

INFORMATIONAL PROPOSAL

(For information only, not to be used for bidding)

NEBRASKA DEPARTMENT OF TRANSPORTATION

LETTING DATE: September 28, 2017

CALL ORDER: 300
CONTROL NO. SEQ. NO.: M3003B 000

CONTRACT ID: M3003B
PROJECT NO.: AFE-N210

TENTATIVE START DATE: 11/05/2017
LOCATION: TRACY CREEK WETLAND FENCE
IN COUNTY: PLATTE

CONTRACT TIME: 10 Working Days

BIDDER

GROUP 7B FENCE

NOTES

THE TOTAL AMOUNT OR WORK WHICH WILL BE ACCEPTED IN
THIS LETTING IS LIMITED TO \$ _____

THE NUMBER OF GROUP _____ CONTRACTS WHICH WILL BE
ACCEPTED IN THIS LETTING IS LIMITED TO _____.



NOTICE TO ALL BIDDERS

To report bid rigging activities, call: 1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of the DOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

LETTING QUESTIONS

Prior to the letting, any questions pertaining to the Special Provisions or the Plans for this project should be submitted to NDOR in a written format through the Bid Express (BidX) website at <https://www.bidx.com/ne/lettings>. Likewise, NDOR will post answers exclusively to the BidX website. All official answers will be identified as “Authorized by NDOR.” **Questions will not be answered verbally.**

STATE OF NEBRASKA
DEPARTMENT OF ROADS

Required Provisions Supplemental to the

Standard Specifications for Highway Construction

I. Application

These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

The contractor shall insert in each of his subcontracts all of the stipulations contained in the Special Provisions and these Required Provisions.

A breach of any of the stipulations contained in these Required Provisions may be grounds for termination of the contract.

II. Equal Opportunity

1. **Selection of Labor**

During the performance of this contract, the contractor shall not discriminate against labor from any other state.

2. **Nebraska Fair Employment Practices Act**

The contractor shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract with respect to his hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex or national origin. The contractor agrees to post in a conspicuous place or places a notice to be provided by the State Highway Department which sets forth excerpts of the Act.

3. **Nebraska Equal Pay Act**

The contractor shall not discriminate on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements. An abstract of the Act is included on the notice which is provided by the State Highway Department.

April 4, 1995

III. Employment of Labor

1. General

No person under the age of sixteen (16) years, and no one whose age or physical condition is such as to make his employment dangerous to his health or safety, or to the health and safety of others shall be employed on any project. This paragraph shall not be construed to deny the employment of older people or physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform.

No person currently serving sentence to a penal or correction institution shall be employed on any project.

Except as specifically provided under this section, workers who are qualified by training or experience to be assigned to projects of this character shall not be discriminated against on any grounds whatsoever.

2. Payrolls

Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working on the site of the work.

The contractor's and subcontractor's payroll records shall be available for inspection by authorized representatives of the State Highway Department and authorized representatives of Federal Agencies.

The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

No charge shall be made for any transportation furnished by the contractor or his agents to any person employed on the work.

April 4, 1995

No individual shall be employed as a laborer on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks or other equipment from individuals. No such rental agreement, or any charges for feed, gasoline, supplies, or repairs on account of such agreement, shall cause any deduction from the wages accruing to any employee except as authorized by the regulations hereinbefore cited.

IV. Safety and Accident Prevention

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as the contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

V. Subletting or Assigning the Contract

The contractor shall perform with his own organization contract work amounting to not less than 30 percent of the total contract amount except that any items designated in the contract as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the total contract amount before computing the amount of work required to be performed by the contractor with his own organization.

Any items that have been selected as "Specialty Items" for the contract are listed as such in the Special Provisions found elsewhere in the contract.

No portion of the contract shall be sublet, assigned, or otherwise disposed of except with the written consent of the contracting officer or his authorized representative. Requests for permission to sublet assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by a showing that the organization which will perform the work is particularly experienced and equipped for such work. The contractor shall give assurance that the minimum wage for labor as stated in his proposal shall apply to labor performed on all work sublet, assigned or otherwise disposed of in any way. Consent to sublet, assign or otherwise dispose of any portion of the contract shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract.

April 4, 1995

**SPECIAL PROVISIONS
FOR
STATE
PROJECT NO. AFE-N210**

GENERAL CONDITIONS

Bids for the work contemplated in this proposal form will be received at the office of the Nebraska Department of Roads in Room 104 of the Central Office Building at 1500 Highway 2 at Lincoln, Nebraska, on September 28, 2017, until 1:30 P.M.

- a. Bids submitted by mail should be addressed to the Nebraska Department of Roads, c/o Contract Lettings Section, P.O. Box 94759, Lincoln, NE 68509-4759.
- b. Bids submitted electronically over the internet, shall be submitted using www.bidx.com.

The 2007 Edition of the Standard Specifications for Highway Construction, including all amendments and additions thereto effective at the date of the contract, are made a part of these Special Provisions, through reference.

The Required Provisions dated April 4, 1995, are attached to and are a part of this proposal form.

The attention of bidders is directed to the Required Provisions covering subletting or assigning the contract.

The proposal contains a statement that the contractor is complying with, and will continue to comply with, fair labor standards in the pursuit of his business and in the execution of the work contemplated in this proposal.

Fair labor standards shall be construed to mean such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the contractor filing this proposal.

TRAINING SPECIAL PROVISIONS

This On-the-Job Training (OJT) Program was created by the Federal Highway Administration (FHWA) and the Nebraska Department of Roads (NDOR) to fulfill the Training Special Provisions requirements of federal-aid construction contracts (23 CFR 230, Appendix B to Subpart A). The purpose of the provision is to address the under-representation of minority and female workers in the construction trades through the assignment of OJT training goals. Therefore, the training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision.

Accordingly, the Contractor shall make every effort to enroll minority and women trainees (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment.

All Contractors will be responsible for demonstrating the steps that they have taken to recruit minority and women trainees prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not. The Contractor shall provide on-the-job training aimed at developing full

journey-level status in the type of trade or job classification involved. The number of training hours under this Training Special Provision will be assigned to each Contractor as set forth below.

1. Under the NDOR Contractor-Specific On-the-Job Training (OJT) Program, OJT hours will be assigned to Contractors and will not be contract or project specific, except as noted in paragraph "a." below.

a. Contractors who **have not** received an OJT assignment and are awarded a federally funded project let by NDOR will be required to fulfill the number of OJT hours as identified in each contract. The number of training hours to be provided under this contract shall be: 0 hours.

A Contractor who has received an OJT assignment will be allowed to provide training on any NDOR-let project on which the Contractor is working as either a Prime Contractor or a subcontractor. A Contractor will have the flexibility to transfer trainees from one project to another after providing notification of the transfer to NDOR.

b. **If this project does not have a contract-specific training requirement, or if the number of training hours is set at zero (0), NDOR will add a training pay item with a nominal 100-hour quantity, that may overrun or underrun, which will be utilized only if the Contractor elects to provide training on this contract.**

2. In January each year, NDOR will allocate OJT assignments to Contractors based on the total average dollar amount of all work performed by a Contractor on NDOR-let projects during the previous three (3) calendar years. The total dollar amount will consist of:

a. The total dollar amount of the Contractor's prime contracts let by NDOR (both federal and state funded) minus the total dollar amount of the work subcontracted out to others, and

b. The total dollar amount of the subcontract work the Contractor performed for others on NDOR-let projects.

The Contractor’s average dollar amount for the previous three calendar years will be calculated, and training hours will then be assigned as follows:

<u>Three Year Average</u>	<u>Training Assignments</u>
Under \$2,500,000	0 hours
\$2,500,000 to 5,000,000	1,000 hours
Over \$5,000,000 to 7,500,000	1,500 hours
Over \$7,500,000 to 10,000,000	2,000 hours
Over \$10,000,000 to 15,000,000	3,000 hours
Over \$15,000,000 to 20,000,000	4,000 hours
Over \$20,000,000 to 25,000,000	5,000 hours
Over \$25,000,000 to 30,000,000	6,000 hours
Over \$30,000,000 to 40,000,000	8,000 hours
Over \$40,000,000 to 50,000,000	10,000 hours
Over \$50,000,000 to 60,000,000	12,000 hours
Over \$60,000,000	15,000 hours

Example: Contractor A, who averaged \$28.66 million, would be assigned 6,000 hours of OJT. Contractor B, who averaged \$10.33 million, would be assigned 3,000 hours of OJT. Contractor C, who averaged \$2.26 million, would not be assigned any OJT hours.

	2011	2012	2013	3 Year Average	2014 OJT Assignment
Contractor A	24.3	33.4	28.3	28.66	6,000 hours
Contractor B	9.3	11.9	9.8	10.33	3,000 hours
Contractor C	2.3	1.4	3.1	2.26	0 hours

3. The OJT hours assigned to a Contractor in January are to be completed during that calendar year (e.g., OJT hours assigned in January of 2014 are to be completed during the period of January 1, 2014 thru December 31, 2014).
 - a. If a Contractor exceeds the number of OJT hours assigned for a calendar year, the Contractor may request to bank up to 30 percent of the excess hours. Banked hours may then be credited toward the Contractor’s OJT assignment for the next calendar year.
4. A Contractor who has not received an annual OJT assignment and is required to provide OJT on a contract-specific basis cannot receive credit for any OJT hours provided by any other Contractor working on the project who has received a Contractor-specific OJT assignment.
5. Completion of the annual OJT assignment is the Contractor’s responsibility. The Contractor is not allowed to assign any of the OJT hours to any other Contractor. The Contractor must make a Good Faith Effort to enroll an adequate number of trainees and provide the trainees a sufficient number of hours training to achieve the Contractor’s annual OJT assignment.
6. While trainees may be assigned to NDOR-let federally or state funded projects, the Contractor should attempt to schedule and assign trainees so that at least 50 percent of a trainee’s hours are earned on federally funded projects - unless otherwise approved in advance by NDOR.

