# State of Nebraska - INVITATION TO BID CONTRACT

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

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

| | | | |
|---|---|---|---|
| **Date** | 1/18/18 | **Page** | 1 of 3 |
| **Solicitation Number** | 5751 OF | | |
| **Opening Date and Time** | 02/14/18 | 2:00 pm | |
| **Buyer** | JULIE SCHILTZ (AS) | | |

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

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

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

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

Contract to supply and deliver Chip Seal (Ledge Rock) Aggregate to the State of Nebraska as per the attached specifications for a one (1) year period from date of award. The contract may be renewed for two (2) additional three (3) month periods when mutually agreeable to the vendor and the State of Nebraska.

(ml 1/9/18)

## INVITATION

| Line | Description | Quantity | Unit of Measure | Unit Price | Extended Price |
|---|---|---|---|---|---|
| 1 | **D-3 CHIP SEAL LEDGE ROCK**<br>CROFTON YARD | 5,600.0000 | TN | _____ | _____ |
| 2 | **D-3 CHIP SEAL LEDGE ROCK**<br>HWY16 MP28 3MI S OF WAKEFIELD | 1,000.0000 | TN | _____ | _____ |
| 3 | **D-3 CHIP SEAL LEDGE ROCK**<br>HWY9 MP41 6MI N OF WAKEFIELD | 2,600.0000 | TN | _____ | _____ |
| 4 | **D-3 CHIP SEAL LEDGE ROCK**<br>NEWCASTLE YARD | 700.0000 | TN | _____ | _____ |

## BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: 100 % 60 DAYS

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

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

**VENDOR#**
**VENDOR:** Kelly Construction
**Address:** 6551 230th Ln
Gordon NE 69343

Enter Contact Information Below

**Contact** Tony Kelly
**Telephone** 308-282-2154
**Facsimile**
**Email**

# State of Nebraska - INVITATION TO BID CONTRACT

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

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

| | | | |
|---|---|---|---|
| **Date** | 1/18/18 | **Page** | 2 of 3 |
| **Solicitation Number** | 5751 OF | | |
| **Opening Date and Time** | 02/14/18 | 2:00 pm | |
| **Buyer** | JULIE SCHILTZ (AS) | | |

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

## INVITATION

| Line | Description | Quantity | Unit of Measure | Unit Price | Extended Price |
|---|---|---|---|---|---|
| 5 | **D-3 CHIP SEAL LEDGE ROCK**<br>JCT 81 ND20 4MI W OF RANDOLPH | 3,400.0000 | TN | 0 | |
| 6 | **D-3 CHIP SEAL LEDGE ROCK**<br>LAUREL YARD | 1,100.0000 | TN | 0 | |
| 7 | **D-3 CHIP SEAL LEDGE ROCK**<br>HWY13 MP37 3MI S OF CREIGHTON | 2,800.0000 | TN | 0 | |
| 8 | **D-3 CHIP SEAL LEDGE ROCK**<br>JCT14 AND 20 16MI N OF NELIGH | 4,600.0000 | TN | 0 | |
| 9 | **D-3 CHIP SEAL LEDGE ROCK**<br>CROFTON YARD | 2,000.0000 | TN | 0 | |
| 10 | **D-3 CHIP SEAL LEDGE ROCK**<br>HWY12 MP151 E OF VERDEL | 1,100.0000 | TN | 0 | |
| 11 | **D-3 CHIP SEAL LEDGE ROCK**<br>HWY 70 2 MI W OF ELGIN | 1,600.0000 | TN | 0 | |
| 12 | **D-3 CHIP SEAL LEDGE ROCK**<br>JCT32/45 MP18 5MI N NEW GROVE | 2,100.0000 | TN | 0 | |
| 13 | **D-3 CHIP SEAL LEDGE ROCK**<br>NELIGH YARD | 3,000.0000 | TN | 0 | |
| 14 | **D-3 CHIP SEAL LEDGE ROCK**<br>HWY84 MP29 6MI E OF BLOOMFIELD | 1,000.0000 | TN | 0 | |
| 15 | **D-8 CHIP SEAL LEDGE ROCK**<br>JCT HWY 20 AND 275 INMAN SCALE | 1,800.0000 | TN | 0 | |
| 16 | **D-8 CHIP SEAL LEDGE ROCK**<br>HWY20 MP134 SITE W OF MERRIMAN | 3,000.0000 | TN | $30.20 | $90,600 |
| 17 | **D-1 CHIP SEAL LEDGE ROCK** | 300.0000 | TN | | |
| 18 | **D-2 CHIP SEAL LEDGE ROCK** | 300.0000 | TN | | |
| 19 | **D-4 CHIP SEAL LEDGE ROCK** | 300.0000 | TN | | |
| 20 | **D-5 CHIP SEAL LEDGE ROCK** | 300.0000 | TN | | |

