2023 implementation.

Queensland Government

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This document is intended as a guide only. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, agency procurement policies and procedures, and any other relevant documents.

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Introduction

Insurance requirements in procurement help to protect suppliers and agencies from potential future losses. Generally, these relate to the types and levels (i.e. amounts) of insurance cover that agencies require from suppliers as part of a contract for 'goods and services'[1].

Insurance requirements:

- reduce the risk that the supplier will not have sufficient financial resources to meet its insurable losses and liabilities and still be able to perform its obligations under the contract
- benefit any injured party by providing access to compensation
- mitigate an agency's exposure to costs that the supplier is liable for but cannot pay (e.g. an agency's legal costs if defending its position against claims where the supplier is liable).

Determining insurance requirements that are aligned with the risk profile of the procurement and informed by commercial insurance market considerations begins with a risk assessment. The risk assessment should be conducted as part of procurement planning and revised as part of contract management, to ensure all risks, including insurable risks, are identified, assessed and managed. Insurance is just one tool that can be used to manage identified insurable risks.

Tailored insurance requirements help to make government procurement more accessible for all suppliers, including small and medium enterprises (SME), supporting growth of this important sector and diversification of the supply market. It enables agencies to advance relevant government economic, environmental and social objectives as set out in the Queensland Procurement Policy (QPP), and other Queensland Government procurement commitments (e.g. Queensland SME procurement target).

Purpose

The purpose of this guide is to assist agency procurement officers to determine insurance requirements that are aligned with the risk, nature and complexity of procurement activities, informed by commercial insurance market considerations.

Note

In recognition of the differing risk appetites of each agency, this guide provides general guidance only and should be read in conjunction with:

- any agency-specific procurement, insurance and risk policies and processes
- advice from the business unit seeking the good and/or service
- advice from specialist financial, risk, insurance and/or legal advisors as required.

Agency procurement officers are encouraged to contact the Queensland Government Insurance Fund (QGIF) for general insurance advice and information. Contact details for QGIF can be found in the "Contacts" section of this guide.

The State's self-insurance scheme, QGIF, differs significantly to the commercial insurance market and should not be compared to or used to determine insurance requirements for suppliers.

[1] 'Goods and services' is defined in the QPP to include all property (except for real property) and all types of services including building and construction services, and infrastructure.

Agency procurement officer

For the purposes of this guide, agency procurement officer is defined as employees of budget sector agencies, statutory bodies, government-owned corporations and special purpose vehicles subject to the QPP (collectively known as 'agencies') who are involved in the whole process of obtaining goods and services, beginning with the identification of needs, through to contract management, disposals and other related functions.

What is insurance?

A contract of insurance is an agreement for the transfer of financial risk from one person (the insured) to another (the insurer) in return for payment of a sum of money (usually called 'the premium').

The existence of insurance does not remove the liability of a party for its actions, but instead provides financial protection for that party in the event of an insurable loss or liability.

Insurance as a risk management tool

It is important to note that insurance is just one risk management tool that can be used to reduce the financial risk exposures that may arise out of the supply of goods and services.

Insurance is a risk sharing measure that can be included as part of a risk management plan. It does not help to control or eliminate risk, it is not necessarily available for all types of losses (e.g. reputational, political, regulatory) and it may not be the most appropriate response for all situations.

A combination of risk treatment options (including insurance) can be used and should form part of an overall risk management strategy for any contractual arrangement.

Types of insurance

While the types of insurance required will depend on the insurable risks presented by the goods and/or services being procured, there are four types of insurance policies that commonly form part of contractual insurance requirements. These are:

- public liability insurance
- product liability insurance
- professional indemnity insurance
- workers compensation insurance.

Public liability insurance

Public liability insurance is required where the supplier's activities or actions have the potential to cause personal injury or property damage to third parties.

It is of particular importance if the supplier's activities or obligations under the contract require them to work with agency employees or clients, work in public spaces, visit spaces owned or controlled by others or to have visitors to its premises.

Public liability insurance policies protect the business against claims resulting from accidents or injuries that occur as result of the business activities, as well as accidental damage to property owned or controlled by someone else.

Businesses can usually choose whether to take out public liability insurance, but in some situations it might be compulsory. For example, in certain public events and facilities, public liability insurance is compulsory, and it is checked through a licensing authority.

Note that public liability insurance excludes losses and liabilities that arise from products; this is covered by product liability insurance. It is a common pitfall to assume that if a supplier holds public liability insurance it also holds product liability insurance. Whether a supplier holds both covers will depend entirely on the insurance product offered by an individual insurer and the cover purchased by the supplier.

Broadform liability insurance

Broadform liability insurance is an insurance product that houses both public liability insurance and product liability insurance. Insurance product names should not be written into a contract, as the individual insurance policies (i.e. insurance types) included within an insurance product, cover different risks and are subject to different limits. That is, the focus should be on the types of insurance that comprise an insurance product.

Product liability insurance

Product liability is a form of strict liability which means the business is liable any time it is shown that its product is defective, whether or not the business is at fault. Defects include design defects, manufacturing defects and instructional errors (e.g. inadequate labelling, instructions for use or warnings which render the product dangerous).

As such, product liability insurance is required where the supplier provides tangible goods that are sold, supplied or modified as part of the contract and which could cause injury or property damage.

Product liability insurance is designed to protect a business for its legal liability if sued because a product it sells, assembles, supplies or maintains has caused harm to a person or their property. It can help cover the cost of investigating and defending against a claim made against the business and its product. It also covers the cost of any damages awarded to a customer if that business is found to be at fault.

Under product liability law, manufacturers, distributors, suppliers, retailers (including those that supply food), and others who make products available to the public are held responsible for the injuries those products cause, meaning that all should be required to hold product liability insurance.

Repairers, maintenance providers and builders

Repairers, maintenance providers and builders also require product liability insurance. Product liability insurance provides cover for occurrences that happen after the works have been completed and handed over. For example, if a problem or defect in a building or repair work injures someone months or years later.

Professional indemnity insurance

Professional indemnity insurance is required where an agency is relying upon the professional services of a supplier. This includes advice, design, consultancy, opinion and/or analysis services.

Certain classes of professionals are required to carry professional indemnity insurance under law (e.g. lawyers), or as part of their registration (healthcare professionals). However, other professions that provide advice and/or services that may cause loss to a client also benefit from the financial protection afforded by professional indemnity insurance. This includes, but is not limited to,

management and business consultants, accountants, information technology professionals, technical and engineer contractors, recruitment agencies and consultants, designers, teachers and trainers.