7. The Contractor must use an OJT program approved by NDOR and/or the FHWA. An OJT program shall be approved if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and qualify the average trainee for journey-level status in the job classification concerned by the end of the training period. An approved OJT program must specify the number of hours required for a trainee to achieve journey-level status in each job classification. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of federal-aid highway construction contracts.
8. The Contractor shall furnish each trainee a copy of the OJT Program he/she will follow in providing the training. The Contractor shall also provide each trainee with a certification showing the type and length of training satisfactorily completed.
9. The Contractor's Equal Employment Opportunity (EEO) Officer shall be responsible for administering the Contractor's OJT and monitoring the trainees' progress. The EEO Officer shall serve as the point of contact for NDOR regarding OJT information, documentation, and conflict resolution. If necessary, the EEO Officer may designate another individual to assist with the OJT monitoring responsibilities. NDOR must be provided the name and contact information for any such designee.
10. At least seven (7) days prior to commencing training, the Contractor must submit a "Request for Trainee Approval" form to NDOR for each individual to be enrolled as a trainee and a tentative list of the projects to which the trainee will be assigned. Requests for Trainee Approval may be submitted by mail, fax, or email.
11. If the Contractor submits a "Request for Trainee Approval" form to NDOR for an individual who is not a minority or female, or cannot replace departing trainees with minorities or females, the Contractor must also produce sufficient Good Faith Efforts documentation of the type set forth below. NDOR may reject non-minority male trainees for entry into the program if it determines that a Contractor failed to make sufficient Good Faith Efforts to hire minorities or female trainees and/or the Contractor failed to document or submit evidence of its Good Faith Efforts to do so.
12. Any training hours provided to a trainee prior to the Contractor receiving approval from NDOR will not be credited toward the Contractor's annual OJT assignment.
13. When an individual is first enrolled as a trainee, the individual will be approved for the number of hours of OJT required to achieve journey-level status in the classification for which the individual is to receive training. (A Contractor will not be penalized if a trainee does not achieve the full number of hours for which the trainee is approved.)
14. If the Contractor is unable to provide a trainee the full number of training hours required to achieve journey-level status on one project, the trainee should be transferred to other NDOR-let projects on which the Contractor is working.
15. At least one (1) day before all such transfers of trainees are made, the Contractor must provide NDOR in writing the name of the trainee and current project, the project to which

the trainee will be transferred, and when the transfer is to take place. Notifications of trainee transfers may be submitted by mail, fax, or email.

16. Any training hours provided to a transferred trainee prior to the Contractor having notified NDOR of the transfer will not be credited toward the Contractor's annual OJT assignment.
17. No individual may be employed as a trainee in any classification in which they have successfully completed training leading to journey-level status or in which they have been employed at journey-level. No individual may be employed as a trainee in any classification with a lower skill level than any classification in which they have successfully completed training leading to journey-level status or in which they have been employed at journey-level (e.g., an individual who has achieved journey-level status as an equipment operator may not be trained as a laborer). The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

An individual may be trained in multiple classifications that require relatively equal skill levels but different skill sets (e.g., an individual who has received training as a milling machine operator may also receive training as a roller operator, or a scraper operator, etc.). Preferably, an individual should have achieved journey-level status in a classification before beginning training in another classification.

The Contractor must request and receive approval from NDOR for an individual to receive training in a classification other than the classification for which the individual was originally approved. Any training hours provided prior to receiving approval from NDOR will not be credited toward the Contractor's annual OJT assignment.

18. Training shall be provided in construction crafts rather than clerk-typist or secretarial-type positions. Training is permissible in positions that are not assigned to a specific project such as office engineers, estimators, timekeepers, shop mechanics, etc., if the selected OJT program includes these classifications. Training in such positions will not be eligible for reimbursement, but will be eligible to be credited toward the Contractor's annual OJT assignment.
19. Some off-site training is permissible as long as the training is an integral part of an approved OJT program and does not comprise a significant part of the overall training (e.g., 16 hours training per trainee per year in areas such as jobsite safety or accident response would be permissible). A copy of a training certificate, agenda, or curriculum must be provided to verify off-site training.
20. The Contractor will be reimbursed \$2.00 per each hour of training provided in accordance with an approved OJT program and the NDOR Training Special Provisions.
21. Contractors shall be allowed to transfer trainees or utilize trainees on other NDOR-let projects which do not contain the Training Special Provisions. NDOR will utilize a Change Order / Supplemental Agreement to incorporate the Training Special Provisions and the appropriate pay item into the contracts of such projects.
22. On all federally funded NDOR-let projects, trainees must be paid at least 60 percent of the appropriate minimum journey-level rate specified in the contract for the first half of

the training period, 75 percent for the third quarter, and 90 percent for the last quarter of the training period - or the appropriate rates approved by the U.S. Department of Labor or the U.S. Department of Transportation in connection with the program in which the trainee is enrolled.

23. In order to document and evaluate a trainee's progress toward journey-level status, the Contractor must provide NDOR at the end of each month a "Special Training Provision Monthly On-The-Job Training Report" listing each trainee, the number of hours trained during the month, and the total number of hours trained as of the date of the report.

NOTE: The monthly reporting requirements may change if/when on-line reporting is implemented by NDOR.

24. If a trainee's employment is terminated for any reason prior to completion of the number of OJT hours for which the individual was approved, the Contractor must make Good Faith Efforts to replace the trainee with another minority or female.
25. Contractors must submit an annual summary report to NDOR by January 15th each year giving an account of all trainee hours provided during the previous year. The report shall show a breakdown of training provided on each project and/or contract.
26. Contractors will have fulfilled their OJT responsibilities if they have provided acceptable training for the number of hours assigned, or have demonstrated that they made a Good Faith Effort to provide the number of OJT hours assigned. Where a Contractor cannot meet his or her annual training hour goal with females and minorities, the Contractor remains responsible for demonstrating the Good Faith Efforts taken in pursuance of the goal. Examples of what actions constitute Good Faith Efforts are set forth below. NDOR will make compliance determinations regarding the Training Special Provisions based upon either attainment of the annual goal or Good Faith Efforts to meet it.
27. Good Faith Efforts are those designed to achieve equal opportunity through positive, aggressive, and continuous results-oriented measures (23 CFR § 230.409(g)(4)). Good Faith Efforts should be taken as trainee hiring opportunities arise and when minorities and women are under-represented in the Contractor's workforce. NDOR will consider all Contractors' documentation of Good Faith Efforts on a case-by-case basis and take into account the following:
 - a. Availability of minorities, females, and disadvantaged persons for training;
 - b. The potential for effective training;
 - c. Duration of the contract;
 - d. Dollar value of the contract;
 - e. Total normal work force that the average Contractor could be expected to use;
 - f. Geographic location;
 - g. Type of work;
 - h. The need for journey level individuals in the area.

Good Faith Efforts may include, but are not limited to, documentation of efforts to:

- Contact minority and female employees to gain referrals on other minority and female applicants;
- Refer specific minorities and females to training programs and specifically request these trainees by name in the future;
- Upgrade minority and female unskilled workers into the skilled classifications when possible;
- Accept applications at the project site or at the Contractor's home office;
- Review and follow up on previously received applications from minorities and females when hiring opportunities arise;
- Maintain monthly evaluations that monitor efforts made to achieve diversity in the Contractor's workforce in general (i.e., significant numbers of minorities and females employed on a company-wide basis);
- Provide incentives for project management personnel or superintendents when hiring goals are met on a project (i.e., similar to performance bonuses paid when a job is completed in a timely manner and under budget).

28. Liquidated damages will be assessed the Contractor for failure to demonstrate a Good Faith Effort to achieve their full OJT assignment or for failure to demonstrate a Good Faith Effort to achieve their full OJT assignment with minority and women trainees.

Liquidated damages will be assessed at the rate of \$4.00 per hour for the number of OJT hours not achieved or, even if achieved, the number of OJT hours in which the Contractor fails to demonstrate Good Faith Efforts to hire minorities and women. (e.g., if the Contractor was assigned 3,000 hours but only achieved 2,000 hours and did not demonstrate a Good Faith Effort, the liquidated damages would be assessed at 1,000 hours x \$4.00 = \$4,000.00.)

29. NDOR will invoice a Contractor for liquidated damages assessed as a result of the Contractor's failure to demonstrate a Good Faith Effort to achieve the number of OJT hours assigned.

The Contractor's failure to promptly pay any invoice for liquidated damages may result in the Contractor being disqualified to bid work with NDOR for a time period determined by the Director/State Engineer.

30. At the end of the calendar year, if the dollar amount of work the Contractor performed on NDOR-let projects is substantially below the three-year average upon which the Contractor's OJT assignment was based, the Contractor's OJT goal for that year may be adjusted according to the table in Paragraph 2. above.

31. The established per hour unit price for the item "Training" shall be full compensation for all costs incurred, which includes but is not limited to providing the necessary

supervision, labor, equipment, tools and material. Any additional costs due to payment of wages in excess of the minimum rates specified and for the payment of any fringe benefits shall not be paid for directly, but shall be considered subsidiary to the items for which direct payment is made.

AMENDMENT TO CONSTRUCTION TRAINING REPORT REQUIREMENTS

The last sentence under Paragraph C., on Page 5 of the Standard Federal Equal Employment Opportunity Construction Contract Specifications, dated November 3, 1980, is void.

FHWA Form 1409 "Federal-aid Highway Construction Contractor's Semi-Annual Training Report" is not required.

STATUS OF UTILITIES

The following information is current as of September 6, 2017.

At this time, no utilities have been required to relocate their facilities.

Aerial and/or underground utilities may exist within the limits of this project. The Contractor shall determine to his satisfaction the extent of occupancy of any underground utilities located within the respective construction areas and the extent of conflict with the proposed work under this contract.

Any utility adjustments or interruption of service for the convenience of the Contractor shall be the sole responsibility of the Contractor.

To arrange for utilities to locate and flag their underground facilities, contact Diggers Hotline of Nebraska at 1-800-331-5666 or dial 811.

Any work necessary will be concurrent with construction.

STATUS OF RIGHT-OF-WAY

All work is to be performed within the existing Right of Way as located by the Engineer.

NOTICE TO BIDDERS

Subsections 102.01 and 102.02 of the Standard Specifications are void. Contractor prequalification for this project is not required.

NOTICE TO BIDDERS

Any references to the Nebraska Department of Roads, NDR, or NDOR within the Plans, Special Provisions or the Standard Specifications shall be taken to mean the Nebraska Department of Transportation (NDOT).

ENVIRONMENTAL COMMITMENT

Project No.: AFE-N210 **Control/Contract No.:** M3003B

Maintenance Activity: Fence - Tracy Creek Wetland Mitigation Bank

Below are the Conservation Conditions that will be required for this project. All conditions and regulations of any permit obtained for this project will be followed by the Contractor. The NDOR District Environmental Coordinator and District Maintenance Superintendent(s) will serve as an NDOR point of contact.

Wetlands

The Contractor shall not stage, store, waste or stockpile materials and equipment in known/potential wetlands and/or known/potential streams that exhibit a clear “bed and bank” channel. Potential wetland areas consist of any area that is known to pond water, swampy areas or areas supporting known wetland vegetation or areas where there is a distinct difference in vegetation (at lower elevations) from the surrounding upland areas.

