

INVITATION FOR BID

2010 COAL FIRE SUPPRESSION PROJECT

Slope County, North Dakota

Abandoned Mine Lands Division

North Dakota Public Service Commission

Bismarck, North Dakota

August 2010

INVITATION FOR BID
2010 Coal Fire Suppression
AML Project

FOREWORD

- Part I. GENERAL INFORMATION**
- Part II. ATTACHMENT SAMPLE CONTRACT**
- Part III. SPECIFIC PROVISIONS**
- Part IV. BID FORMS**

FOREWORD

Enclosed for your consideration is an Invitation for Bid (IFB) to perform coal outcrop fire suppression at several sites in Slope County, North Dakota.

The North Dakota Public Service Commission (Commission or PSC) is interested in bids from qualified contractors to achieve coal fire suppression and related activities within these project areas. Work must be completed as specified during the 2010 construction season.

To bid, submit the required material to the Public Service Commission no later than 11:00 a.m., CDT, August 23, 2010. The public bid opening will be held in the AML Division office, 11:00 a.m., CDT, August 23, 2010, 13th floor, State Capitol, Bismarck, North Dakota.

Any inquiries regarding the Invitation for Bids should be in writing and addressed to the AML Division, North Dakota Public Service Commission, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58505-0480.

This document can be accessed from the State Procurement Internet web site, www.nd.gov/spo/. Please be informed that maps and other attachments may be excluded from the free materials on the Internet and the Commission makes no guarantee of completeness, accuracy or availability of Internet documents.

Part I.
General Information



INVITATION FOR BID
State of North Dakota
OMB/Central Services Division
SFN 2464 (5-2006)

North Dakota Public Service Commission
Abandoned Mine Lands Division
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480
PH: 701-328-4096

Bid Number: 2010 Coal Fire Suppression Project	Bid Title:	
Date Issued: August 3, 2010	Procurement Officer: William E. Dodd	
Deadline for Questions: August 17, 2010	Telephone: 701-328-4101	Fax: 701-328-2133
Bid Opening Date and Time: August 23, 2010, 11:00 a.m., CDT	E-mail: wdodd@nd.gov	
Contract Period: September 15 - December 31, 2010 (approximate)	Commodity or Service: 962 – Miscellaneous Services #2 Sub Class 73 912 – Construction Services Gen Sub Class 23	

You are invited to participate in this Invitation for Bid. Please submit your bid response in conformance with the instructions specified herein.

By submitting a bid response, the vendor agrees and promises to sell, furnish, and deliver to the State all commodities and services contained in this Invitation for Bid for which a contract is awarded by the State. The vendor shall fully perform the contract in accordance with the all specifications, terms and conditions, and requirements contained in the Request for Bid and shall comply with all applicable provisions of the North Dakota Century Code Chapters 54-44.4, 46-02, 44-08 and North Dakota Administrative Code Chapter 4-12, made a part of the Invitation for Bid and contract by reference.

Written acceptance of the vendor's bid response by the State, by issuance of a purchase order or contract, constitutes a binding contract made and entered into by and between the State of North Dakota, acting through the Purchasing Agency named above, and the vendor named below:

Vendor Company Name:			
Street Address:			
P.O. Box:	City	State:	Zip Code:
Toll Free Telephone:		Telephone:	Fax:
Federal I.D. or Social Security No.:		E-Mail:	
Type or Print Name of Person Signing:		Title:	
Authorized Signature:			

MAILING INSTRUCTIONS

Mail a completed and signed Invitation for Bid document in a sealed envelope to the address listed below. Invitation for Bid documents received after the date and time specified in the Invitation for Bid, will be rejected. Address the envelope containing your response in the following manner:

BID NUMBER	2010 Coal Fire Suppression Project
BID OPENING DATE	August 23, 2010
BID OPENING TIME	11:00 a.m., CDT
AGENCY	PUBLIC SERVICE COMMISSION 600 EAST BOULEVARD AVE DEPT 408 BISMARCK ND 58505-0480

Bidder Checklist. Have you remembered to:

- Review all instructions, terms and conditions, and specifications to ensure your bid response complies?
- Double check your bid price(s)?
- Prepare your bid price in the specified unit of measure, F.O.B. Destination, Freight Prepaid to the delivery location listed on the cover sheet?
- Sign your bid on the cover sheet?
- Initial any alterations or corrections?
- Attached MBE/WBE Certification?
- Mark envelope as indicated?

Bidder's Instructions

1. **Addition of Terms and Conditions.** Additional terms and conditions submitted with a bid response are of no effect unless accepted in writing by the Purchasing Agency. Bids with any additional terms and conditions may be rejected as non-responsive.
2. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to the deadline for receipt of bids so that reasonable accommodation can be made.
3. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 30 days, unless otherwise specified by the Procurement Officer in writing.
4. **Bid Opening.** All bids received by the time and date of the bid opening will be publicly opened by the Purchasing Agency at the location indicated on the cover sheet of this solicitation. Interested parties are invited to attend the bid opening.

