

State of Nebraska (State Purchasing Bureau)	
INVITATION TO BID FOR COMMODITIES CONTRACT	

SOLICITATION NUMBER	RELEASE DATE
121021 OR	January 21, 2025
OPENING DATE AND TIME	PROCUREMENT CONTACT
February 21, 2025, 2:00 p.m. Central Time	Brenda Sensibaugh

PLEASE READ CAREFULLY

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for the purpose of selecting a qualified Bidder to provide 1.5" Crusher Run Rock, and optional 3/8" Washed, 1" Crusher Run Rock and Crushed Rock for Surfacing Aggregate for a commodity contract. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be one (1) year commencing upon execution of the contract by the State and the Vendor (Parties). The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

In the event that a contract with the awarded bidder(s) is cancelled or in the event that the State needs additional Vendors to supply the solicited commodities, this solicitation may be used to procure the solicited goods for up to eighteen (18) months from the date the Intent to Award is posted, provided that 1) the solicited goods will be provided by a bidder (or a successive owner) who submitted a response pursuant to this solicitation, 2) the solicitation response was evaluated, and 3) the bidder will honor the bidder's original response, including the proposed cost, allowing for any price increases that would have otherwise been allowed if the bidder would have received the initial award.

ALL INFORMATION PERTINENT TO THIS SOLICITATION CAN BE FOUND ON THE INTERNET AT:
<https://das.nebraska.gov/materiel/bidopps.html>

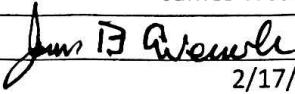
IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter must be posted to a public website. The resulting contract, the solicitation and the successful Vendor's solicitation response will be posted to a public website managed by DAS, which can be found at:
<https://statecontracts.nebraska.gov> and
https://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php.

In addition, and in furtherance of the State's public records Statute (Neb. Rev. Stat. § 84-712 et seq.), all responses received regarding this Solicitation will be posted to the State Purchasing Bureau public website.

These postings will include the entire solicitation response. Bidder must request that proprietary information be excluded from the posting. The bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate file named conspicuously as "PROPRIETARY INFORMATION". The bidder should submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992). **THE BIDDER MAY NOT ASSERT THAT THE ENTIRE SOLICITATION IS PROPRIETARY. COST SHEETS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will determine, in its sole discretion, if the disclosure of the information designated by the Bidder as proprietary would 1) give advantage to business competitors and 2) serve no public purpose. The Bidder will be notified of the State's decision. Absent a determination by the State that the information may be withheld pursuant to Neb. Rev. Stat. § 84-712.05, the State will consider all information a public record subject to disclosure.

If the State determines it is required to release withheld proprietary information, the bidder will be informed. It will be the bidder's responsibility to defend the bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, or solicitation response for any purpose, and to authorize others to use the documents. Any individual or

COMPANY:	Wessels Trucking
ADDRESS:	306 north adams p.o. box 72 Weeping Water Ne. 68463
PHONE:	402 690-3005
EMAIL:	jamesweaz@yahoo.com
BIDDER NAME & TITLE:	James Wessels Owner
SIGNATURE:	
DATE:	2/17/2025
VENDOR COMMUNICATION WITH THE STATE CONTACT INFORMATION (IF DIFFERENT FROM ABOVE)	
NAME:	
TITLE:	
PHONE:	
EMAIL:	

121021 OR
ATTACHMENT A - COST SHEET
Nebraska Department of Transportation
1.5" Crusher Run Rock, and Optional 3/8" Washed,
1.0" Crusher Run Rock & Crushed Rock for Surfacing

Proposal pricing shall be the price per ton for delivered 1.5" Crusher Run Rock and optional rock material line items, FOB Destination. All costs associated to satisfy the requirements in accordance with the general provisions and specifications written in the Invitation to Bid must be included in the prices bid on this form. Estimates shall not be considered a minimum or maximum, but to be used as best estimate for reference and bidding. Alternative or Additional Optional Location and Materials line items are not included in the final price calculation.

DISTRICT 1				
Location	Rock Type	Est. Tons	Price/Ton	Extended Price
Greenwood Yard	1-1/2" Crusher Run Rock	500	30.90\$	15,450.00
Superior Street Yard	1-1/2" Crusher Run Rock	300	34.60	10,380.00
Wahoo Yard	1-1/2" Crusher Run Rock	300	36.65	10,995.00
David City Yard	1-1/2" Crusher Run Rock	300	41.65	12,495.00
Hwy 136, MM 172 2.5 mi Southwest of Beatrice	1-1/2" Crusher Run Rock	1500	40.65	60,975.00
Hwy 50, MM 14 North side of Pawnee City	1-1/2" Crusher Run Rock	2000	36.65	73,300.00
Hwy 33, 0.5 mi East of Dorchester	1-1/2" Crusher Run Rock	500	38.90	19,450.00
Hwy 15, MM 24 13 mi North of Fairbury	1-1/2" Crusher Run Rock	1500	41.65	62,475.00
Salt Valley Yard	1-1/2" Crusher Run Rock	800	35.40	28,320.00
Nebraska City Yard	1-1/2" Crusher Run Rock	1500	33.50	50,250.00
Dunbar Yard	1-1/2" Crusher Run Rock	1500	31.65	47,475.00
Falls City Yard	1-1/2" Crusher Run Rock	1000	42.65	42,650.00
Hwy 136, MM 209	1-1/2" Crusher Run Rock	1500	\$47.05	70,575.00
Hwy 4, MM 204	1-1/2" Crusher Run Rock	1500	45.65	68,475.00
Total Tons		14,700	Total	\$573,265.00

DISTRICT 2				
Location	Rock Type	Est. Tons	Price/Ton	Extended Price
Fremont Yard	1-1/2" Crusher Run Rock	100	37.40\$	3,740.00

Blair Yard	1-1/2" Crusher Run Rock	100	33.65	3,365.00
108 th Street Yard, Omaha	1-1/2" Crusher Run Rock	100	35.40	3,540.00
Mormon Bridge Yard	1-1/2" Crusher Run Rock	100	35.15	3,515.00
South Omaha Yard	1-1/2" Crusher Run Rock	100	35.64	3,564.00
Melia Hill Yard	1-1/2" Crusher Run Rock	100	34.15	3,415.00
Elkhorn Yard	1-1/2" Crusher Run Rock	100	35.65	3,565.00
Plattsmouth Yard	1-1/2" Crusher Run Rock	100	32.65	3,265.00
Total Tons		800	Total	27,969.00

DISTRICT 7				
Location	Rock Type	Est. Tons	Price/Ton	Extended Price
Hwy N-23, MM 13 Near Grant	1-1/2" Crusher Run Rock	1000	92.65\$	92,650.00
Total Tons		1000	Total	\$92,650.00

ALTERNATE OR ADDITIONAL OPTIONAL LOCATIONS AND MATERIALS

In the event delivery locations change or additional optional locations and materials may be needed during the term of the contract that were not included in the original Invitation to Bid (ITB), Bidder shall include a set price per loaded ton-mile for delivered rock material to the specified district locations listed below. Awarded Vendors will not be obligated to serve these alternate or additional optional locations and materials but will have the opportunity to do so. All other specifications and conditions will remain for any alternate or additional optional locations and materials.

