

**2012**  
**INVITATION FOR BID**  
**Columbus Phase 13 AML Project**  
**ND031**  
**Burke County, ND**

**BID NUMBER: 408.03.12.014**

**FOREWORD**

- Part I. GENERAL INFORMATION**
- Part II. SPECIFIC PROVISIONS**  
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## **FOREWORD**

This is an Invitation for Bid (IFB) to reclaim an Abandoned Mine Lands (AML) site. This AML site contains abandoned surface mines generally located within Sections 21, 28 and 29, T162N, R93W south of Columbus, North Dakota, (for locations see Figures 1 and 2).

The North Dakota Public Service Commission (Commission, PSC, Purchasing Agency or State) is interested in bids from qualified construction firms to achieve reclamation on this project. All work must be completed as specified during the 2012 construction season.

To bid, submit the required materials to the North Dakota Public Service Commission no later than **11:00 a.m. CENTRAL DAYLIGHT TIME (CDT), April 23, 2012**. The public bid opening will be held at 11:00 a.m. (CDT), April 23, 2012, in the Commission Hearing Room, 12<sup>th</sup> floor, State Capitol, Bismarck, North Dakota.

Any inquiries regarding the Invitation for Bid should be in writing and addressed to Josh Gallion, Procurement Officer, North Dakota Public Service Commission, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58505-0480.

This document can be accessed from the State Procurement Internet website, [www.nd.gov/spo/](http://www.nd.gov/spo/). Please be informed that maps and other attachments may be excluded from the materials on the Internet and the Commission makes no guarantee of completeness, accuracy or availability of Internet documents.

A registered professional engineer of the State of North Dakota has prepared these plans and specifications. The original signed and sealed plans and specifications are on file at the North Dakota Public Service Commission office.

(S E A L)

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Mark E. Knell, P.E. No. 2927

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Date

## **Part I.**

### **General Information**



**INVITATION FOR BID**  
State of North Dakota  
OMB/Central Services Division  
SFN 2464 (5-2006)

North Dakota Public Service Commission  
Abandoned Mine Lands Division  
600 East Boulevard Avenue, Dept 408  
Bismarck, ND 58505-0480  
PH: 701-328-4096

<b>Bid Number:</b> 408.03.12.014	<b>Bid Title:</b> 2012 Columbus Phase 13 AML Project	
<b>Date Issued:</b> March 5, 2012	<b>Procurement Officer:</b> Josh Gallion	
<b>Deadline for Questions:</b> April 16, 2012	<b>Telephone:</b> 701-328-4020	<b>Fax:</b> 701-328-2410
<b>Bid Opening Date and Time:</b> April 23, 2012, 11:00 a.m. (CDT), 12 <sup>th</sup> Floor Commission Hearing Room	<b>E-mail:</b> <a href="mailto:jcgallion@nd.gov">jcgallion@nd.gov</a>	
<b>Performance Period:</b> May 14, 2012 to October 20, 2012	<b>Commodity or Service:</b> 912-Construction General, Subclass 23 962- Subclass 73	

You are invited to participate in this Invitation for Bid. Please submit your bid response in conformance with the instructions specified herein.

By submitting a bid response, the vendor agrees and promises 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 vendor shall fully perform the contract in accordance with the all specifications, terms and conditions, and requirements contained in the Request for Bid and shall comply with all applicable provisions of the North Dakota Century Code Chapters 54-44.4, 46-02, 44-08 and North Dakota Administrative Code Chapter 4-12, made a part of the Invitation for Bid and contract by reference.

Written acceptance of the vendor's bid response by the State, by issuance of a purchase order or contract, constitutes a binding contract made and entered into by and between the State of North Dakota, acting through the Purchasing Agency named above, and the vendor named below:

<b>Vendor Company Name:</b>			
<b>Street Address:</b>			
<b>P.O. Box:</b>	<b>City</b>	<b>State:</b>	<b>Zip Code:</b>
<b>Toll Free Telephone:</b>		<b>Telephone:</b>	<b>Fax:</b>
<b>Federal I.D. or Social Security No.:</b>		<b>E-Mail:</b>	
<b>Type or Print Name of Person Signing:</b>		<b>Title:</b>	
<b>Authorized Signature:</b>			

## MAILING INSTRUCTIONS

Mail a completed and signed Invitation for Bid document in a sealed envelope to the address listed below. Invitation for Bid documents received after the date and time specified in the Invitation for Bid, will be rejected. Address the envelope containing your response in the following manner:

BID NUMBER	<b>408.03.12.014</b>
BID TITLE	<b>2012 Columbus Phase 13 AML Project</b>
BID OPENING DATE	<b>April 23, 2012</b>
BID OPENING TIME	<b>11:00 a.m. (CDT)</b>
AGENCY	<b>PUBLIC SERVICE COMMISSION 600 EAST BOULEVARD AVE DEPT 408 BISMARCK ND 58505-0480</b>

### **Bidder Checklist.** Have you remembered to?

- Review all instructions, terms and conditions, and specifications to ensure your bid response complies?
- Double check your bid price(s)?
- Prepare your bid price in the specified unit of measure, F.O.B. Destination, Freight Prepaid to the delivery location listed on the cover sheet?
- Sign your bid and the Invitation for Bid form?
- Initial any alterations or corrections?
- Attach bid bond and MBE/WBE Certification?
- Mark envelope as indicated?

## Bidder's Instructions

1. **Addition of Terms and Conditions.** Additional terms and conditions submitted with a bid response are of no effect unless accepted in writing by the Purchasing Agency. Bids with any additional terms and conditions may be rejected as non-responsive.
2. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to the deadline for receipt of bids so that reasonable accommodation can be made.
3. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 60 days, unless otherwise specified by the Procurement Officer in writing.
4. **Bid Opening.** All bids received by the time and date of the bid opening will be publicly opened by the Purchasing Agency at **11:00 a.m. (CDT), April 23, 2012**, in the Commission Hearing Room on the 12<sup>th</sup> floor of the State Capitol in Bismarck, North Dakota. Interested parties are invited to attend the bid opening.

