INVITATION FOR BID

408.22.02.004

2022 Garrison Phase 5 Material Testing AML Project

ND019

McLean County
North Dakota

Abandoned Mine Lands Division

North Dakota Public Service Commission

Bismarck, North Dakota

February 2022

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2022 Garrison Phase 5 Material Testing AML Project IFB
Public Service Commission

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INTRODUCTION

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

DATE ISSUED	February 28, 2022	**BID NUMBER**	408.22.02.004
BID TITLE	2022 Garrison Phase 5 Material Testing AML Project	**COMMODITY CODE(S)**	91275, 99234
BID QUESTION DEADLINE	March 17, 2022, 5:00 P.M., C.T.	**PERFORMANCE PERIOD**	June 15 to September 30, 2022 (108 days)
BID RESPONSE DEADLINE	March 24, 2022, 11:00 A.M., C.T.	**CONTRACT PERIOD**	June 1 to December 31, 2022

PROJECT OVERVIEW

This is an Invitation for Bid (IFB) for testing and support services for the drilling and grouting reclamation of an abandoned mine land site. The AML site contains an abandoned underground lignite coal mine and is located near Garrison, North Dakota.

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. An **Optional** 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., CT, March 24, 2022, in the Commission Hearing Room, 12th 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/Offeror: 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: 91275 and 99234.
   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 #: 408.22.02.004
IFB Title: 2022 Garrison Phase 5 Material Testing AML Project
ATTN**:** Ross Edison
Public Service Commission
Abandoned Mine Lands Division
600 E. 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 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 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 do 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 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
     12th 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 each.

   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 CONTACTOR 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 projectunder 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, thepremium thereon prior to the commencement of work. Both bonds must be executed on formsapproved 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 10th and 25th 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.** An **Optional** 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. **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

12. **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 Specification for AML Reclamation Projects http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf.

13. **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.

14. **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

15. **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.

16. **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.

17. **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)

18. **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.

19. **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.

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

21. **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 coverages (if applicable), with minimum liability limits of $1,625,000 per occurrence.

     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.

     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.

     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:

     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.

     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.

     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.

     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.

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.

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.

Failure to provide insurance as required in this Contract is a material breach of Contract entitling STATE to terminate this Contract immediately.

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.

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.

BID SURETY REQUIREMENT
Each Bid Response must include a bid surety. See N.D.A.C. ch. 4-12-07. 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. Bid surety may be as follows: • a certified check, in the amount of five percent (5%) of the full amount of the Bid Response; or • a bank cashier's check in the amount of five percent (5%) of the full amount of the Bid Response; or • 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.

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-XX-22

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

Date:

_____
Steven Kahl
Executive Director

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

Agreement Information

Case No.: AM-22-21

Contract No.: AM- -22

Start Date:

End Date:

Program Title: AML Reclamation

Type of Contract: (x) Fixed Price
( ) Cost Reimb. ( ) Unit Price
( ) Other

Budget Information

Cost Center: 9000

Services: Construction Services

Optional on-site review:

Expenses:

ID Case No. AM-22-21

Type of Contractor: ( ) Individual
( ) Corporation ( ) Partnership
( ) Public Agency
( ) Nonprofit Organization
( ) Other

This Contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and 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 Material Testing 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 attorney's 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 coverages (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.

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. SPOLIATION – 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 408.22.02.004, 2022 Garrison Phase 5 Material Testing 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

Sec. 100 **Project Objective**

Sec. 200 **Scope of Work**

Sec. 300 **Provisions**

Sec. 400 **Owner Responsibilities**

Sec. 500 **Utilization of Disadvantaged Business Enterprises**

Sec. 600 **Suspension of Work**

SECTION 6
SPECIFIC PROVISIONS & ATTACHMENTS

F O R E W O R D

This is an Invitation for Bid (IFB) for testing and support services for the drilling and grout injection reclamation of an Abandoned Mine Land (AML) site. The AML site contains an abandoned underground lignite coal mine and is located near Garrison, North Dakota.

The 2022 Garrison Phase 5 AML Project includes areas as shown on the map on **page 33** 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 for material testing of grout mixtures that will be injected into underground mine workings and other associated work items as described in this Invitation for Bid (IFB). CONTRACTOR shall perform all work items described herein and any additional tests, as requested by the Commission's Project Manager.

