

# **INVITATION FOR BID**

**408.25.03.003**

**2025 Buechler Velva Phase 3 AML Project**

**ND000004**

**Ward County  
North Dakota**

**Abandoned Mine Lands Division**

**North Dakota Public Service Commission**

**Bismarck, North Dakota**

**March 2025**

**INVITATION FOR BID**  
**2025 Buechler Velva Phase 3 AML Project**

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**Bid Number 408.25.03.003**

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## INTRODUCTION

### STATE OF NORTH DAKOTA INVITATION FOR BID (IFB) (February 2024)

<b>DATE ISSUED</b>	March 12, 2025	<b>BID NUMBER</b>	408.25.03.003
<b>BID TITLE</b>	2025 Buechler Velva Phase 3 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 28, 2025, 5:00 P.M., CT	<b>PERFORMANCE PERIOD</b>	May 27, 2025 to September 26, 2025
<b>BID RESPONSE DEADLINE</b>	April 8, 2025, 10:00 A.M., CT	<b>CONTRACT PERIOD</b>	Upon complete execution of the contract to December 31, 2025

### PROJECT OVERVIEW

This is an Invitation for Bid (IFB) to reclaim and repair Abandoned Mine Land (AML) sites in Ward County. The Buechler Velva Phase 3 main site is located in Section 1, T151N, R81W. A reclaimed site located in the NE ¼ Section 30, T152N, R81W also requires repair. Maps showing the sites are on **Figures 2 and 3**.

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 2025 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): North Dakota Public Service Commission  
 PROCUREMENT OFFICER: Michael Howe  
 EMAIL: [mthowe@nd.gov](mailto: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 25, 2025**, to afford an opportunity to prospective Bidders to receive clarification related to this solicitation. This conference meeting time and location will be:

- 11:00 A.M., Central Time (CT): Beginning at 24000 181st St SE Velva, ND 58790, approximately 8.5 miles southwest of Velva, ND. (Latitude 47°59'2.99"N, Longitude 101° 0'50.63"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 with the IFB number and title cited in the email subject line. Responses to questions will be distributed as a solicitation amendment unless the question can be answered by referring the bidder to a specific section of the IFB.

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).

**STATE PROCUREMENT WEBSITE (SPO ONLINE)**

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

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

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

**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 8, 2025**. The public bid opening will be held at **10:00 a.m. C.T., April 8, 2025**, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

## SECTION 1 BIDDERS INSTRUCTIONS

1. **Bidder Checklist.** Have you remembered to?
  - 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 5.
  - Complete and sign all Bid Forms in Section 8 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 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.
  - 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 #: 408.25.03.003

IFB Title: 2025 Buechler Velva Phase 3 AML Project

ATTN: Michael Howe  
ND Public Service Commission  
Abandoned Mine Lands Division  
600 E Boulevard, Dept 408  
Bismarck, ND 58505-0480

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

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

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

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

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

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

1. This solicitation is posted on SPO Online at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>
2. Select “Recent Solicitations” and find this solicitation. Solicitations are listed by close date.
3. Use “Upload Response” to upload a maximum of five (5), clearly labeled documents before the Bid Response deadline.
4. Offerors must upload their Bid Response as requested in the Bid Response section of this IFB.
5. 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 does not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If Bidder does not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

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

**Bid bond form in Section 8, 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 will be held:

**Onsite**

- Date: **April 8, 2025**
- Time: **10:00 A.M., CT**
- Location: State Capitol  
12<sup>th</sup> Floor, Commission Hearing 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, 2025.
  - 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 12 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 12 months each.

Please see the **Sample Contract in Section 6** 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  
North Dakota 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. **Preservation of Markers.** The 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.
7. **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.
8. **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 the 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.
9. **Time of Performance.** The project performance period is from **May 27, 2025, to September 26, 2025**, 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.
10. **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.
11. **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.
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, Firm-Fixed with Adjustment upon Renewal.** Pricing shall be firm for the first year of the Contract. If a Renewal Option is being considered, the CONTRACTOR may request a price adjustment 10 days of the original contract period expiration. After the firm-fixed period, the CONTRACTOR may submit a request for a price increase to the Procurement Officer. Requests for a price increase must include a copy of the manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers. The STATE reserves the right to accept or reject, within 30 days, or cancel the contract. The CONTRACTOR shall immediately inform the STATE of

any price decreases. Price changes will become effective upon execution of a contract amendment. All orders placed are to be billed at prices in effect at the time of the order, not the date the shipment is made. The CONTRACTOR must abide by the most current Davis-Bacon wage rate determinations within 10 days of the renewal contract execution.

- **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 of 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 prices are 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 10 days after receipt of Notice to Proceed is required. CONTRACTOR must have facilities or service providers within a commuting distance to meet this requirement.
  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 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.
  - **Indemnification Provision.** 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.

CONTRACTOR shall provide certificate of insurance and any endorsements to STATE electronically to:

Name: Michael Howe

Email Address: mthowe@nd.gov

Email Subject Line: Certificate of Insurance - CONTRACT NUMBER/2025 Buechler Velva Phase 3 AML Project

- **Insurance Provision.**

**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. **Payment and Performance Bonds.** The bidder whose bid is accepted is required to enter into a written contract with Commission and to furnish a performance bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the faithful performance of the contract and also a payment bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with the contract, including interest under N.D.C.C. § 13-01-14, for bills which are not paid within ninety (90) days. The bond must also provide, under N.D.C.C. § 65-04-10, that CONTRACTOR has made, or will make, prior to the commencement of any work by CONTRACTOR or any subcontractor under the contract, full and true report to Workforce Safety and Insurance of the payroll expenditures for the employees to be engaged in the work, and that CONTRACTOR has paid,

or will pay, the premium thereon prior to the commencement of work. **Both bonds must be executed on forms approved by Commission.** Bonds must be secured from a company 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.

