

INVITATION FOR BID

408.14.03.044

2014 Exploratory Drilling AML Project

Abandoned Mine Lands Division

North Dakota Public Service Commission

Bismarck, North Dakota

February 2014

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FOREWARD

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FOREWORD

This is an Invitation for Bid (IFB) to perform exploratory drilling, drillhole casing and other associated work on Abandoned Mine Lands (AML) sites located near Wilton, North Dakota; however, work may be conducted at other sites. The following is the general location of the proposed exploratory drilling sites where abandoned underground coal mines exist (See map on page 37):

Wilton Site: Located within the right-of-way of State Highway 36 and county and township roads. Site is located approximately 4 miles southeast of Wilton.

Other sites: Sites may be added by the PSC Project Manager as needed.

To bid, submit the required material to the North Dakota Public Service Commission no later than **11:00 a.m., Central Daylight Time (CDT), April 22, 2014**. The public bid opening will be in the Commission Hearing Room, 11:00 a.m. CDT, April 22, 2014, 12th Floor, Public Service Commission, State Capitol, Bismarck, North Dakota.

Any inquiries regarding the Invitation for Bid should be in writing and addressed to William E. Dodd, Procurement Officer, North Dakota Public Service Commission, 600 E. Boulevard Ave., Dept. 408, State Capitol, Bismarck, North Dakota 58505-0480.

This document can be accessed from the State Procurement Internet website, www.nd.gov/spo/. Please be informed that maps, drilling information and other attachments may be excluded from the 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)

Purchasing Agency:
Agency Name
North Dakota Public Service Commission
Address
600 East Boulevard Avenue, Dept 408
City, State Zip
Bismarck, ND 58505-0480
Telephone
701-328-4096

Bid Number: 408.14.03.044	Bid Title: 2014 Exploratory Drilling AML Project	
Date Issued: March 5, 2014	Procurement Officer: William E. Dodd	
Deadline for Questions: 5:00 p.m. CDT, April 15, 2014	Telephone: 701-328-4101	Fax: 701-328-2410
Bid Opening Date and Time: April 22, 2014, 11:00 a.m. CDT, State Capitol, 12 th Floor, Commission Hearing Room	E-mail: wdodd@nd.gov	
Performance Period: September 15, 2014 to October 29, 2014 (approximate)	Commodity or Service: 912, Subclass 16, Boring, Drilling, Testing 962, Subclass 73, Restoration/Recl.	

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	408.14.03.044
Bid TITLE	2014 Exploratory Drilling AML Project
BID OPENING DATE	April 22, 2014
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 and the Invitation for Bid form?
- Initial any alterations or corrections?
- Attach bid bond and MBE/WBE Certification?
- Addressed 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 60 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 11:00 a.m. CDT, April 22, 2014, in the Commission Hearing Room on the 12th floor of the State Capitol in Bismarck, North Dakota. Interested parties are invited to attend the bid opening.

5. **Bid Results.** Bidders desiring a copy of the bid results are instructed to request such and include a self-addressed, stamped, envelope or email address 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 shall put the bid in an envelope and deliver it to the Procurement Officer 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 must 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 within seven days after receiving notice in accordance with North Dakota Century Code Chapter 54-44 and North Dakota Administrative Code Chapter 4-12-14. Notice of Award will be issued to those vendors that submit a bid. Seven calendar days after award or issuance of the Notice of Intent to Award to vendors that submitted a bid, 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, April 15, 2014**, 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 and 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 ID 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 has no 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 subjects subcontractors to the same provisions.
6. **Compliance with Public Records Law.** Contractor understands that, except for disclosures protected by law, the State must disclose to the public upon request any records it receives from the contractor. Contractor further understands that any records that are obtained or generated by the Contractor under this contract, except for records that qualify for protection under an exception to the North Dakota open records law, 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.
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. 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; (2) place of storage; or, (3) upon receipt.
11. **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. This contract may also be terminated if 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.
12. **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: 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: 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. **Bid Bond, Type.** No bid will be considered unless accompanied by a bidder's bond, certified check or cashier's check in a sum equal to five percent (5%) of the full amount of the bid. A bidder's bond must be executed by the bidder as principal and by a surety company authorized to do business in North Dakota as surety. A certified check or a cashier's check must be drawn on the Bank of North Dakota or a federally insured, solvent bank. If, within ten days after notice of an award, the successful bidder should fail to execute a contract with the owner, then the surety will pay unto the owner for the use and benefit of the owner five percent (5%) of the bid or bids on the contract on which there is a default or the certified check or cashier's check of the bidder will be forfeited to the owner.

