

ORIGINATION FORM

Date: 8-2-13

Originator: Ted Avellone

Contact Information: 414-5284

Specification Title: **Insurance**

Specification Section, Article, or Subarticle Number: 007

Why does the existing language need to be changed?

Many terms are outdated and no longer reflect insurance industry products or coverages. Also, existing language is unnecessarily broad and creates many ambiguities concerning contractors' obligations and the Department's expectations.

Summary of the changes:

Updating of terms and descriptions of coverage, providing unambiguous responsibilities and obligations.

Are these changes applicable to all Department jobs?

If not, what are the restrictions?

The changes apply to all contracts incorporating the Standard Specifications for Road and Bridge Construction. The changes do not broaden or narrow such application as compared to past applications.

Will these changes result in an increase or decrease in project costs?

If yes, what is the estimated change in costs?

The changes will likely result in no change to project costs. Any increases would likely be negligible.

With who have you discussed these changes?

Discussions concerning the updating of the Insurance provisions of the Standard Specifications have been ongoing for several years. Persons involved in such discussions have included OGC attorneys Greg Jones, Calvin Johnson, and Jason Watts. Several other Department employees in the Construction, Maintenance, and Contracts Administration office have also been involved in the discussions. Jim Marshall, CPCU, ARM, JD, of Siver Insurance Consultants, in St. Petersburg, Florida, was also consulted.

What other offices will be impacted by these changes?

Construction, Maintenance, Contracts Administration, Office of General Counsel

Are changes needed to the PPM, Design Standards, SDG, CPAM or other manual?

No.

Is a Design Bulletin, Construction Memo, or Estimates Bulletin needed?

Unknown at this stage.

Contact the State Specifications Office for assistance in completing this form.

Daniel Scheer 850-414-4130 daniel.scheer@dot.state.fl.us

Frances Thomas 850-414-4101 frances.thomas@dot.state.fl.us

Debbie Toole 850-414-4114 deborah.toole@dot.state.fl.us

Andy Harper 850-414-4127 clifton.harper@dot.state.fl.us

Ray Haverty 850-414-4129 ray.haverty@dot.state.fl.us



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

MEMORANDUM

DATE: October 9, 2013

TO: Specification Review Distribution List

FROM: Daniel Scheer, P.E., State Specifications Engineer

SUBJECT: Proposed Specification: 00701300 Legal Requirements and Responsibility to the Public

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change.

The changes are proposed by Ted Avellone of the State General Counsel's Office to update the terms and description of insurance coverage, providing unambiguous responsibilities and obligations.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and should be sent to Mail Station 75 or to my attention via e-mail at SP965DS, or daniel.scheer@dot.state.fl.us. Comments received after **November 6, 2013**, may not be considered. Your input is encouraged.

DS/ft
Attachment

LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC – INSURANCE.
(REV ~~7-1-138-23-13~~)

ARTICLE 7-13 is deleted and the following substituted:

7-13 Insurance.

7-13.1 Workers' Compensation Insurance: Provide Workers' Compensation Insurance in accordance with ~~the laws of the State of Florida's Workers' Compensation law and in amounts sufficient to secure the benefits of the Florida Workers' Compensation Law~~ for all employees. If subcontracting any of the work, ensure that the *subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities.* ~~employees of the subcontractors are covered by similar insurance.~~ Ensure that any equipment rental agreements that include operators *or other personnel* who are employees of independent Contractors, sole proprietorships or partners are covered *by insurance required under Florida's Workers' Compensation law.* ~~by similar insurance. The Engineer will accept equivalent approved protection in lieu of insurance.~~

7-13.2 Contractors' Public Liability and Property Damages Commercial General Liability Insurance: *Carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Contract. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. -Cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. -The coverage afforded to the Department ~~under~~ as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. -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 contract. The policy/ies and coverage described herein may be subject to a deductible, which shall be your sole responsibility.- No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. Prior to the execution of the Contract, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. -The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. -The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have. —Furnish evidence to the Department that, with respect to the operations performed, regular Contractors' Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages*

~~arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.~~

~~————— Cause the Department to be an additional insured party on the Contractor's Public Liability and Property Damages Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.~~

7-13.3 Contractors' Protective Public Liability and Property Damage Liability Insurance: ~~Furnish evidence to the Department that, with respect to the operations performed by subcontractors, regular Contractors' Protective Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Protective Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.~~

~~————— Cause the Department to be an additional insured party on the Contractor's Protective Public Liability and Property Damage Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.~~

7-13.34 Insurance Required for Construction at Railroads:

7-13.4.1 General: *When the Contract includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, you shall, in addition to the insurance coverage required pursuant to 7-13.2 above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2 above. -Prior to the execution of the Contract, and at all renewal periods during the project, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. -The insurance described herein shall be maintained through final acceptance of the work. -Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have. — In addition to any other forms of insurance or bonds required under the terms of the Contract, when the Contract includes the construction of a railroad grade crossing, overpass, or underpass structure, or a railroad crossing signal installation, or any other work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from work or*

~~operations in the vicinity of the railroad right-of-way, provide insurance of the types set forth below and in amounts not less than specified herein.~~

~~7-13.4.2 Railroads' Protective Public Liability and Property Damage~~

~~**Liability Insurance:** Furnish the Department with an original insurance policy that, with respect to the operations performed, will provide for and in behalf of the railroad company regular liability insurance providing coverage for bodily injury, death, and property damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy.~~

~~**7-13.45 Insurance for Protection of Utility Owners:** *When the Contract involves work on or in the vicinity of utility-owned property or facilities, you shall, in addition to the insurance required to be procured pursuant to 7-13.2 above, procure and maintain Commercial General Liability insurance (Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida) where the utility is a Named Insured and where the limits are not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$5,000,000.- The utility shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to subsection 7-13.2 above.- The policy/ies and coverage described herein may be subject to a deductible, which shall be your sole responsibility. -No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. -Prior to the execution of the Contract, and at all renewal periods during the project, both the Department and the utility shall be provided with an ACORD Certificate of Liability Insurance reflecting the policy/ies and coverage described herein.- Both the Department and the utility shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. -The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.* ~~When the work under the Contract involves work on or in the vicinity of utility-owned property or facilities, furnish the Department with evidence that, with respect to the operations performed, General Comprehensive Liability Insurance or its equivalent providing for a limit of not less than \$1,000,000 for bodily injury or death to person(s) per occurrence and \$300,000 property damage each occurrence is carried. The Department and Utility Company are to be Additional Named Insureds, and the policy will be primary to any coverage maintained by the Department or Company. Do not make any material change or cancellation to the policy without providing the Department with ten days prior written notice.~~~~

~~**7-13.6 Submission and Approval of Policies; Termination:** Furnish two copies of each required policy to the Engineer at the Preconstruction Conference.~~

~~Provide all insurance policies in such form and with insurers that are acceptable to the Department, and to the railroad company or the utility owner. Keep insurance in behalf of a railroad company in force until the Department accepts that the Contractor has satisfactorily completed all work required under the Contract. Keep insurance in behalf of a utility owner in force, in the full amount specified herein, until 30 days after the Department accepts the work.~~