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.

_____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** CROFTON YARD	5,600.0000	TN	22 80	$127,680 00
2	**D-3 CHIP SEAL LEDGE ROCK** HWY16 MP28 3MI S OF WAKEFIELD	1,000.0000	TN	31 87	$31,870 00
3	**D-3 CHIP SEAL LEDGE ROCK** HWY9 MP41 6MI N OF WAKEFIELD	2,600.0000	TN	30 60	$79,560 00
4	**D-3 CHIP SEAL LEDGE ROCK** NEWCASTLE YARD	700.0000	TN	25 80	$18,060 00

BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS:_____% _____ DAYS

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to (see Section III) and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within 30 days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

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

VENDOR# 505143
VENDOR: Spencer Quarries Inc.
Address: 25341 430 Ave
Spencer SD 57374

Enter Contact Information Below

Contact Todd Waldera
Telephone 605-246-2344 Ex74
Facsimile 605-246-2362
Email Todd@SpencerquarriesInc.com

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** JCT 81 ND20 4MI W OF RANDOLPH	3,400.0000	TN	26 49	$90,066 00
6	**D-3 CHIP SEAL LEDGE ROCK** LAUREL YARD	1,100.0000	TN	27 78	$30,558 00
7	**D-3 CHIP SEAL LEDGE ROCK** HWY13 MP37 3MI S OF CREIGHTON	2,800.0000	TN	29 34	$82,152 00
8	**D-3 CHIP SEAL LEDGE ROCK** JCT14 AND 20 16MI N OF NELIGH	4,600.0000	TN	29 48	$135,608 00
9	**D-3 CHIP SEAL LEDGE ROCK** CROFTON YARD	2,000.0000	TN	22 80	$45,600 00
10	**D-3 CHIP SEAL LEDGE ROCK** HWY12 MP151 E OF VERDEL	1,100.0000	TN	26 70	$29,370 00
11	**D-3 CHIP SEAL LEDGE ROCK** HWY 70 2 MI W OF ELGIN	1,600.0000	TN	33 82	$54,112 00
12	**D-3 CHIP SEAL LEDGE ROCK** JCT32/45 MP18 5MI N NEW GROVE	2,100.0000	TN	33 90	$71,119 00
13	**D-3 CHIP SEAL LEDGE ROCK** NELIGH YARD	3,000.0000	TN	31 95	$95,850 00
14	**D-3 CHIP SEAL LEDGE ROCK** HWY84 MP29 6MI E OF BLOOMFIELD	1,000.0000	TN	24 00	$24,000 00
15	**D-8 CHIP SEAL LEDGE ROCK** JCT HWY 20 AND 275 INMAN SCALE	1,800.0000	TN	33 00	59,400 00
16	**D-8 CHIP SEAL LEDGE ROCK** HWY20 MP134 SITE W OF MERRIMAN	3,000.0000	TN	47 30	$141,900 00
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 FOR ADD/ALT DELIVERY LOCATIONS	200.0000	TN	$.15	30.00

INVITATION TO BID

Number 5751 OF

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this Invitation to Bid (ITB) for a **Chip Seal (Ledge Rock) Aggregate** for Nebraska Department of Transportation (NDOT) area locations throughout the State of Nebraska commodity contract, ITB Number 5751 OF for the purpose of selecting a qualified Bidder to provide **Chip Seal (Ledge Rock) Aggregate** . Specifications can be found in **Section VI. - Invitation To Bid – Technical Specifications**. 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 Bidder. The Contract includes the option to renew for two (2) additional three (3) month periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

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

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, 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 ITB, and the successful Bidder's bid or response will be posted to a public website managed by DAS, which can be found at:

https://statecontracts.nebraska.gov/

In addition and in furtherance of the State's public records statute (Neb. Rev. Stat. § 84-712 et seq.) all bids or responses received regarding this ITB will be posted to the SPB website.

These postings will include the entire bid or response. Bidders 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 container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The Bidder must 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 BID OR RESPONSE IS PROPRIETARY. COST WILL NOT BE CONSIDERED PROPRIETARY AND IS A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release 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, bid, or response to this ITB for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a bid or response to this ITB, specifically waives any copyright or other protection the contract, bid, or response to the ITB may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a bid or response to this ITB, and award of a contract. Failure to agree to the reservation and waiver will result in the bid or response to the ITB being found non-responsive and rejected.