# State of Nebraska - INVITATION TO BID CONTRACT

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

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

| | | | |
|---|---|---|---|
| **Date** | 1/18/18 | **Page** | 3 of 3 |
| **Solicitation Number** | 5751 OF | | |
| **Opening Date and Time** | 02/14/18 | 2:00 pm | |
| **Buyer** | JULIE SCHILTZ (AS) | | |

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

## INVITATION

| Line | Description | Quantity | Unit of Measure | Unit Price | Extended Price |
|---|---|---|---|---|---|
| 21 | **D-6 CHIP SEAL LEDGE ROCK** | 300.0000 | TN | _____ | _____ |
| 22 | **D-7 CHIP SEAL LEDGE ROCK** | 300.0000 | TN | _____ | _____ |
| 23 | **D-8 CHIP SEAL LEDGE ROCK** | 300.0000 | TN | _____ | _____ |
| 24 | **PRICE PER TON MILE**<br>FOR ADD/ALT DELIVERY LOCATIONS | 200.0000 | TN | _____ | _____ |

## II. TERMS AND CONDITIONS

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

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

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

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

### A. GENERAL

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

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

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

These documents constitute the entirety of the contract.

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

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

### B. GOVERNING LAW

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's

sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

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

## C. CHANGE ORDERS OR SUBSTITUTIONS

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

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

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

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

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

## D. BREACH

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

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

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach.

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

E. **NON-WAIVER OF BREACH**

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

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.

F. **SEVERABILITY**

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

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

G. **INDEMNIFICATION**

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

1. **GENERAL**

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

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

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

## H. ATTORNEY'S FEES

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

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

## I. ASSIGNMENT, SALE, OR MERGER

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

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

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

## J. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE

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

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

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

## K. FORCE MAJEURE

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

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

## L. CONFIDENTIALITY

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

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.

## M. EARLY TERMINATION

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

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.

2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

3. The State may terminate the contract immediately for the following reasons:

   a. if directed to do so by statute;
   b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
   c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
   d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
   e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by

operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;

f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;

g. Contractor intentionally discloses confidential information;

h. Contractor has or announces it will discontinue support of the deliverable; and,

i. In the event funding is no longer available.

## N. CONTRACT CLOSEOUT

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

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

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

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

## III. CONTRACTOR DUTIES

### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

### B. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

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

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at http://das.nebraska.gov/materiel/purchasing.html

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

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

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

**D. COOPERATION WITH OTHER CONTRACTORS**

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

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

**E. PERMITS, REGULATIONS, LAWS**

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

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

## F. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

## G. ANTITRUST

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

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

## H. CONFLICT OF INTEREST

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

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

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

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

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

## I. STATE PROPERTY

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

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

## J. SITE RULES AND REGULATIONS

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

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

## K. ADVERTISING

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

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

## L. DRUG POLICY

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

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

## IV. PAYMENT

### A. PROHIBITION AGAINST ADVANCE PAYMENT

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

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

### B. TAXES

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

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

### C. INVOICES

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

Invoices for payments must be submitted by the Contractor to the ordering district requesting the goods with sufficient detail to support payment. Payment will be made based on the quantities received. Invoices must reference the purchase order number. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

