

DIVISION 100
General Requirements and Covenants

**SECTION 101 – GENERAL INFORMATION,
DEFINITIONS AND TERMS**

Subsection 101.03 is amended by adding the following definitions:

101.0338a – Final Acceptance

Final acceptance is the date final payment is made. Final payment cannot be made until the Engineer has inspected all work and determined it is complete and sent a “Final Tentative Acceptance” letter to the contractor accepting the work. The Engineer’s “Final Tentative Acceptance” letter relieves the contractor of responsibility for the care and maintenance of the completed work; of public liability; and for damages due to the actions of the elements or the action of traffic.

101.0338b – Final Tentative Acceptance

Final tentative acceptance is the date the Engineer writes a “Final Tentative Acceptance” letter to the contractor accepting all of the work. The Engineer’s “Final Tentative Acceptance” letter relieves the contractor of responsibility for the care and maintenance of the completed work; of public liability; and for damages due to the actions of the elements or the action of traffic.

Subsection 101.0359 is void and superseded by the following:

101.0359 – Bid Proposal

A bidder's offer on Department provided forms to perform stated work at the quoted prices.

101.0361 – Proposal Package

Subsection 101.0361 is void and deleted.

**SECTION 102 – PROPOSAL REQUIREMENTS AND
CONDITIONS AND AWARDING OF CONTRACTS
ON STATE HIGHWAY WORK**

102.05 – Proposal Forms

Subsection 102.05 – Proposal Forms, is void and superseded by the following:

102.05 – Bid Proposals and Informational Proposals

1. Bid Proposal forms for work for which prequalification of bidders is required will be issued only to those qualified to bid on each contract. A bidder will not be considered as qualified for any particular letting if the bidder's qualification rating will expire on or before the date of the letting.

2. Bidders submitting two or more proposals in a total amount exceeding their current qualification by more than 25 percent shall submit the same, subject to the limitations of their current rating, plus a tolerance of 25 percent. Nothing in these rules and regulations shall be construed as depriving the Department of the right to reject any bid where, in the opinion of the Department, other circumstances and developments have changed the qualification or responsibility of the bidder.

3. If the qualification rating of the low bidder expires before the award of a contract, such contract will not be awarded until the qualification rating of the low bidder has been renewed.

4. Bid Proposal forms for work for which prequalification of bidders is required will be labeled with the name of the bidder to whom they are issued and shall not be transferable. Any bid proposal submitted by a bidder other than the person or company to whom the proposal form was issued shall be void.

5. Informational Proposal forms for which prequalification of bidders is required may be issued by the Department at its discretion for information only, but such Informational Proposal forms shall not be used for bidding and shall be stamped with the words "For information only, not to be used for bidding"; and bids submitted on such forms shall be void and not considered.

6. Bid Proposal forms will not be issued to any bidder later than 5:00 p.m. of the day preceding the letting.

7. Bid Proposal forms for any contract for which prequalification of bidders is required may be issued, at the discretion of the Department, to two or more qualified bidders jointly if the classes of work for which the prospective bidders are qualified to perform satisfy, in the aggregate, the qualification requirements for the particular contract. Two or more qualified bidders may not bid jointly to perform any contract for which prequalification of bidders is required unless a bid proposal is issued by the Department to those bidders jointly for that purpose.

102.06 – Contents of Proposal Package

Subsection 102.06 is void and deleted.

102.07 – Interpretation of Quantities in Proposal Forms

Subsection 102.07 is void and superseded by the following:

102.07 – Interpretation of Quantities in Bid Proposal Forms

The quantities listed in the bid proposal are to be considered as approximate, unless otherwise provided and are to be used for the comparison of bids. Payments to the Contractor will be made for the actual quantities or plan quantities, if specified, of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities of work to be done and materials to be furnished may each be increased, diminished, or omitted as hereinafter provided without in any way invalidating the unit bid prices, except as provided in Subsection 104.02.

102.10 – Preparation of Proposal

Subsection 102.10 is void and superseded by the following:

1. The Contractor shall use forms downloaded from the NDOR website and the Electronic Bidding Software (EBS) when submitting a bid proposal.

2. The Bidder must state the unit price for each item of work contemplated.

3. All signatures must be in ink. All corrections and other entries not made by the EBS software must be in ink or typed.

4. Bid "Schedule of Item" forms must be properly completed.

a. EBS "Schedule of Items" forms must be completed in accordance with the Electronic Bidding Software parameters.

b. Hard copies of "Schedule of Items" forms must accurately reflect the bid proposal.

(1) If the unit price is left blank and the quantity of the item is one and an amount is shown in the "Bid Amount" column, then the amount in the "Bid Amount" column will be considered the unit price.

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(2) If the bidder enters an amount in the "Unit Price" column when "Lump" is shown in that column, the "Unit Price" shall govern in the extension of that item.