Location	Rock Type	Est. Tons	Price per Loaded Ton-Mile
District 1 1400 Hickman Road Roca, NE 68430	3/8" Washed Crushed Rock	25	\$46.90
	1.0" Crusher Run Rock	25	36.15
	1.5" Crusher Run Rock	25	36.15
	Crushed Rock - Surfacing	25	36.15
District 2 4425 S. 108th Street Omaha, NE 68137	3/8" Washed Crushed Rock	25	46.15
	1.0" Crusher Run Rock	25	35.40
	1.5" Crusher Run Rock	25	35.40
	Crushed Rock - Surfacing	25	35.40
District 3 Hwy 32, MM 33.27 1 mi West of Madison	3/8" Washed Crushed Rock	25	\$64.15
	1.0" Crusher Run Rock	25	53.40
	1.5" Crusher Run Rock	25	53.40
	Crushed Rock - Surfacing	25	53.40
District 4 I-80/L40C Alda Interchange Northeast Corner	3/8" Washed Crushed Rock	25	64.40
	1.0" Crusher Run Rock	25	53.65
	1.5" Crusher Run Rock	25	53.65
	Crushed Rock - Surfacing	25	53.65
District 5 140375 Rundell Road Gering, NE 69341	3/8" Washed Crushed Rock	25	103.15
	1.0" Crusher Run Rock	25	92.40
	1.5" Crusher Run Rock	25	92.40

	Crushed Rock - Surfacing	25	92.40
District 6 123 Lake Ave, PO Box 394 Gothenburg, NE 69138	3/8" Washed Crushed Rock	25	84.40
	1.0" Crusher Run Rock	25	73.65
	1.5" Crusher Run Rock	25	73.65
	Crushed Rock - Surfacing	25	73.65
District 7 38764 US Highway 6 2 mi East of McCook	3/8" Washed Crushed Rock	25	91.00
	1.0" Crusher Run Rock	25	80.25
	1.5" Crusher Run Rock	25	80.25
	Crushed Rock - Surfacing	25	80.25
District 8 Hwy 12, MM 80.6 Spring View, NE 68778	3/8" Washed Crushed Rock	25	96.40
	1.0" Crusher Run Rock	25	85.65
	1.5" Crusher Run Rock	25	85.65
	Crushed Rock - Surfacing	25	85.65

entity awarded a contract, or who submits a solicitation response, specifically waives any copyright or other protection the contract, or solicitation response may have; and acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver are a prerequisite for submitting a solicitation response, and award of a contract. Failure to agree to the reservation and waiver will result in the solicitation response being found non-responsive and rejected.

Any entity awarded a contract or submitting a solicitation response agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials 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, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or solicitation response, awards, and other documents.

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GLOSSARY OF TERMS

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

Addendum: A written correction or alteration to a document during the solicitation process (e.g., Questions and Answers, Revised Schedule of Events, Addendum to Contract Award).

Agency: All officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations

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

Automated Clearing House (ACH): Electronic network for financial transactions in the United States

Award: All purchases, leases, or contracts which are based on competitive solicitations will be awarded according to the provisions in the solicitation

Best and Final Offer (BAFO): In a competitive solicitation, the final offer submitted which contains Vendor's most favorable terms for price

Bid: See Solicitation Response

Bid Opening: The process of opening correctly submitted solicitation responses at the time and place specified in the written solicitation and in the presence of any bidder who wishes to attend

Bidder: A Vendor who submits a Solicitation Response

Breach: Violation of a contractual obligation by failing to perform or repudiation of one's own promise

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 solicitation, purchase order, or contract without expectation of conducting or performing at a later time

Change Order: Document that provides amendments to an executed purchase order or contract

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: See Proprietary Information

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 Award: Document that officially awards a contract to a bidder(s) as the result of a competitive solicitation or a vendor(s) in a contract that qualifies for an exception or exemption from the competitive bidding requirements of the State Procurement Act

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

Contract Period: The duration of the contract

Contractor: See Vendor

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

Cost Sheet: A required document that is completed by the vendor in the prescribed format to show the vendor's pricing to provide the commodities or perform the services requested.

Customer Service: The process of ensuring customer satisfaction by providing assistance and advice on those commodities or services provided by a Vendor

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 a solicitation response after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the solicitation response that relate to determination of the successful award

Evaluation Committee: Individual(s) identified by the agency that leads the solicitation to evaluate solicitation responses

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

Goods: See Commodities

Installation Date: The date when the procedures described in “Installation by Vendor” and “Installation by State” as found in the solicitation or contract are completed

Interested Party: A person acting in their personal capacity or an entity entering into a contract or other agreement creating a legal interest therein

Invitation to Bid (ITB): See Solicitation

Late Solicitation Response: A solicitation response received after the Opening Date and Time

Mandatory: Required, compulsory, or obligatory

May: Discretionary, permitted; used to express possibility

Must: See Shall

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

Non-Responsive Solicitation Response: Any bid that does not comply with the requirements of the solicitation or cannot be evaluated against the other bids

Nonnegotiable: These clauses are controlled by state law and are not subject to negotiation

Opening Date and Time: Specified date and time for the opening of received, labeled, and sealed formal solicitation responses

Outsourcing: The contracting out of a business process that an organization may have previously performed internally or for which an organization has a new need 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 Vendor fulfills any and all obligations under the contract

Personal Property: See Commodities

Point of Contact (POC): The person designated to receive communications and to communicate

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

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 Solicitation Response

Proprietary Information: Trade secrets, academic and scientific research work that is in progress and unpublished or other information that 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, 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 the solicitation or resultant contract under SPB's Protest Policy.

Quote: See Solicitation Response

Release Date: The date of public release of the solicitation

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”

Responsible Bidder: A Vendor 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 Vendor who has submitted a solicitation response which conforms to all requirements of the solicitation

Shall: An order/command; mandatory

Should: Expected; suggested, but not necessarily mandatory

Solicitation: A formal invitation to receive quotes in the form of a Request for Proposal or Invitation to Bid

Solicitation Conference: A meeting scheduled for the purpose of clarifying a written solicitation and related expectations

Solicitation Response: An offer, quote, bid, or proposal submitted by a Vendor in response to a Solicitation

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

Subcontractor: Individual or entity with whom the Vendor enters a contract to perform a portion of the work awarded to the Vendor

Termination: Occurs when either Party, under a power created by agreement or law, puts an end to the contract prior to the stated expiration date; all obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives

Third-Party: Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and subcontractors or agents, and their employees. It shall not include any entity or person who is an interested party to the contract or agreement

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 with the State. or licensed to do so, who seeks to provide and contract for goods or services under the terms of a Solicitation and/or Contract.

Vendor Performance Report: A report completed by the using agency and submitted to State Purchasing Bureau documenting products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications

Will: See Shall

Work Day: See Business Day

ACRONYM LIST

ACH – Automated Clearing House
ARO – After Receipt of Order
BAFO – Best and Final Offer
COI – Certificate of Insurance
DAS – Department of Administrative Services
F.O.B. – Free on Board
ITB – Invitation to Bid
NDOT – Nebraska Department of Transportation
NIGP – National Institute for Governmental Purchasing
PA – Participating Addendum
POC – Point of Contact
SPB – State Purchasing Bureau

- **PROCUREMENT PROCEDURE**

- **GENERAL INFORMATION**

This solicitation is designed to solicit responses from qualified bidders who will be responsible for providing 1.5" Crusher Run Rock, and optional 3/8" Washed, 1" Crusher Run Rock and Crushed Rock for Surfacing Aggregate at a competitive and reasonable cost.

