

# **INVITATION FOR BID**

**408.22.02.003**

**2022 Garrison Phase 5 AML Project**

**ND019**

**McLean County  
North Dakota**

**Abandoned Mine Lands Division**

**North Dakota Public Service Commission**

**Bismarck, North Dakota**

**February 2022**

**INVITATION FOR BID**  
**2022 Garrison Phase 5 AML Project**  
**ND019**  
**McLean County, North Dakota**

**Bid Number 408.22.02.003**

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## INTRODUCTION

### STATE OF NORTH DAKOTA INVITATION FOR BID (IFB) (July 2021)

<b>DATE ISSUED</b>	February 28, 2022	<b>BID NUMBER</b>	408.22.02.003
<b>BID TITLE</b>	2022 Garrison Phase 5 AML Project	<b>COMMODITY CODE(S)</b>	91216, 91229, 96273
<b>BID QUESTION DEADLINE</b>	March 17, 2022, 5:00 P.M., C.T.	<b>PERFORMANCE PERIOD</b>	June 15 to September 30, 2022 (108 days)
<b>BID RESPONSE DEADLINE</b>	March 24, 2022, 11:00 A.M., C.T.	<b>CONTRACT PERIOD</b>	June 1 to December 31, 2022

#### PROJECT OVERVIEW

This is an Invitation for Bid (IFB) to reclaim an Abandoned Mine Lands (AML) site by drilling into mine workings and backfilling with cementitious grout to fill void spaces. This AML site contains abandoned underground lignite coal mines and is located near Garrison, ND.

#### PROCUREMENT OFFICER

The Procurement Officer is the point of contact for this IFB. Bidders shall direct all communications regarding this IFB to the Procurement Officer. Please do not add the Procurement Officer to any marketing distribution lists.

PURCHASING AGENCY (STATE): Public Service Commission, Abandoned Mine Lands Division  
 PROCUREMENT OFFICER: Ross Edison  
 EMAIL: redison@nd.gov  
 PHONE: 701-328-4101  
 TTY Users call: 7-1-1

Engaging in unauthorized communication or seeking to obtain information about an open solicitation with any state employee or official other than the responsible Procurement Officer or designee is sufficient grounds for suspension or debarment. [[N.D.A.C. § 4-12-05-04\(7\)](#)]

#### PRE-BID MEETING/VIRTUAL TOUR

State will not conduct an on-site, pre-bid meeting. A **Mandatory** Pre-bid, Virtual Tour is posted on the Public Service Commission Website. Directions for the Pre-bid, Virtual Tour can be found at <https://psc.nd.gov/jurisdiction/aml/Docs/2022/PreBidVirtualTour2-28-22.pdf>

#### BID QUESTION DEADLINE

Bidders should carefully review the IFB including all attachments. Bidders may ask questions to obtain clarification and request additional information, or object to material in the IFB. Questions and objections must be submitted to the Procurement Officer in writing by the deadline identified in the IFB. If no deadline is specified, questions or objections must be received at least seven days prior to the Bid Response deadline. The Procurement Officer may elect to respond to questions received after the deadline.

Email is the preferred method of submission with the IFB number and title cited in the email subject line. Responses to questions will be distributed as a solicitation amendment unless the question can be answered by referring the bidder to a specific section of the IFB.

**BID RESPONSE DEADLINE AND BID OPENING**

Submit the required materials to the Public Service Commission no later than **11:00 A.M., C.T. March 24, 2022**. The public bid opening will be held at **11:00 A.M., C.T. March 24, 2022**, in the Commission Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, ND. The public may view the bid opening through the Public Service Commission website at <https://www.psc.nd.gov/index.php> and follow the instructions under Watch/Listen to the Commission Live.

**STATE PROCUREMENT WEBSITE (SPO ONLINE)**

This IFB and any related amendments and notices will be posted on the North Dakota OMB website using the State Procurement Online system (SPO Online). Bidders are responsible for checking this website to obtain all information and documents related to this IFB: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>

Select Recent Solicitations and find this solicitation. Recent solicitations are listed by close date.

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

## SECTION 1 BIDDERS INSTRUCTIONS

1. **Bidder Checklist.** Have you remembered to?
  - A. Ensure your Bid Response complies with all instructions, terms and conditions, delivery requirements, and specifications.
  - B. Prepare your bid price as required by the attached Bid Response Form.
  - C. Sign all Bid Response Forms in Section 7 and initial any changes or corrections.
  - D. Mail certified check, cashier's check, or bid bond to ensure receipt by the Bid Response deadline. **Photocopies and faxes will not be accepted in place of the original.**
  - E. Ensure your Bid Response is received by the Procurement Officer by the Bid Response deadline. Call to confirm receipt.
  - F. If using a delivery service, check tracking to ensure the Bid Response will be delivered on time. Contact the Procurement Officer as soon as possible in the event of delays due to weather, etc.
  
2. **Definitions.**
  - A. **Bidder/Officer:** any person or firm submitting a competitive bid in response to a solicitation.
  - B. **Bid Response:** the executed document submitted by a Bidder in response to a solicitation.
  - C. **Commission's Project Manager:** the person authorized by STATE who is responsible for the supervision of the construction.
  - D. **Commodities:** all property, including equipment, supplies, materials, printing, insurance, and the lease of equipment.
  - E. **Contractor:** any person or firm having a contract with a governmental body.
  - F. **Procurement Officer:** an individual duly authorized to enter into and administer purchasing contracts and make written determinations with respect thereto; also includes an authorized representative acting with the limits of designated purchasing authority.
  - G. **Purchasing Agency (STATE):** the entity on which the purchase is being made on behalf of.
  - H. **Services:** the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.
  - I. **Solicitation:** a document to notify prospective Bidders of a bidding opportunity.
  - J. **N.D.A.C.:** North Dakota Administrative Code; rules with the force and effect of law.
  - K. **N.D.C.C.:** North Dakota Century Code; state laws.
  - L. **OMB:** Office of Management and Budget (OMB); a North Dakota state agency.
  - M. **SPO:** State Procurement Office, a division of the Office of Management and Budget.
  - N. **SPO Online:** a procurement information website maintained by the State Procurement Office pursuant to [N.D.C.C. § 54-44.4-14](#).
  
3. **Bidders List and Secretary of State Registration Requirements.** Bidders must comply with requirements related for 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 Office Online system (SPO Online). Bids will be accepted from bidders that are not on the Bidders List. The successful bidder must complete the Bidders List application process and comply with Secretary of State registration requirements within 60 calendar days from the date a notice of intent to award is issued. If the successful bidder does not register within this time, its bid may be rejected.

### **Bidders List and Secretary of State Information**

1. Secretary of State Registration and Online Bidder Registration instructions are available online at [How to Bid | Office of Management and Budget, North Dakota](#).
2. Offeror should check the [Bidders List](#) to determine if Offeror is already registered.
3. An Offeror that needs to complete the registration process shall:
  - a. Register with the Secretary of State (fees apply) and obtain a "System ID" number.
  - b. Complete the [On-line Bidder Registration](#) including selecting [commodity codes](#). Notices related to this IFB will be sent to the Bidders List for the needed commodity or service and other known potential Offerors. The commodity codes used for this solicitation are: 91216, 91229, and 96273.
4. The successful Offeror may be required to register as a new supplier to receive payment from the STATE. New vendors (suppliers and individuals) looking to receive payment from the STATE should use the online [Supplier Registration](#).

4. **Submission Instructions.** Please follow these instructions to submit your Bid Response. Bid Responses must be received by the Procurement Officer by the Bid Response deadline. Bidders assume the risk of the delivery method selected. Late Bid Responses will be rejected.

**Email**

Sealed bids are required; therefore, bids cannot be submitted by email to the Procurement Officer.

**Submit in Person, by Mail or Delivery Service**

Bidders may submit Bid Response in a sealed envelope or package to the following address. Bidders may email Bid Responses to a third party to place in a sealed envelope and deliver by the Bid Response deadline. Contact the Procurement Officer to confirm receipt. Bidder shall submit one (1) copy of the Bid Response on a USB Flash Drive or other storage device. If an Excel file is provided, do not convert the Excel spreadsheet into a PDF file.

IFB #: 408.22.02.003  
IFB Title: 2022 Garrison Phase 5 AML Project  
ATTN: Ross Edison  
Public Service Commission  
Abandoned Mine Lands Division  
600 East Boulevard Ave. Dept. 408  
Bismarck ND 58505-0480

The STATE assumes no responsibility for delays caused by any delivery service. Postmarking by the Bid Response deadline shall not substitute for actual Bid Response receipt by the STATE. The STATE's time of receipt will be used to determine timely receipt.

**Upload Response Through the State Procurement Online System (SPO Online):**

Bidders **may** electronically submit Bid Responses through the State Procurement Office Online system (SPO Online) by the Bid Response deadline.

DO NOT WAIT UNTIL THE "LAST MINUTE" TO SUBMIT A RESPONSE. Recommend uploading response 24 hours prior to the Bid Response deadline.

Bidder must begin the electronic submission process well in advance of the Bid Response deadline to allow for transmission and resolution of any technical difficulties. Be advised that the STATE is not responsible for a Bidder's failure to timely submit a Bid Response due to any technical difficulties. If you experience any technical difficulties contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

If documents are in the process of being uploaded when the Bid Response deadline occurs, the upload process will stop. The attempted submission will not be uploaded successfully and is ineligible for consideration. The STATE takes no responsibility for electronic submissions that are captured, blocked, filtered, quarantined, or otherwise prevented from uploading by any anti-virus or other security software.

1. This solicitation is posted on SPO Online at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>.
2. Select "Recent Solicitations" and find this solicitation. Solicitations are listed by close date.
3. Use "Upload Response" to upload a maximum of five (5), clearly labeled documents before the Bid Response deadline.
4. Offerors must upload their Bid Response as requested in the Bid Response section of this IFB.
5. Offerors must upload their Technical Proposal and Cost Proposal in separate files
6. The maximum file size allowed is 50mb per file.
7. There is a 50-character file name limitation for the document being uploaded.
8. There is 75-character limit in the TITLE field within SPO Online.
9. All SPO Online 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.
10. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.

