Office for Capital Facilities
Guidance Document

CLC-10

Revised: April 2024
Issued: November 2015

Insurance Requirements and Review

A reference guide for insurance limits on construction related consultant and construction contracts.

Contents	Attachments
• Insurance Limits • Insurance Certificates • Review • Expiration and Renewal of Insurance Policies • Additional Insurance Requirements • Notice of a Potential Claim • Insurance Guidelines	1. Insurance Limits Summary 2. Verification: DFS & AM Best 3. ACORD 855 Review Instructions

Insurance Limits

SUNY's Construction Agreement and Term Contract for Trades contain updated language for insurance requirements, effective March 2024. No changes were made to the insurance requirements in the Consultant Agreement. The updates consider the recommendations made by the Council of Contracting Agencies in the *Guidelines for Insurance Requirements in Contracts,* as well as the updated language and limits implemented by the State University Construction Fund. A summary of the required insurance limits is provided as Attachment 1 to this Guidance Document. For Construction Agreements, insurance requirements are established in the Schedule A of the Construction Agreement.

Insurance Certificates

All certificate(s) of insurance/ACORD Forms must be submitted pursuant to the Agreement and include the following information:

- For each insurance certificate, the name and NAIC number of issuing company, number of policies, with effective dates and deductibles, if applicable
- Policy limits consistent with the requirements listed in Schedule A
- Certificate must disclose the policies are on a primary and non-contributory basis
- The contract/project number assigned by the University
- Admitted Carriers must meet the following criteria: (1) AM Best Company rating of A- or greater, (2) financial score of VII or greater

Required documentation includes:

1. ACORD 25 - Certificate of Liability Insurance Form
2. ACORD 855 – New York Construction Certificate of Liability Insurance Addendum (for construction contracts only)
3. NYS Workers' Compensation - Form C105.2 [1] (Certificate of NYS Workers' Compensation Coverage) or the U-26.3 (State Insurance Fund Certificate)
4. NYS Disability Insurance Forms - Form DB120.1 (Certificate of Insurance Coverage under the NYS Disability Benefits Law)
5. SUNY Insurance Checklist (SUNY Form 7554-12/7555-09)

[1] An ACORD Certificate is not acceptable, valid proof of Workers' Compensation and Disability Benefits insurance for New York State governmental entities.

Review

Evaluating the ACORD 855 Construction Certificate of Liability Insurance Addendum

A review guide for the ACORD 855 is included as Attachment 3 to this guidance document. The ACORD 855 is intended to summarize policy provisions, and a review of this form can reveal differences between the kind of insurance required by the agreement and the contractor's Commercial General Liability Insurance (CGL) policy. If the answers provided by the insurance agent or broker differ from the required responses, this indicates the policy does not comply with the requirements of the construction agreement. Campuses should consult their campus counsel if an insurance agent or broker is unable to provide an ACORD 855 form consistent with the requirements. For additional information regarding the ACORD 855 form, consult pages 61 through 64 of the CCA Insurance Guidelines, available on the OGS website.

Verification: Is the carrier authorized in the State of New York?

To complete the SUNY Insurance Checklist, the campus verifies that the carrier is authorized to sell that type of insurance in the State of New York. This is done by ensuring the insurance carrier is listed on the Department of Financial Services website as a Property/Casualty Insurer. In addition to the instructions provided below, screen shots are provided as Attachment 2 to this document.

1. Go to https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search
2. Click on Insurance Industry, a list will appear below, click on Insurance Company Search
3. Click on Insurance Company Search
4. Click on List All Org Types with Descriptions
5. Click on PC Property/Casualty Insurers
6. Review or search the list (press CTL+F to search in browser).
7. Ensure that the name of the insurance company matches the name on the list exactly. There are often multiple entities associated with a company listed, but not all affiliates are authorized to sell insurance in New York State. For example ACME Insurance Inc. may be authorized, when ACME Insurance Company is not. The name on the insurance certificate must exactly match the name listed on the Department of Financial Services list.

Excess Line, or non-admitted carriers are NOT permitted, except when certain provisions are met. If insurance cannot be obtained from an insurance company authorized to write coverage in the State of New York, the campus may consider the use of an excess line or non-admitted carrier only if the following conditions are met.

- The insurance agent or broker has provided written evidence of no less than three requests for insurance quotes made to insurance carriers authorized to write coverage in the State of New York, and has provided copies of the written responses from those insurance carriers indicating those carriers are declining to offer coverage.
- The insurance agent or broker has provided an excess line insurance affidavit (Form - Exhibit A.10 of the Council of Contracting Agencies Guidelines for Insurance Requirements in Contracts).
- Campus Counsel has approved such documentation.

Verification: AM Best Ratings

To complete the SUNY Insurance Checklist, the campus verifies that the carrier has an AM Best Company rating of A- or greater, and a financial score of VII or greater. In addition to the instructions provided below, screen shots are provided as Attachment 2 to this document.