Solicitation responses shall conform to all instructions, conditions, and requirements included in the solicitation. Prospective bidders are expected to carefully examine all documents, schedules, and requirements in this solicitation, and respond to each requirement in the format prescribed. Solicitation responses may be found non-responsive if they do not conform to the solicitation.

- **PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS**

Procurement responsibilities related to this solicitation reside with the State Purchasing Bureau. The point of contact (POC) for the procurement is as follows:

ITB Number: 121021 OR
Name: Brenda Sensibaugh Procurement Contract Officer(s)
Agency: State Purchasing Bureau
Address: 1526 K Street, Suite 130
Lincoln, NE 68508
Telephone: 402-471-6500
E-Mail: as.materielpurchasing@nebraska.gov

From the date the solicitation is issued until the Intent to Award is issued, communication from the bidder is limited to the POC listed above. After the Intent to Award is issued, the Vendor may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this solicitation. The POC will issue any answers, clarifications, or amendments regarding this solicitation in writing. Only the SPB or awarding agency can award a contract. bidders shall not have any communication with or attempt to communicate or influence any evaluator involved in this solicitation.

The following exceptions to these restrictions are permitted:

- Contact made pursuant to pre-existing contracts or obligations;
- Contact required by the schedule of events or an event scheduled later by POC; and
- Contact required for negotiation and execution of the final contract.

The State reserves the right to reject a Vendor's solicitation response, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.

• **SCHEDULE OF EVENTS**

The State expects to adhere to the procurement schedule shown below, but all dates are approximate and subject to change.

NOTE: All ShareFile links in the Schedule of Events below, are unique links for each schedule step. Please click the correct link for the upload step you are requesting.

ACTIVITY	DATE/TIME
• Release solicitation	January 21, 2025
Last day to submit written questions • ShareFile link for uploading questions: https://nebraska.sharefile.com/r-r2a0a138ee7024b9694c6af0460f085a4	February 4, 2025
State responds to written questions through a solicitation "Addendum" to be posted to the Internet at: https://das.nebraska.gov/materiel/bidopps.html • Bid Opening – Online via Webex Meeting IT IS THE BIDDER'S RESPONSIBILITY TO UPLOAD ELECTRONIC FILES BY THE OPENING DATE AND TIME. EXCEPTIONS WILL NOT BE MADE FOR TECHNOLOGY ISSUES. ShareFile Electronic Solicitation Response submissions Link: https://nebraska.sharefile.com/r-r7e382a2f460b4921801162166259f866 Join link: https://sonvideo.webex.com/sonvideo/j.php?MTID=mcc6677bef5dfeddbccd40557bf3d2fee Webinar number: 2496 669 7453 Webinar password: B2rgvQWMM35 (22748796 when dialing from a phone or video system) • Panelist password: ruPnJTDJ753 (78765835 when dialing from a phone or video system) Host key: 422428 Join by video system Dial 24966697453@sonvideo.webex.com You can also dial 173.243.2.68 and enter your webinar number. Join by phone +1-408-418-9388 United States Toll Access code: 2496 669 7453 Global call-in numbers	February 10, 2025
	February 21, 2025 2:00 PM Central Time
• Post "Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD

- **WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to SPB and clearly marked "Solicitation Number 121021 OR; 1.5" Crusher Run Rock, and Optional 3/8" Washed, 1" Crusher Run Rock and Crushed Rock for Surfacing Aggregate Questions". POC is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should submit questions for any items upon which assumptions may be made when preparing a response to the solicitation. Any solicitation response containing assumptions may be deemed non-responsive and may be rejected by the State. Solicitation responses will be evaluated without consideration of any known or unknown assumptions of a bidder. The contract will not incorporate any known or unknown assumptions of a bidder.

Questions should be uploaded using the ShareFile link provided in the Schedule of Events, Section I.C. It is recommended that Vendors submit questions using the following format.

Solicitation Section Reference	Solicitation Page Number	Question

Written answers will be posted at <https://das.nebraska.gov/materiel/bidopps.html> per the Schedule of Events.

- **SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Nonnegotiable)**

All Bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The Bidder who is the recipient of an Intent to Award may be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available on the DAS website at: <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>. This should be accomplished prior to execution of the contract.

- **ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject solicitation responses, withdraw an intent to award or award, or terminate a contract if an ethical violation has been committed, which includes, but is not limited to:

- Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
- Utilizing the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
- Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
- Submitting a solicitation response on behalf of another Party or entity; and
- Colluding with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the solicitation response, or prejudice the State.

The bidder shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the bidder throughout the bidding process and throughout the term of this contract for the awarded bidder and their subcontractors.

- **DEVIATIONS FROM THE SOLICITATION**

The requirements contained in the solicitation (Sections II through V) become a part of the terms and conditions of the contract resulting from this solicitation. Any deviations from the solicitation in Sections II through V must be clearly defined by the bidder in its solicitation response and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the solicitation, solicitation requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this solicitation, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this solicitation. The State discourages deviations and reserves the right to reject proposed deviations.

- **SUBMISSION OF SOLICITATION RESPONSES**

The State is only accepting electronic responses submitted in accordance with this solicitation. The State will not accept bids by mail, email, voice, or telephone, unless otherwise explicitly stated in writing by the State.

Pages may be consecutively numbered for the entire solicitation response or may be numbered consecutively within sections. Figures and tables should be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

It is the bidder's responsibility to ensure the solicitation response is received electronically by the date and time indicated in the Schedule of Events. Solicitation Responses must be submitted via ShareFile by the date and time of the opening per the Schedule of Events. No late solicitation responses will be accepted.

It is the responsibility of the bidder to check the website for all information relevant to this solicitation to include addenda and/or amendments issued prior to the opening date. The website can be found here: <https://das.nebraska.gov/materiel/bidopps.html>.

Emphasis should be concentrated on conformance to the solicitation instructions, responsiveness to requirements, completeness, and clarity of content. If the solicitation response is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the solicitation response as non-conforming.

The ShareFile link for uploading Solicitation Response(s) is provided in the Schedule of Events, Section I.C.

*****UNLESS OTHERWISE NOTED, DO NOT SUBMIT DOCUMENTS
THAT CAN ONLY BE ACCESSED WITH A PASSWORD*****

- **Bidders must submit responses via ShareFile using the solicitation submission link.**

Note: Not all browsers are compatible with ShareFile. Currently Google Chrome, Internet Explorer, Microsoft Edge, Safari, and Firefox are compatible. After the bidder clicks the solicitation submission link, the bidder will be prompted to enter contact information including an e-mail address. By entering an e-mail address, the bidder should receive a confirmation email confirming the successful upload directly from ShareFile.

ShareFile link for uploading solicitation response(s) provided in the Schedule of Events, Section I.C.

- The Solicitation response and Proprietary information should be uploaded as separate and distinct files.
 - If duplicated responses are submitted, the State will retain only the most recently submitted response.
 - If it is the bidder's intent to submit multiple responses, the bidder must clearly identify the separate submissions.
 - It is the bidder's responsibility to allow time for electronic uploading. All file uploads must be completed by the Opening date and time per the Schedule of Events. No late responses will be accepted.

