

# **GENERAL CONDITIONS FOR CONSTRUCTION**

**2022 Edition**



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## **101 GENERAL CONDITIONS**

### **101.100 DEFINITIONS**

#### **101.101 Corporation**

Shall mean Ducks Unlimited, Inc.

#### **101.102 Engineer**

Shall mean the Engineer designated by the Corporation acting directly or through a duly authorized representative.

#### **101.103 Contracting Officer**

Shall mean the person, Engineer or otherwise, designated by the Corporation to administer the requirements of the Contract.

#### **101.104 Contractor**

The individual or entity, also known as the successful Bidder, undertaking the execution of the work under the terms of the Contract and acting directly or through a duly authorized representative.

#### **101.105 Subcontractor**

Any person or entity, contracting with the Contractor, either directly or indirectly, to perform all or part of Contractor's obligations under the Contract including, but not limited to, performing all or part of the work, supplying labor and/or providing, selling or leasing supplies, material or equipment for the work.

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor and to assume toward the Contractor all the obligations and responsibilities which the Contractor assumes toward the Corporation. Each subcontract agreement shall preserve and protect the rights of the Corporation under the Contract with respect to the work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, a copy of the Contract. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

#### **101.106 Contract**

The Contract between the Corporation and the Contractor consists of the Unit Price Agreement/Small Job Unit Price Agreement (including all Addenda and attachments thereto), whereby the Contractor is obligated to perform the proposed work, together with the Bid and all Conditions, Special Provisions, and Technical Specifications, Plans, permits, and securities as listed on the Standard Bid Form or Small Job Unit Price Agreement, and any Change Orders. The documents referenced in this paragraph may be referred to as the Contract documents. The Contract represents the entire and integrated agreement between the parties thereto and supersedes all prior negotiations, representations or agreements, either written or oral.

#### 101.107 Bid

The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed.

#### 101.108 Bidder

Any person or entity submitting a Bid for the proposed work.

#### 101.109 Plans

The drawings which show the character and scope of the work to be performed and which have been prepared or approved by the Engineer and are referred to in the Contract documents.

#### 101.110 Addenda

Written or graphic attachments to the Bid and the Contract which modify or interpret the Bidding documents (being any request for bid or proposal, Plans, Special Provisions, and Technical Specifications) by addition, deletion, clarification or corrections, and which have been mutually approved by the Contractor and the Corporation. Addenda will become part of the Contract when the Contract is executed.

#### 101.111 Technical Specifications

Written requirements for materials, equipment, systems, standards and workmanship as applied to the work, and certain administrative requirements and procedural matters including methods of measurement and basis of payment.

#### 101.112 Special Provisions

Special directions or requirements peculiar to the work under consideration and not otherwise thoroughly or satisfactorily detailed or set forth otherwise.

#### 101.113 Supplemental Conditions

Supplemental Conditions are additional conditions that apply when listed as a Contract document. Supplemental Conditions contain changes and/or additions to the General Conditions.

#### 101.114 Flow Down Conditions

Flow Down Conditions are additional terms and conditions that apply when listed as a Contract document, and contain obligations required by the project funding agreement to be passed on by the Corporation to the Contractor, and its Subcontractors.

#### 101.115 Work

The construction and services required by the Contract whether completed or partially completed, and including all other labor, materials, equipment and services provided by the Contractor or a Subcontractor to fulfill the Contractor's obligations.

#### 101.116 Extra Work

An item of work not provided for in the Contract as awarded but found essential, by the Contracting Officer, to complete the work within its intended scope. Contractor is not authorized to commence any Extra Work without the prior written consent of the Corporation.

#### 101.117 Change Order

A written agreement signed by the Contractor and Corporation amending the scope of the work to be performed, defining Extra Work items, and documenting other changes to the Contract documents.

#### 101.118 Completion Date

Date specified on the Contract by which all contracted work is to be completed by the Contractor.

#### 101.119 Substantial Performance

A Contract or Subcontract shall be conclusively deemed to be substantially performed when the works to be constructed under the Contract or Subcontract are ready for use and the Contractor or Subcontractor has met all statutory requirements.

#### 101.120 Bonds

Without restricting or limiting any other format and acceptable definition of Bid, Performance, and Payment Bonds, for the purposes of this agreement the Bid, Performance, and Payment Bonds shall also include any form of security acceptable to the Corporation and obtained or provided by the Contractor for the benefit of the Corporation, under the terms of which the Corporation is to be indemnified by the Contractor for any loss or damage howsoever arising, as a result of any failure, neglect, delay or for default under the terms of the Contract, including breach of the Contract. Letters of Credit are not an acceptable form of security bond.

#### 101.121 Notice to Proceed

Written notification from the Contracting Officer authorizing the Contractor to commence work pursuant to the Contract.

#### 101.122 Final Acceptance

Corporation shall provide in writing a Final Acceptance to the Contractor indicating that all of the terms of the Contract have been fulfilled and the Work is complete.

### **101.200 BID REQUIREMENTS AND CONDITIONS**

#### 101.201 Bid

The accepted Bid shall apply to and be part of the Contract. Bids for work over \$250,000 will be made by written sealed bid only. Bids for work under \$250,000 will be made by written sealed bid unless otherwise specified by the Contracting Officer.

#### 101.202 Delivery of the Bid

All Bids must be submitted and signed on the original bid form supplied by the Corporation. Unless otherwise required by the instructions to bidders, each Bid must be submitted in a sealed envelope addressed to the Corporation, at the address listed on the cover page of the Bid documents. Each envelope must be clearly marked "BID", and shall identify the project name, Contract number and return address of the Bidder. Each envelope shall also have those items required by State Law (Contractors License Number, expiration date, Classification, etc.). The Corporation reserves the right to open the Bids in private. The Bid will be reviewed by the Contracting Officer, after which a Contract may or may not be awarded. Any Bid received after the closing time will not be accepted.