200. SCOPE OF WORK

The proposed scope of work for the 2022 Garrison Phase 5 Material Testing AML Project involves material testing and associated services for the pumping of cementitious grout into abandoned underground coal mines.

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 sites contain 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. Proposed Work - CONTRACTOR shall:

1. Collect grout samples in conformance with ASTM C172.
2. Test grout in conformance with ASTM C31 and ASTM C39. Test cylinders will be broken at fourteen, twenty-eight days, and fifty-six days.
3. Slump test grout in conformance with ASTM C143 for slumps 6 inches to 11 inches.
4. Spread test grout in conformance with ASTM C1611 for anything over slumps greater than 9 inches.
5. Calculate yield (ASTM C138 or ACI 211.1) and measure temperature of delivered grout.
6. Determine aggregate gradation, particle size analysis and aggregate moisture content as specified.
7. Inspect batching operations.

8. Certify the proportions of the components of grout to ensure compliance with specified material component and performance parameters.
9. Perform a structural survey and stress monitoring of 2 structural units.
10. Perform other associated work items as directed by the Commission's Project Manager.

CONTRACTOR shall act as the representative of the Commission's Project Manager in all matters relating to material testing. CONTRACTOR shall report to and take instructions only from the Commission's Project Manager.

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 contract and performance periods for material testing are concurrent with those of the 2022 Garrison Phase 5 AML Project.

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. **Requirements** - CONTRACTOR shall provide a trailer (heated, if necessary) or other facilities to allow for curing of test specimens as dictated by ASTM C31 for standard curing. After curing, the grout test cylinders must not be in transit more than 4 hours from job site to the laboratory as recommended by the National Ready Mixed Concrete Association publication *CIP34 – Making Concrete Cylinders in the Field*.

3. **Method of Measurement** - Mobilization will be measured on a per site basis. The total mobilization must not exceed 20% 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 per site unit price. Payment is full compensation for furnishing all labor, materials, equipment and incidentals to complete work as specified.

B. FIELD REPRESENTATIVE

1. **Scope of Work** - This item consists of providing a field representative to perform the material testing services. It is anticipated that the field representative will be required to be on-site approximately 40-60 hours per week during grout injection processes. **Approximately 150 hours** will be required for field representative work for the project.

2. **Requirements** - CONTRACTOR shall provide an on-site field representative for the life of the project. This representative shall:

   a. Be able to collect and transport samples as specified and carry a minimum of 50 pounds. The Field Representative shall also be able to transport equipment and samples to various areas associated with the project work areas.

   b. Record pump start and end times on the grout delivery ticket for each truck load.

   c. Collect grout samples according to ASTM C172 for every 50 cubic yards of grout or as directed by the Commission's Project Manager.

      i. Mold and cure three (3) test specimens of grout according to ASTM C31.

ii. Test the slump in conformance with ASTM C143 of each grout sample and as requested by the Commission's Project Manager. Variations of ± one-quarter (1/4) inch from the ordered slumps are acceptable for grout. Material slumps under or over stipulated allowances must be corrected, or the load will be rejected.

iii. Test the spread in conformance with ASTM C1611 of each grout sample and as requested by the Commission's Project Manager. Calculate the spread and record to the nearest one (1) inch. Material spreads under or over stipulated allowances must be field-corrected, or the load will be rejected.

iv. Calculate grout yield. Yield calculations must conform to ASTM C138 or ACI 211.1. The absolute volumes must equal 27 cubic feet. Water added at the injection site must not be included in grout yield calculations.

v. Test grout mix temperature immediately upon being sampled. Alternatively, temperature may be measured from the pump hopper that has been filled with fresh grout. Grout loads with temperatures less than 50° Fahrenheit or 90° Fahrenheit or greater will be rejected.

d. Test aggregate moisture content daily or as directed by the Commission's Project Manager.

e. Sign delivery slips for grout to certify that ingredients in a truckload conform to the proportions of the approved mixes. The grout mix will consist of (per cubic yard) *100 lbs. Portland cement, 600 lbs. flyash, aggregate and water*. When materials furnished by the Grout Contractor fail to meet the construction specifications, the field representative shall immediately notify the Commission's Project Manager.

