

# 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

Date	3/9/18	Page	1 of 3
Solicitation Number	5792 OF		
Opening Date and Time	03/20/18	2:00 pm	
Buyer	FAITH CAMARGO (AS)		

**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 LIQUID ASPHALTIC MATERIALS to the State of Nebraska as per the attached specifications for a Six (6) month period from date of award.

(vc 2/22/18)

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	CRS-2P DISTRICT 1	3,425.0000	TN	<u>No bid</u>	<u>No Bid</u>
2	CRS-2P DISTRICT 3	7,750.0000	TN	<u>No bid</u>	<u>No Bid</u>
3	CRS-2P DISTRICT 4	5,300.0000	TN	<u>No bid</u>	<u>No Bid</u>
4	CRS-2P DISTRICT 6	4,125.0000	TN	<u>No Bid</u>	<u>No bid</u>
5	CRS-2P DISTRICT 7	2,250.0000	TN	<u>No bid</u>	<u>No Bid</u>
6	CRS-2P DISTRICT 8	2,325.0000	TN	<u>No bid</u>	<u>No Bid</u>

### 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 [Signature]  
Here (Authorized Signature MANDATORY - MUST BE SIGNED IN INK)

Enter Contact Information Below

VENDOR# 2200939  
VENDOR: Western States Asphalt LLC  
Address: 4511 S Federal Blvd  
Cheyenne, WY 82007

Contact Evan Henniger  
Telephone (307) 638-2633  
Facsimile (307) 638-2537  
Email ehenniger@wsasphalt.com

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Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
7	CSS-1H DISTRICT 1	400.0000	TN	<u>No Bid</u>	<u>No Bid</u>
8	CSS-1H DISTRICT 3	75.0000	TN	<u>No Bid</u>	<u>No Bid</u>
9	CSS-1H DISTRICT 7	175.0000	TN	<u>\$ 449.50</u>	<u>\$ 78,662.50</u>
10	CSS-1H 50/50 DISTRICT 3	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
11	CSS-1H 50/50 DISTRICT 5	100.0000	TN	<u>\$ 265.50</u>	<u>\$ 26,550.00</u>
12	CSS-1H 50/50 DISTRICT 6	525.0000	TN	<u>\$ 289.50</u>	<u>\$ 151,987.50</u>
13	CSS-1H 50/50 DISTRICT 7	700.0000	TN	<u>\$ 309.50</u>	<u>\$ 216,650.00</u>
14	CSS-1H 50/50 DISTRICT 8	325.0000	TN	<u>No Bid</u>	<u>No Bid</u>
15	CSS-1H 75/25 DISTRICT 2	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
16	CSS-1H 75/25 DISTRICT 3	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
17	CSS-1H 75/25 DISTRICT 5	50.0000	TN	<u>\$ 335.50</u>	<u>\$ 16,775.00</u>
18	CSS-1H 75/25 DISTRICT 6	475.0000	TN	<u>\$ 359.50</u>	<u>\$ 170,762.50</u>
19	CSS-1H 75/25 DISTRICT 8	700.0000	TN	<u>No Bid</u>	<u>No Bid</u>
20	CRS-2VHL DISTRICT 5	875.0000	TN	<u>\$ 473.50</u>	<u>\$ 414,312.50</u>
21	CRS-2P 80/20 DISTRICT 6	800.0000	TN	<u>No Bid</u>	<u>No Bid</u>
22	CRS-2 DISTRICT 3	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
23	HFE-150 DISTRICT 3	125.0000	TN	<u>No Bid</u>	<u>No Bid</u>
24	HFE-150 DISTRICT 5	1,500.0000	TN	<u>No Bid</u>	<u>No Bid</u>
25	HFE-150 DISTRICT 8	775.0000	TN	<u>No Bid</u>	<u>No Bid</u>
26	HFE-300 DISTRICT 4	1,525.0000	TN	<u>No Bid</u>	<u>No Bid</u>
27	HFE-300 DISTRICT 6	1,725.0000	TN	<u>No Bid</u>	<u>No Bid</u>
28	HFE-300 DISTRICT 7	125.0000	TN	<u>No Bid</u>	<u>No Bid</u>