In general, professional indemnity policies will usually provide cover for errors made whilst advising or servicing clients and the legal costs and expenses of investigating and, if justified, defending the business advice and conduct.

Cover varies between insurers and policy wordings and may include events as listed below – it should be noted that not all of the items below are automatically covered by a professional indemnity insurance policy and their inclusion should be specified in the contract when required:

- breach of professional duty
- negligence
- bodily injury and property damage arising from service breach
- libel, slander or defamation against a third party
- loss of client documentation
- legal liability for damages and claimants' costs/expenses arising from an act, error or omission/civil liability of the supplier's employees
- wrongful or inadequate advice to a third party
- acting without proper instructions or failure to act in accordance with the third party's instructions
- failure to advise third party
- breaches of legislation (e.g. *Corporations Act 2001* (Cth)).

Medical indemnity insurance

Medical indemnity (or medical malpractice) insurance is a type of professional indemnity insurance within the health industry.

Medical indemnity insurance is specifically tailored for healthcare professionals and healthcare providers (e.g. pathology laboratories, hospitals) to respond to claims of medical negligence and applies to any suppliers engaged to provide these services.

Workers compensation insurance

Workers compensation insurance covers the medical expenses and the wages of the supplier's employees if they are hurt or injured in the course of conducting work-related activities. As it is a legislative requirement for businesses who have employees to hold workers compensation insurance, agencies do not need to stipulate a minimum level of insurance. However, this type of insurance must still be specified in contract documentation.

Sole traders and self-employed individuals

Sole traders and self-employed individuals should be requested to hold and provide evidence of workplace personal injury insurance or, alternatively, income protection or personal accident and/or illness insurance that includes cover for occupational injuries. Variations to the standard contract terms and conditions will be required in this situation and legal advisors should be consulted.

Other types of insurance

Depending on the nature of the goods and/or services being procured, there may be a need for other types of insurance (e.g. cyber security insurance) to cover risks that are not covered by the

abovementioned insurance policies. Examples of these insurance types have been outlined in **Appendix 1**.

Insurance requirements need to be tailored

Tailored insurance requirements in a procurement are underpinned by a robust risk assessment of the procurement activity.

Without conducting a risk assessment, it is likely that insurance requirements will either be **excessive** or **inadequate** for the procurement:

- **excessive** insurance requirements can arise where the required levels of insurances are over-specified which is likely to increase the cost of the supplier's proposal and create a barrier to entry for suppliers particularly SMEs, including social enterprises, and Aboriginal businesses and Torres Strait Islander businesses
- **inadequate** insurance requirements can expose suppliers to financial hardship or bankruptcy in an attempt to finance liabilities incurred on the contract and may result in agencies having to fund under-funded claims through their own budgets for losses that the supplier causes directly to the agency.

Tailoring insurance requirements plays a key role in attracting SMEs, including social enterprises, and Aboriginal businesses and Torres Strait Islander businesses to supply government, thereby enabling procuring agencies to:

- advance relevant government economic, environmental and social objectives, targets and commitments as set out in the QPP, including the Queensland SME procurement target
- align their procurement activities with the intent of the Queensland Small Business Procurement Commitment – Action Statement which commits to make it easier for small business to supply to government.

Determining insurance requirements in procurement

Seek specialist advice as required

This section contains general guidance only.

Appendices 2, 3 and 4 are provided as **examples only**, and should not be relied upon by any other party.

As each agency has its own unique risk profile and tolerances, and to ensure insurance requirements are tailored to a procurement, it is highly recommended that agency procurement officers refer to any agency-specific procurement, insurance and risk policies and processes, and obtain advice from the business unit seeking the good and/or service, and advice from specialist financial, risk, insurance (e.g. QGIF) and/or legal advisors as required.

Summary of key steps to determine insurance requirements at each stage of procurement

Plan

Step 1 – Conduct risk assessment and identify insurable risks

- Conduct risk assessment at the category and individual procurement level by identifying risks and assessing likelihood and consequence.
- Identify insurable risks from events or incidents that could cause harm to someone, damage to property or financial loss.

Step 2 - Determine the appropriate insurance cover type and period

- Determine insurance cover type based on identified insurable risks and goods and/or services supplied.
- Determine insurance period depending on insurance type and policy form.

Step 3 – Determine the minimum level of insurance cover required

- Determine the level of exposure by assessing the likelihood and consequences of the insurable risks occurring.
- Level of exposure determines the minimum level of insurance cover required.

Step 4 – Specify insurance requirements in invitation documents

- Specify insurance requirements in invitation documents (e.g. requests for quotations, invitation to offer, tenders).
- Note proof of insurance as a key requirement that must be specified, including acceptable forms of proof of insurance and key details in proofs provided in order to confirm compliance with insurance requirements (refer to pages 17-19).
- Consider other insurance requirements that should be specified (e.g. supplier notification requirements).

Go to market and evaluate

Step 5 – Review the terms and conditions of the supplier's proof of insurance

- Review proof of insurance to ensure insurance requirements have been met, including:
    - that the policy is current and will be in effect at the commencement of performance of the contract
    - that the supplier is covered by the policy as a policy holder or named insured
    - that the supplier's services and/or goods are covered by the insurance policy
    - that there are no terms that will impact a supplier's ability to meet any claim or otherwise prejudice the agency's rights under a contract.

Contract development and award

Step 6 – Specify insurance requirements in contracts

- Specify insurance requirements in the contract with the successful supplier.
- Vary template terms and conditions with the assistance of legal advisors to manage risk appropriately and/or accommodate agreed insurance arrangements (e.g. self-insurance, multinational insurance program).

Manage contract

Step 7 – Monitor and review to ensure insurance is maintained and adequate

- Conduct periodic reviews to ensure insurance cover is adequate to address insurable risks associated with the contract.
- Consider events such as product upgrades, changes to the contract, changes to structure of government, modifications or end to supplier's cover, and other changes that impact the risk profile of the contract.
- To ensure the supplier remains compliant with its obligations, proof of insurance must be requested at renewal and upon receipt of advice or notice that the supplier has modified its cover.

Step 1: Conduct risk assessment and identify insurable risks

Conducting a risk assessment

What is a risk assessment and why is it important?

A risk assessment is the process of identifying possible events, problems or disasters before they happen. Once identified, strategies can then be implemented to help minimise the impact and harm that happens if these events were to occur. Put simply, a risk assessment involves a consideration of the following:

- what could go wrong?
- what would the impact be?
- how can we control the impact?

A robust risk assessment enables the determination of tailored insurance requirements.

When must a risk assessment be conducted?

