

STATE OF NORTH DAKOTA

North Dakota Public Service Commission
Abandoned Mine Lands Division
600 E. Boulevard Ave., Department 408
Bismarck, ND 58505-0480

REQUEST FOR PROPOSAL (RFP)

RFP Title: 2021 South Sinkhole Filling AML Project

RFP Number: 408.21.04.007

Issued: April 14, 2021

Purpose of RFP: This is a solicitation to reclaim hazardous subsidence features related to abandoned underground mines and other work as directed by the Public Service Commission at Abandoned Mine Lands (AML) at sites in southwestern North Dakota. Although site locations are unspecified at this time, similar work has been done in recent years at mine sites near Beach, Beulah, Bowman, Dickinson, Haynes, Havelock, New Salem, Richardton, Scranton and Zap. Since this Contract is contingent upon future occurrences of sinkholes, mobilizations, sinkhole filling volumes, tilling/seeding acres, and the total Contract price cannot be guaranteed.

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SECTION ONE – INTRODUCTION AND INSTRUCTIONS

1.01 Purpose Of The RFP

The State of North Dakota, acting through the North Dakota Public Service Commission, Abandoned Mine Lands (AML) Division (STATE) is soliciting proposals to fill hazardous sinkholes resulting from the collapse of abandoned underground mines in the North Dakota counties of Adams, Billings, Dunn Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Slope and Stark (See 7.05 Attachment 5 Project Location Map on page 39).

1.02 Definitions

For this RFP, the acronyms and defined terms are as follows:

- Commission’s Project Manager: The person authorized by STATE as supervisor of the project.
- Contractor - Entity that has an approved contract with STATE
- CT - Central Time Zone
- OFFEROR – The entity submitting a response to the RFP
- N.D.A.C.: North Dakota Administrative Code; rules with the force and effect of law
<https://www.legis.nd.gov/information/acdata/html/4-12.html>
- N.D.C.C.: North Dakota Century Code; state laws <https://www.legis.nd.gov/general-information/north-dakota-century-code>
- RFP - Request for Proposal
- Solicitation - The process of notifying prospective bidders that STATE wishes to receive bids for furnishing goods or services
- Solicitation Closing - Deadline for receipt of proposals listed in the RFP Schedule
- SPO: State Procurement Office, a division of the Office of Management and Budget
- SPO Online: a procurement information website maintained by OMB State Procurement Office pursuant to N.D.C.C. § 54-44.4-14

1.03 Procurement Officer Contact Information

The procurement officer is the point of contact for this RFP. OFFERORS shall direct all communications regarding this RFP to the procurement officer. Please do not add the procurement officer to any distribution list.

PROCUREMENT OFFICER: Joan Breiner, Assistant Director
Abandoned Mine Lands Division
North Dakota Public Service Commission
600 E. Boulevard Ave., Department 408
Bismarck, ND 58505-0480
EMAIL: pscprocurement@nd.gov
PHONE: 701-328-2412
TTY Users call: 7-1-1

Unauthorized contact to obtain information about an open solicitation with any state employee or official other than the responsible procurement officer or designee may result in OFFEROR being disqualified. OFFEROR may also be suspended or disbarred from the state bidders list. [N.D.A.C. § 4-12-05-04(7)]

1.04 RFP Schedule

Request for Proposal issued on SPO.....	April 14, 2021
Deadline for Receipt of Questions and Objections related to the RFP.....	April 28, 2021, 5:00 PM CT
Responses to Questions/RFP Amendments (if required).....	April 30, 2021
Proposals Due (Solicitation Closing)	May 7, 2021, 5:00 PM CT
Proposal Evaluation completed (approximately).....	May 14, 2021
Notice of Intent to Award issued (approximately).....	May 21, 2021
Contract start date (approximately).....	June 15, 2021

1.05 Assistance To Individuals With A Disability

Contact the procurement officer, as soon as possible, if an individual with a disability needs assistance with the RFP, including any events in the RFP schedule, so reasonable accommodations can be made.

1.06 Bidders List and Secretary of State Registration Requirements

OFFERORS shall comply with requirements for the Office of Management and Budget (OMB) Bidders List application and Secretary of State registration [N.D.C.C. § 54-44.4-09]. Bidders Lists are used to notify vendors when solicitations are issued on the State Procurement Online system (SPO Online).

Proposals will be accepted from OFFERORS that are not on the Bidders List. The successful OFFEROR shall complete the Bidders List application process and comply with Secretary of State registration requirements within 30 calendar days from the date a notice of intent to award is issued. If the successful OFFEROR does not register within this time, its proposal may be rejected.

Vendor Registration Information Websites:

Secretary of State Registration. Complete the online Secretary of State registration process (fees apply): <https://firststop.sos.nd.gov/>. Select "Start a Business." You will need to create a username and password. Contact the Secretary of State, Business Services at 701-328-2904 or sosbir@nd.gov for assistance.

Bidders List Application Process. Complete the online Bidders List application process: <https://www.nd.gov/omb/vendor>. Contact the OMB State Procurement Office for assistance at 701-328-2773 or email infospo@nd.gov. Bidders List Used for this Solicitation. Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential OFFERORS. The following commodity codes were used for the Bidders List for this solicitation: 962-73 and 912-23.

Vendor Payment Registration. The successful OFFEROR may be required to register as a new supplier to receive payment from the State. See the Office of Management and Budget website for more information: <https://www.nd.gov/omb/vendor/vendor-payments>

1.07 State Procurement Website (SPO Online)

This RFP and any related amendments and notices will be posted on the North Dakota Office of Management and Budget website using the State Procurement Online system (SPO Online). OFFERORS are responsible for checking this website to obtain all information and documents related to this RFP: <https://www.nd.gov/omb/vendor/bidding-opportunities-spo-online>.

Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential offerors.

Offerors not having completed the Bidders List registration may request to receive notices related to this RFP by contacting the procurement officer in writing with the following information: RFP title, business name, contact person, mailing address, telephone number, and email address.

1.08 Amendments To The RFP

If an amendment to this RFP is issued, it will be provided to all OFFERORS on the Bidders List for the solicitation and to those prospective OFFERORS who have contacted the procurement officer to receive notices related to the RFP. An OFFEROR shall include in its proposal any required acknowledgments of amendments to the RFP.

1.09 Deadline for Questions And Objections

OFFERORS should carefully review the RFP including all attachments. OFFERORS may ask questions to obtain clarification and request additional information or object to material in the RFP. Questions and objections must be submitted to the procurement officer in writing by the deadline identified in the RFP schedule. The Procurement Officer may elect to respond to questions received after the deadline.

Questions and objections should include a reference to the applicable RFP section or subsection. Email is the preferred method of submission with the RFP number cited in the email subject line.

Responses to questions will be distributed as a solicitation amendment unless the question can be answered by referring OFFEROR to a specific section of the RFP.

1.10 **Preproposal Conference Or Site Inspection**

STATE will not hold a preproposal conference or site inspection for this RFP.

1.11 **Offer Held Firm**

OFFERORS shall hold proposals firm for at least 60 days from the deadline for receipt of proposals. STATE may send a written request to all OFFERORS to hold their offer firm for a longer period.

1.12 **Offeror Responsible For Costs**

OFFEROR is responsible for all costs associated with the preparation, submittal, presentation, and evaluation of any proposal.