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Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
29	HFE-300 DISTRICT 8	725.0000	TN	<u>No Bid</u>	<u>No Bid</u>
30	HFE-1000 DISTRICT 4	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
31	HFE-1000 DISTRICT 5	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
32	HFE-1000 DISTRICT 6	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
33	HFE-1000 DISTRICT 8	275.0000	TN	<u>No Bid</u>	<u>No Bid</u>
34	MC-250 DISTRICT 4	100.0000	TN	<u>No Bid</u>	<u>No Bid</u>
35	MC-250 DISTRICT 6	150.0000	TN	<u>No Bid</u>	<u>No Bid</u>
36	MC-250 DISTRICT 8	125.0000	TN	<u>No Bid</u>	<u>No Bid</u>
37	CRS-2P PLANT PICK-UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
38	CSS-1H PLANT PICK-UP	25.0000	TN	<u>\$ 390.00</u>	<u>\$ 9,750.00</u>
39	CSS-1H 50/50 PLANT PICK-UP	25.0000	TN	<u>\$ 270.00</u>	<u>\$ 6,750.00</u>
40	CSS-1H 75/25 PLANT PICK-UP	25.0000	TN	<u>\$ 340.00</u>	<u>\$ 8,500.00</u>
41	CRS-2VHL PLANT PICK-UP	25.0000	TN	<u>\$ 470.00</u>	<u>\$ 11,750.00</u>
42	CRS-2P 80/20 PLANT PICK-UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
43	CRS-2 PLANT PICK-UP	25.0000	TN	<u>\$ 450.00</u>	<u>\$ 11,250.00</u>
44	HFE-150 PLANT PICK-UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
45	HFE-300 PLANT PICK-UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
46	HFE-1000 PLANT PICK-UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
47	MC-250 PLANT PICK-UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
48	DEMURRAGE	1.0000	HR	<u>\$ 180.00</u>	<u>\$ 180.00</u>

**II. TERMS AND CONDITIONS**

**Bidders should complete Section II through VI as part of their bid.**

Bidder is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Bidder should also provide an explanation of why the Bidder rejected the clause or rejected the clause and provided alternate language using 'Track Changes'. Upon request an electronic copy of the bid with 'Track Changes' must be submitted in an editable Word format. By signing the ITB Bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the bid. The State reserves the right to negotiate rejected or proposed alternative language. If the State and Bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the bid. The State is soliciting bids in response to the ITB. The State reserves the right to reject bids that attempt to substitute the Bidder's commercial contracts and/or documents for this ITB.

The Bidder should submit with their bid any license, user agreement, service level agreement, or similar documents that the Bidder wants incorporated in the Contract. Upon notice of Intent to Award, the Bidder must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted with the Bidder's bid. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

1. If only one (1) Party's document has a particular clause then that clause shall control;
2. If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

**A. GENERAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
[Handwritten Initials]			

The contract resulting from this ITB shall incorporate the following documents:

1. Invitation to Bid and Addenda;
2. Amendments to the ITB;
3. Questions and Answers;
4. Contractor's bid (ITB);
5. Award;
6. The executed Contract and any Addenda; and,
7. Amendments to the Contract

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future 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 the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to ITB and any Questions and Answers, 4) the original ITB document and any Addenda, and 5) the Contractor's submitted Bid.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State.

**B. GOVERNING LAW**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this

agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically, subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

**C. BEGINNING OF WORK**

The Contractor shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**D. CHANGE ORDERS OR SUBSTITUTIONS**

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

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the ITB. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The State or Contractor may prepare a written description of the work required due to the change and the Contractor shall prepare an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's bid, were foreseeable, or result from difficulties with or failure of the Contractor's bid or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

Vendor will not substitute any item that has been awarded without prior written approval of SPB.

**E. BREACH**

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding

any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies. (See Indemnity - Self-Insurance and Payment)

**F. NON-WAIVER OF BREACH**

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

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**G. SEVERABILITY**

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

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 provision held to be invalid or illegal.

**H. INDEMNIFICATION**

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

**1. GENERAL**

The Contractor agrees to defend, indemnify, and hold 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 for personal injury, death, or property loss or damage, 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, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

**3. SELF-INSURANCE (Statutory)**

The State 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 through 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.

**I. ATTORNEY'S FEES**

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

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if order by the court, including attorney's fees and costs, if the other party prevails.

**J. ASSIGNMENT, SALE, OR MERGER**

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

Either party may assign the contract upon mutual written agreement of the other party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**K. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE**

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

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause.

The Contractor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**L. FORCE MAJEURE**

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

Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party, and shall have the burden of proof to justify the request. The other Party may granted the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

**M. CONFIDENTIALITY**

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

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**N. EARLY TERMINATION**

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

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, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
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 its 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 of the deliverable; and,
- i. In the event funding is no longer available.

**O. CONTRACT CLOSEOUT**

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

Upon termination of the contract for any reason the Contractor shall within thirty (30) days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property;

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or person property, or information or data owned by the Contractor for which the State has no legal claim.

**III. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
4/17			

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's bid shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a Subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees).

If the Contractor intends to utilize any subcontractor, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's bid. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its bid in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a sub-contractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this contract.

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. 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 DAS website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the ITB response.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. 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.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

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, 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 through 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 goods or services to be covered by any contract resulting from this ITB.

**D. COOPERATION WITH OTHER CONTRACTORS**

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

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on the same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. PERMITS, REGULATIONS, LAWS**

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

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the performance of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

**F. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

If Contractor breaches the contract or anticipates breaching the contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**G. ANTITRUST**

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

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.

**H. CONFLICT OF INTEREST**

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

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

The Contractor 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 delivery of its goods hereunder or which creates an actual or an appearance of conflict of interest.