- **ELECTRONIC SOLICITATION RESPONSE FILE NAMES**

The bidder should clearly identify the uploaded solicitation response files. To assist in identification the bidder should use the following naming convention:

- 121021 OR, Company Name
If multiple files are submitted for one solicitation response, add number of files to file names:
 - 121021 OR Company Name File 1 of 2.
 - 121021 OR Company Name File 2 of 2.
- If multiple responses are submitted for the same solicitation, add the response number to the file names:
 - 121021 OR Company Name Response 1 File 1 of 2.

The "Contractual Agreement Form" must be signed manually in ink or by DocuSign and returned by the opening date and time along with the bidder's solicitation response and any other requirements as stated in this solicitation in order for the bidder's solicitation response to be evaluated.

By signing this Contractual Agreement Form, the bidder guarantees compliance with the provisions stated in this solicitation and agrees to the terms and conditions unless otherwise indicated in writing.

- **SOLICITATION PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by bidders in replying to this solicitation, including any activity related to bidding on this solicitation.

- **FAILURE TO COMPLY WITH SOLICITATION**

Violation of the terms and conditions contained in this solicitation 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:

- Rejection of a bidder's solicitation response,
- Withdrawal of the Intent to Award,
- Withdrawal of the Award,
- Negative documentation regarding Vendor Performance,
- Termination of the resulting contract,
- Legal action; and
- Suspension or Debarment 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.

- **SOLICITATION RESPONSE CORRECTIONS**

A bidder may correct a mistake in an electronically submitted solicitation response prior to the time of opening by uploading a revised and completed solicitation response.

- If a corrected electronic solicitation response is submitted, the file name(s) date/time stamped with latest date/time stamp will be accepted. The corrected solicitation response file name(s) should be identified as:
 - Corrected 121021 Company Name Response #1 File 1 of 2,
 - Corrected 121021OR Company Name Response #2 File 2 of 2, etc.

Changing a solicitation response after opening may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

- **LATE SOLICITATION RESPONSES**

Solicitation Responses received after the time and date of the opening will be considered late responses. Late responses will be considered non-responsive. The State is not responsible for responses that are late or lost regardless of cause or fault.

- **BID OPENING**

The opening will consist of opening solicitation responses and announcing the names of bidders. Responses WILL NOT be available for viewing by those present at the opening. Responses will be posted to the State Purchasing Bureau website once an Intent to Award has been posted to the website. Once responses are opened, they become the property of the State of Nebraska and will not be returned.

- **SOLICITATION REQUIREMENTS**

The bids will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Bids not meeting the requirements may be rejected as non-responsive. The requirements are as follows:

- Original Contractual Agreement Form signed manually in ink or by DocuSign;
- Clarity and responsiveness;
- Completed Sections II through V;
- Completed Cost Sheet.

- **EVALUATION COMMITTEE**

Solicitation Responses are evaluated by members of an Evaluation Committee(s). The Evaluation Committee(s) will consist of individuals selected at the discretion of the State. Names of the members of the Evaluation Committee(s) will not be published prior to the intent to award.

Any contact, attempted contact, or attempt to influence an evaluator that is involved with this Solicitation may result in the rejection of this response and further administrative actions.

- **EVALUATION OF SOLICITATION RESPONSES**

All solicitation responses that are deemed responsive to the solicitation will be evaluated based on the following:

Neb. Rev. Stat. § 73-808 allows the State to consider a variety of factors, including, but not limited to, the quality of performance of previous contracts to be considered when evaluating responses to competitive solicitations in determining a responsible bidder. Information obtained from any Contract Compliance Request or any Contract Non-Compliance Notice (See Terms & Conditions, Section I.H) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

Neb. Rev. Stat. § 73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone. When a state contract is to be awarded to the lowest responsible Vendor, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident Vendor, if all other factors are equal.

Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection. Any contract entered into without compliance with this section shall be null and void.

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a solicitation response in accordance with Neb. Rev. Stat. § 73-107 and has so indicated on the "Contractual Agreement Form" under "Vendor must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the Vendor within ten (10) business days of request:

- Documentation from the United States Armed Forces confirming service,
- Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions),
- Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
- Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the Vendor from consideration of the preference.

- **BEST AND FINAL OFFER**

Each bidder should provide its best offer with their original solicitation response and should not expect the State to request a best and final offer (BAFO).

The State reserves the right to conduct more than one. If requested by the State, the BAFO must be submitted on the BAFO Cost Sheet and in accordance with the State's instructions. Failure to submit a requested BAFO or failure to submit a BAFO in accordance with the State's instructions may result in rejection of the bidder's entire solicitation response. BAFOs may be scored and ranked by the Evaluation Committee.

- **REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a response to this solicitation, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients. Reference and credit checks may be grounds to reject a solicitation response, withdraw an intent to award, or rescind the award of a contract.

- **AWARD**

The State reserves the right to evaluate solicitation responses and award contracts in a manner using criteria selected at the State's discretion and in the State's best interest. After evaluation of the bids, or at any point in the solicitation process, the State of Nebraska may take one or more of the following actions:

- Amend the solicitation;
- Extend the date and time of an opening;
- Waive deviations or errors in the State's solicitation process and in bidder responses that are not material, do not compromise the solicitation process or a bidder's response, and do not improve a Vendor's competitive position;
- Accept or reject a portion of or all of a solicitation response;
- Accept or reject all responses;
- Withdraw the solicitation;
- Elect to re-release the solicitation;
- Award single lines or multiple lines to one or more Vendors; or,
- Award one or more all-inclusive contracts.

The State of Nebraska may consider, but is not limited to considering, one or more of the following award criteria:

- Price;
- Location;
- Quality;
- Delivery time;
- Vendor qualifications and capabilities; and
- State contract management requirements and/or costs.

The solicitation does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the internet at: <https://das.nebraska.gov/materiel/bidopps.html>

Any protests must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the internet. Grievance and protest procedure is available on the internet at: https://das.nebraska.gov/materiel/docs/NE_DAS_Materiel_Purchasing_Agency-SPB_Policy_23_07_Protest_Policy.pdf

- **LUMP SUM OR "ALL OR NONE" SOLICITATION RESPONSES**

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 response on an "all or none" or "lump sum" basis but should also submit a response on an item-by-item basis. The term "all or none" means a conditional response which requires the purchase of all items on which responses are offered, and bidder declines to accept award on individual items; a "lump sum" response is one in which the bidder offers a lower price than the sum of the individual responses if all items are purchased but agrees to deliver individual items at the prices quoted.

**"LUMP SUM" OR "ALL OR NONE" RESPONSES SHOULD BE CLEARLY IDENTIFIED
ON THE FIRST PAGE OF THE SOLICITATION AND COST SHEET**

- **REJECTION OF SOLICITATION RESPONSES**

The State reserves the right to reject any or all responses, wholly or in part, in the best interest of the State.

- **PRICES & COST CLARIFICATION**

Discount and Price provisions are discussed in Sections III.F. and III.G. The State reserves the right to review all aspects of cost for reasonableness and realism as those terms are defined in (Neb. Rev. Stat. § 73-810 (1) (a) and (b) The State may request clarification of any solicitation where the cost component indicates a significant and unsupported deviation from industry standards or in areas where detailed pricing is required. Under Neb. Rev. Stat. § 73-810 (2), the State may reject a bid if the price is not reasonable or realistic.