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

**BID SURETY REQUIREMENT**

Each Bid Response must include a bid surety. See [N.D.A.C. ch. 4-12-07](#). Bid sureties of unsuccessful Bidders will be returned upon award determination. The bid surety of the successful Bidder will be returned upon receipt of a completed contract bond and its approval by the STATE.

Bid surety may be as follows:

- a certified check, in the amount of five percent (5%) of the full amount of the Bid Response; or
- a bank cashier's check in the amount of five percent (5%) of the full amount of the Bid Response; or
- a corporate surety bond from a surety company authorized to do business in the State of North Dakota in the amount of five percent (5%) of the full amount of the Bid Response.

**SECTION 5  
BID RESPONSE FORM**

**SPECIFICATIONS**

**408.25.03.003 – 2025 Buechler Velva Phase 3 AML Project**

**See Section 7 – Specific Provisions and Attachments of this IFB for full specifications**

**Billing and Delivery Address:** North Dakota Public Service Commission  
Abandoned Mine Lands Division  
600 East Boulevard Ave., 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	1,250	Ton	Site Access - Road Preparation (Class 5 Gravel)	\$	\$
C-3	1	L.S.	Site Preparation – Tree Moving and Shredding	\$	\$
D-4	1	L.S.	Site Preparation – Stump, Fence, and Bale Removal	\$	\$
E-5	1	L.S.	Water Management	\$	\$
F-6	3,300	L.F.	Silt Fencing	\$	\$
F-7	100	L.F.	Floating Silt Fence	\$	\$
G-8	57,500	Yd <sup>3</sup>	Topsoil Handling	\$	\$
H-9	115,000	Yd <sup>3</sup>	Subsoil Handling	\$	\$
I-10	800,000	Yd <sup>3</sup>	Earthwork	\$	\$
J-11	1	L.S.	Low Water Crossing – Concrete Mat	\$	\$
K-12	500	Ton	Rock Channel (Class II or Class III Rip Rap)	\$	\$
K-13	420	Sq Yd	Grading and Installation of Geosynthetic Fabric Type RR	\$	\$
L-14	500	Yd <sup>3</sup>	Manure Handling	\$	\$
M-15	85	Acre	Fertilizing, Seeding, and Mulching	\$	\$
N-16	6,600	L.F.	Erosion Control Blanket Lined Channel	\$	\$
O-17	90	L.F.	Vegetated Erosion Control Concrete Mat	\$	\$

SPECIFICATIONS					
<b>408.25.03.003 – 2025 Buechler Velva Phase 3 AML Project</b>					
<b>See Section 7 – Specific Provisions and Attachments of this IFB for full specifications</b>					
<b>Billing and Delivery Address:</b> North Dakota Public Service Commission Abandoned Mine Lands Division 600 East Boulevard Ave., Dept. 408 Bismarck, ND 58505-0480					
Section - ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
P-18	1,875	L.F.	Straw Wattles	\$	\$
Q-19	1	L.S.	CMP Removal	\$	\$
R-20	50	Yd <sup>3</sup>	Slope Failure Repair and Topsoil	\$	\$
S-21	1	L.S.	Clean Up	\$	\$
<b>TOTAL (IN NUMBERS)</b>				\$	
<b>Affirm your ability to meet the period of performance.</b>			YES	NO	
<b>Written Total:</b>					
<b>Also enclosed in this package is a bid bond, certified check or cashier's check in the amount of:</b>					

<b>PROJECT MANAGER:</b> 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>	

<b>BIDDER INFORMATION AND SIGNATURE</b>	
<p>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.</p> <p>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.</p> <p><b>NOTICE.</b> 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. § 3212.204.</p>	
<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>	

<b>STATE OF NORTH DAKOTA BID ACCEPTANCE AND CONTRACT AWARD</b>	
<p>The parties to this contract (Contract) are the state of North Dakota, acting through the Purchasing Agency (STATE), and the above-named Bidder (CONTRACTOR). 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 signatures of the parties shall be deemed the Effective Date.</p> <p><b>NOTICE.</b> 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.</p>	
<b>Acting through its Purchasing Agency:</b>	
<b>BY: (Signature)</b>	
<b>Printed Name:</b>	
<b>Title:</b>	
<b>Date:</b>	

**SECTION 6  
SAMPLE CONTRACT  
CONTRACT NUMBER AM-XXX-25**

<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> <b>Executive Director</b>	_____ <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 XXXXXXXXXXXXXXXX. (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 and attachments for the **2025 Buecher Velva Phase 3 AML Project's** 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 December 31, 2025.**

#### **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 twelve (12) months, beyond the current termination date of this Contract.

#### **Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to one (1) option to renew this Contract under the same terms and conditions for a period of twelve (12) months.

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

The project performance period is from May 27, 2025, to September 26, 2025. 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	
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.
- B. STATE's Solicitation: Invitation for Bid 408.25.03.003, 2025 Buechler Velva Phase 3 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 AMERICA 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 that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; 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.

**29. COPELAND ACT** The CONTRACTOR must abide by the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- 30. DAVIS-BACON ACT** The CONTRACTOR must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standard Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with this statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

The Required Contract Provisions Federal-Aid Construction Contracts can be found at:

<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>.

The North Dakota Labor Rates and Rules can be found at:

<https://sam.gov/wage-determination/ND20250006/0>.