#### 101.203 Examination of the Site

The Bidder warrants that it has visited and examined the site of the project and is familiar with the location, means of access, physical conditions including surface and subsurface conditions, nature and position of any existing structures, utilities, obstructions and any other factors which may affect the Bid or the execution of the work. Examination of any additional information, if available, may be arranged by notifying the Contracting Officer at their office. Should the Bidder wish to conduct any subsurface exploration or soil testing, he/she shall contact the Contracting Officer prior to such exploration. The Bidder shall not claim, after submission of this Bid, that there was any misunderstanding of the conditions of the Contract relating to the site conditions.

#### 101.204 Bid Quantities

The portion of the work for which the Bidders are to submit prices have been divided into items, in order for the Bidders to Bid for the different portions of the work in accordance with their estimate of cost. If there is an increase or decrease in actual quantity of any particular item of work, the Bidder shall promptly notify the Corporation of the change in writing. No change in quantities shall be permitted until the Corporation approves the change in writing. In the event the Corporation approves such a change, the actual quantity delivered or installed shall be paid for at a Bid unit price for that particular item of work.

#### 101.205 Unit Prices

The unit price bid for each item shall include furnishing all tools, equipment, supplies, and materials, and for all labor, operations, and incidentals appurtenant to completion of the work being described and indicated on Plans and in Technical Specifications. The Contractor should include in the total dollar value of unit price items all costs incurred in the performance of the work including but not limited to general condition costs, administration, overhead, taxes, profit, OSHA and safety compliance, permits and permit compliance, transportation of materials, best management practices, project coordination, quality control, testing of materials, construction surveying, layout and staking, submittals, insurance, bonds, and record drawings, as applicable. The Contractor shall not include these costs as separate items from those listed on the Unit Price Table.

#### 101.206 Preparation of Bid

Each Bidder shall submit Bids on the Standard Bid Form supplied by the Corporation. All Standard Bid Forms shall be completely filled out and signed. If required, a Bid bond or cashier's check for five percent (5%) of the Bid amount shall also be included with the Standard Bid Form. Failure to fully complete the Standard Bid Form or to submit the required Bid security may result in the rejection of the Bid. The Plans, Conditions, Special Provisions, and Technical Specifications do not need to be submitted with the Bid but

will be considered to be a part of the Bid and shall be retained by the Contractor for the firm's records. The authorized representative(s) of the Bidder shall sign in the space provided.

#### 101.207 Mathematical Errors in the Bid

No mathematical errors or omissions in the Standard Bid Form shall be corrected by the Corporation except that should a mathematical error occur in the extensions of unit prices and additions of amounts, the unit price shall govern. In such event, the amount and total price shall be corrected accordingly. In the event any other material error or omission should occur, the Contracting Officer, in his or her sole discretion, shall have the option to reject the Bid and/or terminate the Contract.

#### 101.208 Inconsistency

In the event there is an inconsistency or conflict in the Contract documents, Change Orders shall prevail over the Unit Price Agreement; Unit Price Agreement shall prevail over the Standard Bid Form; Standard Bid Form shall prevail over the Flow Down Conditions; Flow Down Conditions shall prevail over Special Provisions; Special Provisions shall prevail over the Technical Specifications; Technical Specifications shall prevail over the Supplemental Conditions; Supplemental Conditions shall prevail over the General Conditions; General Conditions shall prevail over the Plans; Plans shall prevail over other agreements and securities.

In the event of discrepancies or conflicts within the Plans, the drawings drawn to the largest scale shall govern.

In the event of discrepancies or conflicts between figures, dimensions and scaled dimensions, the figured dimensions shall govern.

Except as otherwise provided for herein, any inconsistencies between the Contract documents shall be resolved by the Contracting Officer.

#### 101.209 Withdrawal of Qualifying Bids

A Bidder may, without prejudice, withdraw a Bid after it has been deposited with the Corporation provided the request for such withdrawal is received by the Corporation, in writing, email or fax, before the time set for opening Bids. The Bidder may then submit a revised Bid provided it is received prior to the Bid closing time.

#### 101.210 Discrepancies

Should a Bidder find omissions from or discrepancies in any of the Bid documents or should a Bidder be in doubt as to the meaning of any part of such documents, he should notify the Contracting Officer for clarification before the closing date of Bids. If the Contracting Officer considers a correction or interpretation necessary or desirable, he will issue a written Addendum to all Bidders notifying them of the omissions or discrepancy and setting out the correction or interpretation.

#### 101.211 Acceptability of Bids

Bids which are incomplete, conditional, illegible or obscure or that contain additional matters not requested by the Corporation, reservations, erasures, alterations (unless properly and clearly made and initialed by the Bid signing officer) or irregularities of any kind, may be rejected. All entries in the Bid shall be made in ink or by typewriter. The Corporation reserves the right to waive formalities at its discretion. The

Corporation reserves the right to reject any or all Bids. The lowest Bid may not necessarily be accepted. Any obviously unbalanced Bid may be rejected.

#### 101.212 Validity of the Bid

The Bidder agrees that the Bid and the prices quoted therein constitutes an offer to the Corporation which is open for acceptance of the Corporation for a period of thirty (30) calendar days from the Bid closing time. The Bidder also warrants that the Bid was made in good faith and that the Contractor has not entered into collusion with other Contractors to falsify its Bid.

### **101.300 AWARD AND EXECUTION OF CONTRACT**

#### 101.301 Qualification of Bidder

Before awarding the Contract, the Corporation may require any Bidder to submit proof that the Bidder or any identified Subcontractor has successfully carried out work of a similar nature, is financially capable of carrying out the terms of the Contract; has sufficient quantity and type of equipment to perform the work; holds a valid contractor's license; and such other related information as the Corporation shall reasonably require.

#### 101.302 Acceptance of Bid

Within thirty (30) days of the Bid closing time, the successful Bidder will be notified.

#### 101.303 Execution of Contract

Upon the Corporation's acceptance of the Bid from the Contractor, the successful Bidder shall execute the Corporation's Unit Price Agreement and shall deliver such executed agreement to the Corporation within fourteen (14) calendar days after receipt. The Corporation may rescind its acceptance of Bidder's offer or terminate the Contract and Bidder shall be in default for failure to execute the Unit Price Agreement or for not providing the required information within the fourteen (14) calendar day period.

