



Rail Owner Controlled Insurance Program Manual

Addendum No. 4 to June 2013 Edition (Updated 08-21-17)

**Update to Section 5 – *Enrolled and Excluded Contractor
Required Coverage for Package ‘P’ Contract***

Package ‘P’ Enrolled and Excluded Contractor Required Coverage

Contractors and all subcontractors are required to obtain and maintain insurance coverage to protect against losses that occur off-site or are otherwise not covered under the RAIL OCIP.

Contractors and subcontractors are required to obtain and maintain insurance coverage for the duration of the Contract that protects the Airports Authority from liabilities. These liabilities may arise from the Contractor’s and subcontractor’s operations performed off-site, from coverages not provided by the RAIL OCIP, or from operations performed by Excluded Parties. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. The RAIL OCIP places Contractors and subcontractors into one of two main categories: Enrolled Parties or Excluded Parties.

Contractor Maintained Coverages

See Section 8 for samples of Certificates of Insurance.

Automobile Liability (Enrolled & Excluded)

	<u>Limits of Liability</u>
Combined Single Limit	\$ 1,000,000
Bodily Injury and Property Damage	
<ul style="list-style-type: none"> • Commercial Business Auto Policy covering all owned, non-owned and hired automobiles, trucks, and trailers. • Coverage will apply for both <i>On-Site</i> and <i>off-site</i> activities. 	

Workers’ Compensation and Employer’s Liability (Enrolled & Excluded)

Part One – Statutory Limit for the Commonwealth of Virginia Including Federal Employers Liability Act & Maritime coverage, if appropriate.

Part Two –

	<u>Employer’s Liability Limits</u>
Annual Limits	
Bodily Injury by Accident, each Accident:	\$ 1,000,000
Bodily Injury by Disease, each employee:	\$ 1,000,000
Bodily Injury by Disease, policy limit:	\$ 1,000,000

Commercial General Liability (Enrolled & Excluded)

	<u>Limits of Liability</u>
Each Occurrence Limit	\$ 1,000,000
General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal/Advertising Injury Aggregate	\$ 1,000,000
Products/Completed Operations Extension	To the applicable statute of limitations

- Coverage must be in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy “Occurrence Form” and applies to bodily injury and property damage for operations (including explosion, collapse and underground coverage), independent contractors, products and completed operations.
- General Aggregate will reinstate annually and defense expenses are in addition to the limits of liability.

Umbrella Liability (Enrolled)

	<u>Limits of Liability</u>
Each Occurrence Limit	\$ 1,000,000
General Aggregate	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 1,000,000

- Coverage must be on an Occurrence form and applies to bodily injury and property damage for operations (including explosion, collapse and underground coverage), independent contractors, products and completed operations for off-site activities or operations not insured under RAIL OCIP Coverages.
- Umbrella policies must schedule Employers Liability and Commercial Automobile Liability as underlying policies.

Umbrella Liability (Excluded)

TIER 1 – For contracts with total values up to \$1,000,000 – including all change orders, the following limits will be supplied:

	<u>Limits of Liability</u>
Each Occurrence Limit	\$ 1,000,000
General Aggregate	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 1,000,000

TIER 2 – For contracts with total values in excess of \$1,000,000 – including all change orders, the following limits will be supplied:

	<u>Limits of Liability</u>
Each Occurrence Limit	\$ 5,000,000
General Aggregate	\$ 5,000,000
Products/Completed Operations Aggregate	\$ 5,000,000

Once the total contract value falls into a higher tier due to change orders, the higher tier requirements will automatically apply to the Subcontractors.

Once the total contract value falls into a higher tier due to change orders, the higher tier requirements will automatically apply to the Contractor.

Exceptions will be at the discretion of Owner, but in no event will a limit less than \$2,000,000 be considered or accepted.

The following limits apply to Contractor only:

	<u>Limits of Liability</u>
Each Occurrence Limit	\$ 10,000,000
General Aggregate	\$ 10,000,000
Products/Completed Operations Aggregate	\$ 10,000,000

Aviation and/or Watercraft Liability and/or Marine Cargo (Enrolled & Excluded)

- If required by Owner, Aviation and/or Watercraft Liability and/or Marine Cargo Insurance, in form and with limits of liability and from an insuring entity reasonably satisfactory to the Owner.
- If this Insurance is required by Owner, premiums will be a reimbursable cost to Contractor subject to Owner’s approval of an itemized cost breakdown.