1.13 **Taxes**

STATE is not responsible for and will not pay itemized local, state, or federal taxes. Purchases of tangible personal property made by a state government agency are exempt from sales tax. The state sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency. CONTRACTOR shall provide a valid Vendor Tax Identification Number as a provision of the contract.

The purchasing agency will determine if services provided under this contract are 1099 reportable. The purchasing agency may require CONTRACTOR to submit an IRS Form W-9.

The state tax exemption number should **not** be used by contractors in the performance of a contract.

A contractor or service provider performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on materials, tangible personal property, and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-1246 or visit its website at <https://www.nd.gov/tax/tax-resources/> for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-1248 or visit its website for more information.

1.14 **Solicitation Closing – Late Proposals Rejected**

An OFFEROR is responsible for ensuring its proposal is received by STATE before the proposal receipt deadline identified in the RFP schedule. A solicitation amendment will be issued if this deadline is changed. An OFFEROR may contact the procurement officer to inquire whether its proposal has been received. OFFERORS assume the risk of the method of dispatch chosen. STATE assumes no responsibility for delays caused by any delivery service. Postmarking by the deadline shall not substitute for actual proposal receipt by STATE. Proposals delivered late will be rejected pursuant to N.D.A.C. § 4-12-08-13.

1.15 **Proposal Opening**

This is a formal sealed Request for Proposal (RFP) process. Proposals will be secured and held unopened until the proposal receipt deadline. A public opening will not be held. At the specified date and time, each proposal will be opened in a manner to avoid disclosure of the contents to the competing OFFERORS.

1.16 Amendment And Withdrawal of Proposals

OFFERORS may amend or withdraw proposals before the deadline for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to STATE's request. After the deadline, OFFERORS may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made, and STATE may permit withdrawal.

1.17 News Releases

OFFERORS shall not make any news releases related to this RFP without prior approval of STATE.

1.18 Conflict Of Interest

Under state laws and rules, a state employee or official shall not participate directly or indirectly in a procurement when the state employee or official knows of a conflict of interest. Potential conflicts of interest include state employees or their immediate family members employed by the firm, seeking employment with the firm, or with a financial interest in the firm. Potential conflicts of interest will be addressed in accordance with N.D.A.C. § 4-12-04-04.

Persons employed by the State of North Dakota, or within one year thereafter, may be prohibited from acquiring a pecuniary interest in a public contract or transaction. OFFERORS should review N.D.C.C. § 12.1-13-02 to ensure compliance and avoid such conflict(s) of interest.

1.19 Attempt To Influence Prohibited

OFFERORS shall not give or offer to give anything to a state employee or official anything that might influence, or appear to influence procurement decisions. Suspected attempt to influence will be handled in accordance with N.D.A.C. § 4-12-04-05.

1.20 Collusion Prohibited

OFFERORS shall prepare proposals independently, without collusion. Suspected collusion will be handled in accordance with N.D.A.C § 4-12-04-06.

1.21 Protest And Appeal

An interested party may protest a solicitation pursuant to N.D.C.C. § 54-44.4-12 and N.D.A.C. § 4-12-14-01. When a solicitation contains a deadline for submission of questions and objections, protests of the solicitation will not be allowed if these faults have not been brought to the attention of the procurement officer before the specified deadline. If no deadline for questions is specified, protests based upon defects in the solicitation must be made at least seven calendar days before the deadline for receipt of proposals.

An OFFEROR that has submitted a response to a solicitation and is aggrieved may protest an award or notice of intent to award pursuant to N.D.C.C. § 54-44.4-12 and N.D.A.C. § 4-12-14-02. The protest must be submitted in writing to the Procurement Officer during the protest period, which is seven calendar days beginning the day after the notice of intent to award is issued.

The protestor may appeal the decision of the procurement officer to the Director of Office of Management and Budget (OMB) within seven calendar days after receiving notice of the decision pursuant to N.D.C.C. § 54-44.4-12 and N.D.A.C. § 4-12-14-03.

1.22 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 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.

SECTION TWO – BACKGROUND

2.01 Background Information

The mission of the Abandoned Mine Lands Division is to eliminate existing and potential public hazards resulting from abandoned surface and underground coal mines. The AML Program is a service (not regulatory) program aimed at protecting North Dakotans by reclaiming hazardous abandoned mines. Mines eligible for reclamation may be in our 1,700 plus abandoned mine inventory or reported to us. The PSC's selection of reclamation projects is based on prioritization of abandoned mine-related hazards. It also requires federal approval. Emergency projects are conducted when AML problems are an immediate and serious danger to the public.

The objective of this project is to fill hazardous sinkholes resulting from the collapse of abandoned underground coal mines. The locations and fill volumes are not specified and will be determined as sinkholes are reported and discovered. Sinkhole filling projects have been conducted annually in North Dakota for several years and the number of sinkholes filled in a given year has ranged from the tens to hundreds. Mobilizations, sinkhole filling volumes and the total Contract price cannot be guaranteed since this Contract is contingent upon future occurrences of sinkholes.

Portions of the sites are located within areas containing abandoned underground mine workings. Surface subsidence caused by upward void migration of abandoned mine workings has been documented within the general area. Offeror should understand that work specified in this RFP is inherently dangerous, due to the locations of the project and the presence of abandoned mine workings. All necessary precautionary steps should be taken to adequately protect the workforce, equipment and the general public at all times during project performance.

2.02 Budget

The maximum total bid price may not exceed \$50,000. The unit for sinkhole filling is cubic yards of fill material, and the quantity will be determined by OFFEROR's unit price for this item. Determining unit prices for Mobilization, Seeding and Sinkhole Filling bid items is the responsibility of OFFEROR. Cost determination will be based on the number of cubic yards of sinkhole filling and is responsive to the specifications and all other requirements stated herein.

SECTION THREE – SCOPE OF WORK

3.01 Scope Of Work

The North Dakota Public Service Commission, Abandoned Mine Lands Division is soliciting proposals to fill hazardous sinkholes at abandoned mine lands site by

- Stripping and stockpiling topsoil
- Filling the sinkholes with material and compacting the fill
- Grading, tilling and seeding as directed.

The AML sites contain abandoned underground lignite coal mines. Although site locations are unspecified at this time, similar work has been done at AML locations near Beach, Beulah, Bowman, Dickinson, Haynes, Havelock, New Salem, Richardton, Scranton and Zap.

For more information on the Scope of Work, see 7.02 Attachment 2: Scope of Work on page 29.

The quantities in this Contract are estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and anticipated usage. The Commission's Project Manager reserves the right to increase or decrease the actual quantities as site conditions warrant. The final contract pay will be determined using final quantities computed by the Commission's Project Manager and the unit prices submitted by CONTRACTOR. No allowance will be made for any increased expense, loss of expected reimbursement or loss of anticipated profits suffered or claimed by CONTRACTOR resulting either from field conditions or unbalanced bid prices or any other cause. Applicable Directives

CONTRACTOR is responsible for identifying and complying with all state and federal requirements that apply to the contract. CONTRACTOR shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the contract in general. Offerors shall review the attached sample contract for safety requirements.

3.02 Requirements

A. Billing Address

After delivery of commodities or services under contract, CONTRACTOR shall submit a correct invoice. Payment will be made after inspection and acceptance. All invoice and payment inquiries must be directed to:

**Joan Breiner
Assistant Director, AML Division
Public Service Commission
600 E Blvd Avenue Dept. 408
Bismarck, ND 58505-0480**

B. Location Of Work/Travel

The work is to be performed, completed, and managed at sites of reported hazardous sinkholes potentially in the counties of Adams, Billings, Dunn Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Slope and Stark. A location map can be found on 7.05 Attachment 5: Project Location Map.