Risk assessments must be conducted at both the category (and sub-category) level and individual procurement level as part of procurement planning to ensure the types and levels of insurance are appropriate relative to the risks associated with the procurement.

The risk assessment must be refreshed throughout the life of the resultant contract as part of good contract management to account for changes impacting the provision of the good and/or service.

How is a risk assessment conducted?

At a category level, information sources such as advice from the relevant Industry Reference Group should be leveraged to inform the identification and treatment of risks (including insurable risks as detailed below). The outcomes can then be used to inform risk assessments for individual procurements under the category.

At the individual procurement level, agency procurement officers must conduct a risk assessment of the procurement activity at the outset, in line with their respective agency risk management framework or policies. Broadly, this involves identifying the risks of the good and/or service procured and assessing the likelihood and consequence of the risk occurring.

To ensure the risk assessment for individual procurements is underpinned by a thorough consideration of key drivers and the risk profile of the good and/or service to be procured, the assessment should be informed by:

- relevant category strategies (including category risk assessments)
- objective, scope and complexity of the procurement
- demand and supply market analyses of the procurement (including outcomes of market sounding activities, if applicable)
- advice from the business unit seeking the good or service
- advice from specialist financial, risk, insurance and/or legal advisors as required. This ensures the risk assessment is supported by a thorough consideration of the key drivers and risk profile of the good and/or service to be procured.

For general information on:

- risk management, refer to A Guide to Risk Management published by Queensland Treasury
- procurement categories, refer to the About category management ForGov web page
- procurement planning, refer to the Procurement guidance ForGov web page.

Identifying insurable risks

Once a risk assessment is conducted, it should be reviewed to identify insurable risks.

To identify insurable risks, identify the events or incidents that the supplier may cause, or contribute to, that could potentially generate a claim for compensation and/or pure financial or economic loss from third parties or from the agency. These events or incidents are those which could cause harm to someone, damage to property or financial loss.

Factors to consider when identifying insurable risks include, but are not limited to, the following:

- the profile of the relevant procurement category
- type of goods and/or services supplied
- experience of the supplier
- potential for design and manufacturing defects to occur
- level of skills and technical expertise needed to perform the services
- duration of the contract or supply of goods and/or services
- degree of hazard involved in the supply of goods and/or services
- whether the supplier will interact with members of the public as part of supplying the goods and/or services
- likelihood of the supplier causing severe injury to participants, the public, the agencies' employees or other suppliers on site
- potential for several people to be injured in the one accident or occurrence
- likelihood of the supplier damaging agency property or the property of an agency tenant and the value of the property at risk
- risk of damage to third party property and quantum of losses that could arise
- location of the product or service delivery (does the location increase or reduce the risk of injury or damage?)
- likelihood of pollution or dust nuisance
- nature of the supply of goods and/or services (e.g. uniqueness, complexity, reliance on new technologies or use of hazardous materials)
- whether the supplier is providing professional expertise and whether this professional expertise will be relied upon, and whether relying on this advice could result in financial loss to the agency.

Important

Some risks cannot be insured (e.g. reputational, political, regulatory).

It is good practice to think about risks associated with each contract regardless of its value as even low value contracts can be high risk; conversely, when a thorough risk assessment is conducted it can show that even high value contracts are lower risk than may have been expected initially.

Step 2: Determine the appropriate insurance cover type and period

Insurance cover type

Review the identified insurable risks and determine the likely insurance cover type (also known as class of insurance) that would respond to cover each insurable risk. Agency procurement officers will need to review the types of claims and liabilities each insurance policy type covers in consultation with the relevant business unit and supplemented with specialist financial, risk, insurance and/or legal advice as required.

For further information on types of insurance, refer to the "Types of insurance" section above.

The types of insurance cover required will depend on the insurable risks presented by the goods and/or services being supplied. There may be situations where other insurance types may be

available to protect against the risks identified (e.g. commercial motor vehicle insurance if the use of a motor vehicle is an integral part of a contract).

Insurance cover period

Insurance needs to be in place prior to the commencement of any contract and needs to run continuously for at least the life of the contract. Depending on the insurance type and the form (i.e. basis) on which it is written, this could potentially mean a set period after the end of the contract.

The form in which an insurance policy is written establishes what triggers the insurance policy to respond. This should not be confused with a policy's limits of liability (explained in further detail below in "Step 3: Determine the minimum level of insurance cover required").

Insurance policies written on an 'occurrence', 'per occurrence' or 'per event' basis

Insurance policies written on an 'occurrence', 'per occurrence' or 'per event' basis mean that coverage is triggered when the injury or damage occurs during the policy period, regardless of the date when the claim is made. This means that once the policy period is over, it will still cover the event or incident that gave rise to the claim if it occurred when the policy was in force, even if the claim is made many years after the event or accident.

Generally, product liability and public liability insurance policies are written on an 'occurrence' basis.

Insurance policies written on a 'claims-made' basis

Insurance policies written on a 'claims-made' basis mean that coverage is only triggered when a claim is made or reported during the policy period. It is important that any event or incident that is likely to give rise to a claim must be notified to the insurer prior to the policy expiring. The insurer may refuse cover if a claim, or known event or incident that is likely to give rise to a claim, is not reported. Typically, professional indemnity insurance policies are written on a 'claims-made' basis.

Insurances written on a claims-made basis (such as professional indemnity insurance) should be required to be maintained for no less than seven years after completion of the contract. This is to allow for the longer tail liability risk and the usual limitation period for claims in contract (i.e. six years) plus one year to serve the proceeding.

In some instances, a longer period of ten years may be justified where the risk of latent defects being discovered later exists such as in construction contracts.

Where a contract includes provision for the supply of products, it may be appropriate to require the supplier to maintain product liability insurance where a supplier's policy is written on a claims-made basis. This is because a defect in the products may not manifest itself or be discovered during the contract period and the supplier's liability to compensate an agency for any loss in respect of such defect may not crystallise until after the contract period.

For example, a defect could be discovered in the products and damage suffered five years after the products were supplied. The period for which the products liability cover should be maintained will usually depend on the likely life of the goods in question. In this situation a commercial judgement will need to be made regarding the period to be required.

Step 3: Determine the minimum level of insurance cover required

Once an appropriate insurance cover type is identified for an insurable risk, agency procurement officers should determine the minimum level (i.e. amount) of insurance cover required. The amount of insurance cover should be adequate to cover the maximum probable loss as derived from your risk assessment.

To determine the minimum level of insurance cover required, agency procurement officers should consider:

- limits of liability for each type of insurance
- level of exposure for each insurable risk.