#### 101.304 Bonds

Performance Bonds and Payment Bonds when required by the Corporation shall be provided on forms acceptable to the Corporation and shall be delivered to the Corporation with the signed Unit Price Agreement pursuant to Section 101.303 "Execution of Contract." The Performance Bond and the Payment Bond shall each be for the amount shown in the Bid Form and shall be conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract and upon prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the work provided by the Contract. The Performance Bond and Payment Bond shall be executed by the Contractor and a corporate bonding company licensed to do business in the state in which the work is located, and listed on the US Department of Treasury Circular 570. The Performance and Payment Bond shall be effective on the date the Unit Price Agreement is signed by the Corporation and shall remain in effect until one (1) year after the final acceptance of the work and final payment is made or such earlier date as determined by the Corporation and shown in the Bid Form. The Corporation may, at its sole discretion, terminate the Contract on written notice if the required bonds are not received in a timely manner as provided above and/or do not comply with the requirements of the Contract.

After the Unit Price Agreement is signed and the Performance and Payment Bonds are received, any Bid security held by the Corporation shall be returned to the successful Bidder. If the Contractor fails to execute



the Unit Price Agreement, the Bid security will be forfeited to the Corporation. This forfeiture shall not impair any other remedies, which the Corporation may have either at law or in equity. All unsuccessful Bidders will be relieved of any obligation to enter into a Contract and any security held by the Corporation will be returned.

#### 101.305 Construction Schedule

Unless otherwise stipulated in the Bidding documents, the Contractor shall prepare and submit a construction schedule in writing to the Contracting Officer within 10 days after the Contract is signed for approval. The schedule shall be submitted to the Contracting Officer prior to the issuance of the Notice to Proceed. The schedule shall provide for the timely completion of the work, which is considered to commence with the scheduling of a pre-construction meeting and end with the Contract completion date. The schedule shall outline the major elements of the Work, the time to complete each element, and an estimate of start and completion dates for each element of the Work. The schedule shall be submitted in a format suitable for reproduction and distribution, and updated during the course of construction. Approval of the construction schedule by the Contracting Officer shall be in writing and will not relieve the Contractor of the responsibility to complete the work on a project in a timely manner. Any revisions to the schedule must be submitted to the Contracting Officer in writing and approved by the Contracting Officer.

#### 101.306 Submittals

The Contractor shall prepare and provide a copy of all shop drawings, a description of the construction methods, material specifications, and any other submittal information as required in the Special Provisions or Technical Specifications. This information shall include but is not limited to rebar drawings, structural steel drawings, concrete mix designs, cold and hot weather concrete placement procedures, aggregate and rock gradation and water control structure details. All information shall be submitted in a timely manner to allow the Contracting Officer sufficient time to review and approve the submittals before purchasing the material and prior to commencement of the work. The Contracting Officer shall review and approve or reject initial submittals in writing within seven (7) working days after receipt. Where the Contracting Officer requests additional information or rejects an initial submittal, the Contracting Officer shall use such time as is necessary to review the additional materials or new submittals.

Approval of this information shall not relieve the Contractor of his/her responsibility to meet the requirements of the Contract.

#### 101.307 Notice to Proceed

No work or ordering of materials shall be done on a project until the Contracting Officer has issued a Notice to Proceed. The Notice to Proceed will be written and will be issued only when a signed Unit Price Agreement, a Certificate of Insurance and Construction Schedule as required herein, and all required bonds or other security have been received by the Corporation. If a Notice to Proceed has not been issued within thirty (30) days of Corporation's execution of the Unit Price Agreement then the Contract is considered void unless both parties mutually agree in writing to extend it. If a Contract is extended in such a manner, the Contractor understands that a Notice to Proceed is still needed prior to the start of a project.

Once a Notice to Proceed has been issued, the Contractor shall initiate work in sufficient time to complete the works by the Completion Date indicated on the Unit Price Agreement. If the Contractor has, in the opinion of the Contracting Officer, delayed the commencement of work to the extent that the Completion Date cannot be met, then the Contractor may be subject to the penalties of default or delay as described herein.

## **101.400 SCOPE OF WORK**

### **101.401 Increased or Decreased Quantities**

The quantity of any Contract item may increase or decrease naturally during the completion of a project or may be ordered changed by the Contracting Officer without nullifying the Contract. If the quantity of any Contract item required to complete the project varies from the original estimate by twenty-five percent (25%) or less, payment for that quantity shall be made at the Contract unit price. Unless otherwise noted, adjustment to the Contract item unit price may be made if quantities differ from the original estimate by more than twenty-five percent (25%). An adjustment to the Contract unit price shall be made for the entire Bid item quantity. This adjustment shall be made by the mutual consent of the Contractor and Corporation.

If payment for an increase or decrease greater than 25% in a line item quantity cannot be agreed upon between parties, then payment shall be made as outlined in Section 101.402 "Extra Work." The Contractor shall be responsible for all of the record keeping requirements described in this section.

### **101.402 Extra Work**

The Corporation may, without invalidating the Contract, order the Contractor to perform Extra Work. The Contractor shall not commence any Extra Work unless the work has been ordered in writing by the Contracting Officer. Extra Work shall be paid for by negotiated unit rates or actual hours worked in accordance with the rate or rates set in the Extra Work order. Standby time will not be considered as Extra Work or a viable claim and all claims for payment of standby time will be denied.

If a negotiated rate for the Extra Work cannot be agreed to between the parties, then a rate determined using the Rental Rate Blue Book hourly rate plus fifteen percent (15%) shall be used. The Contractor shall keep a daily record of each portion of work covered by the Extra Work order, showing the names of each workman engaged on the Extra Work, the number of hours each workman was employed, and the number of hours equipment was employed on the Extra Work. These daily records shall be made in duplicate each day of which Extra Work is done, and shall be signed by the Contractor in charge of the work and submitted to the Contracting Officer for approval.