**SECTION 7  
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 Buy America Act**
- Sec. 800 Required Contract Provisions for Federal-Aid Construction Contracts**

**SECTION 7**  
**SPECIFIC PROVISIONS & ATTACHMENTS**  
**FOREWORD**

The 2025 Buechler Velva Phase 3 AML Project involves reclaiming and repairing Abandoned Mine Land (AML) sites in Ward County. The Buechler Velva Phase 3 includes areas as shown on the maps in **Figures 2 and 3** and further described as:

- Main Site: Section 1, T151N, R81W (Ward County)
- Repair Site: NE¼ of Section 30, T152N, R81W (Ward County)

**100. PROJECT OBJECTIVE**

The objective of this project is to reclaim an abandoned surface lignite mine and associated work items as described in this Invitation for Bid (IFB). The Buechler Velva Phase 3 AML Project is located in Section 1, T151N, R81W. A reclaimed site located in the NE¼ Section 30, T152N, R81W also requires repair. Interested bidders shall fulfill all aspects of the IFB as presented.

**200. SCOPE OF WORK**

The 2025 Buechler Velva Phase 3 AML Project sites are identified in **Figure 2 and 3**. The main site (**Figure 2**) contains over 2,900 feet of dangerous highwall and water-filled pits requiring filling from an onsite earthen borrow area. Approximately 800,000 cubic yards of spoil material will need to be moved to backfill the highwall and mine pits. Additional maintenance work is required on a previous AML reclamation site located in the NE¼, Section 30, T152N, R81W and identified in **Figure 3**. 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 July 1, 2024.

CONTRACTOR shall provide all material, equipment and personnel necessary to perform the work. CONTRACTOR shall be capable of completing this project within one hundred twenty-four (124) consecutive calendar days between **May 27, 2025**, and **September 26, 2025**. 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 may 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 that will enable CONTRACTOR to start and finish the project. The project sites are located in Section 1, T151N, R81W and the NE¼, Section 30, T152N, R81W. 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. Obtain a North Dakota Pollutant Discharge Elimination System (NDPDES) temporary discharge general permit, NDG070000. Information about the temporary discharge permit can be found at: [https://deq.nd.gov/WQ/2\\_NDPDES\\_Permits/8\\_TempDischarges/TD.aspx](https://deq.nd.gov/WQ/2_NDPDES_Permits/8_TempDischarges/TD.aspx).
  - c. **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.
  - d. **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.
  - e. **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
  - f. **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.
  - g. **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.

- h. 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 the CONTRACTOR to the landowner for any damage to crops or structures.
- i. Maintain Fence Integrity – **An existing fence on the site's east boundary must be maintained at all times.** Any damage to the fence must be repaired immediately and to the satisfaction of the Commission's Project Manager. All construction activities will be halted until the fence is repaired.

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 1,250 tons of approved Class 5 gravel onto the access road, re-establish a farm trail inside the work area on **Figure 2**, and other areas requiring gravel during construction.
2. Construction Requirements – Prior to commencing the project, the contractor must repair the existing access road in select locations to ensure site accessibility. The access road is identified on **Sheet 2 – Access Road and Manure Hauling Roads**. An existing farm trail shown on **Sheet 5 - Erosion Controls** will be re-established once the spoil material has been graded to the design topography on **Sheet 4 – Post-Reclamation Topography**. Six (6) inches of gravel will be respread on the entire re-established trail and graded. 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 may be required on other areas of the project site and 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 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 – TREE MOVING AND SHREDDING – (Line item C-3 on bid response form)**

1. Scope of Work – This work item consists of moving approximately 600 felled trees and shredding the trees into pieces smaller than (3") three inches in the main site's work area (**Figure 2**).
2. Construction Requirements – Prior to removing topsoil, the site must be cleared of all inert waste, trees, brush, and nuisance material. Approximately 600 trees have recently been felled. Their trunk diameters are up to five feet. The felled trees will be moved to an on-site location approved by the Commission's Project Manager and shredded into pieces smaller than three inches (3"). The contractor will provide a shredding system. The shredded wood chips will be stored on-site in a location that does not interfere with other construction. See the proposed wood chip storage area identified on **Sheet 3 – Existing Topography and Sediment Controls**. Once the spoil is graded and the subsoil is respread, the wood chips will be evenly spread on-site to assist in soil development. Any other inert refuse will be disposed of in accordance with all laws and rules.

3. **Method of Measurement** – Site Preparation - Tree Moving and Shredding 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. The Commission's Project Manager may allow progressive partial payment of this item with wood gathering and shredding costs paid up to 75% of the total bid item.

**D. SITE PREPARATION – STUMP, FENCE, AND BALE REMOVAL** – (Line item D-4 on bid response form)

1. **Scope of Work** – This work item consists of clearing and burying approximately 600 tree stumps, removing approximately 1,400 feet of electric fence, and moving approximately 50 hay bales in the work area in **Figure 2**.
2. **Construction Requirements** – Prior to removing topsoil, the site must be cleared of stumps. The tree stumps will be excavated from the surrounding soil and hauled to existing mine pits for burial. The stumps will be spread evenly in a way that will minimize differential settlement when the stumps decay. The excavated stumps must be buried under a minimum of ten-feet (10') of spoil material. An existing electric fence, located on the north end of the project site identified on **Sheet 3 – Existing Topography and Sediment Controls** will be carefully removed without damage, and placed in an on-site location approved by the Commission's Project Manager. Approximately 50 large round bales are currently on-site. If the landowner has not removed the bales, the contractor will be required to carefully load, haul, and stack the bales at an on-site location approved by the Commission's Project Manager.
3. **Method of Measurement** – Site Preparation – Stump, Fence, and Bale Removal 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. Commission's Project Manager may allow progressive partial payment for this item.