f. Collect bills of lading and mill certification reports on all grout materials and admixtures.

g. Collect and store samples of material components at least every 1,000 cubic yards of grout. These samples are to be properly marked to correlate with bills of lading and mill certifications.

h. Collect an aggregate sample for gradation every 1,000 cubic yards of grout or as directed by the Commission's Project Manager. Aggregate must consist of hard, strong and durable particles free from deleterious materials and must meet the following gradation requirements:

Passing	**Grout**
3/8" mesh sieve	100%
No. 4 mesh sieve	80-90%
No. 30 mesh sieve	40-80%
No. 200 mesh sieve	5-15%

i. Establish a baseline mix design based on the initial aggregate gradation and moisture content to achieve the grout yield of 27 cubic feet per cubic yard and the slump specified by the Commission's Project Manager.

j. Measure flowability and consistency of the grout following ASTM C 939 and ASTM C 143 as required by the Commission's Project Manager.

k. Perform batch plant inspections daily until grout quality control and material component control is established; and thereafter, weekly or as requested by the Commission's Project Manager. When materials furnished by the Grout Contractor fail to meet the construction specifications, the field representative shall immediately notify the Commission's Project Manager.

3. **Method of Measurement** – Field representative services will be measured on a per hour basis. Field representative hours must be recorded daily in the field and submitted to the Commission's Project Manager weekly using the attached form. Only time spent at the work site, inspecting the batch plant, conducting tests (excluding those covered by **Section 300, D. LABORATORY TESTING**) or other work as designated by the Commission's Project Manager will be compensated. Compensation will not be made for standby time if Field Representative is notified of greater than 2-hour delay or cancellation of pumping operations by Grout Contractor or the Commission's Project Manager. **Travel time to and from the work site will not be a consideration for payment under this line item.**

4. **Basis of Payment** – Payment will be made at the unit price. Payment constitutes full payment for all labor, materials, equipment, site clean-up and any other incidentals including travel, meals and lodging required to complete the material testing work as specified.

C. STRUCTURAL SURVEYS AND STRESS MONITORING

1. **Scope of Work** – Pre- and post-construction structural surveys and monitoring may be required in the project area as instructed by the Commission's Project Manager. The surveys will require interior and exterior inspections by CONTRACTOR of structures, foundations, driveways, and surrounding areas before and after grout pumping. Any evidence of stress such as cracking, settling or any other structural imperfections or deformities must be measured and recorded graphically, photographically and in narrative form. Crack monitors must be installed on visible cracks in the structures or foundations, and these must be monitored at regular intervals during proximal grout pumping. Approximately four to ten crack monitors will be needed per structure.

2. **Requirements** - Procedures for structural surveys must be approved by the Commission's Project Manager prior to conducting the surveys. Surveys, inspections, and installation of crack monitors must be performed by a professional engineer or other person with demonstrated expertise in the types of structural monitoring described.

   The Grout Contractor will be required to install a laser level(s) in or near the structures during grout pumping. The material tester may be required to assist in monitoring the level.

   A final report including all observations, measurements, maps, sketches, and photographs must be submitted to, and approved by, the Commission's Project Manager before final payment is made. This report must provide sufficient information to determine whether grouting activities have caused any significant property damage. Interim reports and consultations may also be required. A memo describing a generalized structural survey methodology is attached to this document.

   Structural surveys will be conducted on **two (2) units** at E1/2 NE1/4 Section 18, T148N, R84W McLean County in the South Garrison Addition. For this project a ***unit*** is defined as a residence, its associated outbuildings (office, shop, garage, shed, barn, etc.) and roads or drives (paved and unpaved).

3. **Method of Measurement** - Structural surveys and stress monitoring will be measured on a per unit basis. Additional units may be added at the discretion of the Commission's Project Manager. Any additional units requested by the Commission's Project Manager will be paid at the per unit price.

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. Payment will be made after the final report for each unit has been submitted and approved by the Commission's Project Manager.

D. LABORATORY TESTING

1. **Scope of Work** - The laboratory testing must include all work necessary to conduct the compressive strength and other tests on the material samples as specified above. An **estimated 40 series (120 specimens)** will be tested.

