

# State of Nebraska - INVITATION TO BID CONTRACT

**Return to:**  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: 402-471-6500  
Fax: 402-471-2089

<b>Date</b>	11/14/16	<b>Page</b>	1 of 7
<b>Solicitation Number</b>	5472 OF		
<b>Opening Date and Time</b>	12/06/16	2:00 pm	
<b>Buyer</b>	NATE DOBLER (AS) (SOS)		

**DESTINATION OF GOODS**  
**MULTIPLE DELIVERY LOCATIONS**  
**PLEASE REFER TO DOCUMENTATION**  
**FOR DELIVERY ADDRESSES.**

Per Nebraska's Transparency in Government Procurement Act, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

\_\_\_\_ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. " Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this ITB.

\_\_\_\_ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. §73-107 and wish to have preference, if applicable, considered in the award of this contract.

Contract to supply and deliver Bulk Bituminous Cold Patch Material to the State of Nebraska as per the attached specifications for a two (2) year period from date of award. The contract may be renewed for three (3) additional one (1) year periods when mutually agreeable to the vendor and the State of Nebraska.

(fc 11/10/16)

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	<b>DIST 1 BULK COLD PATCH</b> LINCOLN SUPERIOR	30.0000	TN	_____	_____
2	<b>DIST 1 BULK COLD PATCH</b> LINCOLN SALT VALLEY	30.0000	TN	_____	_____
3	<b>DIST 1 BULK COLD PATCH</b> AUBURN	30.0000	TN	_____	_____
4	<b>DIST 1 BULK COLD PATCH</b> BEATRICE	30.0000	TN	_____	_____

### BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: \_\_\_\_\_% \_\_\_\_\_ DAYS

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to (see Section III) and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within \_\_\_\_\_ days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

**Sign** \_\_\_\_\_

**Here** (Authorized Signature MANDATORY - MUST BE SIGNED IN INK)

Enter Contact Information Below

**VENDOR#** \_\_\_\_\_  
**VENDOR:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contact** \_\_\_\_\_  
**Telephone** \_\_\_\_\_  
**Facsimile** \_\_\_\_\_  
**Email** \_\_\_\_\_  
 \_\_\_\_\_

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Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
5	DIST 1 BULK COLD PATCH DAVID CITY	30.0000	TN	_____	_____
6	DIST 1 BULK COLD PATCH DORCHESTER	30.0000	TN	_____	_____
7	DIST 1 BULK COLD PATCH FAIRBURY	30.0000	TN	_____	_____
8	DIST 1 BULK COLD PATCH FALLS CITY	30.0000	TN	_____	_____
9	DIST 1 BULK COLD PATCH GREENWOOD	30.0000	TN	_____	_____
10	DIST 1 BULK COLD PATCH NEBRASKA CITY	30.0000	TN	_____	_____
11	DIST 1 BULK COLD PATCH PAWNEE CITY	30.0000	TN	_____	_____
12	DIST 1 BULK COLD PATCH PALMYRA	30.0000	TN	_____	_____
13	DIST 1 BULK COLD PATCH SEWARD	30.0000	TN	_____	_____
14	DIST 1 BULK COLD PATCH TECUMSEH	30.0000	TN	_____	_____
15	DIST 1 BULK COLD PATCH WAHOO	30.0000	TN	_____	_____
16	DIST 2 BULK COLD PATCH OMAHA 108TH	30.0000	TN	_____	_____
17	DIST 2 BULK COLD PATCH OMAHA SOUTH	30.0000	TN	_____	_____
18	DIST 2 BULK COLD PATCH OMAHA MORMON	30.0000	TN	_____	_____
19	DIST 2 BULK COLD PATCH FREMONT	30.0000	TN	_____	_____

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Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
20	DIST 2 BULK COLD PATCH BLAIR	30.0000	TN	_____	_____
21	DIST 2 BULK COLD PATCH GRETNA	30.0000	TN	_____	_____
22	DIST 2 BULK COLD PATCH PLATTSMOUTH	30.0000	TN	_____	_____
23	DIST 2 BULK COLD PATCH ELKHORN	30.0000	TN	_____	_____
24	DIST 3 BULK COLD PATCH ALBION	30.0000	TN	_____	_____
25	DIST 3 BULK COLD PATCH BLOOMFIELD	30.0000	TN	_____	_____
26	DIST 3 BULK COLD PATCH CEDAR RAPIDS	30.0000	TN	_____	_____
27	DIST 3 BULK COLD PATCH COLUMBUS	60.0000	TN	_____	_____
28	DIST 3 BULK COLD PATCH HARTINGTON	30.0000	TN	_____	_____
29	DIST 3 BULK COLD PATCH HUMPHREY	60.0000	TN	_____	_____
30	DIST 3 BULK COLD PATCH LAUREL	30.0000	TN	_____	_____
31	DIST 3 BULK COLD PATCH LYONS	60.0000	TN	_____	_____
32	DIST 3 BULK COLD PATCH NELIGH	60.0000	TN	_____	_____
33	DIST 3 BULK COLD PATCH NIOBRARA	30.0000	TN	_____	_____
34	DIST 3 BULK COLD PATCH	60.0000	TN	_____	_____

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## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
	NORFOLK				
35	DIST 3 BULK COLD PATCH PLAINSVIEW	30.0000	TN	_____	_____
36	DIST 3 BULK COLD PATCH SO. SIOUX CITY	60.0000	TN	_____	_____
37	DIST 3 BULK COLD PATCH WAYNE	60.0000	TN	_____	_____
38	DIST 3 BULK COLD PATCH WEST POINT	30.0000	TN	_____	_____
39	DIST 4 BULK COLD PATCH AURORA	30.0000	TN	_____	_____
40	DIST 4 BULK COLD PATCH CENTRAL CITY	30.0000	TN	_____	_____
41	DIST 4 BULK COLD PATCH FULLERTON	30.0000	TN	_____	_____
42	DIST 4 BULK COLD PATCH GENEVA	30.0000	TN	_____	_____
43	DIST 4 BULK COLD PATCH GRAND ISLAND	230.0000	TN	_____	_____
44	DIST 4 BULK COLD PATCH GREELEY	30.0000	TN	_____	_____
45	DIST 4 BULK COLD PATCH HASTINGS	50.0000	TN	_____	_____
46	DIST 4 BULK COLD PATCH HEBRON	30.0000	TN	_____	_____
47	DIST 4 BULK COLD PATCH KEARNEY	60.0000	TN	_____	_____
48	DIST 4 BULK COLD PATCH LOUP CITY	30.0000	TN	_____	_____

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## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
49	DIST 4 BULK COLD PATCH ORD	30.0000	TN	_____	_____
50	DIST 4 BULK COLD PATCH OSCEOLA	30.0000	TN	_____	_____
51	DIST 4 BULK COLD PATCH RAVENNA	120.0000	TN	_____	_____
52	DIST 4 BULK COLD PATCH RED CLOUD	30.0000	TN	_____	_____
53	DIST 4 BULK COLD PATCH ST. PAUL	30.0000	TN	_____	_____
54	DIST 5 BULK COLD PATCH ALLIANCE	30.0000	TN	_____	_____
55	DIST 5 BULK COLD PATCH BRIDGEPORT	30.0000	TN	_____	_____
56	DIST 5 BULK COLD PATCH CHADRON	30.0000	TN	_____	_____
57	DIST 5 BULK COLD PATCH CHAPPELL	30.0000	TN	_____	_____
58	DIST 5 BULK COLD PATCH CRAWFORD	30.0000	TN	_____	_____
59	DIST 5 BULK COLD PATCH GERING	30.0000	TN	_____	_____
60	DIST 5 BULK COLD PATCH GORDON	30.0000	TN	_____	_____
61	DIST 5 BULK COLD PATCH KIMBALL	30.0000	TN	_____	_____
62	DIST 5 BULK COLD PATCH SIDNEY	30.0000	TN	_____	_____
63	DIST 6 BULK COLD PATCH YORK	30.0000	TN	_____	_____