5. **Bid Results.** Bidders desiring a copy of the bid results are instructed to include a self-addressed, stamped, envelope with their bid response. Bid results will be mailed when an award decision is made. Bidders may also obtain bid results or arrange to review the bid file by contacting the Purchasing Agency.
6. **Corrections.** The vendor's authorized representative must initial any corrections and alterations (i.e. erasers, whiteouts, correction tape, etc.) made to the bid response. Those bid responses with corrections and alterations that are not initialed are subject to confirmation by the Procurement Officer.
7. **Definitions:**
 - Bidder – any person or firm submitting a competitive bid in response to a solicitation.
 - Bid Results – a summary of all bid responses received and the award results.
 - Bid response – the executed document submitted by a bidder in response to a solicitation.
 - Contractor – any person or firm having a contract with a governmental body.
 - Solicitation – the process of notifying prospective bidders that the state wishes to receive bids for furnishing goods or services.
8. **Facsimile Bids.** Bid responses faxed to the Purchasing Agency will be rejected. Bids may be faxed to a third party who will put it in an envelope and deliver it to Procurement Office before the date and time specified in the solicitation.
9. **Late Bids.** It is the bidder's responsibility to ensure that a bid response is physically deposited with the Purchasing Agency prior to the date and time specified for the opening. Late bid responses will not be opened and will be rejected regardless of the degree of lateness or the reason.
10. **Minor Informalities.** The State reserves the right to waive minor informalities in bid responses in accordance with North Dakota Administrative Code Chapter 4-12-10. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders or offerors.
11. **New Equipment and Materials.** Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials shall be new and under current production for use in the United States.
12. **Prices, Currency.** All prices must be in United States currency.
13. **Pricing (Unit and Total Prices).** The unit price is to be according to the unit of measurement specified in the solicitation. In the event of mathematical differences between the unit price and extended total, the unit price will prevail.

14. **Protests.** An interested party may protest the solicitation within seven days before the bid opening or protest the notice of intent to award or award within seven days after receiving notice in accordance with North Dakota Century Code Section 54-44.4-10 and North Dakota Administrative Code Chapter 4-12-14. Notice of Award will only be issued to those vendors that request bid results. Seven calendar days after award or issuance of the notice of intent to award to vendors that requested bid results, it will be assumed that all interested parties knew or should have known all the facts surrounding the award.
15. **Questions and Clarifications.** All questions and requests for clarification regarding this solicitation must be addressed to the Procurement Officer. The requirements of this solicitation can only be altered by written amendment of the solicitation. Verbal communications from whatever source are of no effect. Questions must be received by 5:00 p.m. CDT, August 17, 2010, to allow the Procurement Officer to issue any needed amendments in sufficient time before the bid opening date.
16. **Review of the Bids.** After the bid opening, bids become subject to North Dakota open records laws. Interested parties may request public information and make arrangements to review the bid file by contacting the Procurement Officer during normal working hours, between 8:00 a.m. and 12:00 p.m. and 1:00 p.m. and 5:00 p.m., Monday through Friday.
17. **Rejection.** The state reserves the right to reject any and all bids in whole or in part. Bid responses will be rejected if:
 - the bid response is not legible.
 - the bid response is not completed as requested.
 - the bid response is faxed to the Purchasing Agency.
 - the bid response is not responsive to the specifications or other requirements of the solicitation.
 - the bid response is received after the time and date specified.
 - the bidder was required to be registered as an approved vendor by the deadline for receipt of bids, and failed to do so.
 - the bidder is determined to be not responsible, in accordance with North Dakota Administrative Code Section 4-12-11-04.
18. **Signature.** The bidder submitting the bid response or that bidder's duly authorized agent or representative must sign the bid response manually in ink. The name and title of the person signing the bid response must be typed or printed below the signature.
19. **Specifications, Brand Name or Equivalent.** Unless otherwise indicated in the detailed specifications of this solicitation, the use of a specific brand name or make/model is for illustrative purposes only, and the State will consider equivalent products. If a commodity or service put forth by a vendor is rejected as not being equivalent, the procurement officer will notify the bidder of the rejection.

20. **Specifications, Compliance.** All bids submitted in response to this Invitation for Bid must comply with the specifications contained herein, and the successful bidder will be held responsible. Noncompliance with specifications is grounds for rejection of the bid response. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the specifications stated herein must contact the Procurement Officer in writing as soon as possible, so the Procurement Officer can determine whether the specifications need to be amended.
21. **Taxes.** The State does not pay sales tax or federal excise tax. The state sales tax exemption number is E-2001. The federal tax-free transaction number is 45-0309764. The Purchasing Agency will furnish a tax exempt certificate upon request.
22. **Withdrawal or changes to a bid response prior to the bid opening date and time.** Before the bid opening date and time, the bidder's authorized representative may withdraw or change a bid response by making a written request to the Procurement Officer.
23. **Withdrawals after the bid opening date and time.** After the opening, no changes may be made to the bid response. The bidder may make a written request to withdraw the bid response, subject to approval by the Purchasing Agency. Bidders repeatedly withdrawing bids after the opening date may be removed from the State Bidders List.