11. Bidder will receive an email confirmation from [infospo@nd.gov](mailto: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 Bidder does not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If Bidder does not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

Visit <https://www.omb.nd.gov/sites/www/files/documents/doing-business-with-the-state/procurement/spo-electronic-response-external-job-aid.pdf> for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

**Bid Bond (must use form provided in Section 7), certified check, or cashier's check must be received by the Bid Response deadline. Photocopies and faxes will not be accepted in place of the original.**

5. **Additional Terms and Conditions.** Additional terms and conditions submitted with a Bid Response are of no effect unless accepted in writing by the Procurement Officer. Bid Responses with additional terms and conditions may be rejected as non-responsive. ([N.D.A.C. § 4-12-11-06](#)).
6. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to Bid Response deadline so reasonable accommodation can be made.
7. **Bid Response Held Firm.** Bid Responses are not awarded at the bid opening. Bidders must hold their Bid Responses firm for 30 days, unless otherwise specified by the Procurement Officer in writing.
8. **Bid Response Opening.** A public Bid Response opening will be held. The Procurement Officer will hold the Bid Response opening:

**Onsite**

- Date: March 24, 2022
- Time: 11:00 A.M., C.T.
- Location: State Capitol  
12<sup>th</sup> Floor, Commission Hearing Room  
600 East Boulevard Avenue, Dept 408  
Bismarck, ND, 58505-0480

**Webinar or Conference Call**

The public may view the bid opening through the Public Service Commission website at <https://www.psc.nd.gov/index.php> and follow the instructions under Watch/Listen to the Commission Live.

9. **Bid Response Results.** Interested parties may contact the Procurement Officer to obtain a summary of all Bid Responses received and the award. Bid Response results are posted on the Commission website at <https://www.psc.nd.gov/jurisdiction/aml/bidtabulation.php>.
10. **Bidders List - Suspension and Debarment.** Placement on the Bidders List does not guarantee a vendor will receive notice of every solicitation. A vendor may be removed from the Bidders List if a solicitation notice is undeliverable. Vendors may be suspended or debarred from the Bidders List for cause. ([N.D.A.C. ch. 4-12-05](#))
11. **Changes/Corrections.** Bidders must initial any changes or corrections to the Bid Response, such as erasures and crossed out/rewritten prices. The Procurement Officer may confirm the Bid Response when changes are not initialed.
12. **Open Records Requests.** Bid Responses are exempt records until the date and time of the Bid Response opening. After the Bid Response opening, all Bid Responses are subject to North Dakota open records laws. Interested parties may contact the Procurement Officer to request information related to this solicitation.
13. **Protests.** Protests of the solicitation must be received by the Procurement Officer within seven days before the Bid Response deadline. Protests of the award or Notice of Intent to Award must be received by the Procurement Officer within seven days after receiving notice of award. Seven calendar days after award or issuance of the Notice of Intent to Award it will be assumed that all interested parties knew or should have known all the facts surrounding the award. Protests must be made in writing to the Procurement Officer and include the basis for the protest. ([N.D.C.C. § 54-44.4-12](#); [N.D.A.C. ch. 4-12-14.](#))

- 14. Signature.** The Bidder's authorized representative must provide their printed name, title, and sign the Bid Response. The lack of a signature may be waived as a minor informality, provided a signed Bid Response is submitted by the deadline established by the Procurement Officer. ([N.D.A.C. ch. 4-12-10](#))
- 15. Specifications, Compliance.** All Bid Responses must comply with the stated specifications, and the successful Bidder will be held responsible. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the stated specifications must contact the Procurement Officer by the deadline for questions or at least seven days before the Bid Response deadline, so the Procurement Officer can determine whether the specifications need to be amended.
- 16. Withdrawal or changes to a Bid Response prior to the Bid Response deadline.** Before the Bid Response deadline, the Bidder's authorized representative may withdraw or change a Bid Response by making a written request to the Procurement Officer.
- 17. Withdrawals or changes to a Bid Response after the Bid Response deadline.** After the Bid Response deadline, no changes may be made to Bid Response, except as provided in [N.D.A.C. ch. 4-12-10](#). The Bidder's authorized representative may make a written request to withdraw the Bid Response.

## SECTION 2 EVALUATION AND AWARD

1. **Award.** Award will be made to the responsible Bidder with the lowest priced Bid Response that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:
  - All or none.
2. **Award – Preference Laws.** If Bid Responses are received from nonresident (out-of-state) Bidders, the Procurement Officer will apply reciprocal preference, if applicable, in accordance with [N.D.C.C. §44-08-01](#). See [Guidelines to North Dakota Purchasing Preference Laws](#).
3. **Award – Tie Bid Response Preference.** After applying any reciprocal preference, if a tie occurs between two or more Bidders with equal Bid Response prices or offerors with identical evaluation scores:
  - A. Preference must first be given to Bid Responses submitted by resident North Dakota vendors. ([N.D.C.C. § 44-08-01.1](#))
  - B. If a tie remains, preference is given to approved vendors on the Bidders List. ([N.D.C.C. § 54-44.4-09\(4\)](#))
  - C. If a tie still remains, award shall be made in accordance with [N.D.A.C. § 4-12-11-05](#).
4. **Late Bid Responses.** Bid Response responses must be received by the Procurement Officer by the Bid Response deadline. Late Bid Responses will be rejected, regardless of the degree of lateness, unless the delay is due to the error of the Procurement Officer and discovered before the selection of the successful Bidder. ([N.D.A.C. § 4-12-08-13](#))
5. **Responsiveness of the Bid Response.** Any Bid Response that does not meet the requirements of the solicitation, other than mistakes determined to be minor informalities, will be rejected. ([N.D.A.C. § 4-12-11-03](#))
6. **Minor Informalities.** The STATE reserves the right to waive minor informalities in Bid Responses. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the Bid Response document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other Bidders. ([N.D.A.C. ch. 4-12-10](#))
7. **Mistakes.** The Procurement Officer may confirm the Bid Response in the event of apparent errors, such as an unreasonably priced Bid Response. Mistakes will be handled in accordance with [N.D.A.C. ch. 4-12-10](#).
8. **Responsibility of the Bidder.** The Procurement Officer, at any time, may make a supplementary investigation as to the responsibility of any Bidder, even though the Bidder may be on the Bidders List. If a Bidder is determined to be not responsible, that Bid Response will be rejected even if it is the lowest Bid Response, and the Bidder may be debarred or suspended from the Bidders List. ([N.D.A.C. § 4-12-11-04](#))
9. **Rejection.** The STATE reserves the right to reject any and all Bid Responses in whole or in part. The Procurement Officer will send a rejection notice, including the reason for rejection. Bid Responses will be rejected if:
  - A. the Bid Response is determined to be not responsive to the instructions, specifications, and other requirements of the solicitation, other than mistakes or omissions determined to be minor informalities;
  - B. the Bid Response is determined to be late;
  - C. the Bidder fails to comply with Bidders List Application requirements by the stated deadline;
  - D. the Bidder is determined to be not responsible, in accordance with [N.D.A.C. § 4-12-11-04](#);
  - E. the Bid Response is not legible.

If all Bid Responses are rejected, the Procurement Officer will send written notice to Bidders, including the reason all Bid Responses were rejected. ([N.D.A.C. § 4-12-11-09](#))

### SECTION 3 SPECIAL TERMS AND CONDITIONS

1. **Term of the Contract.** The term of the contract issued as a result of this solicitation will be as follows:
  - A. **Contract Period.** This Contract term (Term) begins on complete execution of the contract by all parties or its Effective Date and ends on December 31, 2022.
  - B. **No Automatic Renewal.** This Contract will not automatically renew.
  - C. **Extension Option.** STATE reserves the right to extend this Contract for an additional period of time, not to exceed 6 months, beyond the current termination date of this contract.
  - D. **Renewal Option.** STATE may renew this Contract upon satisfactory completion of the initial Contract Term. STATE reserves the right to execute up to one (1) option to renew this Contract under the same terms and conditions for a period of six (6) months.

Please see the sample contract in Section 5 for additional contract information.

2. **Billing Address.** After delivery of commodities or services under contract, the CONTRACTOR must submit a correct invoice. Payment will be made after inspection and acceptance. Invoices must be addressed to the Purchasing Agency. All invoice and payment inquiries must be directed to:

**Ross Edison, Project Manager  
Public Service Commission  
AML Division  
600 E Blvd Avenue Dept. 408  
Bismarck, ND 58505-0480**

3. **Contract Amendment – Unanticipated Amendment.** After a binding contract has been entered into, no changes may be made, unless prior written approval has been obtained from the Purchasing Agency through execution of a contract amendment. The 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. ([N.D.A.C. ch. 4-12-13](#))
4. **Contract Estimated Quantities.** The quantities of 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. In Section 105.6 of the Standard Specification for AML Reclamation Project, each numbered item on the Bid Response Form is considered one major item regardless of the number of subdivisions under that item. The Commission's Project Manager and CONTRACTOR shall compare records of quantities daily. The CONTRACTOR or CONTRACTORS will be required to furnish actual requirements upon receipt of an order. This contract will not include items of a similar nature, which must be bought for emergency use.
5. **Inspection and Acceptance or Rejection.** The STATE reserves the right to conduct inspections and investigations related to the Bidder 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 Bid Response requirements and responsibility of the Bidder. All material and workmanship are subject to inspection and testing by the STATE at the point of manufacturer, place of storage, or upon receipt. The STATE reserves the right to reject any commodities or services and terminate the contract if the CONTRACTOR fails to comply with the specifications, terms and conditions, or the seller's express or implied warranties. Rejected commodities will be removed at the 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, the STATE will inform the CONTRACTOR in writing. The Purchasing Agency may provide the CONTRACTOR with a reasonable opportunity to cure, whenever practicable, as set forth in writing by the Purchasing Agency.