C. State-Furnished Property/Services

STATE will provide:

1. Project Manager or Project Inspector on-site a minimum of 60% of the time.
2. Consent for Right of Entry to the project sites upon request.
3. Measured pay quantities.

D. Risk Management

CONTRACTOR will take appropriate measures to ensure the safety of its employees, state employees, the public, and property. CONTRACTOR shall identify any potential risks, issues and problems associated with the project and identify ways to mitigate those potential risks.

Indemnification and Insurance Requirements. OFFERORs 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 submission of questions for this RFP. No alteration of these provisions will be permitted without prior written approval from STATE in consultation with the North Dakota Risk Management Division. The successful Offeror shall provide the Procurement Officer with proof of coverage before contract approval. The coverage must be satisfactory to STATE, in consultation with the North Dakota Risk Management Division. 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.

E. Inspection and Acceptance or Rejection.

STATE reserves the right to conduct inspections and investigations related to the Offeror and the offered commodities or services, including but not limited to the firm, personnel, qualifications, and the commodities and services offered to make determinations regarding compliance with the RFP requirements and responsibility of the Offeror. All material and workmanship are subject to inspection and testing by STATE at the point of manufacturer, place of storage, or upon receipt. STATE reserves the right to reject any commodities or services and terminate the contract if CONTRACTOR fails to comply with the specifications, terms and conditions, or the seller's express or implied warranties. Rejected commodities will be removed at CONTRACTOR's expense. Failure to satisfactorily perform may result in suspension or debarment from the Bidders List.

If commodities or services are rejected as being not compliant with the requirements of this solicitation, STATE will inform CONTRACTOR in writing. STATE may provide CONTRACTOR with a reasonable opportunity to cure, whenever practicable, as set forth in writing by STATE.

F. Project Management Plan

CONTRACTOR will be expected to use appropriate project management to ensure the work is accomplished on time, within budget, and meets quantity and quality standards.

CONTRACTOR will be required to collaborate with STATE to agree upon the contract schedule, including a work breakdown, schedule of tasks and activities, and progress milestones.

CONTRACTOR will be required to coordinate with STATE to develop a communication plan. Any problems or unforeseen events must be communicated timely to the Commission's Project Manager, and any changes must be agreed upon between the parties and set forth in a written amendment to the contract. If STATE requires corrective action, CONTRACTOR will be notified in writing.

G. Contract Term, Schedule And Deliverables

1. Contract Term

The contract will begin on full execution of the contract by all parties and end on June 30, 2022. See Section 6: Sample Contract for renewal and extension provisions.

2. Schedule

Mobilization for sinkhole filling should begin within ten days of notification at any time during the Contract period. This notice may be verbal or written and will specify the site location, the estimated number of sinkholes and a volume estimate. Sinkholes that occur near homes, businesses or public roads may be considered emergencies and must be filled or otherwise abated as rapidly as possible. Other work including repairs and maintenance on abandoned surface coal mine sites may also be required as directed by Commission's Project Manager. The approximate schedule for this contract is as follows:

- a. Contract start: Approximately June 15, 2021.
- b. Invoices for Work Completed and Accepted by STATE as stipulated: submitted on or before the 5th or 20th day of each month for payment processing on the 10th or 25th of each month.
- c. Request for contract extension or renewal request deadline: May 15, 2022.

3.03 Experience And Qualifications

Minimum Qualifications

OFFERORS shall submit a current valid North Dakota Contractor's License with the proposal to be considered for contract award.

OFFEROR shall have and keep current any professional licenses and permits required by federal, state, and local laws for performance of this contract. OFFERORS that do not possess required licenses at the time proposals are due will be determined non-responsive and rejected.

Experience

OFFEROR and any subcontractors shall meet the following experience requirements to be considered for a contract award. A proposal from OFFEROR that does not meet minimum experience requirements will be rejected.

OFFERORS shall list and describe with detail at least one (1) completed project involving the performance of:

- Stripping and stockpiling topsoil
- Filling voids, holes, trenches or sinkholes with material and compacting the fill
- Grading, tilling and seeding

Contractor Project Team Personnel

CONTRACTOR shall inform STATE of any changes to CONTRACTOR's project team members or subcontractors named in the proposal, in advance and in writing. The personnel changes of key contractor project team members that are not acceptable to STATE may be grounds for STATE to terminate the contract.

SECTION FOUR – PROPOSAL INSTRUCTIONS

4.01 Proposal Preparation

STATE discourages overly lengthy and costly proposals. An OFFEROR shall prepare its proposal using the prescribed proposal format and provide all the requested information; this will enable the proposal to be evaluated fairly and completely. If an OFFEROR submits more than one proposal, each proposal must be prepared in accordance with these instructions.

4.02 Proposal Submission Instructions

Proposal Format: Each proposal response must include the following clearly labeled files:

- Technical proposal (all requested RFP attachments, excluding cost)
- Cost proposal

Each file must be submitted as separate documents, clearly labeled with the name of OFFEROR, the Solicitation Title and Solicitation Number, and marked “Technical Proposal” and “Cost Proposal”. Costs must not be revealed in the technical proposal. Options may be discussed in the technical proposal, but all cost information must be in the cost proposal only.

Emailed Or Faxed Submission

Sealed proposals are required; therefore, proposals cannot be submitted by email or fax to the procurement officer. OFFERORS may email or fax proposals to a third party to place in a sealed envelope and deliver by the deadline for proposal submission.

Submit In Person, By Mail or Delivery Service

OFFERORS may submit proposals in person, by mail or delivery service. OFFEROR shall submit four (4) copies of its Technical Proposal. OFFEROR shall submit one (1) copy of its Cost Proposal in a separate, sealed envelope, clearly labeled “**Cost Proposal.**” Clearly address all envelopes or packages as follows:

RFP #: 408.21.04.007
RFP Title: 2021 South Sinkhole Filling AML Project
ATTN: Joan Breiner, Procurement Officer
PUBLIC SERVICE COMMISSION
ABANDONED MINE LANDS DIVISION
600 EAST BOULEVARD AVE, DEPT 408
BISMARCK ND 58505-0480

Electronic Submission

OFFERORS may electronically submit proposals through the State Procurement Online system (SPO Online) by the Solicitation Closing date and time.

1. This solicitation is posted on SPO Online at: <https://www.nd.gov/omb/vendor>
2. Click on “Recent Solicitations” and find this solicitation.
3. Use “Upload Response” to upload a maximum of five (5), clearly labeled documents before the deadline for receipt of proposals in the RFP Schedule.
4. OFFERORS shall upload their Technical Proposal and Cost Proposal in separate files.
5. The maximum file size allowed is 50mb per file.
6. All field entries must be alphanumeric. Dashes and underscores are allowed, however the system does not accept other special characters such as apostrophe, & symbol, quotation marks, etc.
7. OFFERORS will receive an email confirmation from infospo@nd.gov that the upload response was received including the “File Description” for the uploaded files. Review this email to ensure all files were successfully uploaded. If you do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If you do not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at infospo@nd.gov or 701-328-2740.