All invoices in connection with the Extra Work shall be submitted by the Contractor to the Contracting Officer, not later than the tenth (10<sup>th</sup>) day of the month following the last day in which the Extra Work was performed. All Extra Work shall be documented on a Change Order.

### **101.403 Concealed or Unknown Conditions**

If conditions are encountered which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in any event no later than 5 days after first observance of the conditions. The Contracting Officer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract and/or Completion Date. If the Contracting Officer determines that the conditions are not materially different from those indicated in the Contract, and that no change in the terms of the Contract is justified, the Contracting Officer shall so notify the Contractor in writing stating the reasons. Claims by the Contractor in opposition to such determination must be made within 5 days after the Contracting Officer has given notice of the decision, pursuant to 101.905. If the conditions encountered are materially different, the Contract and Completion Date shall be equitably adjusted, and any Extra Work completed in accordance with 101.402.

#### 101.404 Clean Premises

The Contractor shall keep the work site in a neat and orderly condition at all times. Care shall be taken to prevent excessive soil erosion by either wind or water. Waste materials, rubbish and debris shall be promptly and regularly removed from the site by the Contractor.

Upon completion of the work, the Contractor shall promptly remove all remaining materials, rubbish, litter, debris, temporary structures, excess materials and plants, and shall clean up the site and works to the satisfaction of the Contracting Officer.

#### 101.405 Stop Work Order

The Contracting Officer may stop work at any time by giving written notice to that effect to the Contractor. Under no circumstances shall the Contractor recommence construction until he has obtained written permission of the Contracting Officer.

#### 101.406 Standby Time

The Contracting Officer may require a Contractor to stop work on a project and “standby” for a period of time before resuming work. When a Contractor is required to “standby” by order of the Contracting Officer then payment for idle equipment shall be made at an hourly fixed-cost rate for each piece of equipment plus fifteen percent (15%) as agreed upon between the Contractor and Contracting Officer. If an hourly fixed-cost rate for equipment cannot be agreed upon between both parties then a rate determined using one half (1/2) the Rental Rate Blue Book hourly rate plus fifteen percent (15%) shall be used. In both cases the fixed-cost rate shall only include the equipment rental rate plus labor and will not include any operating costs. If the Rental Rate Blue Book is used to determine an hourly rental rate for a piece of equipment the monthly rate divided by one hundred seventy-six (176) hours shall be used. Payment for standby equipment shall be based on an eight (8) hour day not to exceed forty (40) hours per week.

### **101.500 CONTROL OF WORKS**

#### 101.501 Contracting Officer’s Rights and Obligations

The Contracting Officer shall:

- a) Decide whether all work has been completed as required by the Contract, including the acceptability of the quality and quantity of any labor, equipment or material used in the execution of the work, and the timing and scheduling of the various phases of the work.
- b) Be authorized to order completed work that is not in compliance with the Contract to be corrected by the Contractor as determined by the Contracting Officer and to order any material that is not in compliance with the Contract to be removed and replaced by the Contractor.
- c) Have the right to order Extra Work, dispense with or change the whole or any part of the work provided for in the Contract.
- d) Have the right to schedule post construction project inspection of the project to determine if corrective work is necessary.

#### 101.502 Supervision of Construction and Workers

The Contractor shall supervise and direct the work using his best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract. The Contractor shall also designate a person(s)

to be the Contractor's representative on site. The superintendent will serve as the project contact person and will represent not only the Contractor but also any subcontractors used on the project. The superintendent shall be responsible for requesting inspection, notifying the Engineer when segments of the work are complete, and communication of instructions to all employees and subcontractors on the job site. Except in emergency situations all specified notifications, submittals, and communications shall be considered valid only if they are received by the Engineer from the designated superintendent.

Any person employed by the Contractor who, in the opinion of the Contracting Officer, does not perform his work in a proper skillful manner, or is disrespectful, intemperate, disorderly, or otherwise objectionable, shall by written request (detailing reasons) of the Contracting Officer to the Contractor be removed from the work site by the Contractor employing the person, and that person shall not be employed again on any portion of the said work.

#### 101.503 Inspection

Construction operations requiring onsite inspection as stipulated in the Contract documents shall not be in progress when the Contracting Officer is not on site unless otherwise authorized by the Contracting Officer. Inspection will be performed on the project in accordance with the inspection requirements.

The Contractor shall give the Contracting Officer no less than two (2) working days written or verbal notice of Contractor's intention to commence construction on any specified operations, and shall not demobilize equipment that may be necessary to adjust or modify such elements of work.

It shall be the Contracting Officer's responsibility to ensure that he is available to inspect the work provided he has been given the appropriate notice. The Contracting Officer may, without breach of the Contract, direct the Contractor either verbally or in writing, to proceed with construction of these operations without the Contracting Officer being present.

Visual inspection and quality assurance testing will be performed by the Contracting Officer at his discretion, and is for the sole benefit of the Corporation for quality assurance. The Contractor shall cooperate with the Corporation's quality assurance testing firm(s) by furnishing samples of materials and providing assistance as requested without charge. Regardless of any test results, the Contractor is solely responsible for the quality of workmanship and materials and for compliance with the requirements of the contract documents. The Corporation, at its own expense, may employ the services of an independent third party firm or individual to provide certified verification of compliance or noncompliance with the requirements for acceptance as stated in the Contract documents. The Contractor shall, without charge, replace or correct work or materials found not to conform to the contract requirements. The costs of all retests may be deducted from monies due, or to become due the Contractor.

#### 101.504 Survey Stakes and Plans

The Contractor is responsible for and shall perform all surveys and measurements required to accurately layout and control work as shown on the plans. Unless otherwise noted in the Contract documents, the Contracting Officer shall provide basic alignment staking and horizontal and vertical control for the Contractor at the project site(s). The Contractor shall assume full responsibility for dimensions and elevations measured from such stakes and for checking the location and elevation of the individual units.

If necessary, the Contractor shall provide adequate and suitable employees to assist the Contracting Officer with minor construction staking.