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

The Parties shall not knowingly, for a period of two years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the ITB or project, or who had any influence on decisions affecting the ITB or project.

**I. STATE PROPERTY**

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

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

**J. SITE RULES AND REGULATIONS**

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

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

**K. ADVERTISING**

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

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 goods are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**L. DISASTER RECOVERY/BACK UP PLAN**

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

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods as specified under the specifications in the contract in the event of a disaster.

**M. DRUG POLICY**

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

Contractor certifies it maintains a drug free work place 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.

**IV. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT**

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

Neb. Rev. Stat. §§ 73-501 through 73-509 says "payments shall be made when contractual deliverables are received or in accordance with specific contractual terms and conditions." Standard term is to pay after deliverables and that any alteration of that standard term should be carefully considered and used only when absolutely necessary to accommodate certain critical exceptions, i.e. insurance premiums, etc. that must be paid in advance.)

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

**B. TAXES**

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

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**C. INVOICES**

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

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment.

Invoices shall reference the purchase order number and include the demurrage charge for each purchase order delivered. Contractors should forward all invoices and supporting documentation to the following address:

Nebraska Department of Transportation (NDOT)  
 Operations Division  
 PO Box 94759  
 Lincoln, NE 68509

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.

**D. INSPECTION AND APPROVAL**

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

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

If a simple inspection of the goods would reveal nonconformity, notice of nonconformity should be provided to the vendor as soon as reasonably practical, but not to exceed thirty (30) days from receipt of goods. This includes visual inspection of product to ensure packaging is not damaged, dented or compromised.

**E. PAYMENT (Statutory)**

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. (Neb. Rev. Stat. Section 73-506(1)). 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 services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

**G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) 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 termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

**H. RIGHT TO AUDIT (Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. §84-304 et seq.) The State may audit and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.



## V. SCOPE OF WORK

The Bidder must provide the following information in response to this ITB.

### A. SCOPE

It is the intent of this bid invitation to establish a contract to supply Liquid Asphaltic Materials per the attached specifications from date of award through November 30, 2018. 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 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 Liquid Asphaltic Materials whether or not they may be specifically mentioned below.

The materials shall conform to the 2017 Nebraska Department of Transportation Standard Specifications for Highway Construction and Special Provisions as amended in these bid documents and accessed at the following link:

<http://dot.nebraska.gov/media/10343/2017-specbook.pdf>

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 in writing, within scope, upon the agreement of both parties.

### C. REVISIONS

In the event any product is discontinued or replaced upon mutual consent during the contract period, the State reserves the right to amend this contract to include the alternate product at the same price.

### D. LATE OR NON-DELIVERY

Crews and equipment are mobilized to the worksite in advance of the project start time in order to be ready when the road oil arrives. Delays in the arrival of material are costly in terms of lost production. Liquidated damages will be applied and deducted from the invoice at the rate of \$400.00/hour, calculated to the nearest half hour. Deliveries less than 15 minutes late will not be assessed liquidated damages. Failure to deliver product within two (2) hours of scheduled start time will be considered non-delivery and will be assessed \$1200.00 liquidated damages. Repeated failure to deliver product according to schedule will be grounds for immediate cancellation of the contract.

**All documents must be filled out completely and plainly show arrival and departure times.**

**Charges for demurrage must be included on the invoice for the Liquid Asphalt Material. Arrival and departure times shown must be for appropriate time zones.**

When the Contractor ships material prior to the completion of their testing, and subsequently learns that the material is out of specification while the material is still in transit, the DEPARTMENT MUST BE NOTIFIED IMMEDIATELY BY CONTACTING THE MATERIAL AND RESEARCH DIVISION @ (402) 479-4774 or (402) 479-3839 and the Field Representative's office expecting the delivery.

Any out of specification material which has been incorporated into the work, sections (b), (c) and (d) of the Basis of Payment will apply. The cost of shipping a load of out of specification material, which is returned to the Contractor, will be the responsibility of the Contractor.

Purchase orders will be issued by Nebraska Department of Transportation, Operations Division, Procurement Unit, PO Box 94759, Lincoln, Nebraska, 68509-4759.

**E. BASIS OF PAYMENT**

Liquid Asphalt Materials which comply with specifications and are furnished in accordance with the instructions herein shall be paid for at the contract unit price per ton.

Samples shall pass specifications when tested after being stored at room temperature (~75°F) for periods of up to 14 days after sampling. When test results of on-site asphalt materials are outside of the specified property ranges, the material shall be paid for at the contract unit price multiplied by the Pay Factors in Table 504.01A.

**VII. INVITATION TO BID - TECHNICAL SPECIFICATIONS**

**A. 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 Bidder's 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 shall determine at its sole discretion whether or not the Bidder's alternative is an acceptable alternative.

