

## **BIG Program Insurance Guidance**

### *Introduction*

If you are an owner or developer and plan to apply or have applied for Brownfield Incentive Grant (“BIG”) Program funds, your environmental consultants, excavation, foundation and other general contractors and their subcontractors, and other professionals you hire will need to fulfill certain insurance requirements of the BIG Program. For non-profit developers seeking a BIG Technical Assistance Grant, insurance requirements may also apply depending upon the type of professional you hire. In addition to insurance, all professionals who work as Qualified Vendors (“QVs”) under the BIG Program must indemnify the city of New York (“City”).

A brief summary of the basic insurance requirements for environmental investigation and cleanup grants follows. Environmental consultants and other environmental professionals hired by a developer or owner (“Grantee”) to investigate the presence of contamination at a site, must maintain a Professional Liability (“PL”) policy for a Grantee to be eligible for BIG funds for the consultant’s site work plans or reports.

For environmental consultants engaged to oversee a site cleanup, if the work involves site compliance and the preparation of a remedial report, the consultant must maintain PL coverage for a Grantee to be eligible for BIG funds for the remedial report. If the scope of a consultant’s services for a Grantee also includes remedial work, the QV and all subcontractors involved in such work, including the removal and disposal of contaminated soil, must maintain a CGL policy and a CPL policy (as described in A. below). Finally, if a BIG Grantee directly hires an excavation/foundation or other general contractor to perform remedial work, that contractor and its subcontractors conducting remedial work must maintain a CGL policy and a CPL policy (as described in A. below).

## **Insurance Guidance**

In general, the insurance requirements for those performing work under the Brownfield Incentive Grant (“BIG”) Program are similar to the insurance practices found in the private, commercial marketplace. As specified below, when performing work to be paid for with grant funds, insurance of a type, amount of coverage and from a carrier that is adequate for the nature and scope of the services and activities performed is required to be maintained. In addition, Qualified Vendors performing Eligible Services under the BIG Program must indemnify the City, NYC Economic Development Corporation (“NYC EDC”), and the BIG Program Grant Administrator for damages or losses arising out of or in connection with all services and activities performed by QVs, their employees, agents and subcontractors.

### **A. Insurance for Remedial Work at a Site, Use of a Vehicle, and Subcontracted Work.**

(1) (a) Insurance is required for any type of remedial work at a site to be paid for with grant funds, including site remediation (e.g., soil removal). A QV, or if authorized by BIG Program Rules, a general contractor (who is not a QV) hired by a developer/Grantee (“GC”), conducting remedial work at a site must maintain a Commercial General Liability (“CGL”) insurance policy covering the QV, or GC, as the case may be, as named insured in the amount of at least \$1,000,000 per occurrence and \$2,000,000 in the general aggregate. Such insurance shall protect the named insured from claims for property damage and/or bodily injury, including death, that may arise from any of the operations of the name insured relating to the work to be paid for with grant funds. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001 and shall

be “occurrence” based rather than “claims-made.” CGL insurance shall include completed operations coverage for named insureds. The CGL policy meeting the requirements in this paragraph (1)(a) is referred to as the “Required CGL Policy.” QVs or GCs who perform such remedial work shall also carry worker's compensation, employer's liability insurance, disability benefits insurance, and unemployment insurance, to the extent required by law.

(b) In the event the remedial work on the site performed by a QV, or GC, involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other hazardous materials or substances, the QV, or GC, as the case may be, shall maintain or cause to be maintained, Contractors Pollution Liability (“CPL”) insurance covering bodily injury, property damage, cleanup costs/remediation expenses, and legal defense costs. Such CPL insurance shall provide coverage for sudden and non-sudden pollution conditions on-site and off-site arising out of the QV’s, or GC’s, operations relating to the work to be paid for with grant funds. The CPL insurance shall have a limit of at least \$1,000,000 per occurrence and annual aggregate and provide coverage for the QV, or GC, as named insured with the same limits as provided to the named insured under all applicable policies of that type of coverage. CPL insurance shall include completed operations coverage for named insureds. The CPL policy meeting the requirements in this paragraph (1)(b) is referred to as the “Required CPL Policy.”

