

"original"

# 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	6/25/19	Page	1 of 6
Solicitation Number	6112 OF		
Opening Date and Time	07/30/19	2:00 pm	
Buyer	RENE BOTTS (AS)		

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

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

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

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

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

(bs 06/21/19)

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	DIST 1 AUBURN WATER ACTIVATED COLD PATCH 6mm aggregate 50 LBS PAIL	7,500.0000 150.000	LB Pail Pallet (36 Pails)	.6488 \$ 29.94 \$ 75.00	\$ 4866.00 \$ 4,491.00 \$ 375.00
	STATE BRAND BEING BID:	Aquaphalt 6.0			
	BID AS ESTIMATED ANNUAL USAGE:				
2	DIST 1 FALLS CITY WATER ACTIVATED COLD PATCH 6mm aggregate	6,000.0000 120.000	LB Pail Pallet	.6488 \$ 29.94 \$ 75.00	\$ 3892.80 \$ 3,592.00 \$ 300

### BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: 0 % 30 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 10 days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

Sign William J Grant  
Here (Authorized Signature MANDATORY - MUST BE SIGNED IN INK)

Enter Contact Information Below

VENDOR# \_\_\_\_\_  
VENDOR: Stetson Building Products  
Address: 6820 J street  
Omaha, NE 68117

Contact Bill Grant  
Telephone 402-689-4463  
Facsimile 402-331-5999  
Email billgrant@Stetsons.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	6/24/19	Page	2 of 6
Solicitation Number	6112 OF		
Opening Date and Time	07/30/19	2:00 pm	
Buyer	RENE BOTTS (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
3	DIST 1 NEBRASKA CITY WATER ACTIVATED COLD PATCH 6mm aggregate	7,500.0000	LB	.6488	4,866. <sup>00</sup>
		150.0000	Pail	\$ 29.94	\$ 4,491. <sup>00</sup>
	Freight	5	Pallet	75.00	375. <sup>00</sup>
4	DIST 1 LINCOLN PALMYRA WATER ACTIVATED COLD PATCH 6mm aggregate	1,800.0000	LB	.6404	\$ 1,152. <sup>84</sup>
		36	Pail	\$ 29.94	\$ 1,077. <sup>84</sup>
	Freight	1	Pallet	75.00	75. <sup>00</sup>
5	DIST 1 TECUMSEH WATER ACTIVATED COLD PATCH 6mm aggregate	6,000.0000	LB	.6488	\$ 3,892. <sup>80</sup>
		120.00	Pail	\$ 29.94	\$ 3,592. <sup>80</sup>
	Freight	4	Pallet	75.00	300. <sup>00</sup>
6	DIST 1 LINCOLN SUPERIOR WATER ACTIVATED COLD PATCH 6mm aggregate	3,750.0000	LB	.6588	\$ 2,470. <sup>50</sup>
		75.00	Pail	\$ 29.94	\$ 2,245. <sup>50</sup>
	Freight	3	Pallet	75.00	225. <sup>00</sup>
7	DIST 1 BEATRICE WATER ACTIVATED COLD PATCH 6mm aggregate	3,500.0000	LB	.6416	\$ 2,245. <sup>80</sup>
		70.00	Pail	\$ 29.94	\$ 2,095. <sup>80</sup>
	Freight	2	Pallet	75.00	150. <sup>00</sup>
8	DIST 1 DAVID CITY WATER ACTIVATED COLD PATCH 6mm aggregate	5,250.0000	LB	.6416	\$ 3,368. <sup>70</sup>
		105.00	Pail	\$ 29.94	\$ 3,143. <sup>70</sup>
	Freight	3	Pallet	75.00	225. <sup>00</sup>
9	DIST 1 GREENWOOD WATER ACTIVATED COLD PATCH 6mm aggregate	7,200.0000	LB	.6404	\$ 4,611. <sup>36</sup>
		144	Pail	\$ 29.94	\$ 4,311. <sup>36</sup>
	Freight	4	Pallet	75.00	300. <sup>00</sup>
10	DIST 1 PAWNEE CITY WATER ACTIVATED COLD PATCH 6mm aggregate	3,500.0000	LB	.6416	\$ 2,245. <sup>80</sup>
		70.00	Pail	\$ 29.94	\$ 2,095. <sup>80</sup>
	Freight	2	Pallet	75.00	150. <sup>00</sup>
11	DIST 1 SEWARD WATER ACTIVATED COLD PATCH 6mm aggregate	3,750.0000	LB	.6586	\$ 2,470. <sup>00</sup>
		75.00	Pail	\$ 29.94	\$ 2,245. <sup>50</sup>
	Freight	3	Pallet	75.00	225. <sup>00</sup>
12	DIST 1 WAHOO WATER ACTIVATED COLD PATCH 6mm aggregate	1,500.0000	LB	.6488	\$ 973. <sup>20</sup>
		30.00	Pail	\$ 29.94	\$ 898. <sup>20</sup>
	Freight	1	Pallet	75.00	75. <sup>00</sup>
13	DIST 2 OMAHA 108TH WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000	LB	.7488	\$ 374. <sup>40</sup>
		10.00	Pail	\$ 29.94	\$ 299. <sup>40</sup>
	Freight	1	Pallet	75.00	75. <sup>00</sup>