Equipment Insurance (Enrolled & Excluded)

- Contractors and subcontractors must provide their own insurance covering all risk of physical damage to equipment provided for use at the Site by the Contractor and Subcontractor.
- Contractor and Subcontractor agree to waive and do hereby waive their rights of recovery against Owner, Contractor and other Subcontractors as to any damage or loss which may occur to its equipment. Subcontractor will have its insurance company specifically agree to this waiver.
- Self-insurance may be allowed subject to the approval of Owner.

The RAIL OCIP **does not** provide coverage for Contractors’ and subcontractors’ personal property.

Professional Liability for Contractors Only (Enrolled & Excluded)

Limit	<u>Limit of Liability</u>
	\$ 10,000,000

- In the case where Contractor is not performing design Work, this coverage can be fully provided by the subcontracted lead Design Professional, or, in the alternative, this coverage can be provided through the combination of a professional liability policy provided by the subcontracted lead Design Professional and a Contractor’s Protective Professional Indemnity (or similar) policy provided by Contractor.
- Coverage can be provided either on a Project-specific basis or with a practice policy and must contain a 5 year extended reporting period to the extent commercially available.

Builder's Risk (Enrolled & Excluded)

The Contractor shall provide a Builders' Risk Insurance policy from the Notice to Proceed until the Owner delivers the Final Acceptance Certificate covering all risk of direct physical loss or damage to property of every kind and description intended to become a permanent part of, or consumed in, the fabrication, assembly, installation, erection or alteration of the Project. The coverage limit shall be the Probable Maximum Loss (PML) that the Contractor determines for the Project, including the value of any Equipment and Materials, including Equipment and Materials that may be in storage (on or off the Site) or via inland transit (on any one conveyance). Such policy shall cover the value of the Work performed, as well as the value of any Equipment and Materials that may be in storage (on or off the site) or in transit (on any one conveyance). The policy shall cover the cost of removing debris, including demolition, as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented structures used to facilitate the Work and property of the Owner held in its care, custody and/or control. Such policy shall provide that, upon achievement of Substantial Completion, the Occupancy Clause in such policy is deleted and a Permission to Occupy endorsement is added. Such policy will cover the Contractor, as named insured, Owner, Owner Indemnitees and all Subcontractors performing On-Site Work and other eligible parties as additional named insureds as respects their On-Site activities. In addition, the Builders' Risk policy shall contain coverage provisions or endorsements that provide for the following:

- Earthquake, Flood and Windstorm, with a sub-limit equal to the greater of \$25,000,000 or the PML;
- Pollutant Clean-up with a minimum sub-limit of \$2,500,000;
- Expediting Expenses with a minimum sub-limit of \$2,500,000;
- Professional Fees with a minimum sub-limit of \$1,000,000;
- Debris removal sub-limit shall be a minimum of \$10,000,000 or 20% of the PML, whichever is higher;
- The Owner and the Contractor shall be named as loss payee for the Work in order of precedence as their interest may appear;
- In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the Insurance Company;

- Testing, Commissioning and Start-up;
- Waiver of Subrogation against all insureds;
- Coverage for resulting damage from error in design, defect in material or faulty workmanship equivalent to LEG 3;
- Contractor is responsible for payment of any deductible or self insured retention until Substantial Completion;
- Owner will reimburse Contractor for any deductible, not to exceed \$100,000 per occurrence, required to be paid under the Builder’s Risk policy following Substantial Completion, provided any such claim is not due to the negligence of a Contractor-Related Party;
- DSU may be required at a limit to be determined by Owner; and premium will be reimbursed to Contractor; and
- Terrorism is to be included.

Contractor is to provide copies of quotations with premiums redacted and any applicable specimen policy forms to Owner thirty (30) days prior to Notice to Proceed and prior to policy being bound. Owner has the right to request amendments. If amendments result in additional premium, they will be reimbursed to Contractor.

Verification of Required Coverages

All Contractors shall provide a valid and properly executed certificate of insurance citing the coverage required for Enrolled Contractors and Excluded Contractors to the Airports Authority RAIL OCIP Administrator prior to mobilization and not less than thirty (30) days prior to expiration date of each insurance policy. Certificates of insurance shall also be provided within five (5) business days of Airports Authority’s or the Airports Authority RAIL OCIP Administrator’s request.

A sample of an acceptable certificate of insurance is provided in Section 8 (Forms). Please note that required insurance coverages must include additional insured and waivers of subrogation as noted herein and in Exhibit 22.1.1(a).