Visit <https://www.nd.gov/omb/vendor/bidder-resources> for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

4.03 Proposal Format

Prepare the technical proposal and cost proposal in accordance with these instructions. Details on each item are provided in 4.04 and 4.05 below.

Technical Proposal – Format the proposal with the following labeled sections:

- Section 1 – RFP Form (Attached)
- Section 2 – RFP Amendments
- Section 3 – Scope of Work Strategy Form (Attached)
- Section 4 – Experience and Qualifications (Attached)
- Section 5 – Open Records and Confidentiality

Cost Proposal – The Cost Proposal must be a separate document. OFFEROR shall use 7.04 Attachment 4: Cost Proposal or provide something similar.

4.04 Technical Proposal

Section 1 – RFP Form

OFFEROR shall submit 7.01: Attachment 1 with the Proposal.

Section 2 – RFP Amendments

OFFEROR shall provide signed copies of all Solicitation Amendments issued by STATE that were required to be acknowledged by OFFERORS.

Section 3 – Scope Of Work Strategy

OFFEROR shall submit a completed 7.02 Attachment 2 Scope of Work.

Section 4 – Experience And Qualifications

OFFEROR shall submit a completed 7.03 Attachment 3 Experience and Qualifications.

Section 5 – Open Records And Confidentiality

All proposals and other material submitted become the property of STATE and may be returned only at STATE's option. The State of North Dakota has broad open records laws. Proposals received are exempt from open record requirements until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2). After award, proposals are subject to the North Dakota open records laws. Proposals or portions of proposals may be confidential only if specifically stated in the law.

OFFERORS are instructed not to mark their entire proposal as "confidential".

OFFEROR shall provide one of the following in their proposal:

- Provide a statement indicating that their proposal does not contain any confidential information; **or**
- Make a written request to hold confidential any trade secrets and other proprietary data contained in its proposal. OFFEROR shall clearly identify the material considered confidential and explain why the material is confidential. See the North Dakota Office of the Attorney General website for additional information. <https://www.ag.nd.gov/OpenRecords/ORM.htm>

If STATE receives a request for public information, the procurement officer, in consultation with the Office of the Attorney General, shall determine whether the information is an exception to the North Dakota open records laws, and the information shall be processed accordingly.

4.05 Cost Proposal

Cost Proposal Format. Cost proposals must be prepared as a separate document from the technical proposal, clearly labeled, "Cost Proposal".

OFFEROR shall complete 7.04 Attachment 4: Cost Proposal or prepare a cost proposal following the same format.

All costs must be stated in U.S. currency.

SECTION FIVE – AWARD AND PROPOSAL EVALUATION

5.01 Award

STATE intends to award a contract to the responsible OFFEROR whose proposal is determined to be responsive to the requirements of the solicitation and is determined to be most advantageous in consideration of the RFP evaluation criteria.

5.02 Responsiveness

All proposals will be evaluated to determine if they are responsive to the requirements of the solicitation. STATE reserves the right to waive minor informalities in accordance with [N.D.A.C. chapter 4-12-10](#). Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from RFP document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other OFFERORS. Responsive proposals will be evaluated by the procurement officer or evaluation committee using the evaluation criteria stated in the RFP.

5.03 Responsibility – Supplementary Investigation

STATE reserves the right to contact references, other customers, including state and local government agencies, regarding past experience with OFFEROR. Prior experience of the state agency or institution with any prospective OFFEROR may also be taken into consideration during evaluation.

STATE may, at any time, make a supplementary investigation as to the responsibility of any OFFEROR in accordance with [N.D.A.C. § 4-12-11-04](#). This investigation may include, but is not limited to, financial responsibility, capacity to produce, sources of supply, performance record, or other matters related to OFFEROR's probable ability to deliver if a contract is awarded to OFFEROR. If it is determined that an OFFEROR appears not to be sufficiently responsible, the proposal will be rejected.

5.04 Evaluation Criteria

Proposals will be evaluated using a 100-point scale. The evaluation committee will award points based on the questions in the Technical Proposal Evaluation Worksheet – 7.06 Attachment 6. The technical proposal evaluation score and cost proposal evaluation score will be added together to determine the total evaluation score. After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those OFFERORS. OFFERORS whose proposals are not selected for further evaluation may request a debrief from the procurement officer after an award notice is issued. The final evaluation score will consider information received by STATE, including but not limited to, discussions with OFFERORS, demonstrations, presentations, site visits, reference checks, and best and final offers.

The evaluation criteria and relative weight are as follows:

Technical Proposal Evaluation: 75 Points

- A. Scope of Work Strategy – 35 Points
- B. Experience and Qualifications – 40 Points

Cost Proposal Evaluation: 25 Points

- A. Cost Section One – 10 Points
- B. Cost Section Two – 15 Points

Minimum Technical Score: Technical proposals must receive at least 50 of the total points available for the Technical Score to be considered responsive to the RFP requirements.

The technical proposal evaluation score and cost proposal evaluation score will be added together to determine the total evaluation score.

5.05 Cost Proposal Evaluation – Reciprocal Preference

STATE will calculate evaluation points awarded to cost proposals. Any prompt payment discount terms proposed by OFFEROR will not be considered in evaluating cost.

The cost amount used for evaluation may be affected by the application of North Dakota preference laws in accordance with [N.D.C.C. § 44-08-01](#). The preference given to a resident OFFEROR will be equal to the preference given or required by the state of the nonresident OFFEROR (i.e. reciprocal preference). For more information, refer to [Guidelines to North Dakota Purchasing Preference Laws](#).

The cost amount used for evaluation may also be affected by the application of other costs required to implement the proposed solution to determine the total cost of the solution (i.e. cost for ITD to host a STATE hosted solution).

After applying any reciprocal preference, the cost proposal that provides the maximum cubic yards of sinkhole filling will receive the maximum number of points. Cost proposals will be evaluated using the following formulas.

A. Cost Section One:

Price of Lowest Cost Proposal
Price of Proposal Being Rated X 10 Pts for Cost Section One = Awarded Points

Price of Lowest Cost Proposal = From the Cost Proposal that has the lowest total price for Cost Section One. (Cost Proposal Section One, (Total of Cost Section One (in Numbers) Line).

Price of Proposal Being Rate = From the Cost Proposal that is being evaluated, it is under Cost Section One, Total of Cost Section One (in Numbers) Line.

B. Cost Section Two:

Lowest Sinkhole Filling Unit Price
Sinkhole Filling Unit Price of Proposal Being Rated X 15 Pts for Cost Sec. Two = Awarded Points

Lowest Sinkhole Filling Unit Price = From the Cost Proposal that has the smallest unit cost for Sinkhole Filling (Cost Section Two, Item 1. Unit Price).

Sinkhole Filling Unit Price Of Proposal Being Rated = From the Cost Proposal, Section Two that is being evaluated, it is under Cost Section Two, Item 1. Unit Price.

Awarded Points = The Cost Proposal Evaluation points awarded to the proposal being evaluated (sum of RFP section 5.05 items A and B).

5.06 Clarifications Of Proposals – Discussions

To determine if a proposal is reasonably susceptible for award, communications by the procurement officer or evaluation committee are permitted with an OFFEROR to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Discussions will be limited to the specific section of the RFP or proposal indicated by STATE. Discussions are generally conducted by telephone or internet-based conference.

In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing OFFERORS. Clarifications may not result in material or substantive change to the proposals. Evaluation scores may be adjusted based on consideration of information obtained through discussions.