**B. NON-COMPLIANCE STATEMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
GA			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 quotation.
GA			2. It is the responsibility of Bidders to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this ITB by any Bidder.
GA			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. Any ITB 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).
NOTES/COMMENTS:			

The Standard Specifications for Highway Construction can be found on the NDOT web site listed as:

<http://dot.nebraska.gov/media/10343/2017-specbook.pdf>

**C. MATERIAL SPECIFICATION**

YES	NO	NO & PROVIDE ALTERNATIVE	
GA			1. Materials shall conform to Division 1000 of the Nebraska Department of Transportation Standard Specifications For Highway Construction 2017 Edition and their Special Provisions as amended in this specification for the following materials: CRS-2L, CRS-2P, CRS-2VHL, CSS-1H, CSS-1H 75/25, CSS-1H 50/50, SS-1H, SS-1H 75/25, SS-1H 50/50, CFS/FS-1, CMS-1, CMS-1W, MC-250, HFE-150, HFE-300, HFE-500, HFE-1000, HFMS-2L and HFMS-2P and CRS-2P 80/20.
GA			2. Due to field samples being approximately one quart in volume, the AASHTO T 59 Sieve test, when tested by NDOT, will be run on a sample portion of less than the specified 1000 grams.

NOTES/COMMENTS:

D. SECTION 504 AND 513

YES	NO	NO & PROVIDE ALTERNATIVE	
Y			1. The Supplier at their option may supply either CSS-1H OR SS-1H when either CSS-1H or SS-1H is requested.
Y			2. The Supplier at their option may supply either CFS-1 or FS-1 when either CFS-1 or FS-1 is requested.
Y			3. The 50/50 rate of terminal-dilution of CSS-1H/SS-1H emulsified asphalt will be 1 part emulsified asphalt to 1 part additional water. The percentage residue by distillation of the diluted emulsified asphalt is specified as 28.5% min. The Bill of Lading shall state the dilution rate.
Y			4. The 75/25 rate of terminal dilution of CSS-1H/SS-1H emulsified asphalt will be 75% emulsified asphalt and 25% additional water. The percentage residue by distillation of the diluted emulsified asphalt is specified as 42.7% min. The Bill of Lading shall state the dilution rate.
Y			5. The 80/20 rate of terminal dilution of CRS-2P emulsified asphalt will be 80% emulsified asphalt and 20% additional water. The percentage residue by distillation of the diluted emulsified asphalt is specified as 52% min. The Bill of Lading shall state that dilution rate.
Y			6. Field samples of diluted CSS-1H/SS-1H shall meet the requirements of Subsections 1031.01 and 1032.01 with the exceptions of Saybolt Furol Viscosity, Storage Stability, and Cement Mixing.

NOTES/COMMENTS:

E. SECTION 515

YES	NO	NO & PROVIDE ALTERNATIVE	
Y			1. The temperature for all grades of emulsified asphalt used for Armor Coats being unloaded from truck transports shall be at a minimum of 160 degrees Fahrenheit upon arrival at the delivery site...
Y			2. NDOT random field samples of emulsion grades which have a softening point specification will set in a standard laboratory ambient environment (73 +/- 4° F) for a minimum of 1 day before being conditioned as per AASHTO T 59, paragraph 3.1. prior to testing. The softening point test will not be run until on at least the fourth day after sampling.

NOTES/COMMENTS:



NA			3. All polymer shall be added as either SBR or polychloroprene latex only, and only during a co-milling emulsification process. The latex polymer solids content shall be 3.0% minimum by weight of the base stock asphalt binder.
NOTES/COMMENTS:			

H. SECTIONS 1031 AND 1032

YES	NO	NO & PROVIDE ALTERNATIVE	
NA			1. The minimum temperature for all grades of emulsified asphalt used in mixing windrows at the delivery site shall be 140 degrees "F".
NA			2. Section 1031 is amended to include the following:  An anti-strip agent shall be added to HFE-300, HFE-500, and HFE-1000 Emulsions at the rate of a minimum of 0.25% by total weight of emulsion.
NA			3. Subsection 1031.02 is amended to include the following:  Type HFE-500 shall be added to Table 1031.01. HFE-500 shall meet the requirements of HFE-1000 with the following exception:  Viscosity by Vacuum Capillary Viscometer at 60 degrees "C", Poise, shall be 100 – 300.  For the test of Viscosity by Vacuum Capillary Viscometer of HFE-500 and HFE-1000, a Cannon-Manning type will be used. The size selection will be determined by a flow time of closest to 60+ seconds.
NA			4. Section 1032 is amended as follows:  All references to Grade CM-4 are replaced as Grade CM-1.  Subsection 1032.02 is amended to include the following: Emulsified Asphalt (CMS-1W)  CMS-1W shall follow the requirements of Table 1032.01 with the following exception:  Residue from distillation, Viscosity, Saybolt Furol, 82°C (180°F), sec., shall be min. 200 to max. 400.
NOTES/COMMENTS:			

I. ANNUAL USAGE, ESTIMATED

YES	NO	NO & PROVIDE ALTERNATIVE	
NA			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.

