



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

sent via email and regular mail

April 18, 2024

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Ms. Beth Kalisiak
Young Guns Construction, LLC
10609 South Cave Road
Ludlow, SD 57755
younggunconstructionllc@gmail.com

RE: Contract for the 2024 Dakota Collieries AML Project.

Dear Ms. Kalisiak:

On April 10, 2024, the North Dakota Public Service Commission issued a Notice of Intent to Award a contract to Young Guns Construction, LLC. of Ludlow, South Dakota for the 2024 Dakota Collieries AML Project in the amount of \$1,015,149.30. The seven-day period for appeals has expired. No appeals were filed. Enclosed are **two (2) original Contracts** and the **performance and payment bond forms** that must be executed and returned. Please return both signed contracts and the executed performance and payment bonds on or before May 15, 2024. I have also included the Contractor Information Form which you completed in 2022, please verify there are no changes, sign, and date. If possible, please hand deliver the contract and other documents.

The following information and documents must be submitted along with the signed contracts and fully executed performance and payment bonds:

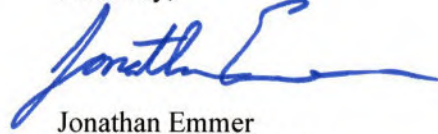
- 1) Copy of your current North Dakota Contractor's License;
- 2) State and Federal taxpayer ID numbers;
- 3) Certificate of Tax Clearance from the North Dakota Tax Department;
- 4) Certificate of Insurance with endorsements showing coverage as stipulated in the Invitation for Bid; and
- 5) Completed AML Contractor Information Form for your company and any subcontractors (enclosed).

Upon receipt of the materials listed above, the Commission will execute both original contracts and one fully executed contract will be returned to you. If you fail to execute the contract and furnish the bonds and other information as directed, the Commission will be entitled to consider all your rights arising out of acceptance of your bid as abandoned and as forfeiture of your bid bond.

If you have any questions, feel free to contact Michael Howe, Matt Fischer, or me.

2024 Dakota Collieries Contract Award Letter
April 18, 2024
Page 2

Sincerely,



Jonathan Emmer
Director, AML Division

Enclosures

AML\2024\2024 Dakota Collieries\Construction\Contract Documents\YGC_Cntrct_awrd_ltr_4-18-24

CONTRACT NUMBER AM-899-24

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

Contractor Young Gun Construction, LLC		
Name		
10609 South Cave Road	Ludlow, SD 57755	605-576-3301
Address	City/State/Zip	Phone
Beth Kalisiak	President	
Typed Name	Title	
Signature	Date	

Agreement Information	
Case No.:	AM-23-323
Contract No.:	AM-899-24
Start Date:	Upon execution
End Date:	12/31/2024
Program Title:	AML Reclamation
Type of Contract:	<input checked="" type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimb. <input type="checkbox"/> Unit Price <input type="checkbox"/> Other

Budget Information	
Cost Center:	9000
Services:	Construction Services
Expenses:	\$1,015,149.30
ID:	Case No. AM-23-323
Type of Contractor:	<input type="checkbox"/> Individual <input checked="" 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 Young Gun Construction, LLC (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 Young Gun Construction, LLC having its principal place of business at 10609 South Cave Road, Ludlow, SD 57755 (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 **One Million Fifteen Thousand One Hundred Forty-Nine Dollars and Thirty Cents (\$1,015,149.30)** (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 December 31, 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 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.

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:

STATE:	CONTRACTOR:
Steven Kahl, Executive Director	Beth Kalisiak, President
Public Service Commission	Young Gun Construction, LLC
600 E. Boulevard Avenue, Dept. 408	10609 South Cave Road
Bismarck, ND 58505-0480	Ludlow, SD 57755

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.

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.

22. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

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*.

21. APPLICABLE LAW AND VENUE

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.

20. SEVERABILITY

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.

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.
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.

18. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR may enter into subcontract 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.

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.

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.

CONTRACT NUMBER AM-899-24

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

Contractor	Young Gun Construction, LLC		
Name	10609 South Cave Road	Ludlow, SD 57755	605-576-3301
Address	City/State/Zip		
Beth Kalisiak	President		
Typed Name	Title		
Signature	Date		

Agreement Information	
Case No.:	AM-23-323
Contract No.:	AM-899-24
Start Date:	Upon execution
End Date:	12/31/2024
Program Title:	AML Reclamation
Type of Contract:	<input checked="" type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimb. <input type="checkbox"/> Unit Price <input type="checkbox"/> Other

Budget Information	
Cost Center:	9000
Services:	Construction Services
Expenses:	\$1,015,149.30
ID:	Case No. AM-23-323
Type of Contractor:	<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Public Agency <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Other

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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 **One Million Fifteen Thousand One Hundred Forty-Nine Dollars and Thirty Cents (\$1,015,149.30)** (Contractual Amount).