Important

In undertaking Step 3 (including any other steps as outlined in this section), remember to refer to any agency-specific insurance and risk policies and processes, and obtain advice from the business unit seeking the good and/or service, and advice from specialist financial, risk, insurance (e.g. QGIF) and/or legal advisors as required.

Understanding limits of liability

An insurance policy's limits of liability represent the maximum exposure an insurer has to third party claims, or for claims made against the insured.

Limits of liability can be on a per occurrence, aggregate (annual or contract) or a combined per claim/occurrence and annual aggregate basis. Limits of liability are different for each policy type, and may include the use of sub-limits.

Limit of liability per occurrence

'Per occurrence' refers to the most that the insurer will pay regardless of the number of claims arising from an occurrence. There can be any number of occurrences within a policy period.

The limit of liability is reinstated for each new occurrence.

Public liability insurance policies usually have a 'per occurrence' limit of liability.

Limit of liability in the aggregate

An aggregate limit applies to all claims occurring either:

- within the same period of cover, regardless of how many claims occur during the period of cover (usually a 12-month period)
- for contract aggregate over the time the contract remains in place, regardless of how many claims occur during that time.

Contract aggregate

Contract aggregate only applies to insurance purchased for specific projects only, and may not apply to the majority of contractual arrangements.

Thus, the total of all claims that fall within the relevant period of cover will not be allowed to exceed the aggregate limit of liability.

The insurer has no further obligation to the policy holder during the remainder of the policy for any subsequent claims that are otherwise covered by the policy and that would be payable under that aggregate limit.

Product liability insurance limits are calculated and applied on an aggregate basis.

Limit of liability per claim/occurrence and in the annual aggregate

By stipulating an ‘annual aggregate’ or ‘aggregate’ limit amount, in addition to a ‘per claim/occurrence’ limit amount, the insurer will pay no more than the aggregate limit in a policy year. In other words, the claim/occurrence limit will be available unless the applicable aggregate limit has been used up.

Professional indemnity insurance

The limit of liability that applies to professional indemnity policies is a combination of ‘per claim’ and ‘aggregate’ limits. This is because professional indemnity policies are written on a ‘claims made’ basis. Therefore, the appropriate language for stating the level of limits of liability required for professional indemnity cover is ‘per claim’, with an annual ‘aggregate limit’.

Sub-limits

A sub-limit is a limitation in an insurance policy on the amount of coverage available for a specific type of loss. It is part of, rather than in addition to, the limit that would otherwise apply to the loss.

Agency procurement officers should be aware of, and check for, any applicable sub-limits that may apply to potential insurable risks.

Determining level of exposure

With an understanding of the relevant insurable risks and the types of insurance that would apply along with associated limits of liability, the minimum level of insurance cover required for each insurance type can be ascertained by determining the level of exposure for each insurable risk.

Determining the level of exposure involves analysing the likelihood (i.e. frequency or probability) and consequences (i.e. the impact) of the insurable risk occurring.

Level of exposure for each insurable risk = likelihood x consequences.

As an example, agency procurement officers may refer to **Appendix 2** to determine the level of exposure for each insurable risk identified.

Appendix 2 is an example only. It is for assessing insurable risks only and is independent from the usual risk assessment of likelihood and consequence. As such, the consequences only look at the liabilities that would be covered by each insurance policy type – the financial impact, the extent and number of injuries and the extent and cost of damage.

Once the level of exposure is determined for each insurable risk, this will enable agency procurement officers to determine the minimum level of insurance required to respond to it. **Appendix 3** provides an example.

Appendix 3 is an example only. The levels of insurance required should be adequate to cover the maximum probable loss as derived from the risk assessment. Where an aggregate limit applies to an insurance policy, the limit of indemnity should be sufficient to cover the maximum cost of all losses that may occur within a policy period (e.g. 12 months).

Agency procurement officers should refer to any agency-specific procurement, insurance and risk policies and processes, and seek advice from the business unit

seeking the good and/or service, and specialist financial, risk, insurance (e.g. QGIF) and/or legal advisors as required.

The minimum level of insurance required of a supplier should always be based on the highest level of exposure for that type of insurance. For example, if there were three professional indemnity insurance risks identified with individual levels of exposures of ‘Low’, ‘Moderate’ and ‘High’ the supplier would be required to hold a ‘High’ level of professional indemnity insurance, as this will automatically address the ‘Low’ and ‘Moderate’ risks.

Care should be taken in determining the level of exposure and associated minimum levels of insurance as overestimation or underestimation can lead to insurance requirements which are not suitable for the procurement activity (refer to “Insurance requirements need to be tailored” section above for more information), thereby deterring supplier (including SME) participation in government procurement.

Where a procurement is determined to be low risk, the minimum levels of insurance as stipulated in **Appendix 3** may be lowered to improve accessibility for suppliers such as SMEs. Agency procurement officers are encouraged to contact QGIF to inform any decisions in this regard.

For a practical example of how Steps 1 to 3 are applied, please refer to **Appendix 4**.

Step 4: Specify insurance requirements in invitation documents

Once the insurance type, period and minimum level are determined, agency procurement officers should specify these insurance requirements in their invitation documents (e.g. requests for quotations, invitation to offer, tenders). This should be communicated clearly and simply so as not to create a perception of additional or excessive barriers to entry.

Generally, the following requirements should be specified:

- if the supplier’s insurances must be held with an authorised and licenced Australian insurer or acceptable alternatives (e.g. an insurer with a security rating of A- or better from AM Best, or an equivalent ratings organisation)
- insurance types (including workers compensation insurance)
- minimum period each type of insurance is to be held during and after the contract, where applicable
- minimum level of insurance for each insurance type (excluding workers compensation insurance)
- the required territorial and jurisdictional limits that must apply to the policy
- requirement for suppliers to provide proof of insurance (including acceptable forms and key information that needs to be included in the proof of insurance document) – e.g. policy schedule, certificate of currency or another form of evidence (refer to “Proof of insurance” section below)
- a requirement to declare any applicable exclusions (i.e. policy endorsements) or excess/deductibles
- notification to suppliers that they will be required to advise of any material modifications to their insurance (including changes to cover, cancellation or lapsing of insurance cover, reduced limits and applicable sub-limits)
- notification to suppliers that agencies may, as part of managing the contract, conduct periodic reviews of insurance requirements and make any adjustments as necessary to address

insurable risks associated with the contract (which may include the need for suppliers to provide current proof of insurance or obtain additional levels of insurance cover).

Proof of insurance

In developing invitation documents, agency procurement officers should specify a requirement(s) that suppliers provide evidence of insurance that includes necessary details to enable the procuring agency to evaluate and confirm whether its specified insurance requirements have been met.