5. **Bid Results.** Bidders desiring a copy of the bid results are instructed to request such and include a self-addressed, stamped, envelope or email address with their bid response. Bid results will be mailed when an award decision is made. Bidders may also obtain bid results or arrange to review the bid file by contacting the Purchasing Agency.
6. **Corrections.** The vendor's authorized representative must initial any corrections and alterations (i.e. erasers, whiteouts, correction tape, etc.) made to the bid response. Those bid responses with corrections and alterations that are not initialed are subject to confirmation by the Procurement Officer.
7. **Definitions:**
  - Bidder – any person or firm submitting a competitive bid in response to a solicitation.
  - Bid Results – a summary of all bid responses received and the award results.
  - Bid Response – the executed document submitted by a bidder in response to a solicitation.
  - Contractor – any person or firm having a contract with a governmental body.
  - Solicitation – the process of notifying prospective bidders that the state wishes to receive bids for furnishing goods or services.
8. **Facsimile Bids.** Bid responses faxed to the Purchasing Agency will be rejected. Bids may be faxed to a third party who will put it in an envelope and deliver it to the Procurement Officer before the date and time specified in the solicitation.
9. **Late Bids.** It is the bidder's responsibility to ensure that a bid response is physically deposited with the Purchasing Agency prior to the date and time specified for the opening. Late bid responses will not be opened and will be rejected regardless of the degree of lateness or the reason.
10. **Minor Informalities.** The State reserves the right to waive minor informalities in bid responses in accordance with North Dakota Administrative Code Chapter 4-12-10. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders or offerors.
11. **New Equipment and Materials.** Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials must be new and under current production for use in the United States.
12. **Prices, Currency.** All prices must be in United States currency.
13. **Pricing (Unit and Total Prices).** The unit price is to be according to the unit of measurement specified in the solicitation. In the event of mathematical differences between the unit price and extended total, the unit price will prevail.

14. **Protests.** An interested party may protest the solicitation within seven days before the bid opening or protest the Notice of Intent to Award or Award within seven days after receiving notice in accordance with North Dakota Century Code Chapter 54-44 and North Dakota Administrative Code Chapter 4-12-14. Notice of Award will be issued to those vendors that submit a bid. Seven calendar days after award or issuance of the Notice of Intent to Award to vendors that submitted a bid, it will be assumed that all interested parties knew or should have known all the facts surrounding the award.
15. **Questions and Clarifications.** All questions and requests for clarification regarding this solicitation must be addressed to the Procurement Officer referenced on the cover sheet of this document. The requirements of this solicitation can only be altered by written amendment of the solicitation. Verbal communications from whatever source are of no effect. Questions must be received by **5:00 p.m. (CDT), April 16, 2012**, to allow the Procurement Officer to issue any needed amendments in sufficient time before the bid opening date.
16. **Review of the Bids.** After the bid opening, bids become subject to North Dakota open records laws. Interested parties may request public information and make arrangements to review the bid file by contacting the Procurement Officer during normal working hours, between 8:00 a.m. and 12:00 p.m. and 1:00 p.m. and 5:00 p.m., Monday through Friday.
17. **Rejection.** The state reserves the right to reject any and all bids in whole or in part. Bid responses will be rejected if:
  - the bid response is not legible.
  - the bid response is not completed as requested.
  - the bid response is faxed to the Purchasing Agency.
  - the bid response is not responsive to the specifications or other requirements of the solicitation.
  - the bid response is received after the time and date specified.
  - the bidder was required to be registered as an approved vendor by the deadline for receipt of bids, and failed to do so.
  - the bidder is determined to be not responsible, in accordance with North Dakota Administrative Code Section 4-12-11-04.
18. **Signature.** The bidder submitting the bid response or that bidder's duly authorized agent or representative must sign the bid response manually in ink. The name and title of the person signing the bid response must be typed or printed below the signature.
19. **Specifications, Brand Name or Equivalent.** Unless otherwise indicated in the detailed specifications of this solicitation, the use of a specific brand name or make and model is for illustrative purposes only, and the State will consider equivalent products. If a commodity or service put forth by a vendor is rejected as not being equivalent, the Procurement Officer will notify the bidder of the rejection.

20. **Specifications, Compliance.** All bids submitted in response to this Invitation for Bid must comply with the specifications contained herein, and the successful bidder will be held responsible. Noncompliance with specifications is grounds for rejection of the bid response. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the specifications stated herein must contact the Procurement Officer in writing as soon as possible, so the Procurement Officer can determine whether the specifications need to be amended.
21. **Taxes.** The State does not pay sales tax or federal excise tax. The state sales tax exemption number is E-2001. The federal tax ID number is 45-0309764. The Purchasing Agency will furnish a tax exempt certificate upon request.
22. **Withdrawal or Changes to a Bid Response Prior to the Bid Opening Date and Time.** Before the bid opening date and time, the bidder's authorized representative may withdraw or change a bid response by making a written request to the Procurement Officer.
23. **Withdrawals After the Bid Opening Date and Time.** After the opening, no changes may be made to the bid response. The bidder may make a written request to withdraw the bid response, subject to approval by the Purchasing Agency. Bidders repeatedly withdrawing bids after the opening date may be removed from the State Bidders List.



## GENERAL TERMS AND CONDITIONS

1. **Affirmative Action.** The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical handicap.
2. **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 brought in the District Court of Burleigh County, North Dakota.
3. **Assignments and Subcontracts.** Contractor may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the Contractor may enter into subcontracts provided that any such 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. Contractor shall not have the authority to contract for or incur obligations on behalf of the State.
4. **Binding Contract.** The acceptance of a bid response in writing by the Purchasing Agency constitutes a contract between the bidder and the State. Written acceptance from the Purchasing Agency will be in the form of a purchase order, notification of award, or contract. Any oral agreement or arrangement by a bidder with a State employee or Purchasing Agency will have no force or effect unless reduced to writing.
5. **Compliance with Laws.** The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations. The Contractor must comply with the provisions of all appropriate federal laws, including Title VI of the Civil Rights Act of 1964. Any subletting or subcontracting by the Contractor subject subcontractors to the same provision.
6. **Compliance with Public Records Law.** Contractor understands that, except for disclosures prohibited by law, the state must disclose to the public upon request any records it receives from the Contractor. Contractor further understands that any records which are obtained or generated by the Contractor under this contract, except for records that qualify for protection under an exception to the North Dakota open records law, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.
7. **Confidentiality.** Contractor agrees not to use or disclose any information it receives from the State under this contract that the 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 the State. The State agrees not to disclose any information it receives from the Contractor that the Contractor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law. The duty of State and Contractor to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

8. **Contract Amendment.** After a binding contract has been entered into, no changes (i.e. substitution of product or a price adjustment) may be made, unless prior approval has been obtained from the Purchasing Agency.
9. **Inspection and Investigations.** The State reserves the right to conduct inspections and investigations related to the Bidder and offered commodities or services, including but not limited to the firm, its facility, personnel, qualifications, and the commodities or and services offered to make determinations regarding compliance with the bid requirements and responsibility of the vendor.
10. **Material and Workmanship.** All material and workmanship shall be subject to inspection and testing by the state either at: (1) the point of manufacturer; (2) place of storage; or, (3) upon receipt.
11. **Payment Terms.** Payment will normally be made within thirty (30) days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoices and payment inquiries must be directed to the Purchasing Agency.
12. **Termination for Lack of Funding or Authority.** This contract shall become null and void, in total or in part, should the Legislature of the State of North Dakota fail to appropriate funds for any or all agencies, which are committed to the terms of this contract. Any such contract termination shall be at no cost to the State. This contract may also be terminated if funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for work performed or purchases of the services or supplies in the indicated quantities or term.
13. **Termination of Contract.** Offerors must review the attached sample contract for termination provisions.