# 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	6/24/19	Page	3 of 6
Solicitation Number	6112 OF		
Opening Date and Time	07/30/19	2:00 pm	
Buyer	RENE BOTTS (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
14	DIST 2 OMAHA SOUTH WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
15	DIST 2 OMAHA MORMON WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 29.94 75.00	374.40 \$ 299.40 75.00
16	DIST 2 FREMONT WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 \$ 29.94 75.00	374.40 \$ 299.40 75.00
17	DIST 2 BLAIR WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 \$ 29.94 75.00	374.40 \$ 299.40 75.00
18	DIST 2 GRETNA WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 \$ 29.94 75.00	\$ 374.40 299.40 75.00
19	DIST 2 PLATTSMOUTH WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
20	DIST 2 ELKHORN WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
21	DIST 3 HARTINGTON WATER ACTIVATED COLD PATCH 6mm aggregate	550.0000 11,000 Freight 1	LB PAIL Pallet	.7351 \$ 29.94 75.00	\$ 404.34 \$ 329.34 75.00
22	DIST 3 LAUREL WATER ACTIVATED COLD PATCH 6mm aggregate	550.0000 11,000 Freight 1	LB PAIL Pallet	.7351 \$ 29.94 75.00	404.34 \$ 329.34 75.00
23	DIST 3 WAYNE WATER ACTIVATED COLD PATCH 6mm aggregate	550.0000 11,000 Freight 1	LB PAIL Pallet	.7351 \$ 29.94 75.00	404.34 \$ 329.34 75.00
24	DIST 3 LYONS WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10,000 Freight 1	LB PAIL Pallet	.7488 \$ 29.94 75.00	374.40 \$ 299.40 75.00

# 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	6/24/19	Page	4 of 6
Solicitation Number	6112 OF		
Opening Date and Time	07/30/19	2:00 pm	
Buyer	RENE BOTTS (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
25	DIST 3 S. SIOUX CITY WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10.000 Freight 1	LB Pail Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
26	DIST 4 GRAND ISLAND WATER ACTIVATED COLD PATCH 6mm aggregate	550.0000 11.000 Freight 1	LB Pail Pallet	.7351 \$ 29.94 75.00	\$ 404.34 \$ 329.34 75.00
27	DIST 4 KEARNEY WATER ACTIVATED COLD PATCH 6mm aggregate	550.0000 11.000 Freight 1	LB Pail Pallet	.7351 \$ 29.94 75.00	\$ 404.34 \$ 329.34 75.00
28	DIST 4 ORD WATER ACTIVATED COLD PATCH 6mm aggregate	300.00 275.0000 6.000 Freight 1	LB Pail Pallet	.8488 \$ 29.94 75.00	\$ 254.64 \$ 179.64 75.00
29	DIST 4 RAVENNA WATER ACTIVATED COLD PATCH 6mm aggregate	550.0000 11.000 Freight 1	LB Pail Pallet	.7351 \$ 29.94 75.00	404.34 \$ 329.94 75.00
30	DIST 4 SAINT PAUL WATER ACTIVATED COLD PATCH 6mm aggregate	300.00 275.0000 6.000 Freight 1	LB Pail Pallet	.8488 \$ 29.94 75.00	\$ 254.64 \$ 179.64 75.00
31	DIST 5 ALLIANCE WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 200.000 Freight 6	LB Pail Pallet	.6438 \$ 29.94 75.00	\$ 6,438.00 \$ 5,988.00 450.00
32	DIST 5 BRIDEPORT WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 200.000 Freight 6	LB Pail Pallet	.6438 \$ 29.94 75.00	6,438.00 \$ 5,988.00 450.00
33	DIST 5 CHADRON WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 200.000 Freight 6	LB Pail Pallet	.6438 \$ 29.94 75.00	6,438.00 \$ 5,988.00 450.00
34	DIST 5 CHAPPELL WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 200.000 Freight 6	LB Pail Pallet	.6438 \$ 29.94 75.00	6,438.00 \$ 5,988.00 450.00
35	DIST 5 CRAWFORD WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 200.000 Freight 6	LB Pail Pallet	.6438 \$ 29.94 75.00	6,438.00 \$ 5,988.00 450.00

# 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	6/24/19	Page	5 of 6
Solicitation Number	6112 OF		
Opening Date and Time	07/30/19	2:00 pm	
Buyer	RENE BOTTS (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
36	DIST 5 GERING WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 Freight 200.0000 6	LB Pail Pallet	.6438 \$ 29.94 75.00	\$ 6,438.00 \$ 5,988.00 450.00
37	DIST 5 GORDON WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 Freight 200.0000 6	LB Pail Pallet	.6438 \$ 29.94 75.00	6,438.00 \$ 5,988.00 450.00
38	DIST 5 KIMBALL WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 Freight 200.0000 6	LB Pail Pallet	.6438 \$ 29.94 75.00	6,438.00 \$ 5,988.00 450.00
39	DIST 5 SIDNEY WATER ACTIVATED COLD PATCH 6mm aggregate	10,000.0000 Freight 200.0000 6	LB Pail Pallet	.6438 \$ 29.94 75.00	\$ 6,438.00 5,988.00 450.00
40	DIST 6 ANSLEY WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 Freight 10.0000 1	LB Pail Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
41	DIST 6 BIG SPRINGS WATER ACTIVATED COLD PATCH 6mm aggregate	1,000.0000 Freight 20.0000 1	LB Pail Pallet	.6738 \$ 29.94 75.00	\$ 673.80 \$ 598.80 75.00
42	DIST 6 BROKEN BOW WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 Freight 10.0000 1	LB Pail Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
43	DIST 6 GOTHENBURG WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 Freight 10.0000 1	LB Pail Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
44	DIST 6 LEXINGTON WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 Freight 10.0000 1	LB Pail Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
45	DIST 6 MULLEN WATER ACTIVATED COLD PATCH 6mm aggregate	200.0000 Freight 4.0000 1	LB Pail	.9738 \$ 29.94 75.00	\$ 194.76 \$ 119.76 75.00
46	DIST 6 OGALLALA WATER ACTIVATED COLD PATCH 6mm aggregate	200.0000 Freight 4.0000 1	LB Pail Pallet	.9738 \$ 29.94 75.00	\$ 194.76 \$ 119.76 75.00