- 6. Payment and Performance Bonds.** The bidder whose bid is accepted is required to enter into a written contract with Commission and to furnish a performance bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the faithful performance of the contract and also a payment bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with the contract, including interest under N.D.C.C. § 13-01-14, for bills which are not paid within ninety (90) days. The bond must also provide, under N.D.C.C. § 65-04-10, that CONTRACTOR has made, or will make, prior to the commencement of any work by CONTRACTOR or any subcontractor under the contract, full and true report to Workforce Safety and Insurance of the payroll expenditures for the employees to be engaged in the work, and that CONTRACTOR has paid, or will pay, the premium thereon prior to the commencement of work. Both bonds must be executed on forms approved by Commission. Bonds must be secured from a company which has complied with the law and regulations of the U.S. Treasury Department and is acceptable as a surety or reinsurer of federal bonds under Sections 9304 to 9308 of Title 31 U.S.C. and appropriate statutes of the State of North Dakota. A list of qualified companies is published under Treasury Circular 570.
- 7. Payment Terms.** Payment will normally be made within thirty (30) days after delivery and acceptance of commodities or services under this Contract and receipt of an approved invoice. All invoices and payment inquiries must be directed to the Commission's Project Manager. CONTRACTOR may request payment any time during the contract period; however, it is expected that payment schedules will coincide with accounts payable processing on the 10<sup>th</sup> and 25<sup>th</sup> of each month. Invoices must be submitted five (5) days prior to processing for review and to ensure timely payment. Invoices will not be considered without the signature of CONTRACTOR. The Commission's Project Manager will maintain records of unit quantities and volumes for this project.
- 8. Pre-bid, On-site Conference.** A mandatory Pre-bid, Virtual Tour is posted on the Public Service Commission Website at <https://psc.nd.gov/jurisdiction/aml/Docs/2022/PreBidVirtualTour2-28-22.pdf>. The STATE will not conduct a Pre-bid, On-site Conference. Bidders may visit the project site on their own. Bid at your own risk.
- 9. Preservation of Markers.** CONTRACTOR shall carefully preserve survey and control stakes and any other markers. In the event of their destruction or loss, CONTRACTOR shall be responsible for their replacement and any resulting damage including, but not limited to, any damages arising from mistakes that may be caused by the loss or disturbance of these stakes or markers.
- 10. Safety Requirements.** CONTRACTOR shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the contract in general. Bidders shall review the attached sample contract for safety requirements.
- 11. Schedule of Construction.** The successful Bidder shall submit a written estimated Schedule of Construction to the Commission's Project Manager for written approval before Commission's Project Manager issues the Notice to Proceed. The Schedule of Construction must indicate the estimated starting and completion dates of mobilization and injection of grout. In addition, the schedule must indicate the major items of equipment to be utilized, including but not limited to water trucks, batching and storage facilities, pump(s), the order in which routing will be conducted and the sources of grout components. The purpose of this schedule is to assure completion of the work in a timely manner. The Commission's Project Manager will not issue a Notice to Proceed without an approved Schedule of Construction.
- 12. Standard Specifications.** Standard Specifications for AML Reclamation Projects outlines requirements and provisions for AML reclamation projects and is available upon request or can be viewed on the Commission's website at: <http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf>
- 13. Time of Performance.** The project performance period is from **June 15, 2022 to September 30, 2022**. STATE will issue a Notice to Proceed to begin the performance period. CONTRACTOR shall return an acknowledged copy of the Notice to Proceed to STATE. If work cannot begin on the date specified in the Notice to Proceed, CONTRACTOR shall provide a written explanation of the reasons for the delay with a written request for an alternate firm start date. The performance period will not be extended without a written request by CONTRACTOR and approval by the Commission's Project Manager. Failure to provide services required by this contract within the time specified may result in contract termination or liquidated damages as specified in Section 109.7 of the Standard Specifications for AML Reclamation Projects <http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf>.

**14. 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 the Commission's Project Manager 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. No work will be allowed on July 4, 2022, or September 5, 2022.

**15. Invoicing.**

All invoices must be signed by an authorized representative and include the contract number and dates of service being paid. All invoices and payment inquiries must be directed to the Purchasing Agency.

**Ross Edison, Project Manager  
Public Service Commission  
AML Division  
600 E Blvd Avenue Dept. 408  
Bismarck, ND 58505-0480**

**16. Pricing – Tax Exempt.** All prices must be in United States currency. Bid Response prices must include all discounts and deductions, and to be less federal and state taxes. Bidders may contact the Procurement Officer to obtain the Purchasing Agency's tax exemption number and tax-exempt certificate.

**17. Price Adjustment.** Pricing during the term of the contract will be as follows:

- **Firm-Fixed.** Pricing shall be firm for the period of the contract.

**18. Pricing, Unit of Measure.** The unit price is to be according to the unit of measurement specified in the solicitation. In the event of mathematical differences between the unit price and extended total, the unit price will prevail. ([N.D.A.C. § 4-12-10-02](#))

**19. Service – Local Requirement.** Services within 10 days after receipt of Notice to Proceed is required. CONTRACTOR must have facilities or service providers within a commuting distance to meet this requirement.

**20. Specifications, Brand Name or Equivalent.** Unless otherwise indicated in the solicitation specifications, the use of a specific brand name or make/model is for illustrative purposes only, and the STATE will consider equivalent products. If an alternate brand offered by a Bidder is rejected as not being equivalent, the Procurement Officer send a rejection notice, including the reason for rejection.

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

**22. 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.

## SECTION 4 RISK MANAGEMENT REQUIREMENTS

**Bidders are instructed to review the following provisions. Objections to these provisions must be made in writing to the Procurement Officer by the deadline for questions.**

1. **Indemnity.** Indemnification provisions are incorporated and made part of this solicitation and resultant contract.
  - CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (STATE), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement, except claims based upon STATE's sole negligence or intentional misconduct. 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 must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse STATE 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.
  
2. **Insurance.** Insurance provisions are incorporated and made part of this solicitation and resultant contract. Bidders are instructed to review the Insurance Requirements. The Successful Bidder will be required to provide the required proof of insurance prior to contract award, and failure to provide evidence of insurance coverage is a material breach and grounds for award rescission. Failure of the CONTRACTOR to keep the required insurance in effect during the term of the contract is grounds for termination of the contract.
  - **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 \$1,625,000 per occurrence.
    - B. Automobile liability, including Owned (if any), Hired and Non-Owned automobiles, with minimum liability limits of \$406,250 per person and \$1,625,000 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 \$1,625,000 as an endorsement on the workers compensation or commercial general liability insurance.
  - **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 Contract is a material breach of Contract entitling STATE to terminate this Contract 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.

- **Pollution Liability.** CONTRACTOR shall provide CONTRACTOR's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of CONTRACTOR for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include Contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage (if applicable).

**3. Bid Surety Requirement.** No Bid Responses will be considered unless accompanied by a bidder's bond, certified check or cashier's check in a sum equal to five percent (5%) of the full amount of the Bid Response. The bidder's bond, certified check or cashier's check must be received by the Bid Response deadline. A bidder's bond must be executed by the Bidder as principal and by a surety company authorized to do business in North Dakota as surety. A certified check or a cashier's check must be drawn on the Bank of North Dakota or a federally insured, solvent bank. If, within ten days after notice of an award, the successful Bidder should fail to execute a contract with the owner, then the surety will pay unto the owner for the use and benefit of the owner five percent (5%) of the Bid Response on the contract on which there is a default, or the certified check or cashier's check of the bidder will be forfeited to the owner.

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

<b>BID SURETY REQUIREMENT</b>
<p>Each Bid Response must include a bid surety. See <a href="#">N.D.A.C. ch. 4-12-07</a>. Bid sureties of unsuccessful Bidders will be returned upon award determination. The bid surety of the successful Bidder will be returned upon receipt of a completed contract bond and its approval by the STATE.</p> <p>Bid surety may be as follows:</p> <ul style="list-style-type: none"> <li>• a certified check, in the amount of five percent (5%) of the full amount of the Bid Response; or</li> <li>• a bank cashier's check in the amount of five percent (5%) of the full amount of the Bid Response ; or</li> <li>• a corporate surety bond from a surety company authorized to do business in the State of North Dakota in the amount of five percent (5%) of the full amount of the Bid Response.</li> </ul>

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

**SECTION 5 – SAMPLE CONTRACT**  
**CONTRACT NUMBER AM-XXX-22**

<b>Administrator:</b>	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400
<b>Date:</b>	
<hr style="width: 20%; margin: 0 auto;"/> Steven Kahl Executive Director	

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

<b>Agreement Information</b>	
Case No.:	<u>AM-22-21</u>
Contract No.:	<u>AM- -22</u>
Start Date:	_____
End Date:	_____
Program Title:	<u>AML Reclamation</u>
<b>Type of Contract:</b>	<input checked="" type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimb. <input type="checkbox"/> Unit Price <input type="checkbox"/> Other

<b>Budget Information</b>	
Cost Center:	<u>9000</u>
Services:	<u>Construction Services</u>
Optional on-site review:	_____
Expenses:	_____
ID	<u>Case No. AM-22-21</u>
<b>Type of Contractor:</b>	<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 XXXX. (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);

**1. SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the work as described in Section 6, SPECIFIC PROVISIONS and attachments beginning on **page 25** of the **2022 Garrison Phase 5 AML Project** Invitation for Bid.

**2. COMPENSATION**

**Contractual Amount**

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (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**

- A. 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.
- B. STATE shall make payment under this Contract within thirty (30) calendar days after receipt of an approved invoice.
- C. 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.
- D. 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.

### **3. TERM OF CONTRACT**

This Contract **begins on complete execution of the contract by all parties and ends on December 31, 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 six (6) months, beyond the current termination date of this Contract.

#### **Renewal Option**

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

### **4. TIME OF PERFORMANCE**

The project performance period is from June 15 to September 30, 2022. STATE will issue a Notice to Proceed to begin the performance period. CONTRACTOR shall return an acknowledged copy of the Notice to Proceed to STATE. If work cannot begin on the date specified in the Notice to Proceed, CONTRACTOR shall provide a written explanation of the reasons for the delay with a written request for an alternate firm start date. The performance period will not be extended without a written request by CONTRACTOR and approval by the Commission's Project Manager. Failure to provide services required by this contract within the time specified may result in contract termination or liquidated damages as specified in Section 109.7 of the Standard Specification for AML Reclamation Projects <http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf>.

### **5. 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.

### **6. 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:

- A. 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.
- B. 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.
- C. 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:

- A. If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; **or**
- B. If CONTRACTOR fails to perform any of the other conditions or provisions of this Contract or fails to pursue the work so as to endanger performance of this Contract in accordance with its terms.

