

SECTION 107 -- LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 -- Laws to be Observed

1. a. The Contractor shall keep fully informed of and observe and comply with all of the following which affect those engaged or employed on the work or affect the conduct of the work:

- (1) Federal and State laws.
- (2) Local laws and ordinances.
- (3) Orders and decrees of bodies or tribunals having any jurisdiction or authority.

b. The Contractor shall protect and indemnify the State and its representatives against any claim arising from the violation of any of the above listed items whenever violated by the following entities or any of their employees:

- (1) The Contractor.
- (2) Subcontractor(s) at any tier.
- (3) Suppliers of materials or services.
- (4) Any others engaged by the Contractor.

2. a. The Contractor shall provide all safeguards, safety devices, and protective equipment and take any other actions necessary to protect the life and health of employees on the project.

b. (1) State personnel will not perform any surveying, inspection, or testing in an affected area until the Contractor has erected all safety devices required by Federal, State, or local ordinances.

(2) The Contractor's failure to erect safety devices will be cause for considering placement of safety devices as the current controlling operation.

c. Delays incurred due to the Contractor's failure to provide the required safety devices will not be considered for extending the contract time allowance.

3. The Contractor shall perform all excavation in accordance with the requirements in the One-Call Notification System Act.

4. Environmental Quality Compliance:

a. Work must stop whenever the Contractor violates any governing Federal, State, or local environmental quality regulation. The Engineer will provide a written order confirming the work stoppage to the Contractor within two NDR work days. Work can resume once the Engineer determines the threat to the environment is corrected.

b. Dredged material shall not contain any unsuitable items (e.g., trash, debris, car bodies, etc.), and the material discharged must be free from toxic pollutants.

c. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the waterway.

d. If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

e. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

f. No activity is authorized under any permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal *Endangered Species Act*, or which is likely to destroy or adversely modify the critical habitat of such species. The Contractor shall notify the Engineer if any listed species or critical habitat might be affected or is near the project and shall not begin work on the activity until notified by the Engineer that the requirements of the *Endangered Species Act* have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

g. No activity which may affect historic properties listed, or eligible for listing, in the *National Register of Historic Places* is authorized until the Engineer has complied with the provisions of 33 CFR 325, Appendix C. The Contractor shall notify the Engineer immediately if the authorized activity may affect any historic properties listed, determined to be eligible, or which the Contractor has reason to believe may be eligible for listing on the *National Register of Historic Places*, and shall not begin the activity until notified by the Engineer that the activity is reauthorized. Information on the location and existence of historic resources can be obtained from the State Historical Preservation Officer and the *National Register of Historic Places*.

h. During the period of April 1 to July 15, the primary nesting season of migratory birds, an initial survey of nesting birds within the project area shall be conducted. Any presence of eggs or young shall be reported immediately to the U.S. Fish and Wildlife Services.

i. Delays incurred as a result of the Contractor's failure to comply with Environmental Quality Regulations will not be considered for extending the contract time allowance.

107.02 -- Permits, Licenses, and Taxes

1. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the lawful prosecution of the work. These costs shall be included in the unit bid prices for the relevant items in the contract.

2. a. Reference is made to the *Nebraska Revenue Act of 1967*, and amendments thereto, which imposed a "Sales and Use Tax". The following information to obtain tax exemption on purchased materials is provided for use in submitting proposals.

b. Each Contractor awarded a contract for Nebraska public highway work will be issued a "Purchasing Agent Appointment" signed by the Director-State Engineer and an "Exempt Sale Certificate". The "Exempt Sale Certificate" should be reproduced, completed, and furnished to vendors by the Contractor or Subcontractor when making purchases as a purchasing agent of the Department.

c. The "Exempt Sale Certificate" is to be used by the Contractor (or Subcontractor) when purchasing tangible personal property to be actually incorporated into the completed project. It does not apply to either of the following:

(1) The purchase of materials to be used or consumed but not incorporated into the contract work, including but not limited to, form lumber, scaffolding, etc.

(2) The purchase or rental of machines, equipment, or tools owned or leased by the Contractor and used in performing the contract work.

3. All construction equipment located in Nebraska on the 1st day of January is subject to Nebraska property taxes for that year. Contractors shall notify the appropriate county officials to insure equipment is assessed.

107.03 -- Patented Devices, Materials, and Processes

1. Without exception, contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. Whenever the Contractor is required or desires to use any design, device, material, or process covered by letters, patent, or copyright, the Contractor shall obtain the right for this use by legal agreement with the patentee or owner. A copy of this agreement shall be filed with the Department.

