

# **INVITATION FOR BID**

**408.24.03.005**

**2024 Dakota Collieries AML Project**

**ND014**

**Mercer County  
North Dakota**

**Abandoned Mine Lands Division**

**North Dakota Public Service Commission**

**Bismarck, North Dakota**

**March 2024**

**INVITATION FOR BID**  
**2024 Dakota Collieries AML Project**

**ND014**  
**Mercer County**  
**North Dakota**

**Bid Number 408.24.03.005**

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**STATE OF NORTH DAKOTA  
INVITATION FOR BID (IFB)  
(December 2023)**

<b>DATE ISSUED</b>	March 6, 2024	<b>BID NUMBER</b>	408.24.03.005
<b>BID TITLE</b>	2024 Dakota Collieries AML Project	<b>COMMODITY CODE(S)</b>	962 – Miscellaneous Services #2 Sub Class 73 912 – Construction Services Gen Sub Class 23
<b>BID QUESTION DEADLINE</b>	March 27, 2024 5:00 P.M. CT	<b>PERFORMANCE PERIOD</b>	June 3 to September 6, 2024
<b>BID RESPONSE DEADLINE</b>	April 9, 2024 10:00 A.M. CT	<b>CONTRACT PERIOD</b>	Upon complete execution of the contract to December 31, 2024

**PROJECT OVERVIEW**

This is an Invitation for Bid (IFB) to reclaim Abandoned Mine Land (AML) sites in Mercer County. This AML site contains an abandoned underground lignite coal mine and is located 3 miles southeast of Zap, North Dakota. The Dakota Collieries Mine Site is located in Sections 31 and 32, T144N, R88W and Section 36, T144N, R89W and other areas as directed by the Commission’s Project Manager. The site is shown on **Figures 1 and 2**.

The North Dakota Public Service Commission (Commission, Purchasing Agency or STATE) is interested in bids from qualified firms to achieve reclamation within this project area. Work must be completed as specified during the 2024 construction season.

**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  
 PROCUREMENT OFFICER: Michael Howe  
 EMAIL: mthowe@nd.gov  
 PHONE: 701-328-4188  
 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**

A mandatory pre-bid, on-site conference is scheduled for March 20, 2024, to afford an opportunity to prospective Bidders to receive clarification related to this solicitation.

This conference will be held at:

- 1:00 P.M., Central Time (CT): Beginning at the corner of Co Rd 20 and 64<sup>th</sup> AVE SW, approximately 4 miles west of Beulah ND. (See **Sheet 2 – Project Site Map**). (Latitude 47°15'45.78"N, Longitude 101°50'56.15"W)

All prospective Bidders are required to attend the conference in order to bid. Failure to attend the on-site conference will result in Bidder disqualification.

### 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. Include the IFB number and title of this IFB 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.

A person or firm interested in submitting a proposal should ensure all communications related to the procurement are only with the designated point of contact. This section does not restrict communication with state officials or any member of the legislative assembly unless the state official or member of the legislative assembly is involved directly with the procurement for which the person is interested or has submitted a bid or proposal (N.D.C.C. § 54-44.4-01.1).

### BID RESPONSE DEADLINE AND BID OPENING

Submit the required materials to the Public Service Commission no later than **10:00 a.m. C.T., April 9, 2024**. The public bid opening will be held at **10:00 a.m. C.T., April 9, 2024**, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

### 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, and providing the following information: IFB number and title, Bidder's business name, contact person, mailing address, telephone number, and email address.

## SECTION 1 BIDDERS INSTRUCTIONS

### 1. **Bidder Checklist.**

- Ensure your Bid Response complies with all instructions, terms and conditions, delivery requirements, and specifications.
- Prepare your bid price as required by the attached **Bid Response Form in Section 7.**
- Sign all Bid Response Forms in Section 7 and initial any changes or corrections.
- 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.
- Ensure your Bid Response is received by the Procurement Officer by the Bid Response deadline. Call the Procurement Officer to confirm receipt.
- 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.**

- **Bidder:** any person or firm submitting a competitive bid in response to a solicitation.
- **Bid Response:** the executed document submitted by a Bidder in response to a solicitation.
- **Commission's Project Manager:** the person authorized by STATE who is responsible for the supervision of the construction.
- **Commodities:** all property, including equipment, supplies, materials, printing, insurance, and the lease of equipment.
- **Contractor:** any person or firm having a contract with a governmental body.
- **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 for Purchasing Agency (State).
- **Purchasing Agency (STATE):** the entity on which the purchase is being made on behalf of.
- **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.
- **Solicitation:** a document to notify prospective Bidders of a bidding opportunity.
- **N.D.A.C.:** North Dakota Administrative Code; rules with the force and effect of law.
- **N.D.C.C.:** North Dakota Century Code; state laws.
- **OMB:** Office of Management and Budget (OMB); a North Dakota state agency.
- **SPO:** State Procurement Office, a division of the Office of Management and Budget.
- **SPO Online:** a procurement information website maintained by the State Procurement Office pursuant to [N.D.C.C. § 54-44.4-14](#).

### 3. **Secretary of State Registration Requirements.** The North Dakota Secretary of State has registration requirements for individuals and businesses transacting business in North Dakota. If the successful Offeror is determined to have a registration requirement with the North Dakota Secretary of State, they must be registered before the contract award and registration must remain active for the duration of the contract period ([N.D.C.C. § 54-44.4-09.1](#))

See the OMB [Guidelines to Vendor Registry](#) for more information.

Visit the Secretary of State's [Vendor Registration](#) webpage for information on registration requirements and fees. Visit [FirstStop](#), the Secretary of State's business and licensing software, for online form options.

- Check the [Business Records](#) database to see if a business is registered.
- Contact Secretary of State's office by [email](#) or call 701-328-2900 (choose menu item 2, then option 1).
- If you need to register, fees apply.
- Vendors may need to obtain businesses licenses. See the [list of licenses required of businesses](#) in the State of North Dakota. The link includes information on who to contact, application fees, renewal dates, and the legal reference.

### 4. **Bidders List.** Individuals or business entities desiring to be notified of bidding opportunities may apply to be placed on the Bidders List ([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). Placement on the Bidders List does not guarantee a

vendor will receive notice of every solicitation ([N.D.A.C. § 4-12-05-01](#)). There are no fees to register as a bidder. The online application form requests contact information for the receipt of solicitation notices. The Bidders List application and SPO Online system use commodity codes to identify categories of goods, services, and information technology.

The commodity codes used for this solicitation are: 962 – Miscellaneous Services #2 Sub Class 73 and 912 – Construction Services Gen Sub Class 23.

Visit the OMB website for instructions and the online Bidders List Application:

[Bidders List Registration Website](#)

For assistance with Bidders List Registration, contact State Procurement Help Desk at 701-328-1728 or [infospo@nd.gov](mailto:infospo@nd.gov).

5. **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 #: 408.24.03.005  
IFB Title: 2024 Dakota Collieries AML Project  
ATTN: Michael Howe  
Public Service Commission  
Abandoned Mine Lands Division  
600 E Boulevard Ave., Dept 408  
Bismarck, ND 58505-0480  
(701) 328-4188  
[mthowe@nd.gov](mailto:mthowe@nd.gov)

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 used to determine timely receipt.

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

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

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

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

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

1. This solicitation is posted on SPO Online at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>
2. Select "Recent Solicitations" and find this solicitation. Solicitations are listed by close date.
3. Use "Upload Response" to upload a maximum of five (5), clearly labeled documents before the Bid Response deadline.
4. Offerors must upload their Bid Response as requested in the Bid Response section of this IFB.
5. The maximum file size allowed is 50 MB per file.
6. There is a 50 character file name limitation for the document being uploaded.
7. There is 75 character limit in the TITLE field within SPO Online.
8. 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.
9. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.
10. Bidder will receive an email confirmation from [infospo@nd.gov](mailto:infospo@nd.gov) that the upload response was received including the "File Description" for the uploaded files. Review this email to ensure all files were successfully uploaded. If Bidder 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](mailto:infospo@nd.gov) or 701.328.2740.

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

**Bid Bond form in Section 7, certified checks, or cashier's check must be received by the bid response deadline. Photocopies and faxes will not be accepted in place of the original.**

6. **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](#)).
7. **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.
8. **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.
9. **Bid Response Opening.** A public Bid Response opening will be held. The Procurement Officer will hold the Bid Response opening:
  - Date: April 9, 2024
  - Time: 10:00 A.M CT
  - Location: **State Capitol**  
**12<sup>th</sup> Floor conference room**  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480
10. **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 may be posted on SPO Online: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>

11. **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](#))
12. **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.
13. **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.
14. **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.](#))
15. **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](#))
16. **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.
17. **Specifications Prepared by Non-State Personnel.** When a purchasing agency has specifications prepared by someone other than a state employee or official on behalf of the state, that person or business entity must be excluded from submitting bids or proposals in accordance with [N.D.A.C. § 4-12-06-06](#).
18. **Supplier Registration (Payee).** The successful Bidder will be required to complete Supplier Registration, if not already registered as a Supplier. Any individual or business who will be receiving payment from a state agency or higher education institution must complete a registration process to collect important financial and taxpayer information. Payments are generally made by check or automatic clearing house (ACH), and taxpayer information must be collected in compliance with IRS requirements. The State and North Dakota University System (NDUS) have separate financial systems and vendor registration processes.
19. **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.
20. **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 – Printing Preference Laws.** If practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks, and printed stationery must be awarded to a resident North Dakota Bidder. ([N.D.C.C. § 46-02-15](#), [N.D.C.C. § 44-08-02](#), [N.D.A.C. § 4-12-16-01](#))
  - Bid Responses from nonresident (out-of-state) Bidders will be accepted. See [Guidelines to North Dakota Purchasing Preference Laws](#).
3. **Award – Preference Laws.** The reciprocal preference law, N.D.C.C. § 44-08-01, was repealed effective August 1, 2023.
4. **Award – Tie Bid Response Preference.** If a tie occurs between two or more Bidders with equal Bid Response prices or offerors with identical evaluation scores:
  - a. Preference must be given to a resident North Dakota bidder, seller, vendor, offeror, or contractor as defined in [N.D.C.C. § 44-08-02](#). ([N.D.C.C. 54-44.4-05.1](#))
  - b. If a tie still remains, award shall be made in accordance with [N.D.A.C. § 4-12-11-05](#).
5. **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](#))
6. **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](#))
7. **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](#))
8. **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](#).
9. **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](#))
10. **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 both parties or its Effective Date, and ends on December 31, 2024.
  - 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 option to renew this Contract under the same terms and conditions for a period of 6 months each.