STATE will be liable only for payment provisions of this Contract for services satisfactorily rendered prior to the effective date of termination. Significant deviation from performance standards in this Contract may result in reduced or terminated financial participation of CONTRACTOR, subsequent to negotiations with STATE.

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

### **7. 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.

### **8. INDEMNITY**

CONTRACTOR agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (state), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement, except claims based upon STATE's sole negligence or intentional misconduct. 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 must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse STATE 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.

### **9. INSURANCE**

**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 \$1,625,000 per occurrence.
- B. Automobile liability, including Owned (if any), Hired and Non-Owned automobiles, with minimum liability limits of \$406,250 per person and \$1,625,000 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 \$1,625,000 as an endorsement on the workers compensation or commercial general liability insurance.

**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 Contract is a material breach of Contract entitling STATE to terminate this Contract 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.

**Pollution Liability.** CONTRACTOR shall provide CONTRACTOR's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of CONTRACTOR for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include Contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage (if applicable).

## 10. 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.

- A. A worksite safety policy and mission statement.
- B. Assigned responsibilities among management, supervisors and employees.
- C. System for periodic self-inspections, including inspections of job sites, materials, work performance and equipment.
- D. A thorough accident and injury reporting and investigation process.

- E. Safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure.
- F. 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.

**11. 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.

**12. 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.

**13. 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, Dept. 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.

**14. 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.

**15. 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.

#### **16. 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.

#### **17. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign this Contract, or otherwise transfer or delegate any right or duty, without STATE's express written consent, or assign any of the monies to be paid hereunder, nor may any part of the work done, or material furnished under this Contract be sublet without STATE's express written consent.

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

#### **18. 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.

#### **19. 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:

- A. The terms of this Contract as may be amended.
- B. STATE's Solicitation: Invitation for Bid 408.22.02.003, 2022 Garrison Phase 5 AML Project.
- C. CONTRACTOR's Bid Response.
- D. Standard Specifications for AML Reclamation Projects.

#### **20. 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.

#### **21. 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*.

#### **22. 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.

### **23. 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.

### **24. 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.

### **25. 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.

### **26. 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.

### **27. 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.

**28. 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.

**29. 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. No work will be allowed on July 4, 2022, or September 5, 2022.

**30. 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.

**31. LEGAL AUTHORITY**

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

## **Section 6**

### **Specific Provisions & Attachments**

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

**SECTION 6  
SPECIFIC PROVISIONS & ATTACHMENTS**

**FOREWORD**

The 2022 Garrison Phase 5 AML Project includes areas as shown on the map on **page 38** and as further described:

- McLean County Highway 15 right-of-way extending approximately ½ mile south of the intersection with North Dakota Highway 37 between Sections 17 and 18, T148N, R84W.
- Private residences in the South Garrison Addition subdivision NE¼ of Section 12, T144N, R88W.
- Other areas as directed by the Commission’s Project Manager.

**100. PROJECT OBJECTIVE**

The objective of this project is the reclamation of selected portions of abandoned underground lignite mine workings in Garrison, ND and associated work items as described in this Invitation for Bid (IFB). Interested Bidders shall fulfill all aspects of the IFB as presented.

**200. SCOPE OF WORK**

The proposed scope of work for the 2022 Garrison Phase 5 AML Project involves subsurface reclamation of abandoned underground coal mines with drilling, pressurized backfilling with grout, the performance of other associated work items as specified. Subsurface reclamation will be conducted under and adjacent to roadways and structures as deemed necessary by the Commission’s Project Manager.

- A. Estimated Quantities** - 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. For Section 105.6 of the Standard Specification for AML Reclamation Projects, each numbered item on the Bid Response Form is considered one major item regardless of the number of subdivisions under that item. The Commission’s Project Manager and CONTRACTOR shall compare records of quantities daily.
- B. Site Conditions** - CONTRACTOR is advised that portions of the site contains abandoned underground mine workings. The work specified in this IFB is inherently dangerous due to the presence of these abandoned mine workings. Surface subsidence caused by upward void migration of abandoned mine workings has been documented in the area. CONTRACTOR shall take necessary precautions to adequately protect their workforce, equipment, and the general public at all times during project performance.
- C. Condition of Subsurface and Mine Workings** - Alternating layers of sand, silt, clay, hard rock ledges, boulders, multiple lignite seams and water-bearing formations are expected. The abandoned mine workings are expected to be predominantly wet or inundated. Mine conditions range from open or partially open voids to heavily rubblized areas. Upward void migration is also evident. The mine voids in the Garrison AML area are dry and range between 25 to 55 feet below surface.

CONTRACTOR shall provide all materials, equipment, and personnel necessary to perform the specified work. CONTRACTOR shall be capable of fulfilling this project within the performance period. Failure to complete the project within the performance period may result in contract termination or liquidated damages as specified in Section 109.7 of the Standard Specification for AML Reclamation Projects <http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf>. The individual designated as the Project Manager is required to spend a minimum of 60% of their time at the project location from the start date until project completion.

**300. PROVISIONS**

The following special provisions must apply:

**A. MOBILIZATION**

1. **Scope of Work** - This item consists of all preparatory work and operations, which will enable CONTRACTOR 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, any construction or dismantling, and any costs incurred are considered part of this line item.

2. **Construction Requirements:**

- a. **Equipment List** – Prior to beginning any work, CONTRACTOR shall provide the Commission's Project Manager with a list of major equipment to be used for the work. For each piece of equipment, the list must include the name and description, the serial number, date of manufacture, condition, hours, and specification sheet.
- b. **Sanitary Facilities** - CONTRACTOR shall furnish, install and maintain ample sanitary facilities for all workers at the project sites. Costs of furnishing, installing and maintaining the sanitary facilities must be included in the lump sum price for mobilization and no additional compensation will be allowed.
- c. **Utility Locates** - Prior to beginning any work, CONTRACTOR shall determine and mark the presence of **ALL public and private** utility facilities including water lines, septic tanks and drain fields within the project areas. The North Dakota "One Call" utility locating Hot Line phone number is **811** or **1-800-795-0555**, and the website is [www.ndonecall.com](http://www.ndonecall.com). One Call does NOT locate privately owned and operated facilities. Contractor shall make other arrangements for locating such facilities. Excavation by hand or with hydro-excavator may be necessary. No additional compensation will be allowed.
- d. **Pre-construction Workshop** - CONTRACTOR shall plan and conduct an informational pre-construction workshop at the site prior to beginning work. The workshop is intended to provide information and establish agreement and collaboration among interested parties on a framework for successful project completion. All parties who will or may be affected by the project shall be invited to the workshop. Invited parties should include all affected landowners, adjacent property owners, tenants or residents, the project foreman, subcontractors, material testers, Commission's Project Manager and appropriate state or local authorities. The pre-construction workshop must:
  - i. Include a general discussion of the project and project timetables;
  - ii. Identify goals, objectives, and concerns of all parties;
  - iii. Establish roles and a communication framework; and
  - iv. Define a procedure for rapid resolution of disputes to minimize conflict.

Based on information received in the initial meeting, CONTRACTOR will develop an outline that identifies goals and objectives, timetables, and an issue resolution framework. This must be distributed to all participants. Additional workshops or meetings may be required as directed by the Commission's Project Manager.

- e. **Operations Space** - Space required for equipment or material storage or the like must be provided by CONTRACTOR. CONTRACTOR shall have express written consent of the property owner or lessee; and, if requested, copies of consent must be furnished to Commission. All sites must be restored to their original condition by and at CONTRACTOR's expense unless exceptions are specifically outlined in the written consent.
  - f. **Fugitive Dust Control** - Unpaved roads, trails or parking areas must be maintained so as to control road dust as well as dust occurring on other exposed surfaces by measures such as watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices as directed by the Commission's Project Manager.
  - g. **Site Access** - Any work needed to access the site will be the responsibility of CONTRACTOR and must be included in the bid price for mobilization. Accessibility includes, but is not limited to, fence removal and subsequent replacement or repair, surface grading, protection from overhead utility lines, snow removal and bridging or planking.
  - h. **Batch Plant Requirements** - Batch plants, ready-mix and related operations must conform to the National Ready Mixed Concrete Association Plant and Truck requirements. Ready-mix or batch plant scales and fluid meters must be certified by a North Dakota Registered Service Company. A copy of the current scale and meter certifications must be provided to the Commission's Project Manager prior to the start of work. A list of registered companies can be found at <https://psc.nd.gov/jurisdiction/weights/index.php>.
3. **Method of Measurement** - Mobilization will be measured on a lump sum basis. The total mobilization must not exceed 10% of the total contract bid. This item will be allocated between mobilization (50%) and demobilization (50%).

4. **Basis of Payment** - Payment will be made at the unit price. Payment is full compensation for furnishing all equipment, labor, materials, and incidentals to complete the work as specified.

**B. DRILLING**

1. **Scope of Work** - This item consists of approximately 5,000 feet of vertical boring, 1,000 feet of casing and 50 feet of coring.