- **SPECIFICATIONS**

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 Materiel Administrator or his or her designee will be the sole judge of equivalency. The Vendor may offer any brands which meets or exceeds the specification. When a specific product is required, the solicitation will so state. Any item within the solicitation response 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.

- **ALTERNATE/EQUIVALENT SOLICITATION RESPONSES**

Vendor may offer solicitation responses which are at variance from the express specifications of the solicitation. The State reserves the right to consider and accept such responses if, in the judgment of SPB, the response will result in goods and/or services equivalent to or better than those which would be supplied in the original

solicitation specifications. Vendor must indicate on the solicitation the manufacturer's name, number and shall submit with their response, sketches, descriptive literature and/or complete specifications. Reference to literature submitted with a previous response will not satisfy this provision. Responses which do not comply with these requirements are subject to rejection. In the absence of any stated deviation or exception, the response will be accepted as in strict compliance with all terms, conditions and specification, and the Vendor shall be held liable, therefore.

- **SOLICITATION TABULATIONS**

Solicitation tabulations are available on the website at: <https://das.nebraska.gov/materiel/bidopps.html>.

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- **TERMS AND CONDITIONS**

Bidder should read the Terms and Conditions within this section and must initial either "Accept All Terms and Conditions Within Section as Written" or "Exceptions Taken to Terms and Conditions Within Section as Written" in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the bidder takes any exceptions, they must provide the following within the "Exceptions" field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

- The specific clause, including section reference, to which an exception has been taken;
- An explanation of why the bidder took exception to the clause; and
- Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. 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 solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder's commercial contracts and/or documents for this solicitation.

Accept All Terms and Conditions Within Section as Written (Initial)	Exceptions Taken to Terms and Conditions Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)
jw		

The bidders should submit with their solicitation response 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 Vendor 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 solicitation response. 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 Addendum to Contract Award has been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

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

- **GENERAL**

- The contract resulting from this solicitation shall incorporate the following documents:
 - Solicitation including any attachments and addenda;
 - Questions and Answers;
 - Bidder's properly submitted solicitation response, including any terms and conditions or agreements submitted by the bidder;
 - Addendum to Contract Award (if applicable); and
 - Amendments to the Contract. (if applicable)

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) Addendums to the solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda or attachments, and 5) the Vendor's submitted solicitation response, including any terms and conditions or agreements that are accepted by the State.

Unless otherwise specifically agreed to in writing by the State, the State's standard terms and conditions, as executed by the State, shall always control over any terms and conditions or agreements submitted or included by the Vendor.

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 of Nebraska.

- **NOTIFICATION**

Bidder and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally; electronically, return receipt requested; or mailed, return receipt requested. All notices, requests, or communications shall be deemed effective upon receipt.

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.

- **BUYER'S REPRESENTATIVE**

The State reserves the right to appoint a Buyer's Representative to manage or assist the Buyer in managing the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the bidder will be provided a copy of the appointment document and is expected to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

- **GOVERNING LAW (Nonnegotiable)**

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 contract 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.

- **AMENDMENT**

This Contract may be amended in writing, within scope, upon the agreement of both parties.

- **CHANGE ORDERS OR SUBSTITUTIONS**

The State and the Vendor, upon the written agreement, may make changes to the contract within the general scope of the solicitation. 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 Vendor may not claim forfeiture of the contract by reasons of such changes.

The Vendor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Vendor 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 Vendor's solicitation response, were foreseeable, or result from difficulties with or failure of the Vendor's solicitation response or performance.

No change shall be implemented by the Vendor 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.

In the event any good or service is discontinued or replaced upon mutual consent during the contract period or prior to delivery, the State reserves the right to amend the contract or purchase order to include the alternate product at the same price.

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

- **RECORD OF VENDOR PERFORMANCE**

The State may document the vendor's performance, which may include, but is not limited to, the customer service provided by the vendor, the ability of the vendor, the skill of the vendor, and any instance(s) of products or services delivered or performed which fail to meet the terms of the purchase order, contract, and/or Solicitation specifications. In addition to other remedies and options available to the State, the State may issue one or more notices to the vendor outlining any issues the State has regarding the vendor's performance for a specific contract ("Contract Compliance Request"). The State may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Contract Non-Compliance Notice"). The Vendor shall respond to any Contract Compliance Request or Contract Non-Compliance Notice in accordance with such notice or request. At the sole discretion of the State, such Contract Compliance Requests and Contract Non-Compliance Notices may be placed in the State's records regarding the vendor and may be considered by the State and held against the vendor in any future contract or award opportunity. The record of vendor performance will be considered in any suspension or debarment action.

- **NOTICE OF POTENTIAL VENDOR BREACH**

If Vendor breaches the contract or anticipates breaching the contract, the Vendor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a 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.

- **BREACH**

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 email, delivery receipt requested; 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 Vendor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchase goods in substitution of those due from the Vendor. The State may recover from the Vendor 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 Vendor's breach. OR In case of default of the Vendor, the State may contract the service from other sources and hold the Vendor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Vendor shall retain all available statutory remedies.

- **NON-WAIVER OF BREACH**

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.

- **SEVERABILITY**

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.

- **INDEMNIFICATION**

- **GENERAL**

The Vendor 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 Vendor, its employees, subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Vendor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

- **INTELLECTUAL PROPERTY**

The Vendor 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 Vendor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the Vendor prompt notice in writing of the claim. The Vendor 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 Vendor has indemnified the State, the Vendor shall, at the Vendor'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 Vendor, and the State may receive the remedies provided under this solicitation.

- **PERSONNEL**

The Vendor 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 subcontractors and their employees, provided by the Vendor.

- **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. If there is a presumed loss under the provisions of this contract, Vendor 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 (§ 81-8,294), Tort (§ 81-8,209), and Contract Claim Acts (§ 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 contract to the extent provided by law.

- The Parties acknowledge that Attorney General for the State is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

- **ATTORNEY'S FEES**

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 ordered by the court, including attorney's fees and costs, if the other Party prevails.

- **ASSIGNMENT, SALE, OR MERGER**

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

The Vendor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Vendor's business. Vendor 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 Vendor 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.

- **CONTRACTING WITH OTHER POLITICAL SUBDIVISIONS OF THE STATE OR ANOTHER STATE**

The Vendor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145(2), 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. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

The Vendor 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.

- **FORCE MAJEURE**

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 an unforeseeable natural or man-made 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 grant 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.

- **CONFIDENTIALITY**

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.

- **EARLY TERMINATION**

The contract may be terminated as follows:

- The State and the Vendor, by mutual written agreement, may terminate the contract at any time.
- The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar days' written notice shall be delivered by email, delivery receipt requested; certified mail, return receipt requested; or in person with proof of delivery to the Vendor. Such termination shall not relieve the Vendor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Vendor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
- The State may terminate the contract immediately for the following reasons:
 - if directed to do so by statute;

- Vendor 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;
 - a trustee or receiver of the Vendor or of any substantial part of the Vendor's assets has been appointed by a court;
 - fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Vendor, its employees, officers, directors, or shareholders;
 - an involuntary proceeding has been commenced by any party against the Vendor 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 Vendor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Vendor has been decreed or adjudged a debtor;
 - a voluntary petition has been filed by the Vendor under any of the chapters of Title 11 of the United States Code;
 - Vendor intentionally discloses confidential information;
 - Vendor has or announces it will discontinue support of the deliverable; and,
 - In the event funding is no longer available.
- **CONTRACT CLOSEOUT**
Upon termination of the contract for any reason the Vendor shall within thirty (30) days, unless stated otherwise herein:
 - Transfer all completed or partially completed deliverables to the State,
 - Transfer ownership and title to all completed or partially completed deliverables to the State,
 - Return to the State all information and data unless the Vendor is permitted to keep the information or data by contract or rule of law. Vendor 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 Vendor's routine back up procedures,
 - Cooperate with any successor Contactor, person, or entity in the assumption of any or all of the obligations of this contract,
 - Cooperate with any successor Contactor, person, or entity with the transfer of information or data related to this contract,
 - Return or vacate any state owned real or personal property; and,
 - Return all data in a mutually acceptable format and manner.