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Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
64	DIST 6 BULK COLD PATCH ANSLEY	30.0000	TN	_____	_____
65	DIST 6 BULK COLD PATCH BIG SPRINGS	30.0000	TN	_____	_____
66	DIST 6 BULK COLD PATCH BROKEN BOW	30.0000	TN	_____	_____
67	DIST 6 BULK COLD PATCH GOTHENBURG	30.0000	TN	_____	_____
68	DIST 6 BULK COLD PATCH LEXINGTON	30.0000	TN	_____	_____
69	DIST 6 BULK COLD PATCH MULLEN	30.0000	TN	_____	_____
70	DIST 6 BULK COLD PATCH OGALLALA	30.0000	TN	_____	_____
71	DIST 6 BULK COLD PATCH OCONTO	30.0000	TN	_____	_____
72	DIST 6 BULK COLD PATCH NORTH PLATTE	30.0000	TN	_____	_____
73	DIST 7 BULK COLD PATCH ALMA	30.0000	TN	_____	_____
74	DIST 7 BULK COLD PATCH ARAPAHOE	30.0000	TN	_____	_____
75	DIST 7 BULK COLD PATCH BENKLEMAN	30.0000	TN	_____	_____
76	DIST 7 BULK COLD PATCH CURTIS	30.0000	TN	_____	_____
77	DIST 7 BULK COLD PATCH HOLDREGE	30.0000	TN	_____	_____
78	DIST 7 BULK COLD PATCH	30.0000	TN	_____	_____

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Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
	IMPERIAL				
79	DIST 7 BULK COLD PATCH MCCOOK	30.0000	TN	_____	_____
80	DIST 8 BULK COLD PATCH AINSWORTH	30.0000	TN	_____	_____
81	DIST 8 BULK COLD PATCH BURWELL	30.0000	TN	_____	_____
82	DIST 8 BULK COLD PATCH MERRIMAN	30.0000	TN	_____	_____
83	DIST 8 BULK COLD PATCH O'NEILL	30.0000	TN	_____	_____
84	DIST 8 BULK COLD PATCH SPENCER	30.0000	TN	_____	_____
85	DIST 8 BULK COLD PATCH VALENTINE	30.0000	TN	_____	_____
86	LINCOLN PLANT PICK UP BULK COLD PATCH	30.0000	TN	_____	_____
87	OMAHA PLANT PICK UP BULK COLD PATCH	30.0000	TN	_____	_____
88	S SIOUX CITY PLANT PICK UP BULK COLD PATCH	30.0000	TN	_____	_____
89	NORTH PLATTE PLANT PICK UP BULK COLD PATCH	30.0000	TN	_____	_____
90	_____ PLANT PICK UP BULK COLD PATCH Please provide plant location	30.0000	TN	_____	_____

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## GLOSSARY OF TERMS

**Acceptance Test Procedure:** Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

**Addendum:** Something to be added or deleted to an existing document; a supplement.

**After Receipt of Order (ARO):** After Receipt of Order

**Agency:** Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

**Agent/Representative:** A person authorized to act on behalf of another.

**Amend:** To alter or change by adding, subtracting, or substituting.

**Amendment:** A written correction or alteration to a document.

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

**Award:** All purchases, leases, or contracts which are based on competitive bids will be awarded according to the provisions in the Invitation to Bid. The State reserves the right to reject any or all bids, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid, and do not improve the Bidders' competitive position. All awards will be made in a manner deemed in the best interest of the State.

**Bid/Proposal:** The offer submitted by a vendor in a response to written solicitation.

**Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the vendor will not withdraw the bid.

**Bidder:** A vendor who submits an offer bid in response to a written solicitation.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

**Business Day:** Any weekday, except State-recognized holidays.

**Calendar Day:** Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

**Cancellation:** To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

**Central Processing Unit (CPU):** Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software.

**Change Order:** Document that provides amendments to an executed purchase order.

**Collusion:** An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

**Commodities:** Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

**Commodities Description:** Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results.

**Competition:** The effort or action of two or more commercial interests to obtain the same business from third parties.

**Confidential Information:** Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

**Contract:** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

**Contract Administration:** The management of the contract which includes and is not limited to contract signing, contract amendments

and any necessary legal actions.

**Contract Management:** The management of day to day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor.

**Contract Period:** The duration of the contract.

**Contractor:** Any individual or entity having a contract or awarded purchase order to furnish commodities or services.

**Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

**Copyright:** A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

**Critical Program Error:** Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract.

**Customer Service:** The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by a Contractor.

**Default:** The omission or failure to perform a contractual duty.

**Deviation:** Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract.

**Evaluation:** The process of examining an offer after opening to determine the vendor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

**Evaluation Committee:** Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids/proposals (offers made in response to written solicitations).

**Extension:** Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

**Free on Board (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

**Free on Board (F.O.B.) Point of Origin:** The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

**Foreign Corporation:** A foreign corporation that was organized and chartered under the laws of another state, government, or country.

**Installation Date:** The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the RFP, ITB (written solicitation) or contract are completed.

**Late Bid/Proposal:** An offer received after the Opening Date and Time.

**Licensed Software Documentation:** The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

**Mandatory/Must:** Required, compulsory, or obligatory.

**May:** Discretionary, permitted; used to express possibility.

**Module (see System):** A collection of routines and data structures that perform a specific function of software.

**Must:** See Shall/Will/Must.

**National Institute for Governmental Purchasing (NIGP):** National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and services.

**Open Market Purchase:** Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

**Opening Date and Time:** Specified date and time for the public opening of received, labeled, and sealed formal bids.

**Operating System:** The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

**Outsourcing:** The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back.

**Payroll & Financial Center (PFC):** Electronic procurement system of record.

**Performance Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Contractor fulfills any and all obligations under the contract.

**Platform:** A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

**Pre-Bid/Pre-Proposal Conference:** A meeting scheduled for the purpose of clarifying a written solicitation and related expectations.

**Product:** Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

**Program Error:** Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error.

**Program Set:** The group of programs and products, including the Licensed Software specified in the RFP, plus any additional programs and products licensed by the State under the contract for use by the State.

**Project:** The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and services to be provided under the contract.

**Proposal:** See Bid/Proposal.

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and service no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information.

**Protest/Grievance:** A complaint about a governmental action or decision related to an Invitation to Bid or resultant contract, brought by a vendor who has timely submitted a bid response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Public Proposal/Bid Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.

**Recommended Hardware Configuration:** The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

**Release Date:** The date of public release of the written solicitation to seek offers

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

**Request for Information (RFI):** A general invitation to vendors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

**Request for Proposal (RFP):** A written solicitation utilized for obtaining competitive offers.

**Responsible Bidder:** A bidder who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance.

**Responsive Bidder:** A bidder who has submitted a bid which conforms to all requirements of the solicitation document.

**Shall/Will/Must:** An order/command; mandatory.

**Should:** Expected; suggested, but not necessarily mandatory.

**Software License:** Legal instrument with or without printed material that governs the use or redistribution of licensed software.

**Sole Source – Commodity:** When an item is available from only one source due to the unique nature of the requirement, its supplier, or market conditions.

**Sole Source – Services:** A service of such a unique nature that the vendor selected is clearly and justifiably the only practical source to provide the service. Determination that the vendor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.

**Specifications:** The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

**System (see Module):** Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

**Termination:** Occurs when either party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. § 87-502(4)).

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

**Upgrade:** Any change that improves or alters the basic function of a product of service.

**Vendor:** An individual or entity lawfully conducting business in the State of Nebraska, or licensed to do so, who seeks to provide goods or services under the terms of a written solicitation.

**Vendor Performance Report:** A report issued to the Contractor by State Purchasing Bureau when products or services delivered or performed fail to meet the terms of the purchase order, contract, and/or specifications, as reported to State Purchasing Bureau by the agency. The State Purchasing Bureau shall contact the Contractor regarding any such report. The vendor performance report will become a part of the permanent record for the Contractor. The State may require vendor to cure. Two such reports may be cause for immediate termination.

**Will:** See Shall/Will/Must.

**Work Day:** See Business Day.

**I. SCOPE OF THE INVITATION TO BID (ITB)**

The State of Nebraska, Administrative Services (AS), Materiel Division, State Purchasing Bureau (hereafter known as State Purchasing Bureau or SPB), is issuing this Invitation To Bid, Number 5472 OF for the purpose of selecting a qualified Contractor to provide Bulk Bituminous Cold Patch Material.

A contract resulting from this Invitation To Bid will be issued approximately for a period of two (2) years effective the date of award. The contract has the option to be renewed for three (3) additional one (1) year periods as mutually agreed upon by all parties.

**ALL INFORMATION PERTINENT TO THIS INVITATION TO BID CAN BE FOUND ON THE INTERNET AT:**  
<http://das.nebraska.gov/materiel/purchasing.html>

**A. SCHEDULE OF EVENTS**

The State expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change.

