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**FROM MIKE GIFFORD: My thoughts as to Workers Compensation Insurance (WCI)**

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**Housing Agency Procurement Assistance**

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Procurement Professionals,

I have the past few years received quite a number of inquiries as to what HUD requires as to Workers Compensation Insurance (WCI). Recently, these inquiries have, for some reason, increased, so based on a number of inquiries I have received, following are my thoughts:

I am often asked what specific level of WCI does HUD require? HUD has a number of insurance requirements detailed within 24 CFR §965.201, §965.205, and §965.215, but does not mention any specific levels of insurance for WCI, nor does HUD state any such levels within Procurement Handbook 7460.8 REV 2.

To recap what HUD does say that I believe pertains to this issue, within Section 1.4 of HUD the Procurement Handbook HUD gives some very good advice worth repeating: "...those involved in the procurement function should exercise personal initiative and sound business judgment in providing the best value product or service in meeting the agency's needs. Consistent with that goal, Contracting Officers may assume that, if a specific strategy, practice, policy or product is in the best interests of the PHA and is not addressed in this handbook, nor prohibited by law, executive order, regulation, or other directive including the PHA's own policy, the strategy, practice, policy or procedure may be a permissible exercise of authority."

Further, within Section 2.4 of the Handbook HUD counsels that "it is the responsibility of the Contracting Officer to .... use sound judgment in accomplishing the procurement activities of the PHA."

A number of folks have asked me, do we have to require our contractor's to have WCI coverage? Reasons given to me that generated this question included:

(1) Our smaller contractors (including small businesses, woman- and minority-owned businesses, Section 3 business concerns, etc.) have stated that they cannot afford WCI coverage, so they ask for relief from the requirements; or

(2) Our state regulations do not require coverage until a contractor has 5 employees (for example), so they have asked for relief from the requirement if they have less than 5 employees on the job.

As to No. (1) immediate-preceding, my thoughts are: First, WCI coverage at some level is, by statute or law, a requirement in virtually every state in the United States, so giving relief (meaning, not requiring the contractor to have WCI coverage) is not an option. Second, it is actually not a financial burden on the contractor to obtain WCI because, whereas the competitive solicitation named the requirement of the WCI coverage, each cost offer submitted in response to the competitive solicitation reflected providing that WCI coverage, so the housing agency is actually the party paying for the WCI coverage as each contractor will increase his/her proposed cost to cover the actual cost of the WCI coverage.

As to the preceding No. (2), when I work with clients in states that do not require WCI coverage until the contractor has a certain number of employees, contracts I do still requires the coverage for all the contractor's employees working on the site. For example, one agency I worked with was in a state that did not mandate WCI

coverage until the contractor had 5 employees, and the bid document stated we required coverage for one or more employees working on the site. During the pre-bid conference the contractors went "nuts" (no other way to state it), some yelling that I was breaking the law by requiring the coverage at a stricter level than the state mandated. I reminded them that the state did not prohibit a greater level of coverage, the state just did not require the stricter level. One contractor in particular then (loudly) made the point that we were "stupid" for requiring the greater coverage because it was going to cost us more money. I responded that we had analyzed the additional costs of the greater coverage and the risk of not having the coverage and it was our conclusion that it was in our best interests to require the greater coverage. A number of the contractors then resorted to their last ditch effort to change the requirement, they said that they would not respond with a bid unless we lessened the requirement. I thanked them for their thoughts and told them that we were not going to lessen the requirement. The housing agency was "distraught" that they would not be "getting any bids," but I assured them that the contractors were actually "negotiating," seeing if they could get us to change the requirements. As it worked out, despite the "threats" of not bidding, the agency received bids from multiple firms and the certificates of the WCI coverage was eventually received from the awarded contractor, as required.

So why do contractors sometimes work so hard in an attempt to get the housing agency to decrease insurance requirements, even when they know that the agency will pay the increased costs for greater coverage? Simple: the contractor is attempting to decrease their exposure and/or risk. For example, if I had agreed to acquiesce to the contractors protests and threats and did not require the greater coverage, and then (heaven forbid) one of the contractor's workers on their site tragically lost a hand in a lawn mover accident, if the agency had allowed the lower coverage and the contractor had no other coverage to cover the employee, where are the "deep pockets" that the injured employee's attorney will go after for compensation? Yes, of course it could (and probably would) be the housing agency.

So to conclude my thoughts as to workers compensation coverage, I strongly recommend that your housing agency require such coverage for all employees that the contractor has working under contract on the agency's site. To save a few pennies on the contract contract cost might cost a housing agency a lot more later if an injury occurs and the housing agency had decided to acquiesce to a contractors "negotiations" for a lower coverage (doing so is, in my opinion, not in a housing agency's best interests).

I hope that this helps. Please don't hesitate to contact me if you have any thoughts or questions.

Regards,

**Michael S. Gifford, C.P.M., CPSD**  
*Housing Agency Procurement Assistance*

I have a consulting practice providing procurement- and contracts-related mentoring, training, and technical assistance to housing agencies. I help housing agencies conduct procurement and contracts in a HUD-compliant and "best practice" manner. [Click here](#) to see my full resume. Please do not hesitate to contact me if you have any questions or concerns pertaining to procurement and contracts (initial answering of questions is "no charge"). As I am either on-the-road or on the phone a lot, an initial contact by e-mail is best; please be sure to include your return telephone number (office/cellular) so that I can call you back.

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