## SPECIAL TERMS AND CONDITIONS

1. **Approved Vendor Registration.** Every person or business entity that desires to bid on contracts for commodities and services must be an approved vendor in order to be placed on the bidders list. Vendors must comply with the vendor registration requirements related to approved bidder registration as set forth in North Dakota Century Code Section 54-44.4-09 and this solicitation:

**Vendors Must Be Approved Before Contract Award.** Proposals will be accepted from vendors who are not currently approved vendors on the State's Vendor Database; however, the successful bidder or offeror will be required to become approved prior to award, in accordance with North Dakota Century Code Section 54-44.4-09. To become an approved vendor, you must: 1) be registered with the North Dakota Secretary of State (fees apply); and, 2) submit a completed Bidders List Application to the ND State Procurement Office.

Registration instructions and forms are available on-line at:

<http://www.nd.gov/spo>. Contact the ND State Procurement Office at 701-328-2683 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance. The successful bidder must register and become approved within sixty calendar days or shorter time specified in writing by the Purchasing Agency from the date of the Notice of Intent to Award. The bid or proposal may be rejected if the vendor fails to register within the specified time period.

**Placement on the bidders list does not guarantee a vendor will receive notice of every formal solicitation. Vendors must maintain current information by submitting a Notice of Change form to the State Procurement Office (Fax 701-328-1615). Visit the website for forms:**  
<http://www.nd.gov/spo>.

2. **Award.** Award will be made to the responsible bidder with the lowest priced bid that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:
  - i. All or none.
3. **Award, Local Service.** Service within 10 days after receipt of the Notice to Proceed is required. Vendor must have facilities or service providers within a commuting distance to meet this requirement.
4. **Bid Bond, Type.** No bid 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. 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 or bids 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.

The Commission will retain the bid bonds, 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 the Commission has successfully contracted the work.

5. **Payment and Performance Bonds.** The bidder whose bid is accepted shall be required to enter into a written contract with the 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 North Dakota Century Code Section 13-01-14, for bills which are not paid within ninety (90) days. The bond must also provide, under North Dakota Century Code Section 65-04-10, that the Contractor has made, or will make, prior to the commencement of any work by the 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 the Contractor has paid, or will pay, the premium thereon prior to the commencement of work. Both bonds shall be executed on Commission-approved forms. Bonds must be secured from a company which has complied with the law and regulations of the U.S. Treasury Department and is acceptable as a surety or reinsurer of federal bonds under Sections 9304 to 9308 of Title 31 USC and appropriate statutes of the State of North Dakota. A list of qualified companies is published under Treasury Circular 570.
6. **Contract Period.** The contract or contracts issued as a result of this solicitation will be for the period from approximately May 9, 2012 to June 30, 2013.
7. **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/or anticipated usage. The Contractor or contractors will be required to furnish actual requirements upon order. This contract will not include items of a similar nature, which must be bought for emergency use.
8. **Indemnification and Insurance Requirements.** Offerors must review the attached sample contract for indemnification and insurance requirements. The indemnification and insurance provisions are incorporated and made part of this solicitation and the resultant final contract. Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the Procurement Officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written

approval from the Purchasing Agency in consultation with the North Dakota Risk Management Division. Upon notice of award, the successful offeror must obtain the required insurance coverage and provide the Procurement Officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the Purchasing Agency, in consultation with the North Dakota Risk Management Division. An offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

9. **Payment Terms.** Payment will normally be made within thirty (30) days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoices and payment inquiries must be directed to the Purchasing Agency. Contractors 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 need to be submitted five (5) days prior to processing for review and to ensure timely payment. Invoices will not be considered without signature of the Contractor.
10. **Pre-Bid, On-Site Conference.** A pre-bid, on-site conference is scheduled for **April 12, 2012**, to afford an opportunity to prospective bidders to receive clarification related to this solicitation. This conference will begin at approximately **1:30 p.m. (CDT)**, at the Columbus AML Site. The conference will start along Highway 40 in the western portion of Section 20, T162N, R93W, approximately 4 miles south of the town of Columbus, North Dakota.
11. **Preservation of Markers.** The Contractor shall carefully preserve survey and control stakes and any other markers. In case of their destruction or loss, the 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.
12. **Pricing.** Pricing under this contract shall be as follows:

**Firm Fixed.** The total bid price is to include all discounts and deductions, and is to be less federal and state taxes, for which exemption certificates will be furnished upon request. Pricing shall be firm for the period of the contract.
13. **Purchasing Cards.** The Purchasing Agency may place orders by issuance of a purchase order or may elect to place an order and make payment using a purchasing card. The Contractor will accept a purchasing card payment without passing the processing fees for the purchase card back to the Purchasing Agency.
14. **Safety Requirements.** The 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. Offerors must review the attached sample contract for safety requirements.

15. **Schedule of Construction.** The successful bidder shall submit an estimated Schedule of Construction to the Project Manager for approval prior to beginning any work items.
16. **Standard Specifications.** Standard Specifications for AML Reclamation Projects (February 2000) outlines requirements and provisions for AML reclamation projects and is available upon request or can be viewed on the Commission's website at <http://www.psc.state.nd.us/divisions/aml/aml-specifications.pdf>.
17. **Time of Performance.** Project work will begin within ten (10) days of issuance of Notice to Proceed. The project performance period will be 150 consecutive calendar days. Time of performance shall be approximately from May 14, 2012 to October 20, 2012.
18. **Work Week.** The Contractor will work a standard 5 day work week (Monday – Friday). Work will generally be restricted to daylight hours Monday through Friday. Any variance of the normal work schedule (Monday – Friday) ***MUST*** receive prior approval from the Project Manager. Any request for variance to the work schedule must be made at least 2 days in advance. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.
19. **Service Representative:** The Contractor must provide a dedicated service representative to provide support for this contract. The Contractor shall provide the name and contact information for the service provider. During the contract period, the Contractor shall notify the Procurement Officer in the event the Contractor's service representative changes.