ACTIVITY		DATE/TIME
1.	Release Invitation To Bid	11/14/16
2.	Last day to submit written questions	11/21/16
3.	State responds to written questions through Invitation To Bid "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	11/29/16
4.	Bid opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	12/06/16 2:00 PM Central Time
5.	Review for conformance of mandatory requirements	12/08/16
6.	Review period	12/14/16
7.	Post "Letter of Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	TBA
8.	Contract finalization period	TBA
9.	Contract award	TBA
10.	Contract start date	12/31/16

## **II. PROCUREMENT PROCEDURES**

### **A. PROCURING OFFICE AND CONTACT PERSON**

Procurement responsibilities related to this Invitation To Bid reside with the State Purchasing Bureau. The point of contact for the procurement is as follows:

Name: Rita Schwabe / Nate Dobler  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508

### **B. GENERAL INFORMATION**

The Invitation To Bid (ITB) is designed to solicit bids from qualified vendors who will be responsible for providing Bulk Bituminous Cold Patch Material at a competitive and reasonable cost. Bids that do not conform to the mandatory items as indicated in the Invitation To Bid will not be considered.

Bids shall conform to all instructions, conditions, and requirements included in the Invitation To Bid. Prospective Bidders are expected to carefully examine all documentation, schedules, and requirements stipulated in this Invitation To Bid, and respond to each requirement in the format prescribed.

In addition to the provisions of this Invitation To Bid and the awarded bid, which shall be incorporated by reference in the contract, any additional clauses or provisions required by the terms and conditions will be included as an amendment to the contract.

A fixed-price contract will be awarded as a result of this Invitation to Bid.

### **C. COMMUNICATION WITH STATE STAFF AND EVALUATORS**

From the date the Invitation To Bid is issued until a determination is announced regarding the contract award, contact regarding this project between potential Contractors and individuals employed by the State is restricted to only written communication with the staff designated above as the point of contact for this Invitation To Bid. Bidders shall not have any communication with, or attempt to communicate with or influence in any way, any evaluator involved in this ITB.

Once a Contractor is preliminarily selected, as documented in the intent to award, that Contractor is restricted from communicating with State staff until a contract is signed. The following exceptions to these restrictions are permitted:

1. Written communication with the person(s) designated as the point(s) of contact for this Invitation To Bid or procurement;
2. Contacts made pursuant to any pre-existing contracts or obligations; and
3. State-requested presentations, key personnel interviews, clarification sessions or discussions to finalize a contract.

Violations of these conditions may be considered sufficient cause to reject a Bidders' bid and/or selection irrespective of any other condition. No individual member of the State or employee of the State is empowered to make binding statements regarding this Invitation To Bid. The Buyer will issue any clarifications or opinions regarding this Invitation To Bid in writing.

### **D. WRITTEN QUESTIONS AND ANSWERS**

Any explanation desired by a Bidder regarding the meaning or interpretation of any Invitation To Bid provision must be submitted in writing to the State Purchasing Bureau and clearly marked "ITB Number 5472 OF; Bulk Bituminous Cold Patch Material Questions". It is preferred that questions be sent via e-mail to [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov). Questions may also be sent by facsimile to 402-471-2089, and must include a cover sheet clearly indicating that the transmission is to the attention of Rita Schwabe / Nate Dobler, showing the total number of pages transmitted, and clearly marked "ITB Number 5472 OF Bulk Bituminous Cold Patch Material Questions".

It is recommended that Bidders submit questions sequentially numbered and include the Invitation To Bid reference and page number.

Written answers will be provided through an addendum to be posted on the Internet at <http://das.nebraska.gov/materiel/purchasing.html> on or before the date shown in the Schedule of Events.

<u>Question Number</u>	<u>ITB Section References</u>	<u>ITB Page Number</u>	<u>Question</u>

**E. SUBMISSION OF BIDS**

The following describes the requirements related to bid submission, bid handling, and review by the State.

To facilitate the evaluation process, one (1) original of the entire bid should be submitted. Bids must be submitted by the bid due date and time. **A separate sheet must be provided that clearly states which sections, if applicable, have been submitted as proprietary or have copyrighted materials.** All proprietary information the Bidder wishes the State to withhold must be submitted in accordance with the instructions outlined in Section III, Proprietary Information. If a recipient phone number is required for delivery purposes, 402-471-6500 should be used. The Invitation To Bid number must be included in all correspondence.

**F. IMPORTANT NOTICE LANGUAGE**

Bid responses should include the completed Form A and Bidder Contact Sheet. Bids must reference the Invitation To Bid number and be sent to the specified address. Please note that the address label should appear as specified in Section II part A on the page of the calendar or Bidders' bid response packet. Rejected late bids will return to the bidder unopened.

**G. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the bid. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.

**H. PRICE ADJUSTMENTS DURING CONTRACT TERM**

Prices quoted shall be unit price (per ton) and shall be firm for 180 days from date of an award and are to be net; including transportation and delivery charges fully prepaid by the Bidder F.O.B. Destination as specified. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern. Any Invitation To an increase must be submitted in writing to the State Purchasing Bureau a minimum of 30 days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State will be given full proportionate benefit of any decrease for the term of the contract. Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services. Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and conditions of the contract must be met by political sub-divisions, cities, and counties.

**I. PAYMENT**

Payment will be made by the responsible agency in accordance with the State of Nebraska Prompt Payment Act, Neb. Rev. Stat. §§ 81-2401 through 81-2408. The State may request that payment be made electronically instead of by state warrant.

J. **BID EXECUTION**

Bids must be signed in ink by the Bidder on the State of Nebraska's Invitation To Bid form. All bids must be typewritten or in ink on the State of Nebraska's Invitation To Bid form. Erasures and alternations must be initialed by the Bidder in ink. No telephone or voice bids will be accepted. Failure to comply with these provisions may result in the rejection of the bid.

K. **BID OPENING**

The sealed bids will be publicly opened and the bidding entities announced on the date, time, and location shown in the Schedule of Events. Bids will be available for viewing by those present at the bid opening. Vendors may also contact the State to schedule an appointment for viewing bids after the Intent to Award has been posted to the website.

L. **ELECTRONIC DOCUMENTS/FACSIMILIE SUBMISSIONS**

The State Purchasing Bureau will not accept electronic responses to an Invitation To Bid for a commodity contract at any dollar amount. However, an exception applies to one-time purchase bids under \$25,000. These one-time purchase bids may be submitted by electronic means, but cannot exceed ten (10) pages.

Sealed responses to an Invitation To Bid that contain a two party bid, may include electronic pages transmitted between the two parties, but these documents cannot be submitted to the State Purchasing Bureau by electronic means. No direct electronic solicitation responses will be accepted for a commodity contract of any estimated value.

M. **VALID BID TIME**

Bids shall be firm for a minimum of sixty (60) calendar days after the opening date, unless otherwise stipulated by either party in the Invitation To Bid.

N. **ALTERNATE/EQUIVALENT BIDS**

Bidder may offer bids which are at variance from the express specifications of the Invitation To Bid. The State reserves the right to consider and accept such bids if, in the judgment of the State Procurement Manager, the bid will result in goods and/or services equivalent to or better than those which would be supplied in the original bid specifications. Bidders must indicate on the Invitation To Bid the manufacturer's name, number and shall submit with their bid, sketches, descriptive literature and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements are subject to rejection. In the absence of any stated deviation or exception, the bid will be accepted as in strict compliance with all terms, conditions and specification, and the Bidder shall be held liable therefore.

O. **LATE BIDS**

Bids received after the time and date of the bid opening will be considered late bids. Rejected late bids will be returned to the Bidder unopened. The State is not responsible for bids that are late or lost due to mail service inadequacies, traffic, or any other reason(s).

P. **NO BID**

If not submitting a bid, respond by returning the Invitation To Bid form explaining the reason in the space provided. NOTE: To qualify as a respondent, Bidder must submit a "NO BID" and it must be received no later than the stated bid opening date and time.

Q. **LUMP SUM OR ALL OR NONE BIDS**

The State reserves the right to purchase item-by-item, by groups or as a total when the State may benefit by so doing. Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a bid on an item-by-item basis. The term "all or none" means a conditional bid which requires the purchase of all items on which bids are offered and Bidder declines to accept award on individual items; a "lump sum" bid is one in which the Bidder offers a lower price than the sum of the individual bids if all items are purchased but agrees to deliver individual items at the prices quoted.