1A			<p>DISTRICT - 1</p> <p>a. CRS-2P STRAIGHT</p> <table border="0"> <tr><td>1.</td><td>Auburn</td><td>475 Tn.</td></tr> <tr><td>2.</td><td>Beatrice</td><td>575 Tn.</td></tr> <tr><td>3.</td><td>David City</td><td>200 Tn.</td></tr> <tr><td>4.</td><td>Dorchester</td><td>450 Tn.</td></tr> <tr><td>5.</td><td>Elmwood</td><td>275 Tn.</td></tr> <tr><td>6.</td><td>Fairbury</td><td>250 Tn.</td></tr> <tr><td>7.</td><td>Falls City</td><td>150 Tn.</td></tr> <tr><td>8.</td><td>Greenwood</td><td>175 Tn.</td></tr> <tr><td>9.</td><td>Pawnee City</td><td>150 Tn.</td></tr> <tr><td>10.</td><td>Salt Valley</td><td>300 Tn.</td></tr> <tr><td>11.</td><td>Talmage</td><td>100 Tn.</td></tr> <tr><td>12.</td><td>Wahoo</td><td>300 Tn.</td></tr> <tr><td>13.</td><td>Plant Pick Up</td><td>25 Tn.</td></tr> <tr><td colspan="2"><b>TOTAL</b></td><td><b>3425 Tn.</b></td></tr> </table> <p>b. CSS-1H STRAIGHT</p> <table border="0"> <tr><td>1.</td><td>Pawnee City</td><td>125 Tn.</td></tr> <tr><td>2.</td><td>Seward</td><td>250 Tn.</td></tr> <tr><td>3.</td><td>Plant Pick Up</td><td>25 Tn.</td></tr> <tr><td colspan="2"><b>TOTAL</b></td><td><b>400 Tn.</b></td></tr> </table>	1.	Auburn	475 Tn.	2.	Beatrice	575 Tn.	3.	David City	200 Tn.	4.	Dorchester	450 Tn.	5.	Elmwood	275 Tn.	6.	Fairbury	250 Tn.	7.	Falls City	150 Tn.	8.	Greenwood	175 Tn.	9.	Pawnee City	150 Tn.	10.	Salt Valley	300 Tn.	11.	Talmage	100 Tn.	12.	Wahoo	300 Tn.	13.	Plant Pick Up	25 Tn.	<b>TOTAL</b>		<b>3425 Tn.</b>	1.	Pawnee City	125 Tn.	2.	Seward	250 Tn.	3.	Plant Pick Up	25 Tn.	<b>TOTAL</b>		<b>400 Tn.</b>																																										
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16.	Stapleton	175 Tn.
17.	Plant Pick Up	25 Tn.
<b>TOTAL</b>		<b>4125 Tn.</b>

b.	CRS-2P 80/20	
1.	Overton	75 Tn.
2.	Famam	75 Tn.
3.	Gothenburg	75 Tn.
4.	Brady	25 Tn.
5.	Ogallala	50 Tn.
6.	Stapleton	100 Tn.
7.	Dunning	75 Tn.
8.	Merna	50 Tn.
9.	North Platte	250 Tn.
10.	Plant Pick Up	25 Tn.
<b>TOTAL</b>		<b>800 Tn.</b>

c.	CSS-1H 50/50	
1.	Dunning	75 Tn.
2.	Merna	50 Tn.
3.	North Platte	250 Tn.
4.	Ogallala	50 Tn.
5.	Stapleton	75 Tn.
6.	Plant Pick Up	25 Tn.
<b>TOTAL</b>		<b>525 Tn.</b>


d.	CSS-1H 75/25	
1.	Ogallala	375 Tn.
2.	Big Springs	75 Tn.
3.	Plant Pick up	25 Tn.
<b>TOTAL</b>		<b>475 Tn.</b>

e.	HFE-300	
1.	Anselmo	50 Tn.
2.	Dunning	25 Tn.
3.	Broken Bow	50 Tn.
4.	Oconoto	25 Tn.
5.	Ansley	50 Tn.
6.	Sargent	50 Tn.
7.	Sutherland	75 Tn.
8.	Dickens	150 Tn.
9.	North Platte	75 Tn.
10.	Ogallala	225 Tn.
11.	Roscoe	225 Tn.
12.	Tryon	100 Tn.
13.	Mullen	250 Tn.
14.	Arthur	200 Tn.
15.	Stapleton	150 Tn.
16.	Plant Pick Up	25 Tn.
<b>TOTAL</b>		<b>1725 Tn.</b>


f.	HFE-1000	
1.	Stapleton	25 Tn.
2.	Plant Pick Up	25 Tn.
<b>TOTAL</b>		<b>50 Tn.</b>

1.	Broken Bow	25 Tn.
2.	North Platte	25 Tn.
3.	Ogallala	25 Tn.
4.	Mullen	50 Tn.
5.	Plant Pick Up	25 Tn.
<b>TOTAL</b>		<b>150 Tn.</b>