<b>NAME OF SERVICE REPRESENTATIVE:</b>	
<b>ADDRESS OF SERVICE REP:</b>	
<b>CITY &amp; STATE &amp; ZIP CODE:</b>	
<b>PHONE NUMBER:</b>	
<b>TOLL FREE NUMBER:</b>	
<b>FAX NUMBER:</b>	
<b>E-MAIL ADDRESS:</b>	

**SPECIAL TERMS AND CONDITIONS**  
**Sample Contract**

## SAMPLE CONTRACT

<b>Administrator:</b>	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400	
<b>Date:</b>		
_____ <b>Kevin Cramer</b> Commissioner	_____ <b>Tony Clark</b> Chairman	_____ <b>Brian P. Kalk</b> Commissioner

<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>	
Contract No.:	
Start Date:	
End Date:	
Program Title:	
<b>Type of Contract:</b> (    ) Fixed Price (    ) Cost Reimb.      (    ) Unit Price (    ) Other	

<b>Budget Information</b>	
Cost Center:	9000
Services:	
Optional on-site review:	
Expenses:	
ID	
<b>Type of Contractor:</b> (    ) Individual (    ) Corporation      (    ) Partnership (    ) Public Agency (    ) Nonprofit Organization (    ) Other	

This contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and XXX (Contractor). This contract consists of this sheet, general provisions and specific provisions.



## **GENERAL PROVISIONS**

### **CONTRACTUAL FEATURES**

#### **LEGAL AUTHORITY**

The Contractor assures that it possesses legal authority to participate in this contract.

#### **ASSIGNMENT/SUBCONTRACTING**

The Contractor may not assign this contract or any part thereof, or assign any of the monies to be paid hereunder, nor may any part of the work done or material furnished under this contract be sublet without the State's expressed written consent.

The Contractor may not enter into subcontracts for any of the work contemplated under this contract unless included in the specific provisions of this contract. Any such subcontract must acknowledge the binding nature of the contract and must incorporate this contract, including any attachments. Contractor is solely responsible for the performance of any subcontractor. Contractor shall not have the authority to contract for or incur obligations on behalf of the State.

#### **TERMINATION**

The State, by written notice of default listing causes and reasons, may terminate this contract in whole or in part if (1) the Contractor fails to provide services required by this contract within the time specified or any extension agreed to by the State; or (2) the Contractor fails to perform any of the other conditions or provisions of this contract, or so fails to pursue the work so as to endanger performance of this contract in accordance with its terms. The State will be liable only for payment provisions of this contract for services satisfactorily rendered prior to the effective date of termination.

Significant deviation from performance standards in this contract may result in reduced or terminated financial participation of the Contractor, subsequent to negotiations with the State.

This contract may be terminated in whole or in part without cause by mutual consent of the Contractor and the State. The parties shall agree upon the termination conditions including effective date and in the case of partial terminations, that portion to be terminated.

The State may terminate this contract effective upon delivery of written notice to the Contractor or on any later date stated in the notice in the event (1) funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for work performed or purchases of the services or supplies in the indicated quantities or term; (2) federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are

no longer eligible for the funding proposed for payments authorized by this contract; or (3) 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.

Any contract that extends beyond the current biennium may be terminated by the State if sufficient funds are unavailable, if the law regarding the contract is changed or without cause at any time.

The rights and remedies of the State provided in the termination provisions related to defaults by the Contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## **FORCE MAJUEURE**

Contractor will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the Contractor's reasonable control and the Contractor gives notice to the State immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

## **RENEWAL**

This contract will not automatically renew. State will provide written notice to Contractor of its intent to extend this contract for reasonable cause before the scheduled termination date.

## **DISPUTES**

The Contractor agrees to attempt to resolve disputes arising from this contract by informal administrative process and negotiations in lieu of litigation. Continued performance by the Contractor during disputes is assured.

Any dispute concerning a question of fact arising under this contract which is not settled by the informal means shall be decided by the authorized representative of the Commission who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of an appeal. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Commission.

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolutions. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

## **MERGER AND MODIFICATION**

This contract 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.

## **SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

## **NOTICE**

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

### **State:**

Darrell Nitschke, Executive Secretary  
Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480

### **Contractor:**

## **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 brought in the District Court of Burleigh County, North Dakota.

## **SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

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 the State the opportunity to review and inspect the evidence, including the scene of an accident.

## INDEMNITY

Contractor agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the Contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless 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.

## CONFIDENTIALITY

Contractor agrees not to use or disclose any information it receives from the State under this contract that the 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 the State. The State agrees not to disclose any information it receives from Contractor that the Contractor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. Chapter 44-04. The duty of the State and Contractor to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

Contractor understands that, except for disclosures prohibited by law, the State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records that are obtained or generated by the Contractor under this contract, except for records that qualify for protection under an exception to the North Dakota open records law, may, under certain circumstances, be open to the public upon request under North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

## INSURANCE

- a. **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 coverage's:
  - (1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

- (2) Automobile liability, including Owned (if any), Hired and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- (3) 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.
- (4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance if Contractor is domiciled outside the State of North Dakota.

b. **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:

- (1) Any deductible or self insured retention amount or similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.
- (2) 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 the State. The policies shall be in form and terms approved by the State.
- (3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this contract.
- (4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverage's of an additional insured under these policies.
- (5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b. A provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior notice to the undersigned State representative;
  - c. A provision that any attorney who represents the State under this policy 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. Section 54-12-08;
  - d. 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 the State, and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - e. Cross liability/severability of interest for all policies and endorsements;

- f. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and,
    - g. 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.
  - (6) The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - (7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
  - (8) If Contractor's insurance carrier cannot provide the insurance requirements listed above, Contractor will be required to purchase a project-specific insurance policy on behalf of State including but not limited to an Owner's Protective Liability insurance policy or a Project Management Protective Liability insurance policy with an occurrence limit of not less than \$1,000,000 and an aggregate of \$2,000,000. Said insurance shall be kept in force until the project is accepted by State.
- c. **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 the Contractor for limits of \$5,000,000. 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 (if applicable).

## **SAFETY REQUIREMENTS**

The 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, the Contractor shall provide, inspect and maintain all safeguards, safety devices, protective equipment, safety programs and other needed actions the Contractor determines necessary to reasonably protect the life, health and property of the Contractor, subcontractors, the State, the public and each of the employees, officers, assigns and agents of the Contractor, subcontractors and the State, in connection with the performance of work resulting from or arising out of the contract.