The Contractor shall be responsible for the preservation of construction stakes and identified survey pins, and the cost of replacement if disturbed.

#### 101.505 Accommodation of Traffic

The Contractor shall obtain and comply with all road permits issued by State, County, and local agencies having jurisdiction over the roads used. The Contractor shall make proper provisions for maintaining traffic on roads and railways. The Contractor shall minimize disruption to all highways and adjacent road traffic. Vehicular and pedestrian traffic shall not be stopped, restricted or diverted except when specified in the Contract documents.

#### 101.506 Access to the Project Site and Site Protection

When crossing private property, the Contractor shall confine his activity to only access roads indicated on the Plans, unless otherwise specified by the Contracting Officer.

The Contractor's use of the project site shall be limited to its construction operations. The Contractor shall minimize disturbance outside the construction limits, and not unnecessarily disturb land on or adjacent to the site. Haul routes and areas of disturbance may be limited at the Contracting Officer's discretion. Damage to any existing equipment, structures, utilities, fencing, roads and /or any other existing facilities due to the Contractor's work or activities shall be repaired or replaced at the expense of the Contractor to the Owner's satisfaction.

#### 101.507 Control of Surface/Subsurface Water

The Contractor is responsible for control of surface water, subsurface water and drainage during the construction period. The discharge from dewatering operations shall be approved by the Contracting Officer before dewatering operations begin. All temporary fills, crossings, or culverts necessary to promote drainage will be installed and removed at the Contractor's expense prior to acceptance of the work. Drains in the project area critical to agricultural and/or habitat management operations may be operating during construction. Any claims arising from upstream or downstream damages as a result of the construction or failure of these temporary works will be the Contractor's responsibility.

#### 101.508 Spill Prevention, Control and Countermeasures

The equipment that the Contractor utilizes to undertake the Work shall be maintained in a manner that minimizes the potential for spills of fuels, lubricants, and other hazardous construction materials. The Contractor shall employ at a minimum the following prevention, control and response measures:

- A. Only perform equipment fueling, maintenance and repair as needed for efficient performance of the work, and in a manner that is protective of water quality and the environment.
- B. Spill prevention shall include but not be limited to the placement of drip pans under equipment, the draining of leaking fluid reservoirs and/or lines, and the repair of leaking gaskets.
- C. In the event of any accidental leaks or spills, immediately clean up the spill and contain any contaminated waters. Remove any contaminated soils, contaminated water, sludge, spill residue or other hazardous materials offsite in accordance with all applicable laws and dispose of at a lawfully permitted facility.
- D. Maintain onsite a spill kit for emergency containment and cleanup.

The Contractor shall immediately notify the Contracting Officer in the event of any spill or release of chemical in any physical form within the project site or adjacent waterways. The Contractor shall be solely responsible for all costs of fines, cleanup, sampling and analysis, reporting and monitoring that results from any fuel or chemical release caused by the Contractor.

#### 101.509 Fire Prevention

The Contractor shall take all necessary precautions to prevent grass, brush and forest fires on the Work. He shall be responsible for all damage from fires due directly or indirectly to his own activities or to those of his subcontractors or employees.

#### 101.510 Subcontracts

Contractor shall not, without the written permission of the Corporation, assign this Contract, or make any Subcontract with any person to perform any portion of the work except as approved in the Bid.

In the event the Corporation consents to a subcontract or assignment, the Contractor shall not be relieved of any liabilities or obligations under the Contract. The Contractor shall be responsible for the prompt payment of all just debts incurred by the assignee or Subcontractor on work done under the Contract.

The Contractor shall supervise all work performed by a Subcontractor and shall terminate a Subcontractor if the Subcontractor's performance is not of good quality or in accordance with the Contract requirements.

### **101.600 CONTROL OF MATERIALS**

#### 101.601 Acceptance of Materials Supplied by the Corporation

The Contractor shall, upon delivery to the site or to his/her possession, check carefully the number and quality of such materials. In the event that there are shortages, discrepancies or materials in poor condition, the Contractor shall immediately report in writing such shortage, discrepancy or poor condition to the Contracting Officer responsible for the work.

#### 101.602 Storage and Care of Materials Supplied by the Corporation

The Contractor shall be solely responsible for the full amount of material in each shipment and any theft of, loss of or damage to material after delivery to the Contractor, will be charged to the Contractor.

If any questions should arise as to the suitability of any material supplied by the Corporation for use on the work, such material shall remain in the care of and at the risk of the Contractor until it can be examined and tested by the Contracting Officer to determine its fitness for the purpose for which it was supplied.

The Contractor shall be solely responsible to provide that materials supplied by the Corporation to the Contractor are only used for the purpose for which they are supplied.

#### 101.603 Warranty

The Contractor warrants to the Corporation that all materials and equipment furnished by the Contractor under the Contract will be new and in accordance with the Contract documents unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Contract. All work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If required by the Corporation, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In the event the Contracting Officer discovers that unacceptable materials are being used, whether incorporated in the work or not, such materials shall be promptly removed from the site at the Contractor's expense.

## **101.700 LEGAL RELATIONS AND RESPONSIBILITIES**

### **101.701 Insurance**

Notwithstanding any other insurance coverages carried, or required by law to be carried, by the Contractor, the Contractor shall provide, maintain and pay for the following insurance coverage for:

- (a) claims under worker's or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the work performed at statutory limits;
- (b) claims for damages because of bodily injury, sickness or disease, or death of any person at limits of at least \$1,000,000 or the amount listed as a Special Provision, which ever is greater, per occurrence.
- (c) claims for damages because of property damage to the property of third party(ies) at limits of at least \$1,000,000 or the amount listed as a Special Provision, which ever is greater, per occurrence.
- (d) claims involving contractual liability insurance applicable to the Contractor's obligations under Section 101.800 at limits of at least \$1,000,000 or the amount listed as a Special Provision, which ever is greater, per occurrence.
- (e) claims for damages to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom at limits of at least the amount of this Agreement paid to Contractor;
- (f) claims for damage because of bodily injury, death or personal property damage arising out of the ownership, maintenance and/or use of a motor vehicle at limits of at least \$1,000,000 or the amount listed as a Special Provision, which ever is greater, per occurrence; and

