

NOTE: *Highlighted, italicized text* indicates REVISIONS to the version of the NJTA 2004 Standard Supplementary Specifications which existed prior to the issuance of this DCA.

106.20 INSURANCE.

Replace this Subsection in its entirety with the following:

Prior to the commencement of any activity under this Contract, the Contractor shall procure and maintain at its own expense, throughout the term of the Contract and until acceptance by the Authority of the Project or for a duration as otherwise provided herein, and, with respect to products and completed operations insurance, for a period of not less than three (3) years following the termination of this Contract, from an insurance carrier acceptable to the Authority, the following insurance coverages:

(A) Commercial General Liability Insurance.

[NOTE TO DESIGNER: If the Engineer's Estimate of the Construction Value is \$100 million or greater, the limits of insurance required in Subparagraph (A) should increase as follows: Commercial General- \$10 million.]

Contractor shall maintain Commercial General liability insurance (CGL) with a coverage limit of not less than ~~\$5,000,000~~ *\$2,000,000* each occurrence. CGL insurance shall be written on the latest ISO occurrence form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage) and shall cover liability for bodily injury and property damage arising from premises, operations, independent contractors, products-completed operations and for liability arising from personal injury and advertising injury, and liability assumed under contract. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. The insurance shall be endorsed to delete the coverage restriction related to work conducted within fifty (50) feet of a railroad, and the XCU exclusions. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds on the latest ISO forms providing such status for ongoing operations and products-completed operations without any added restrictions or diminution in coverage (or substitute forms providing at least equivalent coverage). This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. ~~The required policy limit for this insurance can be provided by a combination of primary and excess coverages, provided that primary coverage shall be not less than \$2,000,000 and that the excess coverage shall be at least as broad as the primary policy.~~ This insurance shall not contain any provision under which claims made by the Authority against the Contractor would not be covered due to the operation of an insured versus insured exclusion.

(B) Commercial Automobile Liability Insurance.

Contractor shall maintain Commercial Automobile liability insurance covering all vehicles owned or used by Contractor with a coverage limit of not less than ~~\$5,000,000~~ *\$2,000,000* each occurrence. Auto insurance shall be written on the latest ISO form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent

coverage) and shall cover liability for bodily injury and property damage. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. Such insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. ~~The required policy limit for this insurance can be provided by a combination of primary and excess coverages, provided that primary coverage shall be not less than \$2,000,000 and that the excess coverage shall be at least as broad as the primary policy.~~ This insurance shall not contain any provision under which claims made by the Authority against the Contractor would not be covered due to the operation of an insured versus insured exclusion.

The Contractor and any Subcontractors who will be transporting any hazardous materials, hazardous substances, hazardous wastes and contaminated soils as part of the Work under this Contract, shall provide the Authority with evidence of levels of financial responsibility as required by the Motor Carrier Act of 1980 and 49 C.F.R., Part 387. The Contractor and/or Subcontractor, as the case may be, shall provide the Authority with an Endorsement for Motor Carrier Policies of Insurance for Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90) issued by the insurer.

(C) Workers' Compensation and Employer's Liability Insurance.

Contractor shall maintain workers' compensation and employer's liability insurance. Employers' liability coverage shall be with a limit not less than \$1,000,000 Bodily Injury by Disease Each Employee, \$1,000,000 Bodily Injury by Accident- Each Accident, \$1,000,000 Bodily Injury by Disease - Policy Limit. Where permitted by law, such insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of the State of New Jersey and shall include all-states insurance to extend coverage to any state which may be interpreted to have legal jurisdiction. Such policies shall include endorsements to ensure coverage under the U.S. Longshore and Harborworkers' Compensation Act, and general maritime law, the Jones Act and the Death on the High Seas Act where required.

(D) Contractors Pollution Liability Insurance.

Contractor shall maintain Contractors Pollution liability (CPL) insurance with a coverage limit of not less than \$5,000,000 each occurrence, \$10,000,000 aggregate.

The CPL insurance shall include, but not be limited to, coverage for on-site cleanup, bodily injury and property damage liability, contractual liability, personal injury liability and automobile liability for the transportation of materials (including hazardous materials and waste) to and from the project site, completed operations and independent contractors. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority.

This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Contractor would not be covered due to the operation of an insured versus insured exclusion.

