

### Section 7 Legal Relations and Responsibility to the Public

#### 3-701 Laws to Be Observed

- 3-701A Reporting Apparent Attempts at Fraud on Construction Contracts
- 3-701B Labor Code Requirements and Fair Labor Standards Act
- 3-701C Vehicle Code
- 3-701D Occupational Safety and Health Standards
  - 3-701D (1) Excavation Safety
  - 3-701D (2) Tunnel Safety
- 3-701E Falsework Erection or Removal

#### 3-702 Public Convenience

- 3-702A Convenience of the Public and Public Traffic
- 3-702B Maintenance of Passageway Through Construction

#### 3-703 Public Safety

- 3-703A Temporary Clearance and Bridge Permit Rating Changes
  - 3-703A (1) Temporary Vertical and Horizontal Clearance Changes
  - 3-703A (2) Temporary Bridge Permit Rating Changes
- 3-703B Permanent Clearance and Bridge Permit Rating Changes
  - 3-703B (1) Permanent Vertical and Horizontal Clearance Changes
  - 3-703B (2) Permanent Bridge Permit Rating Changes
  - 3-703B (3) Notification Procedure

#### 3-704 Indemnification and Insurance

- 3-704A Responsibilities
- 3-704B Evidence of Insurance
  - 3-704B (1) Actions Allowed by the *Standard Specifications*
- 3-704C Railroad Protective Insurance
  - 3-704C (1) Responsibility
  - 3-704C (2) Insurance Renewal

#### 3-705 Unsheltered Individuals Encampments

Example 3-7.1. Sample Notice of Contract Suspension of Work After Insurance Lapse Letter



### **Section 7 Legal Relations and Responsibility to the Public**

#### **3-701 Laws to Be Observed**

The contractor must be familiar with and comply with all laws, regulations, and ordinances that affect the labor, materials, and conduct of the work. However, the specifications do not intend or require that the resident engineer exercise police enforcement power. If the resident engineer learns that the contractor has violated a work-related law or regulation, the engineer must bring the matter to the contractor's attention in writing.

#### 3-701A Reporting Apparent Attempts at Fraud on Construction Contracts

Resident engineers are confronted occasionally with situations in which contractors or their subcontractors or suppliers attempt to obtain improper additional payment.

These matters may differ in magnitude and intent, and minor situations may be resolved satisfactorily at the project level. However, certain fraudulent acts, such as presenting false weighmaster certificates, padding the number of loads of a commodity delivered, tampering with scales, or falsifying test or inspection reports may require special investigation and appropriate action. Such investigations are confidential and begin with a discussion between the resident engineer and the construction engineer. To request a special investigation, write a letter to the Division of Construction field coordinator.

#### 3-701B Labor Code Requirements and Fair Labor Standards Act

For the resident engineer's duties with regard to California Labor Code requirements and the U.S. Fair Labor Standards Act, refer to Chapter 8, "Employment Practices," of this manual.

#### 3-701C Vehicle Code

In any areas open to public traffic within the project's limits, the contractor is not exempt from Vehicle Code requirements. Equipment that fails to comply with the Vehicle Code must not be operated on detours or any other roadway open to public traffic. Refer to Section 3-519B, "Load Limits," of this manual.

#### 3-701D Occupational Safety and Health Standards

The contractor must conform to all Department of Industrial Relations, Division of Occupational Safety and Health standards. Refer to Section 2-1, "Safety," of this manual for guidelines on administering the contract's safety requirements.

#### *3-701D (1) Excavation Safety*

Structure Construction's *Trenching and Shoring Manual* provides technical guidance for analyzing designs of trenching and shoring systems. It also contains information

regarding California's legal requirements for excavation safety. The *Trenching and Shoring Manual* is available at:

<https://dot.ca.gov/programs/engineering-services/manuals/sc-trenchingandshoring-manual>

### 3-701D (2) Tunnel Safety

The California Code of Regulations, Title 8, Subchapter 20, "Tunnel Safety Orders," establishes minimum safety standards for excavation, construction, alteration, repair, or demolition. The contract will describe tunnel locations and the information handout with it will describe the classification. However, the contractor's activities may also create work conditions that will fall under the tunnel safety orders that were not identified in the contract. Be aware of potential tunneling activities such as the following:

- Boring and jacking operations of pipes with an outside diameter of 30 inches or greater.
- Shafts where excavations are greater than 20 feet deep, the depth is at least twice its greatest cross-sectional dimension, and employees may enter the shaft or approach the shaft area. Cofferdams may fit this definition.