Such insurance coverages shall be purchased from and maintained with a company or companies lawfully authorized to do business in the state in which the work is performed. Liability coverages shall include: products and completed operation coverage; independent contractors coverage; explosion, collapse, underground ("ECU") coverage; and broad form contractual liability coverage. Such coverages shall insure claims which arise out of or result from the Contractor's operations under the Contract whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

All insurance coverages required to be obtained and maintained by Contractor under the Contract: (1) name Ducks Unlimited, its officers, directors, employees and agents as additional insureds, along with any additional entity or person as identified in a Special Provision; (2) must be written as primary policy coverage and not contributing with or in excess of any coverage of which the Corporation may carry; (3) must contain an express waiver of any right of subrogation by the insurance company against the Corporation and its employees, officers, directors and agents; and (4) must provide that the policy may not be cancelled unless the Corporation shall have received Ten (10) (or as otherwise provided in the policy, whichever is longer) days prior written notice of cancellation.

Contractor shall deliver to Corporation with the signed Contract, certificates of insurance evidencing that the coverages listed herein are in effect. Coverages shall be written on an occurrence basis and shall be maintained without interruption from the date of the execution of the Contract by the Contractor until Corporation consents in writing upon completion of the project as determined by Contracting Officer.

#### 101.702 Indemnity

The Corporation shall bear no responsibility or liability with respect to any claims or suits by third persons for damages incurred or suffered resulting from, or caused by, the Contractor, any Subcontractor, or their respective employees', agents', servants' and assigns' activities under this Contract. Contractor agrees that it will indemnify, defend and save Corporation harmless from and against all losses and all claims, demands, payments, suits, actions, recoveries, judgements, costs and expenses of every nature and description brought or recovered against the Corporation or expended by the Corporation, including the payment of attorneys' fees arising from the performance by Contractor, any Subcontractor, and/or their respective employees, agents, servants and assigns of Contractor's obligations under this Contract.

#### 101.703 Regulations, Acts and By - Laws

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority that apply to the work carried out under this Contract. If the Contractor performs any work contrary to such laws, ordinances, rules and regulations, he shall assume full responsibility and shall bear all costs attributable thereto.

#### 101.704 Severability

If any term or provision of the Contract shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of the Contract shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

#### 101.705 Licenses and Permits

The Contractor shall obtain and pay for all necessary permits and licenses required by statute or by any by-law, order or regulation having the force of law.

#### 101.706 Taxes

The Contractor shall pay all applicable taxes, excise taxes and duties on materials supplied by the Contractor for the Contract.

#### 101.707 Existing Utilities

It shall be the Contractor's responsibility to determine and verify the location of existing utilities before commencing any work in the vicinity. The Contractor shall indemnify and save harmless the Corporation from and against any and all claims, actions, suits, demands, damage or costs howsoever arising because of any damage to existing utilities.



#### 101.708 Existing Fencing

Any existing fencing dismantled or removed by the Contractor so as to accommodate the construction or access to site shall be replaced or rebuilt to its original condition prior to the Contractor leaving the site. Before any dismantling or removing of fence on private property, the Contractor shall get written permission from the local landowner of that property. All costs incurred for this dismantling or removing shall be borne entirely by the Contractor.

#### 101.709 Roads

The Contractor shall be responsible for all damage and/or restoration of roads whether existing or created, public or private, used in conjunction with the construction of a project. All roads shall be returned to a condition equal or better to that existing prior to their use in construction of the project. Repair and or restoration work of roads shall be at the expense of the Contractor.

#### 101.710 Cultural or Historic Resources

Federal law protects any cultural or historic resources found on the project land. If any cultural or historic resources (artifacts) are found during construction, all work shall immediately cease and Contractor shall notify the Contracting Officer. The Contracting Officer shall determine whether to continue or cease construction activities as appropriate and shall inform the Contractor of his decision.

Contractor will be compensated for work completed to the point of cessation of activities. Any additional claims will be reviewed by the Contracting Officer.

#### 101.711 Habitat and Wildlife Protection

The project site and adjacent areas contain sensitive habitat areas for protected wildlife, and may include endangered species. The Contractor shall provide protection, operate temporary facilities, and conduct construction in ways and by methods that: 1) comply with environmental regulations, 2) adhere to special provisions and/or permits included in the Contract, 3) comply with environmental awareness training provided to project personnel, 4) protect wildlife and water quality, and 5) minimize possible air, waterway, and subsoil contamination or pollution or other undesirable effects. Wildlife or plant life shall not be intentionally harmed and destroyed.

#### 101.712 Safety

The Contractor shall be responsible for initiating, providing, maintaining and supervising all safety programs and precautions in connection with the work in accordance with federal, state and local laws and regulations and with generally accepted safety practices. The Contractor shall provide protection devices including barricades, fencing, warning signs, lights, and other devices necessary to ensure security and safety within the project site during all aspects of the Work. The Contractor shall ensure access and safety are maintained continuously during the performance of the Work.

#### 101.713 Limitation of Liability

Contractor covenants that it will not, under any circumstances, bring lawsuit or claim against Ducks Unlimited's individual employees, officers or directors and that Contractor's sole remedy shall be against Ducks Unlimited, Inc.

## **101.800 PROGRESS OF WORK**

### **101.801 Neglect or Delay by the Corporation**

No extra payment, in addition to the Contract price, will be made to the Contractor for any extra expense, loss or damage due to neglect or delay, unless the Contracting Officer has first certified in writing that such extra expense, loss or damage is directly attributable to any neglect or delay on the part of the Corporation in providing any information or doing any act which is expressly required to do by the Contract. The Contractor shall, within five (5) days from commencement of such neglect or delay, give written notice to the Contracting Officer of a claim for such extra expense, loss or damage. If such notice is not given within the five-day (5) period, any claim the Contractor may have for extra payment shall be waived.