The Commission will retain the bid bonds, cashier's check or certified check of the three (3) lowest bidders until an award is made. In the event that the lowest bidder submits a check, the check may be negotiated and the money retained by the owner until the contract has been awarded and properly executed. All other unsuccessful bidders will have their bid bonds, cashier's checks or certified checks returned immediately. The successful bidder and other low bidders whose bonds or checks are retained will have their bid bonds, certified checks or cashier's checks returned after the Commission has successfully contracted the work.

5. **Payment and Performance Bonds.** The bidder whose bid is accepted shall be required to enter into a written contract with the Commission and to furnish a performance bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the faithful performance of the contract and also a payment bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with the contract, including interest under North Dakota Century Code Section 13-01-14, for bills which are not paid within ninety (90) days. The bond must also provide, under North Dakota Century Code Section 65-04-10, that the Contractor has made, or will make, prior to the commencement of any work by the Contractor or any subcontractor under the contract, full and true report to Workforce Safety and Insurance of the payroll expenditures for the employees to be engaged in the work, and that the Contractor has paid, or will pay, the premium thereon prior to the commencement of work. Both bonds shall be executed on Commission-approved forms. Bonds must be secured from a company which has complied with the law and regulations of the U.S. Treasury Department and is acceptable as a surety or reinsurer of federal bonds under Sections 9304 to 9308 of Title 31 USC and appropriate statutes of the State of North Dakota. A list of qualified companies is published under Treasury Circular 570.
6. **Contract Period.** The contract or contracts issued as a result of this solicitation will be for the period from approximately June 1, 2014 to June 30, 2015.
7. **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.
8. **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.

9. **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. The Contractor may request payment any time during the contract period; however, it is expected that payment schedules will coincide with accounts payable processing on the 10th and 25th of each month. Invoices need to be submitted five (5) days prior to processing for review and to ensure timely payment. Invoices will not be considered without signature of the Contractor.
10. **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.
11. **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.
12. **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.
13. **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.
14. **Schedule of Construction.** The successful bidder shall submit an estimated Schedule of Construction to the PSC Project Manager or his Authorized Representative for approval before issuance of Notice to Proceed. The Schedule of Construction shall indicate the estimated starting and completion dates of the various stages of work as specified by the PSC Project Manager. In addition, the schedule shall indicate the major items of equipment to be utilized, including but not limited to drilling rig(s). The purpose of this schedule is to assure completion of the work in a timely manner.

15. **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 www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf.
16. **Time of Performance.** Project work will begin within ten (10) days of issuance of Notice to Proceed. The project performance period will be 45 consecutive calendar days. Time of performance shall be approximately from September 15, 2014 to October 29, 2014.
17. **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** receive prior approval from the PSC 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.
18. **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.