Upon selection of a disposal facility (if applicable), the Contractor shall also furnish evidence to the Authority that the disposal facility chosen has the minimum environmental liability insurance required by applicable law.

(E) Umbrella Excess Liability Insurance.

Contractor shall maintain Umbrella Excess liability insurance with a coverage limit of not less than \$3,000,000. This insurance shall be written on the latest ISO occurrence form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage) and shall provide excess coverage for CGL and Auto liability matters, providing no less coverage than the underlying policy. Such insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds.

(F) Marine Liability Insurance.

As respects any watercraft (Boats, Barges, etc.) used during the performance of this contract, Contractor shall maintain Marine Protection and Indemnity Insurance covering all marine hazards arising from this contract; including injuries to crew members, if not provided through other insurance; Bodily Injury to third parties and Property Damage to wharves, piers and other structures and loss or damage to other vessels whether or not caused by collision. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. The policy shall be subject to a limit of liability of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Contractor would not be covered due to the operation of an insured versus insured exclusion.

(G) Aircraft Liability Insurance.

If the Contractor or subcontractor is engaged in any operations utilizing aircraft, it shall maintain aircraft liability insurance covering bodily injury and property damage liability in an amount not less than \$10,000,000, written on an occurrence basis. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance

or self-insurance programs afforded to the Authority. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Contractor would not be covered due to the operation of an insured versus insured exclusion.

(H) Owner's Protective Liability Insurance.

The Contractor shall obtain and maintain a separate Owner's Protective Liability policy covering bodily injury and property damage liability arising from its operations in an amount not less than \$5,000,000. Such insurance shall be written on the latest ISO form without any restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage). This policy shall name the New Jersey Turnpike Authority, its members, commissioners, officers, agents, employees, guests, consultants and volunteers as named insureds.

(I) Railroad Insurance.

If the Contractor or Subcontractor is engaged in any Work on the Project which requires a permit from a railroad company, the Contractor will provide insurance in such amounts and such limits as required by the individual railroad company. At a minimum, insurance will be at least as broad as that provided by the latest ISO railroad protective liability insurance form without any restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage.)

~~(J) Builder's Risk/Installation Floater Insurance.~~

~~[NOTE TO DESIGNER: Include the following Paragraph (I) if the Contract includes construction of portions of a bridge, overpass or building/facility, or other Work which could be partially damaged or destroyed by a casualty event prior to completion of all Work under the Contract. Designers are strongly encouraged to consult with the Law Department prior to deleting this paragraph.]~~

~~The Contractor shall provide Builders Risk/Installation Floater Insurance with a coverage limit of not less than the contract amount. Such insurance shall be written on the latest ISO form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage) and shall cover all risks of physical loss or damage to the work performed, including collapse, flood and earth movement. The interests of the New Jersey Turnpike Authority, its contractors and subcontractors, as their interest may appear, in all real and personal property owned, used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly shall be covered. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self insurance programs afforded to the Authority. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers.~~

~~(K)~~(L) Other Insurance.

Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the Work shall be provided upon request of the Chief Engineer **or his designee.**

~~(L)~~(K) Insurance, Certificate and Endorsement Requirements.

All insurance policies shall specify that the territorial limits shall be on a worldwide basis or as otherwise agreed with the Authority. All insurance policies shall provide that not less than 30 days advance written notice of cancellation or material change of any insurance referred to therein shall be given by registered mail to the General Counsel, New Jersey Turnpike Authority at P.O. Box 5042, Woodbridge, NJ 07095. All insurance companies providing coverage shall be authorized to do business in the State of New Jersey and maintain an A.M. Best rating of A-, VII, or better.