The regulations related to these activities are covered in detail at the California Department of Industrial Relations web site:

<http://www.dir.ca.gov/Title8/sub20.html>

Consult the district construction safety coordinator for guidance.

### 3-701E Falsework Erection or Removal

Detailed instructions for reviewing falsework for bridges or other major structures are contained in Structure Construction's *Falsework Manual*. When the erection or dismantling of falsework is over or adjacent to a traveled way, the resident engineer must do the following:

- Before the erection or removal of falsework, determine the exact method of operation the contractor proposes to use.
- If any possibility exists that a material or equipment failure or human error could endanger the public, make sure traffic is rerouted or temporarily stopped during critical portions of the erection and removal operations.

Normally, the contract will provide necessary detours or other restrictions, such as the time of day when certain operations may be performed. In the absence of specific contract requirements, require the contractor to take the necessary measures in accordance with Section 7-1.04, "Public Safety," of the *Standard Specifications*.

### **3-702 Public Convenience**

The following sections provide guidelines for enforcing the provisions in Section 7-1.03, “Public Convenience,” of the *Standard Specifications* and contain discussion of other topics related to the passage of public traffic through construction projects.

#### 3-702A Convenience of the Public and Public Traffic

The contractor has a contractual obligation to provide for the convenience of the public and public traffic. Section 7-1.03, “Public Convenience,” of the *Standard Specifications* requires that operations present the least possible obstruction and inconvenience to the public. The public consists of anyone passing through or affected by construction operations, including pedestrians and residents, as well as vehicular traffic.

Make sure that the contractor maintains safe and convenient access through and around work zones for bicyclists and pedestrians, including persons with disabilities. For guidance, refer to Section 2-216, “Pedestrian Facilities,” of this manual.

Make sure the contractor has made adequate provisions for public convenience when the specifications leave the manner of providing for convenience to the contractor’s discretion. Also, make sure the contractor does not unnecessarily delay or interfere with traffic for the contractor’s own benefit or convenience.

The “least possible obstruction and inconvenience” will always depend on judgment. What is permissible should be that which is accepted as good practice in the industry, complies with the specifications, and does not materially diminish the degree of convenience and free passage through the area that existed before construction. For example, do not accept a trench that lies adjacent to a traffic lane for the entire length of the project and that was excavated just to suit the contractor’s convenience. A length of trench sufficient to accommodate an orderly and efficient progression of operations is reasonable. Likewise, it is physically impossible to carry on a series of operations between an existing roadway and adjoining properties that have access to the roadway without temporarily disrupting the access. However, whether permanent or temporary, restore the access as soon as possible without waiting for the work to be completed past all the adjacent access points.

The intent of Section 7-1.03, “Public Convenience,” of the *Standard Specifications* is to support public convenience, not to minimize construction cost. Frequently, the contractor can achieve both through careful planning and skillful operation.

#### 3-702B Maintenance of Passageway Through Construction

Normally, paved detours will be provided for the passage of public traffic during construction. On low volume roads where the cost of detour construction is unreasonably high, the contract may provide for traffic to pass through the work during the grading and structural section operations. Section 7-1.03 “Public Convenience,” of the *Standard Specifications* assigns responsibility to the contractor to provide reasonably smooth and even surfaces for passage of public traffic through the work. Make sure the contractor constructs a temporary joint taper at the

specified slope when a drop-off between the existing pavement and paving or cold planing area at transverse joints cannot be avoided before opening to traffic.