### D. INSPECTION AND APPROVAL

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

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

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

**E. PAYMENT (Statutory)**

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

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

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

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

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

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

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds three percent (3%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## VI. INVITATION TO BID - TECHNICAL SPECIFICATIONS

# Special Provisions Chip Seal (Ledge Rock) Aggregate

### A. BIDDER INSTRUCTIONS

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

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

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

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

All items bid shall conform to section 1033 in the 2007 Nebraska Department of Transportation Standard Specifications https://dotstore.nebraska.gov/storefront/Store.aspx
for highway construction and special provisions as specified in these bid documents.

**Materials shall conform to the Nebraska Department of Transportation Standard Specifications for the Highway Construction 2007 Edition as amended in this Specification and amendments to the Division 1000.**

### B. NON-COMPLIANCE STATEMENT

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

**NOTES/COMMENTS:**

C. **MATERIAL SPECIFICATION:FOR CHIP SEAL (LEDGE ROCK)**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | **1.** Material shall conform to Section 1033. In addition, Section 1033 is amended as follows: GRADATION FOR CHIP SEAL (LEDGE ROCK) AGGREGATE |

| Sieve Size | Percent Passing |
|---|---|
| 3/8" | 99 - 100 |
| #4 | 0 - 70 |
| #10 | 0 - 10 |
| #50 | 0 - 5 |
| #200 | 0 - 3 |

**NOTES/COMMENTS:**

D. **DURABILITY – Section 1033 is amended to include the following:**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | **1.** Shall have A Los Angeles Abrasion loss percentage of not more than 40 (AASHTO 96). |
| | | | **2.** Shall have a soundness loss of not more than seven percent (7%) by mass at the end of five (5) cycles using sodium sulfate solution (AASHTO T 104). |

**NOTES/COMMENTS:**

E. **ANNUAL USAGE, ESTIMATED**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | **1.** Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Vendor shall not impose minimum order requirements. |

**NOTES/COMMENTS:**

F. USAGE REPORT

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

G. DELIVERY ARO TIME FRAME AND INSTRUCTIONS (BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY TIME FRAME/INSTRUCTIONS)

| YES | NO | NO & PROVIDE ALTERNATIVE | | |
|---|---|---|---|---|
| | | | 1. | Deliveries shall be made within fourteen (14) – twenty one (21) days after receipt of order. Deliveries beyond twenty two (22) days are an award consideration. |
| | | | 2. | Deliveries shall be made between the hours of 8:00 A.M. and 4:00 P.M., 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. |
| | | | 3. | There will be no minimum order requirements. Deliveries must be clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor 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 Contractor will be held responsible for any/all excess cost. |
| | | | 4. | At the time of delivery, a designated State employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage. |
| NOTES/COMMENTS: | | | | |

H. DELIVERY LOCATION AND INSTRUCTIONS (BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY LOCATIONS/INSTRUCTIONS)

| YES | NO | NO & PROVIDE ALTERNATIVE | | |
|---|---|---|---|---|
| | | | 1. | Please refer to ITB 5751 OF for a listing of multiple delivery locations for **Chip Seal (Ledge Rock) Aggregate** for the State of Nebraska. |
| | | | 2. | Deliveries of **Chip Seal (Ledge Rock) Aggregate** shall be FOB Destination and shall be made to either state maintenance yards or designated roadside mix sites as requested by area supervisors or superintendents specified on the (ITB). |
| | | | 3. | |