**E. WATER MANAGEMENT** – (Line item E-5 on bid response form)

1. **Scope of Work** – This item of work pertains to the movement and control of water on the project site located in Section 1, T151N, R81W. Approximately 60-acre feet (19,500,000 gallons) of water will need to be moved during this construction project. Water must be discharged into the drainage northwest of the site or pumped into existing ponds located on-site.
2. **Construction Requirements** – Water must be discharged in accordance with all applicable rules and laws. CONTRACTOR will be required to monitor all lands receiving water for erosion and potential damage. If erosion or damage is identified, all discharges will be immediately halted until mitigation measures have been implemented and approved by the Commission's Project Manager. Only then will water discharge resume.
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. Commission's Project Manager may allow progressive partial payment of this item.

**F. SILT FENCE AND FLOATING SILT FENCE** – (line items F-6 and F-7 on bid response form)

1. **Scope of Work** – This item of work includes the installation and materials for 3,300 linear feet of silt fence. Approximate fence lengths and locations are shown on **Sheet 3 – Existing Topography and Sediment Controls**. Silt fences must also be installed around stockpile areas to control sediment. One hundred (100) feet of floating silt fence (turbidity curtain) will be required as shown on **Sheet 3**. CONTRACTOR shall furnish all materials necessary to complete the installation and submit product information sheets to the Commission's Project Manager for approval prior to ordering materials.
2. **Construction Requirements** – Silt fence must be installed **prior to** any construction at the locations shown on **Sheet 3 – Existing Topography and Sediment Controls**.

**a. The silt fencing must be:**

- i. A standard three (3) foot fence.
- ii. Installed by either A.) Creating a narrow trench that is six inches (6") deep, inserting the silt fence, and compacting the soil on either side, or B.) Using equipment specifically designed for the installation of silt fencing and approved by the Commission's Project Manager.
- 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.

**b. The floating silt fencing must be:** A standard five (5) foot floating silt fence or turbidity curtain.

- i. Installed and anchored in accordance with the manufacturer's guidelines and recommendations and ND DOT Specifications.
- ii. Anchors at the ends shall be steel or wood posts inserted deeper than three (3) feet.
- iii. Regularly monitored. If the fence sustains any damage, repairs must be made within 24 hours.
- iv. 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.

**G. TOPSOIL HANDLING**– (line item G-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 57,500 cubic yards of topsoil will be removed, stockpiled and re-spread. Topsoil is generally defined as the top six inches (6") of spoil supporting vegetative growth; however, topsoil material thickness may vary in depth throughout the site. Any original buried 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.

**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 topsoil storage areas as shown on **Sheet 3 – Existing Topography and Sediment Controls** or 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 the 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 subsoil 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 measured by surveys conducted by the Commission. 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. Payment will be made after completion of stripping and stockpiling (50%) and respreading (50%).

**H. SUBSOIL HANDLING**– (line item H-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 twelve inches (12") or 115,000 cubic yards of subsoil material will be removed, stockpiled, and re-spread. Subsoil is generally defined as approximately twelve (12") inches of brown soil below topsoil; however, subsoil material thickness may vary in depth throughout the site. Subsoil quality material encountered during the 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 the contractor begins subsoil removal.** After all topsoil is removed, the subsoil storage area as shown on **Sheet 3 – Existing Topography and Sediment Controls** will be leveled to an even grade to allow accurate survey volume calculations of the stockpile(s). Subsoil material will then be removed and stockpiled 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. Final 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 measured by surveys conducted by the Commission. 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. Payment will be made after completion of stripping and stockpiling (50%) and respreading (50%).

**I. EARTHWORK**– (line item I-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 mine pits as shown on **Sheet 4 – Post-Reclamation Topography** and as described herein. An estimated 800,000 cubic yards of earthen material must be excavated from areas shown on **Sheet 3 – Existing Topography and Sediment Controls**.
2. **Construction Requirements – The Commission's Project Manager must approve topsoil and subsoil removal before the contractor begins excavating spoil.** The sequence of spoil grading should be prioritized to create the two final water features as shown on **Sheet 5 – Erosion Controls**. This will assist in water management and allow the final pit to be backfilled with spoil. The spoil piles, mine pits, and highwall must be backsloped, backfilled, and graded to the topography shown on **Sheet 4 – Post-Reclamation Topography**. The cut and fill depths are shown on **Sheet 6 – Cut and Fill**.

Haul distances will vary. CONTRACTOR shall be familiar with the volume of material to be placed in the pits. The spoil 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, cable, and foreign material. No extra payment will be made for rock or cable that is moved

into the 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.

**J. LOW WATER CROSSING - CONCRETE MAT** – (line item J-11 on bid response form)

1. **Scope of Work** – This item consists of the installation of an articulated concrete mat erosion control system.
2. **Construction Requirements** – After the existing farm trail has been re-established (included in line item B-2) a new articulated concrete mat erosion control system will be provided and installed in accordance with the manufacturer’s guidelines and recommendations as shown on **Sheet 5 – Erosion Controls** and **Sheet 8 - Details**. CONTRACTOR shall furnish all materials necessary to complete the installation of the concrete mat erosion control system and submit product information sheets to the Commission’s Project Manager for approval prior to ordering materials.
  - a. The CONTRACTOR will provide and install a 12-foot by 24-foot articulated concrete mat erosion control system (CREFLEX-40F or equivalent product).
    - i. Class 5 gravel subbase will be installed under line item B-2 on bid response form.
    - ii. The concrete erosion control blanket shall have a geosynthetic 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.
    - v. A thin layer of gravel will be spread over the installed mat to fill voids.
3. **Method of Measurement** – The articulated concrete mat erosion control system 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.