R. **REJECTION OF BIDS**

The State reserves the right to reject any or all bids, wholly or in part, or to award to multiple Bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid and do not improve the Bidders' competitive position. All awards will be made in a manner deemed in the best interest of the State. The State reserves the right to reject any or all bids and re-advertise for bids; and further reserves the right to waive any informality or irregularity.

S. **EVALUATION OF BIDS**

All responses to this Invitation To Bid which fulfill all mandatory requirements will be evaluated for conformance to requested specifications. Elements that may also be considered include but are not limited to:

1. The ability, capacity, and skill of the Bidder to deliver and implement the system or project, or provide the requested goods, that meet the requirements of the Invitation to Bid;
2. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
3. Whether the Bidder can perform the contract within the specified time frame;
4. The quality of Bidder performance on prior contracts; and
5. Such other information that may be secured and that has a bearing on the decision to award the contract.

T. **BID TABULATIONS**

Bid tabulations are available on the website at: <http://www.das.state.ne.us/materiel/purchasing/bidtabs.htm>.

Bid tabulations will not be provided by telephone or facsimile. Bid files may be examined, after the evaluation period is over, during normal business hours by appointment.

U. **MANDATORY REQUIREMENTS**

The bids will first be examined to determine if all mandatory requirements listed below have been addressed to warrant further evaluation. Bids not meeting mandatory requirements will be excluded from further evaluation. The mandatory requirement items are as follows:

1. Invitation To Bid for Commodity Contract form, signed in ink; and
2. The completed Invitation To Bid document.

V. **REFERENCE CHECKS**

The State reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that may be identified by the company in the bid, those indicated through the explicitly specified contacts, those that are identified during the review of the bid, or those that result from communication with other entities involved with similar projects. The State may use a third party to conduct reference checks.

W. **RECYCLING**

As outlined in Neb. Rev. Stat. § 81-15,159, a preference shall be given to those Bidders that provide products, materials, or supplies which are manufactured or produced from recycled material or that can be readily reused or recycled after its normal use. Preference will also be given to purchases of corn-based biodegradable plastics and road deicers. No preference shall be given if such preference would result in the purchase of products, materials, or supplies that are of inadequate quality or of substantially higher cost.

X. **SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS**

All Bidders should be authorized to transact business in the State of Nebraska. All Bidders are expected to comply with all Nebraska Secretary of State Registration requirements. It is the responsibility of the Bidder to comply with any registration requirements pertaining to types of business entities (e.g. person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation or other type of business entity). The Bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days), valid Certificate of Good Standing or Letter of Good Standing; or in the case of a sole proprietorship, provide written documentation of sole proprietorship. This must be accomplished prior to the award of the contract. Construction Contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certification of registration. Further, all Bidders shall comply with any and all other applicable Nebraska statutes regarding transacting business in the State of Nebraska. Bidders should submit the above certification(s) with their bid.

Y. **RESIDENT BIDDER**

Pursuant to Neb. Rev. Stat. §§ 73-101.01 through 73-101.02, a Resident Bidder shall be allowed a preference against a Nonresident Bidder from a state which gives or requires a preference to Bidders from that state. The preference shall be equal to the preference given or required by the state of the Nonresident Bidders. Where the lowest responsible bid from a resident bidder is equal in all respects to one from a nonresident bidder from a state which has no preference law, the resident bidder shall be awarded the contract. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

**Z. EVALUATION CRITERIA AND AWARD**

The State of Nebraska reserves the right to evaluate bids in a manner, and utilizing methods, selected in the State of Nebraska's best interest and discretion. The State of Nebraska may waive informalities or irregularities in bids if the waiver is in the best interest of the State of Nebraska and such waiver does not prejudice other bidders in the State of Nebraska's discretion. After evaluation of the bids, the State of Nebraska may take, in the State's discretion, one or more of the following actions:

Accept or reject a portion of or all of a bid;  
Accept or reject all bids;  
Withdraw the Invitation to Bid;  
Elect to rebid the Invitation to Bid;  
Award single lines or multiple lines to one or more bidders; or,  
Award one or more complete contracts.

The State of Nebraska reserves the right to make awards that are in the best interest of the State of Nebraska. The State of Nebraska may consider, but is not limited to, one or more of the following award criteria:

Price;  
Location;  
Quality;  
Delivery time; and,  
State contract management requirements or costs.

By submitting a bid in response to this Invitation to Bid, the Bidder grants to the State the right to contact or arrange a visit in person with any or all of the Bidders' clients.

Once an Intent to Award decision has been determined, it will be posted to the Internet at: <http://das.nebraska.gov/materiel/purchasing.html/>

**AA. POLITICAL SUB-DIVISIONS**

The Contractor may extend the contract to political sub-divisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political sub-divisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political sub-divisions or other public entities not authorized by Neb. Rev. Stat. § 81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**BB. VIOLATION OF TERMS AND CONDITIONS**

Violation of the terms and conditions contained in this Invitation To Bid or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a Bidders' proposal;
2. Withdrawal of the Intent to Award
3. Termination of the resulting contract.
4. Legal action.
5. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**III. INVITATION TO BID - TERMS AND CONDITIONS**

By signing the "Invitation To Bid" form, the Bidder guarantees compliance with the provisions stated in this Invitation To Bid, agrees to the Terms and Conditions unless otherwise agreed to, and certifies Bidder maintains a drug free work place environment.

Bidders are expected to closely read the Terms and Conditions and provide a binding signature of intent to comply with the Terms and Conditions; provided, however, a Bidder may indicate any exceptions to the Terms and Conditions by one (1) clearly identifying the term or condition by subsection, and two (2) including an explanation for the Bidders' inability to comply with such term or condition which includes a statement recommending terms and conditions the Bidder would find acceptable. Rejection in whole or in part of the Terms and Conditions may be cause for rejection of a Bidders' bid. Bidders must include completed Section III with their ITB response.

The State of Nebraska is soliciting bids in response to the ITB. The State of Nebraska will not consider bids that propose the substitution of the Bidders' contract, agreements, or terms for those of the State of Nebraska's. Any License, Service Agreement, Customer Agreement, User Agreement, Bidder Terms and Conditions, Document, or Clause purported or offered to be included as a part of this ITB must be submitted as individual clauses, as either a counter-offer or additional language, and each clause must be acknowledged and accepted in writing by the State. If the Bidders' clause is later found to be in conflict with the ITB or resulting contract the Bidders' clause shall be subordinate to the ITB or resulting contract.

**A. GENERAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The contract resulting from this Invitation To Bid shall incorporate the following documents:

1. Amendment to Contract Award with the most recent dated amendment having the highest priority;
2. Contract Award and any attached Addenda;
3. The Invitation To Bid form and the Contractor's Bid Response signed in ink
4. Amendments to ITB and any Questions and Answers; and
5. The original ITB document and any Addenda.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to Contract Award with the most recent dated amendment having the highest priority, 2) Contract Award and any attached Addenda, 3) the signed Invitation To Bid form and the Contractor's Bid Response 4) Amendments to ITB and any Questions and Answers, 5) the original ITB document and any Addenda.

Any ambiguity in any provision of this contract which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Once bids are opened they become the property of the State of Nebraska and will not be returned.

**B. DEBARMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The contractor, by signature to the Invitation To Bid, certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred. The Department may immediately terminate this contract by providing contractor written notices if contractor becomes debarred during the term of this contract.

**C. SPECIFICATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for reference and not intended to limit competition, but will be used as the standard by which equivalent material offered will be judged. The State Procurement Manager will be the sole judge of equivalency. The Bidder may offer any brands which meets or exceeds the specification. When a specific product is required, the Invitation to Bid will so state. Any item bid is to be the latest current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

**D. SAMPLES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

When requested, samples shall be furnished at the Bidders' expense prior to the opening of the bid, unless otherwise specified. Each sample must be labeled clearly and identify the Bidders' name, the Invitation To Bid number and the item number. Samples submitted must be representative of the commodities or equipment which would be delivered if awarded the bid. The State of Nebraska reserves the right to request samples even though this may not have been set forth in the Invitation To Bid. Samples not destroyed in testing will be returned at Bidders' expense, if requested, or will be donated to a public institution.

**E. PERFORMANCE AND DEFAULT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The State reserves the right to require a performance bond from the successful Bidder, as provided by law, without expense to the State. Otherwise, in case of default of the Contractor, the State may procure the articles from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

**F. DRUG POLICY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

Bidder certifies that it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**G. NE ACCESS TECHNOLOGY STANDARDS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request that contract comply with the changed standard at a cost mutually acceptable to the parties.