GENERAL TERMS AND CONDITIONS

1. **Affirmative Action.** The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical handicap.
2. **Applicable Law and Venue.** This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.
3. **Assignments and Subcontracts.** Contractor may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the Contractor may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. Contractor is solely responsible for the performance of any subcontractor. Contractor shall not have the authority to contract for or incur obligations on behalf of the State.
4. **Binding Contract.** The acceptance of a bid response in writing by the Purchasing Agency constitutes a contract between the bidder and the State. Written acceptance from the Purchasing Agency will be in the form of a purchase order, notification of award, or contract. Any oral agreement or arrangement by a bidder with a State employee or Purchasing Agency will have no force or effect unless reduced to writing.
5. **Compliance with Laws.** The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations. The Contractor must comply with the provisions of all appropriate federal laws, including Title VI of the Civil Rights Act of 1964. Any subletting or subcontracting by the Contractor subject subcontractors to the same provision.
6. **Compliance with Public Records Law.** Contractor understands that, except for disclosures prohibited under North Dakota open records laws related to confidentiality, North Dakota Century Code Section 44-04-18, the State must disclose to the public upon request any records it receives from the Contractor. Contractor further understands that any records which are obtained or generated by the Contractor under this contract, except for records that are confidential under North Dakota Century Code Section 44-04-18, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request. Bid responses are exempt records until the time and date of the bid opening.

7. **Confidentiality.** Contractor agrees not to use or disclose any information it receives from the State under this contract that the State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the State. The State agrees not to disclose any information it receives from Contractor that the Contractor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code Section 44-04-18. The duty of State and Contractor to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.
8. **Contract Amendment.** After a binding contract has been entered into, no changes (i.e. substitution of product or a price adjustment) may be made, unless prior approval has been obtained from the Purchasing Agency.
9. **Inspection and Investigations.** The State reserves the right to conduct inspections and investigations related to the Bidder and offered commodities or services, including but not limited to the firm, its facility, personnel, qualifications, and the commodities or and services offered to make determinations regarding compliance with the bid requirements and responsibility of the vendor.
10. **Material and Workmanship.** All material and workmanship shall be subject to inspection and testing by the state either at: (1) the point of manufacturer, or; (2) place of storage, or; (3) upon receipt.
11. **Payment Terms.** Payment will normally be made within thirty days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoices and payment inquiries must be directed to the Purchasing Agency.
12. **Termination for Lack of Funding or Authority.** This contract shall become null and void, in total or in part, should the Legislature of the State of North Dakota fail to appropriate funds for any or all agencies, which are committed to the terms of this contract. Any such contract termination shall be at no cost to the State.
13. **Termination of Contract.** Offerors must review the attached sample contract for termination provisions.

SPECIAL TERMS AND CONDITIONS

1. **Approved Vendor Registration.** Every person or business entity that desires to bid on contracts for commodities and services must be an approved vendor in order to be placed on the bidders list. Vendors must comply with the vendor registration requirements related to approved bidder registration as set forth in North Dakota Century Code Section 54-44.4-09 and this solicitation:

Vendors Must Be Approved Before Contract Award. Proposals will be accepted from vendors who are not currently approved vendors on the State's Vendor Database; however, the successful bidder or offeror will be required to become approved prior to award, in accordance with North Dakota Century Code Section 54-44.4-09. To become an approved vendor, you must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the ND State Procurement Office. Registration instructions and forms are available on-line at: <http://www.nd.gov/spo/>. Contact the ND State Procurement Office at 701-328-2683 or infospo@nd.gov for assistance. The successful bidder must register and become approved within sixty calendar days or shorter time specified in writing by the purchasing agency from the date of the Notice of Intent to Award. The bid or proposal may be rejected if the vendor fails to register within the specified time period.

Placement on the bidders list does not guarantee a vendor will receive notice of every formal solicitation. Vendors must maintain current information by submitting a Notice of Change form to the State Procurement Office (Fax 701-328-1615). Visit the website for forms: <http://www.nd.gov/spo/>.

2. **Award.** Award will be made to the responsible bidder with the lowest priced bid that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:
 - i. All or none.
3. **Award, Local Service.** Service within 10 days after receipt of the Notice to Proceed is required. Vendor must have facilities or service providers within a commuting distance to meet this requirement.
4. **Contract Period.** The contract or contracts issued as a result of this solicitation will be for the period from approximately September 15 to December 31, 2010.
5. **Estimated Volume.** The volume of this contract is estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and/or anticipated usage. The Contractor or contractors will be required to furnish actual requirements upon order. This contract will not include items of a similar nature, which must be bought for emergency use.

