

SPECIAL NOTICE – GIVE TO YOUR INSURANCE REPRESENTATIVE IMMEDIATELY

**** INSURANCE CERTIFICATE MUST BE COMPLETE AND RETURNED TO SANDAG WITHIN 10 DAYS OF CONTRACT AWARD ****

The bid specifications for this job contain requirements for insurance which must be met in full.

To be certain that your firm can comply with all requirements if you are the successful bidder, SANDAG has prepared the attached information kit, which should be given to your insurance representative immediately. **Please be sure to provide contract number on all insurance-related correspondence, including the insurance certificate itself.** Your bid should contemplate the cost of additional coverage, if necessary. **Evidence of all required coverages must be furnished to SANDAG before final SANDAG execution of the contract will be made.**

The insurance requirements kit contains:

- Excerpts from the bid specifications describing the scope of work and insurance requirements; and
- Samples of required endorsements.

If you or your insurance representatives have a question about the requirements, contact the SANDAG Project Manager.

SAMPLE ADDITIONAL INSURED ENDORSEMENT

It is hereby agreed and understood that the San Diego Association of Governments (SANDAG), Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego Transit Corporation (SDTC), and the San Diego and Arizona Eastern (SD&AE) Railway Company, their directors, officers, agents, and employees are named as additional insureds as respects services or operations of (name of contractor) under Contract No. _____.

Attached to and made a part of Policy No. _____ of the _____ Insurance Company.

SAMPLE PRIMARY COVERAGE STIPULATION

It is hereby agreed this insurance afforded by this policy is primary as respects to the San Diego Association of Governments (SANDAG), Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego Transit Corporation (SDTC), and/or the San Diego and Arizona Eastern (SD&AE) Railway Company, their directors, officers, agents, and employees, and that any other insurance available to SANDAG, et al, is excess and noncontributing.

Attached to and made a part of Policy No. _____ of the _____ Insurance Company.

SAMPLE CROSS LIABILITY CLAUSE

It is agreed that this insurance applies separately to each insured except with respect to the limits of liability. It is further agreed that the inclusion of more than one insured shall not act to increase the limits of the company's liability.

Attached to and made a part of Policy No. _____ of the _____ Insurance Company.

LTorio/Alsla
1210020.1, 1300602-INSREQMT-SANDAG-2008.CFINCH
8/02/10

BLUE LINE CROSSOVERS AND SIGNALS PROJECT
CIPs 1210020.1, 1300602 (IFB 5001460)

SECTION 4
SCOPE OF WORK

4-1.01 INTENT OF PLANS AND SPECIFICATIONS

The intent of the plans and specifications is to prescribe the details for the construction and completion of the Work which the Contractor undertakes to perform in accordance with the terms of the contract, including the manufacture and furnishing of all equipment and materials necessary for the construction and completion within the scope of this Work. Where the plans or specifications describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the Work involved in executing the Contract in a satisfactory and workmanlike manner.

The Work consists, in general, of, installing new special track work, railroad signaling system, railroad and highway grade crossing warning system, overhead catenary system (OCS), and related civil improvements along 15 miles of the San Diego Trolley Blue Line Corridor from downtown San Diego to San Ysidro and procuring all materials and performing all other work necessary to complete the Work in accordance with the Contract Plans and Special Provisions.

SECTION 7
LEGAL RELATIONS AND RESPONSIBILITY

7-1.12B INSURANCE

Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, his agents, representatives, employees or subcontractors. Prior to commencing work and within the timeframe otherwise provided for herein, Contractor shall furnish SANDAG with insurance policies or a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects SANDAG and all the entities listed in 7-1.12A, "Indemnification and Responsibility for Damage," its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by SANDAG, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

For the successful bidder, your endorsement and your insurance certificate should have the following language:

“For the Blue Line Crossovers and Signaling Project (CIP 1210020.1, Contract 5001460, the San Diego Association of Governments (SANDAG), Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego Transit Corporation (SDTC), San Diego and Arizona Eastern (SD&EA) Railway, and San Diego and Imperial Valley (SD&IV) Railroad, and the California Department of Transportation (Caltrans), their directors, officers, agents, and employees are named as additional insureds on a Primary basis which shall be excess and noncontributory. Contractor waives any rights of subrogation against SANDAG, MTS, SDTI, SDTC, SD&AE, SD&IV, and Caltrans.

Attached to and made a part of Policy No. _____ of the _____ Insurance Company.”