Any entity awarded a contract or submitting a bid or response to the ITB 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 the bids and responses to the ITB, awards, and other documents.

TABLE OF CONTENTS

INVITATION TO BID i

TABLE OF CONTENTS ii

GLOSSARY OF TERMS iv

I. PROCUREMENT PROCEDURE 1

A. GENERAL INFORMATION 1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS 1
C. COMMUNICATION WITH STATE STAFF 1
D. SCHEDULE OF EVENTS 1
E. WRITTEN QUESTIONS AND ANSWERS 2
F. RECYCLING (§ 81-15,159(d)(2)) 2
G. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory) 2
H. ETHICS IN PUBLIC CONTRACTING 2
I. SPECIFICATIONS 2
J. SAMPLES 3
K. BID PREPARATION COSTS 3
L. DISCOUNTS 3
M. PRICES 3
N. DEVIATIONS FROM THE INVITATION TO BID 3
O. ALTERNATE/EQUIVALENT BIDS 3
P. LUMP SUM OR 'ALL OR NONE' BIDS 3
Q. BID REQUIREMENTS 3
R. FAILURE TO COMPLY WITH INVITATION TO BID 4
S. SUBMISSION OF BIDS 4
T. EMAIL SUBMISSIONS 4
U. BID CORRECTIONS 4
V. LATE BIDS 4
W. BID OPENING 4
X. BID TABULATIONS 4
Y. BEST AND FINAL OFFER 5
Z. REFERENCE AND CREDIT CHECKS 5
AA. REJECTION OF BIDS 5
BB. RESIDENT BIDDER 5
CC. AWARD 5

II. TERMS AND CONDITIONS 6

A. GENERAL 6
B. GOVERNING LAW 6
C. CHANGE ORDERS OR SUBSTITUTIONS 7
D. BREACH 7
E. NON-WAIVER OF BREACH 8
F. SEVERABILITY 8
G. INDEMNIFICATION 8
H. ATTORNEY'S FEES 9
I. ASSIGNMENT, SALE, OR MERGER 9
J. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE 9
K. FORCE MAJEURE 9
L. CONFIDENTIALITY 10
M. EARLY TERMINATION 10
N. CONTRACT CLOSEOUT 11

III. CONTRACTOR DUTIES 12

A. INDEPENDENT CONTRACTOR / OBLIGATIONS 12
B. EMPLOYEE WORK ELIGIBILITY STATUS 12
C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory) 13
D. COOPERATION WITH OTHER CONTRACTORS 13
E. PERMITS, REGULATIONS, LAWS 13
F. NOTICE OF POTENTIAL CONTRACTOR BREACH 14

G. ANTITRUST 14
H. CONFLICT OF INTEREST 14
I. STATE PROPERTY 14
J. SITE RULES AND REGULATIONS 15
K. ADVERTISING 15
L. DRUG POLICY 15

IV. PAYMENT 16

A. PROHIBITION AGAINST ADVANCE PAYMENT 16
B. TAXES 16
C. INVOICES 16
D. INSPECTION AND APPROVAL 16
E. PAYMENT (Statutory) 17
F. LATE PAYMENT (Statutory) 17
G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory) 17
H. RIGHT TO AUDIT (Statutory) 17

V. SCOPE OF WORK 18

A. SCOPE 18
B. AMENDMENT 18
C. REVISIONS 18

VI. INVITATION TO BID - TECHNICAL SPECIFICATIONS 19

A. BIDDER INSTRUCTIONS 19
B. NON-COMPLIANCE STATEMENT 19
C. MATERIAL SPECIFICATION:FOR CHIP SEAL (LEDGE ROCK) 20
D. DURABILITY – Section 1033 is amended to include the following: 20
E. ANNUAL USAGE, ESTIMATED 20
F. USAGE REPORT 21
G. DELIVERY ARO TIME FRAME AND INSTRUCTIONS (BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY TIME FRAME/INSTRUCTIONS) 21
H. DELIVERY LOCATION AND INSTRUCTIONS (BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY LOCATIONS/INSTRUCTIONS) 21
I. DELIVERY PROCESS AND INSTRUCTIONS (BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY PROCESS/INSTRUCTIONS) 22
J. DELIVERY FOR ALTERNATE LOCATIONS, FREIGHT FACTOR INCREASE / DECREASE 22
K. ORDERS 24
L. QUALITY 24
M. PRICES 24
N. SUBSTITUTIONS 25
O. SECRETARY OF STATE REGISTRATION REQUIREMENTS 26

Form A Bidder Contact Sheet 27

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.