Construction mats or timber mats must be used to minimize heavy machinery impacting any wetland or waters of the U.S. All mats will be removed upon completion of construction and any disturbance of wetlands or waters of U.S. will be restored by minor grading preconstruction conditions. Disturbed areas will be seeded and erosion control measures will be implemented as appropriate.

Threatened & Endangered Species

District 3 is within the range of multiple State and Federally Listed Threatened & Endangered Species. Range maps and County Lists for these species can be found on the Nebraska Game and Parks Commission website (found below).

Constructing fence on wetland mitigation bank as outlined below is allowed with the following General Conservation Conditions.

General Conservation Conditions

Threatened and Endangered Species. The Contractor shall reference the Nebraska Game and Parks Commission website for a reference of federal and state listed species that may occur in the project vicinity prior to starting project maintenance operations. These guidance documents can be found at:

- <http://outdoornebraska.gov/atriskspecies/>

If federal or state listed species are observed during maintenance operations, stop work and contact the NDOR District Environmental Coordinator and District Maintenance Superintendent

to determine action required prior to resuming work. Coordination with NDOR Environmental Section will be required if Night-Time work is needed.

Refueling. The Contractor shall conduct refueling only within non-wetland and non-stream locations. Areas adjacent to wetlands and/or streams will be avoided. Spills shall be reported to the NDOR District Environmental Coordinator and District Maintenance Superintendent. The contractor shall be responsible for cleanup of spilled fuel or any other Hazardous Materials, such as engine oil, hydraulic fluid, antifreeze, etc. used in the contract specified maintenance activity. The Contractor is required by NDOR's Standard Specification section 107 (legal relations and responsibilities to the public) to handle and dispose of contaminated material in accordance with applicable laws.

The District Environmental Coordinator shall be responsible for recording and tracking of the spill event through NDOR's DIRK Database.

<http://www.transportation.nebraska.gov/ref-man/specbook-2007.pdf>

Restricted Activities. The following project activities shall, to the extent possible, be restricted to between the beginning and ending points of the project, within the right-of-way designated on the project plans.

- Construction debris waste disposal areas
- Staging areas
- Material storage sites

Waste/Debris. Construction waste/debris will be disposed of in areas or a manner which will not adversely affect state and/or federally listed species and/or designated critical habitat. (Contractor)

Encountering Unexpected Waste

If contaminated soils and/or water or hazardous materials are encountered, then all work within the immediate area of the discovered hazardous material shall stop until NDOR/FHWA is notified and a plan to dispose of the Hazardous Materials has been developed. Then NDEQ shall be consulted and a remediation plan shall be developed for this project. The potential exists to have contaminants present resulting from minor spillage during fueling and service associated with construction equipment. Should contamination be found on the project during construction, the NDEQ shall be contacted for consultation and appropriate actions to be taken. The Contractor is required by NDOR's Standard Specification section 107 (legal relations and responsibilities to the public) to handle and dispose of contaminated material in accordance with applicable laws. (Contractor)

Ground Disturbance

Any and all ground disturbance shall be limited to the post hole holes needed to construct the fence. (Contractor)

Unmarked Human Burial Sites

The contractor shall comply with the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act, Sections 12-1201 – 12-1212. If human skeletal remains or burial goods associated with an unmarked human burial in the ground or on the ground are discovered, then all work in the immediate area of the discovery shall stop and the contractor

shall contact the NDOR District Environmental Coordinator. The NDOR District Environmental Coordinator will then comply with Section 12-1205, notification of local law enforcement in the county in which the remains or burial goods are found. The NDOR District Environmental Coordinator will promptly consult with the appropriate federal, state, and tribal agencies to determine if further field investigations are required before maintenance operations may resume. Pertinent legal authorities covering such discoveries include: the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Archeological Resources Protection Act, the Nebraska Unmarked Burial Sites and Skeletal Remains Protection Act, and the Nebraska Archeological Resources Protection Act.

Any discovered archeological or paleontological objects or deposits are not the property of the Contractor. The NDOR Environmental Coordinator will consult with appropriate federal, state, or tribal agencies to determine the proper disposition of such remains.

SPECIAL PROSECUTION AND PROGRESS
(Migratory Birds)
(A-42-0617)

The Department of Roads will, to the extent practicable, schedule the letting of projects such that clearing and grubbing can occur outside of the primary nesting season in Nebraska which has been determined to generally occur between April 1 and September 1. Work on structures, such as but not limited to bridges and culverts, should occur outside the primary swallow nesting season, April 15 to September 30, unless approved methods of avoiding nesting have been taken on the bridge and/or culvert structures. The nesting dates above are a guide only, nesting can occur outside of those dates. Work outside of those dates is not exempt from compliance with the Migratory Bird Treaty Act.

The Contractor shall, to the extent possible, schedule work on structures, such as but not limited to bridges and culverts, and clearing and grubbing activities to occur outside the primary nesting season in Nebraska. However, if circumstances dictate that project construction or demolition must be done when nesting migratory birds may be present, a survey of the number of active nests and species of birds shall be conducted by qualified personnel representing the Contractor, and assisted by the Project Manager (PM) or NDOR Environmental Section staff. If the survey finds that nests will be impacted by the proposed construction, the Contractor may be responsible for delays.

The following guidance is provided for compliance with the Migratory Bird Treaty Act for construction of NDOR projects:

1. The Contractor shall submit a plan to the NDOR regarding how he intends to accomplish bridge demolition or clearing and grubbing of the project to avoid conflict with nesting migratory birds.
2. The Contractor must submit a temporary erosion control plan tailored to fit the plan for clearing and grubbing.
3. If construction operations result in unavoidable conflict with nesting migratory bird's eggs or young, which will result in "taking" nests and their contents, the Contractor should notify the NDOR Project Manager (PM). The PM shall notify

the Environmental Section of Planning and Project Development by telephone at 402-479-4766.

4. The NDOR Environmental Section will then determine if assistance in conducting the survey will be provided by the NDOR Environmental Section (if available) and arrange for assistance with the survey of nest numbers, bird species, etc. Results of the survey shall be maintained by the Contractor until project completion.
5. If the nesting survey is required, and the project was awarded prior to the nesting season, and the Contractor did not accomplish clearing/grubbing and/or work on bridge/culvert structures outside the nesting season, the Contractor will reimburse the Department of Roads for each survey required at \$1,000 per survey. If the project was awarded during the nesting season, and construction activities are such that clearing/grubbing and/or work on bridge/culvert structures must be accomplished prior to any other activity on the project, then there will be no charge assessed for the initial survey. The Contractor is responsible for removing all trees surveyed, that do not contain active nests, and for taking appropriate measures on bridge/culvert structures, within 3 days of the survey. Reimbursement for additional surveys may be charged if the Contractor fails to remove the trees within 3 days of the survey, and requires an additional survey. Survey reimbursement will be determined on a project specific basis, considering the project timeline and associated activities.
6. If an active nest is found during the survey, the Contractor should do everything possible to restructure his activities and leave the nest undisturbed until the young fledge. Fledging could occur within a week, or up to a month, after the survey depending on the species of bird and whether the nest contained eggs or young. Also depending on the species of bird and their sensitivity to disturbance, a buffer of up to 30 feet surrounding the tree with the active nest could be required.
7. If construction cannot be rescheduled to allow the birds to fledge, and it is determined as an unavoidable "take" circumstance, the Contractor shall stop all work within 30 feet of the active nest and coordinate with the Construction Project Manager to determine how to proceed. The Construction Project Manager will then coordinate with the NDOR Environmental Section and they will facilitate coordination with the US Fish and Wildlife Service and the Federal Highway Administration (for projects using Federal-aid) to determine the appropriate way to address the active nest. No work shall occur within 30 feet of the active nest until US Fish and Wildlife Service coordination is complete and the requirements of the Migratory Bird Treaty Act are satisfied.
8. It is the Contractor's responsibility to schedule his work to accommodate the process of conducting a survey(s) and submitting the necessary documentation if avoidance is not practicable. The Contractor shall be responsible for using any legal and practical method to prevent the nesting of birds in order to prevent the need for any survey and prevent the need for additional surveys. It is understood and agreed that the Contractor has considered in the bid all of the pertinent requirements concerning migratory birds (including endangered species) and that no additional compensation, other than time extensions if warranted, will be allowed for any delays or inconvenience resulting in these requirements.

**STORM WATER DISCHARGES
(A-43-0408)**

In compliance with the Federal Water Pollution Control Act, authorization to discharge storm water on this project has been granted under National Pollutant Discharge Elimination System (NPDES) General NPDES Permit Number NER110000 for Storm Water Discharges from Construction Sites to Waters of the State of Nebraska. This permit became effective on January 1, 2008.

Contractors are advised that, under the Construction Storm Water General Permit, ***plant sites, camp sites, storage sites, and borrow or waste sites not shown on the plans may be subject to separate NPDES permit authorization requirements for stormwater discharges from those locations.*** Contractors shall be responsible for verifying the need for NPDES permit coverage with the Nebraska Department of Environmental Quality (NDEQ). When required for these locations, the filing of a "Notice of Intent" shall be made by the Contractor directly to the NDEQ.

Additionally, asphalt (SIC Code 2951) or concrete (SIC Code 3273) batch plants that are owned by a private contractor and are operated on a contract-for-service basis to perform work for the Contractor completing the project may be subject to NPDES General Permit Number NER000000 for Industrial Storm Water Discharges. While the plant may be required for completion of the project, it is not under the control of the Department (or other project owner); and the filing of a "Notice of Intent" shall be made by the Contractor directly to the NDEQ.

The NDEQ may be contacted at 402-471-4220 for additional information.

**REQUIRED SUBCONTRACTOR/SUPPLIER QUOTATIONS LIST
(A-43-1017)**

All bidders must provide to the NDOT the identity of all firms who provided quotations on all projects, including both DBEs and non-DBEs. This information must be on a form provided by the NDOT Contracts Office.

If no quotations were received, the bidder must indicate this in the space provided.

Each bidder will be required to submit one list per letting to cover all projects bid.