## I. DELIVERY PROCESS AND INSTRUCTIONS (BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY PROCESS/INSTRUCTIONS)

| YES | NO | NO & PROVIDE ALTERNATIVE | | |
|---|---|---|---|---|
| | | | 1. | Stamped weight tickets from a certified scale will be required for each load hauled. Contractors must furnish copies of weight tickets or itemized load sheets to the Maintenance Superintendent's office in order to obtain payment. If a certified scale is not accessible, contractor must obtain advance written approval from the District Operations Maintenance Manager (DOMM) or their designee for the use of detailed truck sketches before truck sketches will be accepted/allowed. |
| | | | 2. | If truck sketches are approved by DOMM, a factor of 1.3 tons/cu.yard. shall be used to calculate the amount 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. |
| | | | 3. | **Chip Seal (Ledge Rock) Aggregate** will be sampled in increments representing 200 tons.<br>a) When **Chip Seal (Ledge Rock) Aggregate** do not meet gradation requirements of Section 1033 as amended elsewhere in this contract, the vendor will be given notice to stop all further delivery of material. The remainder of the contract may be canceled at the option of the State of Nebraska.<br>b) The Contractor will not resume material delivery until written notice has been given by the State of Nebraska unless and until it has received credible written assurance that corrective action has been taken to insure that future delivered gravel will meet the gradation requirements. Approval to resume delivery will be issued from the District Engineer or their designee of the district wherein the delivery site is located.<br>c) Delivered **Chip Seal (Ledge Rock) Aggregate** not meeting gradation provisions required will be removed by the contractor under the direction of the District at no additional cost to the State of Nebraska Department of Transportation.<br>d) Additionally, if the Contractor fails to meet gradation requirements, the State may procure the material from other sources and hold the Contractor responsible for any excess cost. |
| **NOTES/COMMENTS:** | | | | |

## J. DELIVERY FOR ALTERNATE LOCATIONS, FREIGHT FACTOR INCREASE / DECREASE

| YES | NO | NO & PROVIDE ALTERNATIVE | | |
|---|---|---|---|---|
| | | | 1. | In the event delivery locations change or additional locations may be needed during the term of the contract that were not included in original Invitation to Bid (ITB), please include a price per ton mile for freight to *add for greater distance or subtract for closer delivery locations*. The state (NDOT) will select the overall lowest priced Contractor for alternate or additional locations based on the bid price |

of nearby locations plus or minus the freight cost using the delivery cost per ton mile as bid by each Contractor. Contractors will not be obligated to serve these alternate or additional locations, but will have the opportunity to do so. All other specifications and conditions will remain for any alternate or additional locations.

**Example 1.** The State requests Chip Seal (Ledge Rock) for an alternate or additional location not on the ITB. Vendor A has a contract for a nearby location for $15/ton. Haul distance is 10 miles **farther** to the alternate or additional location. Vendor A has bid $0.10 per ton mile for additional freight. The price for delivery to the alternate or additional location is **increased** by $1.00/ton.

**Vendor A overall price**

$$\frac{\$15.00}{ton} + \left(\frac{\$0.10}{ton\ mile} * 10\ miles\right) = \frac{\$16.00}{ton}$$

Vendor B has a contract for a nearby location for $18/ton. Haul distance is 17 miles **shorter** to the alternate or additional location. Vendor B has bid $0.15 per ton mile for additional freight. The price for delivery to the alternate or additional location is **reduced** by $2.55/ton.

**Vendor B overall price**

$$\frac{\$18.00}{ton} - \left(\frac{\$0.15}{ton\ mile} * 17\ miles\right) = \frac{\$15.45}{ton}$$

**Example 2.** The State requests Chip Seal (Ledge Rock) for an alternate or additional location not on the ITB. Vendor A has a contract for a nearby location for $25/ton. Haul distance is 15 miles **shorter** to the alternate or additional location. Vendor A has bid $0.09 per ton mile for additional freight. The price for delivery to the alternate or additional location is **reduced** by $1.35/ton.

