

# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: March 15, 2023
From: Local Systems Bureau	I.M. No. 3.670
Subject: Work on Railroad Right-of-Way	

**Contents:** This Instructional Memorandum (I.M.) includes general guidelines and procedures for a Local Public Agency (LPA) to obtain approval to work within a railroad’s right-of-way. These procedures are required for all LPA projects let through the Iowa Department of Transportation (Iowa DOT) and all LPA Federal-aid projects let locally. These procedures are highly recommended, but not required, for all other LPA projects. This I.M. includes the following attachment:

[Attachment A](#) – Work on Railroad Right-of-Way Flowchart

**Note:** For Federal-aid projects, additional requirements will apply. For more information, refer to [I.M. 3.680](#), Federal-aid Projects Involving Railroads.

### Introduction

There are many railroads operating in Iowa, and each one has different requirements for work within their right-of-way. Therefore, this I.M. will provide only general guidelines and procedures that are applicable when working with any railroad. For more specific information relating to each railroad, refer to the [Railroad Information Sheets for Local Public Agencies](#) (RR Information Sheets). In the case of a conflict between the general guidelines provided in this I.M. and the RR Information Sheets, the information in the RR Information Sheets shall govern.

### Railroad Contacts

Identifying the appropriate railroad contact person(s) is an important first step in coordinating with the railroad. The Rail Transportation Bureau’s [railroad contact page](#) provides several different contact lists. For most transportation infrastructure projects, the Public Works Contacts list is a good place to start.

### Design

Most railroads have specific design requirements that must be met, such as horizontal and vertical clearances. Therefore, it’s best to contact the railroad early in the design process to determine these parameters. Submittal of preliminary plans and possibly conducting a site visit with the railroad is recommended during the early part of the project development process. This helps identify potential problems and reduces the likelihood of expensive design changes and delays later in the project development process.

### Agreements

Generally speaking, a written agreement between the LPA and the railroad will be required anytime LPA personnel or the LPA’s contractor will need access to the railroad’s right-of-way. Because negotiation of an agreement can take some time, LPAs should initiate negotiations with the railroad as soon as possible during the project development process. The form and content of the agreement is usually determined by the railroad, and may vary greatly depending on the railroad’s requirements.

For additional guidance on the agreement content, refer to [I.M. 3.680](#), Federal-aid Projects Involving Railroads. While the agreement requirements set forth in [I.M. 3.680](#) are based on Federal requirements, the Iowa DOT strongly recommends, but does not require, including similar provisions in railroad agreements that do not involve Federal funds, with two exceptions. The following provisions listed in [I.M. 3.680](#) are required even for railroad agreements that do not have any Federal participation:

1. Appendix A and Appendix E of the U.S. DOT Standard Title VI Assurances, and
2. Buy America provisions, if the work covered by the agreement is within the scope of work covered by the National Environmental Policy Act (NEPA) document for a Federal-aid project.

## Specifications

The project plans, specifications, and other contract documents must address all of the railroad's requirements that will apply to the LPA's contractor. For some railroads, the Iowa DOT has developed a Developmental Specification (DS) that contains all the railroad's requirements. These are available on the Iowa DOT's [Specification Section web page](#). If available, the DS shall be used, because these have been previously negotiated and approved for use by the respective railroad. The applicable specifications for each railroad are identified on the [RR Information Sheets](#).

If a DS is not available, and the railroad's construction requirements are not otherwise met by the provisions of the Iowa DOT Standard Specifications, a Special Provision (SP) will be necessary. To prepare an SP, the project designer should thoroughly review the agreement between the LPA and the railroad to ensure the SP includes all of the railroad's requirements that are not addressed elsewhere in the contract documents. Typically, the SP should address the following railroad requirements:

- Contact person(s)
- Notification
- Flaggers
- Insurance
- Liability / indemnification
- Safety training

Previously issued SPs for several different railroads are also available on the Iowa DOT's [Specification Section web page](#). Designers may wish to use previously issued SPs as a guide for writing a new SP for a given railroad.

