



# Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

*sent via email and regular mail*

600 East Boulevard Ave  
Dept. 408  
Bismarck, ND 58505-0480  
701-328-2400  
ndpsc@nd.gov

April 25, 2025

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

**RE: Contract for the 2025 Buechler Velva Phase 3 AML Project**

Dear Ms. Kalisiak:

On April 10, 2025, the North Dakota Public Service Commission issued a Notice of Intent to Award a contract to Young Guns Construction, LLC. for the 2025 Buechler Velva Phase 3 AML Project in the amount of \$2,359,836.25. The seven-day period for appeals has expired. No appeals were filed. Enclosed are **two (2) original contracts** and the **performance and payment bond forms** that must be executed and returned. Please return both signed contracts and the executed performance and payment bonds on or before May 15, 2025. I have also included the Contractor Information Form that you completed in 2024. Please verify that there are no changes, sign, and date. If possible, please hand deliver the contract and the other required documents.

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

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

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

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

Sincerely,

Jonathan Emmer  
Director, AML Division

37 AM-24-353 Filed 04/25/2025 Pages: 21  
Young Guns Construction, LLC Contract Award Package  
Public Service Commission  
Jonathan Emmer

Enclosures

## CONTRACT NUMBER AM-908-25

<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> Executive Director	_____ <b>Date</b>

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

<b>Agreement Information</b>	
Case No.:	<u>AM-24-353</u>
Contract No.:	<u>AM-908-25</u>
Start Date:	<u>Upon execution</u>
End Date:	<u>12/31/2025</u>
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>
Expenses:	<u>\$2,359,836.25</u>
ID	<u>Case No. AM-24-353</u>
<b>Type of Contractor:</b>	<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Public Agency <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Other

This Contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and Young Gun Construction, LLC (Contractor). This Contract consists of this sheet, general provisions and specific provisions.

## GENERAL PROVISIONS

The Parties to this Contract (Contract) are the State of North Dakota, acting through its Public Service Commission (STATE) and Young Gun Construction, LLC having its principal place of business at 10609 South Cave Road, Ludlow, SD 57755 (CONTRACTOR);

### **1. SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the work as described in Section 7, SPECIFIC PROVISIONS and attachments for the **2025 Buechler Velva Phase 3 AML Project** 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 **Two Million Three Hundred Fifty-Nine Thousand Eight Hundred Thirty-Six Dollars and Twenty-Five Cents (\$2,359,836.25)** (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:

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

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

**14. CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. Ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.

**15. COMPLIANCE WITH PUBLIC RECORDS LAWS**

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

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

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

**16. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR’s activities and responsibilities under this Contract, except to the extent specified in this Contract.

## **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>.

# Office of Surface Mining Reclamation and Enforcement

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

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

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

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

### **You can obtain an OFT two ways:**

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

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

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

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

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

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

### **Answers to Part D FAQs:**

*Which employees should be included in Part D?*

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

*What address and phone number should I use?*

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

*What are the begin and end dates for?*

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

ABANDONED MINE LANDS (AML) CONTRACTOR INFORMATION FORM

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

**Part A: General Information**

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

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

If you plan to certify the existing AVS information or submit updates under Part C, you must include an OFT. Instructions for downloading an OFT from the AVS can be found at: <https://www.osmre.gov/sites/default/files/2022-02/OMB%201029-0119%20instructions.pdf>. If you require assistance you may contact the AVS Office by phone at: 800-643-9748, or by email at: [avshelp@osmre.gov](mailto:avshelp@osmre.gov).

**Part C: Certifying and updating information in the AVS**

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

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

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

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature\_\_\_\_\_  
Title

**Part D: OFT Information**

Contractor's Business Name: \_\_\_\_\_

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

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

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

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

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

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

**PAPERWORK REDUCTION STATEMENT**

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

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



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

Individual     Corporation  
 Partnership

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

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

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

Abandoned Mine Site Description

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

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

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

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

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

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

Witness as to Principal:

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

	(Surety)	(SEAL)
BY		

Countersigned by:

North Dakota Resident Agent	P.O./Address
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ACKNOWLEDGMENT OF PRINCIPAL (Individual)

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

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

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

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

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

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

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

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

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

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

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

ACKNOWLEDGMENT OF SURETY

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

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

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



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

<input type="checkbox"/> Individual	<input type="checkbox"/> Corporation
<input type="checkbox"/> Partnership	

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

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

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

Abandoned Mine Site Description

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

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

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

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

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

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

Witness as to Principal:

(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

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