2. **Construction Requirements**

a. **Drilling** - CONTRACTOR shall:

- i. Provide drilling equipment capable of drilling a minimum 4¾ inch to maximum 7½ inch diameter hole to accommodate placement of the required casing.
- ii. Be prepared to drill holes up to 150 feet in depth. Borehole locations will be determined by the Commission's Project Manager.
- iii. Be able to drill in all subsurface conditions. See **section 200, Scope of Work, Item C**. No equitable adjustment will be allowed for bits, drilling aids, or specialized drilling equipment, and bids should be made accordingly. Any water used must be municipally treated potable water.
- iv. Drill angled holes near structures, utilities or roads as requested by the Commission's Project Manager. No equitable adjustment will be allowed for angled, directional or other specialized drilling techniques, and bids should be made accordingly. Angled holes will be no more than 15 degrees from vertical.
- v. Provide a system to remove cuttings and drilling fluids **concurrent** with drilling (e.g. a vacuum truck and mud pit). Drilling fluids will not be allowed without a containment and removal system used concurrently with drilling.
- vi. Cover, shield or otherwise protect areas that may be damaged or harmed by drill cuttings, drilling fluids or equipment as directed by the Commission's Project Manager.
- vii. Produce clean boreholes that easily allow casing or a borehole video camera to enter and freely descend to the bottom of the borehole. The Commission's Project Manager reserves the right to accept or reject any hole.
- viii. Cap or cover open boreholes until cased or backfilled. The Commission's Project Manager may halt drilling operations until this item is satisfactorily fulfilled.
- ix. Provide **30" white pin** flags to mark each borehole. Each flag must include the hole number and casing length, if applicable.

b. **Drill Hole Records** - All written drill logs must:

- i. Be provided and completed by CONTRACTOR using the form on page 39
- ii. Be submitted to the Commission's Project Manager for review and acceptance at the start of the next workday after completion of the hole. Drilling will be suspended until drill logs are submitted to the Commission's Project Manager.
- iii. Include changes in lithography with depth. Drilling personnel shall be capable of accurately delineating and recording voids, previously pumped grout, rubble zones, water-bearing formations, coal seams, contacts between these zones and overburden lithology.
- iv. Record the measured borehole depth to the nearest foot drilled. This data will be verified in the field by the Commission's Project Manager. Measurements must be made from ground surface to the bottom of the hole drilled to a **maximum one foot below the mined coal seam**.

c. **Casing** - All boreholes that encounter mine workings (void/rubble) must be cased as directed by the Commission's Project Manager.

- i. Installation of the casing must be immediate upon removal of the drill stem.
- ii. The borehole must permit the casing to be suspended in the hole and not require force to advance the casing. If the casing pipe does not freely drop through the hole by gravity, or becomes plugged on installation, the pipe must be pulled, and the hole must be cleaned or re-drilled, and casing re-installed at CONTRACTOR's expense.
- iii. Casing length will be 5 feet less than the depth to the top of the void or as directed by the Commission's Project Manager.
- iv. Casing must be 3" I.D. Schedule 40 PVC pipe with an outer diameter of 4" at the collars. Casing may be reused if it has not been used as a grout conduit.
- v. A deep-socket pressure coupling must be used at each connection.
- vi. All casing connections must use PVC cleaning solvent (primer) and PVC cement.
- vii. All connections must be pre-drilled. A minimum of three screws, equally spaced, are required at each connection.

- viii. Screws must penetrate both male and female connections; however, the screws must not be exposed inside the casing after tightening to allow for passage of a down-hole video camera.
- ix. A threaded collar and cleanout plug, or similar, must be installed on the exposed end of the casing. Plugs must have the hole number, year drilled, and casing length written on both the inside and outside with permanent marker.
- x. The borehole must be spudded to 8-12" in diameter and a depth of 6-8" below the surface. Material similar to that which was removed during drilling (topsoil, sod, road gravel, asphalt, concrete, etc.) must be used to backfill the spudded portion of the hole to surface.
- xi. Two (2) heavy gauge metal slips provided by CONTRACTOR must be used to suspend the casing in the spudded hole. CONTRACTOR shall ensure that the casing will not deviate in elevation due to sloughing or settling.
- xii. Two (2) pink-top stake chasers provided by CONTRACTOR must be anchored opposite each other in undisturbed soil above each cased hole using 6" long 60D pole barn nails.
- xiii. Each cased hole must be measured by CONTRACTOR immediately after casing installation and the depth recorded on the drill log.

**d. Drill Hole Backfilling - CONTRACTOR shall:**

- i. Measure and record the static water level on the drill log prior to backfilling.
- ii. Properly and completely backfill all non-void boreholes immediately following completion of the hole. Drill holes that plug or bridge during backfilling must be re-drilled and backfilled at CONTRACTOR's expense.
- iii. Use grout, neat cement, bentonite grout or medium bentonite pellets to backfill boreholes to five (5) feet or more above the static water level when naturally occurring water or drilling fluids are present.
- iv. Use dry drill cuttings to backfill holes in dry mines and overburden with approval of the Commission's Project Manager. Wet cuttings may not be used to backfill drill holes.
- v. Install a plastic stemming hole plug or equivalent approximately three (3) feet below the surface.
- vi. Backfill the top one foot of the hole with material similar to that which was removed during drilling (i.e. topsoil, sod, road gravel, asphalt, concrete, etc.).

**e. Coring - CONTRACTOR shall:**

- i. Provide a ten (10) foot Christensen core barrel (or equivalent) to extract a continuous core from the grouted mine workings.
- ii. Provide necessary bits as conditions dictate. The material to be cored may vary in consistency; however, grout is composed of cementitious admixtures.
- iii. Drill to the top of the expected grouted zone as specified by the Commission's Project Manager.
- iv. Core specific intervals starting at the top of the expected grout zone through the bottom of the grout or the bottom of the mine workings.
- v. Provide a 2 1/8 inch minimum diameter continuous foot core.
- vi. Provide core boxes. It is estimated that 50 feet of coring will be required. Core samples will become the property of the Commission.

**3. Method of Measurement**

- a. Drilling** – Drilling will be measured on a per foot basis of the total borehole depth as measured and recorded on the drill logs. **Payment will be made for no more than one (1) foot drilled below the bottom of the mined coal seam.** All materials and accessories needed to drill and mark all holes and to backfill non-void drill holes must be included in the drilling line item bid.
- b. Casing** – Casing will be measured on a per foot basis of the total cased as measured and recorded on the drill logs. All materials and accessories needed to case and cap the hole, suspend the casing, spud and flag the hole must be included in the casing line item bid.
- c. Coring** – Payment will be for the cored zones only. Drilling to the core zone will be paid as specified under the drilling line item. Payment for coring will be based on the percentage extracted. CONTRACTOR shall recover a minimum continuous core of 90% of the core length to receive full pay on this item. Cores must be measured and recorded immediately following drilling by the Commission's Project Manager. Non-continuous cores will be paid as follows:

Length of Longest Continuous Portion Recovered		Percent of Core Recovered	Payment as a Percentage of the Bid Price
Greater than 5 inches	and	65 – 89%	75%
Greater than 5 inches	and	40 – 64%	60%
Greater than 5 inches	and	5 – 39%	35%
Less than 5 inches	and	Greater than 50%	35%
Less than 5 inches	and	Less than 50%	20%

4. **Basis of Payment** - Payment will be made at the unit price. Payment will be made only for holes that have been approved by the Commission’s Project Manager. To be approved, holes must meet the following conditions: 1) backfilled or cased, 2) properly recorded on drill logs, 3) surveyed by COMMISSION and 4) the area restored to pre-drilling conditions. Payment is full compensation for furnishing all labor, materials, equipment and incidentals required to complete the work as specified

**C. GROUT INJECTION**

1. **Scope of Work** - This item consists of pressure injection of approximately 2,000 cubic yards of cementitious grout into abandoned mine void and rubble zones through appropriate drill holes.

**2. Construction Requirements**

a. **Grout Injection** - CONTRACTOR shall:

- i. Use any of the following methods for grout injection as determined by the Commission’s Project Manager:
  - 1. Inject grout using two to three-inch diameter injection pipe through cased holes to the top of the mining void or rubble zone.
  - 2. Use the PVC casing as the grout injection conduit, however, a minimum of three (3) feet of steel casing must be used at the head to prevent PVC pipe failure. Shorter head pieces may be used with prior approval from the Commission’s Project Manager. CONTRACTOR is responsible for any costs associated with failure of the PVC pipe including redrilling the hole if necessary.
  - 3. Use a bottom-up tremie method with a 2-inch diameter or smaller pipe inserted into the existing PVC casing pipe. Grout injection will begin with the tremie at the bottom of the void and progress upward in two (2) foot increments. This may be varied depending upon mine-specific conditions encountered. The Commission’s Project Manager will make this determination. Formation or casing packers or an acceptable alternative are required at CONTRACTOR’s expense. Oxygen packers are not permitted.
- ii. Review lithology from drilling logs of injection holes (and adjacent holes) prior to grout injection to determine maximum injection pressures to be used.
- iii. Be liable for repair or restoration to pre-construction condition of anything (surface or subsurface) damaged by drilling or grouting activities. This may include repairs to or replacement of roads, foundations, structures, driveways, wells, septic systems, yards, or anything else damaged by these activities. Any damages resulting from drilling or grouting activities must be promptly reported to the Commission’s Project Manager and the property owner or controller.
- iv. Use a laser level and provide skilled personnel to monitor ground movement continuously during pumping operations near all paved roads and within 250 feet of structures. The laser level(s), with a minimum of two (2) receivers, must be capable of detecting ground movement of 0.01 feet at 100 feet.
- v. Review and follow the sequence of drilling and grouting as determined by the Commission’s Project Manager.
- vi. Ensure hole is pumpable until grout injection is completed. CONTRACTOR may be required to flush injection holes with water prior to grout injection using a pump with a minimum discharge of 100 GPM. Flushing will be considered incidental to grout injection and no additional compensation will be made.
- vii. Assure re-access to the hole when equipment is removed before a hole is completely grouted. CONTRACTOR is responsible for any expenses related to keeping the hole accessible including redrilling and casing the hole. No extra payment will be made.
- viii. **Clean-Up** following each day’s construction activities as described in **Section 300: Provisions, Section E. Clean-Up.**
- ix. All casing used as a conduit for grout must be removed immediately upon refusal or completion of pumping that hole. Casing of holes filled by pumping on adjacent holes must be removed as soon as possible but not more than 24 hours after the hole is completed.