ACH deposit: Automated Clearing House deposit.

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

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

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

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

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

Amendment: A written correction or alteration to a document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

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

Contract Administration: The management of the contract which includes and is not limited to contract signing, contract amendments and any necessary legal actions.

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

Contract Period: The duration of the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Invalid Bid: i.e., a fax or email response for a term contract.

Invitation to Bid (ITB): A written solicitation utilized for obtaining competitive offers.

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

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

Mandatory/Must: Required, compulsory, or obligatory.

May: Discretionary, permitted; used to express possibility.

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

Must: See Shall/Will/Must.

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

NDOT: Nebraska Department of Transportation

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposal: See Bid.

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

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

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

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

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

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

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

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

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

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

Should: Expected; suggested, but not necessarily mandatory.

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

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

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

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

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

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

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

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

Third-Party: Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors 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 in the State, or licensed to do so, who seeks to provide goods or goods under the terms of a written solicitation.

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

Will: See Shall/Will/Must.

Work Day: See Business Day.

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The ITB is designed to solicit bids from qualified Bidders who will be responsible for providing **Chip Seal (Ledge Rock) Aggregate** for Nebraska Department of Transportation (NDOT) area locations throughout the State of Nebraska at a competitive and reasonable cost. A detailed description can be found in **Section VI. - Invitation To Bid- Technical Specifications.**

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

B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

Procurement responsibilities related to this ITB reside with the SPB. The point of contact (POC) for the procurement is as follows:

Name: Julie Schiltz
Agency: State Purchasing Bureau
Address: 1526 K Street, Suite 130
Lincoln, NE 68508

Telephone: 402-471-6500

E-Mail: as.materielpurchasing@nebraska.gov

C. COMMUNICATION WITH STATE STAFF

From the date the ITB is issued until the Intent to Award is issued communication from the Bidder is limited to communication with the State Purchasing Bureau (SPB). Only SPB is empowered to make binding statements regarding this ITB. SPB will issue any clarifications or opinions regarding this ITB in writing. Only SPB can modify the ITB, answer questions, render opinions, and only the SPB can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this ITB. After the intent to award is issued the Bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State.

The following exceptions to these restrictions are permitted:

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

Violation of these conditions may be cause to reject a Bidder's bid and/or withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.

D. SCHEDULE OF EVENTS

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

	ACTIVITY	DATE/TIME
1.	Release ITB	01/18/2018
2.	Last day to submit written questions	01/30/2018
3.	State responds to written questions through ITB "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html	02/02/2018
4.	Bid opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	02/14/2018 2:00 PM Central Time
5.	Review for conformance of mandatory requirements	TBA
6.	Evaluation period	TBA
7.	Post "Letter of Intent to Contract" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBA

	ACTIVITY	DATE/TIME
8.	Contract finalization period	TBA
9.	Contract award	TBA
10.	Contractor start date	04/20/2018

E. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any ITB provision must be submitted in writing to the SPB and clearly marked "ITB Number 5751 OF; **Chip Seal (Ledge Rock) Aggregate** for Nebraska Department of Transportation (NDOT) area locations throughout the State of Nebraska Questions". SPB is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should present, as questions, any assumptions upon which the Bidder's bid is or might be developed. Bids 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.

It is preferred that questions be sent via e-mail to as.materielpurchasing@nebraska.gov, but may be delivered by hand or by U.S. Mail. It is recommended that Bidders submit questions using the following format.

ITB Section Reference	ITB Page Number	Question

Written answers will be posted at http://das.nebraska.gov/materiel/purchasing.html per the Schedule of Events.

F. RECYCLING (§ 81-15,159(d)(2))

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference will also be given to purchases of corn-based biodegradable plastics and road deicers if available and suitable. No preference shall be given if such preference would result in the purchase of products, materials, or supplies that are of inadequate quality or of substantially higher cost.

G. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)

All Bidders must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and correct 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 http://das.nebraska.gov/materiel/purchasing.html. This must be accomplished prior to execution of the contract.

H. ETHICS IN PUBLIC CONTRACTING

The State reserves the right to reject bids, withdraw an intent to award or award, or terminate a contract if a Bidder commits or has committed ethical violations, which include, but are not limited to:

1. 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;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity:
4. Submitting a bid on behalf of another party or entity;
5. Collude with any person or entity to influence the bidding process, submit sham bids, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, 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 successful Bidder and their subcontractors.