The Contractor must have a written safety program to be used as guidelines and direction for the Contractor's and subcontractors' activities. This program must meet all federal, state and local laws, regulations and other legal requirements and include the following minimum provisions: (1) a worksite safety policy and mission statement; (2) assigned responsibilities among management, supervisors and employees; (3) a system for periodic self-inspections, including inspections of job sites, materials, work

performance and equipment; (4) a thorough accident and injury reporting and investigation process; (5) a safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure; and, (6) a safety training program including safety "tool box" meetings and other systems for ongoing training and also including training for employees on the recognition, avoidance and prevention of unsafe conditions. Upon request by the Project Manager, a copy of the written safety program must be provided to the Commission.

It will be a condition of the contract, and must be made a condition of each subcontract entered into pursuant to that contract, that the State is assuming no liability relating to its receipt and review of the Contractor's safety plan or activities. Safety remains the responsibility of the Contractor. Furthermore, the right of the State to receive and review the safety plan or activities shall not give rise to a duty on the part of the State to exercise this right for the benefit of the Contractor or any other person or entity.

### **ATTORNEY FEES**

In the event a lawsuit is instituted by the State to obtain performance due of any kind under this contract, and the State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. Section 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

### **INDEPENDENT ENTITY**

Contractor is an independent entity under this contract and is not a State employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. The Contractor retains sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this contract, except to the extent specified in the contract.

## **FISCAL RESPONSIBILITIES**

### **RECORDS**

All records, regardless of physical form, and the accounting practices and procedures of the Contractor relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. The Contractor shall maintain all of these records for at least three years following completion of this contract.

### **NO CLAIM FOR ADDITIONAL WORK**

No claim for additional services not specifically herein provided, done, or furnished by the Contractor will be allowed, nor shall the Contractor do any work or furnish any material not covered by the contract, unless such work is ordered in writing by the State.

### **TIME KEEPING PROCEDURES**

The Contractor shall require employees and subcontractors, if applicable, whose positions are funded under this contract or included as match, to maintain adequate documentation for services provided. For positions that are funded from more than one source, an analysis of duties performed by program shall also be prepared.

### **MONITORING, EVALUATION AND AUDIT**

The Contractor agrees to cooperate with any monitoring, evaluating and/or audit conducted by the State, or their designees who shall have full access to and the right to examine all books, records and other relevant documents.

The Contractor agrees to take immediate corrective action on deficiencies disclosed through program monitoring of costs disallowed in the course of an audit, review, or monitoring.

### **PREPAYMENT**

The State will not make any advance payments before performance by the Contractor under this contract. The Contractor will be compensated based on periodic submittal of progress reports and signed invoices.

### **TAXPAYER ID**

Contractor's North Dakota tax ID number is: \_\_\_\_\_.  
Contractor's federal employer ID number is: \_\_\_\_\_.



## **PROGRAM REQUIREMENTS**

### **COMPLIANCE WITH LAWS**

Contractor agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the term of this contract all licenses, registrations and permits required by law and shall be authorized to do business in the State of North Dakota.

### **EQUAL OPPORTUNITY**

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of race, color, disability, or political affiliation or belief.

The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, disability, age, sex, political affiliation or belief or citizenship.

### **NONDISCRIMINATION**

This contract and any subcontract hereunder are subject to the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights of 1964 and the Americans with Disabilities Act of 1990.

### **WORK PRODUCT, EQUIPMENT AND MATERIALS**

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to the State at the State's request upon termination of this contract. Contractor agrees that all materials prepared under this contract are "works for hire" within the meaning of copyright laws of the United States and assigns to State all rights and interests Contractor may have in the materials it prepares under this contract, including any right to derivative use of the material. Contractor shall execute all necessary documents to enable State to protect its 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.

## **BUY AMERICAN ACT**

The Contractor agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41U.S.C. 10a-10c, popularly known as the "Buy American Act".) This applies to all subcontractors and suppliers of the Contractor. The Contractor will include this clause in all agreements and contracts.

## **WORK WEEK**

The Contractor will work a standard 5 day work week (Monday-Friday). Work will generally be restricted to daylight hours Monday through Friday. Any variance of the normal work schedule (Monday-Friday) **MUST** receive prior approval from the Project Manager. Any request for variance to the work schedule must be made at least 2 days in advance. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.

## **TERMS AND CONDITIONS OF INVITATION FOR BID**

The terms and conditions of the Invitation for Bid issued for this project not specifically set forth in this contract are incorporated herein by reference.

## **EFFECTIVENESS OF CONTRACT**

This contract is not effective until fully executed by both parties.

## **SPECIFIC PROVISIONS:**

Standard Specifications for AML Reclamation Projects (February 2000).

2012 Columbus Phase 13 AML Invitation for Bid (February 2012)

**PART II.**  
**SPECIFIC PROVISIONS**  
**EARTHWORK**

<b>Sec. 100</b>	<b>Project Objective</b>
<b>Sec. 200</b>	<b>Scope of Work</b>
<b>Sec. 300</b>	<b>Provisions</b>
<b>Sec. 400</b>	<b>Points of Approval</b>
<b>Sec. 500</b>	<b>Preservation of Survey Markers</b>
<b>Sec. 600</b>	<b>Utilization of Disadvantaged Business Enterprises</b>

## **100. PROJECT OBJECTIVE**

The objective of this project is the reclamation of approximately 85 acres which are part of a site that totals approximately one thousand two hundred eighty (1,280) acres in size as described in this IFB. This reclamation shall be achieved by excavation of spoil piles and backfilling of highwalls and pits as a result of an abandoned surface mine and other associated work. The requirements of this process are specified below.

## **200. SCOPE OF WORK**

This project involves the backfilling of pits and highwalls at an abandoned strip mine and the performance of other associated work items. It is estimated that approximately 589,250 cubic yards of excavation will be required to perform this work. This excavated material will be used, as shown on Plan Sheets, to backfill the highwalls and pits.

The Contractor is advised that most of this site is located within areas containing abandoned strip mine workings. The Contractor is required to understand that the excavation, backsloping, backfilling, and construction work specified in this IFB is inherently dangerous due to the presence of these unstable spoil piles, pits, highwalls and end walls. The Contractor is required to take the necessary precautionary steps to adequately protect workers and equipment used to complete this project.

The Contractor shall provide all material, equipment and personnel necessary to perform the work. The Contractor must be capable of completing this project within one hundred fifty (150) consecutive calendar days between approximately May 14, 2012 and October 20, 2012. Please note that no work will be allowed on holidays or weekends unless specifically approved by the Project Manager.

