



## Wisconsin Department of Transportation

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**Division of Transportation Systems  
Development**

Bureau of Project Development  
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December 12, 2022

### NOTICE TO ALL CONTRACTORS:

**Proposal #36: 7160-04-75, WISC 2023119  
Trempealeau – Fountain City  
Mississippi Rvr Tributary/3 Bridges  
STH 35  
Buffalo County**

### Letting of December 13, 2022

This is Addendum No. 01, which provides for the following:

#### Special Provisions:

Revised Special Provisions	
Article No.	Description
7	Railroad Insurance and Coordination – BNSF Railway Company (stp-107-034)

The responsibility for notifying potential subcontractors and suppliers of these changes remains with the prime contractor.

Sincerely,

*Mike Coleman*

Proposal Development Specialist  
Proposal Management Section

**ADDENDUM NO. 01**  
**7160-04-75**  
**December 12, 2022**

**Special Provisions**

**7. Railroad Insurance and Coordination – BNSF Railway Company**

*Replace entire article language with the following:*

**A. Description**

Comply with standard spec 107.17 for all work affecting BNSF Railway Company property and any existing tracks.

**A.1 Railroad Insurance Requirements**

In addition to standard spec 107.26, provide railroad protective liability insurance coverage as specified in standard spec 107.17.3. Insurance is filed in the name of BNSF Railway Company. Requirements of the standard specifications are changed as follows:<sup>1</sup>

Before the state issues its notice to proceed to the contractor or contractors (collectively, the contractor) awarded the contract for construction involving the project described in this stipulation (the project), the state shall require the contractor to provide certain insurance coverage to protect the railroad (as defined in this section) from loss for property and liability exposures relating to the construction activities on the PROJECT. The manner and process in which this will be accomplished is as detailed below.

TYPE OF INSURANCE	MINIMUM LIMITS REQUIRED
1. Commercial general liability insurance; shall be endorsed to include blanket contractual liability coverage; shall cover bodily injury and property damage, personal and advertising injury, and fire legal liability. There shall be no endorsements limiting coverage for the work to be performed pursuant to this Stipulation.	\$5,000,000 combined single limits per occurrence with an annual aggregate limit of not less than \$10,000,000.
2. Workers' compensation and employer's liability coverage.	Workers' compensation limits: statutory limits. Employers' liability limits: Bodily injury by accident \$100,000 each accident. Bodily injury by disease \$500,000 each accident \$100,000 each employee
3. Commercial automobile liability insurance; shall cover all owned, non-owned, and hired vehicles used by the CONTRACTOR in carrying out the contract, and shall include coverage for	\$1,000,000 combined single limit per occurrence.
4. Railroad Protective Liability Insurance, issued on a standard ISO form 00 35 10 93 or its equivalent and endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93) and the Limited Seepage and Pollution Endorsement. No endorsements restricting FELA coverage may be added.	\$5,000,000 per occurrence \$10,000,000 in the aggregate

<sup>1</sup> As used in this section, "STATE" and "COMPANY" have the meanings assigned to them in the Stipulation to which this Exhibit is attached, "FELA" means the Federal Employment Liability Act, and "this Stipulation" means the Stipulation to which this Exhibit is attached. <sup>2</sup> The CONTRACTOR may satisfy the requirements for insurance types 1, 2 and 3 through primary insurance coverage or through excess/umbrella policies.