1. Go to https://web.ambest.com/home
2. Create a free account with A.M Best
3. Click on Rating Services, the Search for a Rating (you can also go directly to the search for a rating page using this quick link)
4. Search for the carrier **by NAICS code** (do not search by the name)
5. Review the rating and the financial size of the carrier

Expiration and Renewal of Insurance Policies

If policies expire during the term of the agreement, the contractor must provide proof of renewal 30 days prior to the expiration of the insurance policy. The campus should monitor the expiration of insurance, and request proof of renewals from the contractor. A new ACORD 25 form is required. If there are any changes to the policy, a new ACORD 855 form is required. If proof of renewal or replacement of coverage has not been received by the expiration date of the policy, the campus will send a letter to the contractor stating that the campus requires a new certificate of insurance. Consult with your campus counsel to determine if a stop work order is required.

Additional Insurance Requirements

At times a contract may require additional insurance coverage due to risks specific to that project. Examples of additional coverage that should be evaluated on a case-by-case basis include construction managers' professional liability, environmental liability, railroad protective policies, and marine protection and indemnity. Campuses should consult their campus counsel when determining if additional coverage should be required.

Construction Mangers

If a Construction Manager is under contract to manage a project, the Construction Manager must be listed as an Additional Insured on the Contractors policy.

Railroad Insurance

Railroad Protective Liability (RPL) insurance is required whenever work is being done within 50 feet of the tracks or if a railroad employee is assigned to the work. The railroad owner typically requires this from any contractor working on, over, under, or adjacent to the railroad owner's property. This type of coverage provides Insurance protecting the railroad owner against liability arising out of the work performed by the contractor.

Insurance coverage protecting a railroad from liability exposures due to the work of contractors or subcontractors on or near the railroad right-of-way. This insurance coverage is generally required by the railroad and lists the railroad as the Named Insured. The CCA Guidelines contain additional information and is available on the OGS website.

Marine and Harbor Insurance

Work conducted on or in connection with navigable water presents special insurance issues and therefore requires specific insurance policies. Anytime the contracted activity involves work on or near a shoreline, navigable water, or the work is connected to water related activities (i.e., work in adjoining areas customarily used in the loading, unlading, repairing or building of a vessel), Marine Protection & Indemnity and Hull and Machinery coverage is required.

For those exposures which are water based, a Marine Protection and Indemnity policy covers liability for bodily injury and property damage, similar to the coverage afforded by a CGL policy for operations on the land. The CCA Guidelines contain additional information and is available on the OGS website.

Contractors Pollutant Liability (Environmental Liability)
Most projects will include some abatement or removal of hazardous materials, and will require pollution insurance in accordance with the levels established in attached table. When considering an environmentally sensitive project, campuses should consider if additional Contractor's Pollution Liability (CPL) coverage may be required, and should consult their campus counsel. For additional information on this type of insurance, please see the Council of Contracting Agencies *Guidelines for Insurance Requirements in Contracts*.
On occasion, a project may not involve any hazardous materials or substances as described in the Agreement (see Contractors Pollution Liability under Specific Coverage under Section 5.06). In such cases, campuses must consult their campus counsel to determine if it is appropriate to modify this coverage requirement.

Notice of a Potential Claim

A campus is required to notify all applicable insurance carrier(s) upon the occurrence of a triggering event, which may include, but is not limited to, accidents, property damage or personal injuries. When a campus learns of a potential lawsuit, whether by receipt of a communication or pleading from a private attorney or by a communication from the Office of the Attorney General, it should immediately identify any applicable insurance and notify all applicable insurance carrier(s) of the potential lawsuit. This notification needs to be done even if the accident or incident was previously reported to the same carrier or carriers.

In addition, upon receipt of a Notice of Intention, Claim, Summons with Notice, or Complaint or letter threatening litigation, the campus must notify Albany Claims Bureau or the New York City Claims Bureau of the Office of the Attorney General, depending upon where the incident occurred. Provide proof of insurance coverage and notification to the applicable insurance company(s).

Background
Liability insurance policies typically have two notification provisions. The first is notification of an incident, i.e., the insurance company requires that it be notified of an accident or incident at the time of or shortly after it occurs. The second notification is that of a potential or existing lawsuit. Both notification provisions require the insurance company to be notified as soon as "reasonably practical" or as set forth in the policy. Campuses should establish procedures for identifying any applicable insurance and providing written notice to all applicable insurance carriers of situations causing potential claims. Failure to notify the insurance company under one or both of these required notification provisions allows the insurance company to argue denial of coverage. Campuses should also, in consultation with campus counsel, establish a process for preserving evidence.

Insurance Guidelines

The Council of Contracting Agencies and NYS Procurement Council Guidelines for Insurance Requirements in Contracts contains helpful information such as descriptions ofthe various types of insurance, recommendations for insurance limits for construction managers, and aglossary of insurance terms. A copy of the manual can be found on the OGS website.

