

**California Department of Transportation  
Standard Insurance Requirements, 2006**



## **SECTION 3: AWARD AND EXECUTION OF CONTRACT**

### **3-1.01 AWARD OF CONTRACT**

- The right is reserved to reject any and all proposals.
- The award of the contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed. The award, if made, will be made within 30 days after the opening of the proposals. This period will be subject to extension for such further period as may be agreed upon in writing between the Department and the bidder concerned.
- All bids will be compared on the basis of the Engineer's Estimate of the quantities of work to be done.

### **3-1.02 CONTRACT BONDS**

- The successful bidder shall furnish the 2 bonds required by the State Contract Act. One bond shall secure the payment of the claims of laborers, mechanics or materialmen employed on the work under the contract, and the other bond shall guarantee the faithful performance of the contract. The bond forms will be furnished to the successful bidder by the Department.
- Except as otherwise provided in Section 3248 of the Civil Code and Section 30154 of the Streets and Highways Code, the payment bond shall be in a sum equal to the contract price and the performance bond shall be in a sum equal to at least one-half of the contract price.
- All alterations, extensions of time, extra and additional work, and other changes authorized by these specifications or any part of the contract may be made without securing the consent of the surety or sureties on the contract bonds.

### **3-1.025 INSURANCE POLICIES**

- The successful bidder shall submit:
  - A. Copy of its commercial general liability policy and its excess policy, including the declarations page, all amendments, riders, endorsements, and other modifications in effect at the time of contract execution. Standard ISO form No. CG 0001 or similar exclusions are allowed if not inconsistent with Section 7-1.12, "Indemnification and Insurance." Allowance of any additional exclusions is at the discretion of the Department.
  - B. Certificate of Insurance showing all other required coverages. Certificates of Insurance, as evidence of required insurance for the auto liability and any other required policy shall set forth deductible amounts applicable to each policy and all exclusions that are added by endorsement to each policy. The evidence of insurance shall provide that no cancellation, lapse, or reduction of coverage will occur without 30 days prior written notice to the Department.
- If the successful bidder uses any form of self-insurance, it shall submit:
  - A. A notice of election to self-insure.

### SECTION 3

### AWARD AND EXECUTION OF CONTRACT

- B. The coverages for which self-insurance applies.
- C. The amount of self-insurance.
- D. Declaration under the penalty of perjury by a certified public accountant certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines and the successful bidder has sufficient funds or other resources to cover the self-insurance amounts.
- E. Copy of its commercial general liability policy and its excess policy, including the declarations page, all amendments, riders, endorsements and other modifications in effect at the time of contract execution, for those amounts not covered by self-insurance.

#### 3-1.03 EXECUTION OF CONTRACT

- The contract shall be signed by the successful bidder and returned, together with the contract bonds, copy of insurance policies, and Certificates of Insurance, with documents to verify any self-insurance coverage within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution.

#### 3-1.04 FAILURE TO EXECUTE CONTRACT

- Failure of the lowest responsible bidder, the second lowest responsible bidder, or the third lowest responsible bidder to execute the contract and file acceptable bonds as provided herein within 10 days, not including Saturdays, Sundays and legal holidays, after that bidder has received the contract for execution shall be just cause for the forfeiture of the proposal guaranty. The successful bidder may file with the Department a written notice, signed by the bidder or the bidder's authorized representative, specifying that the bidder will refuse to execute the contract if it is presented. The filing of this notice shall have the same force and effect as the failure of the bidder to execute the contract and furnish acceptable bonds within the time hereinbefore prescribed.

#### 3-1.05 RETURN OF PROPOSAL GUARANTIES

- The proposal guaranties accompanying the proposals of the first, second and third lowest responsible bidders will be retained until the contract has been finally executed, after which those proposal guaranties, except bidders' bonds and any guaranties which have been forfeited, will be returned to the respective bidders whose proposals they accompany. The proposal guaranties, other than bidder's bonds, submitted by all other unsuccessful bidders will be returned upon determination, by the Department, of the first, second and third lowest responsible bidders.

### **7-1.12 INDEMNIFICATION AND INSURANCE**

- The Contractor's obligations regarding indemnification of the State of California and the requirements for insurance shall conform to the provisions in Section 3-1.025, "Insurance Policies," and Sections 7-1.12A, "Indemnification," and 7-1.12B, "Insurance," of this Section 7-1.12.

#### **7-1.12A Indemnification**

- The Contractor shall defend, indemnify, and save harmless the State, including its officers, employees, and agents (excluding agents who are design professionals) from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity (Section 7-1.12A Claims) arising out of or in connection with the Contractor's performance of this contract for:

1. Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of the Contractor, the State, or any other contractor; and
2. Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.

- Except as otherwise provided by law, these requirements apply regardless of the existence or degree of fault of the State. The Contractor is not obligated to indemnify the State for Claims arising from conduct delineated in Civil Code Section 2782 and to Claims arising from any defective or substandard condition of the highway that existed at or before the start of work, unless this condition has been changed by the work or the scope of the work requires the Contractor to maintain existing highway facilities and the Claim arises from the Contractor's failure to maintain. The Contractor's defense and indemnity obligation shall extend to Claims arising after the work is completed and accepted if the Claims are directly related to alleged acts or omissions by the Contractor that occurred during the course of the work. State inspection is not a waiver of full compliance with these requirements.