5.07 Right Of Rejection

STATE reserves the right to reject any proposals, in whole or in part. Proposals received from suspended or debarred bidders will be rejected. Proposals determined to be nonresponsive to the requirements of the RFP will be rejected. STATE reserves the right to reject the proposal of an OFFEROR determined to be not responsible. STATE reserves the right to refrain from making an award if it is determined to be in STATE's best interest.

5.08 Presentations, Demonstrations, Site Visits

STATE may conduct an on-site visit to OFFEROR's facility or facility of OFFEROR's customer where OFFEROR is performing similar work to evaluate OFFEROR's capacity to perform the contract. An OFFEROR shall agree,

at risk of being found nonresponsive and having its proposal rejected, to provide STATE reasonable access to relevant portions of its work sites. Individuals designated by STATE shall conduct the site inspection at STATE's expense. STATE will coordinate the date and time of the on-site visit with OFFEROR.

5.09 Best And Final Offers

STATE is not obligated to request best and final offers; therefore, OFFERORS should submit their best terms (technical and cost) in response to this RFP.

If STATE determines there is a need for any additional information, substantial clarification or changes to the RFP or proposals, STATE may request for best and final offers from OFFERORS that have submitted proposals determined to be reasonably susceptible for award. The best and final offer request will describe the additional information, clarification, or change being requested.

A date and time will be established for receipt of revised proposals. If an OFFEROR does not submit a best and final offer, STATE shall consider its original proposal as its best and final offer.

Best and final offers will be evaluated using the evaluation criteria stated in the RFP. STATE may request more than one Best and Final Offer.

5.10 Negotiations

Contract negotiations will be conducted in accordance with [N.D.A.C. § 4-12-12](#). STATE may enter into negotiations with one or more OFFEROR whose proposals received the highest scores and are reasonably susceptible for award. During negotiations, STATE and OFFEROR may agree to alter or otherwise change the terms and conditions and price of the proposed contract. Negotiation, if held, will be within the scope of the RFP and limited to those items that would have no effect on the ranking of proposals.

Each OFFEROR will be responsible for all costs it incurs as a result of negotiations, including any travel and per diem expenses. Contract negotiations will be conducted primarily by email, conference call, or internet-based conference. Any on-site negotiation, if needed, will be held in Bismarck, North Dakota.

STATE may terminate negotiations, reject a proposal as nonresponsive, and continue or commence negotiations with other OFFERORS reasonably susceptible for award, if OFFEROR:

- fails to provide necessary information for negotiation in a timely manner,
- fails to negotiate in good faith,
- is unable to successfully negotiate contract terms that are acceptable to STATE, or
- indicates that it cannot perform the contract within the budgeted funds.

5.11 Notice Of Intent To Award

After proposals have been evaluated and the successful OFFEROR selected, a Notice of Intent to Award will be promptly issued to all OFFERORS that submitted proposals. Upon issuance of this notice, the procurement file becomes an open record.

The successful OFFEROR named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts until the successful OFFEROR and STATE sign the contract.

5.12 Contract Approval

This RFP does not, by itself, obligate STATE. STATE's obligation shall commence when STATE signs the contract. Upon written notice to CONTRACTOR, STATE may set a different starting date for the contract. STATE shall not be responsible for any work done by CONTRACTOR, even work done in good faith, if it occurs before the contract start date set by STATE.

5.13 Evaluation Debrief

After the notice of intent to award is issued, OFFERORS may contact the Procurement Officer to schedule an evaluation debrief. The debrief will provide information about the evaluation process and proposal scores.

SECTION SIX – SAMPLE CONTRACT

Administrator:	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400
Date:	_____
_____ Steve Kahl Executive Director	

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

Agreement Information	
Case No.:	<u>AM-21-</u>
Contract No.:	_____
Start Date:	_____
End Date:	_____
Program Title:	_____
Type of Contract:	<input checked="" type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimb. <input type="checkbox"/> Unit Price <input type="checkbox"/> Other

Budget Information	
Cost Center:	<u>9000</u>
Services:	_____
Optional on-site review:	_____
Expenses:	_____
ID	<u>Case No. AM-21-</u>
Type of Contractor:	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Public Agency <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Other

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

GENERAL PROVISIONS

The parties to this Contract (Contract) are the 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 the **2021 South Sinkhole Filling AML Project** Request for Proposals.

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 forty-five (45) calendar days after receipt of an approved 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 must 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 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 **upon complete execution of the contract by all parties and ends on June 30, 2022.**

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 eighteen (18) 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 twelve (12) months.

TIME OF PERFORMANCE

CONTRACTOR shall mobilize and begin sinkhole filling within ten days of notification at any time during the Contract period. This notice may be verbal or written and will specify the site location, estimated number of sinkholes and a volume estimate. Work is site-specific and CONTRACTOR shall finish all work as soon as reasonably possible. 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 fails to pursue the work 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 the State of North Dakota, its agencies, officers and employees, 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

- 1) **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:
 - a) Commercial general liability, including premises or operations, contractual and products or completed operations coverage (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
 - b) 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.
 - c) 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.
 - d) 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.
- 2) **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:
 - a) Any deductible or self-insured retention amount or other 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.
 - b) 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.
 - c) 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.
 - d) The State of North Dakota and its agencies, officers, and employees (STATE) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. STATE shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Contract or by the contractual indemnity obligations of CONTRACTOR.
 - e) The insurance required in this agreement, through a policy or endorsement, shall include:
 - i. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against STATE;
 - ii. 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;
 - iii. Cross liability/severability of interest for all policies and endorsements;
 - iv. 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;
 - v. 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.
 - f) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
 - g) Failure to provide insurance as required in this agreement is a material breach of Contract entitling STATE to terminate this agreement immediately.
 - h) CONTRACTOR shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. CONTRACTOR shall provide on an ongoing basis, current certificates of insurance during the term of the Contract. A renewal certificate will be provided 10 days prior to coverage expiration.

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 "toolbox" 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 STATE.

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 work(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:
Steven Kahl, Executive Director	
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 LAWS

CONTRACTOR understands that, in accordance with this Contract’s confidentiality clause, STATE shall 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 or otherwise transfer or delegate any right or duty without STATE’s express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate without cause. CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have 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: Request for Proposals 408.21.04.007 2021 South Sinkhole Filling AML Project.
- 3) Contractor's RFP Response.
- 4) Standard Specifications for AML Reclamation Projects.

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 the 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 AND COSTS

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 non-discrimination, accessibility and civil rights. (See N.D.C.C. Title 34–Labor and Employment, specifically N.D.C.C. § 34-06.1 Equal Pay for Men and Women). 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 the 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. CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

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 a 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. State and federal holidays will be observed.

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.