2. **Requirements** - CONTRACTOR shall test compressive strength in accordance with the latest ASTM Standards for 100% humidity curing. The grout is required to achieve an unconfined compressive strength of 150 psi at 28 days. For each test series, the testing intervals will be 14 days, 28 days and 56 days and may be adjusted at the direction of the Commission's Project Manager. Of the cylinders that meet or exceed 150 psi at 14 days, **CONTRACTOR shall retain at least three series per week to break at 28 days and 56 days.**

   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. CONTRACTOR shall prepare and ship the sample to the chosen petrographic testing laboratory. CONTRACTOR time needed to prepare and ship the sample will be covered under this Contract as "Field Representative" hours. The Grout Contractor shall be billed directly by the petrographic testing firm for the analysis and by 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. No extra payment will be made, and bids should be made accordingly.

The compression machine used for psi break strength determination on this project must comply with latest ASTM C39 standards for loading rate. Readout of gross load at failure must be accurate to within + or - 10 pounds. CONTRACTOR shall furnish compressive test reports to the Commission's Project Manager which contain the following:

a. Cylinder identification number, date cast, injection hole number and delivery ticket number.

b. Grout material components and proportions.

c. Grout slump, temperature and unit weight.

d. Yield (cubic foot/cubic yard).

e. Date delivered to the laboratory.

f. Date tested.

g. Gross load at failure (pounds) and compressive strength of specimen (psi).

h. Type of failure or fracture and any anomalies observed in the specimen.

3. **Method of Measurement** - Compressive strength tests will be measured on a per series basis. Each series may contain up to three (3) individual specimen breaks but will require only sufficient testing (breaks) to determine the minimum grout psi requirement. Of the cylinders that meet or exceed 150 psi at 14 days, CONTRACTOR shall retain at least three series per week to break at 28 days and 56 days.

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

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. Drilling and Grouting

STATE will contract with a Drilling and Grouting Contractor for subsurface reclamation of abandoned underground coal mines with rotary drilling and pressurized backfilling with grout and the performance of other associated work items. Materials to be injected must conform to the physical, chemical, and or gradation characteristics specified in this IFB. It is estimated that 2,000 cubic yards of grout will be placed in the mine workings.

CONTRACTOR shall co-operate with the Drilling and Grouting Contractor. The Grouting Contractor shall:

1. Provide the 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, the Grouting Contractor shall reimburse CONTRACTOR for 8 hours of work at CONTRACTOR's contracted hourly rate as specified in the 2022 Garrison Phase 5 Material Testing AML Project contract.
2. Notify 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 CONTRACTOR at least 12 hours in advance if no work is planned for the following regularly scheduled workday. If no notice is given, Grouting Contractor shall reimburse the CONTRACTOR for 4 hours of work at 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 stoppages caused by unforeseen adverse weather or equipment breakdowns.
4. Provide safe conditions for collecting grout samples by the CONTRACTOR in accordance with ASTM C172 Standard Practice of Sampling Freshly Mixed Concrete.

5. Provide CONTRACTOR access and use of ready-mix truck water supplies.
6. Provide CONTRACTOR copies of bills of lading and mill certification reports for each load of cement, flyash, aggregate, foam and all admixtures delivered for use on the project.
7. Notify 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 **(pages 40-42)**. 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.