(3) If both columns are left blank, the proposal will be considered incomplete and rejected.

(4) If the unit price is indicated with a line, the unit price will be considered free no matter what amount is shown in the "Total Bid" column.

(5) If the unit price is left blank and the quantity of the item is greater than one, the proposal is incomplete and the bid is rejected.

(6) When the proposal schedule is divided into groups, a price shall be submitted on each and every item of work necessary to submit a complete bid for the group on which the bidder wishes to bid.

(7) The bidder shall also show the product of the respective unit prices and quantities in the column provided for that purpose and the total amount for each group and combination of groups, as indicated in the proposal form, necessary for a complete bid for the work on which the bidder wishes to bid.

5. The Contractor shall include the following in each bid proposal submitted to the Department:

a. Hard copies of the Bid Proposal contract provisions provided by the Contracts Office.

b. Downloaded and completed forms from the NDOR website:

(1) Schedule of Items form.

(2) Contract Signature form.

(3) Subcontractor List form.

(4) Required DBE Participation form (if applicable).

(5) Certification of Previous EEO Performance (if applicable).

(6) Equipment Assessment Certification.

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- (7) Hiring Practice Certification.
- (8) Drug-Free Workplace Policy Certification.
- (9) Noncollusion Declaration.
- (10) Compliance Certification for *Standard Specifications for Highway Construction* Sections 102 and 103.

- c. Bid Bond form.
- d. Other forms, as applicable.

6. The bid proposal shall be submitted in the envelopes provided by the Contracts Office or as directed by the Contracts Office.

7. Each bidder, in signing and notarizing the signature page by or on behalf of the person, firm, association, or corporation submitting the bid, certifies that:

- a. Such person, firm, association, or corporation has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid.

- b. All equipment has been assessed for the current year.

- c. The company is operating under a Drug-Free Workplace Policy, a copy of which is being on file with the Department.

- d. A bond for the contract amount will be furnished.

- e. Reports have been filed regarding Equal Opportunity participation (Federally funded projects only).

- f. Disadvantaged Business Enterprises (DBE) goals on designated Federally funded projects will be achieved on "good faith" documentation provided.

8. Failure to submit a signed and notarized proposal signature page as part of the bid proposal package will make the bid nonresponsive. False statements in any of the above certifications will constitute perjury.

102.11 – Electronic Bid System (EBS) (Optional Procedure)

Subsection 102.11 is void and superseded by the following:

102.11 – Electronic Bidding Software System (EBS)

1. General Provisions:

a. The Department will make available electronically, to all bidders, the “Schedule of Items”, other required forms. The “Schedule of Items”, and other required forms and necessary electronic bidding software are available on the Department website (www.dor.state.ne.us).

b. All bidders must have an Advanced Payment Account with the Nebraska Department of Roads. Bidders, when using EBS to prepare and print their bid Schedule of Items, must also submit a computer diskette containing a completed “Schedule of Items” and other required forms. If a bidder fails to submit a computer diskette containing the bid, the Advanced Payment Account will be assessed a \$50.00 fee for each bid missing from the diskette. All bids for a single letting shall be submitted on one diskette.

c. (1) Bid proposals must comply with all plans, special provisions, the *Standard Specifications for Highway Construction*, supplemental specifications to the *Standard Specifications for Highway Construction*, and the *Rules and Regulations* of the Nebraska Department of Roads regarding bid preparation and bid submittal.

(2) Exceptions:

(i) Items of work for which the bidder intends to complete work at no charge to the Department must have a zero (0) unit price entered.

(ii) Bid proposals containing no unit prices will be considered invalid.

(iii) On alternate groups when the bidder does not intend to submit a bid, the bid for the group must be left blank. DO NOT ENTER ZEROS. Leave these items blank.

2. Assembly of Proposal:

a. Bid proposals printed on continuously-rolled printer paper will not be accepted. Sheets must be separated into individual pages.

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b. The computer diskette containing files of all required forms shall be submitted in a separate sealed envelope marked with the bidder's name and all call order numbers for which electronic bids are submitted. The Bid Proposal(s) including paper copies of all required forms downloaded from the EBS and bid bonds shall be submitted in their individual Bid Envelopes.

3. Format of EBS Bids and Other Electronic Bid Requirements:

a. All forms shall be printed on paper 8½ inches (210 mm) horizontal by 11 inches (280 mm) vertical.

b. Paper and printers used for each computer-generated bid "Schedule of Items" page shall be of a quality to maintain clear and concise images and to withstand frequent handling.

c. All computer-generated characters in the electronic bid must be clearly legible.

4. In the event there is a discrepancy between the information submitted on the diskette and the paper copy of the bid "Schedule of Items" submitted with the proposal, the figures on the paper copy of the bid "Schedule of Items" will prevail.