# 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	6/24/19	Page	6 of 6
Solicitation Number	6112 OF		
Opening Date and Time	07/30/19	2:00 pm	
Buyer	RENE BOTTS (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
47	DIST 6 OCONTO WATER ACTIVATED COLD PATCH 6mm aggregate	200.0000 4.000 Freight 1	LB Pail Pallet	.9738 \$ 29.94 75.00	\$ 194.76 \$ 119.76 75.00
48	DIST 6 NORTH PLATTE WATER ACTIVATED COLD PATCH 6mm aggregate	500.0000 10.000 Freight 1	LB Pail Pallet	.7488 \$ 29.94 75.00	\$ 374.40 \$ 299.40 75.00
49	DIST 7 BENKELMAN WATER ACTIVATED COLD PATCH 6mm aggregate	250.000 220.0000 5 Freight 1	LB Pail Pallet	.8988 \$ 29.94 75.00	\$ 224.70 \$ 149.70 75.00
50	DIST 7 CURTIS WATER ACTIVATED COLD PATCH 6mm aggregate	250.000 220.0000 5 Freight 1	LB Pail Pallet	.8988 \$ 29.94 75.00	\$ 224.70 \$ 149.70 75.00
51	DIST 7 HOLDREGE WATER ACTIVATED COLD PATCH 6mm aggregate	2,750.0000 55.000 Freight 2	LB Pail Pallet	.6533 \$ 29.94 75.00	\$ 1,796.70 \$ 1,646.70 150.00
52	DIST 7 IMPERIAL WATER ACTIVATED COLD PATCH 6mm aggregate	250.000 220.0000 5 Freight 1	LB Pail Pallet	.8988 \$ 29.94 75.00	224.70 \$ 149.70 75.00
53	DIST 7 MCCOOK WATER ACTIVATED COLD PATCH 6mm aggregate	250.000 220.0000 5 Freight 1	LB Pail Pallet	.8988 \$ 29.94 75.00	224.70 \$ 149.70 75.00

**Form A**  
**Contractor Contact Sheet**  
**Invitation To Bid Number 6112 OF**

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

Preparation of Solicitation Contact Information	
Contractor Name:	Stetson Building Products, LLC
Contractor Address:	6820 J street Omaha, NE 68117
Contact Person & Title:	Bill Grant Sales
E-mail Address:	bill.grant@stetsons.com
Telephone Number (Office):	402-331-0333
Telephone Number (Cellular):	402-689-4463
Fax Number:	402-331-5999

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

Communication with the State Contact Information	
Contractor Name:	Stetson Building Products, LLC,
Contractor Address:	6820 J street Omaha, NE 68117
Contact Person & Title:	Bryan Compas
E-mail Address:	Bryan.compas@stetsons.com
Telephone Number (Office):	402-331-0333
Telephone Number (Cellular):	402-917-1379
Fax Number:	402-331-5999



**II. TERMS AND CONDITIONS**

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

The Contractor should submit with their proposal any license, user agreement, service level agreement, or similar documents that the Contractor wants incorporated in the Contract. Upon notice of Intent to Award, the Contractor 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 Contractor's proposal. 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 Solicitation Response (Initial)	NOTES/COMMENTS:
wrg			

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

1. Invitation to Bid and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Contractor's proposal response;
5. The executed Contract and any Addenda, if applicable, and properly submitted documents; and,
6. 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 solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor's submitted Proposal.

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. NOTIFICATION**

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties identified in the contract, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

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

**C. NOTICE (POC)**

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

**D. GOVERNING LAW (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this contract must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

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

**E. AMENDMENT**

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

**F. CHANGE ORDERS OR SUBSTITUTIONS**

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

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

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

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

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

**G. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**H. BREACH**

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

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. OR In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

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)

**I. NON-WAIVER OF BREACH**

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

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.

**J. SEVERABILITY**

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

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.

**K. INDEMNIFICATION**

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

**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 contract, 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 contract to the extent provided by law.

**L. ATTORNEY'S FEES**

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

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

**M. ASSIGNMENT, SALE, OR MERGER**

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

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.

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

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

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.

**O. FORCE MAJEURE**

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

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 man-made event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party, and shall have the burden of proof to justify the request. The other Party may 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.

**P. CONFIDENTIALITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>WJ</i>			

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.

**Q. EARLY TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>WJ</i>			

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.

**R. CONTRACT CLOSEOUT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>WJS</i>			

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

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

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 Solicitation Response (Initial)	NOTES/COMMENTS:
[Handwritten Initial]			

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 proposal 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 proposal. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its proposal 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 solicitation 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 solicitation.

**D. COOPERATION WITH OTHER CONTRACTORS**

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

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. 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 proposal. 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.

**F. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

All prices, costs, and terms and conditions outlined in the bid shall remain fixed and valid commencing on the opening date of the bid until the contract is awarded or the ITB is cancelled. Prices quoted on the ITB form or Cost Sheet shall remain fixed for one (1) year of the contract period. Any request for a price increase subsequent to the initial one (1) year period must be submitted in writing to the SPB for approval, and be accompanied by documentation justifying the price increase. These documents include, but are not limited to: 1) invoices for physical components of contracted item(s) Further documentation may be required by the State to justify the increase.

The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State will be given full proportionate benefit of any decreases for the term of the contract.

**G. COST CLARIFICATION**

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

**H. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
WJ			N/A

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.

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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.

**J. ANTITRUST**

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

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.

**K. CONFLICT OF INTEREST**

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

By submitting a proposal, 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 solicitation 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 and services 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 (2) years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the solicitation or project, or who had any influence on decisions affecting the solicitation or project.

**L. STATE PROPERTY**

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

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.

**M. SITE RULES AND REGULATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
WJG			N/A

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.

**N. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
WJG			N/A

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

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

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wjg</i>			

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

**P. DRUG POLICY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wjg</i>			

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.

**Q. WARRANTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wjg</i>			<i>Per manufacturer Warranty</i>

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Contract. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**IV. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

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

**B. TAXES (Statutory)**

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**

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Payment will be made based on 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 Solicitation Response (Initial)	NOTES/COMMENTS:
WJG			

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

**E. PAYMENT**

Payment will be made by the responsible agency. The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and 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. 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.

**G. RIGHT TO AUDIT (First Paragraph is 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.

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

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 Contractor must provide the following information in response to this solicitation.

### A. SCOPE

It is the intent of this proposal invitation to establish a contract to supply **Water Activated Cold Patch Material for the Nebraska Department of Transportation area locations throughout the State of Nebraska** per the attached specifications from date of award for a period of two (2) years with the option to renew for an additional three (3) one (1) year periods when mutually agreeable to the contractor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the contractor and the State.