- (1) Any other insurance carried by Contractor or Subcontractors shall be considered to be primary and any insurance carried by or self-insurance programs afforded to the Authority shall be considered excess and non-contributing with such primary insurance.
- (2) Any other insurance carried by Contractor or Subcontractors shall also contain a waiver of subrogation clause in favor of the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers.
- (3) Prior to commencing any work under this Contract and thereafter upon the Authority's request, Contractor shall furnish the Authority with a certificate(s) of insurance satisfactory to the Authority and, if requested by the Authority, applicable endorsements and/or a certified duplicate copy of the insurance policy(s) required, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. The Certificates of Insurance shall state that each of the above-required policies has been amended to include the following endorsements and shall be accompanied by copies of the endorsements:
 - (a) "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds." This statement is not required for the Contractor's workers' compensation and employer's liability insurance or builders risk insurance, if required.
 - (b) Thirty (30) days notice of cancellation or material change in coverage shall be given by registered mail to the New Jersey Turnpike Authority as specified above.
 - (c) Where permitted by law, all policies shall contain a waiver of subrogation clause in favor of the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers.
 - (d) With respect to all policies, the other insurance clause under each policy shall be amended to read as follows: "This policy will act as primary insurance and not contribute with policies issued to or self-insurance programs afforded to the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers".
 - (e) All certificate(s) shall be mailed to: Law Department, New Jersey Turnpike Authority, P. O. Box 5042, Woodbridge, New Jersey 07095, Attention: Insurance.
- (4) In the event that Contractor subcontracts any portion of its duties under this Contract, Contractor shall require each such Subcontractor to comply with all of the above insurance requirements as if the Subcontractor's name were substituted for any reference to Contractor, except with respect to the limits provided by each Subcontractor, which shall be as follows: CGL- \$1,000,000; Automobile \$1,000,000; and Umbrella Excess- \$1,000,000. Except as specifically set forth above, all other requirements for Subcontractors shall remain the same as the

requirements for the Contractor. If any Subcontractor cannot comply with this requirement, then such Subcontractor shall be added under the Contractor's policies as an additional insured. *Upon request of the Authority, the Contractor shall submit evidence of insurance for each Subcontractor, indicating compliance with all requirements.*

- (5) It is agreed and understood by the parties that the obligation of the Contractor to obtain and maintain insurance policies required in accordance with this Contract is an essential term of the Contract and that the Authority relies on the Contractor to perform such obligation. The parties further acknowledge and agree that the failure of the Authority to require strict compliance with all the terms and conditions regarding insurance, as set forth in this Contract, and as evidenced by any Certificates of Insurance, Slips and/or Binders, copies of insurance policies, or otherwise, shall not constitute a waiver or amendment of any of the terms, conditions and requirements of this Contract regarding the provision of insurance coverage by the Contractor.
- (6) The Contractor shall ensure that the activities to be performed under this Contract do not violate the terms and conditions of any insurance policy which is or may be provided by the Contractor hereunder, and that it shall take all measures necessary to avoid any actions which may lead to cancellation or voidance of such insurance policies.
- (7) In the event that the Contractor fails or refuses to maintain or renew any insurance policy required to be maintained herein, or if such policy is cancelled or modified so that the insurance does not meet the requirements contained herein, the Authority may refuse to make payment of monies due under this Contract. The Authority in its sole discretion may use such monies to purchase insurance on behalf of the Contractor or Subcontractor, or it may default the Contractor and direct the Surety to complete the Project. During any period when the required insurance is not in effect, the Chief Engineer may suspend performance of the Contract. If the Contract is so suspended, no additional compensation or extension of time shall be due on account of such suspension. The Authority may waive or modify any insurance requirement set forth herein.
- (8) Due to future changes in economic, financial, risk and/or insurance market conditions the Authority at its discretion may modify the above insurance requirements.
- (9) NOTWITHSTANDING THAT MINIMUM AMOUNTS OF INSURANCE COVERAGE CARRIED OR REQUIRED TO BE CARRIED BY THE CONTRACTOR ARE SPECIFIED HEREIN, THE LIABILITY OF THE CONTRACTOR SHALL NOT BE LIMITED TO THE AMOUNTS SO SPECIFIED AND SHALL EXTEND TO ANY AND ALL LIABILITY IN EXCESS OF THE INSURANCE COVERAGES SO PROVIDED NOR SHALL THESE MINIMUM LIMITS PRECLUDE THE AUTHORITY FROM TAKING ANY ACTION AVAILABLE TO IT UNDER THE PROVISIONS OF THE CONTRACT OR OTHERWISE IN LAW.
- (10) Terms and Deductibles. The Contractor shall be responsible for any deductible or self-insured retention, exclusions or lack of coverage in the insurance policies described above. Any deductible or self-insured retention greater than \$5,000 per occurrence must be disclosed to and approved by the Authority. The Authority reserves the right to require than any deductible or self-insured retention be no greater than \$5,000 per occurrence.