Please see the Sample Contract in Section 5 for additional contract information.

2. **Invoicing and 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. 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 addressed to:

Michael Howe, Project Manager  
Public Service Commission  
Abandoned Mine Lands Division  
600 East Boulevard Ave., Dept 408  
Bismarck, ND 58505-0480  
mthowe@nd.gov

3. **Payment Terms.** Payment will normally be made within forty-five (45) days after delivery and acceptance of commodities or services under this Contract and receipt of an **approved** invoice. All invoices and payment inquiries must be directed to the Commission's Project Manager. CONTRACTOR may request payment any time during the contract period; however, it is expected that payment schedules will coincide with accounts payable processing on the 10<sup>th</sup> and 25<sup>th</sup> of each month. Invoices must be submitted ten (10) 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.
4. **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](#))
5. **Contract Estimated Volume.** The volume of this contract is estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and 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. The Commission's Project Manager and CONTRACTOR shall compare records of quantities daily. The CONTRACTOR or CONTRACTORS will be required to furnish actual requirements upon receipt of an order. This contract will not include items of a similar nature, which must be bought for emergency use.
6. **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.

7. **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.
8. **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.
9. **Schedule of Construction.** The successful Bidder shall submit a written estimated Schedule of Construction to the Commission's Project Manager for written approval before Commission's Project Manager issues the Notice to Proceed. The Schedule of Construction must indicate the estimated starting and completion dates for all items on the Bid Response form. In addition, the schedule must indicate the major items of equipment to be utilized to complete the project, including but not limited to loaders, scrapers, motor graders, backhoes, pumps, and seeding equipment and an hourly rate for each piece of equipment listed. The purpose of this schedule is to assure completion of the work in a timely manner. The Commission's Project Manager will not issue a Notice to Proceed without an approved Schedule of Construction.
10. **Time of Performance.** The project performance period is from **June 3, 2024, to September 6, 2024**, 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.
11. **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 and no work will be allowed.
12. **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.
13. **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.
  - **Pricing, Fuel Surcharges.** Fuel surcharges may be negotiated between the CONTRACTOR and Purchasing Agency when fuel prices rise 15% more from the fuel prices in effect on the day the solicitation was opened. Subsequent adjustments may be requested, subject to approval of the Procurement Officer. Requests for fuel surcharges must be submitted in writing to the Procurement Officer. Within 30 days, the STATE will accept and amend the contract, reject, and allow the contract to continue, or cancel the contract. The contract may also be amended, with 30 days' notice to the CONTRACTOR, to reduce prices in the event declining fuel prices. The Energy Information Agency diesel and gasoline price indexes will be used for this Contract.  
[http://www.eia.doe.gov/oil\\_gas/petroleum/info\\_glance/petroleum.html](http://www.eia.doe.gov/oil_gas/petroleum/info_glance/petroleum.html)

14. **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](#))
15. **Service – Local Requirement.** Services within ten days after receipt of Notice to Proceed is required. CONTRACTOR must have facilities or service providers within a commuting distance to meet this requirement.
16. **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 will send a rejection notice, including the reason for rejection.
17. **Travel.** CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.
18. **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. **Indemnification.** 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 Coverage.** 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 **\$2,000,000** per occurrence.
    - B. Automobile liability, including Owned (if any), Hired and Non-Owned automobiles, with minimum liability limits of **\$500,000** per person and **\$2,000,000** per occurrence.
    - C. Workers' compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Contract.
    - D. Employer's liability or "stop-gap" insurance of not less than **\$2,000,000** as an endorsement on the workers compensation or commercial general liability insurance.
  - **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:
    - A. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by STATE.
    - B. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by STATE. The policies shall be in form and terms approved by STATE.
    - C. STATE will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify STATE under this agreement shall not be limited by the insurance required in this Contract.
    - D. The State of North Dakota and its agencies, officers, and employees (STATE) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. STATE shall have all the benefits, rights and coverages of an additional

insured under these policies that shall not be limited to the minimum limits of insurance required by this Contract or by the contractual indemnity obligations of CONTRACTOR.

- E. The insurance required in this agreement, through a policy or endorsement, shall include:
  - i. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against STATE;
  - ii. A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by STATE, and that any insurance, self-insurance or self-retention maintained by STATE shall be in excess of CONTRACTOR's insurance and shall not contribute with it;
  - iii. Cross liability/severability of interest for all policies and endorsements;
  - iv. The legal defense provided to STATE under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for STATE is necessary;
  - v. The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- F. CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- G. Failure to provide insurance as required in this Contract is a material breach of Contract entitling STATE to terminate this Contract immediately.
- H. CONTRACTOR shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. CONTRACTOR shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.
- **Pollution Liability.** CONTRACTOR shall provide CONTRACTOR's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of CONTRACTOR for limits of **\$2,000,000**. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

3. **Bid Surety.** 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 the lowest bidder submits a check, the check may be negotiated, and the money retained by the owner until the contract has been awarded and properly executed. All other unsuccessful Bidders will have their bid bonds, cashier's checks or certified checks returned immediately. The successful bidder and other low bidders whose bonds or checks are retained will have their bid bonds, certified checks or cashier's checks returned after Commission has successfully contracted the work.

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

- 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 the Commission.** Bonds must be secured from a company that has complied with the law and regulations of the U.S. Treasury Department and is acceptable as a surety or reinsurer of federal bonds under Sections 9304 to 9308 of Title 31 U.S.C. and appropriate statutes of the State of North Dakota. A list of qualified companies is published under Treasury Circular 570.

**SECTION 5  
SAMPLE CONTRACT  
CONTRACT NUMBER AM-XXX-24**

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

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

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

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

This Contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and XXXXXXXXXXXXXXXXXX. (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 7 SPECIFIC PROVISIONS, including figures and design sheets in the 2024 Dakota Collieries Invitation for Bid. CONTRACTOR shall be registered with the North Dakota Secretary of State and the North Dakota State Procurement Office prior to Contract execution.

### **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 shall 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 forty-five (45) 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 upon complete execution of the contract by all Parties and ends on September 6, 2024.**

#### **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 3, 2024 to September 6, 2024. 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.

### **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 for Convenience or by Mutual Agreement**

This Contract may be terminated by STATE upon thirty (30) days' written notice to CONTRACTOR. This Contract may be terminated by mutual consent of both parties executed in writing.

#### **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, Agencies 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 to CONTRACTOR, may terminate this Contract in whole or in part.

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

STATE, by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- A. If funding from federal, state or other sources is not obtained or continued at levels sufficient to allow for work performed or purchases of the services or goods in the indicated quantities or term.
- B. If federal or state laws or rules are modified or interpreted in a way that the services or goods 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 already 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 or goods required by this Contract within the time specified or any extension agreed to in writing by STATE; **or**
- B. If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection 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, pandemic (excluding COVID-19), acts of God or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, 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. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

## **8. INDEMNIFICATION**

CONTRACTOR agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement, except claims based upon STATE's sole negligence or intentional misconduct. The legal defense provided by CONTRACTOR to STATE under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for STATE is necessary. Any attorney appointed to represent STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse STATE for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

## **9. INSURANCE**

**Required Coverages.** CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:

- A. Commercial general liability, including premises or operations, contractual and products or completed operations coverages (if applicable), with minimum liability limits of **\$2,000,000** per occurrence.
- B. Automobile liability, including Owned (if any), Hired and Non-Owned automobiles, with minimum liability limits of **\$500,000** per person and **\$2,000,000** per occurrence.
- C. Workers' compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Contract.
- D. Employer's liability or "stop-gap" insurance of not less than **\$2,000,000** 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 recover the insurance company may have against STATE;
  - ii. A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by STATE, and that any insurance, self-insurance or self-retention maintained by STATE shall be in excess of CONTRACTOR's insurance and shall not contribute with it;
  - iii. Cross liability/severability of interest for all policies and endorsements;
  - iv. The legal defense provided to STATE under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for STATE is necessary;
  - v. The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- F. CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- G. Failure to provide insurance as required in this Contract is a material breach of Contract entitling STATE to terminate this Contract immediately.
- H. CONTRACTOR shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. CONTRACTOR shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

**Pollution Liability.** CONTRACTOR shall provide CONTRACTOR's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of CONTRACTOR for limits of **\$2,000,000**. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

## 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 by 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:

<b>STATE:</b>	<b>CONTRACTOR:</b>
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 shall not 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 public 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.

#### **15. COMPLIANCE WITH PUBLIC RECORDS LAWS**

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such request.

#### **16. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including 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 this Contract.

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

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this CONTRACT, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

#### **18. SPOILIATION – PRESERVATION OF EVIDENCE**

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such 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 and Form FHWA 1273 (attached). If conflict exists between STATES contract provisions and Form FHWA 1273 that cannot be construed to be harmonious, Form FHWA 1273 will supersede any conflicting STATE contract provision.
- B. STATE's Solicitation: Invitation for Bid 408.24.03.005 – 2024 Dakota Collieries AML Project.

