



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

Sheryl L. Kuhary
Jeffrey J. Warchol
Jenna R. Merten
Assistant City Attorneys

October 16, 2008

Common Council
City of West Allis

RE: Notice of Cancellation of Contractor's Insurance Policies

Dear Mayor and Alderpersons:

As you may recall, the City Attorney's Office and the Engineering Department have made several suggestions regarding the standard clauses in our contracts with contractor's doing public improvement projects. We have identified another issue that I wish to bring to your attention. Lately, we have been having a great deal of difficulty with the following language in our standard contract:

Cancellation. Policies shall not be suspended, voided, canceled, reduced in coverage or in limits except after at least thirty (30) days prior written notice has been given to the Board of Public Works of the City.


In particular, insurance companies have been pointing to the standard Certificate of Insurance, which does not provide for such language. Rather, it provides that the insurance company shall "endeavor to notify" the City. Many insurance companies have been taking the position that they have no authority to modify the standard form. Regardless of the merits of the insurance company's position, we have found that it is taken a great deal of staff time to address this issue. Therefore, I suggest that we utilize the following language instead:

The insurer shall endeavor to give the City Engineer at least thirty (30) days prior written notice of any suspension or cancellation of the policy, or any reduction in coverage or in limits. In addition, the Contractor shall immediately notify the City Engineer whenever it receives notice from the insurer that the policy has been cancelled or suspended or there has been a reduction in coverage or limits. Cancellation or suspension of the policy or reduction in coverage or limits shall constitute a material breach and is grounds for immediate termination of the Contract. Upon notice to the Contractor by the City upon the City's learning of said breach, the Contractor shall immediately cease all Work on the Project.

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It is believed that this language will provide the City with as much protection as the current language does. Most insurance companies have been claiming that they would just ignore that provision anyway and that we had no remedy against them. This provides that the insurer will endeavor to give us the notice and requires that the contractor give us notice. If the contractor fails to give notice, they are in breach of the contract and we may order them to cease work immediately. It is my recommendation and the recommendation of the City Engineer that this change in the standard contract be adopted for all Engineering contracts and all other City contract where insurance is required.

Sincerely,



Scott E. Post
City Attorney

SEP:da
H/Scott/Corr/Itr-CC-Insur Clause-Contracts

cc: Michael Lewis