### **3-703 Public Safety**

The contractor must bear all expenses associated with those devices primarily intended to protect traffic from hazards arising because of the contractor's operations. Typical items classified as public safety devices include barricades, signs, and lights placed to guard the public against damage. The contractor must protect the public from all potential hazards that may result from the construction activities including, but not limited to, falling rocks, falling trees, collision with equipment, whether idle or in operation, open trenches, and other excavations.

Some of the factors affecting public safety include the placement, movements, and actions of workers and equipment, the disposition of workers and the placement and handling of materials.

Under the specifications, the resident engineer can point out the contractor's failure to carry out any of the specification requirements. The specifications do not relieve the contractor of the cost of protecting the public simply because the engineer has or has not called attention to an unsafe situation.

#### **3-703A Temporary Clearance and Bridge Permit Rating Changes**

The following guidelines apply to situations where temporary changes occur in vertical or horizontal clearance for vehicular traffic or where temporary changes occur in bridge permit ratings. When providing notification of changes, use Forms TR-0019, "Notice Of Change In Clearance Or Bridge Weight Rating," for divided highways; TR-0020, "Notice of Change in Vertical Or Horizontal Clearance"; or TR-0029, "Notice Of Change In Clearance Or Bridge Weight Rating." The forms are available at:

<http://cefs2.dot.ca.gov/jsp/forms.jsp>

#### ***3-703A (1) Temporary Vertical and Horizontal Clearance Changes***

Whenever an operation will reduce clearances available to public traffic, the specifications require the contractor to notify the resident engineer at least 25 days and not more than 125 days before the anticipated start of an operation that will change the vertical or horizontal clearance available to public traffic, including shoulders. At least 15 days before implementing proposed changes in vertical clearances, horizontal clearances, or both, notify the Transportation Permits Branch of the proposed changes and their duration. If the clearance change is on a local jurisdiction roadway, notify the affected agency in writing at the same time.

#### ***3-703A (2) Temporary Bridge Permit Rating Changes***

Fifteen days before implementing proposed bridge permit rating changes, the structure representative must notify the resident engineer in writing and the bridge rating engineer of the proposed ratings and their duration. Use Forms TR-0019 or

TR-0029. The bridge rating engineer must then immediately notify the Transportation Permits Branch of any rating changes.

Within 3 days of rescinding the temporary bridge permit rating, the structure representative must notify the resident engineer in writing and the bridge rating engineer. The bridge rating engineer must then immediately notify the Transportation Permits Branch.

### **3-703B Permanent Clearance and Bridge Permit Rating Changes**

The following guidelines apply to situations where permanent changes occur in vertical or horizontal clearance for vehicular traffic or where permanent changes occur in bridge permit ratings.

#### ***3-703B (1) Permanent Vertical and Horizontal Clearance Changes***

Fifteen days before implementing proposed permanent vertical and horizontal clearance changes, the resident engineer must notify the Transportation Permits Branch of the proposed changes. Use Form TR-0019, TR-0020, or TR-0029. Also, to confirm the necessary information, the resident engineer must consult the Transportation Permits Branch before making field measurements.

#### ***3-703B (2) Permanent Bridge Permit Rating Changes***

Fifteen days before implementing proposed changes to the bridge permit rating, the structure representative must notify the resident engineer in writing and the bridge rating engineer of the proposed bridge permit ratings. Use Form TR-0019 or TR-0029. The bridge rating engineer must then immediately notify the Transportation Permits Branch of any rating changes.

#### ***3-703B (3) Notification Procedure***

Submit changes to be reported in accordance with the procedures listed to either the North Region or South Region construction liaison, maintenance liaison, or both, in the Transportation Permits Branch. The North Region liaison is responsible for districts 1, 2, 3, 4, 5, except San Luis Obispo and Santa Barbara Counties; 6, except Kern County; and 10. The South Region liaison is responsible for districts 5's San Luis Obispo and Santa Barbara Counties only, 6's Kern County only, and 7, 8, 9, 11, and 12.

The Transportation Permits Branch will, within 1 business day, send a fax to the resident engineer confirming receipt of the change.