While evidence requirements may differ between agencies and procurement activities (e.g. multinational suppliers or the supply of high risk goods and/or services demand a higher standard of evidence requirements and greater scrutiny), there are key details in proof of insurance documents that should be sought by agencies in order to evaluate:

- if the supplier and its activities are covered by the insurance
- if the insurance complies with the requirements as specified in the invitation documents
- if the supplier's insurance will respond to risks that arise from the arrangement and will protect an agency and the supplier in the event of a claim.

Necessary details

To enable the procuring agency to evaluate and confirm that the supplier has met the requisite insurance requirements, the supplier should be requested to provide the following details:

- insurer name
- whether insurer is an authorised and licenced Australian insurer (or acceptable alternative)
- policy holder/insured name/named insured
- policy number
- type of insurance policy
- period of insurance
- limits of indemnity/liability (listed separately for each type of insurance covered by the policy)
- jurisdictional/territorial limits
- business description/activities
- insurance excess (also known as a deductible)
- exclusions/endorsements listed (or show 'nil' if none apply).

Policy holder/insured name/named insured

It is important to ensure that the supplier is not requested to add the procuring agency as a 'named insured' to the supplier's insurance policy.

In naming the procuring agency as an insured, it entitles the procuring agency to make a direct claim against the insurer for anything which is within the terms of the policy. This may even extend to a liability claim made against the procuring agency which has nothing to do with the goods and/or services provided by the supplier.

When more than one party is permitted to use a supplier's policy in this way, they can quickly exhaust the insurance that is available for the supplier to use for other insurance claims.

Jurisdictional/territorial limits

Where a supplier can demonstrate that its insurer is an authorised and licenced Australian insurer, agency procurement officers may waive the requirement for jurisdictional/territorial limits to be declared.

Forms of proof of insurance

Acceptable forms of proof of insurance include, but are not limited to, certificates of currency, policy schedules and certificates of insurance. Regardless of the form of proof of insurance (which could also include undertakings), the supplier should be requested to prove the requirements outlined under the "Key details" section above. If any of the requirements are not met, agency procurement officers should seek expert advice in determining next steps to progress the assessment of the supplier's response.

Agency procurement officers should also note the following:

- all requests for proof of insurance should be directed at the supplier, and not through the supplier's insurer or broker
- proof of insurance should be issued by the supplier's insurer (or authorised underwriting agent), as not all documents issued by an insurance broker are binding on the insurer, unless the broker is acting as an agent of the insurer
- time needed for suppliers to obtain the requisite proof of insurance from their insurer as part of scheduling the invitation process
- proof of insurance will differ between insurers as there is no standard format.

Certificate of currency

A certificate of currency provides limited representation of the insurance policy and confirms that the policy is in place on the date it is issued. Commonly these documents only provide a bare outline of the cover. Usually this means that additional evidence may be required (e.g. policy schedule, product disclosure statement) to verify that a supplier's insurance cover complies with its contractual obligations.

Insurers are able to update certificates of currency to include key details if requested by its policy holder (i.e. the supplier). Suppliers can ask their broker to request these changes be made or make this request directly to their insurer.

Policy schedule (also known as schedule of insurance)

A document issued by the insurer which attaches to and forms part of the contract of insurance and commonly contains the required level of detail to evaluate cover. A supplier will receive their policy schedule when they purchase their policy and at each renewal. Only key details need be present on the policy schedule for the purposes of verification; any other information that may be shown on the schedule can be redacted if required.

Certificate of insurance

In the commercial insurance market, insurance brokers and insurers may use this title to describe a certificate of currency and a policy schedule. The content, context and meaning can differ between each individual broker and insurer.

Step 5: Review the terms and conditions of the supplier's proof of insurance

As part of evaluating and prior to awarding a contract with the successful supplier, agency procurement officers should review the terms and conditions of the supplier's proof of insurance to ensure that the supplier's insurance matches the requirements in the invitation documents, will respond to risks that exist under the resulting contract and that it will protect agencies and the supplier in the event of a claim.

Insurance policies typically contain a range of terms that can impact on whether or not a claim may be made by the supplier in particular circumstances. Those terms can have a significant impact on the effectiveness of the insurance policy from the agency's perspective.

This usually entails reviewing the insurance documents submitted by the supplier to check the following:

- is the amount of cover equal to or greater than the amount of cover required as stipulated in the invitation documents? consider limits of liability and any applicable sub-limits
- is the level of exposure covered by the policy's limit of liability high enough to cover the potential future losses that may result from the supplier's services and/or products if something went wrong? this should correspond with the level identified in your risk assessment
- is the excess high? does the supplier have the financial capacity to cover the value of the excess?
- looking at the policy period, will the policy still be current when the contract commences and ends? does the policy period cover a period after the end of the contract?
- is the legal entity name for the supplier listed as a named insured/policy holder under the contract?
- does the policy's 'Business/Professional Services Description/Activities' correspond to goods, services and/or activities to be provided by the supplier under the contract?
- if the supplier holds insurance cover with an overseas insurer, do the contract terms and conditions allow for this and does the policy correspond with those requirements (i.e. territorial and jurisdictional limits that include Australia and appropriate security rating, A- or more)?
- if endorsements are listed, do these appear to apply or relate to an activity, service or product supplied under the contract?

As with all documents received from potential suppliers as part of their response to an invitation process, agency procurement officers should store any insurance documentation securely and in accordance with relevant agency record-keeping and information security policies and procedures.

Step 6: Specify insurance requirements in contracts

As part of forming a contract with the successful supplier, agency procurement officers should specify insurance requirements in the contract. This will include relevant insurance clauses as agreed between both parties. For example, this may include terms that:

- allow action to be taken by the agency if insurance is not effected or maintained by the supplier
- allow for the agency to periodically review and change the insurance requirements in a contract
- specify the type of insurance required to be held, including any specific cover extensions or inclusions that must apply to the insurances
- specify the limits of cover that must be met for each required insurance
- require insurances effected with an insurer that is authorised and licensed to operate in Australia (or otherwise with an insurer or insurers with a security rating of A- or better from AM Best, or an equivalent ratings organisation, on terms that are reasonably commercially available)
- require the supplier to provide sufficiently detailed evidence of insurance, specifying details that must be included, and when documents must be supplied (e.g. before the commencement of the performance of the contract, on each renewal, when the policies are materially modified and otherwise on an agency's written request)
- specify the applicable periods of insurance that must apply to relevant insurances (e.g. any claims-made policies)
- require insurances to be subject to territorial and jurisdictional limits that include Australia
- require the supplier to notify the agency in writing of any endorsements, exclusions and deductibles relevant to the required insurance policies that the supplier is required to have under the contract

- require the supplier to notify the agency if any required insurances are cancelled or there is any significant change in any of those policies which may impact the supplier's ability to meet its obligations under the contract
- require the supplier to warrant that any endorsements, exclusions and deductibles that may be applicable to the required insurance policies, will not impact on the supplier's ability to meet any claim or otherwise prejudice the agency's rights under a contract.