If work will be performed by the railroad within the project limits, either by their own forces or a contractor hired by the railroad, this work shall be identified in the contract documents. This information shall include the limits of responsibility for the LPA's contractor and the coordination required with the railroad and / or its contractors.

## Right-of-Entry Agreements

Some railroads require the contractor to enter into a separate right-of-entry (ROE) agreement in order to gain access to the railroad's right of way. The Iowa DOT does not recommend this practice. Use of a ROE agreement increases the risk of project delays and increased costs due to potential conflicts between the requirements of the railroad and LPA, both of whom have a contractual relationship with the contractor. However, if a ROE agreement is required, and the LPA is willing to assume these risks, the Iowa DOT strongly recommends it include ROE agreement provisions similar to those included in the current [Canadian National DS](#). The costs of any conflicts or delays resulting from the ROE agreement will not be eligible for Federal-aid or State-aid participation.

## Flagging

A railroad flagger must be present whenever work is occurring within 25 feet of the centerline of the tracks. Flaggers may also be required in other situations, depending on the activity and the railroad's requirements. Flaggers are provided by the railroad, and may be either railroad personnel or contractors hired by the railroad. Flagging rates are determined by the railroad and are usually specified in the railroad agreement.

In most cases, the railroad will bill the contractor for flagging costs. However, when the A+B bidding method is used, the LPA will pay the flagging costs directly. Arrangements for payment of flaggers should be specified in the railroad agreement.

Generally, flagging costs can be paid with Federal-aid Swap funds, Farm-to-Market funds, or local funds. If the LPA desires Federal-aid participation in any costs paid directly to the railroad (only allowed in limited circumstances), a separate FHWA authorization request must be submitted, as per [I.M. 3.680](#), Federal-aid Projects Involving Railroads. If the flagging costs will be paid by the LPA's contractor, these costs will be included in the construction authorization and so no separate FHWA authorization request is required.

## **Railroad Protective Insurance**

Contractors working on the railroad right of way will need to obtain the insurance specified by the railroad. For projects let by the Iowa DOT, the following procedures will apply.

A separate bid item for railroad protective insurance will be added to the bid proposal prepared by the Iowa DOT Contracts and Specifications Bureau. The bid item for railroad protective insurance will be Federal-aid **non**-participating.

Note: Federal regulations (23 CFR 646.111) limit the amount of railroad protective insurance which may have Federal participation. The limit for bodily injury, death and property damage is \$2,000,000 per occurrence and \$6,000,000 in aggregate. Since most railroads require insurance in excess of these amounts, that is the reason the railroad protective insurance bid item will be Federal-aid **non**-participating.

The LPA shall submit the contractor's certificates of insurance, including the certificate for the railroad protective insurance, with the signed contracts to the Contracts and Specifications Bureau for concurrence in award. The Contracts and Specifications Bureau, Specification Section, will review the railroad protective insurance certificate. If the contract, bonds, insurance certificates, and all other contract documents are acceptable, the Iowa DOT will concur in the award. Upon receipt of Iowa DOT concurrence in the award, the LPA shall make full payment to the contractor for the railroad protective insurance bid item.

The LPA shall provide a copy of the railroad protective insurance certificate to the LPA's Project Engineer. The contractor shall also provide the railroad with the certificate of railroad protective insurance and / or a copy of the policy, as required by the project specifications. Typically, the railroad will require these documents before allowing the LPA's contractor to access to railroad property.

## **Notification and Coordination**

LPAs should notify the railroad of the proposed project early in the project development phase.

All notifications and submittals to the railroad should include the LPA's project number, location description, and the Federal Rail Administration (FRA) crossing number. To determine the FRA number, refer to the Iowa DOT Rail Transportation Bureau's [Highway-Railroad Crossing Identifiers web page](#).

LPAs shall enter information about the affected railroads on their project in the [Transportation Project Management System](#) (TPMS), including the railroad name and FRA crossing number.

Refer to the [RR Information Sheets](#) for more specific notification instructions for each railroad.