

107 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.1 LAWS TO BE OBSERVED

a. Observe and comply with all laws. Laws include Federal law, State law, Municipal law, Federal regulations, State regulations, Municipal ordinances, codes, and orders and decrees of courts, boards, or other tribunals having authority over the subject matter involved.

b. Protect KDOT and any LPA's from liability and indemnify these entities for damages caused by or fines levied for the Contractor's, subcontractors', or suppliers' violation of the law.

c. Immediately notify the Engineer of inconsistencies (ambiguities) between a law and the contract.

107.2 PERMITS, LICENSES, AND TAXES

a. Obtain all permits and licenses necessary to perform the work unless the Contract Documents state KDOT will obtain the permit or license.

(1) Contact KDOT's Bureau of Design, Environmental Services Section, for information regarding necessary environmental permits.

(2) Sources of permits include the U.S. Army Corps of Engineers (Corps), Kansas Department of Health and Environment (KDHE), Kansas State Board of Agriculture Division of Water Resources (DWR), Kansas Wildlife and Parks (KWP) and other governing authorities.

(3) Comply with all permit conditions and restrictions imposed by governing authorities.

b. Permits for Work in Waterways. If the Contractor's method of operation requires placing material in a waterway, obtain both a Corps' Section 404 permit and a KDHE 401 Certification (applicable when water flow exceeds 5 c.f./sec).

c. Railroad Permits. Secure from the Railroad Company any permit, license, right-of-way easement, or right-of-access the Railroad Company requires for:

- constructing temporary crossings upon or over railroad right-of-way, tracks, or property; or
- using or traveling across railroad right-of-way, tracks, or property.

d. KDOT Obtained Permits. KDOT will obtain the U.S. Army Corps of Engineers' permit for design activity. Review any permit KDOT obtains at the District Office in which the project is located or at the Bureau of Construction and Maintenance.

e. KDOT Provided Permits. Obtain a permit from the District Engineer if the Contractor needs an opening in the highway or right-of-way. See **subsection 104.14** for further obligations involving Third Party permits.

f. Notice and Timeliness. Request permits and licenses in a manner that prevents project completion delays. Assume responsibility for delays of 30 calendar days or less in obtaining a permit or license. The 30 calendar day period begins on the date the Contractor submits an accurate, completed permit/license application or the date the Contractor submits a written request if a permit/license application is not required. Assume responsibility for delays in obtaining permits and licenses outside the 30 calendar day period specified if the additional delay was caused by the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof.

g. Expenses. Pay all permit fees, license fees, charges, and taxes necessary to perform the work.

107.3 PATENTED DEVICES, MATERIALS, AND PROCESSES

Enter into all legal agreements necessary to use patented or copyrighted designs, devices, materials, processes, or trademarks. Protect KDOT, political subdivisions, and third parties from liability and indemnify

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KDOT, political subdivisions, and third parties for expenses these entities incur, damages these entities pay, or both for patent or copyright infringements. Assume this liability and pay these expenses and damages whether sought during construction or after project completion. Make sure subcontractors at any tier and suppliers at any tier comply with the same requirements.

107.4 FEDERAL AID PROVISIONS

If a project contains Federal aid funds, comply with all Federal laws, regulations, policies, and federally required contract provisions that are necessary for KDOT, LPA's, or both to receive Federal funding. These Federal laws, regulations, policies, and required contract provisions control over State laws, State regulations, Local ordinances, and codes.

The FHWA or other appropriate Federal agency may inspect and approve the work. This authority does not make the U.S. Government a party to the contract.

107.5 PROVIDING RIGHT-OF-WAY

The Secretary will secure all necessary rights-of-way before construction begins unless the Contract Documents identify a delay in obtaining the rights-of-way.