**H. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Invitation To Bid.

**I. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of the contract. The Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

**J. COOPERATION WITH OTHER CONTRACTORS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The State may already have in place or choose to award supplemental contracts related to this Invitation To Bid or any portion thereof.

1. The State reserves the right to award the contract jointly between two or more potential Contractors, if such an arrangement is in the best interest of the State.
2. The Contractor shall agree to cooperate with such other Contractors, and shall not commit or permit any act which may interfere with the performance of work by any other Contractor.
3. The State reserves the right to award multiple contracts or to award line by line contract.

**K. CONTRACTOR RESPONSIBILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the Invitation To Bid, the Contractor's bid, and the resulting contract. The Contractor shall be the sole point of contact regarding all contractual matters.

**L. CONTRACT CONFLICTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:

Contractor shall insure that contracts or agreements with sub-contractors and agents, and the performance of services in relation to this contract by sub-contractors and agents, does not conflict with this contract.

**M. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of any termination, and advise the Contractor of the location of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. In no event shall the Contractor be paid for a loss of anticipated profit.

**N. RIGHT TO AUDIT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit contract. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and Subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this contract and for a period of five (5) years after the completion of this contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the State, whether during or after completion of this contract and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State. Contractor shall ensure the State has these rights with Contractor's assigns, successors, and Subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any Subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the State.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the State unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the State in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Contractor shall reimburse the State for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the State's findings to Contractor.

**O. CONFLICT OF INTEREST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

By submitting a bid, Bidder certifies that there does not now exist any relationship between the Bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Invitation To Bid or project.

The Bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The Bidder certifies that it will not employ any individual known by Bidder to have a conflict of interest.

**P. BID PREPARATION COSTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The State shall not incur any liability for any costs incurred by Bidders in replying to this Invitation To Bid, including any activity related to bidding on this Invitation To Bid.

**Q. ERRORS AND OMISSIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Bidder shall not take advantage of any errors and/or omissions in this Invitation To Bid or resulting contract. The Bidder must promptly notify the State of any errors and/or omissions that are discovered.

**R. ASSIGNMENT BY THE STATE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

**S. ASSIGNMENT BY THE CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

**T. GOVERNING LAW**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Invitation To Bid or any resultant contract shall be brought

in the State of Nebraska administrative or judicial forums as defined by State law. The Contractor must be in compliance with all Nebraska statutory and regulatory law.

**U. ATTORNEY'S FEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

**V. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

**W. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

During the bid process, all communication between the State and a Bidder shall be between the Bidders' representative clearly noted in its bid and the buyer noted in Section II Part A., Procuring Office and Contact Person, of this ITB. Bidder is at all times to keep its point of contact updated with the most current information. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this ITB, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each Bidder should provide in its bid the name, title, and complete address of its designee to receive notices.

1. Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.
2. Whenever the Contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the Contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the contract, all communication between Contractor and the State regarding the contract shall take place between the Contractor and individuals specified by the State in writing. Communication about the contract between Contractor and individuals not designated as points of contact by the State is strictly forbidden.

**X. EARLY TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar days written notice to the Contractor. The Contractor shall not be relieved of warranty or other obligations incurred under the terms of the contract. In the event of cancellation the Contractor shall be entitled to payment, for those products received and accepted by the State.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by the Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support or provision of the deliverable;
  - i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau; or
  - j. Contractor engaged in collusion or other actions which could have provided Contractor an unfair advantage in obtaining this contract.

**Y. BREACH BY CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The State may terminate the contract, in whole or in part, if the Contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of contract within a period of thirty (30) calendar days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the goods from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

**Z. ASSURANCES BEFORE BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the Intent To Bid/resulting contract, upon written notice from the State, the Contractor shall deliver assurances in the form of additional Contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

**AA. ACCEPTANCE AND PAYMENT OF GOODS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

In the event that the Contractor fails to provide the goods requested by the State, the State will not pay for such products until the same has been received and accepted by the State.

**BB. FORCE MAJEURE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

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.

**CC. PROHIBITION AGAINST ADVANCE PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**DD. PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such claims.

**EE. INVOICES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

Invoices for payments must be submitted by the Contractor to the agency requesting the goods with sufficient detail to support payment. Payment will be made based on the net weight of the material received. Invoices must reference the purchase order number and the Contractor's Federal I.D. number. An itemized invoice including the ordering agency name and individual, purchase order number, product description, unit cost, extension and total charges will be mailed to the bill to address on the purchase order. Discrepancies on invoices will be corrected to the State's satisfaction within fifteen (15) days. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**FF. TAXES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The State is not required to pay taxes of any kind and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the re

**GG. SEVERABILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

HH. PROPRIETARY INFORMATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

Data contained in the bid and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information upon opening the bid. If the Bidder wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. **All proprietary information the Bidder wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the bid, and provide supporting documents showing why such documents should be marked proprietary.** The separate package must be clearly marked PROPRIETARY on the outside of the package. **Bidders may not mark their entire Invitation To Bid as proprietary.** Pricing submitted in Bidders' ITB may not be marked as proprietary information. Failure of the Bidder to follow the instructions for submitting proprietary and copyrighted information may result in the information being viewed by other Bidders and the public. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, Bidders submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

II. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

By submission of this bid, the bidder certifies, that it is the party making the foregoing bid and that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further that the bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

JJ. PRICES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made or the Request for Proposal is cancelled.

Prices quoted shall be unit price (**per ton**) and shall be firm for 180 days from date of an award and are to be net; including transportation and delivery charges fully prepaid by the Bidder F.O.B. Destination as specified. No additional

charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern. Any Invitation To an increase must be submitted in writing to the State Purchasing Bureau a minimum of 30 days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State will be given full proportionate benefit of any decrease for the term of the contract. Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services. Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and conditions of the contract must be met by political sub-divisions, cities, and counties.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

**KK. ETHICS IN PUBLIC CONTRACTING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

No Bidder shall pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any State officer, legislator, employee or evaluator based on the understanding that the receiving person's vote, actions, or judgment will be influenced thereby. No Bidder shall give any item of value to any employee of the State Purchasing Bureau or any evaluator.

Bidders shall be prohibited from utilizing the services of lobbyists, attorneys, political activists, or consultants to secure the contract. It is the intent of this provision to assure that the prohibition of state contact during the procurement process is not subverted through the use of lobbyists, attorneys, political activists, or consultants. It is the intent of the State that the process of evaluation of bids and award of the contract be completed without external influence. It is not the intent of this section to prohibit Bidders from seeking professional advice, for example consulting legal counsel, regarding terms and conditions of this Invitation To Bid or the format or content of their bid.

If the Bidder is found to be in non-compliance with this section of the Invitation To Bid, they may forfeit the contract if awarded to them or be disqualified from the selection process.

**LL. INDEMNIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

**1. GENERAL**

The Contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and

expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this ITB.

**3. SELF-INSURANCE**

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 *et seq.* and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

**MM. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**NN. EMPLOYEE WORK ELIGIBILITY STATUS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the Invitation To Bid response.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

#### IV. SCOPE OF WORK

Bidder shall supply and deliver Bulk Bituminous Cold Patch Material Product.

This specification describes a product that is a High Performance, Permanent Pavement Repair when used according to directions, and applied to deteriorated concrete or bituminous pavement surfaces. It is guaranteed to adhere permanently to the repaired area, or until the surrounding pavement area fails.

**ACCEPTABLE BRANDS; APPROVED BRANDS** - Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the Bidders' proposed product for Bulk Bituminous Cold Patch Material must be an "Approved Brand" by the Nebraska Department of Roads (NDOR). Products that are not on the "Approved Brand" list will not be considered for this Invitation to Bid (ITB).

UPM High Performance Cold Patch, QPR, Omega Mix, EZ Street, Proline or Perma Patch are considered "Approved Brands" which have previously been tested by the NDOR for meeting specification requirements.

Physical review(s) of utilized material performance may be conducted by the Contractor and NDOR throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract. Additionally, should the contract be terminated, the product may be removed from NDOR's Approved Products List and as such the product would not be considered in future ITB's.