**PROPOSAL GUARANTY BID BOND
(A-43-0307)**

Paragraphs 1.a. and 1.b. of Subsection 102.15 in the *Standard Specifications* are void and superseded by the following:

- a. OPTION 1 - (Project Specific Paper Bid Bond). The Bid Bond shall be executed on an original Department Bid Bond Form, which may be obtained from the Department. The original Bid Bond shall be delivered to the Department with the bid. A reproduction or a copy of the original form will not be accepted and will cause the bid not to be opened and read.
- b. OPTION 2 - (Annual Bid Bond). The Department at its discretion may allow a bidder to place an "Annual Bid Bond" on file with the Department. This bond would cover all projects the bidder bids for a 12-month period shown in the bond. The bidder must indicate in the bid submittal to the Department that their "Annual Bid Bond" applies to the submitted bid. The original Annual Bid Bond shall be executed on the Department of Roads Bid Bond Form, which may be obtained from the Department. A reproduction or a copy of the original form will not be accepted.

**WORKER VISIBILITY
(A-43-0507)**

Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:

Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

High-visibility safety apparel is defined to mean personal protective safety clothing that:

- 1 - is intended to provide conspicuity during both daytime and nighttime usage, and
- 2 - meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication titled "American National Standards for High-Visibility Safety Apparel and Headwear."

**VALUE ENGINEERING PROPOSALS (VEP)
(A-43-0807)**

Subsection 104.03 in the *Standard Specifications* is amended to include the following:

14. A VEP will not be accepted if the proposal is prepared by an Engineer or the Engineering Firm who designed the contract plans.

**LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC
(A-43-1017)**

Paragraph 4.a. of Subsection 107.01 in the *Standard Specifications* is void and superseded by the following:

4. a. Whenever the Contractor violates any governing Federal, State or Local environmental quality regulation and/or is in noncompliance with any environmental commitment, the violating activity must cease immediately until the appropriate remedy can be determined by: the Engineer, the NDOT Environmental Section, the Federal Highway Administration (for projects utilizing Federal-aid) and other agencies, as deemed appropriate. The Engineer, with assistance from the NDOT Environmental Section and the FHWA, will provide a written order confirming the appropriate corrective action to the Contractor. Work can resume to normal conditions once the Engineer determines that the violation or non-compliance has been addressed in accordance with the order for corrective action.

Subsection 107.01 in the *Standard Specifications* is amended to include the following two paragraphs:

5. Should the Contractor encounter any previously unidentified hazardous materials, the Engineer shall be promptly notified. The Contractor shall suspend operations in the area involved until such time that arrangements are made for their proper treatment or removal.
6. The Contractor shall prevent the transfer of invasive plant and animal species. The Contractor shall wash equipment at the Contractor's storage facility prior to entering the construction site. The Contractor shall inspect all construction equipment and remove all attached vegetation and animals prior to leaving the construction site.

**SPECIAL PROSECUTION AND PROGRESS
(Federal Immigration Verification System)
(A-43-1017)**

The Contractor shall register with and use a Federal Immigration Verification System to determine the work eligibility status of newly hired employees physically performing services within the State of Nebraska. The Prime Contractor shall contractually require every

subcontractor to register with and use a Federal Immigration Verification System to determine the work eligibility status of newly hired employees physically performing services within the State of Nebraska.

The Federal Immigration Verification System shall be an electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program. The Contractor may use an equivalent Federal program designated by the United States Department of Homeland Security or other Federal agency authorized to verify the work eligibility status of a newly hired employee. The equivalent program shall comply with the Immigration Reform and Control Act of 1986.

The Prime Contractor shall furnish a letter to the NDOT Construction Division in Lincoln on company letterhead and signed by an officer of the company stating that documentation is on file certifying that the Contractor and all subcontractors have registered with and used a Federal Immigration Verification System. The Contractor shall maintain all records of registration and use for a period of three years and make records available upon request. The Contractor shall contractually require subcontractors to maintain all records for a period of three years and make records available upon request.

Payment will not be made to the Contractor for using the Federal Immigration Verification System or the maintenance of the records. This work shall be subsidiary to the work being performed.

The Contractor's Certification shall become part of the final records of the Contract. The Department considers this document to have direct bearing to the beginning interest date and may affect the amount of interest earned.

CONTRACT TIME ALLOWANCE (A-43-0911)

Paragraph 5. of Subsection 108.02 of the *Standard Specifications* is void and superseded by the following:

5. Each week, the Engineer shall post on the Department's website a report of working days or calendar days charged. The Contractor then has 14 days from the day the Engineer's report is posted to provide a written explanation of why he/she does not concur with the working days or calendar days as assessed.

Paragraph 6.b. of Subsection 108.02 of the *Standard Specifications* is amended to include the following:

- (4) If the time allowance for the contract has been established on a calendar day basis, the Contractor is expected to schedule the work and assign whatever resources are necessary to complete the work in the time allowance provided regardless of the weather. Accordingly, regardless of anything to the contrary contained in these *Specifications*, the Department will not consider delays caused by inclement or unseasonable weather as justification for an extension of the contract time allowance unless:
 - i. the weather phenomena alleged to have contributed to or caused the delay is of such magnitude that it results in the Governor issuing a Disaster Declaration, **and**
 - ii. the weather phenomena alleged to have contributed to or caused the delay can clearly be shown to have directly impacted the work on the critical path identified on the Contractor's schedule.

Paragraphs 10.b. and 10.c. of Subsection 108.02 of the *Standard Specifications* are void and superseded by the following:

- b.
 - (1) If the extra work is not in the original contract, time extensions will be granted by determining the actual time necessary to accomplish the extra work.
 - (2) If the extra work is the result of the addition of additional quantities of existing contract items, time extensions will be granted by either:
 - (i) determining the actual time necessary to accomplish the extra work; or
 - (ii) determining the additional time to be granted by comparing the value of the additional quantities of work to the total amount of the original contract when measurement of the actual additional time is not possible or practical.
 - (3) In either case, only the time necessary to perform the extra work of the additional quantities of existing contract items when the extra work or the additional quantities of existing contract items are deemed to be the current controlling operation will be granted as a time extension.
- c. Increases in quantities of work associated with traffic control items measured by the day will not be considered for extending the contract time allowance. Overruns of traffic control items that are measured by methods other than time may be considered for extending the contract time allowance, but they must be deemed to be a controlling operation when the overrun of quantities occurs.

**PARTIAL PAYMENT
(A-43-1110)**

Paragraph 2. of Subsection 109.07 of the *Standard Specifications* is void and superseded by the following:

2. When the value of the work completed during a semi-monthly period exceeds \$10,000, the Contractor will receive semi-monthly progress estimates from which the Department shall make such retentions as may be allowed by the contract, provided that the nature and quality of the completed work are satisfactory and provided further that the progress of the work conforms to the requirements of Subsection 108.07.

Paragraph 3.b. of Subsection 109.07 of the *Standard Specifications* is void and superseded by the following:

- b. Under normal circumstances, the Department shall not retain any earnings on a progress estimate. However, the Department reserves the right to retain such amounts as are necessary for material deficiencies, anticipated liquidated damages, unpaid borrow, and for other reasons to protect the Department's interests.

**PARTIAL PAYMENT
(A-43-0611)**

Paragraph 4. of Subsection 109.07 of the *Standard Specifications* is void and superseded by the following:

4. a. (1) Upon presentation by the Contractor of receipted bills, billing invoices, or such other documentation sufficient to satisfy the Engineer and verify the Contractor's or subcontractor's actual costs for the materials, payments may also be allowed for acceptable nonperishable materials purchased expressly to be incorporated into the work and delivered in the vicinity of the project or stored in acceptable storage places within Nebraska.
 - (2) Materials not delivered and stored in the immediate vicinity of or on the actual project site must be clearly marked to identify the project on which they are to be used, must be segregated from similar materials at the storage site, and cannot be included in a supplier's inventory of material available for sale for other purposes.
 - (3) All items eligible for partial payment as stored materials must be available for verification, sampling, and measurement.
- b. The amount to be included in the payment will be determined by the Engineer, but in no case shall it exceed 100 percent of the value of the materials documented. This value may not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated, nor

shall the quantity in any case exceed the total estimated quantity required to complete the project.

- c. Payment will not be approved when the documented value of such materials amounts to less than \$1,000.00, when the progress of the work is not in accordance with the requirements set forth in Subsection 108.07, or when the material can reasonably be expected to be incorporated into the work and eligible for payment as completed work on a progress estimate within 15 days of being placed into storage.
- d. Deductions at rates and in amounts which are equal to the payments will be made from estimates as the materials are incorporated into the work.
- e. Payment for the materials shall not in itself constitute acceptance, and any materials which do not conform to the specifications shall be rejected in accordance with Subsection 106.05.
- f. The Contractor shall be responsible for all damages and material losses until the material is incorporated into the work and the work is accepted.
- g. Partial payment will not include payment for fuels, supplies, form lumber, falsework, other materials, or temporary structures of any kind which will not become an integral part of the finished construction.
- h. No partial payments will be made on living or perishable plant materials until planted.

**BUY AMERICA
(A-43-0212)**

Subsection 106.07 in the *Standard Specifications* is void and superseded by the following:

106.07 -- Buy America

- 1. The Buy America rule requires that steel or iron materials be produced domestically, and only those products which are brought to the construction site and permanently incorporated into the completed project are covered. Construction materials, forms, etc., which remain in place at the Contractor's convenience, but are not required by the contract, are not covered.
- 2. To further define the coverage, a domestic product is a manufactured steel construction material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States.
- 3. All manufacturing processes to produce steel or iron materials (i.e., smelting, and any subsequent process which alters the steel or iron material's physical form or shape, or changes its chemical composition) must occur within one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States, to be considered of domestic origin. This includes processes such as casting, rolling, extruding, machining, bending, grinding,

drilling, and coating. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the material. The manufacturer shall include a statement on the material test report or certification that all material described above except the coating material is a domestic product.

4. Raw materials used in the steel or iron materials may be imported. All manufacturing processes to produce steel or iron materials must occur domestically. Raw materials are materials such as iron ore, limestone, waste products, etc., which are used in the manufacturing process to produce the steel products. Waste products would include scrap; i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad tracks and the like. Also, steel trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw materials which is customary to prepare them for transporting are exempt from Buy America. The use of pig iron and processed, pelletized, and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for steel and/or iron materials.
5. Notwithstanding this requirement, a minimum of foreign steel or iron materials will be permitted if its value is less than one-tenth of one percent of the total contract cost or \$2,500, whichever is greater.
6. Upon completion of all work utilizing steel or iron products, the Prime Contractor shall furnish a letter to the State on company letterhead and signed by an officer of the company stating that documentation is on file certifying that all steel or iron materials brought to the construction site and permanently incorporated into the work complied in all respects with the Buy America requirements.

