

ADDENDUM TWO, QUESTIONS and ANSWERS

Date: July 28, 2015

To: All Bidders

From: Rita Schwabe, Buyer
State Purchasing Bureau

RE: Addendum for Invitation to Bid Number 5067 OF
to be opened August 4, 2015 at 2:00 p.m. Central Time

Questions and Answers

Following are the questions submitted and answers provided for the above mentioned Invitation to Bid. This addendum will become part of the ITB and should be acknowledged with the Invitation to Bid. *A revised ITB has been posted.* It is the Bidder's responsibility to check the State Purchasing Bureau website for all addenda or amendments.

QUESTIONS	ANSWERS
<p>1. Quantity quoting per line item – is that the minimum order?</p>	<p>No, there are no minimum or maximum orders. The quantity listed per line item is the estimated annual usage only. As stated in "Estimated Annual Usage" in the Terms and Conditions of the ITB and as provided below:</p> <p>Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Vendor shall not impose minimum order requirements.</p>

QUESTIONS	ANSWERS
<p>2. When orders are placed – will they placed for the district as a whole so that split loads (trailers) would be able to be used to help defray freight costs? Example, Line item #1 would be a full load, so no problem. Line items #2 and #3 could be delivered by the same truck if they were ordered at the same time and that would save considerable freight costs.</p>	<p>Orders will not be placed for a district as a whole, but as needed per location. NDOR may consider split loads but only if there is more than one location within the same District with the same contract price. For example, Aurora & Shelton in District 4 and Brady (Gothenburg) & North Platte in District 6 may split full loads. Additionally, to allow for price differences based on quantity ordered and delivered, NDOR has requested District wide pricing for both partial loads as well as full loads.</p>
<p>3. Can you supply zip codes for all of the areas so that accurate freight charges can be quoted?</p>	<p>Zip codes for current locations have been provided below. However, please note: New locations may be added within each District at some point during the life of this contract; for this reason NDOR is asking for District wide pricing to cover any and all locations within the District at the same contract price.</p> <p>Seward 68434; Waterloo 68069; Aurora 68818; Shelton 68876; North Platte 69103; Tri County Canal 69103</p> <p>Scottsbluff 69363 (Stored offsite at Gering Yard 69341)</p> <p>Brady 69123 (Stored offsite at Gothenburg Yard 69138)</p>
<p>4. Can you tell us the number of tanks at each location and what the volume of those tanks are?</p>	<p>Seward (2) 1,000 gallon tanks</p> <p>Waterloo (2) 1,000 gallon tanks</p> <p>Aurora (2) 1,000 gallon tanks</p> <p>Shelton (2) 1,000 gallon tanks</p> <p>North Platte (Stored offsite at North Platte Yard in (1) 10,000 gallon tank)</p> <p>Tri County Canal (2) 1,000 gallon tanks</p> <p>Scottsbluff (Stored offsite at Gering Yard in (1) 4,500 gallon tank)</p> <p>Brady (Stored offsite at Gothenburg Yard in (2) 3,000 gallon tanks)</p>

5. Would the City consider adding the below clauses to the contract:

“Force Majeure” means an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, blackout, orders of any kind of the government of the United States of America, the State or municipality or any of their departments, agencies, or officials, orders of any civil military authority, unavailability of product or equipment, breakage or accident to machinery, transmission pipes or canals, partial or entire failure or utilities, and any other cause which is not reasonably within the control of the party claiming suspension of any of its obligations hereunder.

Force Majeure: If any party is rendered unable, in whole or in part, because of an event of Force Majeure, to carry out any of its obligations under this Agreement, such party shall give the other party prompt written notice of such event of Force Majeure with as full a description of the particulars as is reasonably practicable. The affected party shall use all possible diligence to remove the Force Majeure on the other party. Except for the failure to fulfill its obligations set forth in the immediately preceding sentence, neither party shall be liable for nonperformance or delay in performance caused by an event of Force Majeure of which such party has properly given notice. This section shall not apply to payment or indemnification obligations.

“Warranty”

The Vendor warrants that the products to be delivered hereunder shall conform to the specifications attached hereto; and upon receipt of payment therefore, shall be free from any security interest or encumbrance. The Vendor **disclaims** all warranties and conditions, either express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. In no event shall the Vendor be liable to the Buyer or to any third party for any indirect, incidental, special,

The State of Nebraska Force Majeure Clause will be added to ITB 5067OF as follows:

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party (“Force Majeure Event”). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Contractor. To obtain release based on a Force Majeure Event, the Contractor shall file a written request for relief with the State Purchasing Bureau. Labor disputes with the impacted party’s own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

By operation of Law, the State of Nebraska cannot indemnify vendors. Vendors will have available, the protection of the State of Nebraska Tort Claims Statutes.

The contract contains the Warranty Clause that we require under our contracts.

consequential, punitive, or exemplary damages (including without limitation lost profits, lost savings, or loss of business opportunity) arising out of or relating to the deicer, or the use or inability to use the same, even if the Vendor has been advised of the possibility of such damages.

Indemnity:

(a) Customer shall protect, indemnify, defend and hold harmless Company, its affiliates and their respective officers, agents, shareholders, partners, members, employees, representatives, consultants, advisors and assigns (collectively the "Company Indemnified Parties") from and against any and all Losses incurred or suffered by any Company Indemnified Party arising out of, incidental to or incurred in connection with (i) any spill, release, or leakage of Product following transfer of risk of loss or (ii) injury to or death of persons, including employees of Customer or any loss of or physical damage to the property of any Company Indemnified Party or any third parties, in either case to the extent arising out of or resulting from the intentional or negligent acts or omissions of Customer, its subcontractors, or any person or entity directly employed by any of them, or any person or entity for whose acts any of them are liable during performance of Customer's obligations under this Agreement. In no event shall Customer be responsible for loss or damage caused by the sole negligence of Company, its parent, their subsidiaries or affiliates or the agents and employees of any of them. . Customer shall not settle any such claims or actions in a manner which would require any action or forbearance from action by any Company Indemnified Party without the prior written consent of such Company Indemnified Party, which consent may not be unreasonably withheld.

(b) Company shall protect, indemnify, defend and hold harmless Customer, its affiliates and their respective officers, agents, shareholders, partners, members, employees, representatives, consultants, advisors and assigns (collectively the "Customer Indemnified Parties") from and against any and all Losses incurred or suffered by any Customer Indemnified Party arising out of, incidental to or incurred in connection with (i)

<p>any spill, release, or leakage of Product following transfer of risk of loss or (ii) injury to or death of persons, including employees of Customer or any loss of or physical damage to the property of any Customer Indemnified Party or any third parties, in either case to the extent arising out of or resulting from the intentional or negligent acts or omissions of Company, its subcontractors, or any person or entity directly employed by any of them, or any person or entity for whose acts any of them are liable during performance of Company's obligations under this Agreement. In no event shall Company be responsible for loss or damage caused by the sole negligence of Customer, its parent, their subsidiaries or affiliates or the agents and employees of any of them. Company shall not settle any such claims or actions in a manner which would require any action or forbearance from action by any Customer indemnified Party without the prior written consent of such Customer Indemnified Party, which consent may not be unreasonably withheld.</p>	
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