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

- **AMERICANS WITH DISABILITIES ACT**
Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131–12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub.L. 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

- **DELIVERY AFTER RECEIPT OF ORDER**

Deliveries of 1.5" Crusher Run Rock and optional 3/8" Washed, 1.0" Crusher Run Rock and Crushed Rock shall be made within fourteen (14) to twenty-one (21) business days after receipt of order. Delivery beyond twenty-two (22) business days may be an award consideration.

Deliveries shall be made between the hours of 8:00 AM and 4:00 PM, Monday through Friday (excluding state or federal holidays or as otherwise directed). If an emergency arises, delivery arrangements will be scheduled by the facility/location personnel who placed the order and/or receiving personnel.

State holidays are as follows:

New Year's Day	January 1*
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Arbor Day	Last Friday in April
Memorial Day	Last Monday in May
Juneteenth	June 19*
Independence Day	July 4*
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans Day	November 11*
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday following Thanksgiving
Christmas Day	December 25*

**When the starred holiday falls on a Saturday, it shall be observed on the preceding day. When the starred holiday falls on a Sunday, it shall be observed on the following day.*

There will be no minimum order requirements. If delays in delivery are anticipated, the Vendor will immediately notify the NDOT of the expected delivery date. The order may be canceled if the delivery time is unsatisfactory, and the State may procure item(s) from other sources and the Vendor will be held responsible for any/all excess cost.

At the time of delivery, a designated State employee will sign the "delivery and/or weight ticket". The signature will only indicate that the order has been received and that the items delivered agree with the delivery and/or weight ticket. The signature does not indicate all the items were received in good condition and/or that there is not possible hidden damage.

- **DELIVERY INSTRUCTIONS AND REQUIREMENTS**

Delivery requirements for 1.5" Crusher Run Rock and optional 3/8" Washed, 1.0" Crusher Run Rock and Crushed Rock for Surfacing will be indicated at the time the order is placed.

Stamped weight tickets from a certified scale will be required for each load hauled. Vendors must furnish copies of weight tickets or itemized load sheets to the Maintenance Superintendents office in order to obtain payment. If a certified scale is not accessible, Vendor must obtain advance written approval from the District Operations Maintenance Manager (DOMM) or their designee for the use of detailed truck sketches before sketches will be accepted/allowed. If truck sketches are approved by the DOMM, a factor of 1.3 tons/cubic yard shall be used to calculate the amounts in tons. In addition, a copy of each sketch must be submitted to the Maintenance Superintendent. If more than one truck is used, Vendor must have a numbering system, (i.e. truck #1, #2, #3 etc.). An itemized list showing number of loads hauled per day, per unit, must be submitted.

- **DELIVERY FOR ALTERNATIVE OR ADDITIONAL OPTIONAL LOCATIONS AND MATERIALS**

In the event delivery locations change or additional optional locations may be needed during the term of the contract that were not included in the original Invitation to Bid (ITB), Bidder shall include a set price per ton for delivered rock material to the specified district locations listed on Attachment A Cost Sheet. Awarded Vendors will not be obligated to serve these alternate or additional optional locations but will have the opportunity to do so. All other specifications and conditions will remain for any alternate or additional optional locations.

- **ORDERS**

Orders will be placed either by phone, 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 delivery and/or weight ticket, and invoice.

- **QUALITY**

Product quality must meet specifications and be consistent for the term of the contract. 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.

A guarantee of satisfactory performance by the Vendor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this solicitation.

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.

- **PERFORMANCE TESTING**

Samples may be required during the contract period and shall be of material and construction as within the solicitation response. Samples of 1.5" Crusher Run Rock and optional 3/8" Washed, 1.0" Crusher Run Rock and Crushed Rock shall be provided at no cost to the State and will not be returned to the Vendor upon completion of testing conducted by the NDOT.

Samples must be provided within five (5) business days of a request and must be representative of the product(s) in the solicitation response and meet the specifications.

- 1.5" Crusher Run Rock and optional 3/8" Washed, 1.0" Crusher Run Rock and Crushed Rock will be sampled in increments representing 200 tons.
- When 1.5" Crusher Run Rock and optional 3/8" Washed, 1.0" Crusher Run Rock and Crushed Rock does not meet gradation requirements of the NDOT [Standard Specifications for Highway Construction - Section 1033](#), the Vendor will be given notice to stop all further delivery of material.
- The Vendor shall not resume material delivery until written notice have been given by the NDOT and until it has received credible written assurance that corrective action has been taken to ensure that future deliveries of rock will meet the requirements listed herein. Approval to resume delivery will be issued by the District Engineer or their designee wherein the delivery site is located.
- Delivered 1.5" Crusher Run Rock and optional 3/8" Washed, 1.0" Crusher Run Rock and Crushed Rock not meeting gradation provisions required will be removed by the Vendor under the direction of the District at no additional cost to the State of Nebraska Department of Transportation.
- Additionally, if the Vendor fails to meet gradation requirements, the State may procure the material from other sources and hold the Vendor responsible for any excess cost. The remainder of the contract may be canceled at the option of the State of Nebraska.

- **ANNUAL USAGE, ESTIMATED**

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. ***Estimated Usage: 16,500 tons of 1.5" Crusher Run Rock***

- **VENDOR DUTIES**

Bidder should read the Vendor Duties within this section and must initial either "Accept All Terms and Conditions Within Section as Written" or "Exceptions Taken to Vendor Duties Within Section as Written" in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the bidder takes any exceptions, they must provide the following within the "Exceptions" field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

- The specific clause, including section reference, to which an exception has been taken;
- An explanation of why the bidder took exception to the clause; and
- Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. 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 solicitation response. The State reserves the right to reject

solicitation responses that attempt to substitute the bidder's commercial contracts and/or documents for this solicitation.

Accept All Vendor Duties Within Section as Written (Initial)	Exceptions Taken to Vendor Duties Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)
jw		

• **INDEPENDENT VENDOR / OBLIGATIONS**

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

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

The Vendor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Vendor 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 Vendor's solicitation response 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 Vendor warrants that all persons assigned to the project shall be employees of the Vendor or a subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Vendor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Vendor or the subcontractor respectively.

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

- Any and all pay, benefits, and employment taxes and/or other payroll withholding,
- Any and all vehicles used by the Vendor's employees, including all insurance required by state law,
- Damages incurred by Vendor's employees within the scope of their duties under the contract,
- 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,
- Determining the hours to be worked and the duties to be performed by the Vendor's employees; and,
- All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Vendor, its officers, agents, or subcontractors or subcontractor's employees).