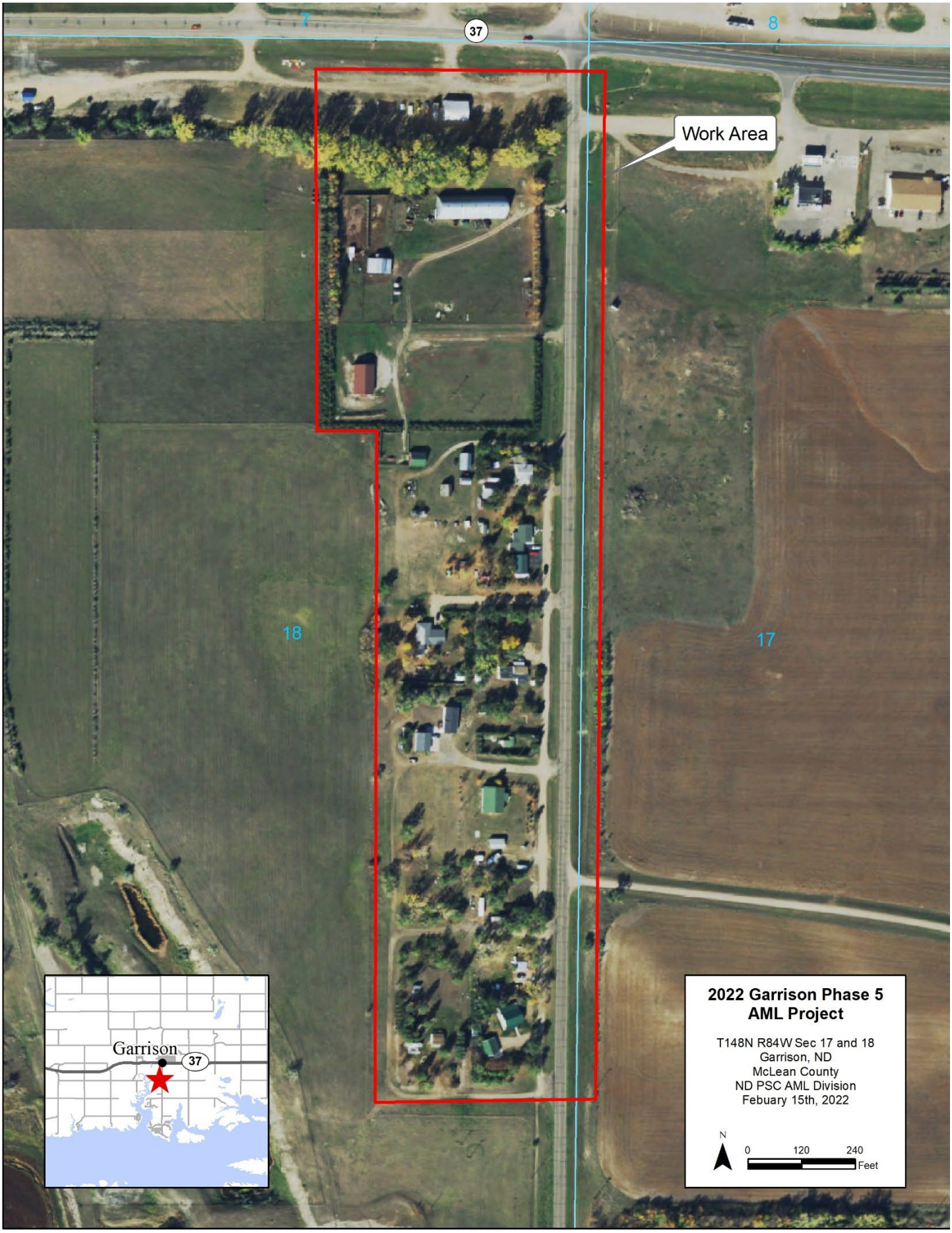
ATTACHMENTS

Project Location Map

Structural Survey Memo

Material Tester Time Sheet

2022 Garrison Phase 5 Material Testing AML Project



NORTH DAKOTA
PUBLIC SERVICE COMMISSION
****

Memorandum

Subject: General Methodology for Structural Surveys

Over the past several years, the AML Division received questions from prospective Material Testing Bidders regarding procedures for conducting pre- and post-construction structural surveys and stress monitoring. The scope of work for this bid item is dictated by the narrative in Section 300D of the Invitation for Bid document. This memo provides further clarification. It is a guideline rather than a set of requirements and reflects those methods that have been used successfully in past projects. The actual methodology used for structural surveys will be developed by the CONTRACTOR and must receive prior approval from the Commission's Project Manager.

The objective of pre-construction structural surveys is to document and quantify the existing condition of structures and facilities prior to grout pumping operations. This must be done with sufficient detail and precision that when the process is repeated after grout pumping operations, a determination can be made whether grouting has caused any property damage. All data gathered during the surveys must be recorded and incorporated in a final report. If structural damage is suspected during the grouting project, consultations and interim reports may also be required.