C. CONTRACTOR's Bid Response.

**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 this 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. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering this Contract

STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

**23. ATTORNEY FEES**

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

**24. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 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, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current all licenses and permits required by law during the Term of this Contract.

CONTRACTOR is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten (10) full-time employees.

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. STATE AUDIT**

Pursuant to N.D.C.C. § 54-10-19, 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 these records for at least four (4) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

**26. COUNTERPARTS**

This Contract may be executed in multiple, identical counterparts, each of which is to be deemed an original, and all of which taken together shall constitute one and the same contract.

## 27. 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.

## 28. BUY AMERICAN DOMESTIC PROCUREMENT PREFERENCE

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

None of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

### **Definitions**

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

**“Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.**

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

## **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**

**Sec. 700 Required Contract Provisions for Federal-Aid Construction Contracts**

## **100. PROJECT OBJECTIVE**

The objective of this project is to reclaim abandoned surface and underground lignite mines and associated work items as described in this Invitation for Bid (IFB). The Dakota Collieries Mine Site is located in Sections 31 and 32, T144N, R88W and Section 36, T144N, R89W. Interested bidders shall fulfill all aspects of the IFB as presented.

## **200. SCOPE OF WORK**

The scope of work for the 2024 Dakota Collieries AML Project includes three sites which are identified on **Figure 2**. The West Site contains over 40 small subsidence and erosional features requiring filling from an onsite earthen borrow area. There is also one large erosional gully requiring rock rip-rap placement and two existing rock channels requiring additional rock rip-rap placement. The Central Site contains an abandoned highwall, final mine pit, and adjacent spoil piles. Approximately 115,000 cubic yards of soil material will need to be moved to backfill the highwall and mine pit. The East Site includes a large erosional gully requiring rock rip-rap placement, removal of an existing culvert and installing a concrete mat as a low water crossing, and slope stabilization of eroding mine spoil piles. Best Management Practices (BMP) must be used on site at all times, including silt fence, straw wattles, and erosion blankets. Standard Specifications can be found on the North Dakota Department of Transportation website and are contained in the Standard Specifications for Road and Bridge Construction publication adopted on April 1, 2023.

CONTRACTOR shall provide all material, equipment and personnel necessary to perform the work. CONTRACTOR shall be capable of completing this project within seventy (70) consecutive calendar days between **June 3, 2024**, and **September 6, 2024**. No work will be allowed on holidays or weekends unless specifically approved by the Commission's Project Manager in writing.

- 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. 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 excavation, backsloping, backfilling, and construction work specified in this IFB is inherently dangerous due to the presence of unstable spoil piles, water filled pits, highwalls, end walls, and abandoned mine workings. Surface subsidence caused by upward void migration of abandoned mine 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. Artifact Identification** – CONTRACTOR is advised that artifacts may be discovered during the construction process. Any historical artifact identified will be flagged and work will cease in the area while proper authorities are contacted. The Commission's Project Manager will work in consultation with the authorities to determine the appropriate action. Work will continue only after the Commission's Project Manager has given permission.

CONTRACTOR shall provide all materials, equipment, and personnel necessary to perform the specified work. CONTRACTOR shall be capable of completing this project within the performance period. Failure to complete the project within the performance period may result in contract termination or liquidated damages.

## **300. PROVISIONS**

The following special provisions must apply:

### **A. MOBILIZATION** - (Line item A-1 on bid response form)

- 1. Scope of Work** – Mobilization consists of all preparatory work and operations, which will enable CONTRACTOR to start and finish the project. The location of the project site is Sections 31 and 32, T144N, R88W and Section 36, T144N, R89W as shown on **Figure 2**. Mobilization includes the movement of necessary items such as personnel, equipment, supplies, facilities, and incidentals to and from the project site.

**2. Construction Requirements** – CONTRACTOR shall:

- a. Construction Permit - Obtain a Construction General Permit from the North Dakota Department of Environmental Quality prior to beginning work. The Construction General Permit consists of a Notice of Intent, a Storm Water Pollution Prevention Plan (SWPPP), and Site Investigation Form. In addition, CONTRACTOR shall adhere to the Construction, Operation, and Maintenance Requirements published by the North Dakota Department of Environmental Quality. All permits and requirements can be found at [https://deq.nd.gov/WQ/2\\_NDPDES\\_Permits/7\\_Stormwater/stw.aspx](https://deq.nd.gov/WQ/2_NDPDES_Permits/7_Stormwater/stw.aspx). The Storm Water Pollution Prevention Plan (SWPPP) must be on-site, current, and available for inspection.
- b. Equipment List – Prior to beginning any work, CONTRACTOR shall provide the Commission’s Project Manager with a list of major equipment to be used for the work. The list must include the name and description, approximate date of manufacture, condition, hours, and the hourly rate for each piece of equipment.
- c. Sanitary Facilities - CONTRACTOR shall furnish, install, and maintain ample sanitary facilities for all workers at the project sites. Costs of furnishing, installing, and maintaining the sanitary facilities must be included in the lump sum price for mobilization and no additional compensation will be allowed.
- d. Utility Locates - Prior to beginning any work, CONTRACTOR must determine and mark the presence of **ALL public and private** utility facilities including water lines, septic tanks and drain fields within the project areas. The North Dakota “One Call” utility locating Hot Line phone number is **811** or **1-800-795-0555**, and the website is [www.ndonecall.com](http://www.ndonecall.com). One Call does NOT locate privately owned and operated facilities. No additional compensation will be allowed. **A natural gas pipeline is located in Section 32, T144N, R88W, and its approximate location is noted on Sheet 2 – Project Site Map. No excavation work is proposed near the pipeline.**
- e. Operations Space - Space required for equipment or material storage or the like must be provided by CONTRACTOR. Neither public nor private property must be used for these purposes without express written consent of the property owner or lessee; and, if requested, copies of consent must be furnished to Commission. All sites must be restored to their original condition by and at CONTRACTOR’s expense unless exceptions are specifically outlined in the written consent.
- f. Fugitive Dust Control – Unpaved roads, trails or parking areas must be maintained so as to control road dust as well as dust occurring on other exposed surfaces by measures such as watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices as directed by the Commission’s Project Manager.
- g. Site Access - Any work needed to access the site will be the responsibility of CONTRACTOR and must be included in the bid price for mobilization. Accessibility includes but is not limited to, fence removal and subsequent replacement or repair required for site access, surface grading, protection from overhead utility lines, snow removal and bridging or planking. All anticipated site access requirements including road preparation, fence removal, and replacement are included as bid items. Reasonable compensation must be paid by CONTRACTOR to the landowner for any damage to crops or structures.

**3. Method of Measurement** – Mobilization will be measured on a lump sum basis. The total mobilization must not exceed 10% of the total contract bid. This item will be allocated between mobilization (50%) and demobilization (50%).

**4. Basis of Payment** – Payment will be made at the lump sum unit price. Payment is full compensation for furnishing all equipment, labor, materials, and incidentals to complete the work as specified. Payment will be made in two separate installments, one half for mobilization and the remaining for de-mobilization.

**B. SITE ACCESS - ROAD PREPARATION** - (Line item B-2 on bid response form)

**1. Scope of Work** – This work item consists of hauling, spreading, and providing 650 tons of approved Class 5 gravel onto the access road.

2. **Construction Requirements** – Prior to accessing the site, the contractor must repair the existing access road to ensure travel to the site will not be impaired. The access road is identified on **Sheet 9 – East Tract Repair Areas**. Class 5 Gravel must be from a NDDOT approved source. The NDDOT Material Source Certificate of Approval must be provided to the Commission's Project Manager before operation. These certificates can be accessed at: [NDDOT Material Source Certificates of Approval](#). The road will be maintained by CONTRACTOR and if necessary, additional Class 5 gravel will be hauled and spread. Additional gravel will be required on the relocated road identified on **Sheet 10 – East Tract Slope Stabilization Area**. This gravel will be provided and spread at the same rate.
3. **Method of Measurement** – The Class 5 gravel will be measured on a per ton basis. Cost to grade the road and spread the gravel and will be included in the per ton price.
4. **Basis of Payment** – Payment will be made at the unit price basis as measured by the Commission's Project Manager or load tickets provided by the contractor. Payment is full compensation for furnishing all labor, materials, equipment and incidentals required to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

**C. SITE PREPARATION** – (Line item C-3 on bid response form)

1. **Scope of Work** – This work item consists of clearing approximately 16 tree stumps located outside of the abandoned mine pit and other inert refuse material. Tree stumps and other inert waste will be buried in the bottom of the pit (See **Sheet 4 – Central Tract Existing Topography**).
2. **Construction Requirements** – Prior to removing topsoil, the site must be cleared of all inert waste, trees, brush, and nuisance material. The material must be disposed of in accordance with all applicable laws and guidelines. Material may be buried on site according to the North Dakota Department of Environmental Quality Guideline 38 – Beneficial Use of Inert Wastes and must have a minimum cover of 10 feet of spoil material.
3. **Method of Measurement** – Site Preparation will be measured on a lump sum basis.
4. **Basis of Payment** – Payment will be made at the lump sum unit price. Payment is full compensation for furnishing all labor, materials, equipment and incidentals required to complete the work as specified.

**D. WATER MANAGEMENT** – (Line item D-4 on bid response form)

1. **Scope of Work** – This item of work pertains to the movement and control of water on the project sites. The Central Tract work area is currently dry. However, melting winter snow and spring precipitation could create ponding water in portions of the abandoned mine pit located in the W $\frac{1}{2}$  Section 31, T144N, R88W. CONTRACTOR will be required to remove any ponded water prior to construction.
2. **Construction Requirements** – If water has ponded in the work area, CONTRACTOR will be required to pump and discharge the water in accordance with all laws and rules. Appropriate measures should be taken to ensure discharge creates no significant erosion. No water may be discharged off the project site.
3. **Method Measurement** – Water Management will be measured as a lump sum (L.S.) basis.
4. **Basis of Payment** – Payment will be made at the lump sum unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified.