I. 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 will be the sole judge of equivalency. The Bidder may offer any

brands which meets or exceeds the specification. When a specific product is required, the ITB will so state. Any item bid is to be the latest current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

J. SAMPLES

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

K. BID PREPARATION COSTS

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

L. DISCOUNTS

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

M. PRICES

All prices, costs, and terms and conditions submitted in the proposal shall remain fixed and valid commencing on the opening date of the proposal until the contract terminates or expires.

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.

N. DEVIATIONS FROM THE INVITATION TO BID

The requirements contained in the ITB (Sections II. through VI.) become a part of the terms and conditions of the contract resulting from this ITB. Any deviations from the ITB in Section II. through VI. must be clearly defined by the Bidder in its bid 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 ITB, mandatory requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this ITB, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this ITB. The State discourages deviations and reserves the right to reject proposed deviations.

O. ALTERNATE/EQUIVALENT BIDS

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

P. LUMP SUM OR 'ALL OR NONE' BIDS

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

Q. BID 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:

1. Original Commodity ITB form signed using an indelible method (electronic signatures are not acceptable);
2. Clarity and responsiveness of the bid;
3. Completed Sections II. through VI. ;
4. Completed ITB Form or State's Bid Sheet.

R. FAILURE TO COMPLY WITH INVITATION TO BID

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

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

S. SUBMISSION OF BIDS

*****ALL BIDS MUST BE SUBMITTED IN A SEALED ENVELOPE OR CONTAINER!*****

Only one (1) original bid shall be submitted. Each bid should be in a separate envelope or container. Bid responses should include the completed Form A, "Bidder Contact Sheet". Bids must reference the ITB number and be sent to the specified address. Please note that the address label should appear as specified in Section II, Part A on the face of each container or Bidder's bid response packet. If a recipient phone number is required for delivery purposes, 402-471-6500 should be used. The ITB number must be included in all correspondence.

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

Sealed bids must be received in the State Purchasing Bureau by the date and time of the bid opening per the Schedule of Events. No late bids 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. Website address is as follows: http://das.nebraska.gov/materiel/purchasing.html

By signing the "ITB" form, the Bidder guarantees compliance with the provisions stated in this ITB.

T. EMAIL SUBMISSIONS

The SPB will not accept bids by email except for one-time purchases under $50,000.00.

U. BID CORRECTIONS

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changes in a bid after opening are acceptable only 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.

V. LATE BIDS

Bids received after the time and date of the bid opening will be considered late bids. Late bids will be returned unopened, if requested by the Bidder and at Bidder's expense. The State is not responsible for bids that are late or lost regardless of cause or fault.

W. BID OPENING

Anyone may attend the opening. It is considered a public opening. The Buyer will read the names of the respondents. Depending upon the complexity of the bid, the buyer may read the bids aloud or allow bids be available for viewing by the public during the bid opening. Once the bid opening has concluded, the bids will not be available for viewing until the Intent to Award has been posted. An initial bid tabulation will be posted to the website as soon as feasible. Information identified as proprietary by the submitting vendor, in accordance with the RFP/ITB and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the Public Records Act, or if ordered to release any withheld information, said information may then be released. The submitting bidder will be notified of the release and it shall be the obligation of the submitting bidder to take further action, if it believes the information should not be released.

X. BID TABULATIONS

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

Y. BEST AND FINAL OFFER

The State reserves the right to request Best and Final Offers. However, a Bidder should provide its best offer in its original bid. Bidders should not expect that the State will request a best and final offer.

Z. REFERENCE AND CREDIT CHECKS

The State reserves the right to conduct and consider reference and credit checks. Reference or credit checks may be grounds to reject a bid, or withdraw an intent to award or award of a contract. The State reserves the right to use third parties to conduct reference and credit checks.

AA. REJECTION OF BIDS

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

BB. RESIDENT BIDDER

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

CC. AWARD

All purchases, leases, or contracts which are based on competitive bids will be awarded according to the provisions in the ITB. The State reserves the right to reject any or all bids, in whole or in part, or to award to multiple Bidders in whole or in part, and at its discretion, may withdraw or amend the ITB at any time. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid, and do not improve the Bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State. The ITB does not commit the State to award a contract. If, in the opinion of the State, revisions or amendments will require substantive changes in bids, the bid opening date may be extended.