If the Vendor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the solicitation response. The Vendor shall agree that it will not utilize any subcontractors not specifically included in its solicitation response in the performance of the contract without the prior written authorization of the State. If the Vendor subcontracts any of the work, the Vendor agrees to pay any and all subcontractors in accordance with the Vendor's agreement with the respective subcontractor(s).

The State reserves the right to require the Vendor to reassign or remove from the project any Vendor or subcontractor employee.

Vendor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

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

• **FOREIGN ADVERSARY CONTRACTING PROHIBITION ACT CERTIFICATION (Nonnegotiable)**

The Vendor certifies that it is not a scrutinized company as defined under the Foreign Adversary Contracting Prohibition Act, Neb. Rev. Stat. Sec. § 73-903 (5); that it will not subcontract with any scrutinized company for

any aspect of performance of the contemplated contract; and that any products or services to be provided do not originate with a scrutinized company.

- **EMPLOYEE WORK ELIGIBILITY STATUS**

The Vendor 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 Vendor is an individual or sole proprietorship, the following applies:

- The Vendor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>
- The completed United States Attestation Form should be submitted with the Solicitation response.
- If the Vendor indicates on such attestation form that he or she is a qualified alien, the Vendor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- The Vendor understands and agrees that lawful presence in the United States is required, and the Vendor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

- **COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Nonnegotiable)**

The Vendor 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 Vendors 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 Vendor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Vendor shall insert a similar provision in all Subcontracts for goods and services to be covered by any contract resulting from this Solicitation.

- **COOPERATION WITH OTHER VENDORS**

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

- **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 solicitation response. 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.

- **PRICES**

Prices quoted shall be unit price (per ton) and shall be firm one hundred eighty (180) days from date of an award and are to be net; including transportation and delivery charges fully prepaid by the Vendor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, handling, fuel surcharge, packaging, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

Any request for 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 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.

The State reserves the right to deny any requested price increase. 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 decreases for the term of the contract.

- **PERMITS, REGULATIONS, LAWS**

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 Vendor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The Vendor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

- **ANTITRUST**

The Vendor 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.

- **CONFLICT OF INTEREST**

By submitting a solicitation response, vendor certifies that no relationship exists between the vendor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this solicitation or project.

Vendor further certifies that vendor will not employ any individual known by vendor to have a conflict of interest nor shall vendor take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

If there is an actual or perceived conflict of interest, vendor shall provide with its solicitation response a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall solicitation response evaluation.

- **STATE PROPERTY**

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

- **SITE RULES AND REGULATIONS**

The Vendor 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 Vendor 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 Vendor.

- **ADVERTISING**

The Vendor 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 or services 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.

- **DISASTER RECOVERY/BACK UP PLAN**

The Vendor 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 and services as specified under the specifications in the contract in the event of a disaster.

- **DRUG POLICY**

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

- **WARRANTY**

The Vendor warrants for a period of one (1) year from the date of Acceptance that: (a) the Products perform according to all specific claims that the Vendor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the State has relied on the Vendor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Vendor will repair or replace (at no charge to the State) the Product whose nonconformance is discovered and made known to the Vendor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Vendor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees, and costs

- **TIME IS OF THE ESSENCE**

Time is of the essence with respect to Vendor's performance and deliverables pursuant to this Contract.

- **USAGE REPORT**

The Vendor shall, upon request by the State Purchasing Bureau, provide a usage report of this contract by state agencies and political subdivisions.

The reporting period may be determined based on need and may include the following:

- Agency name, item(s), and dollar amount and shall include the information of the time period requested.
- Fill rate information for contract items, statewide and by agency to include the number of orders received, orders processed, back orders, and partially filled orders.

Any additional report the State Purchasing Bureau may deem necessary.

- **DELIVERY LOCATIONS / INSTRUCTIONS**

Vendor must provide products to all applicable delivery locations/instructions. Delivery of rock shall be FOB Destination and shall be made to either State maintenance yards or designated roadside mix sites as requested and specified by the District personnel.

1.5" Crusher Run Rock				1.5" Crusher Run Rock		
District	Location	Est. Tonnage		District	Location	Est. Tonnage
1	Greenwood Yard	500		2	Fremont Yard	100
1	Superior Street Yard	300		2	Blair Yard	100
1	Wahoo Yard	300		2	108th Street Yard, Omaha	100
1	David City Yard	300		2	Mormon Bridge Yard	100
1	Hwy 136, MM 172 2.5 mi Southwest of Beatrice	1500		2	South Omaha Yard	100
1	Hwy 50, MM 14 North side of Pawnee City	2000		2	Melia Hill Yard	100
1	Hwy 33, 0.5 mi East of Dorchester	500		2	Elkhorn Yard	100
1	Hwy 15, MM 24 13 mi North of Fairbury	1500		2	Plattsmouth Yard	100
1	Salt Valley Yard	800		7	Hwy N-23, MM 13 Near Grant	1000
1	Nebraska City Yard	1500				
1	Dunbar Yard	1500				
1	Falls City Yard	1000				
1	Hwy 136, MM 209	1500				
1	Hwy 4, MM 204	1500				

- **PAYMENT**

Bidder should read the Payment clauses within this section and must initial either “Accept All Terms and Conditions Within Section as Written” or “Exceptions Taken to Payment clauses Within Section as Written” in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the bidder takes any exceptions, they must provide the following within the “Exceptions” field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

- The specific clause, including section reference, to which an exception has been taken;
- An explanation of why the bidder took exception to the clause; and
- Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. 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 solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder’s commercial contracts and/or documents for this solicitation.

Accept All Payment Clauses Within Section as Written (Initial)	Exceptions Taken to Payment Clauses Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)
jw		

- **PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable)**

Neb. Rev. Stat. § 81-2403 states, “[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency.”

- **TAXES (Nonnegotiable)**

The State is not required to pay taxes and assumes no such liability as a result of this Solicitation. The Vendor 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 Vendor’s equipment which may be installed in a state-owned facility is the responsibility of the Vendor.

- **INVOICES (Nonnegotiable)**

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

Itemized invoices shall reference the ordering agency, ordering location, Purchase Order (PO) number, product description, unit cost, extended price and total charges. Vendor shall send invoices and supporting documentation including delivery and/or weight tickets to the NDOT location that placed the order.

The terms and conditions included in the Vendor’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. **The State shall have forty-five (45) calendar days to pay after a valid and accurate invoice is received by the State.**

- **PAYMENT (Nonnegotiable)**

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. § 81-2403). The State may require the Vendor 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 and services provided by the Vendor prior to the Effective Date of the contract, and the Vendor hereby waives any claim or cause of action for any such goods or services.

- **LATE PAYMENT (Nonnegotiable)**

The Vendor 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).

- **SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Nonnegotiable)**

The State's obligation to pay amounts due on the Contract for 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 Vendor 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 Vendor 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 Vendor be paid for a loss of anticipated profit.

- **RIGHT TO AUDIT (First Paragraph is Nonnegotiable)**

The State shall have the right to audit the Vendor's performance of this contract upon a thirty (30) days' written notice. Vendor 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 Vendor 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 Vendor shall make the Information available to the State at Vendor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Vendor so elects, the Vendor 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. Under no circumstance will the Vendor be required to create or maintain documents not kept in the ordinary course of Vendor's business operations, nor will Vendor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Vendor.

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 Vendor, the Vendor 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 Vendor agrees to correct any material weaknesses or condition found as a result of the audit.