### **3-704 Indemnification and Insurance**

The contractor's obligation for insurance is contained in various sections of the *Standard Specifications*. Section 3-1.07, "Insurance Policies," has provisions describing the types of insurance documents required. Section 3-1.18, "Contract Execution," requires the contractor to submit those insurance documents at the time the contract is executed. Section 7-1.05, "Indemnification," requires the contractor to

indemnify Caltrans and Section 7-1.06, "Insurance," requires the contractor to carry liability insurance without allowing it to lapse.

The contractor must also have railroad protective insurance when required by the contract. This topic is covered in Section 3-704C, "Railroad Protective Insurance," of this manual.

### 3-704A Responsibilities

The Division of Construction is responsible for reviewing, approving, and monitoring contractor insurance documents.

The Division of Construction sends a notice of insurance approval to the districts. Each district has a designated person responsible for notifying resident engineers about insurance-related matters. That person serves as the resident engineer's contact for all insurance issues. The resident engineer files insurance-related documents in the contract records.

For a contractor business name change submitted under Form CEM-1202A, "Contractor Action Request—Change of Name/Address," the Division of Construction will validate and approve insurance policies and contract bonds issued with the new business name. For additional information on Form CEM-1202A, refer to Section 3-506, "Assignment," of this manual. Send by email an electronic copy of the reviewed Form CEM-1202A (including all attachments and a copy of the original contract bonds) to the Division of Construction at [Orm.Insurance.Review@dot.ca.gov](mailto:Orm.Insurance.Review@dot.ca.gov).

### 3-704B Evidence of Insurance

The contractor may show evidence of insurance in two ways:

- A contractor may be pre-approved for insurance before bidding on a Caltrans contract. If a contractor is pre-approved, the Division of Construction will issue a certificate of pre-approved insurance valid until the next insurance policy expiration date. The Division of Construction has posted information and instructions for pre-approval of a contractor's insurance on its website at:  
<https://dot.ca.gov/programs/construction/insurance-pre-approval/>
- The contractor may bid on any Caltrans contract without first obtaining insurance. If the contractor is the apparent low bidder, it must submit the insurance documents to the Office Engineer as a condition of contract approval.

Confirm the contractor's required insurance does not lapse during the life of the project. If the contractor has not submitted the renewed insurance documents 10 days before expiration of its previous insurance, the Division of Construction will:

- Send a notice to the contractor of the failure to comply with the insurance requirements of the contract.
- Send a copy of the notice to the district's insurance contact and the deputy district director of Construction.



If the contractor has not submitted the renewed insurance documents 1 day before the expiration of the contractor's insurance, the Division of Construction sends a second notice to the district's insurance contact with a copy to the deputy district director for Construction and the Division of Construction's field coordinator.

### *3-704B (1) Actions Allowed by the Standard Specifications*

After consultation with the deputy district director for Construction and the Division of Construction field coordinator, take one or both of the following actions:

- Suspend the contractor's operations in accordance with Section 8-1.06, "Suspensions," of the *Standard Specifications* until the contractor submits the insurance documents and the Division of Construction approves them. Inform the contractor's surety in writing that the contractor has failed to maintain insurance as required by the contract and that the work has been suspended temporarily.
- Act in accordance with the provisions of Section 7-1.06H, "Enforcement," of the *Standard Specifications*, which allows Caltrans to maintain the required insurance coverage and withhold or charge the expense to the contractor or to terminate the contractor's control of the work in accordance with Section 8-1.13, "Contractor's Control Termination," of the *Standard Specifications*.

Example 3-7.1, "Notice of Contract Suspension of Work After Insurance Lapse Letter," in this section can be used for either or both of the previous actions.

### 3-704C Railroad Protective Insurance

State highway construction occasionally requires a contractor to work on or near a railroad's operating property. This varies from minor side encroachments to work involving the direct crossing of a railroad's tracks. The contract defines the relationships between Caltrans, the contractor, and the railroad.

When work must be performed on or near a railroad's operating properties, the contractor must provide insurance to assure the financial ability to meet legal liability for damage, and to cover the losses that a railroad might sustain because of the contractor's operations.

Requirements for railroad protective liability insurance vary depending on the railroad company involved. If the contract includes an agreement with a railroad company, Caltrans makes the provisions of the agreement available in the *Information Handout* in the document titled "Railroad Relations and Insurance Requirements."