107.6 EMPLOYEE SAFETY

Make sure no Contractor employees or subcontractor employees are working in unsanitary, unsafe, or hazardous conditions. Provide all safety equipment and materials and take all other action the law, the contract, and the Engineer require to provide a sanitary, safe, and non-hazardous work environment. Admit to the work site and comply with the directions of OSHA inspectors, KDHE inspectors, or other regulatory agency inspectors involved with the project. Nothing in this provision forces the Contractor to waive the right to demand that regulatory agency inspectors have an appropriate warrant if State or Federal law permits or requires a warrant. Admit to the work site KDOT safety personnel and KDOT environmental personnel, who will make any recommendations through the Field Engineer.

107.7 PUBLIC SAFETY

Public safety is critical. Move traffic safely through construction. Move traffic with the least, minimal traffic obstructions. Provide safe ingress and egress for residents living within the project limits. Provide temporary surfacing, when required. Maintain the roadway according to the Contract Documents. See **subsection 104.16**.

Where practical, store vehicles, construction equipment, materials, tools, and debris either off the right-of-way or a minimum of 30 feet from the traveled way. If the Engineer approves storage of an item(s) within 30 feet of the traveled way, place appropriate signs, safety barriers, barricades, or a combination thereof around the item(s). Assume the costs of such devices.

107.8 STORING AND USING EXPLOSIVES

a. General. Store and use explosives safely, protecting against damage to life, property, and the project. Assume liability for bodily injury damage and third party property damage caused by negligently storing or using explosives. Assume liability for Contractor's property damage and damage to the project caused by storing or using explosives.

b. Storage. Store explosives a minimum of 1,000 feet from the traveled way, 1,000 feet from a place of human occupancy, or 1,000 feet from both unless the law requires a greater restriction. Follow the requirements of OSHA and other authorized, regulatory agencies, if any, in securing and marking stored explosives.

c. Use. Notify property owners and utility owners of intended explosives use in their property's vicinity. Notify railroads of intended explosives use if such use is within 200 feet of railroad tracks, railroad structures, or both. Provide this notice in advance of blasting, allowing these owners a reasonable time to monitor and protect their property. Include in the notice the date, time, and approximate duration of blasting operations.

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107.9 PROTECTING PROPERTY, LANDSCAPE, AND THE ENVIRONMENT

a. Protect public and private property from damage until final acceptance. Install temporary fence if the Contractor's operations require temporary fence to protect adjacent property, animals, or both.

b. Disturb no land monuments or property marks before the Engineer or Contractor (whichever is responsible) verifies the location of these markers.

c. Cease construction operations upon encountering historical or archaeological artifacts. The Engineer will determine whether to suspend operations until third parties are able to extract the artifacts or the Contractor has approval to excavate the site. The Engineer may allow work to continue in other project locations.

d. Prevent and avoid pollution and wildlife interference.

(1) Locate and protect all temporary storage facilities for petroleum products, other fuels, and chemicals to prevent accidental spills from entering streams, lakes, ponds, rivers, and reservoirs (water body) within the project area. In 24 hours, clean up all such spills located within 1,500 feet of any water body.

(2) Do not dispose of the following on any land within the project limits, in any water body, in any wetlands, or in any location in which runoff, flood, wind, or other natural forces could result in environmental pollution: cement sweepings, concrete washings, concrete wash water from concrete trucks and other concrete mixing equipment, treatment chemicals, grouting and other bonding materials, construction debris, or other waste materials.

(3) Protect wetlands in the project vicinity from all activities that may result in draining or filling in wetlands.

(4) Use clean uncontaminated materials for fill to minimize excessive turbidity by leaching of fines and to preclude the entrance of deleterious and toxic materials into any water body by natural runoff or by leaching.

(5) Outside the immediate area of operation, excavate, dredge and fill in the water course to minimize increases in suspended solids and turbidity.

(6) During every phase of the project, immediately remove and properly dispose of all debris to prevent the accumulation of unsightly, harmful, and toxic materials in or near any water body.

e. **Erosion Control.** Prevent erosion on the project and project related borrow areas according to **SECTION 901**. Use KDOT's Temporary Erosion Control Manual as a guide for the design, installation, and maintenance of temporary erosion control measures.

