

What Federal Government Contractors need to know about E&O insurance

Essentially all federal government contracts require the contractor to provide evidence of Commercial General Liability insurance (CGL). A CGL policy will pay to a third party (like a federal agency) financial reimbursement on behalf of a contractor if the contractor is legally liable for bodily injury or tangible property damage. It was deemed in the public interest that contractors show evidence of financial capacity – in the form of insurance – to meet legal obligations that may result from a wrongful act while performing work for the federal government.

In today's environment of information technology contracting a new issue arises. Should contractors carry the type of insurance likely to respond in the event of a wrongful act, error, or omission in performing IT services? A CGL policy won't cover losses that arise from intangible property damage (e.g. erasing or failing to protect data) and certain types of personal injury claims like failure to protect an individual's personal information. If you have responsibility for a contract under which you have access to, or responsibility for, databases of information, consider purchasing Professional Liability (a/k/a Errors & Omissions) insurance.

Recent security breaches such as those that occurred at the Veteran Administration in 2006 highlight the increasing frequency of failures to protect confidential information. The trend is toward holding contractors liable for the damages incurred by 3rd parties if their privacy is violated – and with the large number of potential plaintiffs that can be affected by the theft of a database it only takes a damages award of \$100 per person to multiply into the millions.

The “standard” E&O policies, first developed 20+ years ago, usually contain exclusions that can limit coverage for these types of claims – you must use a broker that has deep expertise in the field, and review multiple coverage forms to understand what you are buying.

Learn more about risk management for information technology contracts at www.govconrisk.com.



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