**PROCEDURE FOR PRE-APPROVAL/PRE-QUALIFICATION** - If a vendor/supplier has a product which is not pre-approved by the Department of Roads, the vendor/supplier may contact Carrie Olson, Buyer, NDOR for information concerning the approval process (carrie.olson@nebraska.gov).

Proposed product must pass a field performance evaluation standard over a period that includes all four seasons. Overall testing period for both field testing and Materials & Research review of adherence to these specifications is one full year. If the product is approved, it will have the opportunity for inclusion on the "Approved Brands" list for the next Bulk Bituminous Cold Patch Material bid solicitation.

The Bidder must provide the following information in response to this Invitation To Bid.

##### A. SCOPE

It is the intent of this bid invitation to establish a contract to supply Bulk Bituminous Cold Patch Material per the attached specifications from date of award for a period of two (2) years with the option to renew for an additional three (3) one (1)-year periods when mutually agreeable to the vendor and the State of Nebraska. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the vendor and the State of Nebraska.

All items bid shall be of the latest manufacture in production as of the date of the Invitation To Bid (ITB) and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the Bulk Bituminous Cold Patch Material whether or not they may be specifically mentioned below.

Complete specifications, manufacturer's descriptive literature and/or advertising data sheets with cuts or photographs may be required prior to an award and should be included with the bid on the IDENTICAL items proposed. Literature should be complete and the latest published. Any information necessary to show compliance with these specifications not given on the manufacturer's descriptive literature and/or advertising data sheets should be supplied in writing on or attached to the bid document. If manufacturer's specifications sheets, descriptive literature, advertising data sheets or information necessary to show compliance with these specifications is not supplied in writing on or attached to the bid document, the Bidder will be required to submit requested information within three (3) business days of a written request. Failure to submit requested descriptive literature or advertising data sheets may be grounds to reject the bid.

##### B. AMENDMENT

This Contract may be amended at any time in writing upon the agreement of both parties.

##### C. REVISIONS

In the event any product is discontinued or replaced with a newer version during the contract period, the State of Nebraska reserves the right to amend this contract to include the new product.

V. INVITATION TO BID - SPECIAL PROVISIONS for BULK BITUMINOUS COLD PATCH MATERIAL

**SPECIAL PROVISIONS for BULK BITUMINOUS COLD PATCH MATERIAL**

**BIDDER INSTRUCTIONS**

Bidder must respond to each of the following statements. Specifications listed are minimum conditions that must be met in order for a Bidder to qualify for the award.

“YES” response means the Bidder guarantees they can meet this condition.

“NO” response means the Bidder cannot meet this condition and will not be considered.

“NO & PROVIDE ALTERNATIVE” responses should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the Bidders’ ability to meet the condition, and an explanation of how this would be determined to be an acceptable alternative to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The State of Nebraska shall determine at its sole discretion whether or not the Bidders’ alternative is an acceptable alternative.

A. NON-COMPLIANCE STATEMENT

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to quotation request. Any noncompliance may void your quotation. Non-compliance to any single specification can void your bid.
			2. It is the responsibility of Bidders to obtain information and clarifications as provided below. The State of Nebraska is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this Invitation to Bid by any Bidder.
			3. No interpretation related to the meaning of bid specifications or other pre-bid documents will be made orally to any Bidder by the State of Nebraska. Any Invitation To bid interpretation must be put in writing and faxed by the Bidder to: the State Purchasing Bureau, Fax (402) 471-2089 or e-mailed to AS Materiel Purchasing <a href="mailto:as.materielpurchasing@nebraska.gov">as.materielpurchasing@nebraska.gov</a> by the last day to submit written questions that is specified in the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).
<b>NOTES/COMMENTS:</b>			

B. GENERAL MATERIAL REQUIREMENTS

YES	NO	NO & PROVIDE ALTERNATIVE	BULK BITUMINOUS COLD PATCH MATERIAL
			1. The Bulk Bituminous Cold Patch Material bid shall be UPM High Performance Cold Patch, Omega Mix, QPR, EZ Street, Proline or Perma Patch.
			2. The Bituminous Cold Patch Material will be designed in various seasonal grades for use when the outside ambient temperature is in the range of -15 degrees F (-26 degrees C) to 100 degrees F (38 degrees C).
			3. Each grade shall be manufactured specifically to accommodate anticipated climatic conditions.

			4.	The patching material must be able to withstand vehicular traffic immediately after placement and not strip, kick up or ravel out afterwards.
			5.	The material must be ready to use and require no on-site mixing or heating, or require special primers or bonding agents for placement, even in sub-freezing weather.
			6.	The Bituminous Cold Patch Material shall consist of asphalt and aggregate within prescribed quantities to make a mixture which will provide satisfactory coating, workability and adhesion characteristics.
			7.	The patching mixture will be available in grades to function as a patch during cold and damp weather, and during hot weather in bituminous and concrete pavement.
<b>NOTES/COMMENTS:</b>				

**C. TECHNICAL MATERIAL REQUIREMENTS**

YES	NO	NO & PROVIDE ALTERNATIVE	LIQUID ASPHALT								
			1.	The bituminous material shall be a blend of asphalt cement and other additives, defined by the liquid supplier, which upon blending shall conform to the following requirements:							
			a.	Kinematic Viscosity @ 140 F (60 C), ASTM D 2170, 350 to 4000 cSt.							
			b.	Flash point, Tag Open Cup, ASTM D 1310, 200 F (93 C) min.							
			c.	Percentage of water, ASTM D 95, less than 0.2%.							
			d.	<b>Distillation to 680 F (360 C), ASTM D 402, see values listed below in section E through H:</b>							
			e.	<table border="1"> <thead> <tr> <th>Temperature</th> <th>Volume % Total Distillate Min/Max</th> <th>Volume % Orig. Sample Min/Max</th> </tr> </thead> <tbody> <tr> <td>to 437 F (225 C)</td> <td>0 / 0</td> <td>0 / 0</td> </tr> </tbody> </table>		Temperature	Volume % Total Distillate Min/Max	Volume % Orig. Sample Min/Max	to 437 F (225 C)	0 / 0	0 / 0
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			<b>2.</b> Tests on Residue from Distillation, see values listed below in section A through D:						
			<b>a.</b> Absolute viscosity @ 140 F (60 C), ASTM D 2171, 75 to 425 Poise.						
			<b>b.</b> Penetration, Modified with Cone, ASTM D 5*, 180 min. Bidder please note: * Test is conducted in accordance with ASTM Method D 5, except utilize a penetration cone in place of the standard penetration needle. The cone shall conform to the requirements given in ASTM Method D 217, except that the interior construction may be modified as one desires. The total moving weight of the cone and attachments must be 150 +/- 0.1 gram. Also the level of water in the transfer dish shall be lowered to less than the height of the sample and decant water from the top of the sample before transferring from the bath to the penetrometer.						
			<b>c.</b> Ductility, 39 F (4 C), 1 cm/minute, ASTM D 113, 100 min.						
			<b>d.</b> Solubility in Trichloroethylene, ASTM D 2042, 99.0% min						
<b>NOTES/COMMENTS:</b>									

**D. AGGREGATE**

YES	NO	NO & PROVIDE ALTERNATIVE					
			<p><b>1.</b> The aggregate shall be crushed stone and shall meet the following requirements:</p> <p><b>a.</b></p> <table border="1"> <tr> <td>Sieve Analysis</td> <td>ASTM C 136 #89 ASTM D 448 Percent Passing</td> </tr> <tr> <td>1/2" (12.5 mm)</td> <td>100</td> </tr> </table>	Sieve Analysis	ASTM C 136 #89 ASTM D 448 Percent Passing	1/2" (12.5 mm)	100
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			<b>g.</b> Soundness Loss (Sodium, 5 cycles), ASTM C 88, 12.0 max.						
			<b>h.</b> Los Angeles Abrasion Loss, ASTM C 131, 45.0% max.						
			<b>i.</b> Specific Gravity, ASTM C 127, 2.45 - 2.85.						
			<b>j.</b> Absorption, ASTM C 128, 3.0% max.						
			<b>k.</b> Minus 200 Sieve (0.075mm) Wash Loss, ASTM C 117, 2.5% max.						
<b>NOTES/COMMENTS:</b>									