2. However, whether or not such an agreement is made or filed, the Contractor and the surety in all cases shall indemnify and save harmless the Department from any and all claims for infringement by reason of the use of any such patented design, device, material, process, trademark, or copyright in connection with the work agreed to be performed under the contract.

3. The Contractor and the Contractor's surety shall also indemnify the Department for any costs, expenses, and damages which it may be obligated to pay by reason of any such infringement at any time during the prosecution of or after the completion of the work.

107.04 -- Pavement Opening Permits

1. The Engineer may authorize the Contractor to allow third parties bearing valid permits to make openings in the highway. Permits will provide that all repair work will be paid for by the permit holder.

2. The Engineer may order the Contractor to make repairs to openings made by third parties. Any repairs ordered by the Engineer will be paid for as "extra work" in accordance with Subsection 109.05.

107.05 -- Federal Participation

Federally funded work will be administered by the Department, subject to the inspection and approval of officials of the Federal government. These inspections do not make the Federal government a party to this contract and will in no way interfere with the rights of either party hereunder.

107.06 -- Sanitary Provisions

The Contractor shall provide and maintain in a neat, sanitary condition accommodations for the use of the employees as may be necessary to comply with the requirements of Federal, State, and local Boards of Health regulations.

107.07 -- Public Convenience and Safety

1. The Contractor shall insure the orderly movement of traffic through or around the work at all times. The Contractor may not close any road unless required by the plans or authorized under Subsection 104.05. Temporary traffic control devices and layouts shall conform to the plans, special provisions, and the MUTCD.

2. a. No materials of any kind shall be stored in the median or within 30 feet of the edge of the traveled way, except that they may be placed in the median or on the foreslopes if they are used or removed the same day. In no case shall material be allowed to remain overnight within the 30 feet zone specified above.

b. Equipment not actively engaged in construction operations shall not be parked within 20 feet of the edge of the traveled way except during unavoidable temporary suspensions of the work. No equipment shall be parked within 30 feet of the edge of the traveled way overnight, on holidays, or on weekends.

c. In those cases where the road is closed to public traffic, no material or equipment may be stored within the limits set forth above unless the storage site is physically inaccessible to vehicles. In those cases where the requirements of Subsection 104.05 require that access to locations within the closed portion of the road be maintained, storage of materials and equipment within those same limits will only be allowed for hazards not deemed practical to move; and then only if adequately protected with barricades and flashing lights or other devices approved by the Engineer.

3. a. (1) All slow moving construction vehicles and equipment which operate on the highway at speeds 15 mph lower than the posted legal minimum speed or lower than 35 mph if a minimum speed is not posted then all construction equipment working within the traffic lanes or shoulders of a highway under "traffic maintained" conditions shall be equipped with rotating or flashing yellow beacons or strobe type beacons which comply with the *Nebraska Rules of the Road*.

(2) Rotating or flashing type beacons shall be operated on all such equipment which is parked on or within the traffic lanes or shoulders of the highway under "traffic maintained" conditions.

(3) Trucks and pickups traveling in the normal flow of traffic shall operate the beacons only when close to the work.

b. Rotating or flashing yellow beacons shall be provided with a minimum 50 candlepower bulb and shall be sealed so as to be dust and water tight. Strobe type beacons shall have yellow colored domes. All beacons shall be maintained in good operating condition and shall be mounted level on the equipment to provide for 360 degree visibility, day or night, for a minimum distance of 800 feet. The use of magnetically mounted beacons will be permissible if they meet requirements for visibility and level mounting as set forth above.

4. Slow moving vehicles as defined by the *Nebraska Rules of the Road* shall have a "slow moving emblem." This is in addition to other lighting devices required by law.

5. a. The Contractor shall furnish flaggers to direct traffic whenever construction equipment or vehicles operate on, across, or directly adjacent to the roadway being used by the traveling public. Additionally, the Engineer may require flagging at any time to enhance the public's safety and insure the orderly movement of traffic through or around the work.

b. Except in the cases of incidental flagging, flagging shall be performed by flaggers trained and certified according to the Department's flagger certification program described in Section 422. Incidental flagging shall be defined as flagging required in emergency situations or in situations not expected to last for more than 15 minutes. In those cases where traffic is repeatedly stopped or otherwise controlled for time totalling more than 15 minutes, even though the individual activity is of less than 15 minutes duration, the requirement for a certified flagger is not waived.

c. When the Engineer deems that certified flagging is necessary, the Department will pay for flagging, either at the contract price or at a negotiated price if there is no price established in the contract.