422	DISTRICT - 7		
	a. CRS-2P STRAIGHT		
	1.	Culbertson	425 Tn.
	2.	Holbrook	175 Tn.
	3.	Holdrege	375 Tn.
	4.	Imperial	250 Tn.
	5.	McCook	325 Tn.
	6.	Minden	400 Tn.
	7.	Palisade	175 Tn.
	8.	Trenton	100 Tn.
	9.	Plant Pick Up	25 Tn.
	<b>TOTAL</b>		<b>2250 Tn.</b>
	b. CSS-1H 50/50		
	1.	Beaver City	25 Tn.
	2.	Culbertson	50 Tn.
3.	Curtis	50 Tn.	
4.	Danbury	50 Tn.	
5.	Holdrege	75 Tn.	
6.	Lebanon	50 Tn.	
7.	McCook	175 Tn.	
8.	Minden	75 Tn.	
9.	Moorefield	50 Tn.	
10.	Trenton	25 Tn.	
11.	Wilsonville	50 Tn.	
12.	Plant Pick Up	25 Tn.	
<b>TOTAL</b>		<b>700 Tn.</b>	
c. CSS-1H STRAIGHT			
1.	Holdrege	50 Tn.	
2.	Imperial	25 Tn.	
3.	McCook	75 Tn.	
4.	Plant Pick Up	25 Tn.	
<b>TOTAL</b>		<b>175 Tn.</b>	
d. HFE-300			
1.	Benkelman	50 Tn.	
2.	Holdrege	50 Tn.	
3.	Plant Pick Up	25 Tn.	
<b>TOTAL</b>		<b>125 Tn.</b>	
424	DISTRICT - 8		
	a. CRS-2P STRAIGHT		
	1.	Atkinson	150 Tn.
	2.	Burwell	250 Tn.
	3.	Butte	175 Tn.
	4.	Inman	175 Tn.
	5.	Ewing	125 Tn.
	6.	Kilgore	250 Tn.
	7.	Merriman	300 Tn.
	8.	O'Neill	175 Tn.
	9.	Page	100 Tn.
	10.	Spencer	125 Tn.
	11.	Taylor	250 Tn.
	12.	Valentine	225 Tn.
	13.	Plant Pick Up	25 Tn.
<b>TOTAL</b>		<b>2325 Tn.</b>	
b. CSS-1H 50/50			
1.	Norden	100 Tn.	
2.	Springview	50 Tn.	
3.	Wood Lake	150 Tn.	
4.	Plant Pick Up	25 Tn.	

			<b>TOTAL</b>	<b>325 Tn.</b>
	c. CSS-1H 75/25			
		1.	Butte	125 Tn.
		3.	Kilgore	175 Tn.
		4.	Merriman	200 Tn.
		5.	Spencer	50 Tn.
		6.	Valentine	125 Tn.
		7.	Plant Pick Up	25 Tn.
			<b>TOTAL</b>	<b>700 Tn.</b>
	d. HFE-150			
		1.	Ainsworth	25 Tn.
		2.	Norden	250 Tn.
		3.	Springview	100 Tn.
		4.	Wood Lake	375 Tn.
		5.	Plant Pick Up	25 Tn.
		<b>TOTAL</b>	<b>775 Tn.</b>	
e. HFE-300				
	1.	Atkinson	350 Tn.	
	2.	Bassett	50 Tn.	
	3.	Cody	25 Tn.	
	4.	Merriman	75 Tn.	
	5.	Newport	50 Tn.	
	6.	Sparks	25 Tn.	
	7.	Springview	50 Tn.	
	8.	Valentine	75 Tn.	
	9.	Plant Pick Up	25 Tn.	
		<b>TOTAL</b>	<b>725 Tn.</b>	
f. HFE-1000				
	1.	Emmett	100 Tn.	
	2.	Merriman	25 Tn.	
	3.	Naper	75 Tn.	
	4.	Spencer	25 Tn.	
	5.	Valentine	25 Tn.	
	6.	Plant Pick Up	25 Tn.	
		<b>TOTAL</b>	<b>275 Tn.</b>	
g. MC-250				
	1.	Ainsworth	25 Tn.	
	2.	O'Neill	50 Tn.	
	3.	Valentine	25 Tn.	
	4.	Plant Pick Up	25 Tn.	
		<b>TOTAL</b>	<b>125 Tn.</b>	
<b>NOTES/COMMENTS:</b>				

**J. USAGE REPORT**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The vendor shall, provide an annual usage report of this contract by state agencies and political subdivisions. Information will include agency name, item, and dollar amount. Information may be requested at any time by the SPB, as determined by the State.

NOTES/COMMENTS:

**K. DELIVERY ARO**

YES	NO	NO & PROVIDE ALTERNATIVE	
hr			1. At the time of delivery, a designated State 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.