**b. Grout Batching and Pumping** - CONTRACTOR shall:

- i. Submit a written plan prior to the start of the project defining the method of grout supply.
- ii. Use any of the following methods for grout production as long as CONTRACTOR can demonstrate consistent grout quality and flexibility in alternating mix designs or slump and spread on an as-needed basis. Batch equipment must not adversely impact traffic flow or public safety. All batching operations must comply with OSHA and North Dakota State requirements.
  1. Volumetric mixer or other portable type of batching.
  2. Grout Vendor
  3. On-site batching plant
- iii. Control for excessive dust. If excessive dust emissions occur, the Commission's Project Manager may require compliance testing.
- iv. Deliver the grout to the pump within 90 minutes of batching.
- v. Provide pumping equipment specifically designed for pressure injection of grout and the capability to inject grout under controlled pressures and flow rates.
- vi. Demonstrate the grout pumping capability of the pump prior to approval by the Commission's Project Manager. The pump must have the capability to:
  1. Pump at least 60 cubic yards per hour.
  2. Pump instantaneous fluid pressure of greater than 500 psi.
  3. Regulate the pumping rate in increments of one (1) cubic yard per hour over the full flow rate range.
- vii. Provide a liquid-filled diaphragm in-line gauge to measure grout pressure in pound-force per square inch (psi). The gauge must always be accessible for inspection. Grout injection will not be allowed unless the gauge is properly installed and operating. The gauge must have the following physical characteristics:
  1. All-welded gauge isolation.
  2. Minimal leak points.
  3. All-welded tube, socket, seal, and diaphragm.
- viii. Co-operate with the Commission's Project Manager and Material Testing Contractor and allow free access to all construction activities for quality control and assurance testing. CONTRACTOR shall allow time in his schedule for the performance of field tests.
- ix. Ensure the pumpability of all mixes at the stipulated flow rates for grout. Grout must be fluid and free from lumps or other deleterious materials and must flow through the pump grate. The Commission's Project Manager will reject any load containing excess lumps, balls, rock or the like when they interfere with normal pumping of grout. No compensation will be made for rejected loads. The Commission's Project Manager may also deduct pay for waste material. Waste material is any grout that is not injected into the hole. At the Commission's Project Manager's discretion, the project may be suspended until grout quality issues are resolved.

**c. Grout Mix Design** - Each cubic yard of grout must consist of:

- i. **Portland cement: 100 pounds per cubic yard.** Portland cement must be either Type I or Type II in accordance with the latest ASTM Standard. Cement to be used on this project must be the same type and brand throughout the life of the project. Any changes in grout material sources require prior written approval by the Commission's Project Manager.
- ii. **Flyash: 600 pounds per cubic yard.** CONTRACTOR shall inform the Commission's Project Manager in writing of the source of flyash prior to the start of the project. Flyash from Great River Energy Coal Creek Station, Underwood, North Dakota is preferred. If Coal Creek Flyash is unavailable, flyash from the Basin Electric Power Cooperative Antelope Valley Station, Beulah, North Dakota, and Leland Olds Station, Stanton, North Dakota, may be substituted upon written approval from the Commission's Project Manager prior to the start of the project. Any changes in grout material sources require prior written approval by the Commission's Project Manager. The Commission's Project Manager will inspect the aggregate source.
- iii. **Aggregate:** Aggregate must:
  1. Come from pits with an NDDOT Material Source Certificate of Approval. CONTRACTOR shall provide a copy of the NDDOT Material Source Certificate of Approval to the Commission's Project Manager prior to the start of the project.
  2. Be natural sand and consist of hard, strong, durable particles free from deleterious material.
  3. Not include more than 1% of coal, lightweight lumps or clay lumps by weight.
  4. Pass the following gradation requirements for grout:

3/8" mesh sieve	100%
No. 4 mesh sieve	80-90%
No. 30 mesh sieve	40-80%
No. 200 mesh sieve	5-15%
  5. Be graded and have a laboratory gradation report of the proposed material submitted to the Commission's Project Manager for review 14 days before the proposed project start date.

- 6. Be stored in such a manner to avoid the inclusion of any foreign material in the grout. The storage piles must be constructed in a manner to preclude segregation. Sand that is segregated or mixed with earth or foreign material must not be used. All sand must remain in free draining storage for at least 72 hours prior to use. The sand must be free of frozen lumps, ice, and snow.
- 7. Be tested as directed by the Commission’s Project Manager. CONTRACTOR shall pay for all such testing required to obtain approval of an aggregate source. The following test methods may be used to evaluate the quality of the aggregate:

Particle Size Analysis	AASHTO T 88
Plasticity Index	AASHTO T 89, 90
Soundness (Sodium Sulfate)	AASHTO T 104
Organic Impurities	AASHTO T 113
Coal and Light Particles	AASHTO T 113
Clay Lumps	AASHTO T 112
Clay Content	AASHTO T 176

- iv. **Water: to achieve the specified slump and spread range.** Water utilized on this project for grout mix must be municipally treated potable water or an alternate source if chemically tested and approved. It is estimated that approximately 120,000 gallons of water will be required.

**No change from the approved mix nor addition of pump primer or other additive is allowed without prior written approval from the Commission and ND Department of Environmental Quality.** For any proposed alternate mix design, CONTRACTOR will be required to run additional tests to demonstrate compliance with the grout performance specifications. These tests will be done at the expense of CONTRACTOR.

**d. Grout Performance Criteria** - Grout must meet the following specifications:

	Specification:
Compressive strength	150 psi at 28 days
Slump variation	6-9 inches
Spread variation	16-20 inches (9-11inch slump)
Yield calculation	27 cu ft. / 1 cu yd.
Grout temperature	50–90 degrees Fahrenheit

- i. **Unconfined compressive strength of 150 pounds per square inch (psi) must be achieved within twenty-eight (28) days** in conformance with the latest ASTM Standards for 100% humidity curing. At the discretion of the Commission’s Project Manager, any grout specimen not achieving 150 psi at 28 days will be sent for petrographic analysis to determine the fraction of each grout component in the sample. Commission shall choose the petrographic testing laboratory. The Material Testing Contractor shall prepare and ship the sample to the chosen petrographic testing laboratory. The material tester time needed to prepare and ship the sample will be covered under the Material Testing Contract. CONTRACTOR shall be billed directly by the petrographic testing firm for the analysis and by the Material Testing Contractor for costs of shipping the sample to the petrographic testing firm. Testing reports must be submitted directly to the Commission’s Project Manager from the petrographic testing firm. This item is covered under Grout Injection. No additional compensation will be made, and bids should be made accordingly.
- ii. **Slump Variation:** Slump must be adjustable on-site by the introduction of thickening or thinning agents. Water may be used as a thinning agent. Variations of ± one-quarter (1/4) inch from the ordered slumps are acceptable within the stipulated range (6”–9”). Material slumps under or over stipulated allowances must be immediately field-corrected, or the load will be rejected with no compensation for the rejected grout.
- iii. **Spread Variation:** Spread tests will replace the slump test for slumps greater than 9”. Variations of ± one (1) inch from the ordered spreads are acceptable within the stipulated range (16”–20”). Material spreads under or over stipulated allowances must be immediately field-corrected, or the load will be rejected with no compensation for the rejected grout.
- iv. **Yield calculations:** Yield calculations must conform to ASTM C-138 or ACI 211.1. The absolute volumes must equal 27 cubic feet. Water added at the injection site may not be included in grout yield calculations. Certified tickets specifying the volume of grout delivered and the weight of the specific materials in a given batch must be provided to the Commission’s Project Manager by the batch plant supervisor.
- v. **Temperature:** The temperature of the grout must be measured immediately upon being sampled from the slick line or from the pump hopper that has been filled with fresh grout. Grout loads with temperatures outside the specified range will be rejected with no compensation.

**e. Records** - All information regarding the grouting operations must be recorded by CONTRACTOR and submitted to the Commission’s Project Manager. This record in conjunction with the grout pump monitor must include the following:

- 1. Drill hole/injection hole location, number, and depth.

2. Length of casing.
3. Tremie depth (if used).
4. Grouting pressures and variations.
5. Grout mixes and variations.
6. Total grout quantities placed per day.
7. Total grout quantities for each hole.
8. Cumulative totals placed to date.
9. How the hole was completed.
10. Any other comments or observations.

CONTRACTOR shall provide these records on a daily basis to the Commission’s Project Manager. A form for recording this data is provided on page 40.

3. **Method of Measurement** - Grout volumes will be measured as U.S. Standard cubic yard volumes and will be paid by the cubic yard rounded up to the next tenth. If CONTRACTOR utilizes truck to deliver grout, load tickets will be used to quantify the amount of grout that has been delivered on site. If load tickets cannot be provided CONTRACTOR shall provide a Standard Operating Procedure (SOP) for the accurate quantification of grout injected. CONTRACTOR must have approval of the Commission’s Project Manager on the Standard Operating Procedures for determining quantities prior to initiating work on the Project.
4. **Basis of Payment** - Payment will be at the unit price. Payment for grout will be based on the number of cubic yards injected in accordance with the Project Specifications. **Payment will not be made for rejected loads.** Waste grout in excess of 2 cubic yards on any given day as determined by the Commission’s Project manager will be deducted from the total grout pay.

CONTRACTOR assumes all costs relating to the loss of any tools or equipment. Moving equipment onto and off each hole site, setup and takedown are considered incidental to this item of work and such costs are to be included in the unit price of the bid items.

In addition, payment for grout will be based on the results of the laboratory tests performed on the test cylinders of this item of work as follows:

<b>Test Results Based on</b>	<b>Payment as Percentage</b>
<b><u>28 Day Compressive Strength</u></b>	<b><u>of that shown in the bid</u></b>
100% of Design ( $\geq 150$ psi).....	100%
90% of Design (135-149 psi).....	90%
80% of Design (120-134 psi).....	80%
less than 80% ( $\leq 119$ psi).....	0%

The unit cost paid will equal the proration of the tested sample to the design strength. The pro-rated rate will apply to the 50 yards of grout in the testing interval. No payment will be made for the 50-yard grout interval grout that attains less than 80% of the design strength. Invoice for payment will not be accepted prior to receipt of compressive strength results from the testing laboratory.

Payment is full compensation for furnishing all equipment, labor, materials and incidentals to complete the work as specified.

**D. TRAFFIC CONTROL**

1. **Scope of Work** -- This item covers all traffic control materials, equipment, and labor necessary to conduct construction operations so as to offer the least possible obstruction to the public and to make a safe work site for construction crews and to safely convey traffic from one end of the work site to the other. Businesses and residences must be accessible throughout the project.
2. **Construction Requirements:**
  - a. All personnel shall wear an ANSI/ISEA 107-2004 Class II high visibility garment while within the highway right-of-way as per requirements of 23 CFR 634.