- **TECHNICAL SPECIFICATIONS**

- **VENDOR INSTRUCTIONS**

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

"YES" response means the Vendor guarantees they can meet this condition.

"NO" response means the Vendor 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 Vendor'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 Vendor's alternative is an acceptable alternative.

- **NON-COMPLIANCE STATEMENT**

Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your solicitation response being deemed as non-responsive.

It is the responsibility of Vendors to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Vendor.

• **MATERIAL SPECIFICATIONS: 1.5" CRUSHER RUN ROCK**

YES	NO	NO & PROVIDE ALTERNATIVE	1.5" CRUSHER RUN ROCK												
jw			<ul style="list-style-type: none"> Material shall conform to Section 1033 of the NDOT 2017 Standard Specification for Highway Construction and amended as follows: <p>1.5" Crusher Run Rock Gradation Limits</p> <table border="1"> <thead> <tr> <th>Sieve Size</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>1 1/2"</td> <td>100</td> </tr> <tr> <td>3/4"</td> <td>65 - 95</td> </tr> <tr> <td>3/8"</td> <td>30 - 70</td> </tr> <tr> <td>#10</td> <td>10 - 30</td> </tr> <tr> <td>#200</td> <td>0 - 10</td> </tr> </tbody> </table>	Sieve Size	Percent Passing	1 1/2"	100	3/4"	65 - 95	3/8"	30 - 70	#10	10 - 30	#200	0 - 10
Sieve Size	Percent Passing														
1 1/2"	100														
3/4"	65 - 95														
3/8"	30 - 70														
#10	10 - 30														
#200	0 - 10														
NOTES/COMMENTS:															
YES	NO	NO & PROVIDE ALTERNATIVE	DURABILITY – Section 1033 is amended to include the following:												
jw			<ul style="list-style-type: none"> Shall have a Los Angeles Abrasion loss of not more than forty percent (40%) (AASHTO T 96). 												
jw			<ul style="list-style-type: none"> Shall have a soundness loss of not more than twelve percent (12%), mass at the end of five (5) cycles using sodium sulfate solution (AASHTO T 96). 												
NOTES/COMMENTS:															

END OF 1.5" CRUSHER RUN ROCK SPECIFICATIONS

• **MATERIAL SPECIFICATIONS: 3/8" WASHED CRUSHED ROCK**

YES	NO	NO & PROVIDE ALTERNATIVE	3/8" WASHED CRUSHED ROCK														
jw			<ul style="list-style-type: none"> Material shall conform to Section 1033 of the NDOT 2017 Standard Specification for Highway Construction and amended as follows: <p>Gradation for 3/8" Washed Crushed Rock</p> <p>Mineral Aggregate for Crushed Rock</p> <table border="1"> <thead> <tr> <th>Sieve Size</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>1/2" (12.5mm)</td> <td>100</td> </tr> <tr> <td>3/8"</td> <td>85 - 100</td> </tr> <tr> <td>#4</td> <td>0 - 50</td> </tr> <tr> <td>#8</td> <td>0 - 8</td> </tr> <tr> <td>#16</td> <td>0 - 5</td> </tr> <tr> <td>#200</td> <td>0 - 1.5</td> </tr> </tbody> </table>	Sieve Size	Percent Passing	1/2" (12.5mm)	100	3/8"	85 - 100	#4	0 - 50	#8	0 - 8	#16	0 - 5	#200	0 - 1.5
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NOTES/COMMENTS:																	

YES	NO	NO & PROVIDE ALTERNATIVE	DURABILITY – Section 1033 is amended to include the following:
jw			<ul style="list-style-type: none"> Shall have a Los Angeles Abrasion loss of not more than forty percent (40%) (AASHTO T 96).
jw			<ul style="list-style-type: none"> Shall have a soundness loss of not more than twelve percent (12%), mass at the end of five (5) cycles using sodium sulfate solution (AASHTO T 96).
NOTES/COMMENTS:			

END OF 3/8" WASHED CRUSHED ROCK SPECIFICATIONS

• MATERIAL SPECIFICATIONS: 1.0" CRUSHER RUN ROCK

YES	NO	NO & PROVIDE ALTERNATIVE	1.0” CRUSHER RUN ROCK										
jw			<ul style="list-style-type: none">Material shall conform to Section 1033 of the NDOT 2017 Standard Specification for Highway Construction and amended as follows: 1.0” Crusher Run Rock Gradation Limits<table><tr><th>Sieve Size</th><th>Percent Passing</th></tr><tr><td>1”</td><td>100</td></tr><tr><td>#4</td><td>20 - 60</td></tr><tr><td>#10</td><td>0 – 30</td></tr><tr><td>#200</td><td>0 - 10</td></tr></table>	Sieve Size	Percent Passing	1”	100	#4	20 - 60	#10	0 – 30	#200	0 - 10
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#200	0 - 10												
NOTES/COMMENTS:													

YES	NO	NO & PROVIDE ALTERNATIVE	DURABILITY – Section 1033 is amended to include the following:
jw			<ul style="list-style-type: none"> Shall have a Los Angeles Abrasion loss of not more than forty percent (40%) (AASHTO T 96).
jw			<ul style="list-style-type: none"> Shall have a soundness loss of not more than twelve percent (12%), mass at the end of five (5) cycles using sodium sulfate solution (AASHTO T 96).
NOTES/COMMENTS:			

END OF 1.0" CRUSHER RUN ROCK SPECIFICATIONS

• **MATERIAL SPECIFICATIONS: CRUSHED ROCK FOR SURFACING**

YES	NO	NO & PROVIDE ALTERNATIVE	CRUSHED ROCK FOR SURFACING										
jw			<ul style="list-style-type: none"> Material shall conform to Section 1033 of the NDOT 2017 Standard Specification for Highway Construction and amended as follows: <p>Crushed Rock for Surfacing Gradation Limits</p> <table border="1"> <thead> <tr> <th>Sieve Size</th><th>Percent Passing</th></tr> </thead> <tbody> <tr> <td>1"</td><td>100</td></tr> <tr> <td>#4</td><td>20 - 60</td></tr> <tr> <td>#10</td><td>0 - 30</td></tr> <tr> <td>#200</td><td>0 - 10</td></tr> </tbody> </table>	Sieve Size	Percent Passing	1"	100	#4	20 - 60	#10	0 - 30	#200	0 - 10
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NOTES/COMMENTS:													

YES	NO	NO & PROVIDE ALTERNATIVE	DURABILITY – Section 1033 is amended to include the following:
jw			<ul style="list-style-type: none"> Shall have a Los Angeles Abrasion loss of not more than forty percent (40%) (AASHTO T 96).
jw			<ul style="list-style-type: none"> Shall have a soundness loss of not more than twelve percent (12%), mass at the end of five (5) cycles using sodium sulfate solution (AASHTO T 96).
NOTES/COMMENTS:			

END OF CRUSHED ROCK FOR SURFACING SPECIFICATIONS

CONTRACTUAL AGREEMENT FORM

BIDDER MUST COMPLETE THE FOLLOWING

By signing this Contractual Agreement Form, the bidder guarantees compliance with the provisions stated in this solicitation and agrees to the terms and conditions unless otherwise indicated in writing and certifies that bidder is not owned by the Chinese Communist Party.

THIS FORM MUST BE SIGNED MANUALLY IN INK OR BY DOCUSIGN