BORROW, WASTE EXCAVATION, STOCKPILE, AND PLANT SITE APPROVAL (A-43-1017)

Subsection 107.02 in the Standard Specifications is amended to include the following:

4. Site Approval:
 - a. When borrow is obtained from a borrow site or waste excavation is placed at sites which are not shown in the contract, or the Contractor plans to use a plant or stockpile site which is not shown in the contract, the Contractor shall be solely responsible for obtaining all necessary site approvals. The Department will provide the procedures necessary to obtain approvals from the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Nebraska State Historical Society, Nebraska Game and Parks Commission, and Nebraska Department of Natural Resources on the NDOT website. The Contractor shall also be responsible for obtaining a Discharge Number from the Nebraska Department of Environmental Quality (NDEQ) that allows work under the current Construction Stormwater Permit. The Contractor shall also be responsible for obtaining any and all other permits required by local governments.

- b. It is anticipated that it may require 60 calendar days or more for the Contractor to obtain the necessary approvals. The Contractor will not be allowed to begin work at borrow or waste excavation sites until the necessary approvals are obtained. No extension of completion time will be granted due to any delays in securing approval of borrow or waste excavation sites unless a review of the time frames concludes that there were conditions beyond the Contractor's control.

Paragraph 7. of Subsection 205.02 in the Standard Specifications is void and superseded by the following:

- 7. Borrow and Waste Excavation Site Approval:
 - a. Borrow and waste excavation site approvals shall be in accordance with Subsection 107.02.
 - b. Material shall not be removed from borrow sites until preliminary cross sections and representative soil samples have been taken by the Engineer. The Contractor shall notify the Engineer a sufficient time in advance of the opening of any borrow site so that cross sections may be taken.
 - c. Material shall be removed in a manner that will allow accurate final cross sections to be taken for determining the quantity of excavation. The surfaces of the borrow sites shall be bladed and shaped to drain as shown in the contract or as directed by the Engineer.

**SPECIAL PROSECUTION AND PROGRESS
(Subletting or Assigning of Contract)
(A-43-1017)**

Subsection 108.01 in the Standard Specifications is void and superseded by the following:

108.01 – Subletting or Assigning of Contract

- 1. a. (1) The Contractor will not be allowed to sublet, assign, sell, transfer, or otherwise dispose of any portion of the contract or any right, title, or interest therein; or to either legally or equitably assign any of the money payable under the contract or the claims without the prior written consent of the Engineer.
- (2) With the Engineer's consent, the Contractor may sublet up to 70 percent of the work.
- (3) Any items designated in the contract as "specialty items" may be performed by subcontract.
- (4) The cost of any subcontracted "specialty items" may be deducted from the total contract cost before computing the percentage of work required to be performed by the Contractor.

- (5) Subcontracts, or transfer of contract, will not release the Contractor of any liability under the contract and bonds.
- b. Certain items of work may be performed without a subcontract. A list of items not requiring a subcontract is available from the Engineer.
2. The performance of any work by a subcontractor before the date of authorization by the Department shall subject both the Contractor and subcontractor to the imposition of appropriate sanctions by the Department.
3. a. The Contractor's request to sublet work shall be made electronically to the NDOT Construction Engineer using project management software identified by the Department. A signed subcontract agreement shall be on file in the Contractor's office when the request is made. The subcontract agreement must provide that the subcontracted work will be completed according to the terms of the contract. The required and Special Provisions contained in the proposal shall be physically included in any subcontract.
- b. **On all Federal-aid projects, a scanned copy (.pdf format) of the signed subcontract agreement shall be included with the subcontracting request. (Federal-aid projects can be identified by inclusion in the Proposal of Form FHWA-1273 (REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS)).**
- c. Scanned copies (.pdf format) of all executed subcontracts, written agreements, and/or lease agreements used to meet DBE goals shall be submitted to the NDOT Construction Engineer with the subcontracting request. These copies must show labor cost, material prices, overhead and profit.
4. a. Second tier subcontracts will be allowed.
- b. If a DBE firm subcontracts work to another firm, only work subcontracted to another DBE firm can be counted toward meeting a DBE goal.
- c. All requests for second tier subcontracting shall be submitted to and approved by the Prime Contractor before they are forwarded to the NDOT Construction Engineer for approval.
5. All subcontract documents relating to the contract shall be maintained during the course of the work and preserved for a period of three years thereafter. These documents shall be available for inspection by authorized representatives of State and Federal agencies. Scanned copies (.pdf format) of the signed subcontract agreements not specifically identified elsewhere in this Subsection shall be furnished to the Department upon request.
6. The Contractor may discuss a proposed subcontract with the Engineer before entering into a signed subcontract agreement, but final approval will not be granted until a formal request and proper certification has been received by the Department.

7. On projects requiring submittal of certified payrolls, all subcontractor payrolls shall be checked by the Contractor before submittal to the Engineer.
 8. a. The Prime Contractor, and subcontractors when subletting work to lower tier subcontractors, shall include language which can be identified as a "Prompt Payment Clause" as a part of every subcontract for work and materials.
 - b. (1) The language constituting the "Prompt Payment Clause" will require payment to all first tier subcontractors for all labor and materials --- for work completed to date --- within 20 calendar days of receipt of progress payments from the Department for said work. Similar language in a contract between a subcontractor and a lower-tier subcontractor will require payment to the lower tier subcontractor for all labor and materials --- for work completed to date --- within 10 calendar days of receipt of progress payments from the prime Contractor for said work.
 - (2) The language constituting the "Prompt Payment Clause" will also stipulate the return of retainage within 30 calendar days after the satisfactory completion of the work by the subcontractor as evidenced by inclusion of the work on a progress payment.
 - (3) Additionally, the language constituting the "Prompt Payment Clause" may stipulate the subcontractor's obligation to return to the Contractor or subcontractor, as the case may be, any overpayments which result from adjustments to measured and recorded quantities as part of the preparation of subsequent progress payments or the final records. Overpayments shall be returned to the Prime Contractor or subcontractor, as the case may be, within 20 calendar days of receiving notice of the adjusted quantities and the amount of the overpayment.
 - c. The Prime Contractor of subcontractors, as the case may be, may withhold payment only for just cause and shall not withhold, delay, or postpone payment without first receiving written approval from the Department.
 - d. (1) The failure by the Prime Contractor to abide by the agreements identified in the "Prompt Payment Clause" without just cause, including the timely return of retainage, is a material breach of this contract which may result in the Department withholding the amount of payment from the prime Contractor that should have been paid to the subcontractor, termination of this contract, or other such remedy as the Department deems necessary.
 - (2) Additionally, the failure of any subcontractor to abide by the agreements identified in the "Prompt Payment Clause" without just cause, including the timely return of retainage to lower tier subcontractors, or by failing to return overpayments in a timely manner when the language permitted in Paragraph 8.b.(3) above is included in the subcontract may result in the Department withholding subcontract approval for other work until the overpayments have been returned.
9. a. (1) For Davis Bacon (DBRA)-covered projects and Non-DBRA-covered projects, a Contractor or subcontractor may wish to use another individual owner-operator or trucking company to supplement his or her hauling

fleet. (The Department will not recognize multiple individuals claiming to be collectively identified as a single "owner operator".)

- (2) This supplemental individual or company must either become a subcontractor (first tier or lower tier, as the case may be) or be otherwise documented by the utilizing Contractor or subcontractor by entering into a lease agreement for the trucks and showing the driver (or drivers) from the supplemental company on the Prime Contractor's or subcontractor's payrolls in the manner described below.
 - (3) Payrolls will only be accepted from the Prime Contractor or approved subcontractors.
- b. (1) If the decision is made to subcontract the hauling, the Prime Contractor must first notify the NDOT Construction Office to request subcontract approval. As part of the subcontract approval process --- at any tier --- the proper certificates of insurance must be provided before approval will be granted.
- (2) Additionally, on DBRA-covered projects, the Prime Contractor must submit payrolls for all subcontractors --- at any tier.
- c. (1) Owner/Operators of trucks hired by a Contractor or subcontractor to supplement his or her hauling fleet are not subject to Davis Bacon wage requirements. However, they must still be shown on a payroll prepared by the Contractor or subcontractor for whom they are working with the notation "owner/operator."
- (2) Any other employees of the "owner/operator" must appear on the certified payroll in complete detail and must be compensated according to the wage rates established for the project.
- d. In the event a Prime Contractor or subcontractor elects to not subcontract the supplemental driver or drivers but instead chooses to "carry the workers/truckers on their payroll," the following requirements must be met:
- (1) The Prime Contractor's or subcontractor's certified payroll must contain the names of all workers/truck drivers, and the payroll should identify their supervisors (including "owner-operators").
 - (2) Pay checks for the workers/truckers in question must be drawn against the Prime Contractor's or subcontractor's payroll or other account.
 - (3) Owner/Operators need only be identified as such on the payroll. Additional drivers, if any, from the "owner-operator's" company must appear on a payroll in complete detail and be compensated according to the wage rates established for the project.
 - (4) The Prime Contractor or subcontractor must enter into a lease agreement for the trucks driven by such drivers, and the lease agreement must show that the compensation for the leased equipment is on a time basis and

not based on the amount of work accomplished. The lease agreements must be available for inspection by NDOT personnel.

- (5) Any supplemental truckers employed under this arrangement must still carry the minimum automobile liability coverage specified in the contract. It shall be the duty of the Prime Contractor to ensure that the supplemental truckers have such coverage in effect. Evidence of proper insurance must be presented for verification on demand.

ELECTRONIC SHOP DRAWINGS (A-43-1017)

Paragraphs 5, 6, and 7 of Subsection 105.02 of the Standard Specifications are void and superseded by the following:

5. a. The Contractor shall provide electronic working drawings in a Portable Document Format (PDF). The PDFs shall be sized to print on an 11x17 inch sheet of paper and have a minimum resolution of 300 dpi. Each sheet of the shop drawings shall have a space provided for an electronic stamp that measures 2.5 inches x 3.5 inches when printed.
- b. Electronic working drawing files shall be named with the following file naming format:

Control Number_Brief Description_Date.pdf

For example: 12345_FloorDrains_05Feb2015
 12345_FloorDrainCoverLetter_05Feb2015
- c. The project number, control number, and project location as it appears on the plans shall be shown on the front sheet of each Shop Drawing file. Structure numbers shall be included, if applicable.
6. No electronic working drawings shall be submitted to the Engineer unless they have been checked by the Contractor. The electronic submittal shall be accompanied by a Contractor's letter of approval in a PDF format. This letter shall also be named with the format shown in the example above. The letter of approval shall clearly indicate that the Contractor is responsible for any errors on the working drawings.
7. a. Electronic submittals shall be submitted by email to the following address:

NDOT.ShopDrawings@nebraska.gov
- b. Attachments shall be limited to 25 MB of data per email. Larger files shall be separated and sent in multiple emails.
- c. Electronic working drawings will only be accepted from the Prime Contractor.