**E. MIXTURE**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> Coating, ASTM D 2489, greater than 95%.
			<b>2.</b> Stripping in distilled water*, visual. Less than 5%.
			*Place approximately 100 grams in a 250 ml glass beaker and cover with distilled water for 24 hours before observation.
			<b>3.</b> Extraction of Bituminous Material, ASTM D 2172, 3.5% min., 7.0% max.
			<b>4.</b> Sieve Analysis of Extracted Aggregate, ASTM C 136, see aggregate spec.
			<b>5.</b> -200 (0.075mm) of Extracted Aggregate, ASTM C 117 & ASTM C 136, 4.0% max. **
			**This value shall not be confused with the 2.5% maximum allowed for the Minus 200 (0.075mm) Wash Loss on the raw aggregate before the production of the bituminous cold patch material. That value is necessary to minimize the effect of the plant when producing the finished bituminous cold patch material.
<b>NOTES/COMMENTS:</b>			

**F. PRODUCTION OF BITUMINOUS COLD PATCH**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The contractor of the bituminous cold patch material must provide a paved stockpile pad for the placement of this material during production.
			2. Any pad used to place the produced material must be free of all foreign material which could cause contamination of the produced material.
			3. The asphalt shall be heated to a temperature recommended by the liquid supplier.
			4. The mixture shall consist of an aggregate and asphalt combined in a pug mill in the following proportions:  Asphalt            5.0 to 6.5% Aggregate        93.5 to 95%
			5. The mixture may be prepared with no heat to the aggregate when determined as acceptable by laboratory testing.
			6. Heat should be applied to the aggregate when determined as necessary by laboratory testing prior to production of the mixture. The minimum amount of heat necessary to obtain coating or facilitate the operation of the plant may be utilized, but is not to exceed under any circumstance, 175 F (80 C).
			7. When producing in a batch plant, wet mix time in the pug mill should be typically in the range of thirty (30) to forty five (45) seconds or until the aggregate is uniformly coated (greater than 95%), ASTM D 2489.
<b>NOTES/COMMENTS:</b>			

**G. PRODUCTION COMPLIANCE & SUPERVISION**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. An authorized technical representative from the liquid supplier must be present at every production for quality assurance of the mix at no additional cost to NDOR. The supervision shall be at the expense of the liquid supplier.
			2. All mix delivered to the NDOR must be accompanied with a Certificate of Compliance, with a second copy to NDOR Logistics, stating the mix type meets these specifications.
			3. As a condition of this contract, the successful bidder must agree to furnish on site personnel, at no additional cost, to the NDOR to assist in resolving problems in event material problems develop.
<b>NOTES/COMMENTS:</b>			

H. ACCEPTABLE BRANDS; APPROVED BRANDS

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the Bidders' proposed product for Bulk Bituminous Cold Patch Material must be an "Approved Brand" by the Nebraska Department of Roads (NDOR). Products that are not on the "Approved Brand" list will not be considered for this ITB.</p>
			<p>2. All UPM High Performance Cold Patch, QPR, Omega Mix, EZ Street, Proline or Perma Patch are considered "Approved Brands" which have previously been tested by the NDOR for meeting specification requirements.</p>
			<p>3. Physical review(s) of utilized material performance may be conducted by the Contractor and NDOR throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract. Additionally, should the contract be terminated, the product may be removed from NDOR's Approved Products List and as such the product would not be considered in future ITB's.</p>
<p>NOTES/COMMENTS:</p>			

I. PROCEDURE FOR PRE-APPROVAL/PRE-QUALIFICATION

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. If a vendor/supplier has a product which is not pre-approved by the Department of Roads, the vendor/supplier may contact Carrie Olson, Buyer, NDOR for information concerning the approval process (<a href="mailto:carrie.olson@nebraska.gov">carrie.olson@nebraska.gov</a>).</p>
			<p>2. Proposed product must pass a field performance evaluation standard over a period that includes all four seasons. Overall testing period for both field testing and Materials &amp; Research review of adherence to these specifications is one full year. If the product is approved, it will have the <u>opportunity for inclusion on the "Approved Brands" list for the next Bulk Bituminous Cold Patch Material bid solicitation.</u></p>
<p>NOTES/COMMENTS:</p>			

J. ANNUAL USAGE, ESTIMATED

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. 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.
			2. Bulk Bituminous Cold Patch Material statewide annual usage: <u>900.00 – 1,500.00 TONS</u>
NOTES/COMMENTS:			

K. DELIVERY LOCATIONS/INSTRUCTIONS

YES	NO	NO & PROVIDE ALTERNATIVE	BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY LOCATIONS/INSTRUCTIONS																																																																																
			1. District Superintendent and Location Listing: The tables listed below provide Bidders with information on the locations that may order Bulk Bituminous Cold Patch Material, including an estimated annual usage for these locations.																																																																																
			2. District One Superintendents:  <u>Jeff Havlat</u> - 402-471-0850 – Lincoln Superior, David City, Wahoo, Seward, Greenwood <u>Eldon Schoen</u> - 402-471-0850 – Palmyra, Auburn, Nebraska City, Tecumseh, Falls City <u>Todd Cecrle</u> – 402-471-0850 – Beatrice, Lincoln Salt Valley, Dorchester, Fairbury, Pawnee City																																																																																
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**3.** District Two Superintendents:

**Jim Laughlin** – 402-595-2497 – Omaha 108<sup>th</sup>, Omaha South, Omaha Mormon

**Jason Hansen** – 402-727-3292 – Fremont, Blair

**Sam Banister** – 402-289-4444 – Elkhorn, Gretna, Plattsmouth

DISTRICT	LOCATION	TONS		DISTRICT	LOCATION	TONS
D-2	Omaha 108th	30		D-2	BLAIR	30
D-2	Omaha South	30		D-2	GRETNA	30
D-2	Omaha Mormon	30		D-2	PLATTSMOUTH	30
D-2	FREMONT	30		D-2	ELKHORN	30

**4.** District Three Superintendents:

**Warren Racely** – 402-564-4126 – Columbus, Albion, Humphrey

**Tony Tschirren** – 402-887-5441 – Neligh, Bloomfield, Plainview, Niobrara

**Rodney Weber** – 402-370-3477 – Norfolk, West Point

**Dan Sayre** – 402-494-6826 – So Sioux City, Lyons

**Dick Soden** – 402-375-7070 – Wayne, Hartington, Laurel

DISTRICT	LOCATION	TONS		DISTRICT	LOCATION	TONS
D-3	ALBION	30		D-3	NORFOLK	60
D-3	BLOOMFIELD	30		D-3	PLAINVIEW	30
D-3	CEDAR RAPIDS	30		D-3	S. SIOUX CITY	60
D-3	COLUMBUS	60		D-3	WAYNE	60
D-3	HARTINGTON	30		D-3	WEST POINT	30
D-3	HUMPHREY	60				
D-3	LAUREL	30				
D-3	LYONS	60				
D-3	NELIGH	60				
D-3	NIOBRARA	30				

**5.** District Four Superintendents:

**Don Stiger** – 308-728-3761 – Fullerton, Ord, Central City, St. Paul, Greeley, Loup City

**Dave Cassidy** – 402-362-5930 – Geneva, York, Hebron, Osceola

**Cindy Jelinek** – 308-385-6263 – Kearney, Grand Island, Ravenna

**Randy Sabata** – 402-462-1996 – Hastings, Red Cloud, Superior, Aurora

DISTRICT	LOCATION	TONS		DISTRICT	LOCATION	TONS
D-4	AURORA	30		D-4	ORD	30
D-4	CENTRAL CITY	30		D-4	OSCEOLA	30
D-4	FULLERTON	30		D-4	RAVENNA	120
D-4	GENEVA	30		D-4	RED CLOUD	30
D-4	GRAND ISLAND	230		D-4	ST. PAUL	30
D-4	GREELEY	30		D-4	SUPERIOR	30
D-4	HASTINGS	50		D-4	YORK	30
D-4	HEBRON	30				
D-4	KEARNEY	60				