6. **Indemnification and Insurance Requirements.** Offerors must review the attached sample contract for indemnification and insurance requirements. The indemnification and insurance provisions are incorporated and made part of this solicitation and the resultant final contract. Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the Procurement Officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the Purchasing Agency in consultation with the North Dakota Risk Management Division. Upon notice of award, the successful offeror must obtain the required insurance coverage and provide the Procurement Officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the Purchasing Agency, in consultation with the North Dakota Risk Management Division. An offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.
7. **Payment Terms.** Payment will normally be made within thirty (30) days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoices and payment inquiries must be directed to the Purchasing Agency. Contractors may request payment any time during the contract period; however, it is expected that payment schedules will coincide with Commission meetings to ensure timely payment. Invoices will not be considered without signature of the Contractor.
8. **Preservation of Markers.** The Contractor shall carefully preserve survey and control stakes and any other markers. In case of their destruction or loss, the Contractor shall be responsible for their replacement and any resulting damage including, but not limited to, any damages arising from mistakes that may be caused by the loss or disturbance of these stakes or markers.
9. **Pricing.** Pricing under this contract shall be as follows:

Firm Fixed. The total bid price is to include all discounts and deductions, and is to be less federal and state taxes, for which exemption certificates will be furnished upon request. Pricing shall be firm for the period of the contract.
10. **Purchasing Cards.** The Purchasing Agency may place orders by issuance of a purchase order or may elect to place an order and make payment using a purchasing card. The Contractor will accept a purchasing card payment without passing the processing fees for the purchase card back to the Purchasing Agency.
11. **Safety Requirements.** The Contractor shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the contract in general. Offerors must review the attached sample contract for safety requirements.
12. **Standard Specifications.** Standard Specifications for AML Reclamation Projects (February 2000) outlines requirements and provisions for AML reclamation projects and is available upon request or can be viewed on the Commission's website at <http://www.psc.state.nd.us/divisions/aml/aml-specifications.pdf>.

13. **Time of Performance.** Project work will begin within ten (10) days of issuance of Notice to Proceed. The project performance period will be 75 consecutive calendar days. Time of performance shall be approximately from September 15, 2010 to November 30, 2010.
14. **Work Week.** The Contractor will work a standard 5 day work week (Monday – Friday). Work will generally be restricted to daylight hours Monday through Friday. Any variance of the normal work schedule (Monday – Friday) **MUST** be approved by the Project Manager. Any request for variance to the work schedule must be made at least 2 days in advance. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.
15. **Service Representative:** The Contractor must provide a dedicated service representative to provide support for this contract. The Contractor shall provide the name and contact information for the service provider. During the contract period, the Contractor shall notify the procurement officer in the event the Contractor's service representative changes.
16. **Tax Clearance:** Prior to contract execution, in accordance with North Dakota Century Code 43-07-11.1, the contractor must provide a certificate of tax clearance from the Office of the North Dakota State Tax Commissioner indicating payment of all delinquent income, sales or use taxes. An application for contractor's tax clearance can be accessed on the Tax Department's website at <http://www.nd.gov/tax/genforms/contractors-clearance.pdf>.

NAME OF SERVICE REPRESENTATIVE:	
ADDRESS OF SERVICE REP:	
CITY & STATE & ZIP CODE:	
PHONE NUMBER:	
TOLL FREE NUMBER:	
FAX NUMBER:	
E-MAIL ADDRESS:	

PART II.
ATTACHMENT SAMPLE CONTRACT

SAMPLE CONTRACT

Administrator:	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400	
Date:		
_____	_____	_____
Tony Clark Commissioner	Kevin Cramer Chairman	Brian P. Kalk Commissioner

Contractor		
Name		
Address	City/State/Zip	Phone
Typed Name		Title
Signature		Date

Agreement Information	
Contract No.:	_____
Start Date:	_____
End Date:	_____
Program Title:	_____
Type of Contract:	<input type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimb. <input type="checkbox"/> Unit Price <input type="checkbox"/> Other

Budget Information	
Cost Center:	9000
Services:	_____
Optional on-site review:	_____
Expenses:	_____
ID	_____
Type of Contractor:	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Public Agency <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Other

This contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and XXX (Contractor). This contract consists of this sheet, general provisions and specific provisions.

GENERAL PROVISIONS

CONTRACTUAL FEATURES

LEGAL AUTHORITY

The Contractor assures that it possesses legal authority to participate in this contract.

ASSIGNMENT/SUBCONTRACTING

The Contractor may not assign this contract or any part thereof, or assign any of the monies to be paid hereunder, nor shall any part of the work done or material furnished under this contract be sublet without the State's expressed written consent.