NOTES/COMMENTS:

**L. IDENTIFICATION OF TRUCK SHIPMENTS**

YES	NO	NO & PROVIDE ALTERNATIVE	
hr			1. Supplier, from which truck shipments originate, shall identify each truck shipment by a number that shall apply only to that shipment. This number shall be shown on each copy of the certificate for the shipment.  License numbers of the trucks or truck numbers are not acceptable identification in themselves, since the same truck may make two or more trips during one day.  Numbering system may be either a consecutive numbering system used by some suppliers for all truck shipments originating from their plant, regardless of destination, or a system of identification by weight ticket serial numbers.  Regardless of the system used, it will be necessary to provide positive identification of each shipment on the applicable Certificate of Compliance or Bill of Lading.

NOTES/COMMENTS:

**M. DELIVER LOCATIONS/INSTRUCTIONS**

YES	NO	NO & PROVIDE ALTERNATIVE	BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVER LOCATIONS/INSTRUCTIONS
hr			1. Liquid Asphalt Materials shall be delivered by truck transports in quantities such that legal load limits will not be exceeded, approximately 5800 to 6000 gallons, and shall be hauled by truck transport in fully insulated tanks capable of maintaining required temperatures.  The Contractor shall furnish a delivery receipt to receiving personnel with each load showing type and grade of material, net tons of material, the Contractor, and Supplier's name, source of material, destination of

<p>478</p>			<p>material, consignee, and purchase order number. In addition to the above information, the receiving personnel shall note on the delivery receipt the specified delivery time, actual arrival time, time unloading started, time unloading was completed; and whether the unloading pump was ordered or used. A copy of the completed delivery receipt will be sent or faxed to the Contractor.</p> <p>Supplier must supply a Safety Data Sheet (SDS). The SDS will be provided with the first load at the delivery point.</p> <p>The Contractor will be required to make delivery to roadway destinations or supply tanks Monday through Friday. The time of delivery will be specified when the order is placed. If the Contractor notifies the Department of Transportation of their inability to deliver the order as specified, or if the Contractor fails to deliver the order as specified, the State may procure the material from other sources and hold the Contractor responsible for any excess cost.</p> <p>In the event that the NDOT Materials and Research Division test results indicate a material consistently fails to meet specifications and referee testing confirms our test results or the Contractor fails to satisfactorily meet the delivery schedules for material, the state may cancel all or any part of the contract and obtain the required material elsewhere.</p> <p>The Contractor may expect at least an eighteen (18) hour notice prior to the specified hour the material is to be delivered, with the understanding that the State of Nebraska may cancel the order, with reasonable notice. The Contractor agrees that the applicable receiving personnel will be notified of any breakdown or other happenings, which will delay delivery.</p> <p>Truck transport tanks and transfer lines shall be clean and free of residual build-ups, foreign materials, and other forms of contaminants that affect product performance, testing, or application in the field.</p> <p>Truck transport tanks shall have a sample valve attached that is in accordance with AASHTO Designation T40 (ASTM D 140), section 10, para. 10.1, or other NDOT-approved means for sampling as outlined in the Supplier's Quality Control program.</p> <p>Expected unloading time is defined as 3 hours. In cases where there are unloading delays beyond 3 hours and demurrage is to be charged, the Contractor shall furnish the Nebraska Department of Transportation with signed documents showing purchase order number, arrival and departure times, date, and charges for same. The receiving personnel shall sign documents.</p>
<p><b>NOTES/COMMENTS:</b></p>			

**N. PACKAGING**

YES	NO	NO & PROVIDE ALTERNATIVE	
<p>478</p>			<p>1. Cartons are to be clearly marked with size, weight, color, quantity, and the purchase order number. Cartons must be of suitable size and of sufficient strength to protect the contents during shipping, handling and storage.</p>

NOTES/COMMENTS:

**O. ORDERS**

YES	NO	NO & PROVIDE ALTERNATIVE	
NA			1. Orders will be placed either by, phone, fax, e-mail or Internet (if available and not to the exclusion of the other methods). 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.

NOTES/COMMENTS:

**P. QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
NA			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 and 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.


NOTES/COMMENTS:

**Q. QUALITY CONTROL PROGRAM CERTIFICATION STATUS**


YES	NO	NO & PROVIDE ALTERNATIVE	
NA			1. Vendor has current 2018 NDOT certification/approval for Quality Control Program.
			2. Vendor does not have current NDOT 2018 certification/approval but has submitted Quality Control Plan with bid response.
			3. Vendor has not submitted current 2018 Quality Control Plan with bid response, but will submit upon written request to be considered for contract award.