8. Any reference to hard copy shop drawings in the contract shall be considered void.

PLANS AND PROPOSALS (A-43-1017)

Paragraphs 3. and 4. of Subsection 111.01 in the Standard Specifications are void and superseded by the following:

Plans and Proposals are available for purchase on the NDOT Storefront website.

LIABILITY INSURANCE (A-55-0414)

Subsection 107.13 in the Standard Specifications is void and superseded by the following:

107.13 – Liability Insurance

Prior to execution of the contract, the Contractor shall obtain insurance coverage to fully protect it from loss associated with the work, and have at a minimum the insurance described below:

1. General Liability:
Limits of at least:
 - \$ 1,000,000 per Occurrence
 - \$ 2,000,000 General Aggregate
 - \$ 2,000,000 Completed Operations Aggregate
 - \$ 1,000,000 Personal and Advertising Injury
- a. Contractor shall be responsible for the payment of any deductibles.
- b. Coverage shall be provided by a standard form Commercial General Liability Policy (CG0001 or equivalent) covering bodily injury, property damage including loss of use, and personal injury.
- c. The General Aggregate shall apply on a Per Project Basis.
- d. The State of Nebraska, Department of Roads, shall be named as an Additional Insured on a primary and non-contributory basis including completed operations for three (3) years after final acceptance and payment.
- e. Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Roads. Waiver of Subrogation in favor of the State of Nebraska, Department of Roads shall be added to the policy.
- f. Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.

- g. If work is being performed near a railroad track, the 50' railroad right-of-way exclusion must be deleted.
 - h. Products and completed operations coverage in the amount provided above shall be maintained for the duration of the work, and shall be further maintained for a minimum period of three years after final acceptance and payment.
 - i. Coverage shall be included for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below surface of ground (XCU coverage).
 - j. Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations as per standard CG0001 Pollution Exclusion or equivalent. If the standard pollution exclusion as provided by CG0001 has been amended, coverage must be substituted with a separate Pollution Liability policy of \$1.0 million per occurrence and \$2.0 million aggregate. If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of the Contractor.
2. Automobile Liability:
Limits of at least:
\$ 1,000,000 CSL per Accident
- a. Coverage shall apply to all Owned, Hired, and Non-Owned Autos.
 - b. If work is being performed near a railroad track, the 50-foot railroad right-of-way exclusion must be deleted.
 - c. Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Roads. Waiver of Subrogation in favor of the State of Nebraska, Department of Roads, shall be added to the policy.
 - d. Automobile liability coverage shall be obtained from an insurance carrier who is licensed with the Nebraska Department of Insurance.
3. Workers' Compensation:
Limit: Statutory coverage for the State where the project is located.
Employer's Liability limits: \$500,000 Each Accident
\$500,000 Disease – Per Person
\$500,000 Disease – Policy Limit
- a. Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Roads. Waiver of Subrogation in favor of the State of Nebraska, Department of Roads shall be added to the policy.
 - b. Workers' compensation coverage shall be obtained from an insurance carrier who is licensed with the Nebraska Department of Insurance.

- c. Where applicable, the Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy.
4. Umbrella/Excess:
Limits of at least:
\$1,000,000 per Occurrence
- a. Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Automobile Liability.
 - b. The State of Nebraska, Department of Roads, shall be an "Additional Insured."
 - c. Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Roads. Waiver of subrogation in favor of the State of Nebraska, Department of Roads shall be provided.
5. Pollution Liability:
- a. When "hazardous wastes" or contaminated or polluted materials must be handled and/or moved, the Contractor shall obtain Pollution Liability Coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - b. If, during the course of construction, hazardous wastes, contaminated or polluted material are discovered on the project, the Contractor shall immediately cease any operation that may disturb these materials, and shall immediately notify the Engineer of all facts related to the discovery of these materials.
 - c. Unforeseen work related to the discovery of hazardous, contaminated or polluted materials on the project, and the extra cost, if any, of pollution liability coverage will be handled as "extra work."
6. Additional Requirements:
- a. The Contractor shall provide and carry any additional insurance required by the Special Provisions.
 - b. Except as otherwise provided herein, all insurance shall be kept in full force and effect until after the State releases the Contractor from all obligations under the contract.
 - c. (1) If any of the work is sublet, equivalent insurance shall be provided by or on behalf of the subcontractor or subcontractors (at any tier) to cover all operations.
(2) Approved trucking subcontractors (at any tier) who are being utilized only for the purpose of hauling materials shall be exempt from the requirements of Paragraphs 1, 4, and 5.

- (3) (i) When a Contractor or subcontractor chooses to employ a trucker by carrying the driver on his or her payroll and entering into a lease agreement for the truck, the owner-operator of the truck shall be required to comply with the Automobile Liability provisions of Paragraph 2.
 - (ii) Furthermore, it shall be the duty of the Prime Contractor to ensure that the owner-operator of the truck has such insurance in effect. The Prime Contractor shall maintain evidence that any truckers so utilized (at any tier) are insured to the minimum limits specified and be able to furnish documentation of the same on demand.
 - (iii) Failure to ensure that insurance coverage exists and failure to maintain evidence thereof shall be considered a breach of the contract.
- d. Any insurance policy shall be written by an insurance company with a Best's Insurance Guide Rating of A – VII or better.
- e. Prior to execution of the contract, Contractor shall provide the State of Nebraska, Department of Roads, evidence of such insurance coverage in effect in the form of an Accord (or equivalent) certificate of insurance executed by a licensed representative of the participating insurer(s). Certificates of insurance shall show the Nebraska Department of Roads as the certificate holders.
- f. For so long as insurance coverage is required under this agreement, the Contractor shall have a duty to notify the Department when the Contractor knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be cancelled or terminated. The Contractor must forward any pertinent notice of cancellation or termination to the Department at the address listed below by mail (return receipt requested), hand-delivery, or facsimile transmission within 2 business days of receipt by Contractor of any such notice from an insurance carrier. Notice shall be sent to:

Nebraska Department of Roads
Construction Division --- Insurance Section
1500 Highway 2, P.O. Box 94759
Lincoln, NE 68509-4759
Facsimile No. 402-479-4854
- g. Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this agreement.
- h. The limits of coverage set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the Contractor or any of its subcontractors/tier subcontractors. The carrying of insurance described shall in no way be interpreted as relieving the Contractor,

subcontractor, or tier subcontractors of any responsibility or liability under the contract.

- i. If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement shall prevail.

CONSTRUCTION DETAILS

TEMPORARY WATER POLLUTION CONTROL (B-3-1014)

Section 204 in the Standard Specifications is void.

CONSTRUCTION STORMWATER MANAGEMENT CONTROL (B-3-1014)

A. General

1. This Section defines some best management practices (BMPs) for erosion and sediment control measures and construction practices the Contractor shall use to prevent soil erosion and avoid water pollution.
2.
 - a. The Department and the Contractor are co-permittees of the NPDES Construction Storm Water General Permit.
 - b. The Contractor shall comply with all conditions required by the current NPDES Construction Storm Water General Permit.
3. The Contractor shall exercise every reasonable precaution throughout the life of the contract to prevent silting of the waters of the state, the project site, and adjacent property. Construction of drainage facilities, as well as performance of other contract work which will contribute to the control of siltation, shall be carried out in conjunction with earthwork operations or as soon thereafter as is practicable.
4.
 - a. The Contractor shall take sufficient precautions to prevent pollution of the waters of the state, the project site, and adjacent property from construction debris, petroleum products, chemicals, or other harmful materials.

The Contractor shall conduct and schedule the operations to avoid interference with any protected species.
 - b. The Contractor shall comply with all applicable statutes relating to pollution of the waters of the state and fish and game regulations.

5. All construction debris shall be disposed in a manner that it cannot enter any waterway. Excavation shall be deposited as to protect the waters of the state from siltation.
6. All erosion and sediment control measures shall be properly installed and maintained by the Contractor until all permanent drainage facilities have been constructed, and all slopes are sufficiently vegetated to be an effective erosion deterrent; or until tentative acceptance of the work.
7. All erosion and sedimentation resulting from the Contractor's operations and the weather conditions must be corrected by the Contractor.

LIMITATION OF OPERATIONS (B-3-1014)

A. General

1. The maximum exposed surface area for the Contractor's operations in excavation, borrow, and embankment is 18 acres (72,800 m²) plus an equal area of clearing and grubbing/large tree removal. A written request for an increase in the maximum exposed surface area may be approved by the Engineer. This approval will be based on the soil, moisture, seasonal conditions, the Contractor's operation, or other conditions.
2. The Engineer shall have the authority to reduce the maximum exposed surface area when any of the following conditions warrant:
 - a. Soil and moisture conditions are such that erosion is probable.
 - b. Seasonal conditions may force extended delays.
 - c. Proximity to the waters of the state requires more stringent controls.
 - d. Equipment and personnel available on the job is not sufficient to properly maintain erosion and dust control measures.
 - e. Any other environmental condition in the area that may exist which would be affected by erosion from the project.
3. Construction operations in rivers, streams, wetlands, and impoundments shall be restricted to those areas specifically shown in the contract. Rivers, streams, wetlands, and impoundments shall be promptly cleared of all false work, piling, debris, or other obstructions placed therein or caused by the construction operations.
4. Fording and operation of construction equipment within streams and wetlands will not be allowed, unless explicitly allowed in the contract. Streams are defined as any area between the high banks, regardless of the flow conditions.