### **101.802 Default by the Contractor**

If the Contractor is adjudged as bankrupt, or if he/she makes a general assignment for the benefit of his/her creditors, or if a receiver is appointed on account of his/her insolvency, or if he/she repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough, properly skilled workmen or proper materials, or if he/she fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material violation of any provision of the Contract, then the Corporation may, without prejudice to any right or remedy and after giving the Contractor and his/her surety, if any, four (4) days written notice, terminate the Contract with the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

Where the Contractor is so relieved of the work the Contractor will reimburse the Corporation for all costs and damages incurred or sustained by the Corporation by reason of the Contractor's non-completion of the work. The Contractor will continue to be liable for any legal or contractual obligations other than the physical completion of the work of which he/she was relieved.

Where the Contractor has subsequently completed Contracted work, the Contracting Officer will determine the amount, if any owing to the Contractor that is not required, by the Corporation, for the purpose of completing the Contract and will authorize payment of that amount to the Contractor.

### **101.803 Extension of Time**

At the request of the Contractor, the Contracting Officer may extend the time for completion of the work or any part of the work. Extensions will be provided for delays caused by reasons of Force Majeure as provided in Section 101.804 "Force Majeure" and for changes made to the scope of the work by the Corporation that would increase the time to complete the work. No extensions shall be provided because of Contractor's failure to provide or cause Subcontractors to provide sufficient equipment, labor and material for the completion of the work in the time period provided in the Contract. Any extension request by the Contractor shall be made in writing and document the reasons and need for an extension. A revised construction schedule shall also be provided. A Change Order shall be issued for any extension granted by the Contracting Officer. Contractor's failure to provide needed documentation or a revised construction schedule in a timely manner may result in the denial of the request for an extension of time.

#### 101.804 Force Majeure

Contractor shall not be liable to the Corporation for failure or delays in performance of any duties or obligations hereunder resulting from any cause beyond its reasonable control, including, but not limited to: weather (flood, hurricane, tornado or earthquake), an act of God, an act of war, an embargo, a strike, governmental action or inaction or other law, rule or regulation which delays or prohibits the performance hereof. If such conditions occur, Contractor shall affirmatively attempt to eliminate, remove and/or cure such condition. In the event that the Contractor is unable to eliminate, remove and/or cure such condition, it shall give notice thereof to the Corporation and be excused from performance hereunder during the currency of any such event. If the condition exists for more than one (1) month from the date notice of any such event is given to the other party, either party may terminate this Contract by giving written notice to the other party. Contractor's failure to provide or cause Subcontractors to provide sufficient equipment, labor and material for the completion of the work in the time period provided in the Contract shall be deemed to be within the Contractor's control and shall not excuse or delay Contractor's performance.

#### 101.805 Adverse Weather

The Contractor shall anticipate and plan for average monthly adverse weather in his/her schedule for all weather dependent activities. An extension of time to the Contract may be considered by the Contracting Officer only when the following conditions are met: 1) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month, and 2) The unusually severe weather must actually cause a delay to the completion of the project. Actual adverse weather delay days must prevent work on critical activities for fifty (50) percent or more of the Contractor's scheduled work day. The delay must be beyond the control and without the fault or negligence of the Contractor.

Average monthly adverse weather and actual weather measured shall be based on data provided by National Oceanic and Atmospheric Administration (NOAA) for the project site location.

#### 101.806 Liquidated Damages

If the Contractor fails to complete the work within the time allowed by the Contract, the Contracting Officer, if satisfied that the Contractor is carrying the work forward with reasonable progress, may allow the Contractor to continue in control of the work. A revised construction schedule will be developed between the Contractor and the Contracting Officer. The Contractor will prosecute the work at as many different places, at such times, and with such forces as necessary to adhere to the revised construction schedule.

For each calendar day that any work shall remain uncompleted after the contract completion date or the time extension date, the sum specified in the Bid Form will be deducted from any money due the Contractor, not as a penalty but as liquidated damages: provided, however, that due account shall be taken of any adjustment of the completion date.

The Contracting Officer may waive such portions of the liquidated damages as may accrue after the work is in condition for safe and convenient use.

#### 101.807 Suspension of the Contract

The Contracting Officer may suspend the Contract at any time by giving notice to that effect to the Contractor. If the period of suspension is thirty (30) days or less, the Corporation shall reimburse the Contractor for the Contractor's out-of-pocket expenses involved in complying with the suspension. These costs shall be as mutually agreed upon between the Contracting Officer and the Contractor. If the period

of suspension is more than thirty (30) days, the Contractor shall resume operations at such time in accordance with any terms and conditions agreed upon by the Contracting Officer and the Contractor, or failing such agreement, the Contract shall be terminated. In the event of such termination, work done prior to the date of suspension will be paid for at the Contract Unit Prices.

#### 101.808 Termination of the Contract

The Contracting Officer may terminate the Contract at any time for cause, due to a supervening possibility or because of the loss or termination of any funding for the work to be performed under the Contract, by giving written notice to that effect to the Contractor. Any compensation due to the Contractor will be in accordance with Section 101.900 "Payments."

#### 101.809 Final Acceptance

When the Contractor believes the work set forth in this Contract has been completed and is ready for operation, the Contractor shall notify the Corporation and a joint inspection shall be undertaken at which time any deficiencies will be identified.

In the case that any unacceptable deficiencies remain, a written "punch list" of the deficiencies shall be provided to the Contractor. When the Contractor believes the items on the punch list have been completed, the Contractor shall notify the Contracting Officer for an additional inspection. In the event that subsequent deficiencies remain following the second inspection, the Contractor shall be responsible for all travel and hourly expenses incurred by the Corporation necessitated by any and all additional inspections required to ensure the suitability of Contractor's work prior to final acceptance of said work by the Corporation. The Contractor will be provided an invoice of all such expenses. Final retainage shall not be released until said invoice has been paid in full.

