



## Insurance Requirements

### Commonwealth Procurement Rules – Procurement Risk (paragraph 8.4)

1. Paragraph [8.4](#) of the Commonwealth Procurement Rules (CPRs) encourages the principles of risk sharing and states that risks should be borne by the party best placed to manage them.
2. Officials should ensure insurance requirements on tenderers are fit for purpose and do not unreasonably discourage or prohibit participation.
3. To avoid unreasonable costs to tenderers when participating in Commonwealth procurement and unnecessary ongoing costs throughout the term of a contract, officials should identify the level of risk under the contract, determine the appropriate allocation of risk under the contract, and identify appropriate insurance types, levels and the period of coverage.
4. In most circumstances, tenderers should not be required to take out insurance until a contract is to be awarded. At the time a contract is awarded, the successful tenderer should provide the Commonwealth entity with a valid certificate of currency in respect of each type of insurance required under the contract. This will reduce red-tape and up-front tendering costs for tenderers while ensuring certainty for Commonwealth entities.

CPR Paragraph 8.4	<p>As a general principle, risks should be borne by the party best placed to manage them; that is, <i>relevant entities</i> should generally not accept risk which another party is better placed to manage. Similarly, when a <i>relevant entity</i> is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the <i>supplier</i>.</p> <p><b>a. <i>Relevant entities</i> should limit insurance requirements in <i>contracts</i> by reflecting the actual risk borne by <i>suppliers</i> in contractual liability caps.</b></p> <p><b>b. <i>Suppliers</i> should not be directed to take out insurance until a <i>contract</i> is to be awarded.</b></p>
-------------------------	--

## What should procuring officials consider when specifying insurance requirements?

5. The following paragraphs should not be considered exhaustive nor prescriptive – entities should refer to the Related Resources listed in this guidance and seek appropriate specialist advice where necessary.
  - a. Limiting liability by sharing the risks involved in complex, high-risk projects should only be considered by entities with appropriate legal/risk advice.
  - b. Appropriate advice should be sought from an insurance adviser in relation to any contract involving significant or unusual risks to be insured.
6. Prior to conducting the procurement process, officials should identify the types and levels of risk that could potentially be involved in the contract and once these are known, assess the types, levels and periods of insurance required (including where insurance will be required after the completion of a contract). The level of insurance should be appropriate to the identified risk exposure.
  - a. Insurance requirements for the tender/contract should only be set once a risk assessment has been undertaken.
  - b. Insurance requirements for the tender/contract should be amended if there is a change in the risk profile of the project prior to the contract being awarded, and/or the official becomes aware of insurable risks that were previously unknown or underestimated.
7. Insurance requirements should be informed by:
  - a. the nature of the goods and services being procured
  - b. the type of contract being entered into
  - c. an analysis of the risks of the particular contract
  - d. which of the risks arise from action or inaction by the supplier and can be mitigated or managed by the supplier
  - e. other methods for mitigating risk
  - f. consideration of which of these risks are capable of being insured on commercially acceptable terms and
  - g. what the commercial norm is for the applicable industry/market sector.
8. When assessing insurance requirements, officials should take into account the difficulties and costs involved for suppliers in obtaining the necessary levels of insurance cover.
  - a. Where appropriate the Commonwealth may consider seeking only general insurance policies, and not specific policies that would unreasonably increase costs.
  - b. Where appropriate, procuring officials should consider the application of liability caps ensuring they are commensurate with the risk of the procurement.

- c. In assessing insurance requirements, the Commonwealth should consider other forms of risk mitigation and management that can be implemented besides insurance, such as financial bonds, warranties and obligations to repair, maintain, or make-good in the event that risks eventuate.
  - d. Where insurance is required, the approach to market should include sufficient detail to enable suppliers to price in such costs to the extent possible.
- 9. The insurance period should also be informed by the legal/risk assessment and the type of insurance policy required for the goods and services being procured.
- 10. In most circumstances, insurance need only be in place immediately prior to, or from the commencement of a contract (after the decision has been made to award the contract). Entities should only consider placing an obligation on tenderers to hold current insurance at the time a tender is submitted where mitigation of a risk deems it necessary.
- 11. Entities should consider when it may be appropriate to request copies of Certificates of Currency during the life of the contract. This need may be informed by the term of the contract and the type of insurance policy (noting that some types of insurance, such as professional indemnity insurance, may need to extend beyond the life of the contract).
  - a. When such requirements are necessary, they should be enforced and included as part of the contract terms.

## Practical Example

The following Case Study is provided to assist officials to understand and put into practice CPR Paragraph 8.4.

### Case Study - Establishment of a Commonwealth Panel

A Commonwealth entity identified a need to establish a new panel arrangement that will be accessible by a number of other Commonwealth entities. In establishing the Panel, the entity gave careful consideration to the insurance requirements that would be necessary under the Panel. The entity was conscious not to overburden suppliers, particularly small and medium enterprises, with the cost of holding and retaining high levels of insurance when there is no guarantee of work under the Panel.

As part of this consideration, the entity reviewed insurance requirements under similar Commonwealth panel arrangements and consulted with entities on appropriate levels of insurance. Through consultation, the entity identified an approach to the insurance requirements that meant suppliers would only need to have insurance in place prior to the commencement of a Contract under the Panel rather than when entering into the Head Agreement or responding to a request for quotation. Liability limits and insurance levels were set to reflect the appropriate apportionment of risk without burdening suppliers. Recognising the need for flexibility, the Head Agreement allows entities to request additional insurance requirements if necessary. However, suppliers are allowed to include the costs of obtaining any additional insurance in their quotes to ensure they are not unfairly penalised.

These insurance requirements were included in the Head Agreement which underpins the Panel and suppliers were given the opportunity to comment on the Head Agreement, including the insurance requirements as part of the market consultation process. The insurance requirements have been positively received by suppliers and entities. Having a standard insurance requirement in the Head Agreement has provided a level of consistency for users of the panel and reduced the burden on suppliers who previously had to meet different insurance requirements across the Commonwealth.

### Related Resources

[Resource Management Guide 211 - Implementing the Commonwealth Risk Management Policy](#)

[Indemnity and Insurance Clauses in Commonwealth Contracts](#)

[Insurance Broking](#)

[Resource Management Guide 414 – Indemnities, guarantees and warranties by the Commonwealth](#)

[Indemnities, guarantees and warranties](#)

Entities' Accountable Authority Instructions and internal processes, policies and guidance should also be considered.