**K. ROCK CHANNEL**– (line items K-12 and K-13 on bid response form)

1. **Scope of Work** – This item consists of grading drainage channels and providing and installing geosynthetic fabric and rock rip rap in the rock channels as shown on **Sheet 5 – Erosion Controls** and **Sheet 7 – Culvert Removal and Slope Stability Repair** and specified on **Sheet 8 – Details**.
2. **Construction Requirements** - 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 420 square yards of geosynthetic fabric must be installed and approximately 500 tons of Grade II or III (NDDOT Table 256-01) rock rip rap must be hauled and placed in the bottom of the established drainage channels.

**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** – Rock channels will be measured on a per-ton of rip-rap 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.

**L. MANURE HANDLING**– (line item L-14 on bid response form)

1. **Scope of Work** – This item consists of handling manure located at a farmstead (**Sheet 2 – Access and Manure Hauling Roads**), hauling it to the main site in Section 1, T151N, R81W (**Figure 2**), spreading it evenly on the steep slope areas, and tilling to incorporate manure into the respread topsoil.
2. **Construction Requirements** – Approximately 200 cubic yards of Class 5 gravel (included in line item B-2) will be hauled and spread as an access road to the manure piles (**Sheet 2**). The manure will be removed, hauled to the project site, and spread uniformly across the approved respread areas. This will be done in coordination with the landowner and approved by the Commission’s Project Manager. Approximately 500 cubic yards of material will be hauled approximately six (6) miles to the project site. The manure will be spread evenly across the approved steep grade areas 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.

**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 topsoil to a uniform depth across the steep grades at 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 that 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** – Class 5 gravel will be measured on a per-ton basis and paid under bid response line item B-2. Manure handling will be measured on a per cubic yard basis. Manure pile volumes will be surveyed by the Commission 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.

**M. FERTILIZING, SEEDING, AND MULCHING** – (line item M-15 on bid response form)

1. **Scope of Work** – This item of work includes the fertilizing, mulching, and seeding of approximately 85 acres of disturbed areas as directed by the Commission’s Project Manager, including the final graded spoil piles, pits and highwall areas.
2. **Construction Requirements** – A firm seedbed must be prepared immediately following any earthwork, manure incorporation, or topsoil handling operations as follows:
  - a. Blading with motor grader (both north/south and east/west directions).
  - b. Deep ripping (18 to 24 inches) of 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 the 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 2024 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 disturbed areas must be seeded.

**Seed Mixture:** (Certified tickets are required)

Species	Variety	Pure Live Seed (lbs / Acre)
Oats	Any certified seed variety	30
Western wheatgrass	Rodan or Rosanna	8
Falcata Alfalfa	Falcata	15
Switchgrass	NDG-965-98	6
Slender wheatgrass	Primar or Revenue	4
<b>TOTAL</b>		<b>63</b>

3. **Method of Measurement** – Fertilizing, Seeding, and Mulching 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.

**N. EROSION CONTROL BLANKET LINED CHANNEL**– (line item N-16 on bid response form)

1. **Scope of Work** – Provide and install 6,600 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, and one drainage channel, 24 feet in width, must be constructed as shown on **Sheet 5 – Erosion Controls and Sheet 8 - Details**. 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 NDDOT specifications. 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.

**O. VEGETATED EROSION CONTROL CONCRETE MAT**– (line item O-17 on bid response form)

1. **Scope of Work** – Construct 90 linear feet of drainage channel and line with a vegetated erosion control concrete block mat.
2. **Construction Requirements** - The CONTRACTOR will furnish all materials necessary to complete the installation of the constructed drainage channel and submit product information sheets to the Commission's Project Manager for approval prior to ordering materials.
  - a. A 16-foot-wide drainage channel will be graded and constructed as shown on **Sheets 5 – Erosion Controls** and **Sheet 8 - Details**.
    - a. All foreign material must be removed and disposed of properly.
  - b. Site preparation must be completed as described in G. Topsoil Handling, L. Manure Handling and M. Fertilizing, Seeding, and Mulching.
  - c. Vegetated erosion control concrete block mat such as Flexamat or equivalent product with a minimum **16 feet width** must be installed along the length of the channel as shown on **Sheet 5**. The mat will be installed and **anchored** in accordance with the manufacturer's guidelines and recommendations and NDDOT Specifications.
3. **Method of Payment** – Payment will be made on a per-foot basis as measured by the Commissions Project Manager.
4. **Basis of Payment** - Payment will be made at the unit price. Payment for site preparation (e.g. Topsoil Handling, Manure Handling and Fertilizing, Seeding, and Mulching) is made under those specific items. Payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified.

**P. STRAW WATTLES**– (line item P-18 on bid response form)

1. **Scope of Work** – Provide and install 1,875 lineal feet of straw wattles (also known as fiber rolls) within the disturbed areas, or as instructed by the Commission's Project Manager.
2. **Construction Requirements** – The CONTRACTOR will furnish all materials necessary to complete the installation of the straw wattles and submit product information sheets to the Commission's Project Manager for approval prior to ordering materials. The straw wattles must be placed on the newly established, final graded slopes after seeding and mulching operations are completed. Approximately 1,700 feet of wattles will be need at the main site as shown on **Sheet 5 – Erosion Controls**. Approximately 175 feet of wattles will be needed at the repair site as shown on **Sheet 7 – Culvert Removal and Slope Stability Repair**. 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.