1. The policies for insurance types 1, 2 and 3 may not contain an exclusion for punitive damages.
2. The commercial general liability policy shall include an endorsement that removes any restrictions on coverage regarding work being performed within 50 feet of a railroad or railroad property and an endorsement that removes any exclusion related to explosion, collapse or underground hazard.
3. The CONTRACTOR must waive its right of recovery against the RAILROAD for all claims and suits against the RAILROAD. In addition, the CONTRACTOR's insurers, through the terms of the policy or policy endorsement, must waive their right of subrogation against the RAILROAD for all claims and suits. The certificates of insurance must reflect the waiver of subrogation endorsement. The CONTRACTOR also must waive its right of recovery, and its insurers must also waive their right of subrogation, against the RAILROAD for loss of the CONTRACTOR's owned or leased property or property under the CONTRACTOR's care, custody or control.
4. The CONTRACTOR's insurance policies, except for excess liability/umbrella policies, through policy endorsement, must include wording to the effect that such policies are primary and non-contributing with respect to any insurance carried by the RAILROAD. The certificates of insurance must reflect that such wording is included in the evidenced policies.
5. The policies for insurance types 1 and 3, above, must include a severability of interest endorsement. The RAILROAD and Jones Lang LaSalle Global Services- RR, Inc. must be named as an additional insured with respect to work performed under this project. Severability of interest and naming the RAILROAD and Jones Lang LaSalle Global Services- RR, Inc. as additional insured must be indicated on the certificates of insurance.
6. The CONTRACTOR shall provide the original Railroad Protective Liability policy to the RAILROAD prior to performing any work on the PROJECT.
7. The CONTRACTOR shall only obtain coverage from insurance companies licensed to do business in the State of Wisconsin that have an AM Best rating of A- and Class VII or better.
8. The CONTRACTOR is not allowed to self-insure.
9. Prior to performing any work on the PROJECT, the CONTRACTOR shall provide the RAILROAD acceptable certificates of insurance, including original signatures of the authorized representatives evidencing the required coverages, endorsements, and

amendments and referencing the RAILROAD's contract audit/folder number (if available), as evidence that required coverages for insurance types 1, 2 and 3 are in force.

10. The policies for insurance types 1, 2 and 3 must contain a provision that obligates the insurer to notify the RAILROAD at least 60 calendar days before a cancellation, non-renewal, substitution or material change in coverage, and such provision must be reflected on the insurance certificates.
11. The CONTRACTOR shall send the required insurance documentation to the RAILROAD at the following address:

BNSF Railway Company  
c/o CertFocus  
P.O. Box 140528  
Kansas City, MO 64114  
Toll Free: 877-576-2378  
Fax number: 817-840-7487  
Email: [BNSF@certfocus.com](mailto:BNSF@certfocus.com)  
[www.certfocus.com](http://www.certfocus.com)

12. Acceptance by the RAILROAD of a certificate of insurance that does not comply with this section shall not operate as a waiver of the CONTRACTOR's obligation to provide the insurance required by this section.
13. If the RAILROAD notifies the STATE that the CONTRACTOR does not have the required insurance, the STATE's engineer shall immediately suspend work on the PROJECT until the matter is resolved.
14. The requirements for insurance types 1, 2, and 3 shall apply with equal force whether the CONTRACTOR or a subcontractor, or anyone directly or indirectly employed by either, performs work on the PROJECT. If any portion of the PROJECT work is subcontracted, the CONTRACTOR must require the subcontractor to provide and maintain insurance coverages for insurance types 1, 2, and 3 that meet the requirements of this section, except that the minimum limits required for the subcontractor's commercial general liability policy shall be \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
15. The fact that the CONTRACTOR obtains insurance as required by this section shall not release or diminish the CONTRACTOR's liability. Damages recoverable by the RAILROAD will not be limited by the required insurance coverages.
16. Upon request from the RAILROAD, the CONTRACTOR will provide a certified duplicate original of any requested policy.
17. For purposes of this section references to the RAILROAD mean the COMPANY, Burlington Northern Santa Fe Corporation, and the subsidiaries, successors, assigns and affiliates of each.

Notify evidence of the required coverage, and duration to **Jamie L. Johnson**, BNSF Railroad Company, 2500 Lou Menk Drive, Building AOB-1, Fort Worth, Texas 76132- 2828, FAX (817)352-7207.

Notify evidence of the required coverage, and duration to Jake Rzewnicki, Manager of Public Projects; 4515 Kansas Avenue, Kansas City, Kansas 66106; Telephone (913) 551-4275; Telephone (913) 551-4275; E-mail [Jacob.Rzewnicki@bnsf.com](mailto:Jacob.Rzewnicki@bnsf.com) to determine the applicable railroad rules and regulations. Once determined send the RPLI policy to [bnsf@certfocus.com](mailto:bnsf@certfocus.com). Approval of the policy will not take place until the Manager of Public Projects has been contacted.

Also send a copy to the following: Anna Davey, NW and NC Region Railroad Coordinator; 1701 N 4th Street, Superior, WI 54880; Telephone (715) 392-7960; E-mail: [anna.davey@dot.wi.gov](mailto:anna.davey@dot.wi.gov).