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

SPECIAL TERMS AND CONDITIONS
Sample Contract

SAMPLE CONTRACT

Administrator:	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400	
Date:		
_____	_____	_____
Randy Christmann Commissioner	Brian P. Kalk Chairman	Julie Fedorchak 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:	() Fixed Price
() Cost Reimb.	() Unit Price
() Other	

Budget Information	
Cost Center:	9000
Services:	_____
Optional on-site review:	_____
Expenses:	_____
ID	
Type of Contractor:	() Individual
() Corporation	() Partnership
() Public Agency	
() Nonprofit Organization	
() 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 may 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 extend this contract for reasonable cause 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 Ave., Dept. 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 Century Code Chapter 44-04. 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 by law, 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 qualify for protection under an exception to the North Dakota open records law, 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 N.D.C.C. 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.
 - (8) If Contractor's insurance carrier cannot provide the insurance requirements listed above, Contractor will be required to purchase a project-specific insurance policy on behalf of State including but not limited to an Owner's Protective Liability insurance policy or a Project Management Protective Liability insurance policy with an occurrence limit of not less than \$1,000,000 and an aggregate of \$2,000,000. Said insurance shall be kept in force until the project is accepted by State.
- c. **Pollution Liability.** Contractor shall provide Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage (if applicable).

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 have a 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. Upon request by the PSC Project Manager, a copy of the written safety program must be provided to the Commission.

It will be a condition of the contract, and must 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 all of these records for at least three years following completion of this contract.

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 signed invoices.

TAXPAYER ID

The Contractor shall provide its federal employer ID number and the North Dakota tax ID number to the State upon executing this contract.

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. Contractors 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.

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.

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** receive prior written approval from the PSC 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.

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 (February 2000).

2014 Exploratory Drilling Invitation for Bid (February 2014).

PART II.

SPECIFIC PROVISIONS

Sec. 100	Project Objective
Sec. 200	Scope of Work
Sec. 300	Provisions
Sec. 400	Owner Responsibilities
Sec. 500	Utilization of Disadvantaged Business Enterprises
Sec. 600	Suspension of Work

100. PROJECT OBJECTIVE

The objective of this project is to obtain sub-surface information concerning the nature and extents of abandoned underground lignite mine workings near Wilton and possibly around other western North Dakota mine sites as previously disclosed. Drilling and other associated work will be conducted on road right-of-ways and in residential and commercial areas. Exploratory drill holes that are drilled into mine voids may serve as injection holes for possible future backfilling projects.

The quantities shown in the IFB are estimated quantities and the final payment quantities may vary from those presented in these specifications. The PSC Project Manager reserves the right to increase or decrease the actual quantities as site conditions warrant. This document does not represent a written guarantee or implied guarantee of the quantities listed in the IFB. The final contract price will be determined using the final pay quantities computed by the PSC Project Manager and the unit bid prices submitted by the Contractor.

200. SCOPE OF WORK

This project will involve drilling, backfilling or casing and surface restoration of approximately 25,000 vertical feet of borings. It is estimated that approximately 7,500 feet of casing will be required for installation into drilled mine voids. Drilling and casing depths are expected to range from 50 to 200 feet. The contractor must be prepared to drill holes to a depth of up to 250 feet in depth.

The Contractor is advised that portions of each site are located within areas containing abandoned underground mine workings. Surface subsidence caused by upward void migration of abandoned mine workings has been documented within the general area. The Contractor is required to understand that drilling, surface restoration and associated work specified in this IFB is inherently dangerous due to the location of the project and the presence of the abandoned mine workings. The Contractor is required to take all necessary precautionary steps to adequately protect their work force, equipment and the general public at all times during project performance.

A five-day work week (Monday through Friday) will be required unless otherwise authorized by the PSC Project Manager. Daily work hours may be left to the discretion of the Contractor. However, for safety considerations, work will be restricted to daylight hours only. For the contract term, the drilling rig and crew shall be exclusively dedicated to this project during the normal work week. The Contractor shall provide for all material, equipment, and personnel necessary to perform the specified work. The Contractor must be capable of fulfilling this project within the prescribed performance period following issuance of the Notice to Proceed.

The Contractor may, with prior approval of the PSC Project Manager, operate more than one drilling rig to perform the specified work. The PSC Project Manager shall determine the order in which the sites will be drilled and specific drill hole locations.

Standard Specifications for AML Reclamation Projects presented under separate cover are understood to be incorporated into this contract.