SECTION SEVEN – ATTACHMENTS

- 7.01 Attachment 1: Request for Proposals Form (Include with Response.)
- 7.02 Attachment 2: Scope of Work (Include with Response.)
- 7.03 Attachment 3: Experience and Qualifications (Include with Response.)
- 7.04 Attachment 4: Cost Proposal (Include with Response.)
- 7.05 Attachment 5: Project Location Map
- 7.06 Attachment 6: Technical Proposal Evaluation Worksheet

7.01 Attachment 1: Request for Proposals Form

Request For Proposals
State of North Dakota

North Dakota Public Service Commission
Abandoned Mine Lands Division
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480
PH: 701-328-2400

RFP Number: 408.21.04.007	Solicitation Title: 2021 South Sinkhole Filling AML Project	
Date Issued: April 14, 2021	Procurement Officer: Joan Breiner	
Deadline for Questions: April 28, 2021 5:00 p.m., CT	Telephone: 701-328-2412	Fax: 701-328-2133
Proposal Submission Deadline: May 7, 2021 5:00 p.m., CT	E-mail: pscprocurement@nd.gov	
Contract Period: Begins approx. June 15, 2021. Ends June 30, 2022	Commodity or Service: 962 – Miscellaneous Services #2 Sub Class 73 912 – Construction Services Gen Sub Class 23	

Offeror Company Name:			
Street Address:			
P.O. Box:	City	State:	Zip Code:
Toll Free Telephone:		Telephone:	Fax:
Federal I.D. (FEIN)		E-Mail:	
Type or Print Name of Person Signing:		Title:	
Authorized Signature:			Date:

NOTICE: All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date post marked when addressed to the parties at the following address: 600 E Boulevard Ave Dept. 408, Bismarck, ND 58505-0480.

7.02 Attachment 2: Scope of Work: Use additional paper, if needed.

<u>Contractor Name:</u>	
A. MOBILIZATION	
1.	<p>This item consists of all preparatory work and operations to start and finish the project. This includes personnel, equipment, supplies, facilities and other incidentals. Movement of any of these items to and from the project site and construction or dismantling costs incurred are considered part of this line item. Describe how OFFEROR intends to manage the project to ensure the work is accomplished on time, within budget, and meet quantity and quality standards. OFFERORS may provide a narrative or organizational chart to illustrate the lines of authority and accountability.</p> <p>Describe your strategy to complete this task.</p>
	<u>Offeror Response</u>
2.	<p>Work may be required at more than one site at a time.</p> <p>Describe your ability to work at multiple sites simultaneously.</p>
	<u>Offeror Response</u>
3.	<p>CONTRACTOR shall mobilize and begin sinkhole filling within ten days of notification at any time during the contract period. Notice may be verbal or written and will specify a) the site location, b) the estimated number of sinkholes and c) a volume estimate. CONTRACTOR may need to mobilize quickly for an emergency such as a hazardous sinkhole that occurs near homes, businesses, or public roads.</p> <p>Describe how quickly you will be able to respond to a work request. Please include emergency and non-emergency requests.</p>
	<u>Offeror Response</u>

4.	<p>CONTRACTOR shall determine the presence of all utility facilities within the project areas and have the locations of these facilities appropriately marked prior to beginning work. One Call does NOT locate privately owned and operated facilities. CONTRACTOR shall make other arrangements for locating such facilities.</p> <p>Will you comply with this requirement? Respond with Yes or No.</p>																																																																								
	<p><u>Offeror Response</u> YES NO</p>																																																																								
5.	<p>CONTRACTOR shall dedicate equipment and personnel to this project until all work is finished at each specified site. CONTRACTOR shall provide all material, equipment, and personnel needed to perform the work.</p> <p>Required Equipment: a) an excavator or backhoe must be used for excavation of sinkholes and b) Harley box rake or similar for tillage and seeding.</p> <p>Provide a list of all equipment available for use on this project. Use additional paper if needed. Include:</p> <p>1. Owned/leased/rented* 2. Make/Model & Year 3. Equipment Hours 4. Condition: New, Good, Fair 5. Equipment hourly rate (including operator).</p> <p style="text-align: right;">*Provide rental/lease agreement upon award.</p> <p><u>Offeror Response</u></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 25%;">Equipment</th> <th style="width: 10%;">O/L/R</th> <th style="width: 30%;">Make/Model/Year</th> <th style="width: 10%;">Condition:</th> <th style="width: 10%;">Hours</th> <th style="width: 15%;">Hourly Rate</th> </tr> </thead> <tbody> <tr> <td><i>EXAMPLE Excavator</i></td> <td><i>Owned</i></td> <td><i>Cat/320EL/2013</i></td> <td><i>Good</i></td> <td><i>2170</i></td> <td><i>\$175</i></td> </tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	Equipment	O/L/R	Make/Model/Year	Condition:	Hours	Hourly Rate	<i>EXAMPLE Excavator</i>	<i>Owned</i>	<i>Cat/320EL/2013</i>	<i>Good</i>	<i>2170</i>	<i>\$175</i>																																																												
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6.	<p>Mobilization will be measured as a per site unit. Each mobilization will be to a general work area, i.e. Beulah, Bowman or Haynes. Each mobilization site may include one or more sub-sites. Sub-sites are generally less than 20 miles apart. No extra mobilization payment will be made for those sub-sites.</p> <p>Confirm your understanding with Yes or No.</p>																																																																								
	<p><u>Offeror Response</u> YES NO</p>																																																																								

C. TILLAGE AND SEEDING

CONTRACTOR shall till and seed all disturbed areas using only North Dakota certified seed. A Harley box rake or equivalent equipment must be used to break up clods, prepare the seedbed and cover all seed. The seed mixture is listed below and may be varied or changed at the discretion of Commission's Project Manager. CONTRACTOR shall provide certified seed tickets to Commission's Project Manager.

<u>Species</u>	<u>Rate/Acre – Lbs. (PLS)</u>
Western Wheatgrass	8
Slender Wheatgrass	5
Green Needlegrass	4
Sideoats Grama	2
Forage Oats (new)	<u>10</u>
	29

Describe your strategy to complete this task.

Offeror Response

1.

Tillage and seeding will be measured on a per acre basis. STATE will measure each area tilled and seeded to the nearest 1/100 of an acre.

2.

Confirm your understanding with Yes or No.

<u>Offeror Response</u>	YES	NO
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D. BASIS OF PAYMENT		
<p>For all items, payment will be made at the contract unit price. Payment is full compensation for furnishing all labor, materials, equipment and incidentals required to complete the work as specified for each item.</p> <p>Confirm your understanding with Yes or No.</p>		
<u>Offeror Response</u>	YES	NO
E. RIGHT-OF ENTRY		
<p>STATE is responsible for providing all necessary Right-of-Entry documentation to CONTRACTOR upon request.</p> <p>Confirm your understanding with Yes or No.</p>		
<u>Offeror Response</u>	YES	NO
F. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES		
<p>CONTRACTOR shall <u>complete and submit forms</u> for Utilization of Minority or Women-Owned Business Enterprises and Labor Surplus Area Concerns. The current Disadvantaged Business Enterprise (DBE) information can be accessed on the NDDOT website at the following link: https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm</p> <p>Offeror has included the requested documents. Confirm with Yes or No.</p>		
<u>Offeror Response</u>	YES	NO
G. SUSPENSION OF WORK		
<p>If any problems arise or persist, the Commission's Project Manager has 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.</p> <p>Confirm your understanding with Yes or No.</p>		
<u>Offeror Response</u>	YES	NO
H. ESTIMATED QUANTITIES		
<p>The quantities in this Contract are estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and anticipated usage. The Commission's Project Manager reserves the right to increase or decrease the actual quantities as site conditions warrant. The final contract payment will be determined using final quantities computed by the Commission's Project Manager and the unit prices submitted by CONTRACTOR. No allowance will be made for any increased expense, loss of expected reimbursement or loss of anticipated profits suffered or claimed by CONTRACTOR resulting either from field conditions or unbalanced bid prices or any other cause.</p> <p>Confirm your understanding with Yes or No.</p>		
<u>Offeror Response</u>	YES	NO
I. SITE CONDITIONS		
<p>CONTRACTOR is advised that portions of the sites contain abandoned underground mine workings. The excavation, backsloping, backfilling, and construction work specified in this RFP is inherently dangerous due to the presence of unstable spoil piles, water filled pits, highwalls, end walls, and abandoned mine workings. Surface subsidence caused by upward void migration of abandoned mine</p>		