107.10 LIABILITY FOR BODILY INJURY AND PROPERTY DAMAGE CLAIMS; INSURANCE REQUIREMENTS

a. **Bodily Injury Claims.** Assume liability for bodily injury (including death) arising out of negligent acts or omissions that are:

- associated with the contract; and
- caused by the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof.

b. **Property Damage Claims (other than damage to the project/work itself).** Assume liability for property damages (including loss of use resulting from property damage) arising out of negligent acts or omissions that are associated with the contract and caused by the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof. Restore damaged property to a condition similar or equal to that condition existing before the damage, pay to restore the damaged property to that condition, or pay to replace the damaged property.

(1) If government property, the Engineer will determine whether the Contractor's restoration sufficiently corrected the damage.

(2) If private property, the property owner will determine whether the Contractor's restoration sufficiently corrected the damage. After restoring damaged property or paying for damaged property as required, obtain a release from the property owner and submit the release to the Engineer. The Engineer will not issue final acceptance until the Contractor has obtained and submitted the required release unless the property owner acts unreasonably in refusing to issue a release.

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(3) See **subsection 104.20** for the Contractor's liability for damage to the work/project. Although the property damage claims and related insurance requirements of **subsection 107.10** do not encompass damage to the project, the Contractor is responsible for project damage under **subsection 104.20**.

c. Required Insurance Coverage and Limits.

(1) "Commercial General Liability" insurance in an amount a minimum of \$1,000,000 each occurrence, \$2,000,000 aggregate for bodily injury and property damage combined, and \$2,000,000 aggregate for products and completed operations. The Secretary may increase these limits or require an umbrella policy on specific projects. As a minimum, the Commercial General Liability Policy shall contain the following coverages:

- Premises and Operations;
- XCU (explosion, collapse, and underground hazards);
- Products and Completed Operations; and
- Contractual Liability (for the Contractor's indemnification obligations).

(2) "Automobile Liability" insurance in an amount a minimum of \$1,000,000 each occurrence for bodily injury and property damage combined and that covers Owned, Hired, and Non-Owned vehicles.

(3) "Worker's Compensation" and "Employer's Liability" insurance that complies with K.S.A. 44-532, related statutes, and amendments thereto.

d. General Insurance Requirements.

(1) Certificates of Insurance. Before signing the contract, provide to the Secretary Certificates of Insurance showing the Contractor carries insurance in the amounts and type this **subsection 107.10** requires and showing the effective and expiration dates of such insurance. Such certificates shall provide the insurance company endeavor to give KDOT, any LPA, or both thirty days notice of policy cancellation, policy non-renewal, or a material change in the policy. At the Engineer's request, submit copies of the Contractor's insurance policies.

(2) Authorized Insurers and Approved Forms. Obtain insurance only from insurers authorized to transact insurance business in Kansas as an authorized insurer (admitted insurers). For general liability, see K.S.A. 40-214. For automobile liability insurance, see K.S.A. 40-3103. For worker compensation insurance, see K.S.A. 44-532. If unable to obtain an admitted insurer under K.S.A. 40-214, request the Secretary's permission to use a non-admitted insurer authorized to write excess surplus lines coverage under K.S.A. 40-246e. Be prepared to demonstrate to the Secretary and Kansas Insurance Commission why the Contractor was unable to use an admitted carrier as required by State statute. Use only forms that the Kansas Insurance Commission has approved unless the Secretary has given permission to use a non-admitted insurer under K.S.A. 40-246e. Include any endorsements the Kansas Insurance Commission requires.

(3) Duration. Obtain and maintain all insurances this **subsection 107.10** requires until KDOT issues Notice of Acceptance of Contract under **subsection 105.16b**. Make sure Commercial General Liability Insurance coverage extends to claims made after Notice of Acceptance and before any applicable statute of limitations expires.

e. Subcontractors and Independent Contractors. Make sure subcontractors at any tier (including construction surveyors, materials testing services, or other service type providers) and independent contractors obtain and maintain the insurance this **subsection 107.10** requires. At the Engineer's request, submit copies of such subcontractors' and independent contractors' certificates of insurance or insurance policies.