300. **PROVISIONS**

The following special provisions shall apply:

A. **MOBILIZATION**

1. **Scope of Work** – This item consists of all necessary preparatory work and operations which will enable the Contractor to start and finish the project. This shall include, but is not limited to necessary items such as personnel, equipment, supplies, facilities and other incidentals. Movement of any of these items to and from the project site, any construction or dismantling, and any costs incurred are considered part of this line item.

The Contractor shall furnish, install and maintain ample sanitary facilities for all workers at the project sites. Costs of furnishing, installing and maintaining the sanitary facilities shall be included in the lump sum bid price for mobilization and no additional compensation will be allowed.

The Contractor shall determine the presence of any and all utility facilities within the project areas and have the locations of these facilities appropriately marked prior to beginning work. This includes, but is not limited to, locating private sewer, septic, electric or water systems. The State of North Dakota has adopted a “One Call” utility locating Hot Line. The phone number is **1-800-795-0555** and the website is www.ndonecall.com.

Snow removal (or other site access work) may be necessary. Snow removal and/or any other drill location access work shall be the responsibility of the contractor and shall be included in the lump sum (L.S.) bid price for mobilization.

2. **Method of Measurement** – Mobilization shall be measured as a per site (P.S.) unit, shall not exceed 10% of the total contract bid, and shall include all equipment, personnel and materials needed to perform the work within the time requirements as described above.
3. **Basis of Payment** – Payment shall be made at the per site bid price and shall include full payment for mobilization of all equipment, personnel, and materials as required herein.

B. ROTARY DRILLING AND CASING

1. **Scope of Work** – This item shall consist of the drilling of approximately 25,000 feet of rotary borings and 7,500 feet of casing. With approval of the PSC Project Manager, more than one rotary drilling rig may be used on this project.
2. **Construction Requirements**

- a) **Rotary Drilling**

The Contractor shall provide rotary drilling equipment capable of drilling a minimum 4 ¾ inch diameter hole and shall be of a sufficient size to accommodate placement of 3" Inside Diameter (I.D.) Schedule 40 PVC casing. Outside diameter of 3" PVC casing is specified to be 4" at the collars. Most rotary drilling will be conducted along roads and road rights-of-way. Areas near homes and other structures or facilities may also be drilled. The Contractor should be prepared to drill holes to a maximum of 250 feet in depth. Average drilling depths are expected to be 80 feet. Drill hole locations will be determined in the field by the PSC Project Manager.

Rotary drilling along roadway shoulders and near homes may need to be angled. This may be accomplished by using the rig's leveling jacks and bridge planks or by using specialized drilling equipment. No extra payment will be made for any specialized drilling techniques, and bids should be made accordingly.

Air rotary drilling or water injection is allowable, but air is preferred. Auxiliary air compressor(s) shall be utilized (if necessary) to enhance the removal of drill cuttings. The Contractor must have a water truck and portable mud pit available on-site. Alternating layers of sand, silt, clay, hard rock ledges, boulders, multiple lignite seams and water-bearing formations are expected. There will be no equitable adjustment allowed for bits (including rock bits) that may be needed and contractors should prepare their bids accordingly.

The Contractor may be required to remove and replace fences and to have overhead utility lines de-energized or moved temporarily if necessary to facilitate drilling. The Contractor shall use plastic sheeting, tarpaulins or plywood sheeting or other methods to keep sensitive areas (i.e. yards), and any other areas as required by the PSC Project Manager, from being contaminated by drill cuttings. In general, the Contractor must ensure that drilling is conducted with as little disturbance as possible. Drilling in sensitive areas will only be allowed during dry weather when significant rutting or other damage is unlikely.

If there is a blockage of the hole so that the casing cannot pass, the Contractor shall clean the hole at their expense. The Contractor shall be responsible for the condition of all holes drilled so that a down-hole video camera will be able to pass through the entire length of the open or cased hole. The decision to cease reconditioning efforts on a hole and accept or reject that hole shall be made by the PSC Project Manager. All drill holes that intercept mined workings (void/rubble) shall be cased with 3" I.D. Schedule 40 PVC pipe.