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) or Insurance Services Office Form (CG 00 09 11 88 Owners and Contractors Protective Liability Coverage Form - Coverage for Operations of Designated Contractor)..
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employers' Liability insurance.
4. Builder's Risk (Course of Construction) insurance covering all risks of loss less policy exclusions.
5. Surety bonds as described below.
6. Professional Liability (*if Design/Build – so NOT USED for this project*).
7. Contractors' Pollution Legal Liability and/or Asbestos Legal Liability (if project involves potential pollution issues)
8. Railroad Protective Liability (in the event any work performed is within 50' of the Railroad Right-of-Way.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- | | |
|---|---|
| 1. General Liability
(Including operations,
products and completed
operations) | \$5,000,000 per occurrence for bodily injury,
personal injury and property damage. If
Commercial General Liability Insurance or other
form with a general aggregate limit is used, The
general aggregate limit shall be at \$5,000,000 or
higher. |
| 2. Automobile Liability | \$2,000,000 per accident for bodily injury and
property damage. |
| 3. Workers' Compensation | As required by the State of California. |
| 4. Employers' Liability | \$1,000,000 each accident, \$1,000,000 policy
limit bodily injury by disease, \$1,000,000 each
employee bodily injury by disease. |
| 5. Builder's Risk –
Installation Floater | Completed value of the project with no
coinsurance penalty provisions. |
| 6. Professional Liability | NOT USED |
| 7. Contractors Pollution –
Asbestos Legal Liability | \$1,000,000 each occurrence / \$2,000,000
policy aggregate |
| 8. Railroad Protective
Liability | \$2,000,000 each occurrence / \$6,000,000
aggregate. |

A. Contract Requirements for General Insurance Provisions

1. Evidence of Insurance. Prior to commencing work, Contractor shall furnish SANDAG with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth.
2. All certificates shall provide for 30 days written notice to SANDAG and Property Owner prior to the cancellation or material change of any insurance referred to therein, or 10 days notice of cancellation for nonpayment of premium.
3. Each insurance company providing coverage shall, with the exception of the State Compensation Insurance Fund, have a minimum A.M. Best Rating of A:VII and be licensed to do business in the state of California. (See "J. Acceptability of Insurers," on the following page.)
4. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the certificate form's cancellation provision.

5. Failure of SANDAG to demand such certificate or other evidence of full compliance with these insurance requirements or failure of SANDAG to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
6. SANDAG shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by SANDAG.
7. If at any time during the life of the agreement the contractor fails to maintain in full force any insurance required by the agreement documents, SANDAG may terminate the agreement.
8. If contractor fails to maintain the insurance as set forth herein, SANDAG shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.
9. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to SANDAG whenever requested.
10. Contractor shall provide certified copies of all insurance policies required herein within 30 days of SANDAG's written request for said copies.")
11. No Representation of Coverage Adequacy. By requiring insurance herein, SANDAG does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to SANDAG in this Contract.
12. Cross-Liability Coverage. If Contractors' liability policies do not contain the standard ISO separation of insured's condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

B. Contract Requirements for Workers Compensation Insurance

1. Workers Compensation Insurance. Contractor shall maintain workers compensation and employers liability insurance.
2. Employers' Liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
3. Where applicable, the U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy.
4. Waiver of Subrogation. Contractor waives all rights against SANDAG, Property Owner, and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella liability insurance obtained by Contractor pursuant to this agreement. See sample waiver of subrogation language for the successful bidders insurance certificate under 7-1.12B above.

C. **Contract Requirements for Commercial Auto and Umbrella Liability Insurance**

SANDAG, its directors, officers, agents, and employees, and as applicable, MTS, and their directors, officers, agents, and employees, are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy. The endorsement shall also cover the following as insureds: SDTC, SDTI, SD&AE, SD&IV, and Caltrans.

1. Contractor shall maintain Business Auto Liability and, if necessary, Commercial Umbrella or Excess liability insurance with a limit of not less than \$2,000,000 each accident.
2. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
3. Waiver of Subrogation. Contractor waives all rights against SANDAG and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Agreement [or under any applicable auto physical damage coverage].
4. Business auto coverage shall be written on Insurance Services Office form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
5. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

D. **Contract Requirements for Commercial General Liability (CGL) and Umbrella Liability Insurance**

Contractor shall obtain insurance of the types and in the amounts described below.

1. Commercial General and Umbrella Liability Insurance. Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial excess or umbrella insurance with a limit of not less than \$5,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project.
2. CGL insurance shall be written on current Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent language) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

3. SANDAG, MTS, SDTI, SDTC, SD&AE, SD&IV, Caltrans, and Property Owner shall be included as an insured under the CGL, using ISO additional insured endorsements CG 20 10 and CG 20 37 or their equivalent, which endorsement shall include coverage for SANDAG with respect to liability arising out of the completed operations of Contractor, and which coverage shall be maintained in effect for the benefit of SANDAG, for a period of two (2) years following the final acceptance of the work specified in Section 7-1.12A of this Contract. Additional insured coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to SANDAG.
4. Waiver of Subrogation. Contractor waives all rights against SANDAG and Property Owner, and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement.
5. The CGL policy shall be endorsed to include professional liability coverage as least as broad as ISO form CG 22 80 07 98, or its equivalent.
6. Continuing Completed Operations Liability Insurance. Contractor shall maintain commercial general liability (CGL) in compliance with this Insurance section for at least two (2) years following Final Acceptance of the work.
7. With respects to the Commercial General Liability Insurance, the policy must also have Explosion, Collapse, and Underground (UCX) exclusion deleted.