**E. SILT FENCING** – (line item E-5 on bid response form)

1. **Scope of Work** – This item of work includes the installation and materials for 3,500 linear feet of silt fence. Approximate fence lengths and locations are shown on **Sheet 6 - Central Tract Post-Reclamation Topography**, **Sheet 10 – East Tract Slope Stabilization Area**, and **Sheet 11 – Low Water Crossing**. Silt fences must also be installed around topsoil and subsoil stockpile areas to control sedimentation, which is estimated to be 500 linear feet of silt fence. Topsoil and subsoil pile locations must be approved by the Commission's Project Manager.

2. **Construction Requirements** – Silt fence must be installed on the established perimeter of the work site **prior to** any construction at the location shown on the Sheets.
  - a. **The silt fencing must be:**
    - i. A standard three (3) foot fence.
    - ii. Installed by creating a narrow trench that is six inches (6”) deep, inserting the silt fence, and compacting the soil on either side.
    - iii. Supported with stakes inserted deeper than one (1) foot and at an interval of four (4) feet.
    - iv. Regularly monitored. Sediment must be cleared when it reaches half the height of the fence. If the fence sustains any damage, repairs must be made within 24 hours.
    - v. Removed upon completion of the project or as otherwise directed by the Commission’s Project Manager.
3. **Method of Measurement** – Silt fence will be measured on a per linear foot basis.
4. **Basis of Payment** – Payment will be made at the unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission’s Project Manager may allow progressive partial payment of this item.

**F. FENCING – CENTRAL TRACT**– (line item F-6 on bid response form)

1. **Scope of Work** – This item consists of the installation and materials for 2,900 feet of barbed wire fence shown on **Sheet 8 – Central Tract Fencing and Well Design**.
2. **Construction Requirements** – The fence must be constructed in accordance with the manufacturer’s guidelines and recommendations and NDDOT Specifications. The fence must be constructed using 4-strand barbed wire and 5.5 foot steel posts spaced every 16.5 feet. The barbed wire must be Red Brand 12-1/2 gauge 2-point wire or equivalent. The steel posts must be 1.33 pounds per foot. Any horizontal angle in the fence having a deflection of more than 15 degrees must be braced. Approximately 2,900 feet of fence and five corner braces must be installed as shown on **Sheet 8 - Central Tract Fencing and Well Design**. Six double brace assemblies and depression fence must be included in the price for the fencing. One 16-foot wire gate and one 16-foot rigid steel gate must be installed as shown on **Sheet 8**. Surface disturbance or damage caused by the installation of the fence must be remediated by the CONTRACTOR as directed by the Commission’s Project Manager.
3. **Method of Measurement** – Measurement will be linear feet of fence installed. Fence removal will be the responsibility of the landowner.
4. **Basis of Payment** –Payment will be made at the unit price. Such payment will constitute full payment for all labor, materials, equipment, and any other incidentals required to complete the work. Commission’s Project Manager may allow progressive partial payment of this item.

**G. FENCING – EAST TRACT** – (line item G-7 on bid response form)

1. **Scope of Work** – This item consists of 1.) The removal of approximately 675 feet of existing wire fence along the spoil embankment and 2.) Installation and materials for a new fence after reclamation is completed.
2. **Construction Requirements** – The existing fence as shown on **Sheet 10 – East Tract Slope Stabilization Area** must be removed prior to any construction or earthwork activities. The fencing materials shall be disposed of in accordance with all state and local laws and guidelines. Once reclamation has been completed **and approved by the Commission’s Project Manager**, a permanent fence must be re-installed in the same location. The fence must be constructed in accordance with the manufacturer’s guidelines and recommendations and NDDOT Specifications. The fence must be constructed using 4-strand barbed wire and 5.5 foot steel posts spaced every 16.5 feet. The barbed wire must be Red Brand 12-1/2 gauge 2-point wire or equivalent. The steel posts must be 1.33 lbs./ft. A horizontal angle in the fence having a deflection of more than 15 degrees must be braced accordingly. Approximately 675 feet of fence and two corner braces must be installed as shown on **Sheet 10**. Double brace assemblies and depression fence must be included in the price for the fencing. Surface disturbance or damage caused by the installation of the fence must be remediated by the contractor as directed by the

Commission's Project Manager.

3. **Method of Measurement** – Measurement will be made of linear feet of fence installed.
4. **Basis of Payment** – Payment will be made at the unit price. Such payment will constitute full payment for all labor, materials, equipment, and any other incidentals required to complete the work. Commission's Project Manager may allow progressive partial payment of this item.

**H. TOPSOIL HANDLING**– (line item H-8 on bid response form)

1. **Scope of Work** – All available topsoil must be removed, stockpiled and re-spread as directed by the Commission's Project Manager. An estimated 2,750 cubic yards of topsoil will be removed, stockpiled and re-spread on the Central Tract. An estimated 500 cubic yards of topsoil will be removed, stockpiled and re-spread on the East Tract. Topsoil is generally defined as the top four inches (4") of spoil supporting vegetative growth; however, topsoil material thickness may vary in depth throughout the site. Any original topsoil encountered during removal of the spoil material may be segregated from the spoil material and stockpiled at the discretion of the Commission's Project Manager. **Topsoil handling described in Section K. Earthwork – West Tract is not included in this item and all associated costs should be included in the bid amount for that section.**
2. **Construction Requirements** – **Silt fence must be installed and approved by the Commission's Project Manager prior to topsoil removal.** Topsoil material must be removed and stockpiled in the work areas as directed by the Commission's Project Manager. Stockpile locations must not interfere with any other earthwork.
  - a. **Topsoil must be:**
    - i. Removed in a uniform and neat manner, as completely as possible, and without mixing with poor quality material.
    - ii. Stockpiled in an area approved by the Commission's Project Manager.
    - iii. The Commission's Project Manager must approve topsoil removal before CONTRACTOR begins subsoil removal.
  - b. **Re-spread to a uniform depth.**
    - i. Topsoil must be respread using a scraper or other method approved by the Commission's Project Manager.
    - ii. Topsoil must be tilled to a depth of at least four (4) inches after soil amendments or manure has been spread on the area.
3. **Method of Measurement** – Topsoil handling will be measured on a per cubic yard basis. Topsoil stockpile volumes will be determined by surveys conducted by the Commission's Project Manager. Measurement will be made without regard to any actual or perceived swell that the material may experience.
4. **Basis of Payment** – Payment will be made at the unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

**I. SUBSOIL HANDLING**– (line item I-9 on bid response form)

1. **Scope of Work** – All available subsoil must be removed, stockpiled and re-spread as directed by the Commission's Project Manager. An estimated 11,250 cubic yards of subsoil will be removed, stockpiled and re-spread.

Subsoil is generally defined as approximately thirty (30") inches of brown soil below topsoil; however, subsoil material thickness may vary in depth throughout the site. Approximate subsoil removal depths are shown on **Sheet 5 - Central Tract Topsoil & Subsoil Salvage Areas**. Any subsoil quality material encountered during removal of the spoil material may be segregated from the spoil material and stockpiled at the discretion of the Commission's Project Manager.

2. **Construction Requirements – The Commission’s Project Manager must approve topsoil removal before contractor begins subsoil removal.** Subsoil material must be removed and stockpiled adjacent to work areas as directed by the Commission’s Project Manager. Stockpile locations must not interfere with any other earthwork.
  - a. **Subsoil must be:**
    - i. Removed in a uniform and neat manner, as completely as possible, and without mixing with poor quality material.
    - ii. Stockpiled in an area approved by the Commission’s Project Manager.
    - iii. The Commission’s Project Manager must approve subsoil removal before the contractor can begin earthmoving operations.
  - b. **Re-spread to a uniform depth.**
    - i. Spoil grading must be approved by the Commission’s Project Manager before subsoil can be respread. Subsoil must be respread using a scraper or other method approved by the Commission’s Project Manager.
    - ii. Subsoil must be reasonably level and uniform prior to topsoil respread,
3. **Method of Measurement** – Subsoil handling will be measured on a per cubic yard basis. Subsoil stockpile volumes will be determined by surveys conducted by the Commission’s Project Manager. Measurement will be made without regard to any actual or perceived swell that the material may experience.
4. **Basis of Payment** – Payment will be made at the unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission’s Project Manager may allow progressive partial payment of this item.

J. **EARTHWORK – CENTRAL TRACT**– (line item J-10 on bid response form)

1. **Scope of Work** – This item consists of the excavation of earthen material from spoil piles and backfilling and backsloping the highwalls and pits as shown on **Sheets 4** through **Sheet 7** and as described herein.

An estimated 115,000 cubic yards of earthen material must be excavated from the existing spoil pile areas shown on **Sheet 4 – Central Tract Existing Topography**.

2. **Construction Requirements – The Commission’s Project Manager must approve topsoil and subsoil removal before contractor begins moving spoil.** The spoil piles, mine pit, and highwall shown on **Sheet 4** must be backsloped, backfilled and graded to the topography shown on **Sheet 6 – Central Tract Post-Reclamation Topography**. The cut and fill depths on the Central Tract are shown on **Sheet 7 – Central Tract Cut and Fill**.

Haul distances will vary. CONTRACTOR shall be familiar with the volume of material to be placed in the pits. The spoil pile material to be excavated is classified as common excavation. The material to be moved has varying amounts of rock, gravel, sand, silt, and clay with differing moisture contents. The spoil material is inherently unstable with the potential for large rocks and foreign material. No extra payment will be made for rock that is moved into the pit and highwall fill areas. Abandoned mine sites may contain natural springs that may affect equipment movement and material placement. No extra payment will be made for any muddy or wet conditions encountered in the cut or fill areas.