All drill holes shall be capped or covered and maintained when work is not occurring on that hole, using drill hole covers. Access of drilling equipment and appurtenances to drill hole/injection hole locations shall be included in this bid item. Accessibility shall include, but not be limited to, fence removal and subsequent replacement or repair, surface grading, and snow removal (if required).

Clean-up under this line item shall proceed on a daily basis.

Clean-up shall include, but not be limited to: the removal of all drill cuttings and fluids (including fluid displaced to surface during grouting operations), removal of excess grout and trash from the project site, and disposal of these materials at an approved landfill.

b) Casing

This item shall consist of the casing of void and rubble holes encountered during drilling operations. Drilled holes shall be cased at the discretion and direction of the PSC Project Manager. Casing to be installed shall be 3" I.D. Schedule 40 PVC pipe. It is estimated that 7,500 feet of casing will be installed during this project.

Casing will generally be placed from 4 inches below ground surface to 5 feet above the top of the mining void, or as otherwise directed by the PSC Project Manager. An 8-12" diameter hole shall be spudded to one foot below surface and the 3" I.D. casing shall hang suspended on two heavy gauge metal slips provided by the Contractor. Casing shall be installed using PVC cleaning solvent (primer) at all connections, PVC cement on all connections and a minimum of three screws at all connections. Pilot holes shall be drilled prior to installation of the screws. These screws shall be of a length to penetrate both male and female connections; however, the screws shall not be exposed inside the casing after tightening (to allow for passage of a downhole video camera). The couplings used to make connections shall be deep-socket pressure couplings only.

Installation of the casing shall be immediate upon extraction of the drilling stem. The drilled hole must be sufficiently clean and open, to the extent that the casing will hang suspended in the hole and does not require down force to advance the casing during installation. If the

casing pipe does not freely drop through the hole by gravity, the pipe shall be pulled and the hole re-drilled.

Each cased hole shall be measured by the Contractor immediately after casing installation and the depth recorded on the drilling form. Dry drill cuttings may be used for backfilling from the top of casing to surface. For easy identification, pink-top stake chasers provided by the Contractor shall be anchored in undisturbed ground on opposite sides of the cased hole with a 6" length pole barn nail. Two (2) pink tops shall be required for each cased hole.

The Contractor must ensure that the casing does not deviate in elevation due to sloughing or settling. Casing caps consisting of a collar and threaded plug shall be installed along with all other materials necessary to suspend the casing in the hole and these accessories will be included in the casing line item bid. Caps must also have the hole number written on both the inside and outside of the cap with permanent marker.

c) Drill Hole Records

All written drill hole records (Commission-supplied forms) must be completed by the Contractor and submitted to the PSC Project Manager or his representative for acceptance within twenty-four (24) hours of completion of the hole. Drill hole logs shall consist of notations opposite the observed depth of change in lithology and character of subsurface conditions. Drilling personnel utilized shall be capable of accurately delineating and recording voids, rubble zones, water-bearing formations, coal seams and the contacts between these zones, as well as overburden lithology. Drill hole records not submitted within twenty-four (24) hours of the completion of the drill hole may not be accepted for payment.

d) Drill Hole Backfilling

The Contractor must backfill all non-void (uncased) drill holes immediately following abandonment of hole. Non-void boreholes shall be backfilled from the bottom of the hole to within one (1) foot of ground surface. With approval of the PSC Project Manager, dry drill cuttings may be used to backfill non-void drill holes in dry overburden or mine areas. Otherwise, grout, neat cement, bentonite grout or medium bentonite pellets will be used for backfill.

In wet overburden or mine areas or holes where water is injected, drill holes must be backfilled with grout, neat cement or medium grade bentonite pellets to at least five (5) feet above the static water level. The Contractor shall measure the static water level of all holes prior to backfilling, and record that depth on the drilling form. A plastic stemming hole plug shall be placed approximately three (3) feet below

surface. **All non-void drill holes shall be backfilled on a daily basis for those holes drilled that day.**

Backfilling from one (1) foot below ground surface to surface must be accomplished using material similar to that which was removed during drilling (topsoil, sod, road gravel, asphalt, concrete, etc.).

All drill hole cuttings shall be cleaned up daily and properly disposed off-site in accordance with local ordinance. The Contractor shall ensure that complete backfilling of all holes is accomplished. Drill holes that plug or bridge during backfilling shall be re-drilled and backfilled at the Contractor's expense. Costs associated with drill hole backfilling shall be included under the line item bids for "Drilling".

3. **Method of Measurement** – All drilled and cased holes must be measured to the nearest foot drilled or cased, and recorded by the Contractor at each drilling site (on Commission-supplied forms) and verified in the field at the end of each working day by the PSC Project Manager or his representative. For each individual hole, measurement must be made from ground surface to the bottom of any void encountered or, in the event a void is not encountered, from the ground surface to the bottom of the hole drilled (generally the bottom of the mined coal seam). Payment will be made for no more than one (1) foot drilled into the underclay (below the bottom of the mined coal seam). Drilled holes to be utilized for grout injection shall be appropriately field-marked and labeled delineating hole number, total depth, casing depth, void/rubble zone depths, etc.
4. **Basis of Payment** – Payment will be made at the contract unit price(s). Such payment shall constitute full payment for all labor, materials, equipment, and any other incidentals required to complete the work including the clean-up of drill hole cuttings. Payment shall be made only for those holes recorded on Commission-supplied forms and signed by the Contractor and accepted by the PSC Project Manager.

C. TRAFFIC CONTROL

1. **Construction Requirements** – The Contractor must understand that drilling operations will be conducted on or near highways and possibly residential areas. Traffic is to be allowed to proceed safely at all times. Traffic control devices shall be set up during working hours and taken down after working hours. All barricades, warning signs, lights, temporary signals and other protective devices must conform to the latest edition of the Uniform Traffic Control Devices for Streets and Highways, published by the U.S. Department of Transportation.
2. **Method of Measurement** – Traffic Control will be measured as a lump sum (L.S.) unit, shall not exceed 10% of the total contract bid, and shall

include all equipment, personnel and materials as needed to perform the work as described herein.

3. **Basis of Payment** – Payment will be made at the L.S. unit bid price and shall include full payment for all equipment, personnel, and materials as specified.

D. CLEAN-UP

1. **Scope of Work** – This item consists of the clean-up of the project site and any off-site area which may be used and of the restoration of all damaged or destroyed real property including but not limited to utilities, structures, yards, fences, roads, approaches, haulage ways, access points, crops and ditches.
2. **Construction Requirements** – Fences that must be replaced or repaired shall be of a like workmanship, subject to approval by the PSC Project Manager. All utility, survey and control staking shall be removed from the site within three (3) days of verbal notice from the PSC Project Manager. Restoration may include, but will not be limited to: recontouring or shaping, reseeding, regravelling, resurfacing and repair of roads, driveways and structures, as needed to achieve pre-construction conditions.

Clean-up includes, but is not limited to, the removal of all drill cuttings and fluids (including fluid displaced to surface during drilling and drill hole backfilling), cement or bentonite, and trash from the project site, and will be disposed of at an approved landfill. Drilling clean-up must progress following each day's construction activities.

3. **Method of Measurement** – Clean-up will be measured as a lump sum (L.S.) unit and shall not exceed 10% of the total contract bid, and must include all equipment, personnel and materials as needed to perform the work as described herein.
4. **Basis of Payment** – Payment will be made at the lump sum unit price. Such payment shall constitute full payment for all labor, materials, equipment, and any other incidentals required to complete work. All clean-up and restoration must be approved by the PSC Project Manager prior to any payment. Full payment shall be made at completion of the project and upon fulfillment of this item.