6. a. When the road under construction is being used by the traveling public, special attention shall be paid to keep both the subgrade and newly laid surfacing in such condition that the public can travel over the same in relative comfort and safety.

b. The Engineer may direct that surfacing be opened to traffic if shoulders are not completed within the time limits for the completion of shoulders as provided in Subsection 304.03. When surfacing is opened to traffic under such conditions, the Contractor will not be relieved of any responsibility on any portion of the work so opened to traffic until tentative acceptance has been given, except as provided in Subsection 107.14.

7. a. The Contractor shall conduct all operations to minimize any drop-offs (abrupt changes in roadway elevation) exposed to traffic. Unless otherwise specified in the *Traffic Control Plan* details, drop-offs adjacent to or contiguous with the traveled way shall be protected by a wedge of compacted stable material capable of carrying traffic (the wedge being 1 vertical to 4 horizontal or flatter). An edgeline warning stripe shall also be placed on the traffic side of the drop-off.

b. The Engineer shall authorize other methods, such as concrete barriers or safety drums, to protect drop-offs when conditions do not allow a wedge of compacted, stable material.

c. Open trenches which span all or part of the traveled way and/or auxiliary lanes shall be no wider than 18 inches and must have a steel-plate cover placed and anchored over them. The plate shall have sufficient strength so as to only allow a maximum vertical deflection of 1/2 inch. A wedge of suitable material shall create a smooth transition between the pavement and the steel plate. Warning signs shall be used to alert motorists to the presence of the steel plates.

d. Drop-offs up to 2 inches, unless otherwise ordered by the Engineer, may remain exposed with appropriate warning signs alerting motorists to the condition.

8. When so provided in the typical cross sections, these *Specifications*, or the special provisions, surfacing and base courses shall be constructed with one or more lanes of the roadway open and maintained for traffic. The Contractor shall regulate traffic flow in accordance with the Engineer's direction.

9. When the road is accessible to vehicles, even if closed to the traveling public, the Contractor shall use traffic control devices such as Type II barricades, reflectorized drums, or object markers to locate and mark hazards within the project limits.

10. a. When the project is open to public vehicular traffic and the plans call for a culvert extension with excavation less than 15 feet from the edge of the traveled lane, two double-sided Type III barricades shall be installed on the shoulder, one on each side of the excavation. Also, one double-sided Type III barricade with a Type A light shall be installed on the shoulder 100 feet in advance of the excavation.

b. The cost of barricades used to protect corrugated metal pipe installations and storage areas is subsidiary to the pipe or other appropriate bid item.

11. If a hazard exists and barricades, warning signs, or other devices are in place, then even when the contract is complete, these warning devices may not be removed until the Engineer has replaced the devices.

107.08 -- Use of Explosives

1. When the use of explosives is necessary for the prosecution of the work, the Contractor shall use the utmost care not to endanger life or property. All explosives shall be stored and used in compliance with Federal, State, and local laws and ordinances; and all storage places shall be clearly marked "DANGER-EXPLOSIVES". All permits shall be obtained by the Contractor. The Contractor shall be liable for property damage, injury, or death resulting from the use of explosives.

2. The Contractor shall notify each property owner and utility company having structures or facilities within 1,600 feet of work sites where explosives may be needed. The notice shall be given sufficiently in advance to enable the owners to protect their property.

107.09 -- Preservation and Restoration of Property, Trees, Monuments, etc.

1. The Contractor shall preserve, protect, and prevent damage to all public and private property. This includes any underground or overhead utilities, structures, and facilities, whether shown in the plans or not.

2. The Contractor shall protect from disturbance or damage all land monuments and property markers until the Engineer has witnessed or otherwise referenced their location and shall not remove them until directed.

3. The Contractor shall not cut, injure, remove, or destroy any trees or shrubs unless directed by the Engineer.

4. When or where any direct or indirect damage or injury is done to public or private property because of any act, omission, neglect, or misconduct related to the execution or nonexecution of the work, the Contractor shall restore or replace the property to a condition similar or equal to that existing before such damage or injury was done. The restoration or replacement shall be done at no additional cost to the Department.

107.10 -- Archaeological and Paleontological Discoveries

Should the Contractor encounter any fossils, meteorites, Native American relics, or other articles of historical or geological interest, such articles shall become the property of the State. The Engineer shall be promptly notified when any such articles are uncovered, and the Contractor shall suspend operations in the area involved until such time that arrangements are made for their removal and preservation.