(2) If vehicles are used to perform the work to be paid for with grant funds, then Business Automobile Liability (“BAL”) insurance is required in the amount of \$1,000,000 for each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with the work to be paid for with

grant funds. Coverage shall be at least as broad as the most recently issued ISO Form CA 0001. If vehicles are used for transporting hazardous materials, the BAL insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90. The BAL policy meeting the requirements in this paragraph (2) is referred to as the “Required BAL Policy.”

(3) Subcontractors to QVs or GCs who perform remedial work at a site, including excavation/foundation and other general contractors, must maintain: a Required CGL Policy; worker’s compensation, employer’s liability, disability benefits, and unemployment insurance, to the extent required by law; and a Required CPL Policy if such would have been required to be maintained by a QV or GC performing work as provided in paragraph (1)(b) above. In addition, other subcontractors of QVs and GCs such as soil brokers and truckers that accept contaminated soil for disposal must maintain a Required CGL policy, and a Required CPL Policy if such would have been required to be maintained by a QV or GC performing work as provided in paragraph (1)(b) above. All subcontractors of a QV or GC who use a vehicle to perform work must maintain a Required BAL Policy.

**B. Insurance for Other Services.** A QV who performs other BIG-eligible environmental services that do not involve remedial work on a site, such as engineering or architectural services, environmental consulting, the preparation of work plans or reports, or the development of grant applications, is required to carry Professional Liability insurance if the QV is a type of professional who is normally covered by a PL insurance policy when performing such work in the commercial marketplace. In other words, engineers, architects, attorneys and

qualified environmental professionals (QEPs)<sup>1</sup> who perform BIG-eligible services involving the exercise of professional judgment are required to carry PL insurance in the amount of \$1,000,000 per claim and annual aggregate. In contrast, grant writers, community-based organizations (“CBOs”), local development corporations (“LDCs”), community development corporations (“CDCs”), and community development financial institutions (“CDFIs”) who customarily do not carry PL insurance when applying for grants or performing studies in the commercial marketplace, are not required to carry PL insurance when performing such work under the BIG Program.

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<sup>1</sup> A QEP must: 1) hold a current professional engineer’s or professional geologist’s license or registration issued by the state or another state, or hold a baccalaureate degree or higher in engineering or geology and have the equivalent of three years of full-time relevant experience in site investigation and remediation of the type detailed in the NYC Voluntary Cleanup Program; or 2) be a site remediation professional licensed or certified by the federal government, a state, or a recognized accrediting agency, to perform investigation or remediation tasks consistent with OER guidance, and have the equivalent of three years of full-time relevant experience. (see 43 Rules of the City of New York §43-1402(tt)).

### Examples of Implementation of Guidance

Below is an illustration of how these principles apply to specific BIG grants:

**Pre-Development Design Grants** - Vendors who provide title insurance and conduct title searches are not required to carry insurance, as it is not generally required in the commercial marketplace, and therefore grants for those services do not require insurance. Grants for services or activities involving the exercise of professional judgment such as the preparation of Phase I studies or a site survey require PL insurance in accordance with B. above yet a market analysis or pro forma financial analysis which reflect subjective judgments do not.

**Environmental Investigation Grants** - When conducting a Phase II investigation for a Grantee, an environmental consultant (QV) must maintain PL coverage in accordance with B. above. Laboratories that analyze environmental samples are not required to obtain insurance, but must satisfy all applicable certification and licensing requirements for laboratories.

**Pre-Enrollment Technical Assistance Grants** – Services involving the planning and execution of a brownfield project performed by environmental consultants, attorneys, and other professionals must be covered by PL insurance in accordance with B. above. When such work is performed by CBOs, LDCs, CDCs, PL insurance is not required.