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

**ACCEPTABLE MATERIALS** - Products bid must meet the material specifications.

Physical review(s) of utilized material performance may be conducted by the Contractor and NDOT throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract.

### **PROCEDURE FOR PRODUCT CERTIFICATION –**

The manufacturer must provide a signed product Certification of Compliance meeting all of the material specifications within this ITB. Manufacturer's current descriptive literature and/or advertising data sheets with cuts or photographs must also be included with the bid. 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.

**VI. TECHNICAL SPECIFICATIONS**

**A. CONTRACTOR INSTRUCTIONS**

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

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

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

All items bid shall conform to section 1033 in the 2017 Nebraska Department of Transportation Standard Specifications <https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.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 2017 Edition as amended in this Specification and amendments to the Division 1000.**

**B. NON-COMPLIANCE STATEMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your proposal.</p>
			<p>2. It is the responsibility of Contractors to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Contractor.</p>
			<p>3. No interpretation related to the meaning of solicitation specifications or other pre-proposal documents will be made orally to any Contractor by the State. Any solicitation interpretation must be put in writing by the Contractor to: the State Purchasing Bureau, E-mail questions to SPB. <a href="mailto:as.materielpurchasing@nebraska.gov">as.materielpurchasing@nebraska.gov</a> by the last day to submit written questions per the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).</p>
<p><b>NOTES/COMMENTS:</b></p>			

**C. GENERAL SPECIFICATIONS: WATER ACTIVATED COLD PATCH MATERIAL**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The Bituminous Cold Patch Material will be designed in size ¼ inch (6 mm).
<i>yes</i>			2. Grade shall be manufactured so it can perform and when applied within the temperature range of 0 to 120 degrees Fahrenheit.
<i>yes</i>			3. The patching material must be able to withstand vehicular traffic immediately after placement and not strip, kick up or ravel out afterwards and designed to be fully cured in 24 hours.
<i>yes</i>			4. The material must be ready to use and only require water for placement, even in sub-freezing weather.
<i>yes</i>			5. The Water Activated Cold Patch Material shall consist of a binder and aggregate within prescribed quantities to make a mixture which will provide satisfactory workability and adhesion characteristics.
<i>yes</i>			6. The patching mixture will be able to function as a patch during cold and damp weather, and during hot weather in bituminous and concrete pavement.
NOTES/COMMENTS:			

**D. MATERIAL REQUIREMENTS: LIQUID ASPHALT**

YES	NO	NO & PROVIDE ALTERNATIVE	
<i>yes</i>			1. The binder shall be a combination of plant based binders and bitumen at 5 to 9% binder by weight of mix.
<i>yes</i>			2. Liquid Asphalt shall meet the following AASHTO and ASTM Test requirements: <ul style="list-style-type: none"> <li>o AASHTO T-85, Specific Gravity &lt;=3.0 ✓</li> <li>o AASHTO T-176, SE value &gt;80 ✓</li> <li>o AASHTO T-304, FAA value &gt;45 ✓</li> <li>o AASHTO T-11, % passing #200</li> <li>o AASHTO T-27, uniform consistency of material ✓</li> <li>o AASHTO T-308, 5-9% binder and obtain raw aggregate ✓</li> <li>o AASHTO T-30, Gradation Requirements ✓</li> <li>o AASHTO T-209, Max Density ✓</li> <li>o AASHTO T-245, Stability and Flow ✓</li> <li>o AASHTO TP-43, workability of product at 4 +/- 1 deg C ✓</li> </ul>
NOTES/COMMENTS:			

E. AGGREGATE

YES	NO	NO & PROVIDE ALTERNATIVE					
wps			1. Aggregate shall be crushed stone and shall meet the following requirements:				
wps			2. <table border="1" data-bbox="730 472 1453 609"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>1/2" (12.5 mm)</td> <td>100</td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	1/2" (12.5 mm)	100
Sieve Analysis	Percent Passing						
1/2" (12.5 mm)	100						
wps			3. <table border="1" data-bbox="730 640 1453 777"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>3/8" (9.5mm)</td> <td>90 - 100</td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	3/8" (9.5mm)	90 - 100
Sieve Analysis	Percent Passing						
3/8" (9.5mm)	90 - 100						
wps			4. <table border="1" data-bbox="730 808 1453 934"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#4 (4.75 mm)</td> <td>85 - 100 <i>90% max</i></td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#4 (4.75 mm)	85 - 100 <i>90% max</i>
Sieve Analysis	Percent Passing						
#4 (4.75 mm)	85 - 100 <i>90% max</i>						
wps			5. <table border="1" data-bbox="730 966 1453 1102"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#8 (2.36 mm)</td> <td>20 - 67 <i>32-67</i></td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#8 (2.36 mm)	20 - 67 <i>32-67</i>
Sieve Analysis	Percent Passing						
#8 (2.36 mm)	20 - 67 <i>32-67</i>						
wps			6. <table border="1" data-bbox="730 1155 1453 1291"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#16 (1.18 mm)</td> <td>----- <del>-----</del></td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#16 (1.18 mm)	----- <del>-----</del>
Sieve Analysis	Percent Passing						
#16 (1.18 mm)	----- <del>-----</del>						
wps			7. <table border="1" data-bbox="730 1333 1453 1459"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#200 (0.075 mm)</td> <td>2 - 10</td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#200 (0.075 mm)	2 - 10
Sieve Analysis	Percent Passing						
#200 (0.075 mm)	2 - 10						
See Data sheet			8. Soundness Loss (Sodium, 5 cycles), ASTM C 88, 12.0 max.				
See Data sheet			9. Los Angeles Abrasion Loss, ASTM C 131, 45.0% max.				
wps			10. Specific Gravity, ASTM C 127, 2.45 - 2.85.				
wps			11. Absorption, ASTM C 128, 3.0% max.				
wps			12. Minus 200 Sieve (0.075mm) Wash Loss, ASTM C 117, 2.5% max.				
NOTES/COMMENTS:							