CONSTRUCTION METHODS (B-3-1014)

A. General

1. The Contractor shall conduct all construction activities and install temporary erosion control measures, as necessary, to control sediment and avoid soil erosion during construction.
2. The Contractor shall incorporate all permanent erosion control features into the project at the earliest practicable time.
3. Construction stormwater management control measures for Contractor obtained work areas located outside the right-of-way, such as borrow site operations, haul roads, plant sites, staging sites, waste sites, equipment storage sites, etc. are the sole responsibility of the Contractor. All construction stormwater management control measures for these areas are at the Contractor's expense. The Contractor is responsible for securing all required permits for use of these sites.
4. The construction stormwater management procedures contained herein shall be coordinated with any permanent erosion control measures specified elsewhere in the contract to the extent practical to assure economical, effective, and continuous erosion and sediment control throughout the construction period.
5. The Contractor shall be responsible to limit erosion and prevent siltation into the waters of the state during the construction period, as well as during the times that work may be suspended.
6.
 - a. All erosion and sediment control items shall be installed by personnel who are knowledgeable in the principles and practice of various BMP installations.
 - b. The installation of all erosion and sediment control items shall be done under the direct supervision of the Contractor's employee who has successfully completed training provided by the Department and has been certified as an Erosion and Sediment Control Inspector (Inspector). The Contractor's Inspector shall be present at each site during installation to direct and inspect all erosion and sediment control BMP installations.
 - i. The NDOR Erosion and Sediment Control Inspector Certification is obtained by completing an Erosion and Sediment Control Inspector Training Course provided by the Nebraska Department of Roads and passing the examination that accompanies the training.
 - c. The Contractor shall notify the Engineer of all employees, who have been certified as Inspectors, who will be on the project to direct and inspect all erosion and sediment control BMP installations.
 - d. No payment will be made for any erosion and sediment control item unless a Contractor's Inspector was present to directly supervise and inspect the work.

- e. No payment will be made for any erosion and sediment control item that is not properly installed. All erosion and sediment control items shall be installed as per the contract.

**ENVIRONMENTAL COMMITMENT DOCUMENT
(B-3-1014)**

A. Environmental Commitment Document

- 1. a. An Environmental Commitment Document will be created by the Department to identify all project specific environmental commitments and will be included in the Contract.
- b. The Department will provide information for the following, when applicable:
 - i. Storm Water Pollution Prevention Plan (SWPPP)
 - ii. U.S. Army Corps of Engineers (USACE) Section 404 Permit
 - iii. Nebraska Department of Environmental Quality 401 Water Quality Certification
 - iv. State Title 117 Waters (USACE Non-Jurisdictional)
 - v. Floodplain Permit
 - vi. Historic Clearance
 - vii. Endangered Species Act Clearance
 - viii. Nebraska Nongame and Endangered Species Conservation Act Clearance
 - ix. National Environmental Policy Act Compliance
 - x. NPDES Construction Stormwater Permit (within Right-of-Way limits, only)
 - xi. Conservation Measures
 - xii. Migratory Bird Treaty Act
 - xiii. Bald and Golden Eagle Protection Act Compliance
 - xiv. Other pertinent issues
- c. The Contractor shall provide information for the following, when applicable:
 - i. Temporary Erosion Control Plan
 - ii. Spill Prevention and Control Plan
 - iii. Migratory Bird Treaty Act Compliance Plan
 - iv. Name and telephone number of the Contractor's representative responsible for the Environmental Commitments

- v. Name and telephone number of the employees that are NDOR-Certified Erosion and Sediment Control Inspectors
- vi. Critical Path Construction Schedule
- vii. Other items as defined elsewhere in the contract

**STORM WATER POLLUTION PREVENTION PLAN (SWPPP)
(B-3-0717)**

A. General

1. A SWPPP is required for projects that construction activities will cause a land disturbance of one (1) acre or more. The Department will prepare the SWPPP for the areas within the Right-of-Way, temporary easements and permanent easements.
2. For projects not requiring a SWPPP, the Contractor shall comply with the requirements of Environmental Commitment Document, Paragraph 1.b. of this Special Provision, as applicable.
3. Contractor obtained work areas, located on private property, are not included in the NDOR Project SWPPP.

B. Temporary Erosion Control Plan

1. The Contractor shall prepare and submit the Temporary Erosion Control Plan prior to the start of any work. The Contractor shall not begin work until the Temporary Erosion Control Plan has been submitted to the Engineer and appropriate erosion control measures are in place. Payment for any work on the contract will be withheld if erosion control measures are not in place or properly maintained.
2. The Temporary Erosion Control Plan will be reviewed at project progress meetings. All active Contractors shall have their Inspectors present and work in cooperation to determine any necessary changes. Necessary changes will be documented on the Temporary Erosion Control Plan by the Engineer.
3. Payment for preparing the Temporary Erosion Control Plan, inspections and meeting reviews are subsidiary to items that direct payment is made.

C. Spill Prevention and Control Plan

1. All project activities shall be addressed in the Spill Prevention and Control Plan. The Contractor shall prepare and submit the plan to the Engineer and install all appropriate spill prevention and control measures prior to the start of any work.
2. The Spill Prevention and Control Plan shall clearly state measures to prevent, contain, document and clean up a spill. It shall state measures for disposal of the contaminated material, disposal documentation and incident review to train personnel to prevent spills from reoccurring.

3. Spill Prevention and Control Plans are applicable to construction sites where hazardous materials are stored, used and/or generated onsite. Hazardous materials include, but not limited to: hazardous wastes, pesticides, paints, cleaners, petroleum products, fertilizers, solvents and porta-potty wastes.
4. Direct payment will not be made for the Spill Prevention and Control Plan.

D. Migratory Bird Treaty Act Compliance Plan

1. The Contractor shall not begin work until a Migratory Bird Treaty Act Compliance Plan has been submitted to the Engineer and appropriate nesting migratory bird avoidance measures are in place.
2. a. The Contractor shall clearly state the necessary measures they intend to use to avoid a "Take" of nesting migratory birds in the Migratory Bird Treaty Act Compliance Plan. Measures may include but are not limited to:
 - i. Clearing and grubbing prior to April 1st or after September 1st
 - ii. Tree removal prior to April 1st or after September 1st
 - iii. Clearing empty nests on structures prior to April 1st
 - iv. Maintaining clear structures until commencement and throughout the duration of work on structures
 - v. Netting structures to prevent nesting
 - vi. Commitment to perform surveys according to protocol
 - vii. Hire a biologist to survey areas to be disturbed prior to commencement of work during the nesting season
 - viii. Submittal of required bird survey reports
 - ix. Training of Contractor Personnel to insure compliance
3. a. The Migratory Bird Treaty Act Compliance Plan is applicable to the entire project site to avoid the "Take" of migratory birds protected under the Migratory Bird Treaty Act.
 - b. "Take" is defined as: pursuit, hunt, shoot, wound, kill, trap, capture, collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.
4. The Migratory Bird Treaty Act Compliance Plan shall adhere to the NDOR's Avian Protection Plan located at:

<http://www.roads.nebraska.gov/media/3952/avian-protection-plan.pdf>

Direct payment will not be made for the Migratory Bird Treaty Act Compliance Plan.

E. SWPPP Inspection

1. The Contractor shall accompany the Engineer on inspections in accordance with the NPDES Construction Storm Water General Permit.
2. The SWPPP will be maintained and updated by the Engineer as work progresses and site conditions change to accurately describe the BMPs that are currently in place.
3. The Contractor's participation in SWPPP inspections, maintenance and updates shall begin on the first day construction activities cause land disturbance and end on the date of project completion as evidenced as the completion date in the District Engineer's Letter of Tentative Acceptance.
4.
 - a. The Contractor's Inspector shall be responsible for ensuring that all BMPs are installed in accordance with the contract or the manufacturers' recommendations. The Contractor's Inspector shall be capable of reading and interpreting these documents.
 - b. The Contractor's Inspector shall be familiar with product and structural BMPs. The Contractor's Inspector shall inspect, assess, and supervise the maintenance of erosion and sediment control BMPs to ensure compliance with the NPDES Construction Storm Water General Permit while preserving BMP functionality.
5. Payment for project inspection is subsidiary to items that direct payment is made.

**ENVIRONMENTAL COMMITMENT ENFORCEMENT
(B-3-1215)**

A. General

1. This specification establishes payment and disincentive assessment for the Contractor's performance in complying with Contract Environmental Commitments.
2. Deficiencies are described but not limited to:
 - a. Failure to install pollution prevention control BMPs as work progresses or as described in the SWPPP.
 - b. Failure to maintain existing pollution prevention control BMPs.
 - c. Failure to remove non-functioning pollution prevention control BMPs.
 - d. Failure to comply with USACE Section 404 Permit requirements.
 - e. Failure to comply with NPDES Construction Storm Water General Permit requirements.

- f. Failure to comply with all applicable statutes relating to pollution of the waters of the state.
- g. Exceeding the maximum exposed surface area for excavation of 18 Acres without written request for permission and written approval.
- h. Failure to comply with wildlife species specific conservation conditions.
- i. Failure to comply with the Contract.
- j. Failure to comply with the Engineers directives.

B. SWPPP Deficiency Notification

- 1. The Engineer will document and direct the Contractor to correct deficiencies.
- 2.
 - a. The Contractor shall commence correcting deficiencies, provide adequate equipment and personnel, and diligently pursue correcting deficiencies without cessation until all deficiencies have been corrected.
 - b. The count of Working Days and/or Calendar Days will continue during the time period that corrective work is being performed.
 - c. Delays to the project as a result of the Contractor conducting corrective actions for the Contract Environmental Commitments will not constitute a valid reason for an extension of the contract time allowance.
- 3. Deficiencies shall be corrected within seven (7) calendar days of notification or within an approved extension. When deficiencies are not corrected within seven (7) calendar days or within an approved extension, the Engineer will make a disincentive assessment to the contract as stated herein.
- 4.
 - a. If soil, weather, or other conditions prevent the Contractor from completing the corrective actions within seven (7) calendar days, the Contractor shall notify the Engineer in writing. The Contractor's letter shall state the reasons preventing corrective action within the time allowed. The Contractor shall propose a written Corrective Action Plan within 48 hours. Corrective work shall continue while the Corrective Action Plan is developed. The Contractor's Corrective Action Plan must contain a course of action and a time frame for completion. If the reasons and the Corrective Action Plan are acceptable, the Engineer may extend the time in which to complete the corrective work.
 - b. The Contractor will be allowed to proceed with the plan as proposed without incurring a disincentive assessment. If all corrective work is completed within the time allowance shown in the Notification or within an approved extension, a disincentive assessment will not be imposed upon the Contractor.
 - c. Storm events or soil and weather conditions occurring on other projects, which interfere with a Contractor completing corrective actions on the

project within seven (7) calendar days, will not be justification for a time extension to complete the corrective work.