**Cleanup Grants** - At sites under remediation, QVs hired by a Grantee to oversee site compliance and prepare reports on the remedial action must maintain Professional Liability insurance in accordance with B. above if the Grantee seeks a BIG grant for the QV's reports. At sites where the QV is responsible for cleanup and hires an excavation/foundation or other general contractor and other subcontractors to perform remedial work, the QV and all such contractors and subcontractors handling and/or disposing of soil (including a soil broker and trucker) must

maintain the Required CGL and Required CPL Policies and other applicable insurance requirements in A. above. At many cleanups, the developer (Grantee) directly hires an excavation/foundation or other general contractor to conduct remedial work at a site. In those instances of contractors hired directly by a Grantee and any subcontractors hired by those contractors, such contractors and subcontractors must maintain the Required CGL and Required CPL Policies and satisfy other applicable insurance requirements in A. above for the developer to be eligible for a BIG cleanup grant.

**Environmental Insurance Grants** - No insurance is required.

**BOA Application Technical Assistance Grants** – A grant writer is not required to carry PL insurance to serve as a Qualified Vendor who prepares a BOA application. However, for attorneys and other professionals who customarily carry PL insurance when performing such services, PL insurance in accordance with B. above is required.

**BOA Local Match Grants** - No insurance is required.

**Hazardous Materials E-Designation or Restrictive Declaration Remediation Grants** - No insurance is required.

**Services Provided and Types of Insurance Required**

	<b>Grant Types</b>	<b>Relevant Features</b>	<b>Insurance Required</b>
<b>Pre-Enrollment Grants</b>	Pre-Development Design Grant	Title insurance/title search	None
		Project feasibility study	None
		Site survey	PL
		Community outreach	None
		Phase I ESA	PL
	Environmental Investigation Grant	Work plans and reports	PL, as applicable
		Phase II/Remedial Investigation	PL, as applicable
Lab Analysis		Lab certification	
Pre-Enrollment Technical Assistance Grant	Services associated w/ planning, execution & viability of a brownfield project; advice on QV selection; preparation of budget, statements of work, draft work plans, etc.	PL, as applicable	
<b>Enrollment Grants</b>	Cleanup Grant	Services/activities conducted during remediation (soil removal/disposal, backfill, engineering controls, etc.)	CGL/CPL BAL, as applicable
	Environmental Insurance Grant	Used towards purchase of pollution liability insurance or cleanup cost cap insurance.	No insurance required
	Track-1 Bonus Cleanup Grant	Remedies that achieve permanent cleanups.	CGL/CPL BAL, as applicable
	BOA Strategic Property Cleanup Grant	Used towards strategic sites designated by a BOA that are cleaned up while enrolled in the NYCBCP.	CGL/CPL BAL, as applicable
<b>Special Grants</b>	BOA Local Match Grant	Eligible services are those stated in an executed NYS DOS BOA contract and/or NYS DOS approved BOA work plan.	No insurance required.
	BOA Application Technical Assistance Grant	Used towards eligible services needed for the development of a NYS DOS BOA application.	No insurance required
	Hazardous Materials E-Designation or Restrictive Declaration Remediation Grant	Used towards cleanup/remediation of E-Designation and Restrictive Declaration hazardous waste sites.	No insurance required.

**Qualified Vendor and Types of Insurance Required**

Type of QVs	Required Qualifications	Insurance Required
Environmental Consultant	Must be a Qualified Environmental Professional (QEP). <sup>2</sup>	PL for reports prepared.
		CGL/CPL and BAL, as applicable, for remedial work at a site
Licensed Professional Engineer	Licensed in NYS.	PL for reports prepared.
		CGL/CPL and BAL, as applicable, for remedial work at a site
Attorney	Admitted to practice law in NYS.	PL
Registered Architect/Registered Landscape Architect	Licensed and registered in NYS.	PL
Certified Planner	Certified by American Institute of Certified Planners.	PL, as applicable
Grant Writer	Must demonstrate experience with writing NYS BOA grant applications or those of a similar type and scope.	No insurance required.
Licensed Land Surveyor	Licensed in NYS.	PL, as applicable
Licensed Insurance Broker/Agent	Licensed in NYS.	No insurance required.
Not-for-Profit Service Providers, including Community-Based Organizations (CBO), including Community Development Corporations (CDC) and/or Community Development Financial Institutions (CDFI)		No insurance required.

<sup>2</sup> See footnote 1.