			D-4	LOUP CITY	30																																																																																																							
			<b>6. Districts Five Superintendents:</b>  <b>Paul Howard</b> – 308-432-6141 – Chadron, Gordon, Crawford, Alliance <b>John Lutz</b> – 308-436-6587 – Gering, Bridgeport <b>Doug Sick</b> – 308-254-6932 – Sidney, Chappell, Kimball																																																																																																									
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			<b>7. District Six Superintendents:</b>  <b>Carlos Campa</b> -308-324-3885 – Lexington, Gothenburg <b>Pam Garrett</b> – 308-535-8010 – North Platte, <b>Robert Hilton</b> – 308-284-8070 – Ogallala, Big Springs <b>Larry Ferguson</b> – 308-872-6733 – Broken Bow, Ansley <b>Lex Zimmerman</b> – 308-546-2241 – Mullen, Stapleton																																																																																																									
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			<b>8. District Seven Superintendents:</b>  <b>Kerry Scott</b> – 308-345-8495 – McCook, Arapahoe, Curtis <b>Dan Jones</b> – 308-995-4242 – Alma, Minden, Holdrege <b>Ray Walrod</b> – 308-882-4252 – Imperial, Benkelman																																																																																																									
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			<b>9. District Eight Superintendents:</b>  <b>Chuck Osborn</b> – 402-387-2472 - Ainsworth <b>Dennis Connot</b> – 402-376-1350 – Valentine, Merriman <b>Rob Lowe</b> – 402-336-2051 – O'Neill, Burwell, Spencer																																																													
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L. USAGE REPORT

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> The vendor shall, upon request by the State of Nebraska, provide an annual usage report of this contract by state agencies. Information will include agency name, item, and dollar amount. Information may be requested at any time by the State Purchasing Bureau, but may typically be requested at the end of the contract period or upon renewal of the contract, or at other intervals (monthly, quarterly, etc.) as determined by the State.
NOTES/COMMENTS:			

M. PRICES

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> Price quoted shall be unit price (per ton) and shall be firm for 180 days from date of an award and are to be net; including transportation and delivery charges fully prepaid by the Bidder F.O.B. Destination as specified to any location within a District. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern. Any Invitation To an increase must be submitted in writing to the State Purchasing Bureau a minimum of thirty (30) days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any

			<p>proposed price increase(s), cancel the contract, and re-bid if determined to be in the best interest of the State. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.</p> <p>The State will be given full proportionate benefit of any decrease for the term of the contract. Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services. Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and conditions of the contract must be met by political sub-divisions, cities, and counties.</p>
<b>NOTES/COMMENTS:</b>			

**N. ORDERS**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Orders will be placed on an as needed basis and in most instances by telephone but not to the exclusion of other methods, (fax, e-mail or Internet, etc.) by district personnel stating the locations, product desired, quantity and purchase order number. There will be no minimum order requirements. All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order.</p>
<b>NOTES/COMMENTS:</b>			

**O. DELIVERY AFTER RECEIPT OF ORDER**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Deliveries of Bulk Bituminous Cold Patch Material shall be FOB destination to all NDOR locations specified on the purchase order or as directed by NDOR at the time of purchase in accordance with this ITB. A NDOR District contact person and phone number will be given to the Contractor when an order is placed. Contractor must notify the NDOR District contact a minimum of twenty four (24) hours prior to the anticipated delivery. Contractor shall maintain sufficient inventory to process and deliver within thirty (30) days after receipt of order(s). There will be no minimum order requirements.</p>

			<p>2. If the Contractor is unable to meet delivery schedules, the ordering District Superintendent must be notified within three (3) days from the date the order was placed. If it is nearing the delivery date and for some unforeseen reason the Contractor is unable to meet expected delivery, the ordering District shall be notified at least forty eight (48) hours in advance. The order may be cancelled if the delivery date is unsatisfactory, and the State may procure item(s) from other sources. The contractor may be held responsible for an/all excess cost. Failure to meet delivery requirements of the contract may constitute a breach of the contract.</p>
			<p>3. Plant Pick-up of Bulk Bituminous Cold Patch Material shall be an available option. District personnel will make arrangements with the Contractor to schedule the pick-up of material (including same day pick-up).</p>
			<p>4. Deliveries shall be made during normal working hours between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday (excluding State holidays and / or as otherwise directed). If an emergency exists, delivery may be made through prior arrangements with receiving personnel.</p> <p>At the time of delivery, a designated State of Nebraska employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.</p>
<p><b>NOTES/COMMENTS:</b></p>			

P. **QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Product quality must meet specifications and be consistent for the term of the contract. A guarantee of satisfactory performance by the supplier and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation. All materials must be of first quality, under standard production by the manufacturer, be of standard design, complete as regularly advertised and marketed, and be of proven performance. Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during the initial warranty period with no additional charges for shipping or restocking.</p>
<p><b>NOTES/COMMENTS:</b></p>			

**Q. PERFORMANCE GUARANTEE**

	NO	NO & PROVIDE ALTERNATIVE	<b>NOTE: The supplier of the bituminous cold patch material shall guarantee the performance of the patching mix to meet the following requirements.</b>
			1. The material shall remain workable, without heating, to accommodate climate conditions, in a covered stockpile for a period of not less than twelve (12) months.
			2. Repaired potholes shall not show any significant signs of shoving, rutting, tracking, kick-up or ravel-out within a period of twelve (12) months from the time of repair.
			3. The material shall be capable of being overlaid with hot mix asphalt after placement and compaction and shall not bleed through or affect the performance of the hot mix asphalt.
			4. For any uncompliant materials not meeting specifications and representations provided on the ITB, NDOR in its sole discretion shall have the right to either accept the materials at a Pay Factor of 40% as listed within section 19.A. of this ITB or reject the material and request replacement material by Contractor, at the Contractor's expense, within fifteen (15) business days FOB destination to the location on the original purchase order.
			5. NDOR, in its sole discretion, shall have the right to require any uncompliant stockpiled material be removed by the Contractor from State of Nebraska property at no additional cost to the NDOR.
<b>NOTES/COMMENTS:</b>			

**R. SAMPLE TESTING THROUGHOUT THE LIFE OF THE CONTRACT**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. NDOR reserves the right to acquire a random sample of liquid asphalt and aggregate at any time during the term of the contract for testing to determine specification compliance as provided in the ITB..
			2. The mix design and samples of the liquid asphalt and aggregates shall be submitted and reviewed by the NDOR Materials and Research Flexible Pavements Engineer. The materials shall conform to the technical requirements following material specifications and representations provided in this ITB within section V. Special Provisions.
			3. For any uncompliant materials not meeting specifications and representations provided in the ITB, NDOR in its sole discretion shall have the right to either accept the materials at a Pay Factor of 40% as listed within section 19.A. of this ITB or reject the material and request replacement material by Contractor, at the Contractor's expense, within fifteen (15) business days FOB destination to the location on the original purchase order.
<b>NOTES/COMMENTS:</b>			

S. ACCEPTANCE AND PAY FACTOR

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. For any uncompliant materials not meeting specifications and representations provided in the ITB, NDOR in its sole discretion, shall have the right to either accept the materials at a Pay Factor of 40% or reject the material and request replacement material by Contractor, at the Contractor's expense, within fifteen (15) business days FOB destination to the location on the original purchase order.</p>
<p>NOTES/COMMENTS:</p>			

T. SUBSTITUTIONS

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Vendor will not substitute any item that has been awarded without prior written approval of State Purchasing Bureau.</p>
<p>NOTES/COMMENTS:</p>			

U. SECRETARY OF STATE REGISTRATION REQUIREMENTS

YES	NO	NO & PROVIDE ALTERNATIVE	*Prior to contract award and/or upon request of SPB, potential award recipient(s) will be asked to certify compliance with Nebraska Secretary of State Registration by providing a true and exact copy of current (dated within 90 days) valid Certificate of Good Standing or Letter of Good Standing.
			<p>1. Bidder is a SOLE PROPRIETORSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required) If the Bidder is an Individual or Sole Proprietorship, the following applies:</p> <ul style="list-style-type: none"> <li>a. The Bidder must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>. The completed United States Attestation Form should be submitted with the Invitation to Bid response.</li> <li>b. If Bidder indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.</li> <li>c. The Bidder understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.</li> </ul>

			2. Bidder is a GENERAL PARTNERSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required)
			3. Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State <b>is provided</b> within bid submission documents.
			4. Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State <b>will be provided</b> in a timely manner upon request prior to award.
<b>NOTES/COMMENTS:</b>			

END OF SPECIAL PROVISIONS for BULK BITUMINOUS COLD PATCH MATERIAL

**Form A Bidder Contact Sheet  
 Invitation To Bid Number 5472 OF**

Form A should be completed and submitted with each response to this Invitation to Bid. This is intended to provide the State with information on the Bidders' name and address, and the specific person(s) who are responsible for preparation of the Bidders' response.

Preparation of ITB Contact Information	
Bidder Name:	
Bidder Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

Each Bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Bidders' response should become necessary.

Communication with the State Contact Information	
Bidder Name:	
Bidder Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	