Attachments

1. Insurance Limits Summary
2. Verification – DFS & AM Best
3. ACORD 855 Review Instructions

Resources

- Insurance Review Checklist 7555-09 and 7554-12
- Guidelines for Insurance Requirements in Contracts - OGS website
- Procedure 7554 - Construction Contracting
    - Form 7554-09 - Construction Agreement
- Procedure 7555 - Construction Related Consultant Contracting Procedures
    - Form 7555-10 - Consultant Agreement
    - Form 7555-10A - Consultant Term Agreement

Revisions

May 2024 – updates to clarify the process for accepting non-admitted carriers using the ELANY affidavit
April 2024 – updates to Insurance requirements
August 2021 – updates to Attachment 2 Department of Financial Services search instructions.

Attachment 1

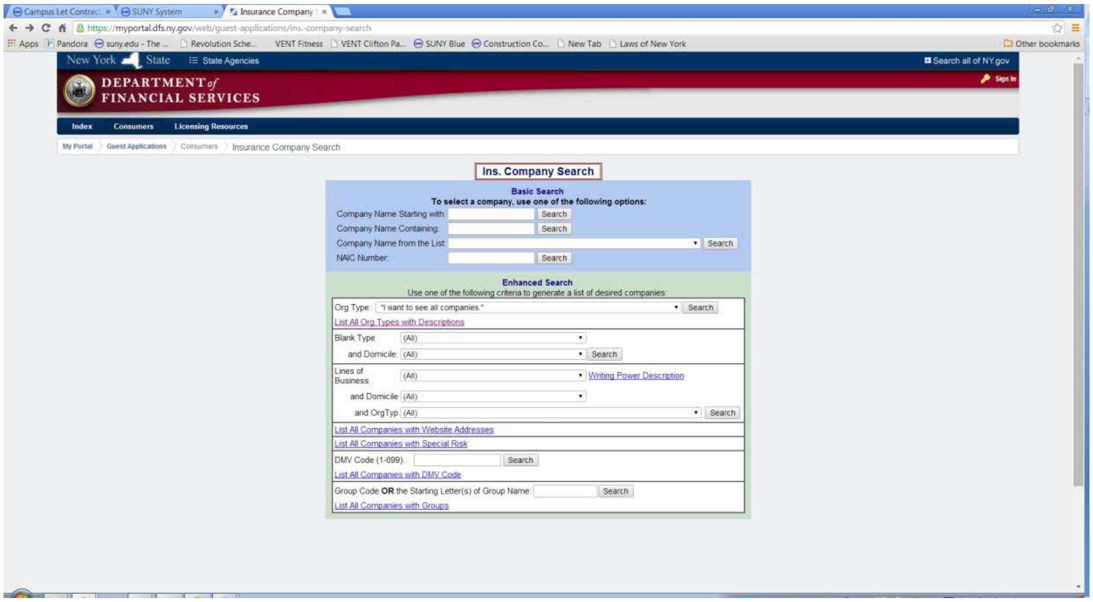
Insurance Limits Summary for Construction and Construction Related Consultant Contracts

<table>
<tr><th rowspan="2"></th><th rowspan="2">Workers Comp & Disability</th><th colspan="2">Commercial General Liability</th><th colspan="2">Owners and Contractors Protective Liability</th><th rowspan="2">Builders Risk</th><th rowspan="2">Business Automobile Liability</th><th rowspan="2">Professional Liability (Errors and Omissions)</th><th colspan="2">Contractor's Pollution Liability</th></tr>
<tr><th>Each Occurrence</th><th>General Aggregate</th><th>Each Occurrence</th><th>General Aggregate</th><th>Each Occurrence</th><th>General Aggregate</th></tr>
<tr><td>Architecture</td><td rowspan="5">As required by law</td><td rowspan="2">$2M</td><td rowspan="2">$2M</td><td rowspan="2" colspan="3">Not applicable</td><td rowspan="2">$1M per occurrence</td><td rowspan="2">Based on construction value
<$25M = $2M
>$25M = $5M
>$100M = TBD</td><td rowspan="2" colspan="2">Not applicable</td></tr>
<tr><td>Engineering</td></tr>
<tr><td>Construction <10M</td><td>$2M</td><td>$2M</td><td rowspan="3" colspan="2">Not applicable (no longer required)</td><td rowspan="3">Project Value</td><td rowspan="3">$1M per occurrence</td><td rowspan="3">Not applicable</td><td>$2M</td><td>$2M</td></tr>
<tr><td>Construction >10M and <50M</td><td>$5M</td><td>$5M</td><td>$5M</td><td>$5M</td></tr>
<tr><td>Construction >50M</td><td>$10M</td><td>$10M</td><td>$10M</td><td>$10M</td></tr>
</table>