The Contractor may not enter into subcontracts for any of the work contemplated under this contract unless included in the specific provisions of this contract. Any such subcontract must acknowledge the binding nature of the contract and must incorporate this contract, including any attachments. Contractor is solely responsible for the performance of any subcontractor. Contractor shall not have the authority to contract for or incur obligations on behalf of the State.

TERMINATION

The State, by written notice of default listing causes and reasons, may terminate this contract in whole or in part if (1) the Contractor fails to provide services required by this contract within the time specified or any extension agreed to by the State; or (2) the Contractor fails to perform any of the other conditions or provisions of this contract, or so fails to pursue the work so as to endanger performance of this contract in accordance with its terms. The State will be liable only for payment provisions of this contract for services satisfactorily rendered prior to the effective date of termination.

Significant deviation from performance standards in this contract may result in reduced or terminated financial participation of the Contractor, subsequent to negotiations with the State.

This contract may be terminated in whole or in part without cause by mutual consent of the Contractor and the State. The parties shall agree upon the termination conditions including effective date and in the case of partial terminations, that portion to be terminated.

The State may terminate this contract effective upon delivery of written notice to the Contractor or on any later date stated in the notice in the event (1) funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for work performed or purchases of the services or supplies in the indicated quantities or term; (2) federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract; or (3) any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Any contract that extends beyond the current biennium may be terminated by the State if sufficient funds are unavailable, if the law regarding the contract is changed or without cause at any time.

The rights and remedies of the State provided in the termination provisions related to defaults by the Contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

FORCE MAJUEURE

Contractor will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the Contractor's reasonable control and the Contractor gives notice to the State immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

RENEWAL

This contract will not automatically renew. State will provide written notice to Contractor of its intent to renew this contract at least sixty days before the scheduled termination date.

DISPUTES

The Contractor agrees to attempt to resolve disputes arising from this contract by informal administrative process and negotiations in lieu of litigation. Continued performance by the Contractor during disputes is assured.

Any dispute concerning a question of fact arising under this contract which is not settled by the informal means shall be decided by the authorized representative of the Commission who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of an appeal. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Commission.

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolutions. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

MERGER AND MODIFICATION

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

SEVERABILITY

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

NOTICE

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

State:

Darrell Nitschke, Executive Secretary
Public Service Commission
600 E. Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

Contractor:

APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

SPOILIATION – NOTICE OF POTENTIAL CLAIMS

Contractor shall promptly notify State of all potential claims that arise or result from this contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the State the opportunity to review and inspect the evidence, including the scene of an accident.

INDEMNITY

Contractor agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the Contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

CONFIDENTIALITY

Contractor agrees not to use or disclose any information it receives from the State under this contract that the State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the State. The State agrees not to disclose any information it receives from Contractor that the Contractor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code Section 44-04-18. The duty of the State and Contractor to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

Contractor understands that, except for disclosures prohibited in North Dakota Century Code Chapter 47-25.1, the State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records that are obtained or generated by the Contractor under this contract, except for records that are confidential under North Dakota Century Code Chapter 47-25.1, may, under certain circumstances, be open to the public upon request under North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

INSURANCE

- a. **Required Coverages.** Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverage's:
 - (1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - (2) Automobile liability, including Owned (if any), Hired and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - (3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
 - (4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance if Contractor is domiciled outside the State of North Dakota.

- b. **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:
 - (1) Any deductible or self insured retention amount or similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.

- (2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- (3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this contract.
- (4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverage's of an additional insured under these policies.
- (5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b. A provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior notice to the undersigned State representative;
 - c. A provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code Section 54-12-08;
 - d. A provision that Contractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State, and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
 - e. Cross liability/severability of interest for all policies and endorsements;
 - f. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and,
 - g. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- (6) The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- (7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

SAFETY REQUIREMENTS

The Contractor shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the contract in general. In addition, the Contractor shall provide, inspect and maintain all safeguards, safety devices, protective equipment, safety programs and other needed actions the Contractor determines necessary to reasonably protect the life, health and property of the Contractor, subcontractors, the State, the public and each of the employees, officers, assigns and agents of the Contractor, subcontractors and the State, in connection with the performance of work resulting from or arising out of the contract.

The Contractor shall submit to the State a copy of the written safety program to be used as guidelines and direction for the Contractor's and subcontractors' activities. This program must meet all federal, state and local laws, regulations and other legal requirements and include the following minimum provisions: (1) a worksite safety policy and mission statement; (2) assigned responsibilities among management, supervisors and employees; (3) a system for periodic self-inspections, including inspections of job sites, materials, work performance and equipment; (4) a thorough accident and injury reporting and investigation process; (5) a safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure; and, (6) a safety training program including safety "tool box" meetings and other systems for ongoing training and also including training for employees on the recognition, avoidance and prevention of unsafe conditions.