7.03 Attachment 3: Experience and Qualifications: Use additional paper, if needed.

<u>Contractor Name:</u>	
1.	<p>Provide a brief history and describe the organization of the OFFEROR's company. Describe the number of years OFFEROR's company has provided the type of work requested in this RFP.</p> <p><u>Offeror Response</u></p>
2.	<p>Describe specific experiences in completing similar projects. Provide examples that include earthmoving, filling and compacting large holes, stockpiling topsoil, grading, tilling and seeding. Provide the approximate time frame of the project and contact information for the customer.</p> <p><u>Offeror Response</u></p>

3.	<p>Provide examples of work for government entities.</p> <hr/> <p><u>Offeror Response</u></p>
4.	<p>Provide information for key project team members, including a) names, b) permanent/temporary employee, c) years of experience, d) anticipated work they will perform, e) a description of the relevant education, training, experience, skills and qualifications for each team member</p> <hr/> <p><u>Offeror Response</u></p>

5.	<p>Provide the names of the subcontractors and the portions of the work the subcontractors will perform. Provide a statement that OFFEROR will ensure that the subcontractor has or will obtain any required licenses and registrations, including registration with the North Dakota Secretary of State.</p>
	<p><u>Offeror Response</u></p>
6.	<p>Provide a minimum of 3 professional references with contact information or 3 letters of reference from customers.</p>
	<p><u>Offeror Response</u></p>

Cost Proposal
2021 South Sinkhole Filling AML Project
408.21.04.007

North Dakota Public Service Commission

Cost Section One

<u>Item</u>		<u>Estimated</u>					
<u>No.</u>	<u>Description</u>	<u>Quantity*</u>	<u>Unit</u>		<u>Unit Price</u>	=	<u>Total Price</u>
1.	Mobilization/Demobilization	5	Site	X	_____	=	_____
2.	Tillage and Seeding	2	Acre	X	_____	=	_____

Total of Cost Section One (in Numbers) _____

Cost Section Two

<u>Item</u>		<u>Estimated</u>					
<u>No.</u>	<u>Description</u>	<u>Quantity*</u>	<u>Unit</u>		<u>Unit Price</u>	=	<u>Total Price</u>
1.	Sinkhole Filling	_____	Cubic Yards	X	_____	=	_____

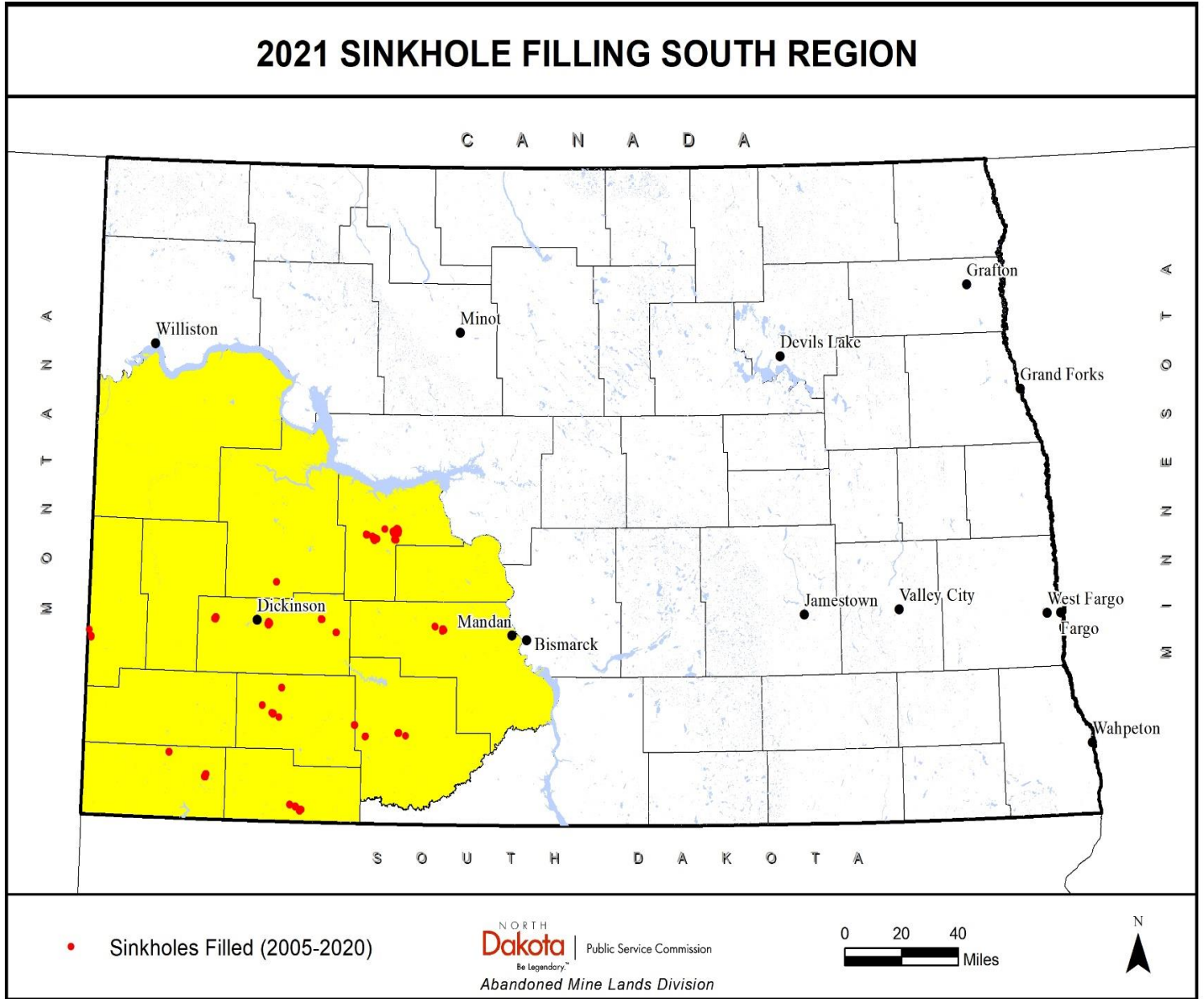
Total of Cost Section Two (in Numbers) _____

Combined Written Total

The maximum total bid price may not exceed \$50,000. The unit for sinkhole filling is cubic yards of fill material, and the quantity will be determined by OFFEROR's unit price for this item. Determining unit prices for Mobilization, Seeding and Sinkhole Filling bid items is the responsibility of OFFEROR. Cost will be determined by the combination of unit prices that allows the maximum cubic yards of sinkhole filling and is responsive to the specifications and all other requirements stated herein.

* The quantities in this Contract are estimated. These estimates will be used to determine the cost comparison for this RFP. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and anticipated usage and site conditions. The final contract pay will be determined using final quantities computed by the Commission's Project Manager and the unit prices submitted by CONTRACTOR.