107.11 LIABILITY FOR RAILROAD CLAIMS; RAILROAD INSURANCE REQUIREMENTS

a. Protect the Railroad from and assume liability for bodily injury (including death) to railroad workers and railroad passengers arising out of negligent acts or omissions that are associated with the contract and caused by the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof.

b. Protect the Railroad from and assume liability for damage to railroad property and railroad right-of-way (including loss of use resulting from property damage) arising out of negligent acts or omissions that are associated with the contract and caused by the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof.

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c. Obtain a Railroad Protective Liability Insurance Policy (Policy) for the Railroad on projects involving work at railroad crossings, work adjacent to railroad right-of-way, or work within 50 feet of the centerline of a railroad track. Comply with the following:

(1) Policy Limits. For each annual period, an amount of \$2,000,000 each occurrence and \$6,000,000 aggregate for bodily injury (including death), property damage, and physical damage to property combined.

(2) Policy Coverage. Contact the Railroad for those forms, endorsements, and exclusions the Railroad requires. If unable to comply with the Railroad's requirements, notify the Assistant Bureau Chief of Construction and Maintenance, Kansas Department of Transportation, Topeka, Kansas.

(3) Authorized insurers and Approved Forms. Obtain the Policy only from insurers authorized to transact insurance business in Kansas as an authorized insurer under K.S.A. 40-214. If unable to obtain an authorized, general liability insurer under K.S.A. 40-214, request the Secretary's permission to use a non-admitted insurer authorized to write excess lines coverage under K.S.A. 40-246e. Use only forms that the Kansas Insurance Commission has approved unless the Secretary has given approval to use a non-admitted insurer under K.S.A. 40-246e. Include any endorsements the Kansas Insurance Commission requires.

(4) Duration. Maintain the Policy **subsection 107.11** requires until KDOT issues final acceptance under **subsection 105.16b**. unless the Railroad and Secretary approve cancellation of the Policy before final acceptance.

(5) Subcontractors. If any work is sublet, make sure subcontractors at any tier provide similar insurance for the Railroad Company to cover the subcontractor's operations.

d. Policy Submittal and Approval.

- Provide the Bureau Chief of Construction and Maintenance, Kansas Department of Transportation, Topeka, Kansas, the original and 1 copy (Original for Carrier, copy for KDOT) of the Railroad Protective Liability Insurance Policy (Policy) on the Railroad Company's behalf;
- Submit the Policy within 15 calendar days after receiving notice of award of the contract. Obtain Railroad approval of the Policy before beginning construction on or near the railroad or railroad right-of-way. The Railroad Company approves the Policy, including coverage provided and the underwriter. (The Railroad typically requires 30 business days to issue its Policy approval.);
- The Engineer may delay issuing the Notice to Proceed until the Contractor has obtained the railroad's approval of the Policy. Alternatively, if the Contractor has submitted the Policy to KDOT, the Engineer may issue the Notice to Proceed, restricting the Contractor's operations to locations outside the railroad right-of-way until the railroad has approved the Policy; and
- Assume the risk of delays in submitting the Policy. Assume responsibility for delays of 45 calendar days or less in obtaining the Railroad's approval. The 45 calendar day period begins on the date the Contractor submits the policy to KDOT. Assume responsibility for delays in obtaining the Railroad's approval outside the 45 calendar day period specified if the additional delay was caused by the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof. NOTE: Railroad permits are subject to **subsection 107.2c**.

e. **Sample Form**. If desired, request from the Assistant Bureau Chief of Construction and Maintenance, Kansas Department of Transportation, Topeka, Kansas, a sample Standard Form Railroad Protective Liability Policy.