Standard Specifications for AML Reclamation Projects presented under separate cover are understood to be incorporated into this contract.

## **300. PROVISIONS**

The following special provisions shall apply:

### **A. MOBILIZATION**

1. **Scope of Work** – Mobilization consists of all necessary preparatory work and operations, which will enable the Contractor to start and finish the project. Mobilization includes movement of necessary items such as personnel, equipment, supplies, facilities and incidentals to and from the project site and any construction or dismantling. The Contractor shall determine the presence of any and all utility facilities within the project boundaries and notify all utility owners to appropriately mark the locations of these utility facilities.

The State of North Dakota has adopted a “One Call” utility locating Hot Line. The phone number is **1-800-795-0555** and the website is [www.ndonecall.com](http://www.ndonecall.com).

The Contractor must furnish, install and maintain ample sanitary facilities for all workers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of State and Local governments. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations. Costs for furnishing, installing and maintaining sanitary facilities shall be included in the lump sum price bid for mobilization and no additional compensation will be allowed.

2. **Method of Measurement** – Mobilization must be measured on a lump sum (L.S.) basis, and shall not exceed ten percent (10%) of the total contract bid.
3. **Basis of Payment** – Payment for mobilization will be made according to the following schedule:
  - a) Upon mobilization of the equipment, materials and personnel needed to perform the requirements of this project, payment of eighty percent (80%) of the total mobilization shall be paid.
  - b) Upon demobilization of the equipment, materials and personnel needed to perform this project, payment of twenty percent (20%) of the total mobilization shall be paid.

## **B. TOPSOIL REMOVAL**

1. **Scope of Work** – This item consists of removal and stockpiling of all available topsoil (and other good quality soil) within the disturbed project site, as directed by the Project Manager. Available topsoil material shall be generally defined as approximately the top one foot of material; however, topsoil material thickness may vary in depth throughout the site.
2. **Construction Requirements** – Topsoil material shall be removed as directed and stockpiled into piles adjacent to working areas. Stockpiles shall be located as not to interfere with any earthwork. The stockpiles shall be located as directed by the Project Manager. It is estimated that approximately 2,000 cubic yards of topsoil material will need to be removed and stockpiled on the site. Removal of topsoil material shall be performed in a uniform and neat manner. Average stripping depth is estimated at one foot; however, actual field conditions may result in the removal of a greater or lesser depth of soil. The amount of material to be salvaged from any and all portions of the project site shall be determined in the field by the Project Manager. Topsoil material shall be put in stockpiles of uniform and neat dimensions to facilitate measurement of true volumes. Topsoil material removal must receive explicit approval

from the Project Manager prior to the Contractor proceeding with other work items (see "Sec. 400").

Topsoil material removal areas will also be determined in the field by the Project Manager. Topsoil material shall be removed from all portions of the project area as completely as possible without mixing with poor quality material. Adjacent portions of the project area will also have topsoil material removed as directed by the Project Manager to facilitate in the final grading of the site.

3. **Method of Measurement** – Stockpiled topsoil material must be measured by neat measurement as it lies within the stockpiles of each area. Measurement shall be made without regard to any actual or perceived swell that the material may experience. The topsoil stockpile surveying operations will be conducted by the Commission.
4. **Basis of Payment** – Payment will be made at the contract unit price for true volumes stockpiled. Such payment shall constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

### **C. EARTHWORK**

1. **Scope of Work** – This item of work shall consist of the excavation of earthen materials from spoil piles and the backfilling of the highwalls and filling of the pits as shown on Plan Sheets 2 of 29 through 29 of 29 and as described herein.
2. **Construction Requirements** – The spoil piles, pits and highwalls shall be backfilled so as to leave a ground surface with the approximate configuration of that shown on the Plan Sheets. The cut and fill depths are shown on Plan Sheets 5 of 29, 8 of 29, 11 of 29, 14 of 29, 17 of 29, 20 of 29, 23 of 29, 26 of 29 and 29 of 29.

Spoil pile areas to be cut within the cut areas shall be lowered to the elevation of that shown on the Plan Sheets.

A total of 589,250 cubic yards of material must be removed from existing spoil pile areas, as shown on Plan Sheets 3 of 29, 6 of 29, 9 of 29, 12 of 29, 15 of 29, 18 of 29, 21 of 29, 24 of 29 and 27 of 29, to achieve a desired slope. The excavated material must be moved to the pits and utilized as backfill material to achieve the desired post-reclamation topography of that shown on Plan Sheets 4 of 29, 7 of 29, 10 of 29, 13 of 29, 16 of 29, 19 of 29, 22 of 29, 25 of 29 and 28 of 29. The excavation areas must be cut to grade and any excess material not needed to meet final grade must be placed along the entire length of the fill areas.

Please note that material cut from work areas 1-7 must be placed within the fill areas of work areas 1-7. The material cut from work area 8 must

be placed within the fill area of work area 8. The material cut from work areas 9-11 must be placed within the fill areas of work areas 9-10. Haul distances will vary, the Contractor shall be familiar with the volume of material to be placed in the pits.

The spoil material to be moved has varying amounts of rock, gravel, sand, silt and clay with differing moisture contents. Please note that no extra payment will be made for rock that is moved into the pit and highwall fill areas. Also note that no extra payment will be made for any muddy or wet conditions encountered in the cut or fill areas. Any waste (garbage) found on or within the spoil piles or pits must be properly buried or disposed. No extra payment will be made for the waste.

Please note that a total volume of 589,250 cubic yards of material has been calculated to be excavated and that no volume overruns will be allowable or paid for unless specifically approved by the Project Manager. The total cut volume and total fill volume, shown on Plan Sheet 2 of 29, do not match due to compaction (shrinkage) caused by heavy equipment (scrapers) traffic within the fill areas. Also note work areas 8-11 must be done before work areas 1-7.

To ensure timely payments, once any of the 11 areas (work areas 1-11) are excavated to grade, an invoice may be submitted for payment. Upon approval by the Project Manager, the cut volume shown on Plan Sheet 2 of 29 will be the basis of payment for the partial payments included on the invoices to be submitted by the Project Manager.