The district railroad agreements coordinator within the Right of Way and Land Surveys Unit in the district is the point of contact for all railroad insurance issues. Before the contractor performs contract work that encroaches on the railroad's operating properties, the resident engineer must either receive a copy of the approved insurance documents from the contractor or district railroad agreements coordinator, or confirm with the district railroad agreements coordinator that the contractor has furnished railroad protective insurance.

For emergency contracts, obtain verbal release and authority to start work after the railroad has received all the insurance documents.

### *3-704C (1) Responsibility*

The resident engineer must confirm the specified insurance is in force at all times when work that requires such insurance is being performed.

Prohibit work that involves encroachment on railroad property by either a prime contractor or subcontractor until the following conditions are met:

- The railroad or the district railroad agreements coordinator advises the resident engineer that the contractor, subcontractor, or both, have furnished the specified insurance.
- The resident engineer receives a copy of the approved proof of insurance.

### *3-704C (2) Insurance Renewal*

The contractor's or subcontractor's obligation to renew the required railroad protective insurance before expiration is specified in the contract. The Division of Construction monitors the expiration of an approved railroad protective insurance. The Division of Construction will notify the district's insurance contact if the contractor fails to renew the railroad protective insurance.

If the contractor fails to renew the railroad protective insurance, suspend the operation related to the railroad operating property as stated in Section 3-704B (1), "Actions Allowed by the *Standard Specifications*," of this manual.

## **3-705 Unsheltered Individuals Encampments**

Caltrans is responsible for the initial removal and cleanup of unsheltered individuals' encampment areas within the right-of-way. The contractor is required to provide specified advanced notice of the need of such areas for performing the work. Upon notification, contact the Maintenance superintendent and arrange for the removal and cleanup of the areas. Maintenance uses a service contract for performing this specialized work and will be knowledgeable of the legal requirements as well as the health and safety precautions to be used. Once the area has been cleared, notify the contractor that they are responsible for maintaining the area. Actual expenses incurred by Caltrans for additional removal operations in areas previously cleared will be borne by the contractor.

If a requested area is unable to be initially cleared within the specified time, evaluate the delay's effect on the critical path and determine if a contract time adjustment is appropriate.

### Example 3-7.1. Sample Notice of Contract Suspension of Work After Insurance Lapse Letter

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF CONSTRUCTION

*[Resident Engineer's Address]*

*[City, CA ZIP]*

*[PHONE (Area Code) xxx-xxxx]*

*[FAX (Area Code) xxx-xxxx]*

TTY 711

www.dot.ca.gov



Making Conservation  
a California Way of Life.

Date: *[Month dd, yyyy]*

*[Name of Surety Company]*

*[Address]*

*[City, State ZIP]*

Subject: Notice of Contract Suspension of Work Because of Insurance Lapse

*[Contractor's Name]*

*[Contract Number/Project Description]*

Dear Surety:

This is to notify you that *[insert contractor's name]* has failed to maintain insurance on contract number *[insert contract EA and project description]* as required under Sections 7-1.05, "Indemnification," 7-1.06, "Insurance," or both, of the *Standard Specifications*. In accordance with Section 8-1.06, "Suspensions," of the *Standard Specifications* *[contractor's name]*'s operations on contract number *[insert contract EA]* are suspended effective *[effective date of temporary work suspension]*.

Your attention is directed to the provisions of Section 10253 of the Public Contract Code and to Section 8-1.13, "Contractor's Control Termination," of the *Standard Specifications* relating to the contractor's failure to comply with the insurance provisions of the contract. According to PCC Section 10253, unless the contractor submits proof of insurance as required by the contract, Caltrans may issue a 5-day notice to terminate the contractor's control.

You will be notified if the contractor provides the required proof of insurance before a notice to terminate the contractor's control of the work.

If you have questions, please contact me at *[(area code) xxx-xxxx]*.

Sincerely,

*[Name of resident engineer]*

Resident Engineer

c:

bc:

*"Provide a safe, sustainable, integrated and efficient transportation system"*