3. **Method of Measurement** – Earthwork will be measured on a cubic yard basis. The reclaimed area will be surveyed by the Commission’s Project Manager to verify they are at the designed post-reclamation grade.
4. **Basis of Payment** – Payment will be made at the unit price for volume of earth moved as measured by the Commission’s Project Manager. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission’s Project Manager may allow progressive partial payment of this item.

**K. EARTHWORK – WEST TRACT**– (line item K-11 on bid response form)

1. **Scope of Work** – This item consists of reclaiming and stabilizing numerous settlement and erosional features located in Section 36, T144N, R89W. Grading, compacting, spreading, and providing soil amendments, tilling, seeding, and mulching all disturbed areas as directed.
2. **Construction Requirements** – This will include: Stripping and stockpiling topsoil in and around subsidence and erosion features and borrow areas. Filling the subsidence and erosion features with soil material and compacting the fill to ensure long-term stability. An estimated 500 cubic yards of earthen material must be excavated from the existing spoil settlement area shown on **Sheet 3 - West Tract Erosion and Subsidence Features**. Haul distances will vary. CONTRACTOR shall be familiar with the volume of material to be placed in the pits. The soil material to be excavated is classified as common excavation. The material to be moved has varying amounts of rock, gravel, sand, silt, and clay with differing moisture contents. The soil material is inherently unstable with the potential for large rocks and foreign material. No extra payment will be made for rock that is moved into the subsidence and erosion features. Abandoned mine sites may contain natural springs that may affect equipment movement and material placement. No extra payment will be made for any muddy or wet conditions encountered in the cut or fill areas.
3. **Method of Measurement** – Earthwork will be measured on a cubic yard basis. A borrow site within the West Tract project boundary will be selected and surveyed by the Commission's Project Manager to determine pay volumes. Rip rap installation, soil amendment incorporation, and other erosion control measures will be installed and paid in accordance with other sections of the IFB.
4. **Basis of Payment** – Payment will be made at the unit price for volume of earth moved as measured by the Commission's Project Manager. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

**L. SLOPE STABILIZATION EARTHWORK**– (line item L-12 on bid response form)

1. **Scope of Work** – This item consists of the excavation of earthen material from an unstable slope and spreading the spoil in the area described on **Sheet 10 - East Tract Slope Stabilization**. An estimated 5,000 cubic yards of earthen material must be excavated.
2. **Construction Requirements** – The unstable spoil piles, piping area, and spoil disposal areas shown on **Sheet 10 – East Tract Slope Stabilization Area** must be backsloped, backfilled and graded to the topography shown on the sheet. An estimated 5,000 cubic yards of earthen material must be excavated. The area is unstable and contain large piping and erosion features. Care should be taken to ensure the safety of the equipment operators and other personnel. Haul distances will vary. CONTRACTOR shall be familiar with the volume of material to be moved. The spoil pile material to be excavated is classified as common excavation. The material to be moved has varying amounts of rock, gravel, sand, silt and clay with differing moisture contents. The spoil material is inherently unstable with the potential for large rocks and foreign material. No extra payment will be made for rock that is moved into the pit and highwall fill areas. The spoil disposal areas will be graded to blend into the surrounding terrain and provide a flat surface to spread and incorporate manure. The final spoil grade will require approval of the Commission's Project Manager before manure spreading and incorporation. Abandoned mine sites may contain natural springs that may affect equipment movement and material placement. No extra payment will be made for any muddy or wet conditions encountered in the cut or fill areas.
3. **Method of Measurement** – Earthwork will be measured on a cubic yard basis. The spoil cut areas will be surveyed by the Commission's Project Manager to determine cut volume and verify they are at designed post-reclamation grade.
4. **Basis of Payment** – Payment will be made at the unit price for volume of earth moved as measured by the Commission's Project Manager. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

**M. CORRUGATED METAL PIPE REMOVAL AND CONCRETE MAT INSTALLATION**– (line item M-13 on bid response form)

1. **Scope of Work** – This item consists of the excavation and removal of an existing corrugated metal pipe (CMP) and the installation of an articulated concrete mat erosion control system. Erosion and piping are evident around the existing CMP.
2. **Construction Requirements** – The existing 24-inch CMP must be removed and a new articulated concrete mat erosion control system will be provided and installed in accordance with the manufacturer's guidelines and recommendations (See **Sheet 11 – East Tract Low Water Crossing**).
  - a. The existing 24-inch CMP must be excavated and disposed of in accordance with all applicable laws and guidelines. All excess soil must be graded into the adjacent areas where erosion is evident. Once final grade is approved by the Commission's Project Manager, 100 CY of manure will be hauled, spread over the areas disturbed by spoil disposal, and incorporated into the spoil with three tillage passes to a depth of four (4) inches. The area will be seeded and mulched in accordance with Section Q - Fertilizing Seeding and Mulching.
  - b. The CONTRACTOR will provide and install a 12-foot by 48-foot articulated concrete mat erosion control system (CREFLEX-40F or equivalent product).
    - i. Install 20 tons of Class 5 gravel as a subbase (See **Sheet 11 – East Tract Low Water Crossing**).
    - ii. The concrete erosion control blanket shall have a geotextile fabric backing of 7-ounce minimum of 40 pounds per square foot.
    - iii. Concrete used to fabricate the erosion control shall have a compressive strength of 4,000 pounds per square inch.
    - iv. The articulated concrete mat erosion control system shall be anchored in accordance with the manufacturer's guidelines and recommendations.
3. **Method of Measurement** – Culvert excavation and removal, grading, and installation of the articulated concrete mat erosion control system will be measured on a lump sum basis. Class 5 gravel will be measured on a per ton basis under bid item B-2 and manure will be measured on a per cubic yard basis under bid item P-18.
4. **Basis of Payment** – Payment will be made at the lump sum unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified.

**N. EROSION REPAIR / ROCK STABILIZATION**– (line item N-14 and N-15 on bid response form)

1. **Scope of Work** – This item consists of grading an erosion gully, providing and installing rock rip rap in two existing rock channels and one new rock channel in Section 36, T144N, R89W. Grading an erosion channel and providing and installing geosynthetic fabric and rock rip rap in the SE ¼ Section 32, T144N, R88W. All grading costs will be included in line item N-15.
2. **Construction Requirements** - Approximately 50 cubic yards of in place soil will be graded to blend the head cut of an erosion gully located in the SE ¼ of Section 32, T144N, R88W into the surrounding topography (See **Sheet 12 – East Tract Erosion Repair/Rock Channel**). CONTRACTOR must provide and install a geosynthetic fabric Type RR meeting the ND DOT Specifications and (BABA) Build America Buy American requirements. The geosynthetic Type RR fabric must be installed in accordance with the manufacturer's recommendations and must be approved by the Commission's Project Manager prior to installation. Approximately 200 sq. yd. of geosynthetic fabric must be installed and approximately 250 tons of Grade II or III (NDDOT Table 256-01) rock rip rap must be hauled and placed in the bottom of the erosion gully. One erosion area identified **Sheet 3 – West Tract Erosion and Subsidence Features** will require grading, the installation of approved geosynthetic fabric (120 sq. yd.), and 50 tons of Grade II or III rock rip rap. Two existing drainage channels located in the SE ¼ of Section 36, T144N, R89W identified on **Sheet 3 – West Tract Erosion and Subsidence Features** will require approximately 100 tons of Grade II or III rip rap but not require grading or geosynthetic fabric.

**Table 256-01  
Riprap Gradations**

Grade I		Grade II		Grade III	
Size (Inches)	Percent Smaller	Size (Inches)	Percent Smaller	Size (Inches)	Percent Smaller
20	100	28	100	36	100
18	70-90	22	30-80	29	55-85
15	40-60	16	20-50	24	35-50
10	0-10	10	0-5	10	10-15
6	0-2	6	0-2	6	0-2

3. **Method of Measurement** – Erosion Repair / Rock Stabilization rip-rap will be measured on a per ton basis. Erosion control geosynthetic Type RR mat will be measured on a square yard basis.
4. **Basis of Payment** – Payment for rock rip rap will be made at the per ton price basis as measured by the Commission’s Project Manager or load tickets provided by the contractor. Payment for geosynthetic mat will be made at the per square yard as measured by the Commission’s Project Manager. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission’s Project Manager may allow progressive partial payment of this item.

**O. SOIL AMENDMENT INCORPORATION**– (line items O-16 and O-17 on bid response form)

1. **Scope of Work** – This includes providing, spreading, and tilling a soil amendment. The total area is approximately 16 acres as directed by the Commission’s Project Manager, including the final graded erosion features, respread topsoil, and other areas.
2. **Construction Requirements** – Immediately following earthwork and topsoil respread operation, soil amendments will be spread and incorporated as follows:
  - a. A blend of 400 lbs./acre of soil sulfur (Tiger90 or equivalent), 10,000 lbs./acre of gypsum, 500 lbs./acre of Source X or equivalent leonardite product, and a soil microbial product at the manufacturer’s recommended application rate will be spread on the disturbed areas in Section 36, T144N, R89W. Additional areas where there is little vegetative cover will be included. Total area is estimated at 4 acres. These areas will be identified by the Commissions Project Manager and marked in the field. The amendments will be incorporated with three passes of a light disk or harrow.
  - b. A blend of 200 lbs./acre of soil sulfur (Tiger90 or equivalent), 5,000 lbs./acre of gypsum, 500 lbs./acre of Source X or equivalent leonardite product, and a soil microbial product at the manufacturer’s recommended application rate will be spread on the disturbed areas in W½ Section 31, T144N, R88W. Total area is estimated at 12 acres. The amendments will be incorporated into the soil with three tillage passes to a depth of six (6”) inches.
  - c. Rock-picking, if deemed necessary by the Commission’s Project Manager.
  - d. Removal and disposal of any inert or construction waste in the area.
  - e. Final light disking or harrowing.
3. **Method of Measurement** – Soil amendments will be measured on a per acre basis.
4. **Basis of Payment** – Payment will be made at the per acre basis as measured by the Commission’s Project Manager. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission’s Project Manager may allow progressive partial payment of this item.