3. **Method of Measurement** – The spoil pile cut areas shall be surveyed to assure they are accurately cut to the planned post-reclamation grade. The surveying operations will be conducted by the Commission.
4. **Basis of Payment** – Payment will be made at the contract unit price. Such payment shall constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

#### **D. TOPSOIL RESPREAD**

1. **Scope of Work** – This item consists of topsoil resspreading of the removed topsoil within the disturbed site, as directed by the Project Manager.
2. **Construction Requirements** – Topsoil material to be resspread shall include the approximately 2,000 cubic yards removed and stockpiled during the topsoil removal operations done prior to earthwork operations. An additional 3,250 cubic yards of topsoil, previously stockpiled along the north and west facing spoil pile slope located in the east half of Section 29 within work areas 1-7, shall be directly resspread. Approximately 6,250 cubic yards of topsoil shall be stripped, from the undisturbed area south of the work areas 1-7 pit in the east half of Section 29, then directly resspread.

The 11,500 cubic yards of salvaged topsoil material shall be respread to a uniform depth upon the regraded work areas 1-7 of the site as directed by the Project Manager.

3. **Method of Measurement** – The topsoil material shall be measured by neat measurement as it lies within the stockpiles of each area. Measurement shall be made without regard to any actual or perceived swell that the material may experience. The topsoil material surveying operations will be conducted by the Commission.
4. **Basis of Payment** – Payment will be made at the contract unit price for true volumes stockpiled. Such payment shall constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

#### **E. FORCE ACCOUNT**

1. **Scope of Work** – The scope of work performed under this item consists of the provision of labor, equipment and material to undertake additional work that is not covered by specific bid items. For any force account work performed by a subcontractor, the Contractor will receive an additional allowance for administrative and overhead expenses. The additional allowance will be a percentage of the total force account invoice equal to ten percent of the first \$5,000 plus three percent of the balance in excess of \$5,000. The Project Manager reserves the right to procure force account services by the subcontractor of his choice. An example of force account work would be surveying done by an engineering firm.
2. **Method of Measurement** – Measurement shall be based on material quantities, equipment hours or other methods as determined by the Project Manager and agreed to by the Contractor. For subcontractor force account work, measurement shall be based on material quantities, equipment hours or other methods as determined by the Project Manager and agreed to by the subcontractor.
3. **Basis of Payment** – Payment will be made based on the above-described method of measurement. All bidding contractors shall be required to submit a bid amount of \$20,000 under the force account line item.

#### **F. CLEAN-UP**

1. **Scope of Work** – This item consists of the clean-up of the project site and any off-site area which may be used and the restoration of all damaged or destroyed real property including, but not limited to, fences, roads, haulage ways, access points, crops and ditches.
2. **Construction Requirements** – Fences, which must be replaced or repaired, shall be of a like workmanship, subject to approval of the Project



Manager. All survey and control staking shall be removed from the site within three (3) days of verbal notice from the Project Manager.

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

Restoration must include, but will not be limited to, recontouring or shaping, reseeding, and regraveling, resurfacing and repair of roads as needed to achieve pre-construction condition.

3. **Method of Measurement** – Measurement shall be as a lump sum (L.S.) unit as shown on the bid schedule.
4. **Basis of Payment** – Payment will be made at the lump sum (L.S.) basis. Such payment shall constitute full payment for all labor, materials, equipment and any other incidentals required to complete the work.

#### **400. POINTS OF APPROVAL**

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 (Sec. 300) include, but may not be limited to:

1. A detailed proposed progress chart must be submitted and approved by the Project Manager prior to beginning any other work items. Also an equipment and average load capacity list must be submitted.
2. B. "Topsoil Removal"; approval for this item must be given prior to C. "Earthwork".
3. C. "Earthwork" work areas 8-11 must be given priority over work areas 1-7.

#### **500. PRESERVATION OF SURVEY MARKERS**

After placement of survey and control stakes and markers the Contractor shall carefully preserve those stakes or markers and in case of their destruction or loss the Contractor shall be responsible for their replacement as directed by the Project Manager 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.

#### **600. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

The current DBE information can be accessed on the NDDOT website, <http://www.dot.nd.gov/>.