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- 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 December 31, 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.

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.

16. INDEPENDENT ENTITY

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. Contract

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. 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.

15. COMPLIANCE WITH PUBLIC RECORDS LAWS

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.

14. CONFIDENTIALITY

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.

STATE:	CONTRACTOR:
Steven Kahl, Executive Director	Beth Kallsiak, President
Public Service Commission	Young Gun Construction, LLC
600 E. Boulevard Avenue, Dept. 408	10609 South Cave Road
Bismarck, ND 58505-0480	Ludlow, SD 57755

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:

13. NOTICE

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.

12. WORK PRODUCT

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.

Office of Surface Mining Reclamation and Enforcement

Instructions for Completing the AML Contractor Form OMB #1029-0119

Purpose: The Office of Surface Mining Reclamation and Enforcement Applicant/Violator System (AVS) office is required to conduct eligibility checks for businesses performing abandoned mine land (AML) reclamation work to ensure those businesses are not associated with any coal mining violations in accordance with the Surface Mining Control and Reclamation Act (SMCRA). This form is used to update the AVS database which maintains relationship information between individuals and their associated businesses. If you have any questions, please contact the AVS Office at 800-643-9748.

Part A: General Information: Part A should be completed by the AML Contractor. You can find an electronic fillable form on our website (<https://www.osmre.gov/programs/AVS.shtm>).

Part B: Obtain an Organizational Family Tree (OFT): Part B should be completed by the AML Contractor. An Organizational Family Tree (OFT) indicates the relationships between individuals and their associated business.

You can obtain an OFT two ways:

1. Call the AVS Office at 800-643-9748 to request your company's OFT.
2. Go to the AVS website (<https://avss.osmre.gov>). Click "Access AVS", and then "Login as Guest". Place your cursor on the "Entity" Module and click. Type your business name (or entity number) in search box and press enter. Select your company and then click on the "Relationship" tab to display your Entity OFT information. Print the Entity OFT from AVS. Review the OFT, if you need to make updates complete Part D. Attach the OFT to your AML Contractor Form.

If you are a new company or this is your first AML bid: Your business is most likely **not** in the AVS. If your company does not appear in the AVS database, move on to Part C, check Box 3, and complete Part D of this form.

If your company has worked on previous AML projects or in the coal mining industry: Your business is most likely in the AVS, but may need to be updated. Obtain and review your OFT and then complete Part C.

Part C: Certifying and updating information in the Applicant/Violator System (AVS). Part C should be completed by the AML Contractor. Please check the box that best describes your situation, sign and date.

Note: Signature date must be recent (within 30 days) to be considered.

Part D: OFT Information. Part D should be completed by the AML Contractor **only** if you want to make updates to what information is in the AVS, or if your company **does not** have any information in the AVS. Include **all** fields, including the relevant begin and/or end dates for individuals, including middle name or initial for individuals if possible.

Answers to Part D FAQs:

Which employees should be included in Part D?

Any current or separated employee of significance should be listed. Refer to the list provided at the top of Part D. For those owning less than 10% reporting the ownership is optional. Include those employees who direct, manage, or control the project. If, for example, a Professional Engineer has the power to determine how the project is conducted you should include him/her on Part D.

What address and phone number should I use?

Use the address and phone number where the person receives business correspondence.

What are the begin and end dates for?

Begin dates indicate when a person started in that position in your company. If an individual still works at the company you can simply fill in the begin date and leave the end date blank or write "N/A". **End dates** are used for indicating that someone no longer works in that capacity or is no longer employed at the company. **If an employee has held more than one position** or title, note the begin dates/end dates for each position.

ABANDONED MINE LANDS (AML) CONTRACTOR INFORMATION FORM

You must complete this form for your AML contracting officer to request an eligibility evaluation from the Office of Surface Mining Reclamation and Enforcement (OSMRE) to determine if you are eligible to receive an AML contract. This requirement can be found under OSMRE's regulations at 30 CFR 874.16. **NOTE:** This form must be signed and **dated within 30 days** of submission to be considered for a current bid.

Part A: General Information

Business Name: _____
 Tax ID #: _____
 Address: _____
 City, State, & Zip: _____
 Phone Number: _____
 Email Address: _____

Part B: Obtain an Organizational Family Tree (OFT) from the Applicant Violator System (AVS)

If you plan to certify the existing AVS information or submit updates under Part C, you must include an OFT. Instructions for downloading an OFT from the AVS can be found at:

<https://www.osmre.gov/resources/forms/OMB1029-0119instructions.pdf>

If you require assistance you may contact the AVS Office by phone at: 800-643-9748, or by email at: avshelp@osmre.gov.

Part C: Certifying and updating information in the AVS

Select one of the options, follow the instructions for the selected option, sign, and date below.