Thereafter, the Contracting Officer will issue a written notice of Substantial Performance or Final Acceptance of the work done if, in the opinion of the Contracting Officer, all requirements of the Contract have been fulfilled. Nothing other than this acceptance shall imply completion of any part of the works, or the fulfillment of the Contract requirements. Until a letter of Substantial Performance or Final Acceptance is issued the Contractor shall be responsible for injury or damage to any part of the project resulting from the action of the elements or from any other cause. The Contractor shall rebuild, repair, restore or make good all injuries or damages to any portion of the work prior to the final inspection.

When conditions dictate that a small amount of work must be postponed until a later date, then only a letter of Substantial Completion may be issued on that work which has been completed with a letter of Final Acceptance to follow when all the work has been completed.

#### 101.810 Post Construction Warranty

The Contractor warrants to the Corporation that work performed under the Contract will be free from defects not inherent to the quality required and will conform with the requirements of the Contract for a period of one (1) year after the date of final acceptance by the Corporation. During that one (1) year period, if the Contracting Officer determines that the work is defective or does not conform with the requirements of the Contract, the Contractor shall within ten (10) calendar days of notice from the Corporation perform corrective work to remedy any such defect at its own expense. Failure to correct such defects shall be a breach of Contractor's performance under the Contract, and the Corporation may, in addition to any other remedies at law or in equity, seek redress for nonperformance under the Performance Bond required pursuant to Section 101.304 "Bonds." Warranties for equipment or materials supplied as part of the Contract shall be transferred or assigned to the owner of the site.

## **101.900 PAYMENTS**

### **101.901 Measurement**

All payments to the Contractor will be for acceptable materials furnished and work satisfactorily completed as specified in the Contract. Quantities for each pay item will be measured in accordance with the Unit listed on the Unit Price Table and the method of measurement described in the Technical Specifications.

For bid items that are specified to be measured on a plan quantity basis, the quantities set forth in the bid will be the pay quantities, unless changes are made to the drawings. The actual quantities placed in accordance with the plans and specifications will not be measured for payment. Payment will be made on the bid quantities times the unit price bid.

For bid items that are specified to be measured in the field, as staked, as installed or for time recorded, the quantities set forth in the Bid are approximate only. Final quantities will be verified by the Engineer as indicated in the Measurement and Payment sections of the Technical Specifications. The extension amounts shown in the Bid are for comparative purposes only and in no way constitute an actual amount for which Ducks Unlimited, Inc. will be liable.

For bid items that are paid on a lump sum basis, payment will be made based on completion of the bid item. Actual quantities placed in accordance with the plans and specifications will not be measured for payment. The Contracting Officer may consider requests made by the Contractor for progress payments on lump sum bid items. The Contractor shall submit to the Contracting Officer for approval a Schedule of Values identifying costs of major items of work for lump sum (LS) bid items. The major items of work shall be further broken down into definable features of work for which progress payments may be requested. The Contracting Officer may request data to verify accuracy of dollar values, including invoices, receipts, etc. for work completed and materials installed.

Payments to the Contractor are made on completion and acceptance of the work by the Corporation. The partial payments for all bid items may be subject to retention. Payments to the Contractor will be made within thirty (30) days upon receipt of an approved invoice and Waiver and Release form. Invoices are to be submitted on a monthly basis, but not more than bi-monthly, subject to the instructions of the Contracting Officer. The Contracting Officer may waive the frequency of payment requirement if no significant work has been accomplished on a project.

### **101.903 Payment for Materials on Hand**

Partial payments may be made to the extent of delivered cost of approved materials to be incorporated in the work, when delivered to the project or stored in acceptable storage places in the vicinity of the project. This provision shall be applicable to those materials only that are durable in nature and represent a significant portion of the project cost, such as pipe, aggregates, steel and precast concrete, etc. Small warehouse items shall not be included unless approved by the Contracting Officer.

### **101.904 Final Payment**

Final payment shall not be made until the Contractor submits to the Contracting Officer a signed Waiver and Release form. The Corporation at its sole discretion may require a signed Waiver and Release from each Subcontractor, supplier, and materialmen establishing payment or satisfaction of obligations arising out of the Contract before final payment is made to the Contractor. If any Subcontractor, supplier, and materialmen refuses to furnish a signed final Waiver and Release form required by the Corporation, the Contractor shall furnish a bond satisfactory to the Corporation to indemnify the Corporation against any such lien or stop notice. If any liens or stop notices remain unsatisfied after all payments are made, the

Contractor shall pay all monies necessary to discharge such liens and stop notices, including all costs and attorney fees.

Payment for work completed under this Contract is subject to terms contained in project funding agreement(s), including fund expiration dates. An approved invoice for final payment must be received by the Contracting Officer within 30 days of Final Acceptance. Failure of the Contractor to submit an invoice approved by the Contracting Officer, and the signed final Waiver and Release form as described above, within the stipulated allowable time shall relieve the Corporation of any outstanding obligation of payment for work completed.

#### 101.905 Claims

Any claims, which the Contractor may have arising out of or related to the Contract, must be presented in writing to the Contracting Officer within thirty (30) days after the particular work on which the claim is based has been completed, otherwise such claims shall be waived.

#### 101.906 Statutory Holdback/Retention

The Corporation shall be entitled to deduct and withhold payment of any and all amounts allowed by law to be so withheld, for whatever period of time and in whatever amounts prescribed; and whether in regards to progress payments or for final payment for services rendered, materials supplied for work done. Such withholding shall not constitute a breach of the Corporation's obligations hereunder and the Corporation shall not be liable to the Contractor for any amounts so withheld, except to the extent and in the manner provided for in the applicable Municipal, State or Federal legislation.

Subject to local law, holdback on projects shall be from zero percent (0%) to ten percent (10%) of the invoice amount as determined by the Contracting Officer at the time the invoice is submitted. The Contracting Officer may increase the retainage above ten percent (10%) when the Contracting Officer has not been given ample opportunity for inspection of the completed work or if the work is only partially completed. Retentions may be released on a schedule as determined by the Contracting Officer. All retentions yet to be paid shall be released on the final invoice once the project has been accepted.