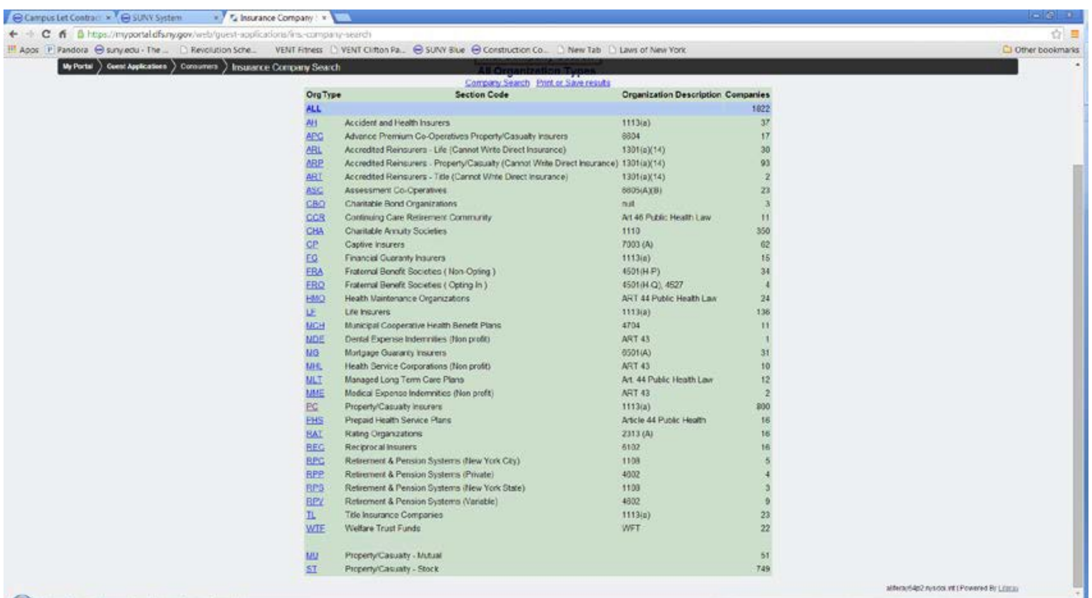
Attachment 2
Verification Instructions – DFS & AM Best

Verification: Is the carrier authorized in the State of New York?

1. Go to https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search
2. Click on List All Org Types with Descriptions

