

**WAC 468-320-030 Calculation of state's exposure to loss. (1)**

For each contract, a written loss evaluation will be conducted by the project design team during the estimating phase of plan preparation. This evaluation will determine the amount of the state's exposure to loss broken down into performance exposure (subsection (2)(a) through (f) of this section) and payment exposure, if any (subsection (2)(g), (h), and (i) of this section). These amounts will be included in the bid specifications. The amount of the state's exposure to loss will be expressed in terms of a dollar amount or a percentage of the contract amount. After bid opening, copies of the written evaluation will be made available upon request.

(2) The evaluation will include consideration of all potential costs to the state (including engineering and administration (overhead)) in the following risk categories, mitigated generally by permitted delays in payments to the contractor and by contract retainage, and mitigated specifically as described below:

(a) Damage to the vessel, mitigated as appropriate by the required builder's risk insurance.

(b) Noncomplying or faulty material, mitigated as appropriate by the manufacturers' warranties and/or the degree of anticipated state inspection and testing.

(c) Work done poorly, incompletely, or incorrectly, mitigated as appropriate by the nature, complexity, and accessibility of the work, and/or the degree of anticipated state inspection.

(d) Out of service costs due to delays in the work.

(e) Failure to receive United States Coast Guard or American Bureau of Shipping approval, when required, for work already paid for by the state.

(f) Default or bankruptcy of the contractor, including:

(i) Removing the vessel from the contractor's facility;

(ii) Identifying and removing from the contractor's facility material paid for by the state;

(iii) Delivering the vessel to alternate shipyard facilities (contractor or state);

(iv) Completing the work, whether by new contract or by state forces; and

(v) Administering all such actions.

(g) Failure of the contractor to pay taxes or other governmental obligations related to the contract.

(h) Failure of the contractor to pay wage rates required by law.

(i) Failure of the contractor to pay claims of laborers, mechanics, subcontractors, materialmen and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work.

(3) If a contract change order significantly increases the amount of the state's exposure to loss, such change order shall specify the amount of such increase and shall provide the amount and form of additional contract security required.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-030, filed 10/26/89, effective 11/26/89.]