107.11 -- Right-of-Way

The Department will provide all land and easements for the right-of-way shown in the plans.

107.12 -- Responsibility for Damage, Injury, or Other Claims

1. The Contractor shall indemnify and save harmless the Department and all of its representatives from any and all actions or claims brought because of injuries or damages to persons or property caused by the actions or omissions of the Contractor or the Contractor's employees or agents.

2. The Contractor shall be responsible for all damage or injury to any property during the prosecution of the work, resulting from any act, omission, neglect, or misconduct, in the manner or method of executing said work satisfactorily, or due to the nonexecution of said work or at any time due to defective work or materials and said responsibility shall continue until the work shall have been completed and accepted.

3. Prior to beginning any work, the Contractor is required to meet with all involved local governmental entities and advise them of any intentions to use their local roads. The Contractor shall be responsible for resolving claims concerning damage to local roads caused by his/her operation.

107.13 -- Liability Insurance

1. a. The Contractor shall carry public liability insurance to indemnify the public for injuries or death sustained by reason of carrying on the work. In addition, the Contractor must also carry worker's compensation insurance in accordance with Nebraska statutory requirements.

b. Before execution of the contract, the Contractor shall furnish a certificate or certificates satisfactory to the Engineer verifying that adequate insurance is in force.

c. When "hazardous wastes" must be handled and/or moved, the Contractor shall submit proof that a pollution exclusion, as is common to most liability policies, will not void his/her coverage.

d. Unforeseen work involving hazardous waste requires appropriate liability insurance. The cost of this insurance will be handled as "extra work".

2. a. The General Liability coverage for bodily injury liability shall be not less than \$500,000 for injuries, including accidental death, in any one occurrence, and subject to an aggregate limit of not less than \$1,000,000.

b. The amount of property damage liability insurance shall be not less than \$500,000.

c. The General Liability policy must include contractual insurance coverage.

d. The Business Automobile Insurance Policy, or equivalent policy, shall be not less than \$1,000,000 for bodily injury and property damage per occurrence on all vehicles which will be used at any time in connection with the performance of the work on the project.

e. The Contractor may, at his/her option, provide the limits of liability as set out above by a combination of the above described policy forms and excess liability coverage.

f. Insurance, as herein required, shall be maintained in force until the Department releases the Contractor from all obligation under the contract.

3. If any of the work is sublet, similar insurance shall be provided by or in behalf of the Subcontractor or Subcontractors (at any tier) to cover their operations.

4. Certificates of insurance will not be accepted unless the insurer is licensed by the Nebraska Department of Insurance. **Certificates of Insurance shall show the Nebraska Department of Roads as the Certificate Holder.**

5. The Contractor shall provide and carry any additional insurance required by the special provisions.

107.14 -- Opening of Sections of the Project to Traffic

1. The Engineer may direct that all or part of the project be opened to traffic before final acceptance of the work. Opening such sections shall not constitute final acceptance of the work or a waiver of any contract provisions.

2. a. In the event that the opening occurs during the orderly progression of the work, the section will be inspected, completed work will be tentatively accepted in writing, and the section turned over to the Department for maintenance.

b. (1) **The Contractor will not be held responsible for damages to portions of the project which have been documented as partially tentatively accepted in accordance with Subsection 109.08, Paragraph 5. and opened to traffic before the entire project has been finally tentatively accepted, provided such damages are due to the actions of the elements or the normal actions of traffic.**

(2) **If a traffic accident should cause damage to the roadway before final acceptance, the Contractor must take all reasonable action to insure that the responsible parties reimburse the cost of any repairs.**

c. The Contractor shall remain responsible for any damages which are due to or caused by defective work or because of noncompliance with the contract.

3. a. The Engineer may direct that all or part of the project be opened to traffic when:

(1) The work is not progressing satisfactorily or the work has been delayed for reasons attributable to the Contractor.

(2) The Department finds it in the public interest to open the project to traffic (such as during the winter months).

b. In such cases and except for damages due to the ordinary action of traffic, the Contractor shall not be relieved of any responsibility or liability for maintaining the work. Furthermore, the Contractor shall conduct the remaining construction operations with minimum interference to traffic and without additional compensation for any added cost of the work due to the opening of the project to traffic.

4. a. Only upon receipt of specific written authorization covering traffic control devices from the Engineer may the Contractor cease to maintain warning signs, barricades, warning lights, and all other traffic control devices regardless of whether the Contractor erected the device or it was erected by a third party.

b. Warning signs, barricades, warning lights, and all other traffic control devices shall not be removed if the hazard has not been eliminated.