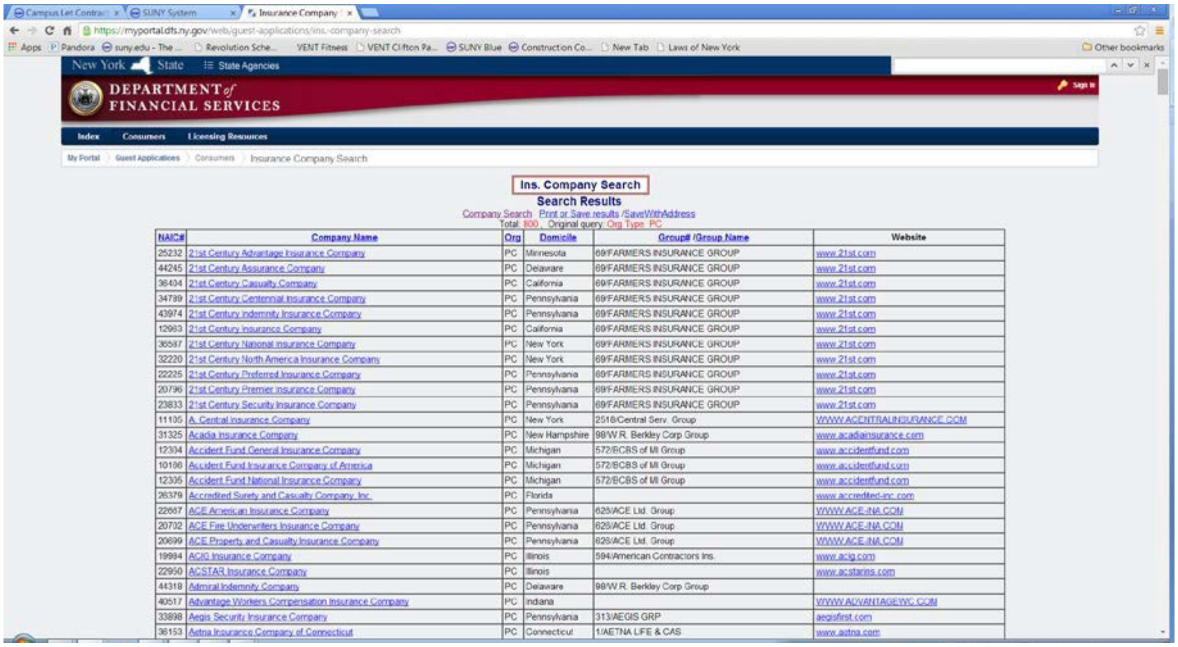


4. Click on PC Property/Casualty Insurers



Org Type	Section Code	Organization Description	Companies
ALL			1822
AH	Accident and Health Insurers	1113(a)	37
APC	Advance Premium Co-Operatives Property/Casualty Insurers	6604	17
ARL	Accredited Reinsurers - Life (Cannot Write Direct Insurance)	1301(a)(14)	30
ARP	Accredited Reinsurers - Property/Casualty (Cannot Write Direct Insurance)	1301(a)(14)	93
ART	Accredited Reinsurers - Title (Cannot Write Direct Insurance)	1301(a)(14)	2
ASC	Assessment Co-Operatives	6605(A)(B)	23
CBO	Charitable Bond Organizations	null	3
CCR	Continuing Care Retirement Community	Art 46 Public Health Law	11
CHA	Charitable Annuity Societies	1110	350
CP	Captive Insurers	7003 (A)	62
FG	Financial Guaranty Insurers	1113(a)	15
FBA	Fraternal Benefit Societies (Non-Opting)	4501(H P)	34
FBO	Fraternal Benefit Societies (Opting In)	4501(H Q), 4527	4
HMO	Health Maintenance Organizations	ART 44 Public Health Law	24
LF	Life Insurers	1113(a)	136
MCH	Municipal Cooperative Health Benefit Plans	4704	11
MDE	Dental Expense Indemnities (Non profit)	ART 43	1
MG	Mortgage Guaranty Insurers	6501(A)	31
MHL	Health Service Corporations (Non profit)	ART 43	10
MLT	Managed Long Term Care Plans	Art. 44 Public Health Law	12
MME	Medical Expense Indemnities (Non profit)	ART 43	2
PC	Property/Casualty Insurers	1113(a)	800
PHS	Prepaid Health Service Plans	Article 44 Public Health	16
RAT	Rating Organizations	2313 (A)	16
REC	Reciprocal Insurers	6102	16
RPC	Retirement & Pension Systems (New York City)	1108	5
RPP	Retirement & Pension Systems (Private)	4602	4
RPS	Retirement & Pension Systems (New York State)	1108	3
RPV	Retirement & Pension Systems (Variable)	4602	9
TL	Title Insurance Companies	1113(a)	23
WTF	Welfare Trust Funds	WFT	22
MU	Property/Casualty - Mutual		51
ST	Property/Casualty - Stock		749

5. Review or search list (press CTL+F to search in browser)



Ins. Company Search

Search Results

Company Search Print or Save results /SaveWithAddress

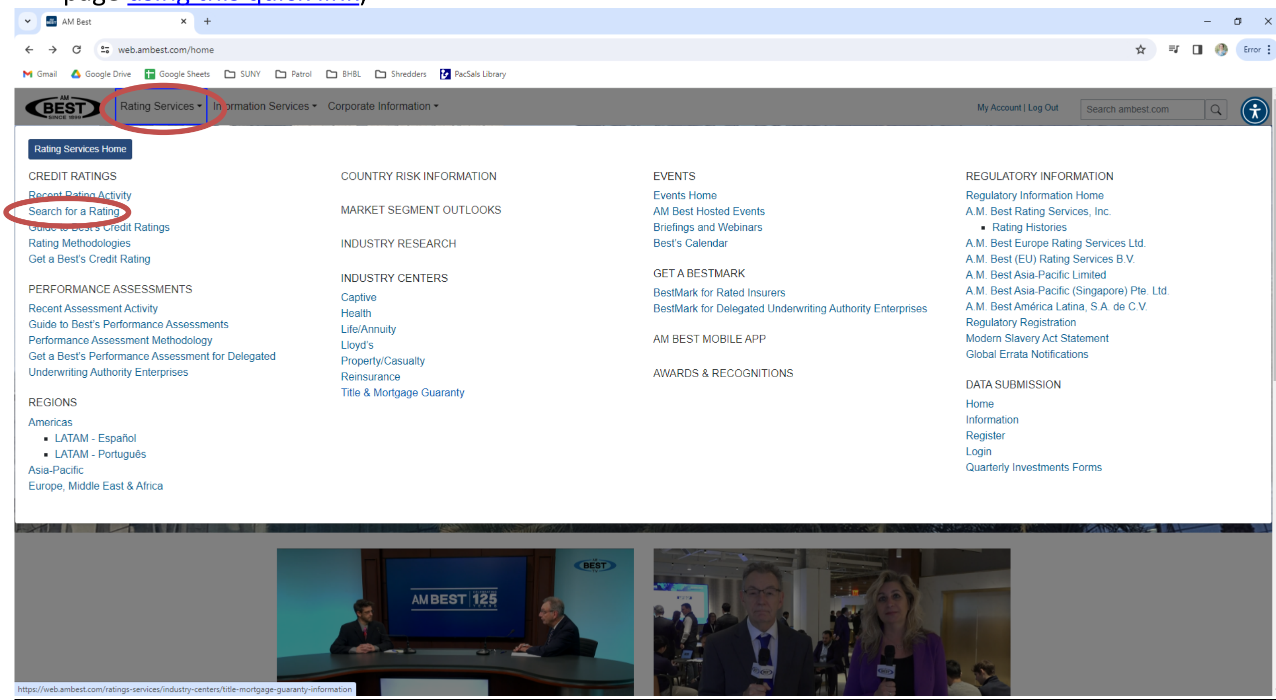
Total: 800 , Original query: Org Type: PC

