

# **INVITATION FOR BID**

**408.16.02.003**

**2016 Wilton Phase 2 Material Testing AML Project**

**ND 001**

**Burleigh County, ND**

**Abandoned Mine Lands Division**

**North Dakota Public Service Commission**

**Bismarck, North Dakota**

**February 2016**

**INVITATION FOR BID**  
**2016 Wilton Phase 2 Material Testing AML Project**  
**ND 001**  
**Burleigh County, ND**  
**Bid Number 408.16.02.003**

**FOREWORD**

- Part I. GENERAL INFORMATION**
- Part II. SPECIFIC PROVISIONS**
- Part III. ATTACHMENTS**
- Part IV. BID FORMS**

## **FOREWORD**

This is an Invitation for Bid (IFB) to reclaim Abandoned Mine Lands (AML) sites. These AML sites contain abandoned underground lignite coal mines and are located near Wilton, North Dakota.

The 2016 Wilton Phase 2 AML Project includes areas along state and county highways, adjacent township roads, and private property and structures as shown on maps on page 33 and as further described:

- ND Highway 36 between Sections 4, 5, 6, 7, 8 & 9 , T142N, R79W including the entire right-of-way;
- From the intersection of ND Highway 36 and 41<sup>st</sup> Street north ½ mile including the entire right-of-way; and,
- Other areas as directed by the Commission's Project Manager.

The North Dakota Public Service Commission (Commission, PSC, Purchasing Agency or State) is interested in bids from qualified firms to achieve reclamation within this project area. Work must be completed as specified during the 2016 construction season.

To bid, submit the required materials to the Public Service Commission no later than **11:00 a.m. CDT, April 7, 2016**. The public bid opening will be held at 11:00 a.m. CDT, April 7, 2016, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

Any inquiries regarding the Invitation for Bid must in writing and addressed to William E. Dodd, Procurement Officer, North Dakota Public Service Commission, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58505-0480. Deadline for questions is **5:00 p.m., CDT, March 30, 2016**.

This document can be accessed from the State Procurement Internet website, **[www.nd.gov/spo/](http://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 (8-2008)

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

<b>Bid Number:</b> 408.16.02.003	<b>Bid Title:</b> 2016 Wilton Phase 2 Material Testing AML Project	
<b>Date Issued:</b> February 17, 2016	<b>Procurement Officer:</b> William E. Dodd	
<b>Deadline for Questions:</b> March 30, 2016, 5:00 p.m., CDT	<b>Telephone:</b> 701-328-4101	<b>Fax:</b> 701-328-2133
<b>Bid Opening Date and Time:</b> April 7, 2016, 11:00 a.m., CDT, State Capitol, 12 <sup>th</sup> Floor, Commission Hearing Room	<b>E-mail:</b> <a href="mailto:wdodd@nd.gov">wdodd@nd.gov</a>	
<b>Performance Period:</b> June 1 – September 8, 2016	<b>Commodity or Service:</b> 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 bidder 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 bidder shall fully perform the contract in accordance with the all specifications, terms and conditions, and requirements contained in the Invitation 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 bidder'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 bidder named below:

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

## MAILING INSTRUCTIONS

Mail a completed and signed Invitation for Bid response in a sealed envelope to the address listed below. Invitation for Bid responses 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	<b>408.16.02.003</b>
BID TITLE	<b>2016 Wilton Phase 2 Material Testing AML Project</b>
BID OPENING DATE	<b>April 7, 2016</b>
BID OPENING TIME	<b>11:00 a.m. CDT</b>
AGENCY	<b>PUBLIC SERVICE COMMISSION 600 EAST BOULEVARD AVE, DEPT 408 BISMARCK ND 58505-0480</b>

**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 as required by the attached bid form?
- 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 who need an accommodation shall 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 7, 2016**, in the Commission Hearing Room on the 12<sup>th</sup> 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 Bidder's authorized representative shall 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 N.D.A.C. § 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.
11. **Prices, Currency.** All prices must be in United States currency.
12. **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.
13. **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 N.D.C.C. § 54-44.4-12 and N.D. Admin. Code § 4-12-14. Notice of Award will be issued to all Bidders. Seven calendar days after award or issuance of the Notice of Intent to Award, it will be assumed that all interested parties knew or should have known all the facts surrounding the award.
14. **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, March 30, 2016**, to allow the Procurement Officer to issue any needed amendments in sufficient time before the bid opening date.

15. **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.
16. **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 Bidder by the deadline for receipt of bids, and failed to do so;
  - the bidder is determined to be not responsible, in accordance with N.D. Admin. Code § 4-12-11-04.
18. **Signature.** The bidder submitting the bid response or that bidder's duly authorized agent or representative shall 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 Bidder 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 shall contact the Procurement Officer in writing as soon as possible, so the Procurement Officer can determine whether the specifications need to be amended.
21. **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.
22. **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

General terms and conditions are contained in the attached Sample Contract.

## SPECIAL TERMS AND CONDITIONS

1. **Approved Bidder Registration.** Every person or business entity that desires to bid on contracts for commodities and services shall be an approved Bidder in order to be placed on the bidders list. Bidders shall comply with the Bidder registration requirements related to approved bidder registration as set forth in N.D.C.C. § 54-44.4-09 and this solicitation:

**Bidders Shall Be Approved Before Contract Award.** Bids will be accepted from Bidders who are not currently Approved Bidders for the State of North Dakota; however, the successful bidder will be required to become approved prior to award, in accordance with N.D.C.C. § 54-44.4-09. To become an Approved Bidder, you shall: 1) register with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders Application to the ND State Procurement Office. Registration instructions and forms are available on-line at: [www.nd.gov/spo/](http://www.nd.gov/spo/). Contact the ND State Procurement Office at 701-328-2683 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance. The successful bidder shall register and become approved within thirty 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 Bidder fails to register within the specified time period.

**Placement on the bidders list does not guarantee a Bidder will receive notice of every formal solicitation. Bidders shall 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/](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:
  - All or none.
3. **Award, Local Service.** Service within 10 days after receipt of the Notice to Proceed is required. Bidder shall 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 bond, 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 is 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 N.D.C.C. § 13-01-14, for bills which are not paid within ninety (90) days. The bond must also provide, under N.D.C.C. § 65-04-10, that Contractor has made, or will make, prior to the commencement of any work by 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 Contractor has paid, or will pay, the premium thereon prior to the commencement of work. Both bonds must be executed on forms approved by the Commission. 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 U.S.C. 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 June 1, 2016 to December 31, 2016.
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. 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.** Bidders shall 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 Bidder shall 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. A Bidder'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 Commission's Project Manager. Contractors may request payment any time during the contract period; however, it is expected that payment schedules will coincide with accounts payable processing on the 10<sup>th</sup> and 25<sup>th</sup> of each month. Invoices must be submitted five (5) days prior to processing for review and to ensure timely payment. Invoices will not be considered without signature of Contractor. The Commission's Project Manager will maintain records of unit quantities and volumes for this project.
10. **Preservation of Markers.** Contractor shall carefully preserve survey and control stakes and any other markers. In case of their destruction or loss, 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 must 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 must be firm for the period of the contract.
12. **Safety Requirements.** 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. Bidders shall review the attached sample contract for safety requirements.
13. **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](http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf).
14. **Time of Performance.** The project performance period is 100 consecutive calendar days. Time of performance is from **June 1, 2016 to September 8, 2016.**
15. **Work Week.** A five (5) day work week (Monday through Friday) is expected. It is also expected that the grouting contractor will work 8-12 hours per day; however, daily and weekly work schedules may vary depending on the grouting contractor's work schedule. From the time work commences on this project until completion, the material testing contractor must furnish a field representative dedicated solely to this project.
16. **Service Representative.** Contractor shall provide a dedicated service representative to provide support for this Contract. Contractor shall provide the name and contact

information for the service provider. During the contract period, Contractor shall notify the Procurement Officer in the event Contractor's service representative changes.

<b>NAME OF SERVICE REPRESENTATIVE:</b>	
<b>ADDRESS OF SERVICE REP:</b>	
<b>CITY &amp; STATE &amp; ZIP CODE:</b>	
<b>PHONE NUMBER:</b>	
<b>TOLL FREE NUMBER:</b>	
<b>FAX NUMBER:</b>	
<b>E-MAIL ADDRESS:</b>	

**SPECIAL TERMS AND CONDITIONS**  
**Sample Contract**

**SAMPLE CONTRACT**

<b>Administrator:</b>	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400	
<b>Date:</b>		
_____	_____	_____
<b>Randy Christmann</b> Commissioner	<b>Julie Fedorchak</b> Chairman	<b>Brian P. Kalk</b> Commissioner

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

<b>Agreement Information</b>	
Contract No.:	_____
Start Date:	_____
End Date:	_____
Program Title:	_____
<b>Type of Contract:</b>	(    ) Fixed Price (    ) Cost Reimb.    (    ) Unit Price (    ) Other

<b>Budget Information</b>	
Cost Center:	_____ 9000
Services:	_____
Optional on-site review:	_____
Expenses:	_____
ID	
<b>Type of Contractor:</b>	(    ) 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**

The parties to this Contract (Contract) are STATE of North Dakota, acting through its Public Service Commission (STATE) and \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (CONTRACTOR);

### **SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the work as described in PART II: SPECIFIC PROVISIONS beginning on page 27.

### **COMPENSATION**

#### **Contractual Amount**

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \_\_\_\_\_ (Contractual Amount).

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

#### **Payment**

- 1) Payment made in accordance with this Compensation section will constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within thirty (30) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.
- 4) For any amount that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

### **Travel**

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

### **Prepayment**

STATE will not make any advance payments before performance by CONTRACTOR under this Contract.

### **Payment of Taxes by STATE**

State is not responsible for and will not pay local, state, or federal taxes. STATE sale tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by the CONTRACTOR.

### **Taxpayer ID**

CONTRACTOR shall provide STATE with its federal employer ID number and North Dakota tax ID number upon executing this Contract.

### **Purchasing Card**

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

## **TERM OF CONTRACT**

This Contract begins on June 1, 2016 and ends on December 31, 2016.

### **No Automatic Renewal**

This Contract will not automatically renew. If STATE intends to renew this Contract, STATE shall provide written notice to CONTRACTOR of STATE's intent to renew this Contract before the scheduled termination date.

### **Extension Option**

STATE reserves the right to extend this Contract for an additional period of time, not to exceed six (6) months, beyond the current termination date of this Contract.

### **Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to one (1) option to renew this Contract under the same terms and conditions for a period of six (6) months.

## **TIME OF PERFORMANCE**

The project performance period is 100 consecutive calendar days beginning June 1, 2016 through September 8, 2016. The Commission will issue a Notice to Proceed to begin the performance period. Contractor shall return an acknowledged copy of the Notice to Proceed to the Commission.

## **TIME IS OF THE ESSENCE**

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

## **TERMINATION OF CONTRACT**

### **Termination by Mutual Agreement**

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

### **Early Termination in the Public Interest**

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice of CONTRACTOR, may terminate this Contract in whole or in part.

### **Termination for Lack of Funding or Authority**

STATE may terminate the whole or any part of this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) 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.
- 2) If 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.
- 3) If 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.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party accrued prior to termination.

## **Termination for Cause**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; **or**
- 2) If 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.

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 CONTRACTOR, subsequent to negotiations with STATE.

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

## **FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

## **INDEMNITY**

CONTRACTOR agrees to defend, indemnify, and hold harmless STATE of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of 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 STATE under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for STATE is necessary. Any attorney appointed to represent STATE shall 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. § 54-12-08. CONTRACTOR also agrees to defend, indemnify, and hold 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.

## **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 coverages:

- (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 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 CONTRACTOR. The amount of any deductible or self-retention is subject to approval by 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 STATE. The policies shall be in form and terms approved by STATE.
- (3) STATE will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify STATE under this agreement shall not be limited by the insurance required in this Contract.
- (4) 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. 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 STATE;
  - b. 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 STATE, and that any insurance, self-insurance or self-

- retention maintained by STATE shall be in excess of CONTRACTOR's insurance and shall not contribute with it;
- c. Cross liability/severability of interest for all policies and endorsements;
  - d. The legal defense provided to STATE under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for STATE is necessary; and,
  - e. 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) 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 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.
- (9) The policy and endorsements may not be canceled or modified without thirty (30) days' prior notice to the undersigned State representative.

## **SAFETY REQUIREMENTS**

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, CONTRACTOR shall provide, inspect and maintain all safeguards, safety devices, protective equipment, safety programs and other needed actions CONTRACTOR determines necessary to reasonably protect the life, health and property of CONTRACTOR, subcontractors, STATE, the public and each of the employees, officers, assigns and agents of CONTRACTOR, subcontractors and STATE, in connection with the performance of work resulting from or arising out of the Contract.

CONTRACTOR shall have a written safety program to be used as guidelines and direction for CONTRACTOR's and subcontractor's 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) System for periodic self-inspections, including inspections of job sites, materials, work performance and equipment.

- 4) Thorough accident and injury reporting and investigation process.
- 5) Safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure.
- 6) 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.

A copy of the written safety program must be provided to the STATE upon request.

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

## **WORKS FOR HIRE**

CONTRACTOR acknowledges that all works(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All materials developed by CONTRACTOR in performance of this Contract for STATE must be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable State to protect STATE's 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 PRODUCT**

All work product, equipment or materials created for STATE or purchased for STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

## **NOTICE**

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

<b>State:</b>	<b>CONTRACTOR:</b>
Darrell Nitschke, Executive Secretary	
Public Service Commission	

600 E. Boulevard Avenue	
Department 408	
Bismarck, ND 58505-0480	

Notice provided under this provision does not meet the notice requirements for monetary claims against STATE found at N.D.C.C. § 32-12.2-04.

## **CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that 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 STATE. STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. 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.

## **COMPLIANCE WITH PUBLIC RECORDS**

CONTRACTOR understands that, in accordance with this Contract's confidentiality clause, STATE must disclose to the public upon request any records STATE receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE promptly upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

## **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 Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this Contract, except to the extent specified in the Contract.

## **ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign this Contract, or otherwise transfer or delegate any right or duty, without STATE's express written consent, 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 STATE's express written consent.

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 does not have the authority to Contract for or incur obligations on behalf of STATE.

### **SPOILIATION – PRESERVATION OF EVIDENCE**

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 STATE the opportunity to review and inspect the evidence, including the scene of an accident.

### **MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Contract, including the following documents, 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.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence.

1. The terms of this Contract as may be amended;
2. STATE's Solicitation: Invitation for Bid 408.16.02.003 2016 Wilton Phase 2 Material Testing AML Project;
3. Contractor's Bid Response;
4. Standard Specifications for AML Reclamation Projects (2002).

### **SEVERABILITY**

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected, 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.

### **APPLICABLE LAW AND VENUE**

This Contract is governed by and construed in accordance with the laws of STATE of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

## **DISPUTES**

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

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

CONTRACTOR will be afforded an opportunity to be heard and to offer evidence in support of an appeal. Pending final decision of a dispute, CONTRACTOR shall proceed diligently with the performance of the Contract and in accordance with the decision of STATE.

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. STATE does not waive any right to a jury trial.

## **ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

## **NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

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.

CONTRACTOR agrees to comply with all laws, rules, and policies, including 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 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 STATE of North Dakota.

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 CONTRACTOR. CONTRACTOR will include this clause in all agreements and Contracts.

## **MONITORING, EVALUATION AND AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain all of these records for at least four (4) years following completion of this Contract and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination. Records must be retained beyond four years if audit findings have not been resolved.

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

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.

#### **NO CLAIM FOR ADDITIONAL WORK**

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

#### **TIME KEEPING PROCEDURES**

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 must also be prepared.

#### **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.

CONTRACTOR shall 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.

#### **WORK WEEK**

A five (5) day work week (Monday through Friday) is expected. It is also expected that the grouting contractor will work 8-12 hours per day; however, daily and weekly work schedules may vary depending on the grouting contractor's work schedule. From the time work commences on this project until completion, the material testing contractor must furnish a field representative dedicated solely to this project.

## **EFFECTIVENESS OF CONTRACT**

This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.

## **LEGAL AUTHORITY**

CONTRACTOR assures that it possesses legal authority to participate in this Contract.

## **PART II. SPECIFIC PROVISIONS**

<b>Sec. 100</b>	<b>Project Objective</b>
<b>Sec. 200</b>	<b>Scope of Work</b>
<b>Sec. 300</b>	<b>Provisions</b>
<b>Sec. 400</b>	<b>Utilization of Disadvantaged Business Enterprises</b>
<b>Sec. 500</b>	<b>Suspension of Work</b>

## **100. PROJECT OBJECTIVE**

The objective of this project is to perform material testing on grout mixtures that will be injected into underground mine workings, and other associated work items at the 2016 Wilton Phase 2 AML Project located near Wilton, North Dakota. The testing laboratory must perform all tests described herein and any additional engineering tests as requested by the Commission's Project Manager or his authorized representative. All references to the Commission's Project Manager also includes any representative authorized to make decisions for the Commission's Project Manager.

## **200. SCOPE OF WORK**

The proposed scope of work for this project involves:

1. The collection and compressive strength testing of grout test cylinders (4" diameter x 8" length);
2. Slump testing;
3. Aggregate moisture testing;
4. Certification of the proportions and amount of grout components to ensure compliance with specified material component and performance parameters;
5. Batch plant inspections; and
6. Other associated work items as specified.

The material testing laboratory must provide a trailer (heated, if necessary) or other facility to allow for curing of test specimens as dictated by ASTM C31 for standard curing. The grout test cylinders must not be in transit more than 4 hours from jobsite to the laboratory as recommended by the Nation Ready Mixed Concrete Association publication *CIP34 – Making Concrete Cylinders in the Field*. The testing laboratory must provide an on-site field representative for the life of the project. This representative shall:

1. Collect the sample according to ASTM C172.
2. Mold and cure test specimens according to ASTM C31 for each 50 cubic yards of grout or as directed by the Commission's Project Manager.
  - a. Three specimens must be collected for each test series (approximately 150 test series or 450 specimens).
  - b. Grout specimens must also be tested for slump, mix temperature, unit weight, and batch yield (cubic feet/cubic yard).
3. Test the slump of the grout mixture as requested and during the making of each grout test specimen.
4. Test aggregate daily or as necessary to determine moisture content.
5. Certify by signing on delivery slips that ingredients in a truck-load conform to the proportions of the approved mixes. The grout mix will consist of (per cubic yard) *100 lbs. Portland Cement, 600 lbs. Flyash, 70 oz. Superplasticizer, aggregate and water*. When it appears that material(s) furnished by the grouting contractor fails to meet the construction specifications, the field representative shall notify the Commission's Project Manager immediately.
6. Collect bills of lading and mill certification reports on all grout material admixtures.

7. Collect and store samples of material components at least every 1,000 cubic yards. These samples must be properly marked to correlate with bills of lading and mill certifications.
8. Collect and sample on-site aggregate for gradation every 1,000 cubic yards or as directed by the Commission's Project Manager. Aggregate must consist of hard, strong, durable particles free from deleterious materials and must meet the following gradation requirements:

<b><u>Passing:</u></b>	3/8" mesh sieve	100%
	No. 4 mesh sieve	80-90%
	No. 30 mesh sieve	40-80%
	No. 200 mesh sieve	5-25%

9. Establish a baseline mix design based on the initial aggregate gradation and moisture content to achieve a 10½ inch slump grout and yield of 27 cubic feet per cubic yard.
10. Perform batch plant inspections daily until grout quality control and material component control is established; and, thereafter weekly or as requested by the Commission's Project Manager. When it appears that material(s) furnished by the grouting contractor fail to meet the construction specifications, the field representative shall notify Commission's Project Manager to such failure.

The testing laboratory must act as the Commission's Project Manager's representative in all matters relating to material(s) testing and must report to the Commission's Project Manager and take instructions only from the Commission's Project Manager.

The testing laboratory must test compressive strength in accordance with the latest ASTM Standards for 100% humidity curing. The grouting contractor's material is required to achieve an unconfined compressive strength of 150 psi at 28 days. For each test series, the testing intervals will be 14 days, 28 days and 56 days and may be adjusted at the direction of the Commission's Project Manager. Additional testing will not be required once the specified compressive strength (150 psi) has been achieved on that particular test series. Of the cylinders that meet or exceed 150 psi at 14 days, the testing laboratory must retain at least one series per week to break at 28 days and 56 days.

The compression machine used for psi break strength determination on this project must comply with ASTM C39 for loading rate. Readout of gross load at failure must be accurate to within + or - 10 pounds.

The testing laboratory must furnish compressive test reports to the Commission's Project Manager that contains the following:

1. Cylinder identification number, date cast, injection hole number and delivery ticket number.
2. Grout material components and proportions.
3. Grout slump, temperature and unit weight.
4. Yield (cubic foot/cubic yard).
5. Date delivered to the laboratory.
6. Date tested.

7. Gross load at failure (pounds) and compressive strength of specimen (psi).
8. Type of failure or fracture and any anomalies observed in the specimen.

A five (5) day work week (Monday through Friday) is expected. It is also expected that the grouting contractor will work 8-12 hours per day; however, daily and weekly work schedules may vary depending on the grouting contractor's work schedule. From the time work commences on this project until completion, the material testing contractor must furnish a field representative dedicated solely to this project.

The contract and performance periods for material testing will be concurrent with those of the grouting contractor. The project performance period will be 100 consecutive calendar days. Time of performance will be from **June 1, 2016 to September 8, 2016**. The grouting contractor is required to provide the material testing contractor with a minimum of three (3) days verbal notice prior to the start date of grout injection operations. Additionally, the grouting contractor will be required to provide the material testing contractor with at least 12 hours of advance notice when no work is planned.

### **300. PROVISIONS**

The following special provisions must apply:

#### **A. MOBILIZATION**

1. **Scope of Work** – This item consists of all necessary preparatory work and operations which will enable the testing laboratory to start and finish the project. This includes, but is not limited to such items 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.
2. **Method of Measurement** – Mobilization will be measured on a lump sum basis, and must not exceed 20% of the total contract bid. This item must be allocated between mobilization (50%) and demobilization (50%).
3. **Basis of Payment** – Payment will be made at the lump sum bid price. Such payment is full compensation for furnishing all equipment, labor, and materials to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

#### **B. FIELD REPRESENTATIVE**

1. **Scope of Work** – This item consists of providing a field representative to perform the material testing services outlined above. It is anticipated that the field representative will be required to be on-site approximately 40-60 hours per week during grout injection processes. It is estimated that approximately 475 hours will be required for field representative work.

2. **Minimum Qualifications** - The field representative shall be able to collect grout samples from the point of discharge and transport samples and equipment as necessary. The field representative shall also be able carry a minimum of 50 pounds.
3. **Method of Measurement** – Field representative services will be measured on a per hour basis. Field representative hours must be recorded daily in the field and submitted to the Commission’s Project Manager weekly.
4. **Basis of Payment** – The hourly bid price will be the basis of payment for the field representative. Such payment is full compensation for furnishing all labor, materials, equipment, site clean-up, travel, meals, lodging and incidentals to complete the work as specified. Travel time to and from the work site will not be a consideration for payment under this line item. Only the time spent at the grouting site, inspecting the batch plant, conducting tests or other work as designated by the Commission’s Project Manager will be compensated. Compensation will not be made for standby time if the material tester is notified of greater than 2 hour delay or cancellation of pumping operations by Contractor or the Commission’s Project Manager.

#### **C. LABORATORY TESTING**

1. **Scope of Work** – The laboratory testing must include all work necessary to conduct the compressive strength and other tests on the material samples as specified above.
2. **Method of Measurement** – Compressive strength tests will be measured on a per series basis. Each series may contain up to three individual specimen breaks, but will require only sufficient testing (breaks) to determine the minimum grout psi requirement. Of the cylinders that meet or exceed 150 psi at 14 days, the testing laboratory must retain at least one series per week to break at 28 days and 56 days. It is anticipated that 150 series will be tested.
3. **Basis of Payment** – The unit bid price per series will be the basis of payment for laboratory testing.

#### **400. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

The current DBE information can be accessed on the NDDOT website, [www.dot.nd.gov/](http://www.dot.nd.gov/).

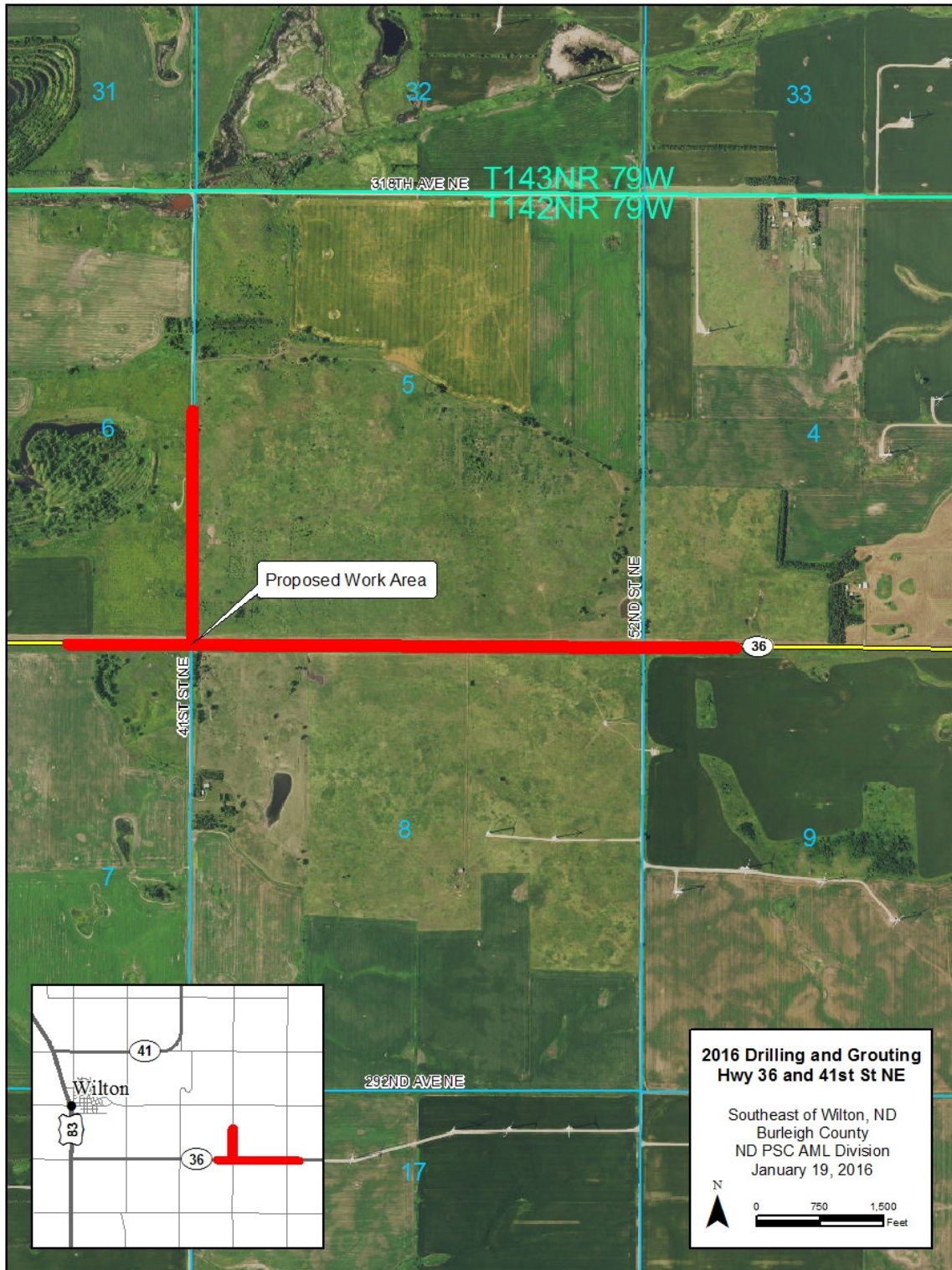
#### **500. SUSPENSION OF WORK**

If any problems arise and/or persist, the Commission’s Project Manager shall have the authority to suspend any ongoing item of work, as deemed 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**

### 2016 Wilton Phase 2 Proposed Site General Overview Map of Site Location near Wilton, ND



**PART IV.**  
**BID FORMS**

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



**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
-----------------------------	--------------

SFN 13657 (Rev. 12-99)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
known to me to be the person who is described in and who executed the foregoing instrument and acknowledges to me that he/she executed the  
same.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
a member of the co-partnership of \_\_\_\_\_ known to me to be the person who is described in and who  
executed the foregoing instrument and acknowledges to me that he/she executed the same as and for the act and deed of the said co-partnership.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
to me known, who, being by me duly sworn, deposes and says that he/she resides in the City of \_\_\_\_\_  
that he/she is the \_\_\_\_\_ of the \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of  
the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors  
of said corporation, and that he/she signed his/her name thereto by like order.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF SURETY

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
Attorney-in-Fact of \_\_\_\_\_ with whom I am personally acquainted, and who, being by  
me duly sworn, says that he/she resides in \_\_\_\_\_ that he/she is the Attorney-in-Fact  
of \_\_\_\_\_, the Company described in and which executed the  
foregoing instrument; that he/she know(s) the corporate seal of such Company; and that the seal affixed to the foregoing instrument is such  
corporate seal and that it was affixed by the order of the Board of Directors of said Company, and that he/she signed said instrument as  
Attorney-in-Fact of the said Company by like order.

\_\_\_\_\_  
Notary Public



**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

### MATERIAL TESTING 2016 WILTON PHASE 2 AML PROJECT 408.16.02.003

### BURLEIGH COUNTY, NORTH DAKOTA

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<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
1.	Mobilization*	1	L.S. X	_____	= _____
2.	Field Representative	475	Hours X	_____	= _____
3.	Laboratory Testing	150	Series X	_____	= _____

**Total (In Numbers)** \_\_\_\_\_

Written Total \_\_\_\_\_

L.S. (Lump Sum)

**\* This bid item must not exceed 20% of the total contract bid**

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

\_\_\_\_\_

\_\_\_\_\_  
Bidder Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail

\_\_\_\_\_  
Typed or Printed Name of Person Signing and Title

Signed: \_\_\_\_\_