

0071201FGT LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC -  
RESPONSIBILITY FOR DAMAGES, CLAIMS, ETC.  
(FGT ENCROACHMENT AGREEMENTS)  
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

Art Berger  
FDOT, Legal

Comments: (6-25-15)

1. Suggest the following changes: The Contractor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful ~~misconduct~~ **conduct** of the Contractor and persons employed or utilized by the Contractor in the performance of the ~~construction~~ Contract.

Response:

Language changed to read "intentional misconduct".

2. Suggest adding the following edits: Indemnify and hold harmless Florida Gas Transmission Company (FGT) from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, **to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.**

Response:

Language changed to read "...to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract or caused by the violation of enforceable environmental statutes, ordinances, rules, orders, or regulations of any governmental entity or agency having jurisdiction resulting from the storage or generation of any hazardous or toxic wastes or substances."

3. Suggest the following changes: It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, **a legal duty to the public,** or to authorize anyone not a party to this Contract to maintain a suit for personal injuries, **economic damages** or property damage pursuant to the terms or provisions of this Contract

Response:

No change made.

4. Suggest the following changes Carry Commercial General Liability insurance providing continuous coverage for all work ~~or~~ **and** operations performed under the Contract.

Response:

No change made.

5. Suggest the following changes: The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to the **e**Contract.

Response:

Change made.

6. Suggest the following changes: When the Contract involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2~~above~~.

Response:

Change made.

\*\*\*\*\*

Roger Wood  
FDOT, Legal

Comments: (7-8-15)

attorney's fees, to the extent caused by the negligence, recklessness, or intentional ~~wrongful~~ misconduct of the

Response:

Change made.

\*\*\*\*\*

Chad Rucks  
FDOT, D4  
(772) 429-4938

Comments: (7-20-15)

In section 7-13.4 in the last sentence FGT is defined as Florida Gas Transmission. This definition is already provided in 7-12.1. I recommend just using FGT in 7-13.4 since the term is already defined.

Response:

Change made.

\*\*\*\*\*

William Phelps (via FTBA)  
George H. Friedlander Company  
321-254-8477

Comments:(7-14-15)

I do have a concern regarding the language of SUBARTICLE 7-13.2 included in this proposed specification. Specifically relating to the required limits of insurance. These are:

1. 1,000,000 "any one person"
2. 5,000,000 "for each occurrence"

The issue is with 1,000,000 "any one person". General Liability insurance policies written in today's marketplace do not have a limit which applies to "any one person". The CG 00 01 policy form called for in these specifications provide for a limit "per occurrence" and "general aggregate". I do not believe a limit for "any one person" is readily available in the market and the request is in conflict with the very form the provision requires.

My suggestion is that the required limits should be increased to reflect what FGT needs to manage its risk. As an example, the FDOT specifications require that when a contractor does work within the right-of-way of a railroad the railroad requires higher limits of insurance (2,000,000 per occurrence and 6,000,000 general aggregate). If the work is being done on a CSX right-of-way, the required limit is even higher (5,000,000 per occurrence and 10,000,000 general aggregate). Higher limits can be managed and purchased for the project/contract. A change in how the limits apply will not be received favorably by the insurance marketplace.

**Response:**

The requirement of \$1,000,000 per person needs to remain because policies can contain a per person claim limitation (for example, a \$250,000 per person claim limit). Insurance with a limit of \$5,000,000 per occurrence would comply as long as the policy did not contain a separate provision limiting a claim per person under \$1,000,000. A CG 00 01 policy form providing for a limit of \$5,000,000 per occurrence is compliant as long as the policy contains no per person claim limitation. The language has been clarified to state “The limits of coverage shall not be less than \$1,000,000 for any one person, not less than \$5,000,000 for each occurrence, and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy.”