107.12 INDEMNIFICATION

a. Defend KDOT and any LPA and hold KDOT and any LPA harmless from personal injury claims, property damage claims (other than damage to the project-work itself), and associated expenses (including attorney's fees and defense costs) that are associated with the contract and that are caused by the negligent acts or omissions of the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof. If KDOT, the LPA, or both defend against a personal injury claim or property damage claim (other than damage to the project-work itself), indemnify KDOT, the LPA, or both for expenses they incurred (including attorney's fees and defense costs), amounts they paid (including interest), or both but only if the claim was associated with the contract and only to the extent caused by the negligent acts or omissions of the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof. The fact that KDOT, any LPA, or both share liability with the Contractor does not release the Contractor's obligations to defend, hold harmless, and indemnify KDOT, any LPA, or both; however, the

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Contractor's obligation to indemnify does not include that part of the claim (including that share of expenses) caused by the negligent acts or omissions of KDOT, the LPA, or both.

b. If the agreement between KDOT and any Railroad requires it, defend the Railroad and hold the Railroad harmless from personal injury claims, property damage claims, and associated expenses (including attorney's fees and defense costs) that are associated with the contract and that are caused by the negligent acts or omissions of the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof. If the Railroad defends against a personal injury claim or property damage claim, indemnify the Railroad for expenses the Railroad incurred (including attorney's fees and defense costs), amounts the Railroad paid (including interest), or both but only if the claim was associated with the contract and only to the extent caused by the negligent acts or omissions of the Contractor, the Contractor's agents, independent contractors, subcontractors at any tier, suppliers at any tier, or a combination thereof. The fact that the Railroad shares liability with the Contractor does not release the Contractor's obligations to defend, hold harmless, and indemnify the Railroad; however, the Contractor's obligation to indemnify does not include that part of the claim (including that share of expenses) caused by the negligent acts or omissions of the Railroad.

c. The indemnification obligations in **subsections 107.12a.** and **b.** do not affect other indemnification rights or obligations that may exist as to a party or person described in **subsection 107.12.**

107.13 UNKNOWN HAZARDOUS MATERIALS

Upon encountering unknown hazardous materials or unknown potentially hazardous materials, immediately:

- stop work within the contaminated or potentially contaminated area;
- remove workers from the contaminated or potentially contaminated area;
- exercise extreme caution at all times;
- notify the Engineer; and
- continue working on other unaffected areas unless the Engineer prohibits such work.

With KDHE and possibly other environmental agencies, the Secretary and any LPA will identify the hazardous materials and form a cleanup plan for the hazardous materials. The Secretary and any LPA will arrange for a third party to perform the cleanup. The Secretary will treat the discovery and cleanup of unknown hazardous materials as a differing site condition under **subsection 104.5.**

Nothing in **subsection 107.13** limits the Contractor's responsibility for cleaning up, at the Contractor's expense, known hazardous or potentially hazardous materials, including those materials identified in the Contract Documents and those materials the Contractor brings to the project.

107.14 LIABILITY OF PUBLIC OFFICIALS

a. The Secretary's authorized representatives assume no personal or other liability in exercising their contractual authority. They act only as the Secretary's employees or agents.

b. The LPA's authorized representatives assume no personal or other liability in exercising their contractual authority. They act only as the LPA's employees or agents.

107.15 LPA's AND OTHER THIRD PARTY OWNERS

The Secretary is the principal contracting party on construction contracts for the State highway system as defined by K.S.A. 68-406.

The Secretary is the agent on construction contracts entered into on behalf of disclosed principals such as counties, cities, political subdivisions, or other authorized persons, firms, or corporations.

These LPA's and other third parties have the right to:

- enter the property;
- inspect and approve work; and
- along with KDOT, accept the project.

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The Agreement(s) made between the Secretary and a disclosed principal(s) on a project is incorporated by reference into the construction contract for the project. The Secretary will provide a copy of any Agreement upon request.

107.16 THIRD PARTY BENEFICIARY

Except as provided in **subsection 105.12** and **subsection 107.12**, the parties do not intend to confer third party beneficiary rights on any person or entity that is not a party to this contract.

Respecting third parties, the parties to this contract have only the duties, obligations, and responsibilities the law imposes.