NAIC#	Company Name	Org	Domicile	Group# /Group Name	Website
25232	21st Century Advantage Insurance Company	PC	Minnesota	69/FARMERS INSURANCE GROUP	www.21st.com
44245	21st Century Assurance Company	PC	Delaware	69/FARMERS INSURANCE GROUP	www.21st.com
36404	21st Century Casualty Company	PC	California	69/FARMERS INSURANCE GROUP	www.21st.com
34789	21st Century Centennial Insurance Company	PC	Pennsylvania	69/FARMERS INSURANCE GROUP	www.21st.com
43974	21st Century Indemnity Insurance Company	PC	Pennsylvania	69/FARMERS INSURANCE GROUP	www.21st.com
12963	21st Century Insurance Company	PC	California	69/FARMERS INSURANCE GROUP	www.21st.com
36587	21st Century National Insurance Company	PC	New York	69/FARMERS INSURANCE GROUP	www.21st.com
32220	21st Century North America Insurance Company	PC	New York	69/FARMERS INSURANCE GROUP	www.21st.com
22225	21st Century Preferred Insurance Company	PC	Pennsylvania	69/FARMERS INSURANCE GROUP	www.21st.com
20796	21st Century Premier Insurance Company	PC	Pennsylvania	69/FARMERS INSURANCE GROUP	www.21st.com
23833	21st Century Security Insurance Company	PC	Pennsylvania	69/FARMERS INSURANCE GROUP	www.21st.com
11105	A. Central Insurance Company	PC	New York	2518/Central Serv. Group	WWW.ACENTRALINSURANCE.COM
31325	Acadia Insurance Company	PC	New Hampshire	98/W.R. Berkley Corp Group	www.acadiainsurance.com
12304	Accident Fund General Insurance Company	PC	Michigan	572/BCBS of MI Group	www.accidentfund.com
10166	Accident Fund Insurance Company of America	PC	Michigan	572/BCBS of MI Group	www.accidentfund.com
12305	Accident Fund National Insurance Company	PC	Michigan	572/BCBS of MI Group	www.accidentfund.com
26379	Accredited Surety and Casualty Company, Inc.	PC	Florida		www.accredited-inc.com
22667	ACE American Insurance Company	PC	Pennsylvania	626/ACE Ltd. Group	WWW.ACE-INA.COM
20702	ACE Fire Underwriters Insurance Company	PC	Pennsylvania	626/ACE Ltd. Group	WWW.ACE-INA.COM
20699	ACE Property and Casualty Insurance Company	PC	Pennsylvania	626/ACE Ltd. Group	WWW.ACE-INA.COM
19984	ACIG Insurance Company	PC	Illinois	594/American Contractors Ins.	www.acig.com
22950	ACSTAR Insurance Company	PC	Illinois		www.acstarins.com
44318	Admiral Indemnity Company	PC	Delaware	98/W.R. Berkley Corp Group	
40517	Advantage Workers Compensation Insurance Company	PC	Indiana		WWW.ADVANTAGEWC.COM
33898	Aegis Security Insurance Company	PC	Pennsylvania	313/AEGIS GRP	aegisfirst.com
36153	Aetna Insurance Company of Connecticut	PC	Connecticut	1/AETNA LIFE & CAS	www.aetna.com