E. Builder's Risk (Course of Construction) Insurance

1. Contractor may submit evidence of Builder's Risk insurance in the form of "Course of Construction" coverage. In either case, such coverage shall contain the following: SANDAG shall be named as loss payee.

If the scope of work does not involve new or major reconstruction (as defined by SANDAG), at the option of SANDAG, an "Installation Floater" will be acceptable to meet this requirement. For such projects, a property installation floater shall be obtained that provide for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the project site(s).
2. Contractor shall purchase and maintain in force until Final Completion and Acceptance of Work, a Builders Risk Policy, on an "all risk" basis, in an amount equal to the replacement cost of the completed Work.
3. Insured property shall include material or portions of the Work located away from the project site but intended for use at the project site, and shall also cover material or portions of the Work in transit.

4. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the project site. The policy shall cover the cost of removing debris, including demolition, as may be legally necessary by operation of any law, ordinance, or regulation.
5. The policy shall provide that all proceeds thereunder shall be payable [loss payee] to SANDAG and shall name SANDAG, MTS, SDTI, SDTC, SD&AE, SD&IV, Caltrans, and Affiliated Agencies (or any successors of the foregoing), Contractor, subcontractors, and suppliers of all tiers as named insured's.
6. SANDAG shall be entitled to one hundred percent (100 %) of its loss. Any portion of that loss not covered because of a deductible shall be paid to SANDAG by the Contractor at the same time the proceeds of the insurance are paid to SANDAG.
7. Waiver of Subrogation. The policy shall be endorsed to state that the insurer will waive all rights of subrogation against SANDAG, MTS, SDTI, SDTC, SD&AE, SD&IV, Caltrans, and Affiliated Agencies (or any successors of the foregoing), their governing bodies, elected officials, officers, agents and representatives for losses paid under the terms of the policy which arise from the work performed in accordance with the Contract.

F. Contractors Pollution Legal Liability Insurance

1. Contractor shall maintain in force, for the full period of this Contract, insurance covering losses caused by pollution conditions that arise from the operations of the Contractor described under the scope of services of this Contract, with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 policy aggregate. SANDAG and Property Owner shall be included as insureds under the Contractor's Pollution Liability Policy.
2. Insurance shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
3. The policy of insurance shall be endorsed to include as an insured SANDAG, its Board, agents, officers, and employees.
4. If General Liability, Contractor's Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:
 - A. The retroactive date must be shown, and must be before the date of the Contract or the beginning of contract work.
 - B. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract effective date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

5. If coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time that Work under the Contract is completed.
6. If the scope of services as defined in this Contract includes the disposal of any hazardous or non-hazardous materials from the job site, the Contractor must furnish to the Contractor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Contract.
7. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractor's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.
8. A copy of the claims reporting requirements must be submitted to SANDAG for review.

G. **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII and licensed to do business in the State of California, unless otherwise acceptable to SANDAG. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

H. **Verification of Coverage**

Contractor shall furnish SANDAG with certificates of insurance and endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by SANDAG before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

I. **Waiver of Subrogation**

Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of SANDAG and Property Owner for all work performed by the "Contractor," its employees, agents, and subcontractors.

J. **Railroad Protective Liability Insurance**

Contractor shall maintain railroad protective liability insurance on behalf of SANDAG, MTS, SDTI, SDTC, SD&AE, SD&IV, Caltrans, and affiliated agencies (or any successors of the foregoing) as named insured. The Railroad Protective Liability Insurance policy shall have limits of liability of not less than \$2,000,000 per occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. Additionally, Policy Endorsement CG 28 31 – Pollution Exclusion Amendment, is required to be endorsed onto the policy. A \$6,000,000 annual aggregate shall apply.

7-2.01.1 TITLE VI COMPLIANCE

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- A. **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- B. **Nondiscrimination.** The Contractor, with regard to the Work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive Bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color sex, age, or national origin.
- D. **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the recipient, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the recipient shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
 - 2. Cancellation, termination, or suspension of the contract, in whole or in part.
- F. **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs A through F of this Section 7-2.01.1 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Board or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Board to enter into such litigation to protect the interests of the

Board, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.