It will be a condition of the contract, and shall be made a condition of each subcontract entered into pursuant to that contract, that the State is assuming no liability relating to its receipt and review of the Contractor's safety plan or activities. Safety remains the responsibility of the Contractor. Furthermore, the right of the State to receive and review the safety plan or activities shall not give rise to a duty on the part of the State to exercise this right for the benefit of the Contractor or any other person or entity.

ATTORNEY FEES

In the event a lawsuit is instituted by the State to obtain performance due of any kind under this contract, and the State is the prevailing party, Contractor shall, except when prohibited by North Dakota Century Code Section 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

INDEPENDENT ENTITY

Contractor is an independent entity under this contract and is not a State employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. The Contractor retains sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this contract, except to the extent specified in the contract.

FISCAL RESPONSIBILITIES

RECORDS

All records, regardless of physical form, and the accounting practices and procedures of the Contractor relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. The Contractor shall maintain and retain all books, records, and other documents required by the State and to produce program narrative and statistical data at times prescribed by the State relevant to this agreement for four years after final payment. Records shall be retained beyond four years if audit findings have not been resolved.

NO CLAIM FOR ADDITIONAL WORK

No claim for additional services not specifically herein provided, done, or furnished by the Contractor will be allowed, nor shall the Contractor do any work or furnish any material not covered by the contract, unless such work is ordered in writing by the State.

TIME KEEPING PROCEDURES

The Contractor shall require employees and subcontractors, if applicable, whose positions are funded under this contract or included as match, to maintain adequate documentation for services provided. For positions that are funded from more than one source, an analysis of duties performed by program shall also be prepared.

MONITORING, EVALUATION, AND AUDIT

The Contractor agrees to cooperate with any monitoring, evaluating and/or audit conducted by the State, or their designees who shall have full access to and the right to examine all books, records and other relevant documents.

The Contractor agrees to take immediate corrective action on deficiencies disclosed through program monitoring of costs disallowed in the course of an audit, review, or monitoring.

PREPAYMENT

The State will not make any advance payments before performance by the Contractor under this contract. The Contractor will be compensated based on periodic submittal of progress reports and a signed invoice.

TAXPAYER ID

Contractor's North Dakota tax ID number is: _____.
Contractor's federal employer ID number is: _____.

PROGRAM REQUIREMENTS

COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the term of this contract all licenses, registrations and permits required by law and shall be authorized to do business in the State of North Dakota.

EQUAL OPPORTUNITY

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of race, color, disability, or political affiliation or belief.

The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, disability, age, sex, political affiliation or belief or citizenship.

NONDISCRIMINATION

This contract and any subcontract hereunder is subject to the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights of 1964 and the Americans with Disabilities Act of 1990.

WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to the State at the State's request upon termination of this contract. Contractor agrees that all materials prepared under this contract are "works for hire" within the meaning of copyright laws of the United States and assigns to State all rights and interests Contractor may have in the materials it prepares under this contract, including any right to derivative use of the material. Contractor shall execute all necessary documents to enable State to protect its rights under this section. Contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts entered into relating to this project.

WORK WEEK

The Contractor will work a standard 5 day work week (Monday – Friday). Work will generally be restricted to daylight hours Monday through Friday. Any variance of the normal work schedule (Monday – Friday) **MUST** be approved by the Project Manager. Any request for variance to the work schedule must be made at least 2 days in advance. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.

BUY AMERICAN ACT

The Contractor agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41U.S.C. 10a-10c, popularly known as the "Buy American Act".) This applies to all subcontractors and suppliers of the Contractor. The Contractor will include this clause in all agreements and contracts.

TERMS AND CONDITIONS OF INVITATION FOR BID

The terms and conditions of the Invitation for Bid issued for this project not specifically set forth in this contract are incorporated herein by reference.

EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

SPECIFIC PROVISIONS:

Standard Specifications for AML Reclamation Projects (Feb. 2000).

2010 Coal Fire Suppression, AML Projects Invitation for Bid (Aug. 2010)

PART III.
SPECIFIC PROVISIONS

Specific Terms, Conditions and Specifications

Utilization of Disadvantaged Business - Enterprises

SPECIFIC TERMS, CONDITIONS AND SPECIFICATIONS

Project Objective: To extinguish or suppress all burning materials within selected project sites.

Project Funding: Project funding is limited to \$25,000.

Scope of Work: This project will entail excavation and burial of burning lignite coal outcrops on private and U.S. Forest Service properties in Slope County. There are approximately six known coal outcrop fires ranging in size from 1/10 acre to 1/2 acre or more. Coal fire suppression work will be conducted on as many of these sites as possible. The Commission reserves the right to add or delete project sites as it deems necessary.