- b. CONTRACTOR shall set up and maintain any necessary barricades, lights, signs, signals, flag persons and other traffic control devices as necessary to protect the general public and project workers. **Traffic control devices must be set up during working hours and taken down after working hours.** "Trucks Entering" or other appropriate signs must be used at any points where trucks or other equipment access public roads.
  - c. All barricades, warning signs, lights, temporary signals and other protective devices must conform to the latest edition of the Uniform Traffic Control Devices for Streets and Highways, published by the U.S. Department of Transportation.
  - d. Reclamation work may require traffic to be slowed to a safe speed and diverted from two-lane to one-lane away from ongoing work. "Safe speed" is defined as a speed in which CONTRACTOR is able to stop oncoming traffic immediately if surface jacking of the roadway occurs. In the event that surface jacking does occur, CONTRACTOR may be required to divert traffic onto the opposite lane of travel or provide an acceptable detour.
  - e. CONTRACTOR shall submit to the Commission's Project Manager prior to the start of the project a detailed quick response "Plan-of-Action" in the event sudden surface jacking occurs during pressure-grouting operations. CONTRACTOR shall instruct CONTRACTOR's workforce (including subcontractors) of the duties and responsibilities regarding problem abatement and traffic control in preparation for an emergency situation.
3. **Method of Measurement** - Traffic Control will be measured on a lump sum basis and must not exceed 5% of the total contract bid.
4. **Basis of Payment** - Payment will be made at the unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified.

**E. CLEAN-UP**

1. **Scope of Work** - This item consists of the clean-up of the project sites and any off-site areas utilized for the project such as batch operation areas and parking or equipment storage areas and the restoration of all damaged or destroyed real property including, but not limited to utilities, wells, structures, septic systems, yards, fences, roads, approaches, haulage ways, driveways, access points, crops and ditches.
2. **Construction Requirements** - CONTRACTOR shall:
- a. Keep the work site free of accumulations of waste materials on a daily basis. Construction debris must not interfere with access to businesses and residences throughout the project.
  - b. Be responsible for all clean-up issues as a result of executing the work. This responsibility will not be released until the project has been completed and accepted by the Commission's Project Manager.
  - c. Be responsible for returning all disturbed areas to their original pre-construction condition or better.
  - d. Repair any damage to public or private property at CONTRACTOR's expense. CONTRACTOR must repair, rebuild, or otherwise restore or make good the damage in a manner acceptable to Commission and private property owners. Restoration may include 1) contouring or shaping, 2) seeding, 3) graveling, resurfacing and repair of roads and driveways, 4) repair of yards, fields, wells, septic systems, and structures, as needed to achieve pre-construction conditions or make good the damage in a manner acceptable to the Commission's Project Manager.
  - e. Seed with a seed mixture approved by the Commission's Project Manager.
  - f. Remove all pin flags, utility, survey, and control staking from the site within three (3) days of verbal notice from the Commission's Project Manager.
  - g. Grade and gravel all areas impacted by drilling or grouting activities as directed by the Commission's Project Manager. If not otherwise specified, CONTRACTOR shall provide DOT Class 5 gravel to be spread at a rate of 1 cubic yard of gravel per 100 square feet of disturbed area. No extra payment will be made for grading and graveling, and bids should be made accordingly.
  - h. Dispose of all waste, including flyash, sand, cement, drill cuttings and PVC pipe in a landfill authorized to accept such material.
3. **Method of Measurement** - Clean-up will be measured on a lump sum basis and must not exceed 10% of the total contract bid.

4. **Basis of Payment** - Payment will be made at the unit price. Clean-up and restoration must be approved by the Commission's Project Manager prior to any payment. Upon failure to complete clean-up within 10 days of the request of the Commission's Project Manager, Commission may arrange for clean-up to be done and the cost deducted from CONTRACTOR's final pay. Payment will be made only at completion of the project and upon fulfillment of this item. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified.

#### F. **GROUNDWATER MONITORING**

1. **Scope of Work** - This item consists of the monitoring of groundwater from two domestic wells at private residences in the South Garrison Subdivision. More wells may be added as directed by the Commission's Project Manager.
2. **Construction Requirements** - CONTRACTOR shall use a water testing laboratory that:
  - a. will provide on-site groundwater sampling and
  - b. is certified by the North Dakota Department of Environmental Quality to analyze drinking water samples.

##### **Each well will be sampled**

- a. One week prior to the start of grout injection operations,
- b. one week after the end of grout injection,
- c. once in October 2022 or
- d. as directed by the Commission's Project Manager.

Analyses will include field and lab measurements of pH, temperature, and conductivity. Other lab analysis will include TDS, iron, bicarbonate, fluoride, nitrate, sulfate, chloride, sodium adsorption ratio (including calcium, magnesium, potassium and sodium cation concentrations), iron, manganese, selenium and boron; and analysis of other RCRA metals including arsenic, barium, cadmium, chromium, lead, mercury and zinc.

Groundwater monitoring laboratory reports are to be directly submitted to the Commission's Project Manager.

3. **Method of Measurement** - Groundwater monitoring will be measured on a per sample basis.
4. **Basis of Payment** - Payment will be made at the unit price. Full payment will be made at completion of the project and upon Commission's receipt of all testing results. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete work as specified.

#### G. **FORCE ACCOUNT**

1. **Scope of Work** - The scope of work performed under this item consists of the provision of labor, equipment, and material to undertake additional work that is not covered by specific bid items. For any force account work performed by a Subcontractor, CONTRACTOR will receive an additional allowance for administrative and overhead expenses. The additional allowance will be a percentage of the total force account invoice equal to ten percent of the first \$5,000 plus three percent of the balance in excess of \$5,000. The Commission's Project Manager reserves the right to procure force account services by the subcontractor of COMMISSION's choice.
2. **Method of Measurement** - Measurement will be based on material quantities, equipment hours or other methods as determined by the Commission's Project Manager and agreed to by CONTRACTOR. For Subcontractor force account work, measurement will be based on material quantities, equipment hours or other methods as determined by the Commission's Project Manager and agreed to by the Subcontractor.
3. **Basis of Payment** - Payment will be made based on the method of measurement described above. All Bidders are required to submit a bid amount of **\$50,000** under the force account line item.

#### 400. **OWNER RESPONSIBILITIES**

**A. Right-of-Entry**

STATE is responsible for providing all necessary Right-of-Entry documentation to CONTRACTOR upon request. If requested, the Commission's Project Manager will inform CONTRACTOR of the Right-of-Entry status to allow completion of detailed work schedules.

**B. Material Testing**

STATE will contract with a Certified Testing Laboratory for the collection and performance testing of grout material cylinders. Materials to be injected must conform to the physical, chemical, and or gradation characteristics specified in this IFB. It is estimated that three (3) material specimens will be collected for every 50 cubic yards of grout injected.

The material samples will be broken at the appropriate times in a Certified Testing Laboratory in accordance with ASTM C39/C39M specifications to ascertain the actual strength of the injected grout. The results of these tests will be used in determining payment as specified in the Measurement and Payment provisions for Grout Injection.

Slump tests in conformance with ASTM C143/C143M and spread tests in conformance with ASTM C1611/C1611M will be ongoing throughout the project performance period. The Material Testing Contractor will provide to the Commission's Project Manager aggregate moisture content, temperatures, yields, unit weights, and batching operation inspections. The Material Testing Contractor will provide certification of the actual quantities and quality of grout components to the Commission's Project Manager.

CONTRACTOR shall cooperate with the Material Testing Contractor. CONTRACTOR shall:

1. Provide the Material Testing Contractor a minimum of three (3) workdays' notice prior to the firm start date of grout injection operations. For every day not worked after notice is given, CONTRACTOR shall reimburse the Material Testing Contractor for 8 hours of work at Material Testing Contractor's contracted hourly rate as specified in the 2022 Garrison Phase 5 AML Project contract.
2. Notify the Material Testing Contractor as soon as possible for any time that grout pumping operations will be delayed or canceled. This notification requirement includes work stoppage caused by adverse weather or equipment breakdowns.
3. Notify the Material Testing Contractor at least 12 hours in advance if no work is planned for the following regularly scheduled workday. If no notice is given, CONTRACTOR shall reimburse the Material Testing Contractor for 4 hours of work at Material Testing Contractor's contracted hourly rate as specified in the 2022 Garrison Phase 5 Material Testing AML Project contract. This notice does not apply to work stoppage caused by unforeseen adverse weather or equipment breakdowns.
4. Provide safe conditions for collecting grout samples by the Material Testing Contractor in accordance with ASTM C172 Standard Practice of Sampling Freshly Mixed Concrete.
5. Provide the Material Testing Contractor access and use of ready-mix truck water supplies.
6. Provide the Material Testing Contractor copies of bills of lading and mill certification reports for each load of cement, flyash, aggregate, and all admixtures delivered for use on the project.
7. Notify the Material Testing Contractor of any changes to the grout formulation or procedures.

**500. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

CONTRACTOR shall complete and submit attached forms for Utilization of Minority or Women-Owned Business Enterprises and Labor Surplus Area Concerns (**see pages 45-47**). 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>.