Structural surveys should include the following:

Visual Inspections and Investigations - Visual inspections are conducted to check for cracking, settlement, heaving or any other evidence of structural stress or deformities. Visual surveys should be conducted in basements, along walls and floors (especially where block or concrete is uncovered), along foundations, garages, driveways, outbuildings, or slabs, and along city streets, sidewalks, curbs, etc. Removal and replacement of rugs, furniture and other items may be necessary. Cracks or other features should be measured with a caliper, crack comparator card or other device sensitive to within 0.01 inch. The location of the measurement should be clearly marked, and the dimensions of the crack recorded. It is best if the feature is identified with a letter/number designation so it can be precisely located and re-measured after grout pumping. High-intensity lighting and a water mist can help to make cracks and other deformities more visible.

Investigations should be made to determine the location and apparent condition of water, sewer, electrical and gas lines, septic systems, sprinkler systems and any other structures of facilities that could be affected by grout injection. These locations should be delineated on site maps or drawings.

Crack Monitors - Crack monitors are simple gauges used to measure movement of cracks in brick, concrete, or masonry structures. They should be securely installed on representative visible cracks where structural movement resulting from grouting operations may be expected to occur. They should be numbered for easy recording. Crack monitors cost about $20.00 each. Crack monitors can be removed and reused when the project is completed.

Photographs, Charts and Maps - Photographs and/or digital recordings should be made of all structures inspected to document any structural defects identified in the visual inspections. These should clearly show any points where measurements have been made or crack monitors installed. Charts should be used to document each measurement and observation before and after construction. The location of these measurements or observations should be delineated on a map or drawings of the site.

Ongoing Stress Monitoring - The Grout Contractor will be expected to take a primary role in this monitoring, but the material tester may be asked to assist when not busy with grout testing. The Grout Contractor will be required to install oscillating laser levels to provide continuous monitoring for structural movement during grout pumping operations. If the material tester notes any change in elevation or evidence of ground movement, surface jacking or grout seeping to surface, he will immediately notify the Grout Contractor or Commission's Project Manager.

For information about structural surveys and monitoring, refer to the publication, Structural Monitoring at a Pressurized Grout Remote Backfilling AMLR Project at Beulah, North Dakota (2001). This is available upon request or can be accessed under the heading, Articles Written by AML Staff, on the Commission's website at www.psc.nd.gov/docs/amlarticles/structural-monitoring-at-a-pressurized-grout-project.pdf.

Material Tester Time Sheet

	Moisture/Gradation		On-site		Hours		
Date	**Start**	**Finish**	**Start**	**Finish**	**Total**	**Cumulative**	**Comments**

SECTION 7
BID FORMS

1. **Bid Bond**

2. **Utilization of Minority or Women-Owned Business Enterprises and Labor Surplus Area Concerns**

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

Principal
Surety
Penal Sum

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

Signed, this _____ day of _____ 20 _____.

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

_____

_____

NOW, THEREFORE,

a. If said BID shall be rejected, or

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

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

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

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

SFN 13657 (Rev. 12-99)

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

	(Surety)	(SEAL)
BY		

Countersigned by:

North Dakota Resident Agent	P.O./Address

SFN 13657 (Rev. 12-99)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

STATE OF _____)
)ss
County of _____)

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 _____)
)ss
County of _____)

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 _____)
)ss
County of _____)

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 _____)
)ss
County of _____)

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.

SFN 16755 (Rev. 12-99)

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

SFN 16755 (Rev. 12-99

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

BID RESPONSE FORM

SPECIFICATIONS					
2022 Garrison Phase 5 Material Testing AML Project: See Section 6 – Specific Provisions and Attachments for full specifications.					
ITEM NO.	**QTY**	**UNIT**	**DESCRIPTION**	**UNIT PRICE**	**TOTAL PRICE**
1	1	1	Mobilization/Demobilization	$	$
2	150	Hours	Field Representative	$	$
3	2	Unit	Structural Survey	$	$
4	40	Series	Laboratory Testing	$	$
			TOTAL (IN NUMBERS)		
Written Total:					
Affirm your ability to meet the period of performance			YES	NO	

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.	
Project Manager Name:	
Address:	
City & State & ZIP	
Phone Number:	
Cell Phone Number:	
Toll Free Number:	
E-Mail Address:	
Fax Number:	

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.

By signing below, I acknowledge that I have reviewed all documents associated with this IFB.

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