**F. PRODUCTION AND COMPLIANCE**

YES	NO	NO & PROVIDE ALTERNATIVE	
WJG			1. All mix delivered to the NDOT must be accompanied with a Certificate of Compliance stating the mix type meets these specifications.
WJG			2. As a condition of this contract, the successful bidder must agree to furnish on site personnel, at no additional cost, to the NDOT to assist in resolving problems in event material problems develop.
NOTES/COMMENTS:			

**G. ANNUAL USAGE, ESTIMATED**

YES	NO	NO & PROVIDE ALTERNATIVE	
WJG			1. Annual usage figures provided on the bid lines 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. Contractor shall not impose minimum order requirements.
NOTES/COMMENTS:			

**H. USAGE REPORT**

YES	NO	NO & PROVIDE ALTERNATIVE	
WJG			1. The contractor shall, upon request, 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:			

I. PRICES

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Price quoted shall be unit price (per pound) 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.</p>
<p>NOTES/COMMENTS: Also Price per 50 Lb PAIL with Freight Pallet Quantity IT is advisable to order per Pallet Quantities - 36 units/Pallet</p>			

J. DELIVERY ARO

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Deliveries of Water Activated Cold Patch Material shall be FOB destination to all NDOT locations specified on the purchase order or as directed by NDOT at the time of purchase in accordance with this ITB. A NDOT District contact person and phone number will be given to the Contractor when an order is placed. Contractor must notify the NDOT District contact a minimum of 24 hours prior to the anticipated delivery. Contractor shall maintain sufficient inventory to process and deliver within 30 days after receipt of order(s). There will be no minimum order requirements.</p>
			<p>2. If the Contractor is unable to meet delivery schedules, the ordering District Superintendent must be notified within three (3) days from the date the order was placed. If it is nearing the delivery date and for some unforeseen reason the Contractor is unable to meet expected delivery, the ordering District shall be notified at least 48 hours in advance. The order may be cancelled if the delivery date is unsatisfactory, and the State may procure item(s) from other sources. The contractor may be held responsible for an/all excess cost. Failure to meet delivery requirements of the contract may constitute a breach of the contract.</p>

			<p><b>3. NDOT Superintendent Phone Listing</b></p> <ul style="list-style-type: none"> <li>• District One – Lincoln, NE. Phone: 402-471-0850</li> <li>• District Two – Omaha, NE. Phone: 402-935-5438 Fremont, NE. Phone: 402-727-3292 Elkhorn, NE. Phone: 402-289-4444</li> <li>• District Three – Norfolk, NE. Phone: 402-370-3477 Columbus, NE. Phone: 402-564-4126 Neligh, NE. Phone: 402-887-5441 South Sioux City, NE. Phone: 402-494-6826 Wayne, NE. Phone: 402-375-7070</li> <li>• District Four – Grand Island, NE. Phone: 308-385-6263 Hastings, NE. Phone: 402-462-1996 Ord, NE. Phone: 308-728-3761 York, NE. Phone: 402-362-5930</li> <li>• District Five – Gering, NE. Phone: 308-436-6587 Chadron, NE. Phone: 308-432-6141 Sidney, NE. Phone: 308-254-6932</li> <li>• District Six – North Platte, NE. Phone: 308-535-8010 Lexington, NE. Phone: 308-324-3885 Ogallala, NE. Phone: 308-284-8070 Broken Bow, NE. Phone: 308-872-6733 Mullen, NE. Phone: 308-546-2241</li> <li>• District Seven – McCook, NE. Phone: 308-345-8495 Holdrege, NE. Phone: 308-995-4242</li> <li>• District Eight – Ainsworth, NE. Phone: 402-387-2472 Valentine, NE. Phone: 402-376-1350 O'Neill, NE. Phone: 402-336-2051</li> </ul>
			<p><b>4.</b> Deliveries shall be made during normal working hours between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday (excluding State holidays and / or as otherwise directed). If an emergency exists, delivery may be made through prior arrangements with receiving personnel.</p>
			<p><b>5.</b> At the time of delivery, a designated State of Nebraska employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.</p>
<p><b>NOTES/COMMENTS:</b></p>			

K. PACKAGING

YES	NO	NO & PROVIDE ALTERNATIVE	
wjg			1. Packages are to be clearly marked with aggregate size, and weight.
wjg			2. Packaging must be of suitable size and of sufficient strength to protect the contents during shipping, handling and storage.
wjg			3. Packaging must be weather/waterproof, sold in buckets or bags with a shelf life of at least one year.  State package type here: <u>50Lb Pail</u>
NOTES/COMMENTS: <u>36 Pails Per Pallet</u>			

L. ORDERS

YES	NO	NO & PROVIDE ALTERNATIVE	
wjg			1. Orders will be placed either by, phone, fax, e-mail or Internet (if available and not to the exclusion of the other methods).
wjg			2. All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order.
NOTES/COMMENTS:			

M. QUALITY

YES	NO	NO & PROVIDE ALTERNATIVE	
wjg			1. Product quality must meet specifications and be consistent for the term of the contract. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance.
wjg			2. A guarantee of satisfactory performance by the contractor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this proposal invitation.
wjg			3. 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: <u>Per manufacturer warranty</u>			

**N. AUTHORIZED DEALER & WARRANTY**

YES	NO	NO & PROVIDE ALTERNATIVE	
<i>wjs</i>			1. To the extent required by the manufacturer, the Contractor shall be an authorized dealer. Contractor may be required to substantiate that he/she is an authorized dealer. Proof, if required, must be submitted to SPB within three (3) business days of the request and prior to the award of any contract.
<i>wjs</i>			2. The terms of the original manufacturer's standard warranty shall apply to all product acquired from this solicitation for the entire warranty period.
NOTES/COMMENTS:			