**Vendor A overall price**

$$\frac{\$25.00}{ton} - \left(\frac{\$0.09}{ton\ mile} * 15\ miles\right) = \frac{\$23.65}{ton}$$

Vendor B has a contract for location for $23/ton. Haul distance is 6 miles **farther** to the alternate or additional location. Vendor B has bid $0.11 per ton mile for additional freight. The price for delivery to the alternate or additional location is **increased** by $0.66/ton.

**Vendor B overall price**

$$\frac{\$23.00}{ton} + \left(\frac{\$0.11}{ton\ mile} * 6\ miles\right) = \frac{\$23.66}{ton}$$

**NOTES/COMMENTS:**

## K. ORDERS

| YES | NO | NO & PROVIDE ALTERNATIVE | | |
|---|---|---|---|---|
| | | | 1. | Orders will be placed on an as needed basis and in most instances by telephone but not to the exclusion of other methods, (fax, e-mail or Internet, etc.) by district personnel stating the locations, quantity and purchase order number. |
| | | | 2. | All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. |
| | | | 3. | Invoices are to be sent to the "Invoice to" address on the purchase order. |
| NOTES/COMMENTS: | | | | |

## L. QUALITY

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

## M. PRICES

| YES | NO | NO & PROVIDE ALTERNATIVE | | |
|---|---|---|---|---|
| | | | 1. | Price quoted shall be unit price and shall be firm for one (1) year from date of an award and are to be net; including transportation and delivery charges fully prepaid by the Bidder F.O.B. Destination as specified. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. Any request for an increase must be submitted in writing to the SPB a minimum of thirty (30) days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. In no instance may a price increases be billed to the State until the contract is amended. 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 will be given full proportionate benefit of any decrease for the term of the contract. Contract supplier |

| | | | |
|---|---|---|---|
| | | | or suppliers may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and conditions of the contract must be met by political sub-divisions, cities, and counties. |
| **NOTES/COMMENTS:** | | | |

**N. SUBSTITUTIONS**

| YES | NO | NO & PROVIDE ALTERNATIVE | | |
|---|---|---|---|---|
| | | | **1.** | Vendor will not substitute any item that has been awarded without prior written approval of SPB. |
| **NOTES/COMMENTS:** | | | | |

## O. SECRETARY OF STATE REGISTRATION REQUIREMENTS

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

| YES | NO | *Prior to contract award and/or upon request of SPB, potential award recipient(s) will be asked to certify compliance with Nebraska Secretary of State Registration by providing a true and exact copy of current (dated within 90 days) valid Certificate of Good Standing or Letter of Good Standing. |
|---|---|---|
| | | **1.** Bidder is a SOLE PROPRIETORSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required)<br><br>If the Bidder is an Individual or Sole Proprietorship, the following applies:<br><br>a. The Bidder must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at http://das.nebraska.gov/materiel/purchasing.html<br><br>The completed United States Attestation Form should be submitted with the Invitation to Bid response.<br><br>b. If the Bidder indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.<br><br>c. The Bidder understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108. |
| | | **2.** Bidder is a GENERAL PARTNERSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required). |
| | | **3.** Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State is provided within bid submission documents. |
| | | **4.** Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State will be provided in a timely manner upon request prior to award. |

# Form A
## Bidder Contact Sheet
### Invitation To Bid Number 5751 OF

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

| Preparation of ITB Contact Information | |
|---|---|
| Bidder Name: | Kelly Construction |
| Bidder Address: | 6551 230th Ln Gordon NE 69343 |
| Contact Person & Title: | Tony Kelly Owner |
| E-mail Address: | |
| Telephone Number (Office): | 308-282-2154 |
| Telephone Number (Cellular): | 308-360-0440 |
| Fax Number: | |

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

| Communication with the State Contact Information | |
|---|---|
| Bidder Name: | Tony Kelly |
| Bidder Address: | 6551 230th Ln Gordon NE 69343 |
| Contact Person & Title: | Tony Kelly Owner |
| E-mail Address: | |
| Telephone Number (Office): | 308-282-2154 |
| Telephone Number (Cellular): | 308-360-0440 |
| Fax Number: | |