**Q. CORRUGATED METAL PIPE (CMP) REMOVAL-** (line item Q-19 on bid response form)

1. **Scope of Work** - This item consists of the excavation and disposal of an existing corrugated metal pipe (CMP). This site is located in the NE¼, Section 30, T152N, R81W (**See Figure 3**).
2. **Construction Requirements** – The CONTRACTOR will furnish all materials necessary to complete the removal and disposal of an existing 36-inch CMP culvert that is approximately 120 feet length. The existing 36-inch CMP must be removed before a rock channel is installed per line items K-12 and K-13 (Rock Channel). Severe erosion and piping are evident around the existing CMP. **Work will not begin until after the adjacent crops have been harvested and written approval from the Commission's Project Manager has been received. Time extensions for this item will be given if required.**
  - a. The existing 36-inch CMP must be excavated and disposed of in accordance with all applicable laws and guidelines.
  - b. The excavated area will be re-graded so the final rock channel outlet is same elevation as the existing CMP outlet channel re-established and approved by the Commission's Project Manager.
  - c. The CONTRACTOR will install a rock channel in accordance with the specifications and requirements listed in Section K–Rock Channel.
  - d. If necessary, seed any disturbed grassed areas with the seed mix approved in Section M-14.
3. **Method of Measurement** – Culvert excavation and disposal will be measured on a lump sum basis. If necessary, the seeding area will be surveyed in the field and payment will be on a per-acre basis per in line-item M.
4. **Basis of Payment** - Payment will be made at the lump sum or unit price basis. 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. SLOPE FAILURE REPAIR AND TOPSOIL**– (line item R-20 on bid response form)

1. **Scope of Work** – This item consists of providing topsoil and repairing an existing slope failure located in the NE¼, Section 30, T152N, R81W (**See Figure 3**). The disturbed area will be stabilized then fertilized, seeded, and mulched.
2. **Construction Requirements** – A 150-foot slope failure plane shown on **Sheet 7 – Culvert Removal and Slope Stability Repair** developed after the reclamation of this AML site. The CONTRACTOR will be required to provide approximately 50 cubic yards of topsoil quality material which must be approved by the Commission's Project Manager before ordering. Fill and stabilize the failure plane and blend into the existing topography. Seed the disturbed area and stabilize the area with the installation of straw wattles per line item P-18.
3. **Method of Measurement** – Topsoil will be measured on a per cubic yard basis and will be determined by the Commission's survey or counting truck loads if agreed to by the Commission's Project Manager and CONTRACTOR. The seeded area will be surveyed in the field and payment will be on a per-acre basis at the rate stated in line item M-18. Straw wattles will be measured on a linear foot basis and paid at the unit price stated in line item P-18.
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.

**S. CLEAN-UP** - (line item S-21 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, repair of roads, and other areas as needed to achieve pre-construction conditions.

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.

#### T. **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. An existing electric fence and hay bales must be placed in an approved on-site location.
  - c. F. Silt Fencing approval must be given prior to G. Topsoil Salvage.
  - d. G. Topsoil Salvage approval must be given prior to H. Subsoil Salvage
  - e. G. Topsoil Salvage and H. Subsoil Salvage approval must be given prior to I. Earthwork.
  - f. I. Earthwork approval must be given before J. Fertilizing, Mulching and Seeding, and Installation of the K. Erosion Control Blanket, and L. Straw Wattles.
  - g. Topsoil, subsoil, and wood chip storage areas must be approved.
  - h. Manure respread areas must be approved.
  - i. Any variance in fertilizer or seed mixture must be submitted and approved by the Commission's Project Manager prior to the beginning of seeding.
  - j. The Commission's Project Manager must approve gravel source, geosynthetic fabric, silt fencing, straw wattles, erosion control blanket, vegetative erosion control concrete block mat, and concrete mat prior to ordering by CONTACTOR.
  - k. Work at the repair site will not begin without written approval from the Commission's Project Manager.

#### 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 form in Section 8. The current Disadvantaged Business Enterprise (DBE) information can be accessed on the NDDOT website at the following link: <https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>.

## **600. SUSPENSION OF WORK**

If any problems arise or persist, the Commission's Project Manager has the authority to suspend any ongoing item of work until appropriate remedial action is taken in accordance with ND Department of Transportation Standard Specifications for Road And Bridge Construction.

## **700. BUY AMERICAN ACT**

### **Buy America 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 that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; 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.**

**PVC casing used in North Dakota drilling and grouting projects is considered temporary because it is removed after grouting and does not become a permanent part of any infrastructure.**

"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.

#### **800. 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. <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