**O. PERFORMANCE GUARANTEE**

YES	NO	NO & PROVIDE ALTERNATIVE	
<i>wjs</i>			1. The material shall remain workable in the application temperature range for a period of not less than twelve (12) months.
<i>wjs</i>			2. Repaired potholes shall not show any significant signs of shoving, rutting, tracking, kick-up or ravel-out within a period of twelve (12) months from the time of repair. <i>when Prepared + Installed Properly</i>
<i>wjs</i>			3. The material shall be capable of being overlaid with hot mix asphalt after placement and compaction and shall not bleed through or affect the performance of the hot mix asphalt.
<i>wjs</i>			4. For any uncompliant materials not meeting specifications and representations provided on the ITB, NDOT in its sole discretion shall have the right to either accept the materials at a Pay Factor of 40% as listed within section VI., P. of this ITB or reject the material and request replacement material by Contractor, at the Contractor's expense, within fifteen (15) business days FOB destination to the location on the original purchase order.
NOTES/COMMENTS:			

**P. ACCEPTANCE AND PAY FACTOR**

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

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

YES	NO	NO & PROVIDE ALTERNATIVE	
<i>WJ</i>			<p>1. NDOT reserves the right to acquire a random sample of the materials at any time during the term of the contract for testing to determine specification compliance as provided in the ITB.</p>
<p><b>NOTES/COMMENTS:</b></p>			

# AQUAPHALT®

permanent repair for asphalt + concrete

Ranked #1 by  
Consumer Reports!



## 2017-2018 AVAILABLE PRODUCTS

Aquaphalt is a permanent eco-friendly patch material for asphalt and concrete manufactured in Charlottesville, VA. It is commonly used by DOTs, municipalities, government agencies, schools and universities, property management firms, asphalt maintenance contractors, and anyone else who has roadway and parking areas that need to be maintained. Aquaphalt is available in three size aggregates:

4.0



4.0 -  
FINE

Used for  
repairs  
.5" - 1"

6.0



6.0 -  
MEDIUM

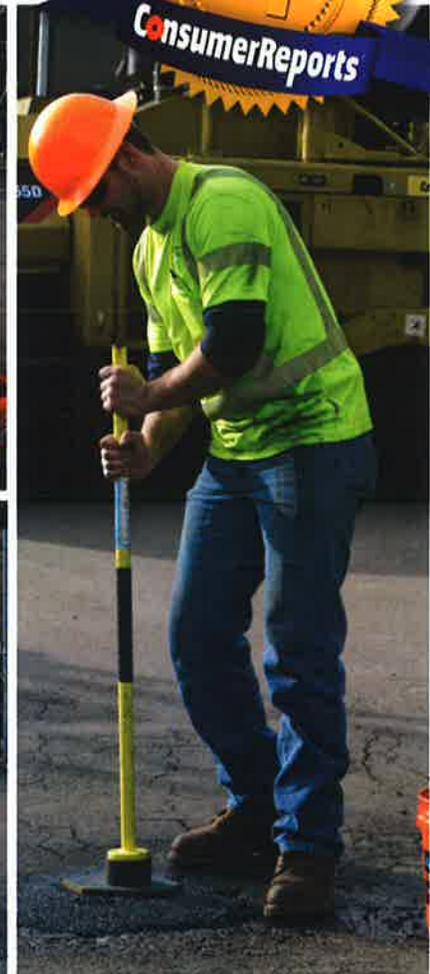
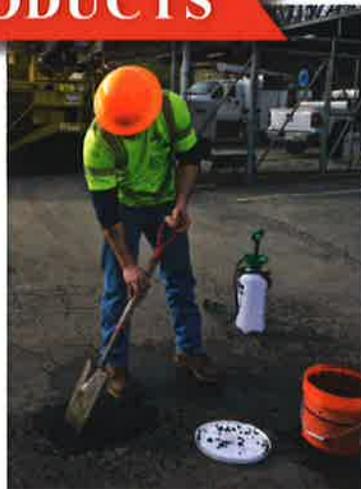
Used for  
repairs  
1"+

9.0



9.0 -  
COARSE

Used for  
repairs  
1.25"+



**SIMPLE INSTALLATION: JUST POUR, WATER AND TAMP FOR A PERMANENT REPAIR.**

**HAND TAMPER**



**AQUAPHALT'S Shock-Absorbing Hand Tamper**

- Built-in shock absorber
- Reduces vibrations
- Reduces stress on forearms and back

**LEARN MORE ABOUT AQUAPHALT  
PRODUCTS AT [AQUAPHALT.COM](http://AQUAPHALT.COM)**



# AQUAPHALT®—SUSTAINABLE COLD MIX

## TECHNICAL DATA SHEET

**Manufactured by:** RoadStone Production LLC, 1230 River Road, Charlottesville, VA 22901

### **Product Description:**

Aquaphalt® is a revolutionary, high performance, flexible, reactive repair product for use in repairing asphalt and concrete road surfaces. Aquaphalt® reacts with water to provide a permanent repair solution. All sizes of Aquaphalt® are free of solvents or volatile organic compounds (VOC's). Aquaphalt® comes in three (3) sizes (4.0mm, 6.0mm, & 9.0mm) for surface, intermediate or base repairs for any type of asphalt or concrete road repair.

**Applications:** Highways (asphalt or concrete), Runways/Taxiways/Aprons, Bridge Decks, Manhole repairs, Potholes, Utility Cuts, Parking Lots, Driveways, Tennis Courts, Pathways

### **Performance Features:**

**Permanent Solution** – Aquaphalt® is comparable to typical hot mix asphalt pavements in quality and unlike other conventional cold patch asphalt products which never deliver a truly permanent repair.

**Cost Effective** – Aquaphalt® saves time and money by eliminating costly repeat repairs.

**Environmentally Sustainable** – Aquaphalt® contains no toxic solvents of VOC's, making it friendlier to the environment.

### **Directions for Use:**

Remove all loose material from area to be repaired. Place Aquaphalt® in the patch and level with a rake or trowel. Allow 0.5" -1.0" additional height for compaction. Saturate with water (use approx. 1/2 gallon of water to 50 lbs. Aquaphalt®) and compact. If the depth of the pothole is greater than 2-3", it is advisable to fill the hole in two layers. In colder weather a freezing point suppression additive may be added to the water prior to saturation (i.e. road brine, salt water, etc.)

### **Clean Up:**

Use Automotive hand cleaners on hands and tools. Tools may also be cleaned with light oil, mineral spirits or vegetable oil.