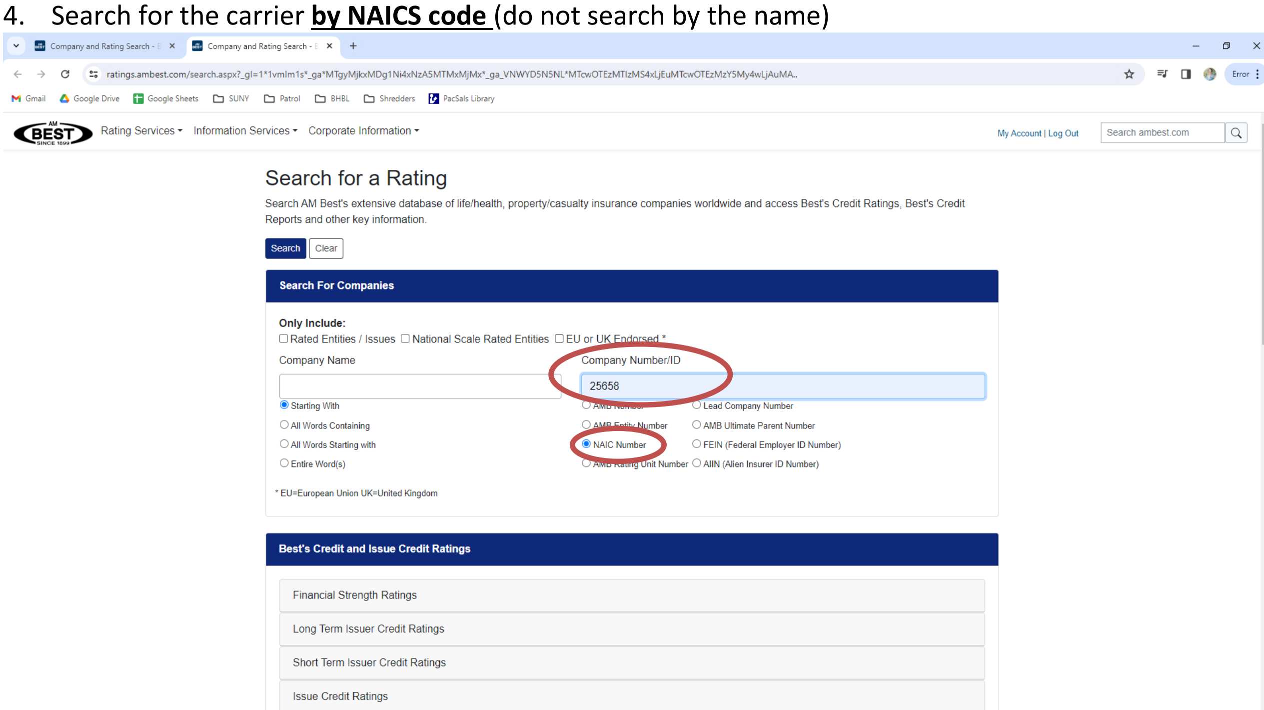
6. Ensure that the name of the insurance company matches the name on the list exactly. There areoften multiple entities associated with a company listed, but not all affiliates are authorized to sell insurance in New York State. For example ACME Insurance Inc. may be authorized, when ACME Insurance Company is not. The name on the insurance certificate must exactly match the name listed on the Department of Financial Services list.

Verification: AM Best Rating

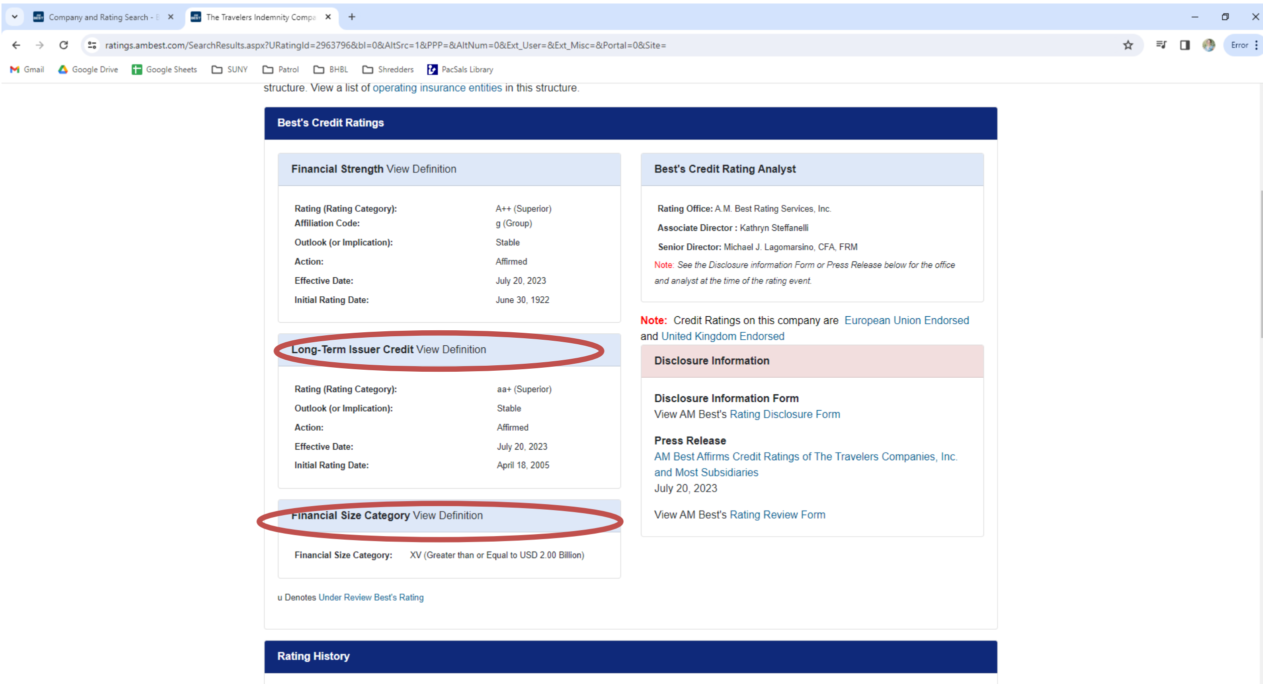
1. Go to https://web.ambest.com/home
2. Create a free account with A.M Best
3. Click on Rating Services, the Search for a Rating (you can also go directly to the search for a rating page using this quick link)