**P. MANURE HANDLING**– (line item P-18 on bid response form)

1. **Scope of Work** – Haul, spread, and till approximately 1,500 cubic yards of manure from a site located in SW ¼ Section 33, T144N, R88W in the disturbance area shown on **Sheet 10 – East Tract Slope Stabilization Area**. Haul, spread, and till approximately 100 cubic yards of manure as shown on **Sheet 11 – East Tract Low Water**

**Crossing.** The CONTRACTOR will load, haul, spread, and till the manure into the respread topsoil and spoil as directed by the Commission's Project Manager.

2. **Construction Requirements** – The manure must be removed from the borrow site and hauled to the project site and spread uniformly across the respread topsoil and spoil. This will be done in coordination with the landowner and approved by the Commission's Project Manager. Approximately 1,500 yards of material will be hauled four (4) miles to the East Tract Slope Stabilization Site. Approximately 100 yards of manure will be hauled six (6) miles to the East Tract Low Water Crossing Site. The manure will be spread evenly across the disturbed area and incorporated into the topsoil with three tillage passes to a depth of six (6) inches. The CONTRACTOR will be responsible for removing the manure, blending the final borrow area, and repairing any damage caused by the CONTRACTOR at the farmstead.

**Manure must be:**

- a. Removed in a uniform and neat manner, as completely as possible, without mixing with poor quality material or damaging the existing structures.
  - b. Hauled to the project sites following all applicable laws and regulations and will be covered during transport.
  - c. Respread on approved topsoil to a uniform depth across the site and approved by the Commission's Project Manager prior to the beginning of tillage.
  - d. Tilled to a depth of at least six (6) inches in three separate passes.
  - e. All roads, haulage ways, structures, access points and any other areas which experience damage due to equipment or personnel movement or activity must be restored to a pre-construction state as directed by the Commission's Project Manager.
3. **Method of Measurement** – Manure handling will be measured on a per cubic yard basis. Manure stockpile volumes will be determined by surveys if possible or by load counts if agreed to by both the contractor and the Commission's Project Manager. Measurement will be made without regard to any actual or perceived swell that the material may experience.
  4. **Basis of Payment** – Payment will be made at the unit price for volume as measured by the Commission's Project Manager. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

**Q. FERTILIZING, MULCHING AND SEEDING**– (line item Q19 and Q-20 on bid response form)

1. **Scope of Work** – This item of work includes the fertilizing, mulching, and seeding of approximately 20 acres of disturbed areas as directed by the Commission's Project Manager, including the final graded spoil piles, pits and highwall areas.

Site	Acres
West Site	4.0
Central Site	12.0
East Site	4.0

2. **Construction Requirements** – A firm seedbed must be prepared immediately following any earthwork, soil amendment, or topsoil handling operations as follows:
  - a. Blading with motorgrader (both north/south and east/west directions).
  - b. Deep ripping (18 to 24 inches) any areas compacted by vehicle traffic as directed by the Commission's Project Manager.
  - c. Chisel-plowing or disking to initially break up clods and work the soil.

- d. Rock-picking, if required by Commission’s Project Manager.
- e. Removal and disposal of any inert or construction waste in the area.
- f. Final light disking or harrowing.

**All disturbed areas must be:**

- i. Mulched with straw mulch at a minimum application rate of two tons per acre. Mulch must be anchored to the surface by crimping. The mulch must be workable in texture.
- ii. Fertilized with a fertilizer blend of 20% nitrogen, 10% Phosphate, 10% potash, 2% iron, and 8% sulfur or equivalent at a minimum application rate of 200 pounds per acre.
- iii. Seeded as required by “ND DOT 2023 Standard Specifications for Road and Bridge Construction”, Sec. 251 and according to the seed mixtures listed below. Seed shall be treated with a mycorrhizal inoculum or equivalent at the manufacturer’s recommended rate. Seeding must be performed along the contour utilizing a grass seed drill and drilled to a depth of one-half inch. The seed mixture may be varied or changed at the discretion of the Commission’s Project Manager. All areas must be seeded.

**Seed Mixture:** (Certified tickets are required) Section 36, T144N, R89W

Species	Variety	Pure Live Seed (lbs / Acre)
Oats	Any certified seed variety	10
Western wheatgrass	Rodan or Rosanna	16
Green needlegrass	Lodorm	8
Sideoats gramma	Killdeer or Pierre	4
Little bluestem	Campen	0
Switchgrass	NDG-965-98	0
Slender wheatgrass	Primar or Revenue	10
<b>TOTAL</b>		<b>48</b>

**Seed Mixture:** (Certified tickets are required) Section 31 and 32, T144N, R88W

Species	Variety	Pure Live Seed (lbs / Acre)
Oats	Any certified seed variety	30
Western wheatgrass	Rodan or Rosanna	24
Green needlegrass	Lodorm	12
Sideoats gramma	Killdeer or Pierre	6
Little bluestem	Campen	6
Switchgrass	NDG-965-98	9
Slender wheatgrass	Primar or Revenue	15
<b>TOTAL</b>		<b>102</b>

- 3. **Method of Measurement** – Fertilizing, Mulching and Seeding will be measured on a per acre basis.
- 4. **Basis of Payment** – Payment will be made at the per acre basis as measured by the Commission’s Project Manager. Payment is full compensation for furnishing all labor, materials, equipment and incidentals required to complete the work as specified. Commission’s Project Manager may allow progressive partial payment of this item.

**R. EROSION CONTROL BLANKET**– (line item R-21 on bid response form)

- 1. **Scope of Work** – Provide and install 1,540 linear feet of erosion control blankets within constructed drainage channels on the final graded slopes.

2. **Construction Requirements** – Several drainage channels, 12 feet in width, must be constructed as shown on **Sheet 6 – Central Tract Post-Reclamation Topography**. Erosion control blankets with a minimum of 12 feet in width must be installed along the full length of the channel after the channel has been seeded. The erosion control blanket will be installed and anchored in accordance with the manufacturer's guidelines, recommendations, and to NDDOT Specification. CONTRACTOR shall furnish all materials necessary to complete the installation of the erosion control blankets and submit product information sheets to the Commission's Project Manager for approval prior to ordering materials.
3. **Method of Measurement** – Erosion control blankets will be measured on a linear foot basis.
4. **Basis of Payment** – Payment will be made at the unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

S. **STRAW WATTLES**– (line item S-22 on bid response form)

1. **Scope of Work** – Provide and install 1,400 lineal feet of straw wattles within the disturbed areas, or as instructed by the Commission's Project Manager.
2. **Construction Requirements** – The straw wattles must be placed on the newly established, final graded slopes after seeding operations are completed. Approximately 1,400 feet of wattles will be used as shown on **Sheet 10 - East Tract Slope Stabilization Area**. The straw wattles must be installed and anchored according to the manufacturer's instructions and NDDOT Standard Specifications Section 261 <https://www.dot.nd.gov/dotnet/supplspecs/standardspecs.aspx>. The straw wattles must be manufactured from straw wrapped in biodegradable tubular netting, and approximately 12 inches in diameter. A trench must be constructed so that runoff does not run under or around the roll. Wattles must be staked with 24-inch wooden stakes at four feet on center. The rolls must be installed perpendicular to water movement at an increment as directed by the Commission's Project Manager.
3. **Method of Measurement** – Straw wattles will be measured on a lineal foot basis.
4. **Basis of Payment** – Payment will be made at the unit price. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

T. **SOLAR WELL AND TANK INSTALLATION**– (line item T-23 and T-24 on bid response form)

1. **Scope of Work** – This item consists of 1.) The installation of a well approximately 250 feet deep including minimum 4" casing, screen, and sand pack. 2.) Installation of a solar pump system including solar panels, pump, and controls. 3.) Installation of a storage and tank system that will have a minimum capacity of 6,500-gallons. 4.) Installation of 2" Schedule 40 PVC pipeline including couplings (750') buried at a minimum 6-foot depth 5.) Two 13' rubber tire livestock watering tanks with bottoms. 6.) Installation of livestock exclusion fence (steel continuous or 2X10 lumber) is required to protect the tanks, solar panels, control system, well, and other required plumbing.
2. **Construction Requirements** – The installation will be in accordance with all specifications and requirements provided in the drawings by the NRCS and in accordance with USDA NRCS National Engineering Handbook and their specifications. The location of the well, solar panels, pipeline, two storage tanks, and associated fencing are shown on **Sheet 8 – Central Tract Fencing and Well Design**.
3. **Method of Measurement** – Measurement will be made of vertical feet of completed well and lump sum for all other items required to complete the task.
4. **Basis of Payment** – Payment will be made at the lineal foot price for the completed well. Payment will be made as a lump sum for all other items to complete the task. Such payment will constitute full payment for all labor, materials, equipment, and any other incidentals required to complete the work. Commission's Project Manager may allow progressive partial payment of this item.

**U. CLEAN-UP**– (line item U-25 on bid response form)

1. **Scope of Work** – This item consists of the clean-up of the project sites and any off-site areas used for the project such as parking or equipment storage areas and the restoration of all damaged or destroyed real property including, but not limited to, utilities, wells, structures, septic systems, yards, fences, roads, approaches, haulage ways, driveways, access points, crops, and ditches.
2. **Construction Requirements** – Any replaced or repaired items must be of like quality and workmanship, subject to approval of the Commission's Project Manager. All cut and fill survey stakes, silt fencing, and utility flags must be removed from the site within three (3) days of verbal notice from the Commission's Project Manager.