Overburden depth to the burning coal seam(s) is expected to range from 2-20 feet. Average coal seam thickness is expected to be from 1-8 feet. Multiple burning layers are possible. If deemed necessary, the U.S. Forest Service may provide a water truck and personnel for quenching burning materials on the Little Missouri National Grassland areas. Seeding of areas affected by coal fire suppression work on the Little Missouri National Grassland sites will be completed by the U.S. Forest Service.

Contractors are required to understand that project work will be conducted over inherently dangerous burning coal seams, fractured and collapsing overburden. All precautionary measures shall be taken by the contractor to adequately protect their work force and equipment, and to minimize the potential for ignition of grass fires during excavation and suppression efforts. Please note that work may not be allowed if the fire danger index is in the extreme or very high categories or if U.S. Forest Service personnel recommend against work because of localized fire danger.

Bid quantities are estimated and will be based on the successful contractor's price/cubic yard bid and mobilization. Payment will be based on measured cut volumes of intercept and/or burial trenches and measured volumes of material excavation required for complete extinguishment. The Commission reserves the right to estimate volumes based on negotiated hourly equipment rates if deemed necessary.

STANDARD REQUIREMENTS

1. Remove and stockpile topsoil or suitable plant growth material from around/within the defined project area.
2. Excavate intercept trench or burial trenches at prescribed depths for burial of competent overburden and/or burning materials.

3. Excavate and emplace burning materials into the burial trenches. Blend or intermix the burning/hot materials with clay or approved overburden in lifts as directed. Excavation of the active burn face is considered complete when the coal seam is cool to the touch. Water quenching (as required) may be performed by U.S. Forest Service personnel on the Little Missouri National Grassland site or sites.
4. Cover the backfilled trenches with approved material. Ensure that all buried materials are isolated from other combustible materials. Any combustible material removed from trenches or borrow areas must be covered or mixed with inert soil material.
5. Grade area to blend with surrounding topography and re-establish drainage.
6. Re-spread salvaged topsoil (where available) over disturbed areas. Drag the topsoil area with a spike-tooth harrow or equivalent and clean-up the site.

At a minimum, the contractor is required to provide **an excavator. A dozer and/or front end loader is also required.** The contractor must have at least two fully-charged fire extinguishers on site at all times. The Commission Project Manager and U.S. Forest Service representatives will direct the location of the remaining project sites to be reclaimed.

The contractor is responsible for having utilities located and marked prior to any work, and may contact the North Dakota "One Call" Utility hotline at **811** or 1-800-795-0555.

Any site access work undertaken by the contractor must be reclaimed to its previous condition.

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

The current DBE information can be accessed on the NDDOT website, <http://www.dot.nd.gov/>.

PART IV.
BID FORMS

- 1. Minority and Women-Owned Business Enterprise and Labor Surplus Area Concern Certifications**
- 2. Bid Forms**



**UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES AND
LABOR SURPLUS AREA CONCERNS**
PUBLIC SERVICE COMMISSION
ABANDONED MINE LANDS DIVISION
SFN 16755 (Rev. 12-99)

The requirements of this Special Provision will govern over any other contract provisions which may be in conflict or contrary thereto:

1. The Contractor agrees to use its best efforts to utilize minority or women-owned business enterprises (M/WBE) in the award of its subcontracts and in procuring supplies and materials to the fullest extent consistent with the efficient performance of its contract. As used in this contract, the term "minority or women-owned business enterprise" means a business, at least 51 percent of which is beneficially-owned and controlled by minority groups or women or, in the case of publicly-owned businesses, at least 51 percent of the voting interest and 51 percent of the beneficial ownership interests are held by minority groups or women. For the purpose of this definition, minority means a person who is Black, Hispanic, Asian American, American Indian, or Alaskan Native. Attached to this IFB is a list of M/WBE Contractors and Suppliers certified in North Dakota as a reference source for bidders. Bidders are in no way limited to this M/WBE list for subcontracting opportunities to M/WBE Contractors.
2. The Contractor agrees to establish and conduct an affirmative action program to ensure that minority or women-owned business enterprises will have an equitable opportunity to compete for subcontracts and furnishing of supplies. In this regard, the contracts shall:
 - a. Designate a liaison officer who will administer the Contractor's M/WBE Program.
 - b. Give adequate and timely consideration to the capabilities of known minority or women-owned business enterprises.
 - c. Ensure that known minority or women-owned business enterprises will have equal opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules.
 - d. Maintain records showing (1) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority or women-owned business enterprises, (2) awards to minority or women-owned business enterprises on the source list, and (3) specific efforts to identify and award subcontracts to minority or women-owned business enterprises.
 - e. Include this special provision "UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES" with certifications in all subcontracts.
 - f. Cooperate with the State in any studies and surveys of the Contractors' minority or women-owned business enterprises procedures and practices that the State may conduct from time to time.
 - g. Submit periodic reports with respect to the records referred to in subparagraph (d) above, in such form and manner and at such times (not more often than quarterly) as the State may prescribe.
3. The Contractor agrees to use its best efforts to utilize labor surplus area firms in the award of subcontracts. The term "labor surplus area" means a geographical area identified by the Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus. The term "labor surplus area" means a concern that, together with its first-tier subcontractor, will perform substantially in labor surplus areas. The term "perform substantially in labor surplus area" means that the costs incurred on account of manufacturing, production, or appropriate services in labor surplus areas exceed 50 percent of the contract price. Attached to this IFB is a list of labor surplus area counties in North Dakota as a reference source for bidders.