5. The Engineer may issue a written order relieving the Contractor of public liability in areas where the Contractor has, with the Engineer's approval, removed his/her equipment from the right-of-way and completed all work.

107.15 -- Contractor's Responsibility for Work

1. a. Until final written acceptance of the Contractor's work by the Engineer, the Contractor shall be responsible for the protection, care, and upkeep of the work, all associated storage sites, and other areas used to execute the contract. The Contractor shall take every precaution against injury or damage to the work due to the weather or from any other cause.

b. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to the work due to any cause before final acceptance at no additional cost to the Department except as follows:

(1) The Contractor shall not bear the expense for damage resulting from natural phenomena like the weather when these phenomena are of such magnitude that they result in the Governor issuing a Disaster Declaration.

(2) The Contractor will not be liable for damage or injuries caused by acts of war or governmental authorities.

2. In case of suspension of the work, the Contractor shall, at no additional cost to the Department:

- a. Be responsible for the work.
- b. Take such precautions to prevent damage to the project.
- c. Provide appropriate drainage and erosion control.
- d. Erect any necessary temporary structures, signs, or facilities.

e. Maintain all newly established plantings, seedings, and soddings furnished under the contract.

f. Protect new trees and other important vegetative growth against injury.

3. The Contractor must at all time have in place adequate erosion control measures as prescribed in the plans and specifications.

107.16 -- Contractor's Responsibility for Utility Property and Services

1. The accuracy of information furnished with respect to existing utilities is not guaranteed, and the Contractor must verify all such information.

2. The Contractor shall notify all utility companies who may have installations in the work area and secure their assistance in locating and identifying all utilities.

3. The Contractor shall determine the actual locations of all existing underground utilities before starting any work that may cause damage to such utilities.

4. a. The Contractor must protect and keep operational all encountered utilities. Contractor damaged utilities shall be promptly repaired to the owner's satisfaction, and all restoration of damaged utilities shall be done at no additional cost to the Department.

b. The Contractor must properly request the utilities to locate their equipment. If the utilities fail to locate or are unable to furnish the Contractor adequate information to prevent damage to their equipment, the Department will not hold the Contractor responsible for the damage.

5. Where operations are adjacent to properties of railway, telegraph, telephone, power, or other utilities, work shall not begin until all arrangements necessary for their protection have been made and the Contractor has explained the arrangements to the Engineer.

6. a. The Contractor shall cooperate with any affected utility to insure that:

(1) Removal and relocation of facilities progresses in a reasonable manner.

(2) Relocation work is not unnecessarily duplicated.

(3) Interruption of service is kept to an absolute minimum.

b. In the event of a project-related interruption to utility services, the Contractor shall promptly notify the utility owner and the Engineer. The Contractor shall cooperate fully in the prompt restoration of service.

7. Fire hydrants shall be kept visible and accessible to the Fire Department at all times. No materials shall be stored within 15 feet of any fire hydrant.

8. The Contractor shall schedule work in such a manner as to protect existing utility facilities until they are relocated, abandoned, or replaced. When partial grading is necessary before a utility can perform such work, the Contractor shall coordinate efforts with the utility to provide the utility adequate time to plan and complete its work.

9. The Contractor shall perform all work required beyond the pole lines after the poles have been moved. If the poles rest within an area outside the right-of-way limits from which borrow is to be taken, the Contractor shall use such equipment as may be required and/or employ hand labor methods to avoid causing damage to the poles or wires.

10. Unless otherwise provided in the contract, utilities shall be moved by their owners when necessary to preclude damage during construction.

107.17 -- Personal Liability of Public Officials

The Department's authorized representatives shall not be liable, either personally or as employees of the State, for any action taken in performance of their authorized duties.

107.18 -- No Waiver of Legal Rights

1. Whether before or after final acceptance and payment for the work, the Department will not be prevented from:

a. Correcting any measurement, estimate, or certificate made before or after completion of the contract.

b. Showing the true character of the materials furnished or work performed and determining their conformance to the contract.

c. Recovering from the Contractor or his/her surety, or both, such damage as it may sustain by reason of the Contractor's failure to comply with the contract.

2. Neither the acceptance of the work by the Department, nor any payment for or acceptance of any or all of the work, nor any extension of time granted for completion of the work, nor any possession taken by the Department shall operate as a waiver of:

a. Any portion of the contract.

b. Any power herein reserved.

c. Any right to damages.

3. A waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach.