

INVITATION FOR BID
2016 Bowman Foxhole AML Project
ND041
Bowman/Slope County, ND

BID NUMBER: 408.16.07.004

FOREWORD

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- Part II. SPECIFIC PROVISIONS**
EARTHWORK
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July 2016

FOREWORD

This is an Invitation for Bid (IFB) to reclaim an Abandoned Mine Lands (AML) site. This AML site contains an abandoned surface mine generally located within Section 31, T133N, R101W of Slope County, and Section 2, T132N, R102W of Bowman County. The site is located approximately 7 miles North of Bowman, North Dakota (for location see Figures 1 and 2).

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

A mandatory pre-bid, on-site meeting will be held at the project site at **10:30 a.m. Mountain Daylight Time (MDT), July 21, 2016**, at the project site approximately 7 miles north of Bowman, North Dakota.

To bid, submit the required materials to the North Dakota Public Service Commission no later than **11:00 a.m. CDT, August 2, 2016**. The public bid opening will be held at 11:00 a.m. CDT, August 4, 2016, in the Commission Hearing Room, 12th floor, 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, 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 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.

The plans and drawings pertaining to Bowman Foxhole AML Project have been prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of mine reclamation.

(S E A L)

Bruce A. Johnson, P.E. No. 3833

Date

Part I.
General Information



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

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

Bid Number: 408.16.07.004	Bid Title: 2016 Bowman Foxhole AML Project	
Date Issued: July 6, 2016	Procurement Officer: William E. Dodd	
Deadline for Questions: July 26, 2016	Telephone: 701-328-4101	Fax: 701-328-2133
Bid Opening Date and Time: August 2, 2016, 11:00 a.m. CDT, 12 th Floor State Capitol, Commission Hearing Room	E-mail: wdodd@nd.gov	
Performance Period: September 6, 2016 to October 16, 2016 (approximate)	Commodity or Service: 912-Construction General, Subclass 23 962- Miscellaneous Services, Subclass 73	

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	408.16.07.004
BID TITLE	2016 Bowman Foxhole AML Project
BID OPENING DATE	August 2, 2016
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?
- Mark envelope as indicated?

Bidder's Instructions

1. **Addition of Terms and Conditions.** Additional terms and conditions submitted with a bid response are of no effect unless accepted in writing by the Purchasing Agency. Bids with any additional terms and conditions may be rejected as non-responsive.
2. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to the deadline for receipt of bids so that reasonable accommodation can be made.
3. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 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, August 2, 2016**, 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 will put it 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 or 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, July 26, 2016**, 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 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 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. **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 Vendor Registration.** Every person or business entity that desires to bid on contracts for commodities and services must be an approved vendor in order to be placed on the bidders list. Vendors must comply with the vendor registration requirements related to approved bidder registration as set forth in North Dakota Century Code Section 54-44.4-09 and this solicitation:

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

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

2. **Award.** Award will be made to the responsible bidder with the lowest priced bid that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:
 - i. All or none.
3. **Award, Local Service.** Service within 10 days after receipt of the Notice to Proceed is required. Vendor must have facilities or service providers within a commuting distance to meet this requirement.
4. **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 will 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 September 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. 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. 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 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. **Pre-Bid, On-Site Conference.** A **mandatory pre-bid, on-site conference** is scheduled for **July 21, 2016**, to afford an opportunity to prospective bidders to receive clarification related to this solicitation. This conference will begin at approximately **10:30 a.m. MDT**, at the Bowman Foxhole AML Site. The conference will be held in Section 31, T133N, R101W of Slope County, and Section 2, T132N, R102W of Bowman County, approximately 7 miles north of Bowman, North Dakota. Prospective bidders **MUST** attend this meeting in order to bid. Failure to attend this meeting will result in bidder disqualification.
11. **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.
12. **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.
13. **Schedule of Construction.** The successful bidder shall submit an estimated Schedule of Construction to the Project Manager for approval before issuance of the Notice to Proceed. The Schedule of Construction shall indicate the estimated starting and completion dates of various stages of work as specified by the Project Manager.

In addition, the schedule shall indicate an equipment and average load capacity list. The purpose of this schedule is to assure completion of work within the performance period.

14. **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.
15. **Time of Performance.** Project work will begin within ten (10) days of issuance of Notice to Proceed. The project performance period will be 40 consecutive calendar days. Time of performance will be approximately from September 6, 2016 to October 16, 2016.
16. **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 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.
17. **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:		
<hr/>	<hr/>	<hr/>
Randy Christmann Commissioner	Julie Fedorchak Chairman	Brian P. Kalk Commissioner

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

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

Budget Information	
Cost Center:	<u>9000</u>
Services:	<hr/>
Optional on-site review:	<hr/>
Expenses:	<hr/>
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

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 30 of the 2016 Bowman Foxhole AML Project Invitation for Bid.

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 is 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 sales 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 September 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 40 consecutive calendar days beginning September 6, 2016 through October 16, 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. If work cannot begin on the date specified in the Notice to Proceed, Contractor shall provide a written explanation of the reasons for delay and a written request for an alternate firm start date. Contractor may not extend the performance period without prior written approval of the Commission's Project Manager. Failure to provide services required by this contract within the time specified may result in contract termination or liquidated damages as specified in Section 109.7 of the Standard Specification for AML Projects
<http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf>.

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.
- 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 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

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) A 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:

State:	CONTRACTOR:
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 408.16.07.004 2016 Bowman Foxhole AML Project;
- 3) Contractor's Bid Response;
- 4) Standard Specifications for AML Reclamation Projects (2000);
- 5) 2016 Bowman Foxhole AML Project Specifications and Plan Sheets.

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

CONTRACTOR shall work a standard 5 day work week (Monday-Friday) restricted to daylight hours. A request for variance to the work schedule must be made in writing to STATE at least 2 days in advance of the start of the variance. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.

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
EARTHWORK

Sec. 100	Project Objective
Sec. 200	Scope of Work
Sec. 300	Provisions
Sec. 400	Points of Approval
Sec. 500	Preservation of Survey Markers
Sec. 600	Utilization of Disadvantaged Business Enterprises
Sec. 700	Suspension of Work

100. PROJECT OBJECTIVE

The objective of this project is the reclamation of an approximately 10-acre site as described in this IFB. This reclamation shall be achieved by excavation of spoil piles and the backfilling of pits of an abandoned surface mine and other associated work. The requirements of this process are specified below.

200. SCOPE OF WORK

This project involves the backfilling of pits and highwalls at an abandoned surface mine and the performance of other associated work items. It is estimated that approximately 40,000 cubic yards of excavation will be required to perform this work. This excavated material will be used, as shown on Plan Sheets, to backfill the highwalls and pits.

The Contractor is advised that most of this site is located within areas containing abandoned surface mine workings. The Contractor is required to understand that the excavation, backsloping, backfilling, and construction work specified in this IFB is inherently dangerous due to the presence of these unstable spoil piles, pits, highwalls and end walls. The Contractor is required to take the necessary precautionary steps to adequately protect workers and equipment used to complete this project.

The Contractor shall provide all material, equipment and personnel necessary to perform the work. The Contractor shall be capable of completing this project within forty (40) consecutive calendar days between approximately September 6, 2016 and October 16, 2016. Please note that no work will be allowed on holidays or weekends unless specifically approved by the Project Manager.

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** – Mobilization consists of all necessary preparatory work and operations, which will enable the Contractor to start and finish the project. Mobilization includes movement of necessary items such as personnel, equipment, supplies, facilities and incidentals to and from the project site and any construction or dismantling. The Contractor shall determine the presence of any and all utility facilities within the project boundaries and notify all utility owners to appropriately mark the locations of these utility facilities.

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.

The Contractor will be required to obtain a Construction General Permit from the North Dakota Department of Health. The Construction General Permit consists of a Notice of Intent, a Storm Water Pollution Prevention Plan (SWPPP), and Site Investigation Form. In addition, the Contractor is required to adhere to the Construction and Environmental Disturbance Requirements published by the North Dakota Department of Health. All permits and requirements can be found at <http://www.ndhealth.gov/wq/storm/construction/constructionhome.htm>.

The Contractor shall furnish, install and maintain ample sanitary facilities for all workers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of State and Local governments. All such facilities and services must be furnished in strict accordance with existing and governing health regulations. Costs for furnishing, installing and maintaining sanitary facilities shall be included in the lump sum price bid for mobilization and no additional compensation will be allowed.

2. **Method of Measurement** – Mobilization must be measured on a lump sum (L.S.) basis, and shall not exceed ten percent (10%) of the total contract bid.
3. **Basis of Payment** – Payment for mobilization will be made according to the following schedule:
 - a) Upon mobilization of the equipment, materials and personnel needed to perform the requirements of this project, payment of eighty percent (80%) of the total mobilization shall be paid.
 - b) Upon demobilization of the equipment, materials and personnel needed to perform this project, payment of twenty percent (20%) of the total mobilization shall be paid.

B. TOPSOIL SALVAGE

1. **Scope of Work** – This item consists of removal, stockpiling and respreading of all available topsoil (and other good quality soil material) within the disturbed project site, as directed by the Project Manager. Available topsoil material shall be generally defined as approximately the top one half (1/2) foot of material; however, topsoil material thickness may vary in depth throughout the site.
2. **Construction Requirements** – Topsoil material must be removed as directed and stockpiled into piles adjacent to working areas. Stockpiles must be located as not to interfere with any other earthwork. The stockpiles shall be located as directed by the Project Manager. It is

estimated that approximately 5,000 cubic yards of topsoil material must be removed and stockpiled and then respread on the site.

Removal of topsoil material must be performed in a uniform and neat manner. A scraper, excavator and truck must be used to strip and haul the topsoil. Average stripping depth is estimated at one half (1/2) foot; however, actual field conditions may result in the removal of a greater or lesser depth of soil. The amount of material to be salvaged from any and all portions of the project site must be determined in the field by the Project Manager. Topsoil material must be put in stockpiles of uniform and neat dimensions to facilitate measurement of true volumes. Topsoil material removal must receive explicit approval from the Project Manager prior to the contractor proceeding with other work items (see "Sec. 400").

Topsoil material removal areas will also be determined in the field by the Project Manager. Topsoil material must be removed from all portions of the project area as completely as possible without mixing with poor quality material. Adjacent portions of the project area will also have topsoil material removed as directed by the Project Manager to facilitate in the final grading of the site.

Upon completion of the earthwork requirements of any given area (see C. "Earthwork"), the salvaged topsoil material shall be respread to a uniform depth upon all the disturbed areas of the site. The topsoil must be respread on the site from which it was stripped from. Please note all topsoil must be respread utilizing a scraper. Upon replacement of the topsoil, the soil must be deep tilled to the full depth to encourage the regrowth of vegetation.

3. **Method of Measurement** – Stockpiled topsoil material will be measured by neat measurement as it lies within the stockpiles of each area. Measurement will be made without regard to any actual or perceived swell that the material may experience. The topsoil stockpile surveying operations will be conducted by the Commission.
4. **Basis of Payment** – Payment will be made at the contract unit price for true volumes stockpiled. Such payment will constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

C. EARTHWORK

1. **Scope of Work** – This item consists of the excavation of earthen material from the spoil pile areas and backfilling of the highwalls and pits as shown on Plan Sheets 2 of 7 through 7 of 7 and as described herein.
2. **Construction Requirements** – The spoil piles, pits and highwall, as shown on the Plan Sheets 2 of 7 and 5 of 7, must be backsloped and

backfilled so as to leave a ground surface with the approximate configuration of that shown on the Plan Sheets 3 of 7 and 6 of 7. The cut and fill depths are shown on Plan Sheets 4 of 7 and 7 of 7.

It is estimated that approximately 40,000 cubic yards of earthen material must be removed from existing spoil pile areas, as shown on Plan Sheets 2 of 7 and 5 of 7, to achieve a desired slope. The excavated material will be moved to the pits and utilized as backfill material to achieve the desired post-reclamation topography of that shown on Plan Sheets 3 of 7 and 6 of 7.

Haul distance will vary and the contractor shall be familiar with the volume of material to be placed in the pits. The North Site must be reclaimed first in order to haul leftover fill to the South Site. Note that an estimated volume of 5,000 cubic yards of material must be hauled from the North Site to the South Site to be used as fill.

The spoil pile material to be excavated is classified as common excavation. The material to be moved has varying amounts of rock, gravel, sand, silt and clay with differing moisture contents. Also, note that no extra payment will be made for any muddy or wet conditions encountered in the cut or fill areas. Note: any inert waste (concrete, metal, and/or wood) found on or within the spoil piles or pits must be properly buried. No extra payment will be made for the buried waste.

Please note that a total volume of 40,000 cubic yards of material is estimated to be excavated and that no volume overruns will be allowable or paid for unless specifically approved by the Project Manager.

3. **Method of Measurement** – The spoil pile cut areas will be surveyed to assure they are cut to the planned post-reclamation grade. The surveying operations will be conducted by the Commission.
4. **Basis of Payment** – Payment will be made at the contract unit price. Such payment will constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

D. FERTILIZING, MULCHING, AND SEEDING

1. **Scope of Work** – This item of work pertains to the establishment of disturbed areas of the site as directed by the Project Manager, including but not limited to, the final graded spoil piles, pits, and highwall areas.
2. **Construction Requirements** – All areas with potential for soil erosion must be mulched, utilizing straw mulch, with a minimum application rate of two tons per acre. Mulch must be anchored to the surface with a crimping operation. The mulch must be workable in texture.

All areas are required to be fertilized with a minimum application rate of 200 pounds per acre. The fertilizer must be a 35-18-0 fertilizer.

The area that has been labeled South Project Site (approximately 2 acres) shall be seeded as directed by the Project Manager. The seed mixture is listed below and may be varied or changed at the discretion of the Commission. Please note that the North Site will not be seeded due to the landowners intention to plant annual crops on site.

Seed Mixture, 100 lbs. estimated (on South Site only):

(Certified tickets are required)

<u>Variety</u>	<u>Rate/Acre – Lbs. (PLS)</u>
Thickspike Wheatgrass	4
Sodar Streambank Wheatgrass	4
Revenue Slender Wheatgrass	2
Rosana Western Wheatgrass	2
Lodorm Green Needlegrass	2
Pierre Sideoats Grama	2
Forestburg Switchgrass	2
	20

3. **Method of Measurement** – Measurement must be made on a lump sum (L.S.) basis.
4. **Basis of Payment** – Payment will be made at the contract unit price. Such payment will constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

E. WATTLES

1. **Scope of Work** – This item of work pertains to the establishment of approximately 600 linear feet of straw wattles within the disturbed areas of the site.
2. **Construction Requirements** – The straw wattles must be placed on the newly established final graded slopes once seeding operations are completed. The wattles will be placed in the area labeled South Project Site to reduce the effect of sheet flow creating erosion. The straw wattles must be installed and anchored according to the manufacturer’s instructions. The straw wattles shall be manufactured from straw that is wrapped in tubular plastic netting. The straw rolls will be approximately 12 inches in diameter. It is imperative that a sufficient trench is constructed to place the rolls in. Runoff must not be allowed to run under or around the roll. The rolls must be

installed perpendicular to water movement. They must be staked with 24 inch wooden stakes at four foot on center. The wattles will be placed perpendicular to the direction of the flow at an increment of 50 feet.

3. **Method of Measurement** – Measurement must be made of linear feet of straw wattles installed.
4. **Basis of Payment** – Payment will be made at the contract unit price. Such payment will constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

F. ROAD SURFACING

1. **Scope of Work** – This item of work consists of raising the grade of 78th Street SW to prevent the runoff exiting the construction site from washing out the current roadway and to create a more effective roadside ditch.
2. **Construction Requirements** – The current road surface of 78th Street SW must have a gravel overlay for a total length of 300 linear feet, as shown in location on Plan Sheet 3. The depth over the 300-foot span will be an average of one foot. This depth is subject to change by location, as specified by the Project Manager. The road surfacing will need to be graded as specified by the Project Manager. The overlay must also be crowned to promote drainage. The material for the overlay shall be NDDOT Class 5 gravel. The estimated amount of material required to cover the 15-foot roadway is 167 cubic yards.
3. **Method of Measurement** – Measurement must be made of cubic yards of material installed.
4. **Basis of Payment** – Payment will be made at the contract unit price. Such payment will constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

G. 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 the restoration of all damaged or destroyed real property including, but not limited to, fences, roads, haulage ways, access points, crops and ditches.
2. **Construction Requirements** – Fences, which must be replaced or repaired, shall be of a like workmanship, subject to approval of the Project Manager. All survey and control staking, as well as utility flags, must be removed from the site within three (3) days of verbal notice from the Project Manager.

All roads, haulage ways, access points and any other areas which experience surface damage due to equipment or personnel movement or activity must be restored to a pre-construction state as directed by the Project Manager.

Restoration must include, but will not be limited to, recontouring or shaping, reseeding, and regravelling, resurfacing and repair of roads as needed to achieve pre-construction condition.

3. **Method of Measurement** – Measurement must be as a lump sum (L.S.) unit as shown on the bid schedule.
4. **Basis of Payment** – Payment will be made at the lump sum (L.S.) basis. Such payment will constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

400. POINTS OF APPROVAL

The Contractor is advised that a number of work items will require expressed approval by the Project Manager prior to the Contractor continuing with or beginning other work items. Such items (Sec. 300) include, but may not be limited to:

1. The contractor shall submit an estimated Schedule of Construction to the Project Manager for approval prior to beginning any other work items. The Schedule of Construction must indicate the estimated starting and completion dates of various stages of work as specified by the Project Manager. In addition, the schedule must indicate an equipment and average load capacity list.
2. **B. "Topsoil Salvage"**; approval for this item must be given prior to **C. "Earthwork"**.

500. PRESERVATION OF SURVEY MARKERS

After placement of survey and control stakes and markers the Contractor shall carefully preserve those stakes or markers and in case of their destruction or loss the Contractor shall be responsible for their replacement as directed by the Project Manager 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.

600. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

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

700. SUSPENSION OF WORK

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

PART III.
ATTACHMENTS

Figures 1-3

Plans and Maps (under separate cover, 7 sheets)

STATE OF NORTH DAKOTA

Figure 1



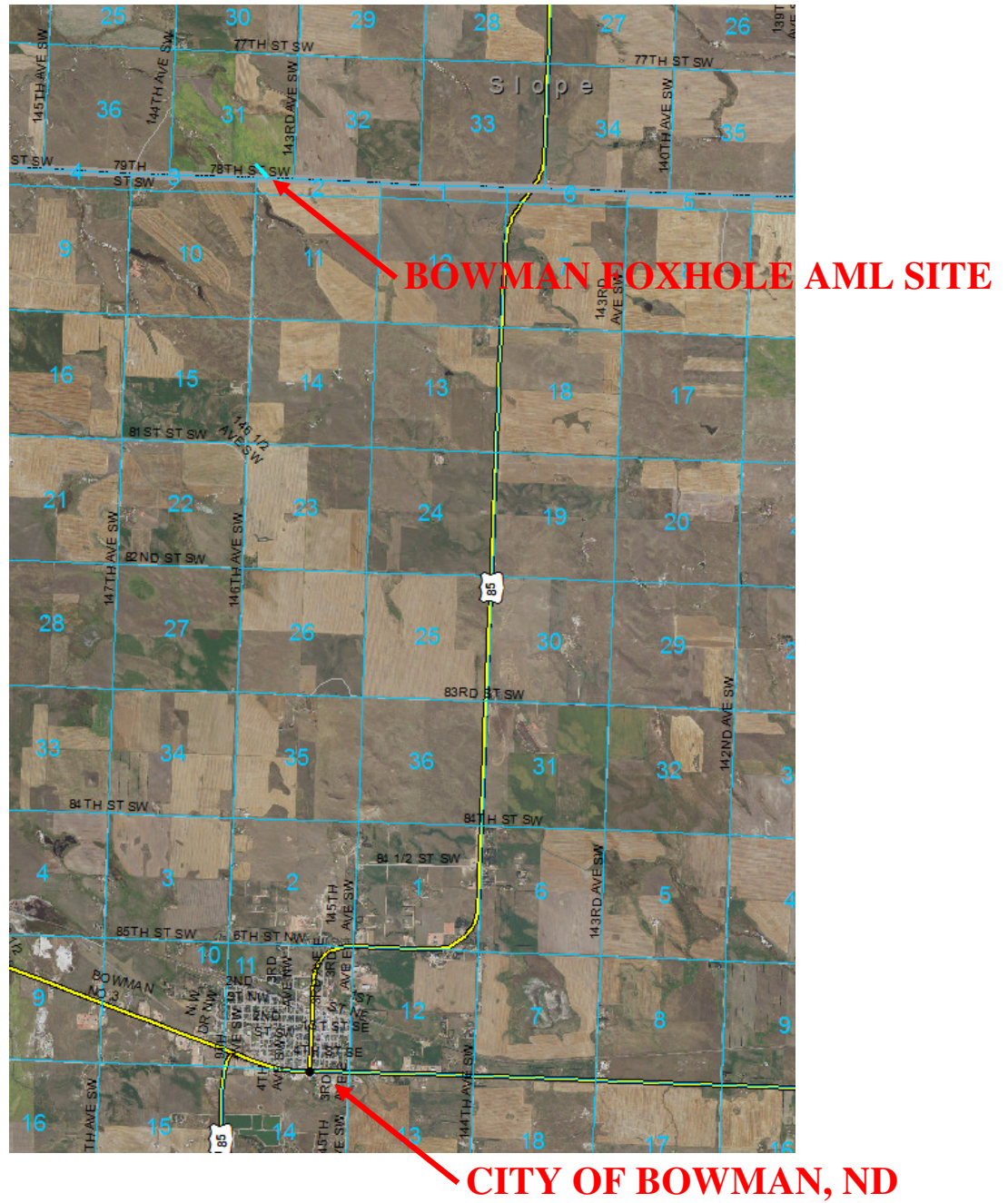


Figure 2

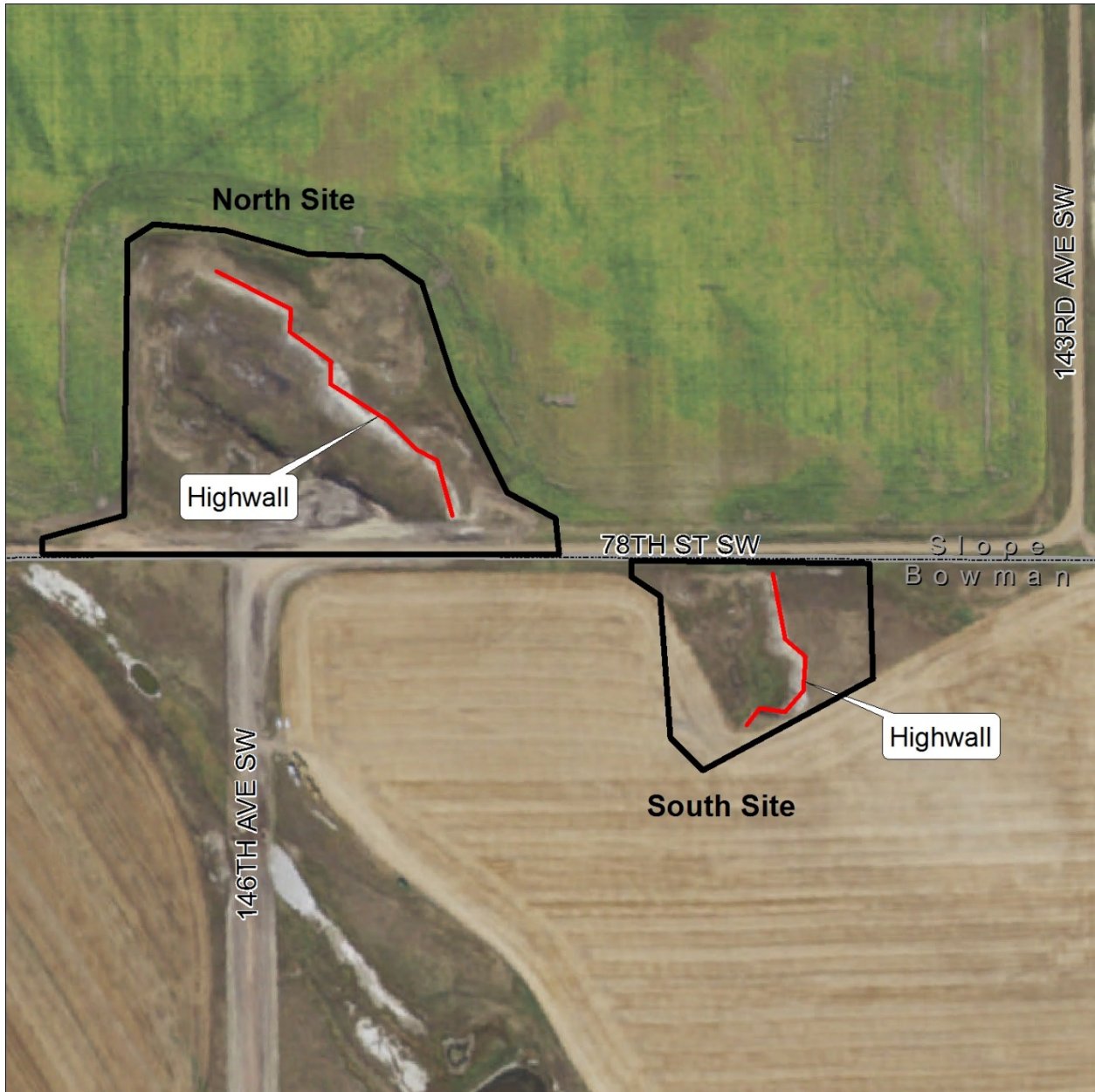


Figure 3

**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 2016 BOWMAN FOXHOLE AML PROJECT Bowman and Slope Counties, ND

Item No.	<u>Description</u>	Estimated Quantity of Units	<u>Unit</u>	<u>Price</u>	<u>Total</u>
1.	Mobilization*	1	L.S. X	_____	= _____
2.	Topsoil Salvage	5,000	Yds ³ X	_____	= _____
3.	Earthwork	40,000	Yds ³ X	_____	= _____
4.	Fertilizer, Mulch, and Seeding	1	L.S. X	_____	= _____
5.	Wattles	600	Feet X	_____	= _____
6.	Road Surfacing	167	Yds ³ X	_____	= _____
7.	Clean-Up	1	L.S. X	_____	= _____

Total (In Numbers) _____

Written Total: _____

- *** 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:

Signature

Typed or Printed Name

Company Name

City and State