By submitting a bid in response to this ITB, 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.

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

The protest procedure is available on the Internet at:
http://das.nebraska.gov/materiel/purchase_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors%20(2).pdf

Any protests must be filed by a vendor within ten (10) business days after the Intent to Award is posted to the Internet.

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

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

The State reserves the right to make awards that are in the best interest of the State. The State may consider, but is not limited to, one (1) or more of the following award criteria:

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

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:
TW			

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:
TW			

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:
TW			

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:
Th			

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:
TW			

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:
TW			

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:
TW			

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:
TW			

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:
TW			

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:
TW			

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:
TW			

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:
TL			

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:
TV			

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:
TV			

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:
TW			

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:
TW			

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:
TW			

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:
TW			

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:
TV			

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:
TV			

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:
TV			

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:
TW			

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:
TW			

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:
TW			

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:
TW			

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.

V. SCOPE OF WORK

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

A. SCOPE

It is the intent of this bid invitation to establish a contract to supply **Chip Seal (Ledge Rock) Aggregate** for Nebraska Department of Transportation (NDOT) area locations throughout the State of Nebraska per the attached specifications from date of award for a period of one (1) year with the option to renew for an additional two (2) three (3) month periods when mutually agreeable to the vendor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the vendor and the State.

All items bid shall be of the latest manufacture in production as of the date of the ITB and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the **Chip Seal (Ledge Rock) Aggregate** for Nebraska Department of Transportation (NDOT) area locations throughout the State of Nebraska whether or not they may be specifically mentioned below.

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

B. AMENDMENT

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

C. REVISIONS

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

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		
TW			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.
TW			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.
TW			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	
TW			**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	
TW			**1.** Shall have A Los Angeles Abrasion loss percentage of not more than 40 (AASHTO 96).
TW			**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	
TW			**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		
TW			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		
TW			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.
TW			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.
TW			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.
TW			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		
TW			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.
TW			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		
TW			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.
TW			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.
TW			3.	**Chip Seal (Ledge Rock) Aggregate** will be sampled in increments representing 200 tons. 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. 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. 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. 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		
TW			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

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

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

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

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

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

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

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

NOTES/COMMENTS:

K. ORDERS

YES	NO	NO & PROVIDE ALTERNATIVE		
TW			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.
TW			2.	All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice.
TW			3.	Invoices are to be sent to the "Invoice to" address on the purchase order.
NOTES/COMMENTS:				

L. QUALITY

YES	NO	NO & PROVIDE ALTERNATIVE		
TW			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		
TW			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		
TV			**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) If the Bidder is an Individual or Sole Proprietorship, the following applies: 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 The completed United States Attestation Form should be submitted with the Invitation to Bid response. 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. 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).
TW		**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:	Spencer Quarries Inc.
Bidder Address:	25341 430 Ave Spencer 57374
Contact Person & Title:	Todd Waldera Gen Mgr.
E-mail Address:	Todd@spencerquarriesinc.com
Telephone Number (Office):	605 246 - 2344
Telephone Number (Cellular):	605 - 999 - 2590
Fax Number:	605 - 246 - 2362

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:	Same As Above
Bidder Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

STATE OF NEBRASKA

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

Secretary of State
State Capitol
Lincoln, Nebraska

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

SPENCER QUARRIES, INCORPORATED

a South Dakota corporation is authorized to transact business in Nebraska;

that no occupation taxes due from and assessable against the Corporation are unpaid and have become delinquent;

that no annual or biennial report required to be forwarded by the Corporation to the Secretary of State has become delinquent;

that a Certificate of Withdrawal has not been filed.

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

In Testimony Whereof,

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

February 7, 2018

John A. Gale

Secretary of State

"cation ID a93ba17 has been assigned to this document. Go to ne.gov/go/validate to validate authenticity for up to 12 months.

ADDENDUM ONE
QUESTIONS and ANSWERS

Date: February 1, 2018

To: All Bidders

From: Julie Schiltz, Buyer
AS Materiel State Purchasing Bureau

RE: Addendum for Invitation to Bid Number #5751 OF
to be opened February 14, 2018 at 2:00 p.m. Central Time

No questions were received for ITB #5751 OF.

This addendum will become part of the ITB and should be acknowledged with the Invitation to Bid.