5. If all corrective work identified in the Notification has not been completed at the end of the seventh (7th) calendar day after the Initial Notice Date or within an approved extension, a Shut-Down Notice will be issued on the eighth (8th) calendar day after the Initial Notice Date or on the calendar day following the last day of an approved extension.
6. All operations shall cease as of the date and time cited in the Shut-Down Notice. The Contractor shall work, exclusively, on the deficiencies until all have been corrected or as directed by the Engineer. Upon issuance of the Shut-Down Notice, a disincentive of \$500.00 per deficiency per calendar day will be assessed thru the day the corrective work is completed, inclusive.
7. The Engineer may require the Contractor to provide a written Procedures Plan that describes the process to prevent reoccurrence of deficiencies. The written Procedures Plan shall be provided within two (2) calendar days of the request. Failure to correct all deficiencies and provide a Procedures Plan may result in payments being withheld until such time that procedures are outlined.
 - a. Payment for preparing a written Procedures Plan is subsidiary to items that direct payment is made.

C. Storm Event Restoration – Incentive and Disincentive

1. The Department will pay “Storm Event Restoration - Incentive” when the Contractor completes the restoration work to eliminate the pollution prevention control deficiencies within seven (7) calendar days of Notification or within an approved extension. Multiple deficiencies may be included in one notification. If the restoration work has not been completed within seven (7) calendar days after the Initial Notice or within an approved extension, payment for the item of “Storm Event Restoration - Incentive” will not be made.
2. A storm event is defined as a storm exceeding 0.50 inch of rain in a 24 hour period.
3. The Department will notify the Contractor of pollution prevention control deficiencies.
4.
 - a. Payment for the item of “Storm Event Restoration - Incentive” may not be made when the Contractor is notified to correct pollution prevention devices not installed in accordance with the contract or the manufacturer’s recommended installation instructions.
5. If the restoration work is not completed within seven (7) calendar days or within an approved extension, a disincentive assessment of \$500.00 per deficiency per calendar day will be assessed. The disincentive assessment will begin on the eighth (8th) calendar day after the issuance of the Initial Notice Date or on the calendar day following the last day of an approved extension(s) and continue through the day that the restoration work is completed, inclusive.

D. Method of Measurement

1.
 - a. “Storm Event Restoration – Incentive” will be measured by the each upon completion of restoration of all deficiencies included in a notification within the allowed time and only one payment per notification is allowed when multiple deficiencies are included on the notification.
 - b. If deficiencies from multiple notifications are restored during the same restoration operation, only one (1) incentive is eligible for payment.
 - c. If multiple notifications are the result of successive storm events and deficiencies are transferred to ensuing notifications, incentive payment is only eligible for the latest notification.
2. “Storm Event Restoration – Disincentive” will be measured by the calendar day in accordance with Paragraph C.5. above.

E. Basis of Payment

- | | | |
|----|--|---|
| 1. | Pay Item
Storm Event Restoration – Incentive
Storm Event Restoration – Disincentive | Pay Unit
Each
Calendar Day |
|----|--|---|
2. All equipment, materials, etc. used in the restoration work will be paid for in accordance with Division 800 of the Standard Specifications.
 3. Payment is full compensation for all other incidentals required to complete the restoration work included in the notification within the allowed time.

F. Environmental Commitments – Contractor Compliance

1. To provide payment for all plans, inspections, surveys, reports, travel, qualified inspection person’s, carrion removal, and any other subsidiary activities for the work of implementing threatened and endangered species commitments, temporary erosion control or any other environmental commitments prescribed in the contract.
2. Multiple visits to the project may be required to comply with environmental commitments prescribed in the contract.

G. Method of Measurement

1. No measurement is required.

H. Basis of Payment

- | | | |
|----|--|-----------------------------|
| 1. | Pay Item
Environmental Commitments – Contractor Compliance | Pay Unit
Lump Sum |
|----|--|-----------------------------|

2. Partial payments will be made as follows:
 - a. The Department will pay 50 percent of the total amount bid for the item Environmental Commitments – Contractor Compliance within seven (7) calendar days after the Notice to Proceed Date.
 - b. Upon completion of 50 percent of the Original Contract Amount, the Department will pay 30 percent of the amount bid for the item Environmental Commitments – Contractor Compliance.
 - c. Upon completion of 75 percent of the Original Contract Amount, the Department will pay the remaining 20 percent of the amount bid for the item Environmental Commitments – Contractor Compliance.
 - d. Failure to comply with any or all of the contract requirements, included for payment under the item of Environmental Commitments – Contractor Compliance, will preclude all payment for the item, including any previous payment.
3. Payment is full compensation for all work prescribed in the contract.

I. Immediate Action Deficiencies

1. Deficiencies that pose an imminent threat to the environment are considered an emergency situation. These deficiencies will be identified in the Immediate Action Deficiencies Section of the Environmental Commitment Deficiency Notification Form. The corrective work for Immediate Action Deficiencies shall begin immediately and continue without cessation until completed.
2. The Engineer will issue a shut-down notice. All work on the contract shall cease until the corrective work has been completed. The Engineer may allow the Contractor to continue working in areas unaffected by the Immediate Action Deficiency, provided corrective actions are being actively performed on the deficiency.
3. Immediate Action Deficiencies are not eligible for an incentive payment.
4. The Contractor will be assessed a disincentive assessment of \$1,000.00 per deficiency per calendar day for failure to begin corrective actions or failing to continue to completion as directed by the Engineer or by the regulatory agency with jurisdiction.
5. Examples of Immediate Action Deficiencies include but are not limited to:
 - a. Threatened & Endangered Species habitat protection deficiencies
 - b. USACE Section 404 Permit Noncompliance
 - c. Petroleum Spills/Tank Leakage
 - d. Hazardous Material Spills

J. Rights Reserved

1. The Department reserves the right to initiate and perform corrective action on any deficiencies which result from the Contractors' actions, inactions, or for failure to comply with the NPDES Construction Stormwater General Permit, USACE Section 404 Permit, or any other applicable permit.
2. The Contractor shall be liable to the Department for any and all costs incurred by the Department for corrective actions taken by the Department.
3. It is expressly understood that the provisions of this specification shall not relieve the Contractor of their responsibilities nor shall it relieve the Surety of its obligation for and concerning any just claim.
4. The Contractor shall indemnify and save harmless the Department and all of its representatives from any and all actions or claims brought because of the Contractor's actions, inactions, or for failure to comply with the NPDES Construction Storm Water General Permit, USACE Section 404 Permit, or any other applicable permit.

**TYPE B HIGH INTENSITY WARNING LIGHTS
(D-6-0307)**

All references in the plans to Type B High Intensity Warning Lights shall be considered void. The plans will not be revised to reflect this change.

**TEMPORARY TRAFFIC CONTROL DEVICES
(Type II Barricades, Reflectorized Drums, 42" (1070 mm) Reflective Cones, and
Vertical Panels)
(D-6-1112)**

Paragraph 2.d. of Subsection 422.03 in the Standard Specifications is void and superseded by the following:

- d. (1) Reflectorized drums used for traffic warning or channelization shall be constructed of lightweight, flexible, and deformable materials, be a minimum of 36 inches (900 mm) in height, and have a minimum width of 18 inches (450 mm), regardless of orientation. The predominant color of the drum shall be orange.
- (2) Steel drums shall not be used.

- (3) The markings on drums shall be horizontal, shall be circumferential, and shall display four 6-inch (150 mm) wide bands of retroreflective sheeting, alternating fluorescent orange - white – fluorescent orange - white. The fluorescent orange sheeting shall meet the luminance requirements of the following table.

FHWA Luminance Factor

Sheeting Type	Luminance Factor Y_T		
	Min	Max	Fluorescence Luminance Factor Limit, Y_F
Fluorescent Orange	25	None	15

- e. When approved by the Engineer or shown in the plans, 42" (1070 mm) reflective cones may be used in lieu of Type II Barricades or Reflectorized Drums. 42" (1070 mm) reflective cones shall include a 30-pound (14 kg) rubber base and display four 6-inch (150 mm) wide bands of retroreflective sheeting, alternating fluorescent orange - white - fluorescent orange - white. 42" (1070 mm) reflective cones shall not be used for lane-closure tapers or shifts.
- f. Rubber base-mounted 36-inch vertical panels shall not be used for channelization when the speed limit exceeds 40 miles per hour.

Paragraph 2.b. of Subsection 422.04 of the Standard Specifications is void and superseded by the following:

- b. (i) Type II Barricades, Reflectorized Drums, and 42" (1070 mm) Reflective Cones shall be counted as "Barricades, Type II" and measured for payment by the number of calendar days each is in place and positioned as shown in the plans or as directed by the Engineer.
- (ii) Vertical Panels shall be measured for payment as permanent "Sign Days" (by the each) by the number of calendar days each vertical panel unit is in place and positioned as shown in the plans or as directed by the Engineer.

Paragraph 2.c. of Subsection 422.04 of the Standard Specifications is amended to include Reflectorized Drums.

Paragraphs 3. and 4. of Subsection 422.05 of the Standard Specifications are void and superseded by the following:

3. a. The pay item "Barricade, Type II" is used to pay for three items ("Barricades, Type II", "42" (1070 mm) Reflectorized Cones", and "Reflectorized Drums").
- b. "Barricades, Type II", which includes "42" (1070 mm) Reflectorized Cones", and "Reflectorized Drums", is paid for as an "established" contract unit price item. The established unit price is identified on the "Schedule of Items" shown in the Proposal.
4. Payment for vertical panels includes all posts, brackets, or hardware necessary to install and maintain the vertical panel units.

**WORK ZONE TRAFFIC CONTROL SIGNS
(D-6-1212)**

The Department has adopted the FHWA 2009 Manual of Uniform Traffic Control (MUTCD) and the 2011 Nebraska Supplement to the MUTCD as the official guidance for work zone traffic control signs. Many work zone traffic control signs have been revised, redesigned, or replaced in the 2009 MUTCD (and 2011 Nebraska Supplement). Accordingly, all work zone signs shall comply with the following:

- 1 - All signs, regardless of age, shall meet the design standards of the 2009 MUTCD (and 2011 Nebraska Supplement).

POSTHOLES

Post holes shall be dug either by hand or by the use of one or two man posthole digger. Should heavy equipment be used, construction mats or timber mats shall be used to minimize heavy machinery impacting any wetlands or waters of the U.S. All mats shall be removed upon completion of construction and any disturbance of wetlands or waters of the U.S. shall be restored by minor grading to preconstruction conditions. Disturbed areas shall be seeded and erosion control measures implemented as appropriate.

VEHICLE GATE

Paragraph 1. of Subsection 910.05 in the Standard Specifications is amended to include the following:

Pay Item	Pay Unit
Vehicle Gate	Each (ea)

**PROPOSAL GUARANTY
(A-40-0307)**

As an evidence of good faith in submitting a bid for this work, the bidder shall indicate the type of bid bond applied to this project in accordance with the Proposal Guaranty Bid Bond Section of these Special Provisions.

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