Restoration must include recontouring or shaping, reseeding, graveling, resurfacing, and repair of roads as needed to achieve pre-construction condition.

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

3. **Method of Measurement** – Clean-up will be measured on a lump sum basis.
4. **Basis of Payment** – Payment will be made at the lump sum unit price. Clean-up and restoration must be approved by the Commission's Project Manager prior to any payment. Payment will be made only at the completion of the project and upon fulfillment of this item. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified.

**V. POINTS OF APPROVAL**

1. **Scope of Work** –The contractor is advised that a number of work items will require expressed approval by the Project Manager prior to the contractor continuing with or beginning other work items. Such items include, but may not be limited to:
  - a. A detailed construction schedule must be submitted and approved by the Commission's Project Manager prior to beginning any other work items.
  - b. D. Silt Fencing approval must be given prior to F. Topsoil Salvage.
  - c. F. Topsoil Salvage approval must be given prior to G. Subsoil Salvage
  - d. F. Topsoil Salvage and G. Subsoil Salvage approval must be given prior to H. Earthwork.
  - e. H. Earthwork shall be given priority over other work items and approval must be given before J. Fertilizing, Mulching and Seeding, and Installation of the K. Erosion Control Blanket, and L. Straw Wattles.
  - f. Any variance in fertilizer or seed mixture must be submitted and approved by the Commission's Project Manager prior to the beginning of seeding.
  - g. The Commission's Project Manager must approve the geotextile weave fabric, silt fencing, straw wattles and vegetative erosion control blanket prior to ordering by CONTACTOR.

**400. OWNER RESPONSIBILITIES**

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.

**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. The current Disadvantaged Business Enterprise (DBE) information can be accessed on the NDDOT website at the following link: <https://www.dot.nd.gov/about-nddot/civil-rights/disadvantaged-business-enterprise-dbe-program>.

**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 ND Department of Transportation Standard Specifications for Road And Bridge Construction.

**700. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS**

The provisions of Form FHWA-1273 generally apply to all Federal-aid construction projects, and must be physically incorporated into the construction contract, subcontracts and lower-tier subcontracts. Form FHWA-1273 – Revised October 23, 2023 has been included in Section 10 of this IFB.

## **Attachments**

**Figures 1 – 2 (Maps)**

### **Designed Plan Sheets**

**(attached separately as 2024 Dakota Collieries Design Plan Sheets)**

- Sheet 1 – Cover Sheet**
- Sheet 2 – Project Site Map**
- Sheet 3 – West Tract Erosion and Subsidence Features**
- Sheet 4 – Central Tract Existing Topography**
- Sheet 5 – Central Tract Topsoil & Subsoil Salvage Areas**
- Sheet 6 – Central Tract Post-Reclamation Topography**
- Sheet 7 – Central Tract Cut and Fill**
- Sheet 8 – Central Tract Fencing and Well Design**
- Sheet 9 – East Tract Repair Areas**
- Sheet 10 – East Tract Slope Stabilization Area**
- Sheet 11 – East Tract Low Water Crossing**
- Sheet 12 – East Tract Erosion Repair/Rock Channel**

Figure 1 – Index Map

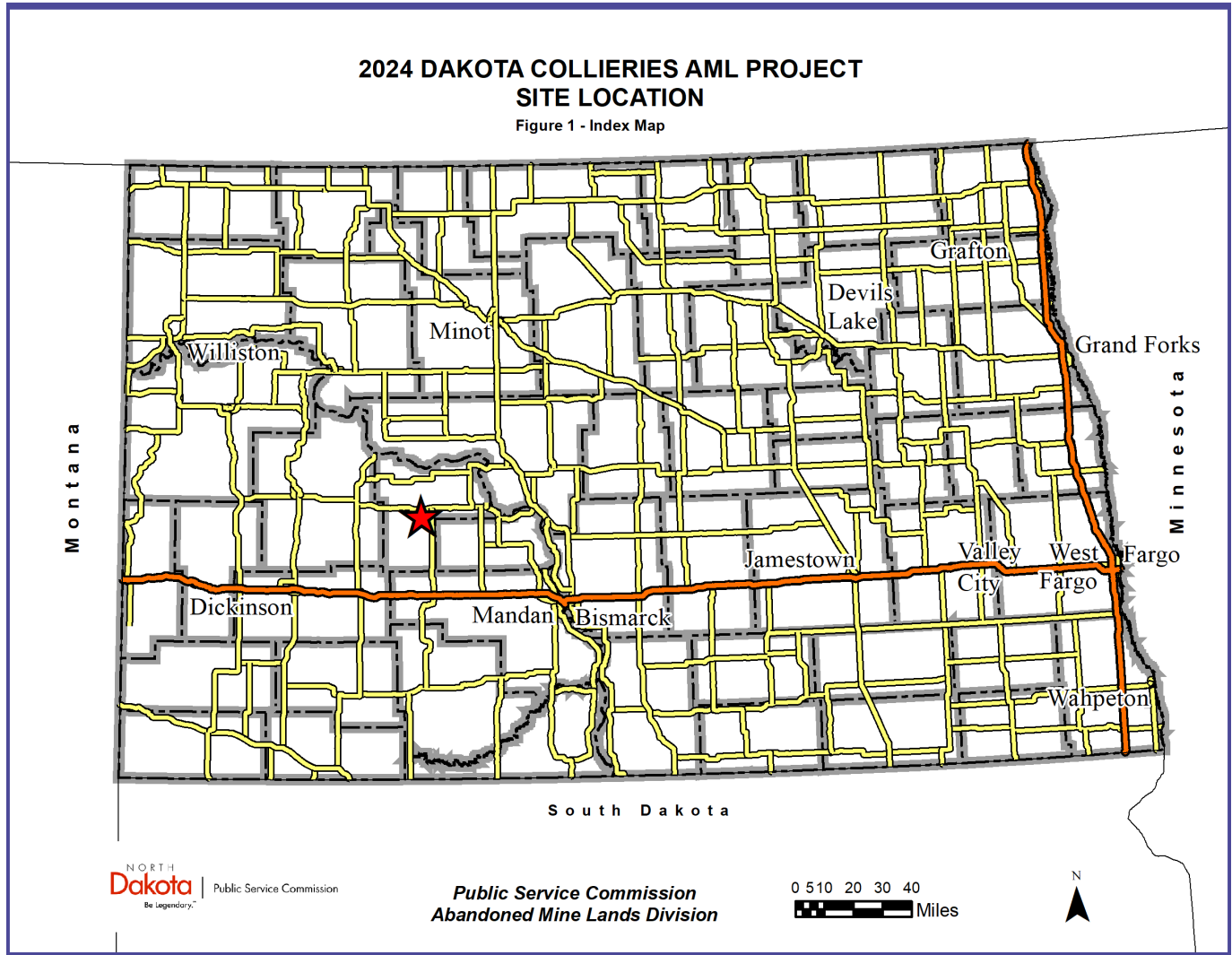
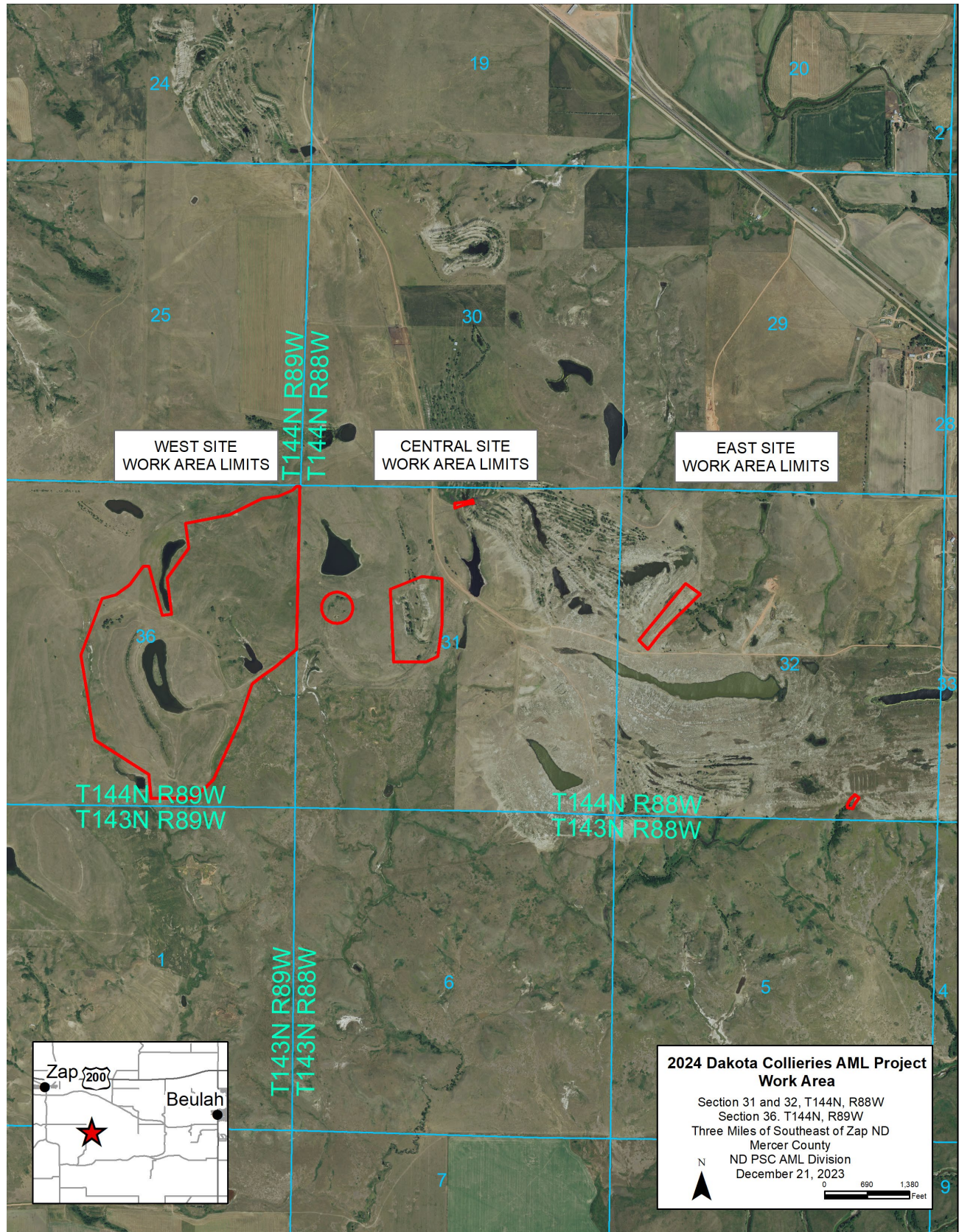