The Contractor agrees to establish and conduct a program which will encourage labor surplus area firms to compete for subcontracts within their capabilities. In this connection, the Contractor shall:

- a. Designate a liaison officer who will (1) maintain liaison with duly authorized representatives of the government on labor surplus area matters, (2) supervise compliance with the "Utilization of Labor Surplus Area Concerns" clause, and (3) administer the contractor's Labor Surplus Area Subcontracting Program;
- b. Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
- c. Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concern;
- d. Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and
- e. Include the "Utilization of Labor Surplus Area Concerns" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

Included in Parts 4, 5, and 6 - "BID FORMS" of this IFB are one M/WBE Subcontractor Certification, one M/WBE Supplier Certification, and one Labor Surplus Area Certification which must be completed by the bidder and returned with the bid package.

FAILURE TO COMPLETE AND RETURN THESE FORMS SHALL RESULT IN BIDDER DISQUALIFICATION.

4. M/WBE SUBCONTRACTOR CERTIFICATION (See Section 600 of Part III - Special Provisions)

TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT, THE BIDDERS MUST EXECUTE ONE OF THE FOLLOWING CERTIFICATIONS:

Name of Company

NEGATIVE CERTIFICATION

The bidder does not intend to sublet any portion of the work. If later circumstances dictate subletting a part of the work, the requirement under the Affirmative Certification will be satisfied.

Signed By	Title	Date
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AFFIRMATIVE CERTIFICATION

The bidder intends to sublet a portion of the contract work and hereby certifies that it has an affirmative action program to seek out and consider minority business enterprises as potential subcontractors and to document the results of such contacts.

- a. If work is to be subcontracted, provide a general description of items to be subcontracted.

- b. The contacts made with potential Minority or Women-owned Business Enterprise subcontractors and the results thereof are listed below: (Use additional sheets if necessary)

Signed By	Title	Date
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5. M/WBE SUPPLIER CERTIFICATION (See Section 600 of Part III - Special Provisions)

TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT, THE BIDDER MUST EXECUTE THE FOLLOWING CERTIFICATION:

Name of Company

The bidder hereby certifies that it has an affirmative action program to seek out and consider Minority or Women-owned Business Enterprises as potential suppliers and to document the results of such contacts. The contacts made with potential Minority or Women-owned Business Enterprise suppliers and the results thereof are listed below: (Use additional sheets if necessary)

Signed By	Title	Date
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6. LABOR SURPLUS AREA CERTIFICATION

TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT, THE BIDDER MUST EXECUTE ONE OF THE FOLLOWING CERTIFICATIONS:

NEGATIVE CERTIFICATION

The bidder does not intend to sublet any portion of the work. If later circumstances dictate subletting a part of the work, the requirements under the Affirmative Certification will be satisfied.

Signed By	Title	Date
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AFFIRMATIVE CERTIFICATION

The bidder intends to sublet a portion of the contract work and hereby certifies that it has a labor surplus area concern program to seek out and consider potential subcontractors from labor surplus areas and to document the results of such contacts.

a. If work is to be subcontracted, provide a general description of items to be subcontracted.

b. The contacts made with potential Labor Surplus Area subcontractors and the results thereof are listed below:
(Use additional sheets if necessary)

Signed By	Title	Date
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BID FORM

North Dakota Public Service Commission Abandoned Mine Lands Division 2010 Coal Fire Suppression Project

<u>Bid Item</u>	<u>Unit</u>	<u>Quantity</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mobilization	Lump Sum	1	X	_____	=	_____		
Excavation/Burial	Cubic Yards	3500	X	_____	=	_____		

Total (In Numbers) _____

I agree to perform all the work as described at the specified project sites for the price I have submitted.

Vendor Company Name:			
Street Address:			
P.O. Box:	City	State:	Zip Code:
Toll Free Telephone:	Telephone:	Fax:	
Federal I.D. or Social Security No.:		E-Mail:	
Type or Print Name of Person Signing:		Title:	
Authorized Signature:			
NAME OF SERVICE REPRESENTATIVE:			
ADDRESS OF SERVICE REP:			
CITY, STATE & ZIP CODE:			
PHONE NUMBER:			
TOLL FREE NUMBER:			
FAX NUMBER:			
E-MAIL ADDRESS:			