7.05 Attachment 5: Project Location Map



**2021 South Sinkhole Filling AML Project
RFP Number: 408.21.04.007**

TECHNICAL PROPOSAL EVALUATION WORKSHEET

OFFEROR Name _____

Evaluator Certification. I have reviewed the Request for Proposal Evaluators Guide, and I certify that neither I nor my immediate family members have a conflict of interest regarding this OFFEROR, in accordance with [N.D.A.C. § 4-12-04-04](#).

Evaluator Name _____ Signature _____ Date _____

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS PROPOSAL IS 100

SCOPE OF WORK STRATEGY RATING SCALE (35 Point Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1 – 9	Fair. Limited applicability
10 – 18	Good. Some applicability
19– 27	Very Good. Substantial applicability
28 – 35	Excellent. Total applicability

IMPORTANT. Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion. Evaluators must provide comments to support scoring.

Yes	No	Comments
-----	----	----------

A. MOBILIZATION

1	Offeror must describe their strategy for providing all preparatory work and operations to start and finish the project. This includes personnel, equipment, supplies, facilities and other incidentals. Movement of any of these items to and from the project site and construction or dismantling costs incurred are considered part of this line item.			
2	Offeror provided detail how they will work at more than one site at a time.			
3	Offeror described how quickly they will be able to respond to emergency and non-emergency work requests.			
4	Offeror acknowledges they will determine the presence of all utility facilities within the project areas and have the locations of these facilities appropriately marked prior to beginning work including private utilities.			

5	Offerer has provided a list of equipment that includes: a) an excavator or backhoe and b) Harley box rake or similar. For each piece of equipment, the list includes: 1. Owned/leased/rented* 2. Make/Model & Year 3. Equipment Hours 4. Condition (New, Good, Fair) 5. Equipment hourly rate. Offeror provided rental/lease agreements.			
6	Offeror acknowledges that each mobilization is to a general work area which may include one or more sub-sites and that no extra mobilization payment will be made for those sub-sites.			
7	Offeror has provided a strategy to access work sites.			
8	Offeror acknowledges they will preserve survey and control stakes and any other markers and will replace and repair any damage.			
9	Offer acknowledges mobilization will be measured as a per site unit.			
B. SINKHOLE FILLING				
1	Offeror understands and will comply with requirements for filling sinkholes as detailed. Offeror has provided details on how they would fill a sinkhole to prevent settling.			
2	Offeror understands that fill material will be taken only from borrow areas determined by Commission's Project Manager. Offeror will NOT be required to pay for fill material.			
3	Offer accepts that STATE will measure Sinkhole Filling by surveying the cut (borrow area) volume whenever possible or use measured sinkhole volumes, load counts or hourly equipment rates. No allowance will be made for swell or shrinkage.			
C. SEEDING AND TILLAGE				
1	Offeror has described their strategy of tilling and seeding disturbed areas.			
2	Offeror understands they will till and seed all disturbed areas using only approved North Dakota certified seed. They also understand they must provide equipment to break up clods, prepare the seedbed and cover all seed.			
3	Offeror understands that STATE will measure each area tilled and seeded to the nearest 1/100 of an acre.			
D. BASIS OF PAYMENT				
	Offeror acknowledges that for all items, payment will be made at the contract unit price and that payment is full compensation for furnishing all labor, materials, equipment and incidentals required to complete the work as specified for each item.			
E. RIGHT OF ENTRY				
	Offeror understands that STATE will provide all necessary Right-of-Entry documentation to CONTRACTOR upon request.			
F. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES				
	Offeror has included completed forms for Utilization of Minority or Women-Owned Business Enterprises and Labor Surplus Area Concerns.			

G. SUSPENSION OF WORK			
	Offeror acknowledges that If any problems arise or persist, the Commission's Project Manager has the authority to suspend any ongoing item of work, as deemed necessary, until appropriate remedial action is taken.		
H. ESTIMATED QUANTITIES			
	Offeror acknowledges that the quantities in this Contract are estimated and the estimates are not considered a minimum or maximum, but an estimate based upon past and anticipated usage. Offeror Understands that the Commission's Project Manager reserves the right to increase or decrease the actual quantities as site conditions warrant and that the final contract payment will be determined using final quantities computed by the Commission's Project Manager and the unit prices submitted by Offeror.		
I. SITE CONDITIONS			
	Offeror acknowledges that portions of the sites contain abandoned underground mine workings and work is inherently dangerous. Offeror will take necessary precautions to adequately protect their workforce, equipment and the general public.		
J. RISK MANAGEMENT			
	Offeror described measures to be taken to ensure the safety of its employees, state employees, the public and property. Offeror also identified any pertinent issues and potential problems related to the project, and described how those potential issues and problems could be mitigated.		
K. WORK WEEK			
	Offeror understands that a standard 5-day work week (Monday-Friday) restricted to daylight hours is expected and State and Federal holidays will be observed. Offeror also understands that a written request must be made for a variance to the work schedule to the Commission's Project Manager at least 2 days in advance.		
L. CONTRACT AMENDMENT - UNANTICIPATED AMENDMENT			
	Offeror understands that after a binding contract has been entered into, no changes may be made, unless prior written approval has been obtained from STATE through execution of a contract amendment. CONTRACTOR may request changes, such as substitutions of a product, by submitting a written request to the Procurement Officer. Unanticipated amendments must be within the scope of the original contract, authorized by the terms of the contract and due to legitimate, unforeseen circumstances.		
M. PAYMENT TERMS			
	Offeror understands the payment terms of the contract and that invoices are to be directed to the Commission's Project Manager for approval. Offeror acknowledges that invoices must be submitted five days before process dates (the 10th and 25th of the month) for processing. Offeror also acknowledges that Invoices will not be considered without the signature of CONTRACTOR.		
Additional Comments			

EXPERIENCE AND QUALIFICATIONS RATING SCALE (40 Point Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1 – 10	Fair. Limited applicability
11 – 20	Good. Some applicability
21 – 30	Very Good. Substantial applicability
31 – 40	Excellent. Total applicability

IMPORTANT. Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion. Comments to support scoring are required, and will be helpful when performing OFFEROR evaluation debriefs after award.

MINIMUM QUALIFICATIONS

Has OFFEROR provided a valid North Dakota Contractor’s License? Has OFFEROR provided any other applicable professional licenses or permits?

EXPERIENCE AND QUALIFICATIONS		Yes	No	Comments
1	Offeror provided a brief history and description of their organization. The Offeror described the number of years OFFEROR’s company has provided the type of work requested in this RFP.			
2	Offeror described specific experiences in completing similar projects and provided examples of earthmoving, filling and compacting large holes, stockpiling topsoil, grading, tilling and seeding. The Offeror provided the approximate time frame of the project and contact information for the customer.			
3	Offeror provided examples of work for government entities.			
4	Offeror provided information for key project team members, including a) names, b) permanent/temporary employee, c) years of experience, d) anticipated work they will perform, e) a description of the relevant education, training, experience, skills and qualifications for each team member.			
5	Offeror provided the names of subcontractors and described portions of the work the subcontractors will perform. Offeror provided a statement that Offeror will ensure that the subcontractor has or will obtain any required licenses and registrations, including registration with the North Dakota Secretary of State.			
6	Offeror provided a minimum of 3 references with contact information or 3 letters of reference from customers.			