Figure 2 – Dakota Collieries Mine Site



## **SECTION 7**

### **BID RESPONSE FORMS**

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



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

Principal
Surety
Penal Sum

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

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

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

NOW, THEREFORE,

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

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

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

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

SFN 13657 (Rev. 12-99)

Witness as to Principal:

(Principal: Individual, Partnership, or Corporation)

(SEAL)

BY

(Partner or President)

BY

(Partner or Secretary)

(Surety)

(SEAL)

BY

Countersigned by:

North Dakota Resident Agent

P.O./Address

SFN 13657 (Rev. 12-99)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

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

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

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

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

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

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

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

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

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

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

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

ACKNOWLEDGMENT OF SURETY

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

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

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



**UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES AND  
LABOR SURPLUS AREA CONCERNS**

PUBLIC SERVICE COMMISSION  
ABANDONED MINE LANDS DIVISION  
SFN 16755 (Rev. 12-99)

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

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

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

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

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

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

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

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

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

**NEGATIVE CERTIFICATION**

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

Signed By	Title	Date
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**AFFIRMATIVE CERTIFICATION**

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

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


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


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

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

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

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


Signed By	Title	Date
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**6. LABOR SURPLUS AREA CERTIFICATION**

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

**NEGATIVE CERTIFICATION**

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

Signed By	Title	Date
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**AFFIRMATIVE CERTIFICATION**

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

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


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


Signed By	Title	Date
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### BID RESPONSE FORM

**2024 Dakota Collieries AML Project**

**Delivery Address:** Public Service Commission  
 Abandoned Mine Lands Division  
 600 East Boulevard Ave., Dept 408  
 Bismarck, ND 58505-0480

**Delivery Date Time Required:**

- Date: April 9, 2024
- Time: 10:00 A.M CT
- Location: **State Capitol**  
**12<sup>th</sup> Floor conference room**  
 600 East Boulevard Avenue, Dept. 408  
 Bismarck, ND 58505-0480

Section - ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
A-1	1	L.S.	Mobilization – Not to exceed 10% of total contract bid	\$	\$
B-2	650	Tons	Hauling and Spreading Class 5 Gravel For Site Access Road Preparation	\$	\$
C-3	1	L.S.	Site Preparation	\$	\$
D-4	1	L.S.	Water Management	\$	\$
E-5	3,500	L.F.	Silt Fencing	\$	\$
F-6	2,900	L.F.	Fencing – Central Tract – Fence and Gates	\$	\$
G-7	675	L.F.	Fencing – East Tract - Removal and Install	\$	\$
H-8	3,250	Yd <sup>3</sup>	Topsoil Handling	\$	\$
I-9	11,250	Yd <sup>3</sup>	Subsoil Handling	\$	\$
J-10	115,000	Yd <sup>3</sup>	Earthwork – Central Tract	\$	\$
K-11	500	Yd <sup>3</sup>	Earthwork – West Tract	\$	\$
L-12	5,000	Yd <sup>3</sup>	Slope Stabilization Earthwork – East Tract	\$	\$
M-13	1	L.S.	Corrugated Metal Pipe Removal; and Concrete Mat Installation with geotextile fabric	\$	\$

**2024 Dakota Collieries AML Project**

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 Abandoned Mine Lands Division  
 600 East Boulevard Ave., Dept 408  
 Bismarck, ND 58505-0480

**Delivery Date Time Required:**

- Date: April 9, 2024
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- Location: **State Capitol**  
**12<sup>th</sup> Floor conference room**  
 600 East Boulevard Avenue, Dept. 408  
 Bismarck, ND 58505-0480

Section - ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
N-14	400	Tons	Class II or Class III Rip Rap	\$	\$
N-15	320	Sq Yd	Grading and Installation of Geosynthetic Fabric Type RR	\$	\$
O-16	12	Acre	5,700 lbs./acre rate Leonardite, Gypsum, Soil Microbial, and Sulfur Soil Amendment – Section 31	\$	\$
O-17	4	Acres	10,900 lbs./acre rate Leonardite, Gypsum, Soil Microbial, and Sulfur Soil Amendment – Section 36	\$	\$
P-18	1,600	Yd <sup>3</sup>	Manure Hauling	\$	\$
Q-19	4	Acre	Fertilizing, Seeding, and Mulching – Section 36	\$	\$
Q-20	16	Acre	Fertilizing, Seeding, and Mulching – Sections 31 and 32	\$	\$
R-21	1,540	L.F.	Erosion Control Blanket	\$	\$
S-22	1,400	L.F.	Straw Wattles	\$	\$
T-23	250	L.F.	Well Installation, screen, and casing.	\$	\$
T-24	1	L.S.	Solar Pump, feeder pipeline, two tanks, and associated fencing.	\$	\$
U-25	1	L.S.	Clean Up	\$	\$
<b>TOTAL (IN NUMBERS)</b>					

**2024 Dakota Collieries AML Project**

**Delivery Address:** Public Service Commission  
 Abandoned Mine Lands Division  
 600 East Boulevard Ave., Dept 408  
 Bismarck, ND 58505-0480

**Delivery Date Time Required:**

- Date: April 9, 2024
- Time: 10:00 A.M CT
- Location: **State Capitol**  
**12<sup>th</sup> Floor conference room**  
 600 East Boulevard Avenue, Dept. 408  
 Bismarck, ND 58505-0480

Section - ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
<b>Written Total:</b>					
<b>Affirm your ability to meet the period of performance</b>				YES	NO

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

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

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

**BIDDER INFORMATION AND SIGNATURE**

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

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

**NOTICE.** All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties identified herein. Notice provided under this provision does not meet the notice requirements for monetary claims against the STATE found at N.D.C.C. § 32-12.2-04.

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

## SECTION 8

### NORTH DAKOTA LABOR RATES FROM US DEPARTMENT OF LABOR

"General Decision Number: ND20240040 01/05/2024

Superseded General Decision Number: ND20230040

State: North Dakota

Construction Type: Heavy  
HEAVY CONSTRUCTION PROJECTS

County: Mercer County in North Dakota.

#### HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

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If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract.	The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
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If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract.	The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this

wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number    Publication Date  
 0                      01/05/2024

CARP1091-005 05/01/2022

	Rates	Fringes
CARPENTER.....	\$ 34.40	23.21

ELEC0714-017 07/04/2022

	Rates	Fringes
ELECTRICIAN.....	\$ 42.43	11.86+10.5%

ENGI0049-032 05/01/2022

	Rates	Fringes
POWER EQUIPMENT OPERATOR Bobcat/Skid Steer/Skid Loader.....	\$ 35.05	21.60
Bulldozer.....	\$ 35.05	21.60

ENGI0049-033 10/01/2023

	Rates	Fringes
POWER EQUIPMENT OPERATOR Backhoe/Excavator/Trackhoe..	\$ 32.25	20.65
Crane.....	\$ 32.65	20.65
Forklift.....	\$ 32.25	20.65
Loader.....	\$ 32.25	20.65

ENGI0049-034 05/01/2022

	Rates	Fringes
TRUCK DRIVER (DUMP TRUCK).....	\$ 35.05	21.60

LABO0563-010 05/01/2023

	Rates	Fringes
LABORERS Common or General.....	\$ 27.30	20.45
Pipelayer.....	\$ 30.80	20.45

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SUND2017-003 07/31/2020

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...	\$ 24.33	0.00
IRONWORKER, REINFORCING.....	\$ 25.28	0.00
OPERATOR: Grader/Blade.....	\$ 28.00	0.00
OPERATOR: Roller.....	\$ 28.00	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were

prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

## SECTION 9

# FEDERAL AID CONSTRUCTION CONTRACT REQUIREMENTS DAVIS BACON MINIMUM WAGE RATES

FHWA-1273 – Revised October 23, 2023

### REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>I. General</li><li>II. Nondiscrimination</li><li>III. Non-segregated Facilities</li><li>IV. Davis-Bacon and Related Act Provisions</li><li>V. Contract Work Hours and Safety Standards Act Provisions</li><li>VI. Subletting or Assigning the Contract</li><li>VII. Safety: Accident Prevention</li><li>VIII. False Statements Concerning Highway Projects</li><li>IX. Implementation of Clean Air Act and Federal Water Pollution Control Act</li><li>X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</li><li>XI. Certification Regarding Use of Contract Funds for Lobbying</li><li>XII. Use of United States-Flag Vessels:</li></ul> | <p>(not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).</p> <p>2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work</p> |
|---|---|

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**II. NONDISCRIMINATION** (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### 6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### 10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

**c. Conformance.** (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**d. Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**e. Unfunded plans.** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**f. Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

**a. Withholding requirements.** The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**b. Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

*a. Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

*(2) Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

*(3) Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

*(4) Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

*b. Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

*(2) Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

*(3) Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

*(4) Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### 4. **Apprentices and equal employment opportunity** (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower- tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consulting contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\* \* \* \* \*

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\* \* \* \* \*

**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS**

**ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.