



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Washington, D.C. 20590

Subject: Contractor Furnished Liability Insurance

Date: MAR 18 1987

From: Associate Administrator for
Engineering and Program Development

Reply to
Attn of: HHO-32

To: Regional Federal Highway Administrators
Regions 1-10

We have had several inquiries and comments on our policy on liability insurance furnished by contractors. Our September 11, 1986, memorandum noted contractors should only be required to provide liability insurance coverage for operations performed by the contractor or his/her subcontractors. The contractor cannot be responsible for the conduct of State highway agency (SHA) employees since they are not under his/her control. Accordingly, the policy noted that in no instance should the contractor be required to furnish coverage for any act or omission, neglect or misconduct of SHA employees.

One commentor pointed out the need for the owner to be identified as an "additional named insured" in the contractor's insurance policy. The coverage would protect the owner from acts or omissions, neglect or misconduct of the "named insured" which is the contractor. It was not the intent of our September 11 policy statement to prohibit this type of coverage. This is consistent with the AASHTO Guide Specifications 107.14 which indemnifies the Department, officers, and employees from any act or omission, neglect or misconduct of the contractor. Contract specifications requiring insurance to protect the owner from acts of the contractor may continue to be used in Federal-aid highway projects with funding derived from the construction items of work.

Another SHA noted that they had required the contractor to provide insurance coverage for the acts of both the contractor and owner's personnel for a number of years. Federal-aid participation had knowingly been approved for a long period of time and they strongly objected to the retroactive determination of nonparticipation for ongoing projects. Further, they stressed it was more economical to have the contractor supply one all inclusive insurance policy rather than have the SHA furnish independent insurance for its employees.

Our January 15, 1987, memorandum addressed the retroactive aspects of Federal-aid participation. The critical determination of that memorandum was it continued to allow Federal-aid participation in projects approved prior to the September 11 policy statement. Although we continue to believe it is improper to require a contractor to provide insurance covering the acts of SHA employees, we are sympathetic to the cost argument. Accordingly, if an SHA chooses to require the contractors to provide coverage for acts or omissions, neglect or misconduct of SHA employees, we will allow these provisions in Federal-aid contracts. However, the costs of this portion of the insurance coverage will be nonparticipating unless it can be demonstrated to the Division Administrator that no additional costs to the project would be incurred.


Rex C. Leathers

Cancelled