- The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determine that the Contractor is not liable. The Contractor shall respond within 30 days to the tender of any Claim for defense and indemnity by the State, unless this time has been extended by the State. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, the Department may withhold such funds the State reasonably considers

necessary for its defense and indemnity until disposition has been made of the Claim or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

- With respect to third-party claims against the Contractor, the Contractor waives all rights of any type to express or implied indemnity against the State, its officers, employees, or agents (excluding agents who are design professionals).

- Nothing in the Contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these indemnification specifications.

#### **7-1.12B Insurance**

##### **7-1.12B(1) General**

- Nothing in the contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

##### **7-1.12B(2) Casualty Insurance**

- The Contractor shall procure and maintain insurance on all of its operations with companies acceptable to the State as follows:

1. The Contractor shall keep all insurance in full force and effect from the beginning of the work through contract acceptance.
2. All insurance shall be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
3. The Contractor shall maintain completed operations coverage with a carrier acceptable to the State through the expiration of the patent deficiency in construction statute of repose set forth in Code of Civil Procedure Section 337.1.

##### **7-1.12B(3) Workers' Compensation and Employer's Liability Insurance**

- In accordance with Labor Code Section 1860, the Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.

- In accordance with Labor Code Section 1861, the Contractor shall submit to the Department the following certification before performing the work:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in

accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

- Contract execution constitutes certification submittal.
- The Contractor shall provide Employer's Liability Insurance in amounts not less than:
  1. \$1,000,000 for each accident for bodily injury by accident
  2. \$1,000,000 policy limit for bodily injury by disease
  3. \$1,000,000 for each employee for bodily injury by disease
- If there is an exposure of injury to the Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

#### **7-1.12B(4) Liability Insurance**

##### **7-1.12B(4)(a) General**

• The Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Contractor providing insurance for bodily injury liability and property damage liability for the following limits and including coverage for:

1. Premises, operations, and mobile equipment
2. Products and completed operations
3. Broad form property damage (including completed operations)
4. Explosion, collapse, and underground hazards
5. Personal injury
6. Contractual liability

##### **7-1.12B(4)(b) Liability Limits/Additional Insureds**

- The limits of liability shall be at least the amounts shown in the following table:

Total Bid	For Each Occurrence <sup>1</sup>	Aggregate for Products/Completed Operation	General Aggregate <sup>2</sup>	Umbrella or Excess Liability <sup>3</sup>
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
>\$1,000,000				
≤\$5,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$5,000,000				
≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000
1. Combined single limit for bodily injury and property damage. 2. This limit shall apply separately to the Contractor's work under this contract. 3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.				

- The Contractor shall not require certified Small Business subcontractors to carry Liability Insurance that exceeds the limits in the table above. Notwithstanding the limits specified herein, at the option of the Contractor, the liability insurance limits for certified Small Business subcontractors of any tier may be less than those limits specified in the table. For Small Business subcontracts, "Total Bid" shall be interpreted as the amount of subcontracted work to a certified Small Business.

- The State, including its officers, directors, agents (excluding agents who are design professionals), and employees, shall be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of the Contractor under this contract. Coverage for such additional insureds does not extend to liability:

- Arising from any defective or substandard condition of the roadway which existed at or before the time the Contractor started work, unless such condition has been changed by the work or the scope of the work requires the Contractor to maintain existing roadway facilities and the claim arises from the Contractor's failure to maintain;
- For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Contractor that occurred during the course of the work; or
- To the extent prohibited by Insurance Code Section 11580.04

- Additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO), or other form designated by the Department.

**7-1.12B(4)(c) Contractor's Insurance Policy is Primary**

- The policy shall stipulate that the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by the State is excess only and shall not be called upon to contribute with this insurance.

**7-1.12B(5) Automobile Liability Insurance**

- The Contractor shall carry automobile liability insurance, including coverage for all owned, hired, and nonowned automobiles. The primary limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required under Section 7-1.12B(4)(b) also applies to automobile liability.

**7-1.12B(6) Policy Forms, Endorsements, and Certificates**

- The Contractor shall provide its General Liability Insurance under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.

**7-1.12B(7) Deductibles**

- The State may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the State. Regardless of the allowance of exclusions or deductions by the State, the Contractor is responsible for any deductible amount and shall warrant that the coverage provided to the State is in accordance with Section 7-1.12B, "Insurance."

**7-1.12B(8) Enforcement**

- The Department may assure the Contractor's compliance with its insurance obligations. Ten days before an insurance policy lapses or is canceled during the contract period, the Contractor shall submit to the Department evidence of renewal or replacement of the policy.
- If the Contractor fails to maintain any required insurance coverage, the Department may maintain this 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."
- The Contractor is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless the State, its officers, agents, and employees by the Department's acceptance of insurance policies and certificates.



- Minimum insurance coverage amounts do not relieve the Contractor for liability in excess of such coverage, nor do they preclude the State from taking other actions available to it, including the withholding of funds under this contract.

**7-1.12B(9) Self-Insurance**

- Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and approval by the State.
- If the Contractor uses a self-insurance program or self-insured retention, the Contractor shall provide the State with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the contract is the Contractor's acknowledgement that the Contractor will be bound by all laws as if the Contractor were an insurer as defined under Insurance Code Section 23 and that the self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code Section 22.