E. FORCE ACCOUNT

1. **Scope of Work** – The scope of work performed under this item shall consist of the provision of labor, equipment and material to undertake additional work that is not covered by specific bid items. For any force account work performed by a subcontractor, the Contractor will receive an

additional allowance for administrative and overhead expense. The additional allowance will be a percentage of the total force account invoice equal to ten percent of the first \$5,000 plus three percent of the balance in excess of \$5,000. The PSC Project Manager reserves the right to procure force account services by the subcontractor of his choice. Examples of work the PSC Project Manager may procure under the Force Account may include sinkhole filling and ground water monitoring.

2. **Method of Measurement** – Measurement must be based on material quantities, equipment hours or other methods as determined by the PSC Project Manager and agreed to by the Contractor. For subcontractor force account work, measurement shall be based on material quantities, equipment hours or other methods as determined by the PSC Project Manager and agreed to by the subcontractor.
3. **Method of Payment** – Payment will be made based on the above-described method(s) of measurement. All bidding contractors shall be required to submit a bid amount of \$15,000 under the force account line item.

400. OWNER RESPONSIBILITIES

Right-of-Entry

The Public Service Commission will be responsible for providing all necessary Right-of-Entry documentation to the Contractor upon request. If requested, the PSC Project Manager will inform the Contractor of the Right-of-Entry status to allow completion of detailed work schedules.

500. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

The current DBE Roster can be accessed on the NDDOT website, www.dot.nd.gov/.