### **Storage and Handling:**

Each bucket of Aquaphalt® contains approximately 50 lbs. of material. Store Indoors in cool, dry conditions. Avoid direct sunlight and/or exposure to freezing. Aquaphalt® can be applied in freezing conditions, but workability is best when it is stored indoors.

### **General Advice:**

Aquaphalt® hardens quickly for immediate use. After water is applied, Aquaphalt® will start to cure in 15 minutes and can be opened to traffic immediately. The reactive process happens relatively quickly and Aquaphalt starts to get hard and in most cases, will be fully cured in 24 hours.

Since Aquaphalt® does not release any harmful VOC's it can be sealed 24 hours after installation.



# AQUAPHALT®—SUSTAINABLE COLD MIX (Continued)

## Material Specifications:

Aquaphalt® is designed and performance tested using AASHTO and ASTM testing specifications related to Hot Mix Asphalt.

### AASHTO M-323 (Table 3)

#### Gradation Control Point Ranges:

Sieve Sizes	4.0 mm % Passing	6.0 mm % Passing	9.0 mm % Passing
1/2" Sieve	100	100	90 – 100
3/8" Sieve	95 -100	90 -100	90 max.
#4 Sieve	90 -100	90 max.	
#8 Sieve		32 -67	28-58
#16 Sieve	30-55		
#200 Sieve	6-13	2-10	2-10

#### AGGREGATES:

All aggregate materials are a non-polishing, crushed granite from an approved Virginia DOT source.

All aggregate materials are quality tested and having the following properties:

- AASHTO T-85,84/ASTM C-127,128      Specific Gravity <= 3.000.
- AASHTO T-176                              SE value > 80
- AASHTO T-304                              FAA value > 45
- AASHTO T-11/ASTM C-117              % passing 75-µm (No. 200) < 7.0
- AASHTO T-27/ASTM C-136              Uniform consistency of material

#### BINDER:

The binder of – Aquaphalt® is a proprietary liquid blend that contains renewable natural raw materials. **Reactive Binder** is a further development of the “Raps-Asphalt” technology. “Raps-Asphalt” is a plant based binder with bitumen, a naturally occurring organic byproduct of organic materials representing a total weight of approximately 5-8% of the finished product; this binder contains natural rape seed oil which improves stability.

## Quality and Performance Specifications:

Each production run of Aquaphalt® product is quality and performance tested to insure consistently superior performing material. Each product is evaluated using AASHTO and ASTM testing specifications related to Hot Mix Asphalt.

- AASHTO T-308                              - to insure Aquaphalt® product has 5-8% proprietary binder and obtain raw aggregate.
- AASHTO T-11/ASTM C-117              - to determine % passing 75-µm (No. 200) of product blend.
- AASHTO T-30                                - to determine products conformance to design gradation ranges.
- AASHTO T-209 Method A (Air)        - to determine the Maximum density of each Aquaphalt® product.
- AASHTO R-68                                - to make samples for;
- AASHTO T-245                                - to determine the Stability and Flow of Aquaphalt® products using the air bath procedures.
- AASHTO TP-43                                - to determine the workability of Aquaphalt® product at 4 ± 1°C (39.2 ± 1.8°F)
- Other AASHTO/ASTM specified testing methods per various DOT requirements.



## AQUAPHALT®—SUSTAINABLE COLD MIX (Continued)

### **Guarantee:**

RoadStone Production LLC, a Virginia limited liability company (RSP), provides an **unlimited** “**CURING GUARANTEE**” to the Customer that Aquaphalt® product[s], produced by RSP LLC, and sold by its authorized Distributors will cure, upon proper installation – as directed in written form by the manufacturer and applicable standards – within a reasonable time frame (24 hours to 120 hours) from the date of installation.

See website for more details. [www.aquaphalt.com](http://www.aquaphalt.com)





# Aquaphalt Premium Safety Data Sheet

---

## SECTION 1: PRODUCT AND COMPANY INFORMATION

GHS product identifier: Cold Asphalt Mix  
Trade Name: Aquaphalt Premium 0/4.0, 0/6.0, 0/9.0, 0/12.0  
Recommended use: Reactively curing, cold applied asphalt mix, free of solvents  
Emergency phone number:

**EMERGENCY CONTACT 24 hours:**  
**CHEMTREC 1-800-424-9300**  
**INFORMATION CONTACT: 866-784-5031**  
(Monday-Friday, 8:00 a.m. – 3:00 p.m. EST)

Manufacturer:  
RoadStone Production LLC  
1230 River Road  
Charlottesville, VA 22901

Revision Issue Date: January, 2015  
Supersedes Date: January, 2014

## SECTION 2: HAZARDS IDENTIFICATION

Signal Word: Warning



Physical Hazards: Not Classified  
Health Hazards: The product is classified as not acute toxic, not sub-acute respectively chronically toxic, and classified as not irritating or sensitizing. Causes mild/moderate eye irritation (tears, blurred vision and redness), prolonged exposure may cause moderate skin irritation. May cause drying/defatting of the skin. Not likely to be toxic if ingested, but may cause irritation of the mouth, throat and stomach. See Section 11 for more information

Pictogram: Not Applicable  
Precautionary Statements:  
Environmental Hazards: Not Classified

Chemical family: Bitumen Asphalt without Solvent

This product does not contain any carcinogens or potential carcinogens as listed by OSHA, IARC or NTP.

**ROADSTONE PRODUCTION, LLC.**  
1230 RIVER ROAD, CHARLOTTESVILLE, VA 22901  
866-784-5031 [www.aquaphalt.com](http://www.aquaphalt.com)



## Safety Data Sheet AQUAPHALT PREMIUM 0/4.0, 0/6.0, 0/9.0, 0/12.0,

While this material is not considered hazardous by the OSHA Hazard Communication Standard (29 CFR 1910.1200), this MSDS contains valuable information critical to the safe handling and proper use of the product. This MSDS should be retained and available for employees and other users of this product.