I, _____, have express authority to certify that:
 (Print Name)

1. Our business is listed in the AVS. The information is accurate, complete, and up to date. (If you select this option, you must attach an Entity OFT from the AVS to this form). Do not complete Part D.
2. Our business is in the AVS. The information needs to be updated. (If you select this option, you must attach an Entity OFT from the AVS to this form). Complete Part D to provide the missing or corrected information.
3. Our business is not listed in the AVS. The information needs to be added. Complete Part D to provide the information.

 Date

 Signature

 Title

Part D: OFT Information

Contractor's Business Name: _____

If the current Entity OFT information for your business is incomplete in the AVS, or if there is no information in the AVS for your business, you must provide all of the following information as it applies to your business. Please include additional copies of this page if the space below is not sufficient to capture all information.

- Every officer (President, Vice President, Secretary, Treasurer, etc.);
- All Directors, Partners, and Members;
- All persons performing a function similar to a Director;
- Every person or business that owns 10% or more of the voting stock in your business;
- Any other person(s) who has the ability to determine the manner in which the AML reclamation project is being conducted.
- **Please list an end date for any person who is no longer with your business.**

Name: _____
 Address: _____
 City, State, Zip: _____
 Begin Date: _____
 End Date: _____
 % Ownership: _____
 Position/Title: _____
 Phone Number: _____

Name: _____
 Address: _____
 City, State, Zip: _____
 Begin Date: _____
 End Date: _____
 % Ownership: _____
 Position/Title: _____
 Phone Number: _____

Name: _____
 Address: _____
 City, State, Zip: _____
 Begin Date: _____
 End Date: _____
 % Ownership: _____
 Position/Title: _____
 Phone Number: _____

Name: _____
 Address: _____
 City, State, Zip: _____
 Begin Date: _____
 End Date: _____
 % Ownership: _____
 Position/Title: _____
 Phone Number: _____

PAPERWORK REDUCTION STATEMENT

The Paperwork Reduction Act of 1995 (44 U.S.C 3501) requires us to inform you that: Federal Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. This information is necessary for all successful bidders prior to the distribution of AML funds, and is required to obtain a benefit.

Public reporting burden for this form is estimated to range from 15 minutes to one hour, with an average of 30 minutes per response, including time for reviewing instructions, gather and maintaining data, and completing and reviewing the form. You may direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1849 C Street, NW, Room 4559, Washington, DC 20240.



PAYMENT BOND
PUBLIC SERVICE COMMISSION
ABANDONED MINE LANDS DIVISION
 SFN 13653 (Rev. 05-2000)

Individual Corporation
 Partnership

Name of Contractor			
Address of Contractor	City	State	Zip Code
Name of Surety			
Address of Surety	City	State	Zip Code

KNOW ALL PERSONS BY THESE PRESENTS, that the above named Contractor, hereinafter called the Principal, and the above named Surety, are held and firmly bound unto the North Dakota Public Service Commission on behalf of the State of North Dakota hereinafter called OWNER, in the penal sum of _____ dollars, (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successor, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____ 20 ____, a copy of which is hereto attached and made a part hereof for the reclamation of the following described abandoned mine site.

Abandoned Mine Site Description

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall affect its obligation of this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in two counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20 ____.

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners shall execute BOND.

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

Witness as to Principal:

(Principal: Individual, Partnership, or Corporation) (SEAL)

BY (Partner or President)

BY (Partner or Secretary)

(Surety) (SEAL)

BY

Countersigned by:

North Dakota Resident Agent	P.O./Address
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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



PERFORMANCE BOND
PUBLIC SERVICE COMMISSION
ABANDONED MINE LANDS DIVISION
 SFN 13652 (Rev. 05-2000)

Individual Corporation
 Partnership

Name of Contractor			
Address of Contractor	City	State	Zip Code
Name of Surety			
Address of Surety	City	State	Zip Code

KNOW ALL PERSONS BY THESE PRESENTS, that the above named Contractor, hereinafter called the Principal, and the above named Surety, are held and firmly bound unto the North Dakota Public Service Commission on behalf of the State of North Dakota hereinafter called OWNER, in the penal sum of _____ dollars, (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successor, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____ 20____, a copy of which is hereto attached and made a part hereof for the reclamation of the following described abandoned mine site.

Abandoned Mine Site Description

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period commencing upon final acceptance, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall affect its obligation of this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in two counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20____.

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners shall execute BOND.

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

Witness as to Principal:

Empty rectangular box for witness signature.

(Principal: Individual, Partnership, or Corporation)

(SEAL)

Empty rectangular box for principal signature.

BY

(Partner or President)

Empty rectangular box for partner/signatory signature.

BY

(Partner or Secretary)

Empty rectangular box for partner/signatory signature.

(Surety)

(SEAL)

Empty rectangular box for surety signature.

BY

Empty rectangular box for surety signature.

Countersigned by:

North Dakota Resident Agent

P.O./Address

Large empty rectangular box for countersignatory information.

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