## **ATTACHMENTS**

### **Figures 1 – 3 (Maps)**

### **Design Plan Sheets**

**(Attached separately as 2025 Buechler Velva Phase 3 Design Plan Sheets)**

**Sheet 1 – Cover Sheet**

**Sheet 2 – Access and Manure Hauling Roads**

**Sheet 3 – Existing Topography and Sediment Controls**

**Sheet 4 – Post-Reclamation Topography**

**Sheet 5 – Erosion Controls**

**Sheet 6 – Cut and Fill**

**Sheet 7 – Culvert Removal and Slope Stability Repair**

**Sheet 8 – Details**

Figure 1 – Index Map

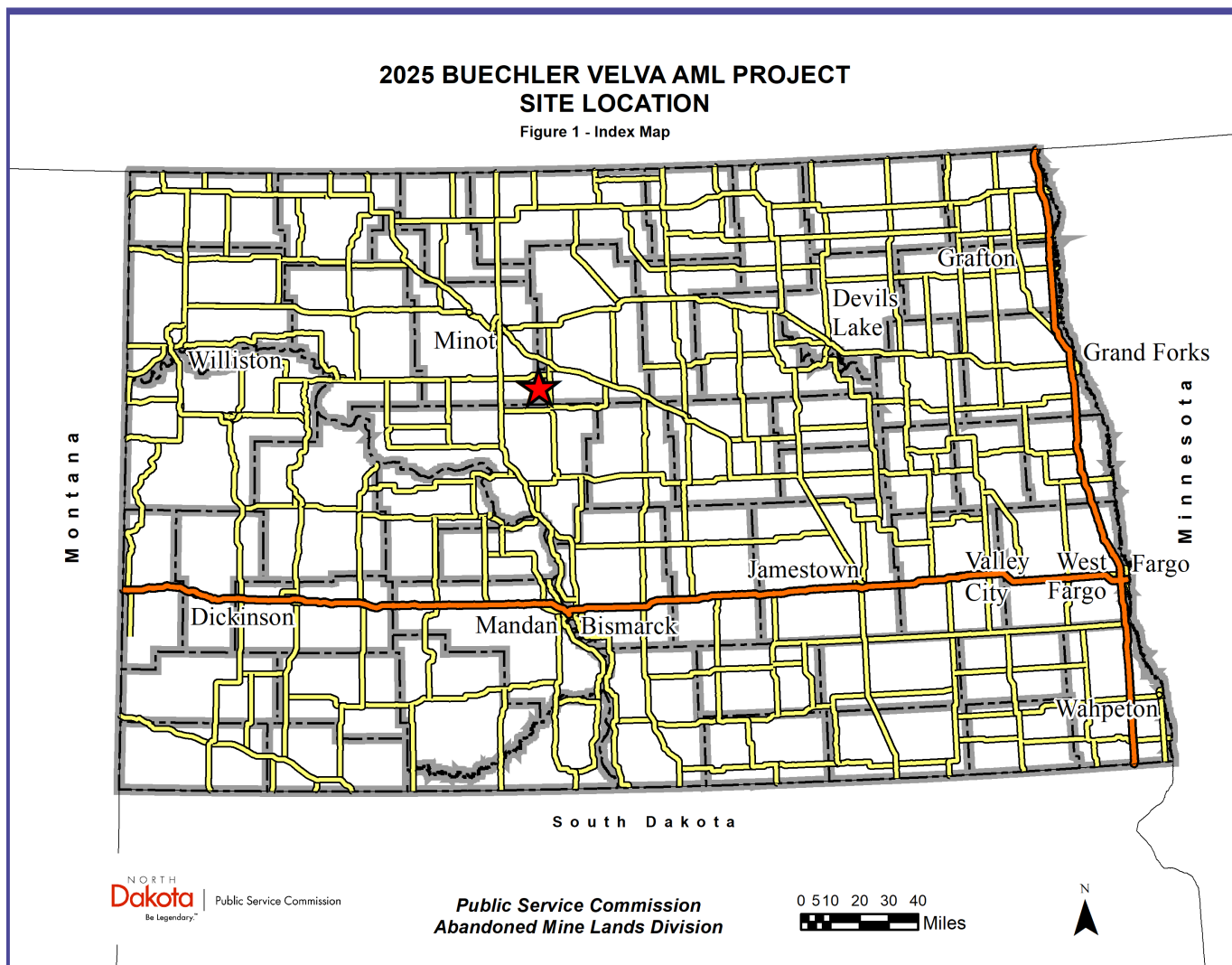


Figure 2 – Buechler Velva Phase 3 Main Site

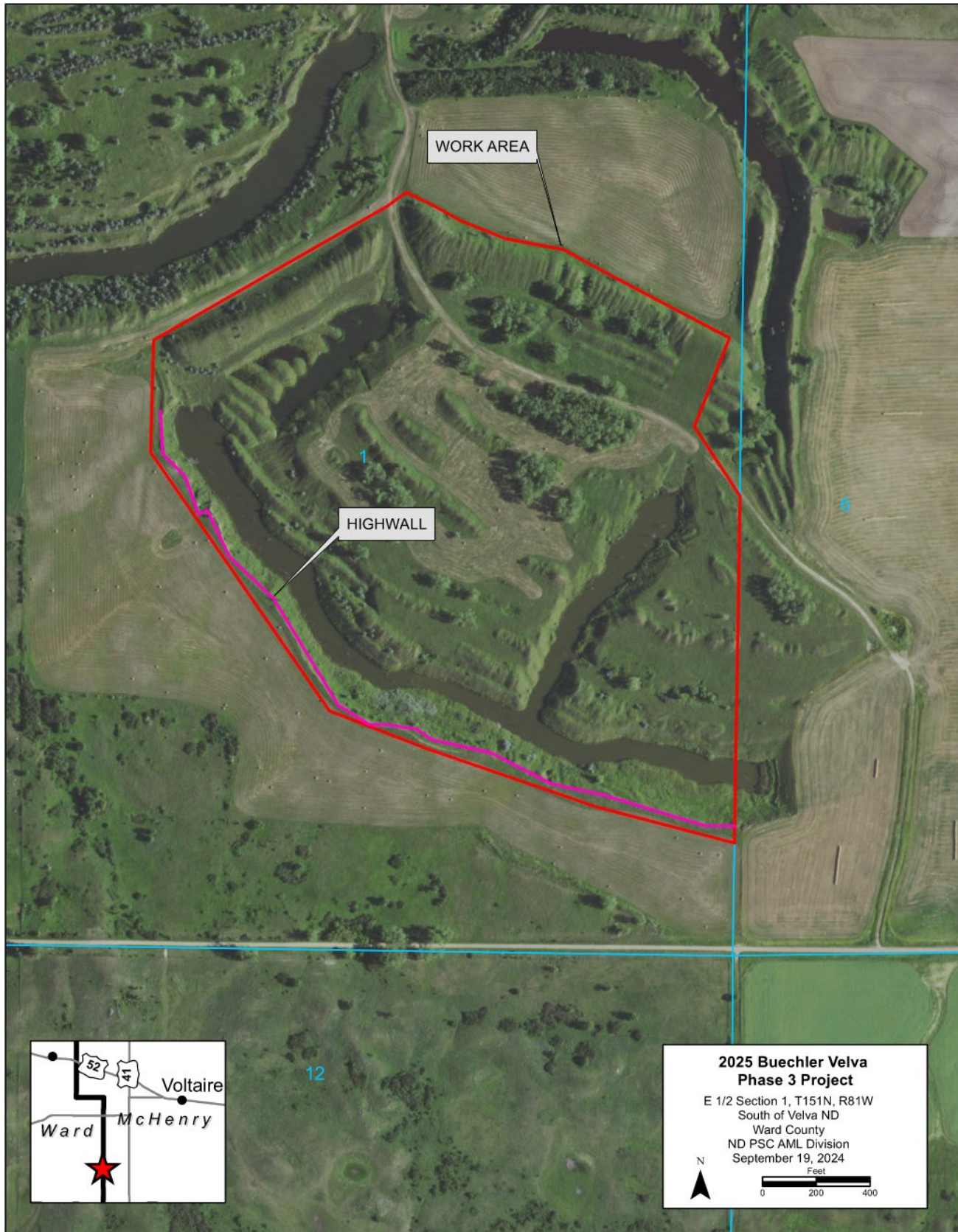
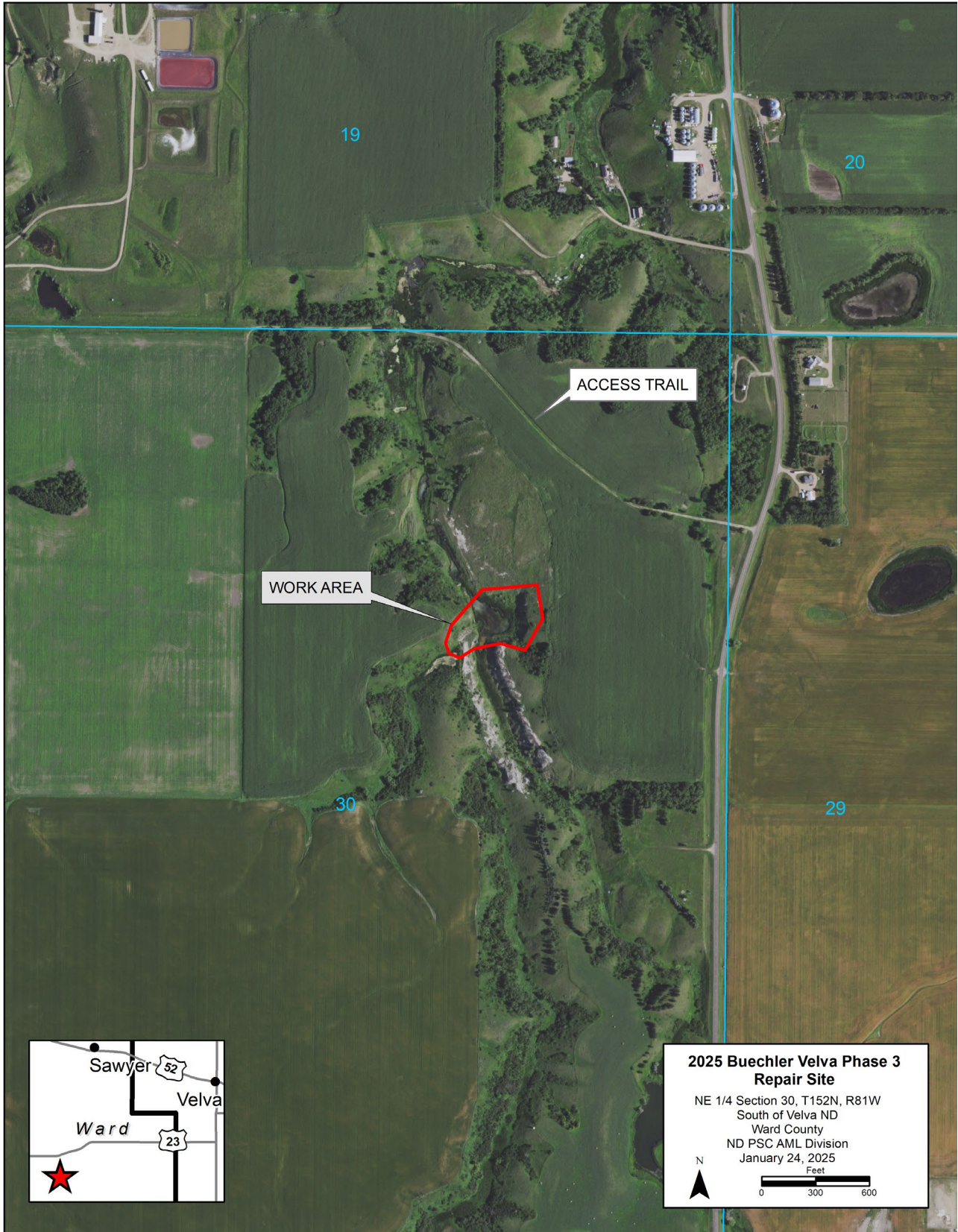


Figure 3 – Buechler Velva Phase 3 Repair Site



## **SECTION 8 BID FORMS**

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

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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



**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
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**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.

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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)

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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
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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)

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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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