5. The Department retains the discretion to accept as responsive a non-electronic bid.

102.12 – Ties and Limitations

Paragraph 7. of Subsection 102.12 is void and superseded by the following.

7. The bidder shall not make a conditional deduction or reduction in any unit price in any bid proposal.

102.13 – Irregular Proposals

Subsection 102.13 title is void and superseded by the following:

102.13 – Irregular Bid Proposals

Paragraph 4. of Subsection 102.13 is void and superseded by the following:

4. Special provisions or documents bound with or attached to the bid proposal shall be considered a part thereof and shall not be detached or

altered. Any bid proposals not complying with this requirement shall be considered void.

SECTION 104 -- SCOPE OF WORK

104.02 -- Alteration of Plans or Character of Work

Paragraph 2.c.(2) of Subsection 104.02 is amended by adding the following two sentences:

Items of Work in Group 10 – General are excluded from the definition of “major item of work”, and will not become the basis for negotiating a contract adjustment when quantities change. Also, any contractor-exercised option, such as the use of RAP in an asphaltic concrete mix, will not become the basis for an increase in price due to a quantity change.

SECTION 105 -- CONTROL OF WORK

105.02 -- Plans and Working Drawings

The last sentence in Paragraph 5. of Subsection 105.02 is void and superseded by the following:

The Contractor shall furnish the Engineer as many copies of working drawings as are required in each Division specifying submission of working drawing, or seven copies (8 copies if the submission is a precast structure or element), if the quantity is not specified.

Paragraph 6.c. of Subsection 105.02 is void and superseded by the following:

c. The project number, structure number, control number, and project location as it appears on the plans, shall be shown ON each sheet of all shop drawings.

105.11 -- Restrictions on Moving and Use of Heavy Equipment

Paragraph 12.b. of Subsection 105.11 is void and superseded by the following:

b. When moving equipment on or across concrete or asphalt pavement, the contractor shall provide at least a 12-inch (300 mm) thick ramp of compacted earth or other suitable material which will support the vehicle and prevent damage to the pavement.

SECTION 106 -- CONTROL OF MATERIAL

Section 106 is amended by adding the following:

106.07 -- Buy America

1. The Buy America rule requires that steel products 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 products (i.e., smelting, and any subsequent process which alters the steel 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 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 product may be imported. All manufacturing processes to produce steel products 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 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. 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 products brought to the construction site and permanently incorporated in the project will comply in all respects with the Buy America requirements.

SECTION 107 – LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.13 – Liability Insurance

Paragraph 4. of Subsection 107.13 is amended by adding the following.

Certificates of Insurance shall show the Nebraska Department of Roads as the Certificate Holder.

107.14 – Opening of Sections of the Project to Traffic

Paragraph 2.b.(1) and (2) is void and superseded by the following:

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.

SECTION 108 -- PROSECUTION AND PROGRESS

108.01 -- Subletting or Assigning of Contract

Subsection 108.01 is amended by adding the following paragraphs:

9. a. The prime Contractor shall include a "Prompt Payment Clause" as a part of every subcontract (including second tier subcontracts) for work and materials. The "Prompt Payment Clause" will require payment to all subcontractors for all labor and materials, for work completed, within 20 calendar days of receipt of progress payments from the Department for said work. The "Prompt Payment Clause" will also stipulate the return of retainage within 30 calendar days after the satisfactory completion of work by the subcontractor. Any delay of payment from the

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above time frame may occur only for good cause following written approval of the Department.

b. The failure by the prime Contractor to carry out the requirements of the "Prompt Payment Clause" and/or the timely return of retainage, without just cause, 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.

c. The prime Contractor may withhold payment only for just cause and must notify the Department in writing of its intent prior to withholding payment. The prime Contractor shall not withhold, delay, or postpone payment without first receiving written approval from the Department.

SECTION 109 – MEASUREMENT AND PAYMENT

109.08 – Acceptance, Final Payment, and Termination of Contractor's Responsibility

Subsection 109.05 is amended by adding Paragraph 5. a., b., and c. as shown below:

5. a. If at any time during the prosecution of the work the contractor completes to the satisfaction of the Engineer a unit or portion of the work, such as a structure, an interchange, or a section of road or pavement, the Engineer may tentatively accept that unit.

b. The section that is being tentatively accepted shall be inspected, completed work will be documented as being tentatively accepted in writing, and the section will be turned over to the Department for maintenance.

c. The Contractor will not be held responsible for care and maintenance of the completed work and for damages to portions of the project which have been tentatively accepted before final project acceptance provided such damages are due to the actions of the elements or the normal action of traffic.

d. If a traffic accident should cause damage to the roadway, land, or property before final acceptance, the Contractor must attempt to insure that the responsible parties reimburse the cost of any repairs.

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