Step 7: Monitor and review to ensure insurance is maintained and adequate during the life of the contract

As part of managing the contract with the successful supplier, agency procurement officers should conduct periodic reviews to ensure the specified type, period and levels of insurance cover remain adequate to address insurable risks associated with the contract. This includes requesting and reviewing updated evidence of insurance before the end of the insurance policy period.

Monitoring and reviewing insurance requirements and contract risks throughout the life of a contract should be managed in accordance with the Contract Management Framework.

Should any of the following occur, a review of insurable risks should be conducted:

- product upgrades
- changes to standards
- changes to the nature and scope of the contract
- when contemplating a contract extension
- changes to personnel and/or person managing the contract
- changes to the structure of government that impact on the type of procurement
- other changes that impact the risk profile of the contract
- modifications to the supplier's insurance cover
- the end of an insurance policy period.

High-risk contract clauses related to insurance

Suppliers may seek to include contractual indemnity, limitations and/or exclusions of liability clauses in the contract to control their potential losses. These clauses can limit the effectiveness of insurance as a risk mitigation tool.

This section aims to provide an overview of these clauses to raise awareness of their respective functions and implications.

Important

Agency procurement officers need to be vigilant and identify when these high-risk contract clauses are requested by suppliers.

If identified, it is strongly recommended that agency procurement officers refer to any agency-specific procurement, insurance and risk policies and processes, and obtain advice from specialist financial, risk, insurance (e.g. QGIF) and/or legal advisors as required to inform next steps in the evaluation stage of the procurement, and the decision to contract with a supplier.

This is because any liabilities that extend to an agency because of the inclusion of such clauses may have potentially significant financial implications to the agency (i.e. liabilities may be excluded from insurance cover with QGIF and need to be met by the agency from its own budget).

Indemnity clauses

Indemnity clauses are commonly used to allocate risks under a contract. In basic terms, an indemnity is an agreement by one party (the indemnifier) to meet the costs or liabilities incurred by another party (the beneficiary). The nature of any loss or damage that is recoverable depends upon the wording of the indemnity. If an agency agrees to indemnify a supplier, the agency is agreeing that if the supplier suffers a specified type of loss, the agency will meet the cost of that loss.

Indemnities can appear in many different guises. The word ‘indemnify’ need not be present for a party to assume the risk of loss from another party; expressions like ‘hold harmless’, ‘indemnify, defend and hold harmless’, ‘reimburse’, ‘be liable for’, ‘pay’ or ‘make good’ are often seen in practice, and, depending on the construction of the clause, may yield similar outcomes.

Where an indemnity in a contract/agreement alters the common law and/or statutory rights of an agency, (e.g. an agency accepts liability for losses caused by the supplier), those liabilities will be excluded from QGIF insurance cover and must be managed with other risk mitigation strategies and financed by the agency’s own budget.

As such, it is important to seek expert advice to examine the terms of an indemnity before allowing its insertion into a contract, and to consider how it fits with insurance and the intended allocation of risks.

Limitation clauses

Liability caps

When procuring goods or services, it is not uncommon in negotiations for a supplier to attempt to exclude or limit their loss for when things might go wrong.

A limitation of liability clause limits the amount and types of losses one party can recover from the other party. The clause will list the specific losses that are subject to a cap, and the applicable value of that cap (this can be different for different types of loss).

The monetary value of the cap is commonly based on the value of the contract or the potential amount of damage a breach of contract may cause. Suppliers will often choose a low monetary value in order to limit its liability.

Where an agency agrees to these terms, the agency has no right of recourse/recovery against the supplier for losses in excess of the agreed liability cap and the agency will not be able to recover these costs under either party’s insurances.

Consequently, the agency and therefore the State, will bear the risk for all uninsured financial consequences that arise from the terms.

It should be noted that if an agreed liability cap is lower than the supplier’s insurance, its insurer will only cover up to the value of the cap.

It is QGIF’s position, as the Queensland Government’s insurer, that liability caps should not be included in invitation documentation, and they should not be offered within contracts unless requested by the supplier.

If a supplier requests a liability cap, QGIF advises that:

- it is in the best interests of an agency not to agree to such requests as these terms can have the effect of transferring risk to the agency that is not inherently its own
- should there be compelling reasons for an agency to agree to limit the other party’s liability, that any capping be no less than the maximum limit

of liability applicable to the relevant insurances required to be held under the terms of the contract.

It is not appropriate to cap liability in the following situations:

- liabilities that can impact on the physical or mental well-being of individuals
- there is potential for major loss or damage to tangible property
- breach of third-party intellectual property
- confidentiality or privacy breaches
- where the goods and/or services are critical to the operation of the organisation.

Where liability limitation clauses are being considered, a risk assessment should be conducted to identify the resulting risk exposures and uninsured financial implications.

Professional Indemnity – Limitation of Liability Scheme

A Limitation of Liability (also known as Professional Standards) Scheme is a statutory scheme, enforced by the courts, that caps the amount of damages that can be awarded against a member's practice. Professional indemnity insurance pays the claim while the Scheme caps the amount of damages that can be awarded. The caps differ by profession and generally an individual must be a member of the practice's professional representative body and hold current applicable registration or a practicing certificate for the benefits to apply.

It should be noted that these schemes do not apply to liability for damages arising from:

- the death of, or personal injury to, a person
- any negligence or other fault of a lawyer in acting for a client in a personal injury claim
- a breach of trust
- fraud or dishonesty.

Therefore such schemes do not apply to medical or healthcare professionals and more commonly apply to professions such as accountants and lawyers. These should be referred to when setting liability limits for professionals that are subject to these schemes.

In procuring goods and/or services from a supply market where it is likely that suppliers are members of a professional standards scheme, procurement officers should seek relevant expert advice to ensure the risk assessment and resultant procurement insurance requirements are tailored to agency needs.

For general information on current Schemes in force, please refer to the Professional Standards Schemes web page by the Professional Standards Councils.

Exclusion of liability

Sometimes a supplier may attempt to exclude all liability for a certain thing that could go wrong, for example damage to equipment whilst in transit.

Exclusion clauses specify losses that a party will not be liable for, such as loss of profit, revenue, indirect or consequential loss or damage.

The terms "exclusion clause", "exemption clause", "disclaimer" and "warning" are often used interchangeably but generally refer to terms that are intended to exclude a party's liability in the event of loss or damage.

However, it is not possible to exclude liability for fraud or to contract out of relevant legislation, for example proportionate liability legislation and the Australian Consumer Law. If these are excluded, any such clause will not be enforceable.

If an agency suffers a loss as a result of an act or omission of the supplier that is subject to an exclusion, the agency will not be able to seek recovery from the supplier or its insurer. Consequently, these assumed contractual liabilities may be excluded under the QGIF insurance policy and the agency will bear the financial risk from its own budget.

Standing offer arrangements

Agency procurement officers responsible for establishing Standing Offer Arrangements (SOA) must ensure that appropriate insurance is in place for an arrangement.

When establishing or purchasing from a SOA, it is important that agency procurement officers refer to the steps outlined in the "Determining insurance requirements in procurement" section above to ensure that adequate and appropriate insurance requirements are addressed within the terms and conditions of these arrangements or purchase orders so that a balance is struck between protecting agency interests and not imposing excessive insurance requirements on suppliers relative to the risk of the procurement.

Contacts

For general insurance advice and information, contact QGIF on (07) 3035 6367 or qgif@qgif.qld.gov.au. Alternatively, visit the QGIF website.

For general advice on this guidance, contact the Office of the Chief Advisor – Procurement on (07) 3215 3593 or betterprocurement@hpw.qld.gov.au.

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Appendix 1: Other types of insurance

Contract works insurance

Public liability insurance policies may include exclusions related to construction works. These exclusions can vary, but typically apply to any construction contract that exceeds a specific dollar amount.

For construction projects, contract works insurance (also known as builders contract works insurance or construction works insurance) is required. Contract works insurance covers projects under construction, building materials and equipment onsite against fire, malicious damage, storm damage, water damage, accidental damage, impact by a vehicle, theft, and property damage or personal injury caused to others.

Contract works insurance does not preclude a builder or construction company from holding product liability or public liability insurance. These policies are still necessary to cover losses and liabilities that fall outside the cover provided by a contract works insurance policy. Contract works insurance products also differ across insurers, and product liability insurance and public liability insurance may be included as part of the product. Consequently, specialist insurance advice should be sought for construction-related projects to assist with determining insurance requirements and drafting terms.

Cyber security insurance

Cyber security insurance covers a supplier’s liability for cyber attacks or data breaches involving sensitive information (e.g. credit card numbers, account numbers, health records). It may be desirable if a supplier is engaged to collect and manage personally identifiable data on behalf of an agency.

This type of insurance commonly covers the costs related to investigation, business losses, privacy and notification, and legal proceedings and extortion. It may assist with covering costs incurred when reporting a Notifiable Data Breach under the Notifiable Data Breach scheme established by the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth). Generally, the scheme outlines notification requirements that businesses must meet when responding to data breaches which can occur as a result of a cyber attack.

Self-insurance

Some suppliers may self-insure some or all of their risk, either by retaining, provisioning for and managing the risk internally or by transferring it to a captive insurer. A captive insurer is an alternative to self-insurance in which a parent group or groups create a licensed insurance company to provide coverage for itself.

Self-insurance can be applied to almost any class of risk, including liability, property, motor vehicle and workers’ compensation. How much the contracting party can self-insure depends on their financial resources and the exposed risks.

Where self-insurance or captive insurer arrangements are requested by the supplier, procurement officers should seek further advice from specialist financial, risk, insurance (e.g. QGIF) and/or legal advisors as required.

Project-specific insurance

Project-specific insurance may be purchased by a contractor to cover insurable risks arising from a contract issued under a project, rather than rely on its general insurances which cover other activities of the contractor and possibly also other insured parties.

Project-specific insurance will usually result in higher insurance costs and may risk duplicate cover, but can be desirable where, for example:

- the risks under a contract are unique
- various unrelated parties are to be insured under the one insurance policy
- the policy is to be placed for an extended period (for example, a period of construction)
- the type of insurance has an aggregate limit of indemnity for all claims – an aggregate limit of indemnity could be exhausted by claims unrelated to the contract or contractor; project specific insurance ensures that there is an available insurance limit dedicated to claims arising from the performance of the contract.

It should be noted that the management of project risks should be considered as part of a project's overall risk management plan and strategy, and is distinct from the management of contract risks.

For certain complex projects, it may be appropriate for agencies to require project-specific insurance to be effected by potential contractors. Any such decision should be underpinned by specialist advice from financial, risk, insurance (e.g. QGIF) and legal advisors.

Appendix 2: Example table – Determining level of exposure for identified insurable risks

Table 2: Example table - Determining level of exposure for identified insurable risks

	Consequence				
Likely insurance type	**Insignificant/Negligible**	**Minor**	**Moderate**	**Major**	**Extreme/Catastrophic**
Public liability insurance	• No injury • Minor injury or damage that may or may not result in a formal complaint being lodged • Minimal impact on business	• Minor injury • Minor damage to property that could be managed within existing unit/agency budget • Interruption of service delivery affecting non-key operations	• Injury or illness resulting in hospitalisation (medical expenses) • Moderate damage to property that can be managed within the agency's budget • Interruption of service delivery affecting multiple units/branches	• Permanent/serious injury to persons • Damage to property that cannot be managed within the agency's budget • Interruption of service delivery to multiple users and/or back-up failure	• Fatality or multiple fatalities • Chance of multiple claims • Major incident requiring organisation-wide evacuation of site • Significant damage to property • Critical financial loss • Complete loss of service
Product liability insurance	• No injury • Minor injury or damage that may or may not result in a formal complaint being lodged • Minimal impact on business	• Minor injury • Minor damage to property that could be managed within existing unit/agency budget • Interruption of service delivery affecting non-key operations	• Injury or illness resulting in hospitalisation (medical expenses) • Moderate damage to property that can be managed within the agency's budget • Interruption of service delivery affecting multiple units/branches	• Permanent/serious injury to persons • Damage to property that cannot be managed within the agency's budget • Interruption of service delivery to multiple users and/or back-up failure	• Fatality or multiple fatalities • Chance of multiple claims • Major incident requiring organisation-wide evacuation of site • Significant damage to property • Critical financial loss • Complete loss of service
Professional indemnity insurance	• Negligible circumstance resulting in no financial loss • Minimal impact on business	• Interruption of service delivery with little financial loss to third party/agency • Moderate financial loss or additional expenditure (including legal costs) that could be managed within existing unit/agency budget	• Interruption of service delivery with major financial loss to third party/agency • Major financial loss that can be managed within the agency's budget	• Business interruption with major financial loss to multiple users • Financial loss that cannot be managed by the agency	• Critical financial loss that has significant impact
Likelihood of risk occurring	**Level of exposure**				
Almost certain	Medium	High	High	Very High	Very High
Likely	Medium	High	High	High	Very High
Possible	Low	Medium	High	High	High
Unlikely	Low	Low	Medium	High	High
Rare	Low	Low	Medium	High	High

Source: Queensland Health

Note:

Appendix 2 is provided as an **example only.**

As each agency has its own unique risk profile and tolerances, and to ensure insurance requirements are tailored to a procurement, it is highly recommended that agency procurement officers refer to any agency-specific procurement, insurance and risk policies and processes, and obtain advice from the business unit seeking the good and/or service, and advice from specialist financial, risk, insurance and/or legal advisors as required.

