

# DESIGN PROFESSIONAL TIP

## Bridge Inspection and Design

If you are a customer of the Design Professional group of XL Insurance, please refer to *The XL Insurance Contract Guide for Design Professionals* and these Trend Alert articles:

- Bridge Inspection & Design
- Onerous Public Contracts

For other readers, consider the following excerpts that could be of great benefit to your firm.

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On August 1, 2007, the highway engineering field changed dramatically. That was the day the Interstate 35W bridge in Minneapolis collapsed into the Mississippi River, killing 13 people and injuring 144 others.

In the wake of this tragedy, state DOTs rushed to evaluate the condition of their bridges. As a result, engineers have much more bridge design, inspection and engineering work to bid on. But with this new level of opportunity, there will also come more public scrutiny and higher safety demands than ever.

A recently released GAO report on federal-aid highways spells out the situation:

- More than half of state DOTs reported increases in the amount of design, engineering and inspection work contracted to the private sector.
- It is recommended that the Federal Highway Administration work with state DOTs to “develop and implement performance measures to better assess the effectiveness of state DOT controls related to the use of consultants and contractors to better ensure that the public interest is protected.”

### Excerpt from XL Insurance Trend Alert, January 2008:

“As public entities rush to inspect, rehabilitate and construct bridges and roads, we must keep in mind that these public entities, now more than ever, will want to fully insulate themselves from any liability,” say Randy Lewis, Vice President of Loss Prevention and Client Education for Design Professional. “State and local governments will be holding designers’ feet to the fire to make sure that, in the event of another tragedy, these entities will not be held responsible.”

It’s important to educate yourself about the issues that can arise during these projects and how you can best prevent a claim from developing.

- **Detail your scope of services.** Be vigilant in your description of services. Bridge inspection contracts should state:
  - how you’re inspecting (e.g., visually, using x-ray, etc.),
  - what you’re inspecting (e.g., the deck, superstructure, underwater abutments), and
  - what you’ll deliver (e.g., raw test data, photographs, recommendations).
- **Discuss budget limitations and safety factors.** Your contract might say “Based on our discussions of the cost-benefit analysis of increasing the factor of safety above the minimum required by applicable standards or codes, you have decided that having the new bridge design meet a safety factor of [insert safety factor] is satisfactory. We have informed you that we could design to a higher safety factor and have outlined the costs involved. You have fully informed yourself of the relevant issues, including the potential for increased maintenance, shortened useful life and limited redundancies, and have weighed those considerations against budget constraints and other factors and have directed us to design to a safety factor of [insert safety factor].”
- **Limit your liability.** One solution to avoiding responsibility for others’ actions – or inaction – is to routinely include a Limitation of Liability (LoL) clause in your contracts.

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