



Construction Policy Bulletin

CPB 08-1 Contractor Indemnification and Insurance

References: *Standard Specifications*

Section 3-1.025, "Insurance Policies"
Section 3-1.03, "Execution of Contract"
Section 7-1.12, "Indemnification and Insurance"
Section 8-1.05, "Temporary Suspension of Work"

Construction Manual

Section 5-102, "Organization of Project Documents"

Effective Date: March 16, 2008

Approved:

A handwritten signature in black ink, appearing to read 'Mark Leja', written over a horizontal line.

MARK LEJA

Chief

Division of Construction

Approval Date: March 13, 2008

Background

The *Standard Specifications* outlines contractors' insurance obligations. Section 3-1.025, "Insurance Policies," stipulates the type of insurance documents required and how contractors must submit those documents. Section 3-1.03, "Execution of Contract," requires contractors to submit those insurance documents at the time the contract is executed. Section 7-1.12, "Indemnification and Insurance," sets the contractor's responsibility to indemnify Caltrans and carry liability insurance.

When Section 13, "Railroad Relations and Insurance Requirements," is included in the contract's special provisions, the contractor must have railroad protective insurance when a construction contract encroaches on railroad operating properties.

Existing Procedure

Before or at the preconstruction conference, the resident engineer requests and receives the contractor's evidence of insurance. The resident engineer reviews these documents to ensure they conform to the requirements in Section 7-1.12B, "Insurance," of the *Standard Specifications*.

The resident engineer ensures that the contractor's insurance does not lapse during the life of the contract. Also, when the contract special provisions include Section 13, "Railroad Relations and Insurance Requirements," the resident engineer checks that the contractor has provided railroad protective insurance if Caltrans work encroaches on or crosses a railroad operating property.

If the contractor fails to maintain coverage after being requested to do so, the resident engineer may contact the insurance carrier and make arrangements to maintain coverage and charge the expense to the contractor.

New Procedure

The responsibility to review, approve, and monitor contractor insurance documents has been moved from the resident engineer in the field to the Division of Construction, Office of Risk Management.

At contract execution, the contractor submits copies of insurance policies for general liability and excess or umbrella coverage, along with the certificate of liability for automobile and workers' compensation insurance, to the Division of Engineering Services, Office of Contract Awards and Services, in accordance with Section 3-1.025, "Insurance Policies," of the *Standard Specifications*. If Section 13 of the special provisions requires railroad protective insurance, the contractor also submits the certificate of liability insurance for the railroad protective insurance.

The Office of Contract Awards and Services forwards the contractor's insurance documents to the Office of Risk Management, who then reviews the documents and notifies the Office of Contract Awards and Services when insurance is approved. At the same time, the Office of Risk Management issues a certificate of pre-approved insurance to the contractor for the level of insurance approved. Contractors may be pre-approved for insurance until the next insurance policy expiration date. The Division of Construction has posted instructions for pre-approval of a contractor's insurance on its website:

<http://www.dot.ca.gov/hq/construc/riskmanagement/insurancepreapproval/>

After the executed contract is approved, the Office of Contract Awards and Services forwards notice of approval of the contractor's insurance documents, together with the approved contract, plans, specifications, and instructions, to the resident engineer. The resident engineer files a copy of the contractor's insurance approval document in accordance with Category 12 of Section 5-102, "Organization of Project Documents," of the *Construction Manual*.

The Office of Risk Management keeps all approved contractor's insurance documents in a designated location at the Division of Construction. They continue to monitor the contractor's insurance to ensure that the approved insurance does not lapse or is not canceled.

Each deputy district director of construction has designated one person in the district to be responsible for notifying resident engineers about insurance-related matters. This person serves as the resident engineers' contact for all insurance issues.

If the contractor has not submitted the renewed insurance documents ten days before expiration of the contractor's insurance, the Office of Risk Management will send a notice to the contractor stating that the contractor has failed to comply with the insurance requirements of the contract. The Office of Risk Management also sends a copy of the notice to the district's insurance contact and deputy district director of construction.

If the contractor has not submitted the renewed insurance documents one day before the expiration of the contractor's insurance, the Office of Risk Management sends a second notice to

the district's insurance contact with a copy to the deputy district director for construction and headquarters' construction coordinator. This notice states that the contractor has failed to comply with contract insurance requirements. Upon consultation with the deputy district director for construction and the headquarters' construction coordinator, the resident engineer then takes one or both of the following actions:

1. Suspend the contractor's operations in accordance with the fifth paragraph of Section 8-1.05, "Temporary Suspension of Work," of the *Standard Specifications* until the contractor submits the insurance documents and the Office of Risk Management approves them. Inform the contractor's surety company in writing that the contractor has failed to maintain insurance as required by the contract and that the work has been temporarily suspended. A sample letter to the surety is attached for your use.
2. Act in accordance with the provisions of Section 7-1.12B (4), "Enforcement," of the *Standard Specifications*, which allow Caltrans to maintain the required insurance coverage and withhold or charge the expense to the contractor or terminate the contractor's control of the work in accordance with Section 8-1.08, "Termination of Control," of the *Standard Specifications*.

The Office of Risk Management will continue to obtain renewed insurance documents from the contractor. When the Office of Risk Management receives all requested documents, it notifies the district that the contractor is in compliance with the contract's insurance requirements.

As a follow-up, two weeks after expiration of a contractor's insurance policy, the Office of Risk Management sends a notice to the deputy district director of construction requesting information on the status of the project and the actions taken during the insurance noncompliance period.

If Section 13 of the contract special provisions specifies railroad protective insurance, the district right-of-way railroad agent within the Division of Right of Way and Land Surveys is the point of contact for all railroad insurance issues. Before the contractor performs contract work that encroaches on the railroad's operating properties, the resident engineer must receive a copy of the reviewed and approved insurance from the railroad agent or confirm from the agent that the contractor has furnished the required railroad protective insurance.

If you have questions regarding these new indemnification and insurance procedures, please contact Patrick Bockari at (916) 654-5196 or Victor Salazar at (916) 651-8312.

Attachment