NOTES/COMMENTS:

**R. PRICES**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the bid until an award is made or the Invitation to Bid is cancelled.</p> <p>Prices quoted on the Cost Proposal form shall remain fixed for the entire contract period. Prices shall be net, including transportation, unloading pump and delivery charges fully prepaid by the Bidder, F.O.B. Destination named in the Invitation to Bid. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.</p> <p>The State will be given full proportionate benefit of any price decrease during the term of the contract.</p> <p>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.</p> <p>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.</p>
<p><b>NOTES/COMMENTS:</b></p>			


**S. SUBSTITUTIONS**

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



**VII SECRETARY OF STATE REGISTRATION REQUIREMENTS**

\*\*\*CHOOSE "YES" TO BEST ANSWER ONLY, CHOOSE "NO" FOR REMAINING LINES\*\*\*

YES	NO	*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)</p> <p>If the Bidder is an Individual or Sole Proprietorship, the following applies:</p> <p>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></p> <p>The completed United States Attestation Form should be submitted with the Invitation to Bid response.</p> <p>b. If the Bidder indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. 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.</p> <p>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.</p>
		<p>2. Bidder is a GENERAL PARTNERSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required).</p>
		<p>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 is provided within bid submission documents.</p>
		<p>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 will be provided in a timely manner upon request prior to award.</p>

**Form A**  
**Bidder Contact Sheet**  
**Invitation To Bid Number 5792 OF**

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

Preparation of ITB Contact Information	
Bidder Name:	Western States Asphalt LLC
Bidder Address:	4511 S Industrial Rd Cheyenne WY 82007
Contact Person & Title:	Evan Henninger / Marketing
E-mail Address:	ehenninger@wsasphalt.com
Telephone Number (Office):	(307) 638-2633
Telephone Number (Cellular):	(970) 821-5848
Fax Number:	N/A

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

Communication with the State Contact Information	
Bidder Name:	Western States Asphalt LLC
Bidder Address:	4511 S Industrial Rd Cheyenne, WY 82007
Contact Person & Title:	Evan Henninger / Marketing
E-mail Address:	ehenninger@wsasphalt.com
Telephone Number (Office):	(307) 638-2633
Telephone Number (Cellular):	(970) 821-5848
Fax Number:	N/A

# STATE OF NEBRASKA

United States of America,        } ss.  
State of Nebraska                }

Secretary of State  
State Capitol  
Lincoln, Nebraska

I, John A. Gale, Secretary of State of the  
State of Nebraska, do hereby certify that

## WESTERN STATES ASPHALT, LLC

**a(n) Wyoming Limited Liability Company is authorized to transact business  
in Nebraska;**

**all fees, taxes, and penalties due under the Nebraska Uniform Limited  
Liability Company Act or other law to the Secretary of State have been paid;**

**the Company's most recent biennial report required by section 21-125 has  
been filed by the Secretary of State;**

**the Secretary of State has not revoked the Company's Certificate of Authority  
and has not filed a notice of cancellation.**

*This certificate is not to be construed as an endorsement,  
recommendation, or notice of approval of the entity's financial  
condition or business activities and practices.*

In Testimony Whereof,



I have hereunto set my hand and  
affixed the Great Seal of the  
State of Nebraska on this date of

**March 2, 2018**

*John A. Gale*  
Secretary of State

## ADDENDUM ONE, QUESTIONS and ANSWERS

Date: March 09, 2018  
 To: All Bidders  
 From: Faith Camargo, Buyer  
 AS Materiel State Purchasing Bureau  
 RE: Addendum for Request for Proposal Number 5792 OF  
 to be opened March 20, 2018 at 2:00 P.M. Central Time



3/12/18

### Questions and Answers

Following are the questions submitted and answers provided for the above mentioned Request for Proposal. The questions and answers are to be considered as part of the Request for Proposal. It is the Bidder's responsibility to check the State Purchasing Bureau website for all addenda or amendments.

Question Number	RFP Section Reference	RFP Page Number	Question	State Response
1.			Question: Demurrage is not listed as a bid item this year. Will this be added to the Bid Document?	The Invitation to Bid (ITB) is hereby amended to include line #48. The revised ITB is now posted to the State Purchasing website link provided below.  <a href="http://das.nebraska.gov/materiel/purchasing/5792/5792.tml">http://das.nebraska.gov/materiel/purchasing/5792/5792.tml</a>
2.			Question: Can there be a bid item for "Freight for Return Loads" due to weather or NDOT Equipment breakdowns? This could be on a per mile basis depending on how far a truck has driven before the load is cancelled by the Agency at no fault to the Supplier. Suppliers have to pay trucking firms per mile hauled even if their load is cancelled after it has shipped from our facilities.	No, this will not be added.
3.			Question: Demurrage is not	Please see response to Question 1.

			listed as a bid item this year. Will this be added to the Bid Document?	
4.			Can you please provide actual usage by product / district from 2017?	Usage is provided in Attachment One below.  Per VII. I. 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.
5.			Please provide the actual tonnage purchased by Product, by District, by Supplier for the 2017 ITB 5522 OF. This allows Suppliers to understand the actual tons purchased vs bid for each District.	Please see response to Question 4.
6.	M	36	How many loads, by District, were ordered with less than 5800 gallons per page 36 Section M in 2017?	This information is not available, it was not tracked in 2017.
7.	R	39	No additional charges will be allowed for packing, packages, or partial delivery costs". This statement is not fair to the suppliers when asked to haul short loads very long distances without additional compensation. What language can be added to this Contract to allow compensation for the transportation of loads less than 5800 gallons?	This statement will remain as-is. NDOT will endeavor to order deliveries in full load quantities only.

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.