All policies must be issued by companies authorized to do business in the Commonwealth of Virginia and having a current policyholder’s management and financial size category rating of not less than “A- VII” according to AM Best’s Insurance Reports Key Rating Guide (except for policies issued by Lloyds of London and approved foreign companies acceptable to the Commonwealth of Virginia and approved in writing by Owner), or of recognized financial responsibility and

Failure of any Enrolled Contractor or any Excluded Contractor to file the required certificates of insurance will not relieve such party of its responsibility to carry and maintain such insurance.

otherwise agreed by the parties and approved in writing by Owner.

The Contracting Officer, Contracting Officer's Technical Representative, Risk Management Department staff, and RAIL OCIP Safety Consultant have the right to stop work or prevent any non-enrolled Contractor or subcontractor of any tier from entering the Site until the Contractor's certificate has been filed. Denial of Site access for this reason will not be accepted as the basis for a delay claim.

Note the contractual requirement that all Enrolled and Excluded Parties' policies cannot be cancelled, suspended or lapsed without 30 day prior written notice provided to Airports Authority by registered or certified mail.

The limits of liability shown for the insurance required of the Contractors are minimum limits only and are not intended to restrict the liability imposed on the Contractors for work performed under their Contract.

If a Contractor is terminated under the RAIL OCIP after Substantial Completion, but remains On-Site for non-RAIL OCIP site work, the Contractor will be considered "Excluded" and must provide the tiered coverage enumerated herein for Excluded Parties. Any exceptions will be at the sole discretion of the Airports Authority's Risk Manager.

See Section 8 for samples of Certificates of Insurance.

Enrolled Parties

Enrolled Parties are to provide evidence as per the insurance specifications in Exhibit 22.1.1(a) Sections 1.7 ("Contractor's OCIP Obligations") and 1.8 ("Additional Insurance Required From Enrolled Parties and Excluded Parties"):

- General Liability and Excess/Umbrella Liability insurance for only *off-site activities*;
- Automobile Liability insurance for **both** *On-Site* and *off-site* activities; and
- Workers' Compensation & Employers Liability for **both** *On-Site* and *off-site* activities.

Excluded Parties

Excluded Parties are to provide to the Rail OCIP Administrator evidence of Workers' Compensation & Employers Liability, General Liability, Excess/Umbrella Liability and Automobile Liability insurance for all activities including **both** *On-Site* and *off-site* activities as per the insurance specifications in Exhibit 22.1.1(a) Section 1.8 ("Additional Insurance Required From Enrolled Parties and Excluded Parties").

Contractor's Monitoring Responsibility

Subcontractors are obligated to maintain coverage as required by contract, and are required to submit evidence of coverage to the RAIL

OCIP Administrator. Contractors are responsible for monitoring their Enrolled subcontractors' and Excluded subcontractor's certificates of insurance. Copies of all its subcontractors' certificates of insurance should be maintained by the Contractor, and upon request, be supplied to the Airports Authority or its authorized representatives. Copies of Contractor or subcontractor insurance policies required by contract should be supplied to the Airports Authority or its authorized representatives upon request.

Additional Insured Endorsement

Each policy required by Enrolled and Excluded Parties, except Workers' Compensation policy and Professional Liability policy, shall name Owner, Owner Indemnitees, their respective officers, agents and employees, and any additional entities as Owner may request as additional insureds. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds. Additional Insured wording for General Liability is to be provided via form CG 2010 11/85 or the equivalent forms (CG 2033 07 04 & CG 2037 07 04) which provide Completed Operations coverage.

Waivers of Subrogation

Where permitted by Laws, Regulations and Ordinances, Contractor hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against Owner, the RAIL OCIP Administrator, the Owner Indemnitees, its or their officers, agents, or employees, and any other Person and/or Entity performing Work or rendering services on behalf of Owner in connection with the planning, development and construction of the Project. All Contractor maintained insurance coverages related to the Work must waive all rights of recovery by subrogation against Contractor and the parties referenced immediately above. There permitted by Laws, Regulations and Ordinances, Contractor shall require similar written express waivers and insurance clauses from each of its Subcontractors. A waiver of subrogation shall be effective as to any Person and/or Entity even if such Person and/or Entity: (a) would otherwise have a duty of indemnification, contractual or otherwise; (b) did not pay the insurance premium directly or indirectly; and (c) has an insurable interest in the property damaged. In addition, Owner hereby waives all rights of subrogation against Contractor with respect to General Liability provided under the RAIL OCIP with the exception of Safety Obligations to be imposed on Contractor. Owner also waives all rights of subrogation against Contractor from damage to the Owner's property.