Include the following information on the insurance document:

- Project ID: 7160-04-75
- Project Location: Fountain City, Wisconsin
- Route Name: STH 35, Buffalo County
- Crossing ID: 079915C – project runs parallel to BNSF line
- Railroad Subdivision: St Croix Sub
- Railroad Milepost: 329.689
- Work Performed on or within 50' of RR ROW: Bridge Replacement

## **A.2 Train Operation**

Approximately 44 through freight trains operate daily at up to 60 mph. There are no switching movements at this location.

## **A.3 Names and Addresses of Railroad Representatives for Consultation and Coordination**

### **Construction Contact**

Jake Rzewnicki, Manager of Public Projects; 4515 Kansas Avenue, Kansas City, Kansas 66106; Telephone (913) 551-4275; Telephone (913) 551-4275; E-mail [Jacob.Rzewnicki@bnsf.com](mailto:Jacob.Rzewnicki@bnsf.com) for consultation on railroad requirements during construction.

Amend standard spec 108.4 to include the railroad in the distribution of the initial bar chart, and monthly schedule updates. The bar chart shall specifically show work involving coordination with the railroad.

### **Flagging Contact**

Notify the Construction Contact above a minimum of 40 working days in advance to arrange for a railroad flagger. Reference the Crossing ID, Wisconsin Milepost and Subdivision found in A.1.

### **Cable Locate Contact**

In addition to contacting Diggers Hotline, contact the BNSF Communications Network Control Center at (800) 533-2891, five working days before the locate is needed. Reference Wisconsin Milepost 329.689 on Line Segment 3.

BNSF will only locate railroad owned facilities located in the railroad right-of-way. The railroad does not locate any other utilities.

## **A.4 Work by Railroad**

The railroad will perform the work described in this section, except for work described in other special provisions and will be accomplished without cost to the contractor. None

Amend standard spec 108.4 to include the railroad in the distribution of the initial bar chart, and monthly schedule updates. The bar chart shall specifically show work involving coordination with the railroad.

### **A.5 Temporary Grade Crossing**

If a temporary grade crossing is desired, submit a written request to the railroad representative named in A.3 at least 40 days prior to the time needed. Approval is subject to the discretion of the railroad. The department has made no arrangements for a temporary grade crossing.

### **A.6 Temporary Clearances During Construction**

*Replace standard spec 107.17.1(3) items 4.1 and 4.2 with the following:*

- 4.1 Provide 15 feet 0 inches plus 1.5 inches per degree of track curvature, measured horizontally from the track center line.
- 4.2 Provide 21 feet 6 inch measured vertically above the top of the highest rail.

### **A.7 Contractor Right of Entry**

N/A

## **B Railroad Flagging**

Arrange with the railroad for the flagging of trains and safety of railroad operations if clearances specified in subsection 107.17.1 are not maintained during construction operations. At any other time in railroad representative's judgment, the contractor's work or operations constitute an intrusion into the track zone and create an extraordinary hazard to railroad traffic, and at any other time when flagging protection is necessary for safety to comply with the operating rules of the railroad.

Projects with concurrent activity may require more than one flagger.

Projects with heavy contractor activity within 25 feet of the centerline of any track or unusual or heavy impact on railroad facilities will normally require a full-time flagger.

The department and railroad will monitor operations for compliance with the above flagging requirements. Violations may result in removal from railroad property until arrangements to adhere to the flagging requirements are satisfied. If the railroad imposes additional flagging requirements beyond the above flagging requirements due to the previous violations, the contractor shall bear all costs of the additional flagging requirements.

## **C Flagging by Railroad– Railroad Does Not Pay Flagging Costs**

### **C.1 General**

*Replace paragraph (1,3 and 4) of standard spec 107.17.1 with the following:*

- (1) Coordinate with the railroad for all work performed within 25 feet of the track centerline including equipment or extensions of equipment that can fall within 25 feet of the track centerline or adjacent facilities or when working on railroad right-of-way. Include the following on all submittals and other written communications with the railroad:
  - WisDOT crossing number.
  - Railroad milepost.
  - Railroad subdivision.
- (3) Perform all work within 25 feet of the track centerline including equipment or extensions of equipment that can fall within 25 feet of the track centerline or adjacent facilities or when working on railroad right-of-way in a way that does not interfere with the safe and uninterrupted operation of railroad traffic. Maintain clearances during construction as follows:

1. Do not operate equipment closer than 25 feet horizontally from a track centerline or 22 feet vertically above the top of a rail, except under the protection of railroad flaggers.
2. Do not store materials or equipment closer than 25 feet horizontally from a track centerline.
3. Provide an obstruction-free work zone adjacent to a track extending 12 feet or more horizontally on both sides of the track centerline. Keep this work zone free of construction debris.
4. Unless the railroad's chief engineering officer approves otherwise in writing, maintain minimum clearances from falsework, forms, shoring, and other temporary fixed objects as follows:
  - 4.1 Provide 12 feet, plus 1.5 inches per degree of track curvature, measured horizontally from the track centerline.
  - 4.2 Provide 21 feet, plus compensation for super-elevated track, measured vertically above the top of the highest rail.

(4) Comply with the railroad's rules and regulations when work is within 25 feet of the track centerline including equipment or extensions of equipment that can fall within 25 feet of the track centerline or adjacent facilities or when working on railroad right-of-way. If the railroad's chief engineering officer requires, arrange with the railroad to obtain the services of qualified railroad employees to protect railroad traffic through the work area. Bear the cost of these services and make payment directly to the railroad. Notify the appropriate railroad representative as listed in section A.3 above, in writing, at least 40 business days before starting work near a track. Provide the specific time planned to start the operations.

## **C.2 Rates - BNSF**

The following rates, reimbursement provisions, and excluded conditions will be used to determine the contractor's cost of flagging:

- \$1,300 daily rate for an eight-hour day (including wages, labor surcharges, meals, lodging, vehicle and mileage expenses),
- \$1,800 "Rest Time" or nightly rate for weekday overnight work for an eight-hour day (including wages, labor surcharges, meals, lodging, vehicle and mileage expenses),
- \$1,800 daily rate for an eight-hour day on Saturdays, Sundays or holidays (including wages, labor surcharges, meals, lodging, vehicle and mileage expenses),
- \$2,000 "Rest Time" or nightly rate for weekend overnight work for an eight-hour day (including wages, labor surcharges, meals, lodging, vehicle and mileage expenses),
- \$200 per hour overtime rate for all time worked before or after the regular assigned eight hours on any day, or for a minimum three hour call on Saturdays, Sundays, or Holidays.

The flagger is required to set flags each day in advance of the contractor commencing work that will require flagging. The flagger must also remove the flags each day after the completion of work that required flagging. Any time worked before or after the minimum eight-hour flagging day to set or remove flags will be billed at the overtime rate. The contractor is responsible for knowing the requirements of the railroad for arranging and terminating flagging services and for the associated costs of those services.

## **C.3 Reimbursement Provisions**

The actual cost for flagging will be billed by the railroad. After the completion of the work requiring flagging protection as provided in section B above, the department will reimburse 50% of the cost of such services up to the rates provided above based on paid railroad invoices, except for the excluded conditions enumerated below. In the event actual flagging rates exceed the rates stated above, the department will reimburse 100% of the portion of the rate that is greater than the rates stated above.

**C.4 Excluded Conditions**

The department will not reimburse any of the cost for additional flagging attributable to the following:

1. Additional flagging requirements imposed by the railroad beyond the flagging requirements provided in subsection B above due to violations by the contractor.
2. Temporary construction crossings arranged for by the contractor.

The contractor shall bear all costs of the additional flagging requirements for the excluded conditions.

**C.5 Payment for Flagging**

The department will pay for the department's portion of flagging reimbursement as specified in section C of this provision under the following item:

ITEM NUMBER	DESCRIPTION	UNIT
801.0117	Railroad Flagging Reimbursement	DOL

The reimbursement payment, as shown on the Schedule of Items, is solely for department accounting purposes. Actual flagging costs will vary based on the contractor's means and methods.

Railroads may issue progressive invoices. Notify the railroad when the work is completed and request a final invoice from the railroad. Promptly pay railroad-flagging invoices, less any charges that may be in dispute. The department will withhold flagging reimbursement until any disputed charges are resolved and the final invoice is paid. No reimbursement for flagging will be made by the department if a violation of subsection B is documented.

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END OF ADDENDUM