



Public Service Commission

State of North Dakota

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600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

August 10, 2010

Mr. David A. Smith, President
Smith Contracting, Inc.
3941 Wynne Avenue
Butte, MT 59701

First National Insurance Company of America
Attn: Claims Department
Safeco Plaza
P.O. Box 34670
Seattle, WA 98124

RE: Unsatisfactory Progress on the 2010 Buechler/Velva AML Project

Dear Mr. Smith and Sir/Madam:

This letter addresses our continuing concerns about the slow progress that Smith Contracting, Inc. has made on the 2010 Buechler/Velva abandoned surface mine reclamation project. As stated in the Notice to Proceed for this project, the 150-day performance period for this project began May 20 and ends October 16, 2010. As of August 1, we were nearly halfway through the performance period and only approximately 350,000 cubic yards, less than 20%, of the required 1,850,000 cubic yards of spoil material (titled 'dirt work' in the bid documents) has been moved. According to Smith Contracting's second revision of project schedule dated July 3, 723,815 cubic yards of dirt should have been moved by July 31. Also, it should be noted that the July 3 schedule took into account work delays due to the above normal rainfall that occurred in June. In addition to moving the 1,850,000 cubic yards of spoil material, other work that needs to be completed by the end of the performance period includes topsoil respreading, installation of 240 feet of culverts, mulching and seeding, and installing 12,000 feet of erosion control wattles.

Without a major improvement in the pace of the work on the Buechler/Velva project, we are very concerned about Smith Contracting's ability to fulfill the terms of the contract for this project. It is apparent that insufficient equipment and manpower are currently on-site to complete the project by mid-October. This letter is notification to Smith Contracting, Inc. that the AML Division considers progress of the Buechler/Velva project unsatisfactory.

Pursuant to Section 109.12 of the AML Division's Standard Specifications for AML Reclamation Projects pertaining to the unsatisfactory progress of a project, we are arranging a meeting with Smith Contracting, Inc. and First National Insurance Company of America (the surety company that issued performance and payment bonds, Bond No. 6662386, for this project). The purpose of the meeting is

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First National Insurance Company of America
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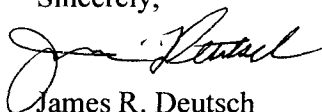
to discuss the project work and determine the steps and procedures to be followed to ensure that required work is completed. We are scheduling this meeting for **2:00 p.m. CDT, Tuesday, August 17**, at the project site about 10 miles south of Sawyer, North Dakota. If this date will not work for you, please contact me as soon as possible to arrange an alternate day during the week of August 16.

We are also responding to Smith Contracting's correspondence dated August 4, 2010 detailing concerns about the representation of the soil conditions at the Buechler/Velva site and the above normal rainfall in June. With regard to the soil conditions, the Invitation for Bids (IFB) clearly described the materials to be excavated as spoil piles that were the result of an abandoned surface mine. It is commonly understood that mine spoils are a mixture of sand, silt, clay and gravel and that the percentage of each varies greatly from site to site, and within a particular mine site. Due to the variation of materials that occur on mined lands, we do not attempt to define or characterize the spoil material in IFB's other than to identify it as mine spoils. Also, the spoil materials are considered unconsolidated in part because they have been previously disturbed by past mining activities.

The primary purposes of the April 7 pre-bid onsite conference that you attended were to allow all potential bidders to review the site characteristics of the Buechler/Velva project for themselves and to ask questions about the project. Please refer to Section 103.5 of the Standard Specifications on examination of plans, specifications, special provision, and site of work. This section states that the bidder is expected to carefully examine the site of the proposed work, plans, specifications, special provisions, and contract forms before submitting a bid. It goes on to state "The submission of a bid shall be considered prima facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of all contract documents."

With regard to above normal rainfall in June, we are aware that the wet conditions caused some work delays during that month. The project engineer has granted some additional days for the performance period due to the June rain events and he gave Smith Contracting approval to work Saturdays and Sundays, although the IFB states work will generally be restricted to daylight hours Monday through Friday. In addition, we do not believe significant work delays can be attributed to the rainy weather in June since the 2 to 3 employees of Smith Contracting that worked most of the month of June were usually able to resume work shortly after the rain events. However, we are willing to discuss a short extension to the performance period as the project needs to be completed this construction season.

We look forward to discussing these matters at the meeting next week and the development of a new plan for Smith Contracting to complete the project this fall. If you have any questions, please let me know.

Sincerely,

James R. Deutsch
Director, AML Division

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