## **PART III. ATTACHMENTS**

**Figures 1-2**

**Plans and Maps (under separate cover, 29 sheets)**

# STATE OF NORTH DAKOTA

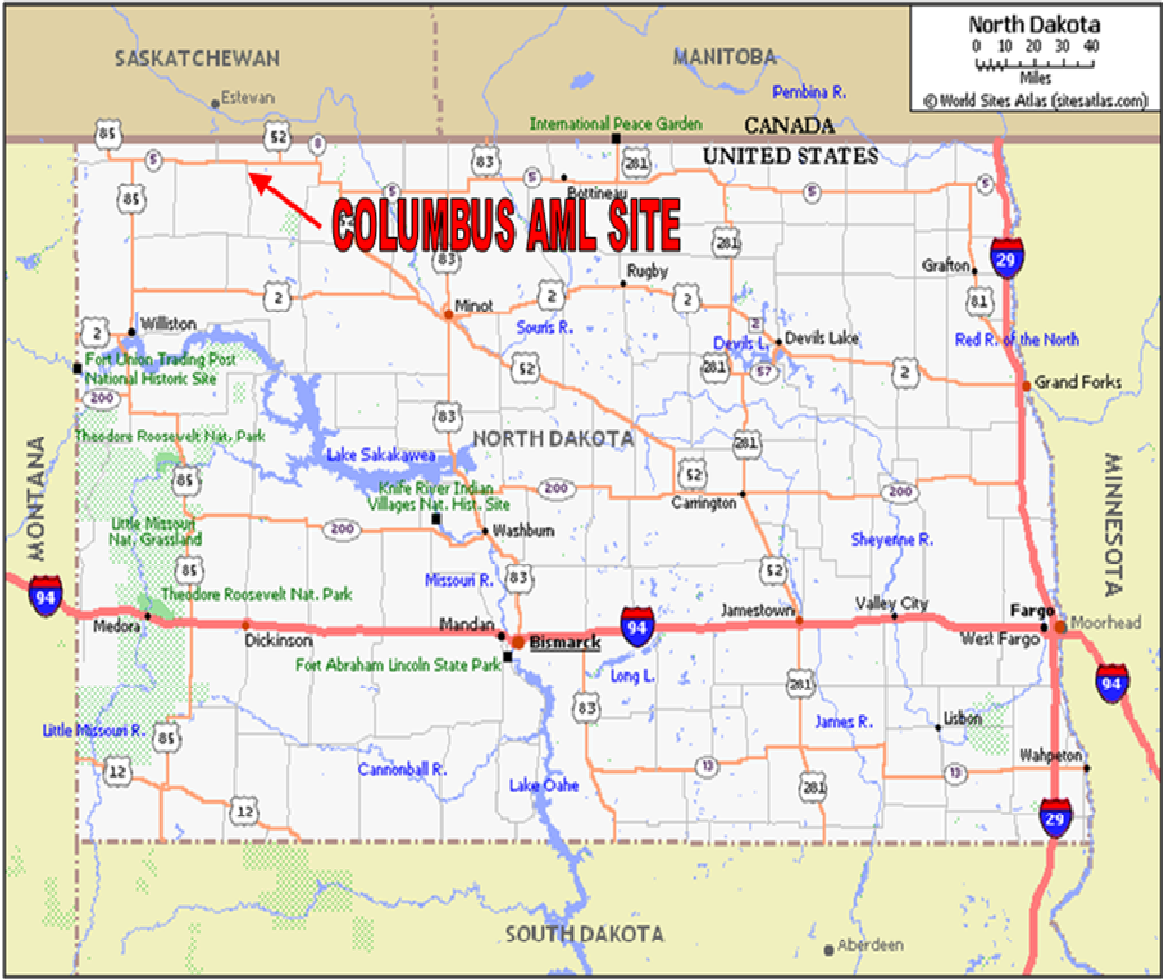
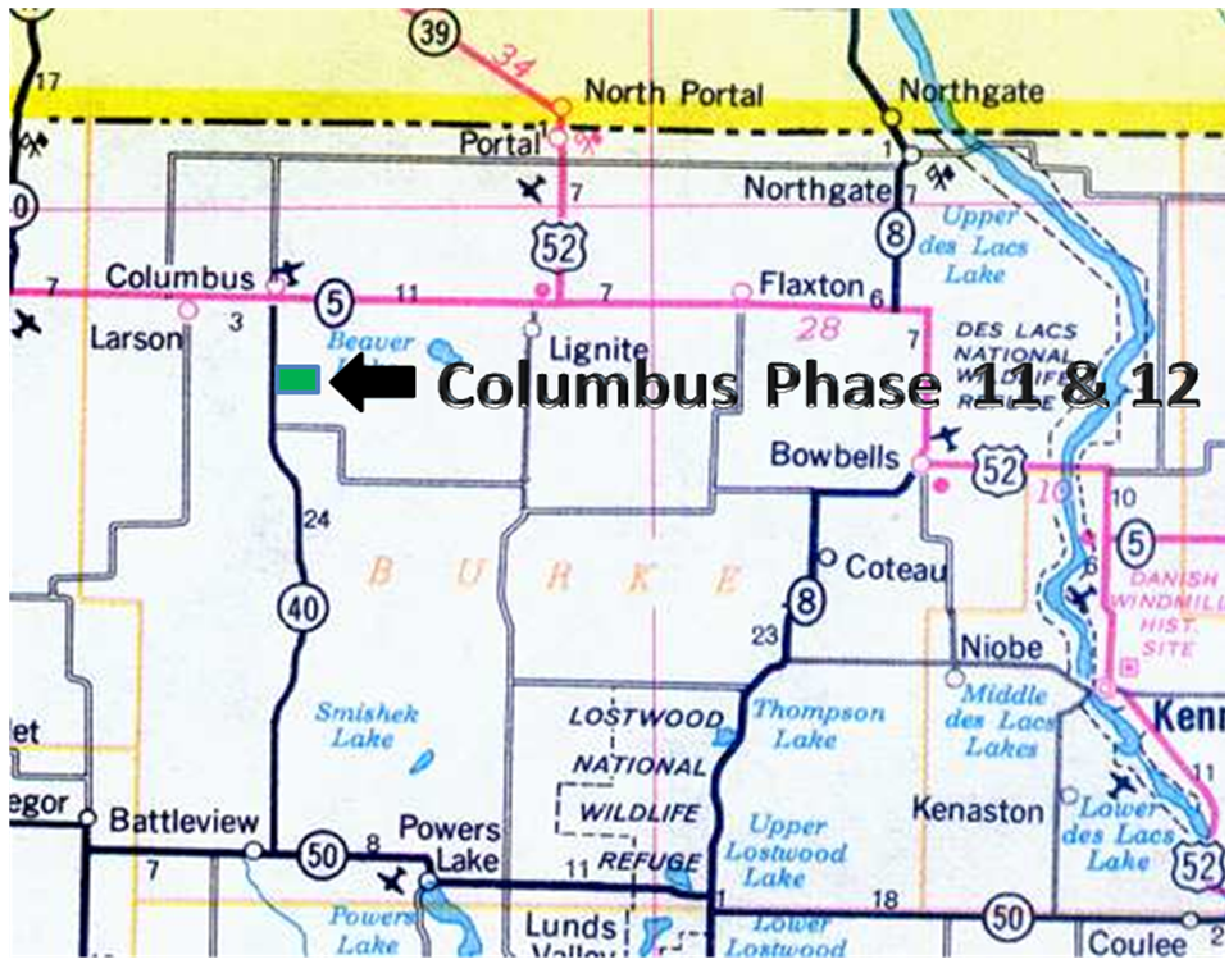


FIGURE 1



**FIGURE 2**

## **PART IV.**

### **BID FORMS**

- 1. Bid Bond**
- 2. Minority and Women-Owned Business Enterprise and  
Labor Surplus Area Concern Certifications**
- 3. Bid 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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SFN 13657 (Rev. 12-99)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

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

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

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

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

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

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

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

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

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

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

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

ACKNOWLEDGMENT OF SURETY

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

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





**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.

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

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

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

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

Name of Company

**NEGATIVE CERTIFICATION**

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

Signed By

Title

Date

**AFFIRMATIVE CERTIFICATION**

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

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


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


Signed By

Title

Date

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

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

Name of Company

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


Signed By

Title

Date

**6. LABOR SURPLUS AREA CERTIFICATION**

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

**NEGATIVE CERTIFICATION**

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

Signed By	Title	Date
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**AFFIRMATIVE CERTIFICATION**

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

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


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


Signed By	Title	Date
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**BID FORM  
COLUMBUS PHASE 13 AML PROJECT  
Burke County, ND**

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity of Units</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>
1.	Mobilization*	1	L.S. X	_____	= _____
2.	Topsoil Removal	2,000	Yds <sup>3</sup> X	_____	= _____
3.	Earthwork	589,250	Yds <sup>3</sup> X	_____	= _____
4.	Topsoil Respread	11,500	Yds <sup>3</sup> X	_____	= _____
5.	Force Account	1	L.S. X	<u>20,000</u>	= <u>20,000</u>
6.	Clean-Up	1	L.S. X	_____	= _____

Total (In Numbers) \_\_\_\_\_

Written Total: \_\_\_\_\_

- **\* This bid item shall not exceed 10% of the total contract bid.**

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

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name