Appendix 3: Example table – Potential minimum level of insurance for each level of exposure

Table 3: Example table – Potential minimum level of insurance for each level of exposure

Level of exposure	Public liability insurance (limit of liability per occurrence)	Product liability insurance (limit of liability in the annual aggregate policy period)	Professional indemnity insurance** (limit of liability per claim, and double this amount for the annual aggregate limit)
Low	No less than $10 million	No less than $10 million	$1 million
Medium	No less than $10 million	No less than $10 million	$2 million
High	No less than $20 million	No less than $20 million	$5 million
Very High	No less than $50 million	No less than $50 million	Greater than $10 million

Note:

Appendix 3 has been developed as an **example only** based on a generic supply market and is subject to future procurements with unknown risk profiles. Each agency is to develop its own internal policies and procedures to enable the determination of appropriate minimum levels of insurance for procurements, having regard to the following considerations:

- agency risk profile and tolerances
- nature, complexity and risk of procurement
- agency-specific procurement, insurance and risk policies and processes
- advice from business unit seeking the good and/or service
- advice from specialist financial, risk, insurance (e.g. QGIF) and/or legal advisors.

It should also be noted that the limits may be lowered for certain procurements (e.g. low risk procurement) to improve accessibility for suppliers such as SMEs, subject to the abovementioned considerations. Agency procurement officers are encouraged to contact QGIF to inform any such decisions.

***Note:**

The minimum amount of cover required of medical indemnity insurance is generally higher than professional indemnity insurance as the cost of claims are greater than other professional service providers. In Australia, medical indemnity insurance policies typically provide cover up to $20 million per claim and in the aggregate for individual medical practitioners and $10 million per claim and in the aggregate for all other health practitioners.

Higher aggregate limits are likely required when entering into an arrangement with healthcare establishments as these entities often provide a range of medical services and have a number of healthcare professionals working in their facilities. Consequently, these organisations must have sufficient cover to respond to the vicarious liability that arises from the healthcare services provided by all of its employees and contracted medical and healthcare professionals.

Appendix 4: Worked example – determining minimum level of insurance cover

Hypothetical scenario

A supplier is to be engaged to collect information and maintain a database that members of the public will use to make decisions. In collecting the information, the supplier will primarily use email and phone calls. However, some minimal contact with the public is anticipated. No personally identifiable information will be collected. The supplier employs 30 people and operates from its own premises.

Step 1: Conduct risk assessment and identify insurable risks

Following a **risk assessment**, the following risks are identified as part of procurement planning:

- possible injury to members of the public including agency employees
- damage to agency property
- accuracy of information provided to the public
- supplier is responsible for employees
- reputational damage to agency in the event of unauthorised disclosure of information.

On review of the risk assessment, the following **insurable risks** are identified, noting reputational risk is not insurable:

- possible injury to members of the public including agency employees
- damage to agency property
- accuracy of information provided to the public
- supplier is responsible for employees.

Step 2: Determine the appropriate insurance cover type and period

Determine the appropriate insurance cover type and period to respond to each insurable risk as outlined in **Table 4** below.

Table 4: Insurable risks, and insurance cover type and period

Insurable risk	Insurance cover type	Insurance cover period
Possible injury to members of the public including agency employees	Public liability insurance	If written on an ‘occurrence’ basis, ensure insurance is maintained during life of contract
Damage to agency property	Public liability insurance	If written on an ‘occurrence’ basis, ensure insurance is maintained during life of contract

Insurable risk	Insurance cover type	Insurance cover period
Accuracy of information provided to the public	Professional indemnity insurance	If written on a 'claims-made' basis, consider procurement risk profile and agency procurement policies and procedures, and determine period for maintenance of insurance after expiry of contract
Supplier is responsible for employees	Workers compensation insurance	If a worker (as defined in the *Workers' Compensation and Rehabilitation Act 2003*) is employed, workers compensation insurance is compulsory, and must be maintained so long as a worker is employed

Step 3: Determine the minimum level of insurance cover required

Understand the **limits of liability** that are usually attached to each identified insurance type:

- public liability insurance policies usually have a 'per occurrence' limit of liability
- professional indemnity insurance policies usually have a combination of 'per claim' and 'aggregate' limits.

Workers compensation insurance covers claims or injuries only under certain circumstances – the limitations of this insurance type can be found under 'Limitations of coverage' in the Understanding your workers' compensation accident insurance policy – A guide to your policy cover and conditions guidance published by WorkCover Queensland is accessible on the Workcover website at www.worksafe.qld.gov.au/AIP-policy-guide-GD100.pdf

Determine the **level of exposure** to each insurable risk as outlined in **Table 5** below.

Table 5: Determining level of exposure to each insurable risk

Insurable risk	Insurance cover type	Likelihood and consequence (refer to example table in Appendix 2)	Level of exposure (refer to example table in Appendix 2)
Possible injury to members of the public including agency employees	Public liability insurance	• Supplier has minimal contact with the public • Likelihood: Possible, but unlikely • Consequence: Insignificant/minor	The level of exposure for these risks is **low**
Damage to agency property	Public liability insurance	• Supplier operates from own premises • Likelihood: Unlikely • Consequence: Insignificant/minor	The level of exposure for these risks is **low**
Accuracy of information provided to the public	Professional indemnity insurance	• Public will use information provided in database • Likelihood: Possible • Consequence: Minor financial loss	The level of exposure for this risk is **medium**

With reference to the example table in Appendix 3, use information on the level of exposure to determine the **minimum level of insurance** required:

- public liability insurance: no less than $10 million per occurrence
- professional indemnity insurance: $2 million per claim and $4 million in the annual aggregate
- workers' compensation insurance: supplier must maintain this insurance while employing any worker.