

# PUBLIC SERVICE COMMISSION

## State of North Dakota

### Memorandum

**TO:** Commissioners Clark, Kalk and Cramer  
Darrell Nitschke  
Illona Jeffcoat-Sacco & Mark Gruman

**From:** Jim Deutsch, Director - AML Division

**Date:** November 16, 2011

**Subject:** Acknowledge Completion of Work under the Tender Agreement for the 2010 Buechler/Zap Project, Case No. AM-10-37

On April 28, 2010, the Commission entered into Contract AM-588-10 with Smith Contracting, Inc. in the amount of \$1,225,500 for the 2010 Buechler/Velva AML Project. The construction work involved the elimination of dangerous highwalls at abandoned surface mines south of Sawyer and Velva in Ward County and to otherwise reclaim about 150 acres of mined lands at these sites. As you know, Smith abandoned the project last fall and defaulted on the contract. Smith's bonding company made arrangements for a completion contractor to complete the project and a Tender Agreement was executed in May of this year between the Commission, the bonding company, and Kern & Tabery, Inc., the completion contractor.

Smith was paid \$398,094.99 for work they carried out in 2010 under the original contract and the bonding company agreed to pay the difference between the completion contractor's bid, \$1,099,896.41, and the amount of money remaining under the original contract, \$827,405.01. The bonding company paid the initial \$272,491.39 to Kern & Tabery, Inc. for their work under the completion contract and we have paid the remaining bills as work continued. Kern & Tabery completed the project in late September and final payment has been made.

Project Manager Mark Knell and construction inspector Ray Kelsch supervised the project work and determined that Kern & Tabery satisfactorily performed all of the required work required under terms of the Tender Agreement and completion contract. The total cost of Kern & Tabery's work under the completion contract was \$1,049,169.96. It should be noted that not all of the funds allocated to the force account bid item were spent.

Attached is a motion for the November 23, 2011, Commission meeting to acknowledge that all construction work has been completed under terms of the Tender Agreement and to close out the completion contract with Kern & Tabery, Inc.

Attachment

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