**600. SUSPENSION OF WORK**

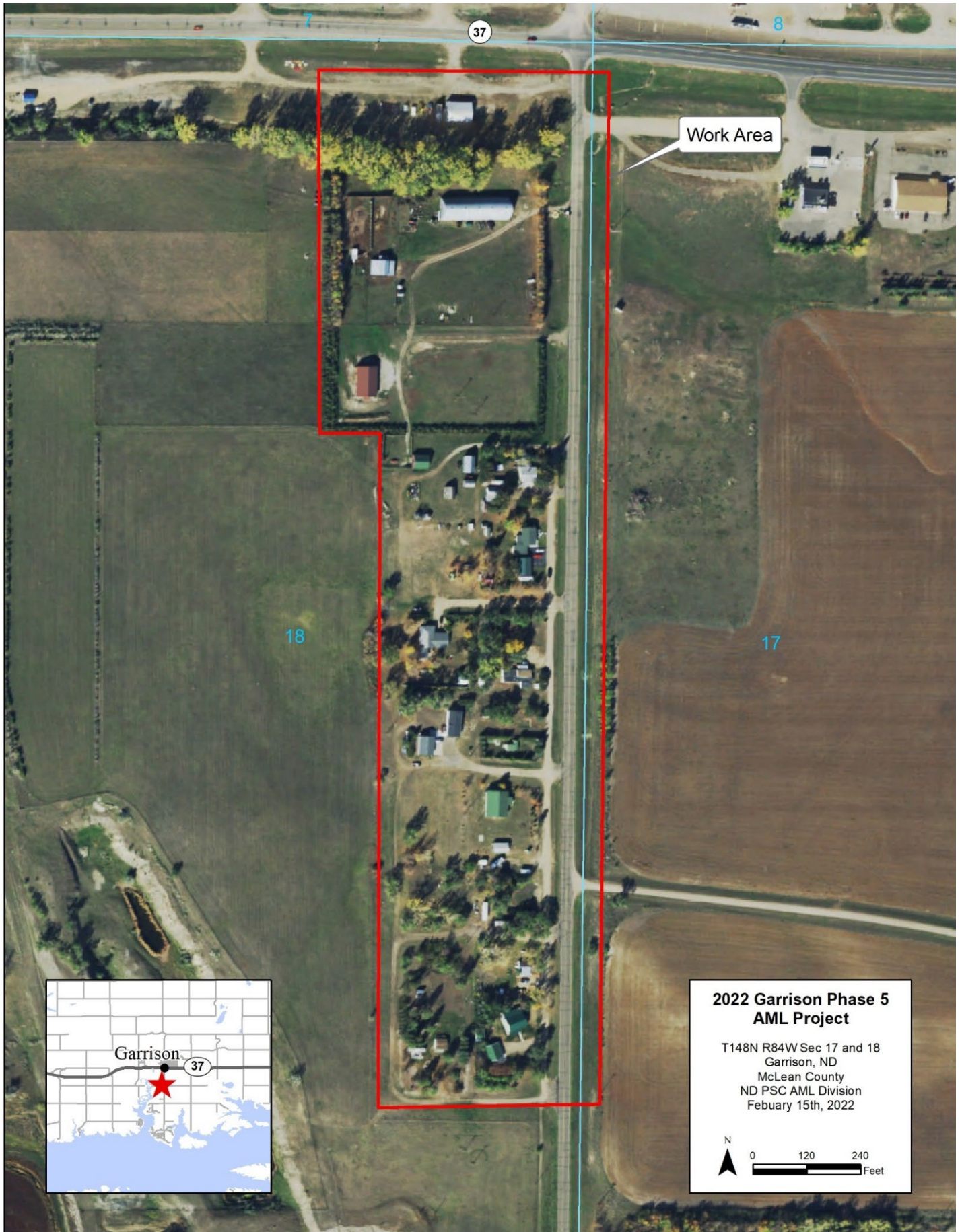
If any problems arise or persist, the Commission's Project Manager has the authority to suspend any ongoing item of work until appropriate remedial action is taken in accordance with Section 105.3 of Standard Specifications for AML Reclamation Projects.

## **ATTACHMENTS**

**Project Location Map**

**Drilling Log Form**

**Grout Injection Form**







## **SECTION 7 BID FORMS**

- 1. Bid Bond**
- 2. Utilization of Minority or Women-Owned Business Enterprises and Labor Surplus Area Concerns**
- 3. Contractor Qualification Form**



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

Principal
Surety
Penal Sum

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

Signed, this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

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

NOW, THEREFORE,

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

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

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

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

Witness as to Principal:

		(Principal: Individual, Partnership, or Corporation)	(SEAL)
BY		(Partner or President)	
BY		(Partner or Secretary)	

	(Surety)	(SEAL)
BY		

Countersigned by:

North Dakota Resident Agent	P.O./Address
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SFN 13657 (Rev. 12-99)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

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

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

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

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

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

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

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

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

Notary Public

ACKNOWLEDGMENT OF SURETY

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

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

Notary Public



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

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

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

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

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

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

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

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

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

Name of Company
-----------------

**NEGATIVE CERTIFICATION**

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

Signed By	Title	Date
-----------	-------	------

**AFFIRMATIVE CERTIFICATION**

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

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


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


Signed By	Title	Date
-----------	-------	------

**5. M/WBE SUPPLIER CERTIFICATION (See Section 600 of Part III - Special Provisions)**

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

Name of Company
-----------------

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


Signed By	Title	Date
-----------	-------	------

**6. LABOR SURPLUS AREA CERTIFICATION**

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

**NEGATIVE CERTIFICATION**

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

Signed By	Title	Date
-----------	-------	------

**AFFIRMATIVE CERTIFICATION**

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

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


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


Signed By	Title	Date
-----------	-------	------

## **CONTRACTOR QUALIFICATION FORM**

CONTRACTOR and any subcontractors shall complete the following and include with the Bid Response.

### **1. EXPERIENCE**

CONTRACTOR shall submit details of at least one project completed by their firm that demonstrates the ability to provide the required drilling, grout injection and coring techniques applicable to abandoned underground mine reclamation.

### **2. RESUMES OF KEY PERSONNEL**

CONTRACTOR shall submit resumes for each person who will represent CONTRACTOR during work performed and who will have the ultimate authority to direct the field operations. The project supervisor/manager will be required to be on-site at least 60% of the time during the course of the project. The grout pump operator(s) assigned to the project work should have at least one year experience with the equipment or very similar equipment to be used for work on each project.

All personnel listed, and any other personnel that will be engaged for each project, must be fully qualified and shall be authorized or permitted under state and local law to perform such services.

### **3. Equipment**

CONTRACTOR shall submit a list of equipment owned or leased that will be dedicated to the project. CONTRACTOR shall list major equipment to be used for the work including name, description and serial number, date of manufacture, condition, hours, and specification sheet. CONTRACTOR shall also indicate if the equipment is CONTRACTOR owned; leased (include a letter of availability and good standing from leasing agent); or purchased contingent on the award of an AML drilling and grouting project contract (include a letter of availability and good standing from seller).

All equipment listed is subject to inspection prior to receiving a “qualified” status.

Equipment may be substituted with prior approval of the Commission’s Project Manager.

### **4. LIST OF SUBCONTRACTORS**

Subcontractors that will be involved in the drilling and grout injection work will be evaluated by the same criteria as CONTRACTOR. Subcontractors shall submit resumes, equipment lists and responses to item 5 Requirements. Subcontractors may be disqualified by the same criteria as bidders under Section 103.13 of the Standard Specifications for AML Reclamation Projects.

### **5. REQUIREMENTS**

To ensure that CONTRACTOR and any subcontractors have read and understand the requirements of the Contract Documents, the following questionnaire must be completed by CONTRACTOR and any subcontractors and submitted with the Bid Response (all references are to the Section 6, Specific Provisions of the 2022 Garrison Phase 5 AML Project IFB: 408.22.02.003).

	YES	NO
1. Do you understand and can you provide for the drilling, casing, coring, hole backfilling and recording requirements, as stipulated in Section 300, Subsection B?	_____	_____
2. Do you understand and can you provide the grout mix designs, as stipulated in Section 300, Subsection C?	_____	_____
3. Do you understand and can you provide the aggregate and other materials that meet design requirements, as stipulated Section 300, Subsection C?	_____	_____
4. Do you understand and can you provide the pumping, injection and monitoring requirements, as stipulated in Section 300, Subsection C?	_____	_____
5. Do you understand and can you provide the traffic control requirements, as stipulated in Section 300, Subsection D?	_____	_____
6. Do you understand and can you perform the clean-up requirements, as stipulated in Section 300, Subsection E?	_____	_____
7. Do you understand and can you provide groundwater monitoring as stipulated in Section 300, Subsection F?	_____	_____
8. Have you, your organization or any officers or partners been barred from bidding by any State or Federal Agency? (If yes, describe details on an attachment)	_____	_____
9. Have you, your organization or any officers or partners failed to complete any work awarded to it? (If yes, describe details on an attachment)	_____	_____

**6. Affidavit**

I, the undersigned, being an authorized representative of the corporation, partnership or other legal entity, do hereby attest that the information presented in this questionnaire is, to the best of my knowledge, accurate. I further understand that any inaccuracies or distortions revealed after the contract is awarded may be cause for termination of the contract.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

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

**BID RESPONSE FORM**

**SPECIFICATIONS**

2022 Garrison Phase 5 AML Project. See Section 6 – Specific Provisions and Attachments for full specifications

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	1	Site	Mobilization - Not to exceed 10% of the contract bid.	\$	\$
2	5,000	Foot	Drilling	\$	\$
3	1,000	Foot	Casing	\$	\$
4	50	Foot	Coring	\$	\$
5	3,000	Cubic Yard	Grout Injection	\$	\$
6	3	Sample	Ground Water Sampling	\$	\$
8	1	L.S.	Traffic Control - Not to exceed 5% of the contract bid	\$	\$
9	1	L.S.	Clean Up - Not to exceed 10% of the bid	\$	\$
10	1	L.S.	Force Account	\$50,000	\$50,000
<b>TOTAL (IN NUMBERS)</b>					

**Written Total:**

<b>Affirm your ability to meet the period of performance</b>	YES	NO
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Also enclosed in this package is a bind bond, certified check or cashier's check in the amount of:

**PROJECT MANAGER:** The CONTRACTOR must provide a dedicated project manager to support this contract. During the contract term, the CONTRACTOR shall notify the Procurement Officer if CONTRACTOR's project manager changes.

<b>Project Manager Name:</b>	
<b>Address:</b>	
<b>City &amp; State &amp; ZIP</b>	
<b>Phone Number:</b>	
<b>Cell Phone Number:</b>	
<b>Toll Free Number:</b>	
<b>E-Mail Address:</b>	
<b>Fax Number:</b>	

**BIDDER INFORMATION AND SIGNATURE**

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

Written acceptance of the Bid Response by the STATE constitutes a binding contract made and entered into by and between the State of North Dakota, acting through the Purchasing Agency, and the Bidder named below. Written acceptance may be made by execution of a contract, purchase order, or order using a state purchasing card.

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

<b>Bidder/Contractor Name:</b>	
<b>Contractor Federal Employer Identification Number (FEIN)</b>	
<b>Bidder Street Address/ P.O. Box:</b>	
<b>City, State ZIP:</b>	
<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Telephone Number:</b>	
<b>Email:</b>	
<b>Authorized Representative Signature:</b>	
<b>Date:</b>	