4. Search for the carrier **by NAICS code** (do not search by the name)



5. Review the rating and the financial size of the carrier



Attachment 3
ACORD 855 Review Guide

ACORD 855 Review Guide
Excerpt from Council of Contracting Agencies Insurance Guidelines, updated September 2021

AGENCY CUSTOMER ID: ____________________

NEW YORK CONSTRUCTION CERTIFICATE OF LIABILITY INSURANCE ADDENDUM

DATE (MM/DD/YYYY)

THIS ADDENDUM SUMMARIZES SOME OF THE POLICY PROVISIONS IN THE REFERENCED INSURANCE POLICIES AND IS ISSUED AS A MATTER OF INFORMATION ONLY; IT CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. ALL TERMS, EXCLUSIONS AND CONDITIONS IN THE ACTUAL POLICY SHOULD BE CONSULTED FOR A MORE DETAILED ANALYSIS OF COVERAGE, AS THIS ADDENDUM DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES.

AGENCY	NAMED INSURED(S)		
All header information must match Acord 25 form			
POLICY NUMBER	EFFECTIVE DATE	CARRIER	NAIC CODE

ADDENDUM INFORMATION **CERTIFICATE NUMBER:** **REVISION NUMBER:**

A. Insurer

- [x] Admitted / authorized — SUNY Agreement requires admitted or authorized carriers
- [ ] Excess line or free trade zone

B. General Liability (GL) policy form

- [x] ISO / ISO modified — Most Common
- [ ] Other

C. Specific operations excluded or restricted (GL policy) Review any exclusions against the requirements of the contract

- [ ] Location: ____________________
- [ ] Type of construction: ____________________
- [ ] Building height: ____________________
- [ ] Classifications [see attached declarations / endorsement]
- [ ] Designated work [see attached endorsement]

D. Additional insured endorsement (GL policy) SUNY Agreement agreement requires CG 00 01 or equivalent

- [ ] CG 20 10 [ ] CG 20 26 [ ] CG 20 32 [ ] CG 20 33 [ ] CG 20 37 [ ] CG 20 38
- [ ] Other: #: __________ ____________________

E. According to the terms of this GL policy, the additional insured has primary and noncontributory coverage

- [x] Yes [ ] No and [ ] no other option is available with this insurer

If no, this requires an explanation

F. Additional insured will receive advance notice if insurer cancels (GL policy)

- [x] Yes [ ] No and [ ] no other option is available with this insurer

If no, this requires an explanation

G. Blanket contractual liability located in the "insured contract" definition (Section V, Number 9, Item f. in the ISO CGL policy) is removed or restricted

- [ ] Yes and [ ] no other option is available with this insurer [x] No changes made

If yes, this requires an explanation

H. "Insured contract" exception to the employers liability exclusion is removed or modified (GL policy)

- [ ] Yes and [ ] no other option is available with this insurer [x] No changes made

If yes, this requires an explanation and agency review

I. GL policy (including endorsements) does not cover the additional insured for claims involving injury to employees of the named insured or subcontractors (not workers' compensation)

- [ ] Yes and [ ] no other option is available with this insurer [x] No changes made

CANNOT ACCEPT "yes"

ADDENDUM INFORMATION (continued)

AGENCY CUSTOMER ID: ____________________

J. **Earth movement, excavation or explosion / collapse / underground property damage is excluded or restricted (GL policy)**

☐ Yes and ☐ no other option is available with this insurer ☑ No changes made

K. **Insured vs. insured suits (cross liability in the ISO CGL policy) are excluded or restricted (other than named insured vs. named insured)**

☐ Yes and ☐ no other option is available with this insurer ☑ No changes made

L. **Property damage to work performed by subcontractors (exception to the "damage to your work" exclusion in the ISO CGL policy) is excluded or restricted**

☐ Yes and ☐ no other option is available with this insurer ☑ No changes made

If yes, this requires and explanation and agency review

M. **Excess / umbrella policy is primary and non-contributory for additional insureds**

☑ Yes, by specific policy provision ☐ Yes, by endorsement ☐ No and ☐ no other option is available with this insurer

Yes -preferred

This information is provided as general guidance and is not intended to be legal advice.
Consult with your agency's legal counsel to determine if responses received on the ACORD form are appropriate.

ACORD 855 Review Guide
Excerpt from Council of Contracting Agencies Insurance Guidelines, updated September 2021

For additional information regarding this form, and descriptions of each question, consult pages 61-64 of the CCA Insurance Guidelines, available here on the OGS website.

AUTHORIZED REPRESENTATIVE SIGNATURE

DATE (MM/DD/YYYY)