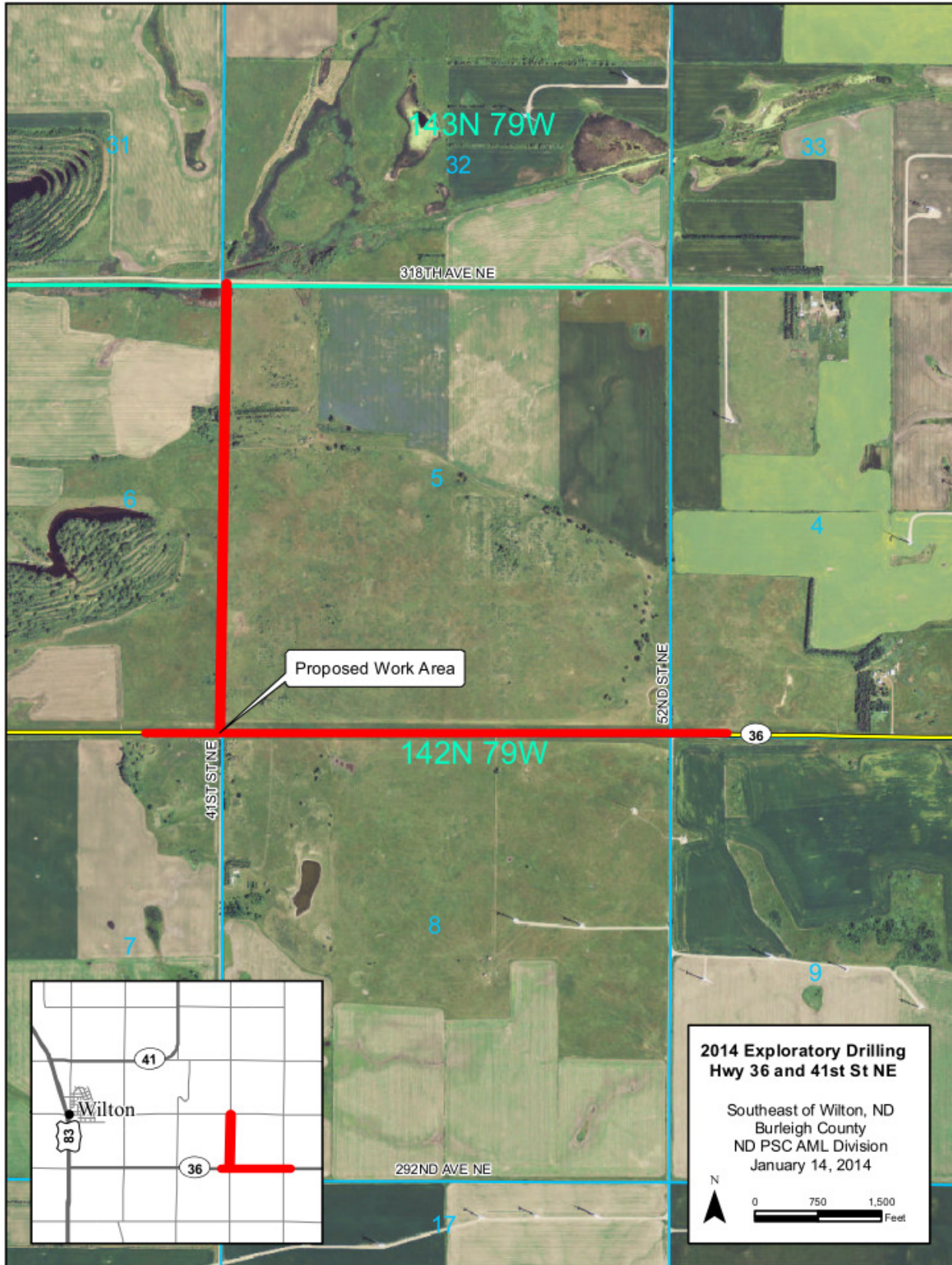
600. SUSPENSION OF WORK

If any problems arise and/or persist, the PSC Project Manager shall have the authority to suspend any ongoing item of work, as he deems necessary, until appropriate remedial action is taken in accordance with Section 105.3 of Standard Specifications for AML Reclamation Projects (February 2000).

PART III.
ATTACHMENTS

Project Location Map
Drilling/Coring Form

Proposed Exploratory Drilling Wilton, ND



**PART IV.
BID FORMS**

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



BID BOND
PUBLIC SERVICE COMMISSION
ABANDONED MINE LANDS DIVISION
SFN 13657 (Rev. 12-99)

Principal
Surety
Penal Sum

KNOW ALL MEN BY THESE PRESENTS, that the above named Principal and Surety, are hereby held and firmly bound unto the North Dakota Public Service Commission on behalf of the State of North Dakota as OWNER in the penal sum stated above for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____ 20 ____.

The Condition of the above obligation is such that whereas the Principal has submitted to the North Dakota Public Service Commission a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for the _____

NOW, THEREFORE,

- a. If said BID shall be rejected, or
- b. If said BID shall be accepted and the Principal shall execute and deliver a contract (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and Surety have subscribed their name and affix their seals, the day and year first set forth above.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in North Dakota.

SFN 13657 (Rev. 12-99)

Witness as to Principal:		
	(Principal: Individual, Partnership, or Corporation)	(SEAL)
BY	(Partner or President)	
BY	(Partner or Secretary)	
	(Surety)	(SEAL)
BY		

Countersigned by:

North Dakota Resident Agent	P.O./Address
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**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

2014 Exploratory Drilling AML Project 408.14.03.044

North Dakota Public Service Commission Abandoned Mine Lands Division

<u>Bid Item</u>	<u>Unit</u>	<u>Quantity</u>		<u>Unit Price</u>	=	<u>Total</u>
Mobilization*	Site	1	X	_____	=	_____
Rotary Drilling	Feet	25,000	X	_____	=	_____
Casing	Feet	7,500	X	_____	=	_____
Traffic Control*	L. S	1	X	_____	=	_____
Clean-Up*	L. S	1	X	_____	=	_____
Force Account				<u>\$15,000</u>	=	<u>\$15,000</u>

Total (In Numbers) _____

Written Total _____

L.S. (Lump Sum)

* **This bid item shall not exceed 10% of the total contract bid**

Also enclosed in this package is a bid bond, certified check or cashier's check in the amount of:

Signed: _____

Typed or Printed Name