Potential Environmental Effects: See Section 12 for more information

### SECTION 3: COMPOSITION, INFORMATION ON INGREDIENTS

<u>Component</u>	<u>CAS #</u>	<u>% by Wt.</u>
Mineral aggregates	_not applicable_	92 – 94%
OMV Bitumen 106/220	8052-42-4	6-8%

HAZARDS DISCLOSURE: This product contains no known hazardous materials as defined by the OSHA Hazard Communication Standard 29 CFR 1910.1200.

### SECTION 4: FIRST AID MEASURES

Eye contact: Rinse opened eye for several minutes under running water; consult a physician.  
 Skin contact: Remove contaminated clothing and wash before reuse. Wash skin with soap and water. Get medical attention if irritation develops.  
 Inhalation: Not relevant.  
 Ingestion: Do NOT induce vomiting. Do NOT administer anything by mouth to unconscious person. Offer water to drink. Get medical attention.

Note to Physicians: Not relevant.

### SECTION 5: FIRE FIGHTING MEASURES

Suitable Extinguishing Media: Foam, powder, water spray  
 Unsuitable Extinguishing Media: Water stream  
 Products of Combustion: Not applicable  
 Specific firefighting methods: No specific methods required  
 Specific protective devices: Self-contained breathing apparatus  
 Specific hazards: No specific hazards known  
 Protection of Firefighters: Firefighters should wear self-contained breathing apparatus and full fire-fighting turnout gear.

### SECTION 6: ACCIDENTAL RELEASE MEASURES

Personal precautionary measures: No special measures required.  
 Environmental precautionary measures: Observe usual precautions.  
 Methods for cleaning up: Collect mechanically.  
 Other Information: Spills of this material do not need to be reported to the National Response Center.

### SECTION 7: HANDLING AND STORAGE

#### Handling

Keep away from heat, sparks and flame - do not smoke - Do not get in eyes. Do not breathe vapor. Avoid prolonged contact with skin.

#### Storage



## Safety Data Sheet AQUAPHALT PREMIUM 0/4.0, 0/6.0, 0/9.0, 0/12.0,

Requirements on storage rooms and containers: Store in weather / sun protected area! Keep container well closed, material cures by exposure to air. Product residue may remain in empty containers. Observe all label precautions until container is cleaned, reconditioned or destroyed.

Information about storage in a common storage facility:	Not relevant
Further information about storage conditions:	Store in weather / sun protected area
Storage class according to VCI:	Not relevant.
Appropriate application(s):	For patching up asphalt and concrete

### SECTION 8: EXPOSURE CONTROLS/PERSONAL PROTECTION

#### Exposure Guidelines

Component 1: Not established.

Component 2: Not established.

Engineering measures: No special requirement.

Components with critical values that require inspection at the place of work: The product does not contain any relevant quantities of material with critical values, which have to be monitored at a work place.

Eye/face protection: Not required

Skin protection: Wear suitable work gloves.

Respiratory protection: Not required

General Hygiene Considerations: Wash thoroughly after handling. Have eye-wash facilities immediately available. Do not eat, drink and smoke while working.

### SECTION 9: PHYSICAL AND CHEMICAL PROPERTIES

Appearance: black, solid  
 Odor: characteristic  
 Odor threshold: Not available  
 Physical state: mineral – binder - mix  
 pH - value: not relevant  
 Freezing point: not relevant  
 Boiling point: not relevant  
 Flash point: not relevant  
 Flammability: not relevant  
 Upper Flammability Limit: not relevant  
 Lower Flammability Limit: not relevant  
 Vapor pressure at 20 °C/68 °F [mmHg]: not relevant  
 Vapor Density at 25° C [g/ cm<sup>3</sup>]: 2-2.5  
 Solubility in water at 20°C/68 °F: not relevant  
 Solubility in fat at 20 °C/68 °F: not relevant  
 Auto-ignition Temperature: Not available.  
 Dynamic viscosity at 20° C/68 °F [mPas]: not relevant  
 Percent Volatile, wt. %: 0  
 Volatile Organic Compound (VOC) content, wt. %: 0  
 Fire promoting properties [°C]: product is not oxidizing  
 Danger of explosion [°C]: product is not explosive

### SECTION 10: STABILITY AND REACTIVITY



---

**Safety Data Sheet AQUAPHALT PREMIUM 0/4.0, 0/6.0, 0/9.0, 0/12.0,**


---

Stability:	Stable.
Conditions to avoid:	Keep away from heat, sparks and flames.
Incompatible Materials:	not relevant
Possibility of Hazardous Reactions:	Will not occur.
Hazardous Decomposition Products:	Not relevant

### SECTION 11: TOXICOLOGICAL INFORMATION

No adverse effects are expected if this product is handled in accordance with this Safety Data Sheet and the product label. Symptoms or effects that arise when the product is mishandled or overexposure occurs are:

#### ACUTE EFFECTS:

The product is classified as not acute toxic.

#### CHRONIC EFFECTS:

The product is classified as not sub-acute respectively chronically toxic. \*

#### Corrosive or irritant effect or sensitization:

The product is classified as not irritating or sensitizing.

Likely Routes of Exposure:	Eye contact, skin contact.
Eye:	Causes mild/moderate irritation (tears, blurred vision and redness).
Skin:	Prolonged exposure may cause moderate skin irritation. May cause drying/defatting of the skin.
Ingestion:	Not likely to be toxic but may cause irritation of the mouth, throat and stomach.
Inhalation:	Not relevant

#### Medical Conditions Aggravated By Exposure:

May cause more significant skin irritation in people with pre-existing skin conditions.

### SECTION 12: ECOLOGICAL INFORMATION

Mobility in Environment: Not relevant.

Persistence/ Degradability: Not relevant.

Bioaccumulation/ Accumulation: Not relevant.

Further negative effects: There are no negative effects known.

### SECTION 13: DISPOSAL CONSIDERATIONS

Disposal:	Dispose of in accordance with federal, state and local regulations. *
Packaging:	Packaging can be reused or recycled after cleaning. Note local restrictions. *

### SECTION 14: TRANSPORT INFORMATION

UN number	Not applicable
UN Proper shipping name	Not applicable
Transport Hazard class(es)	Not applicable
Packing group, if applicable	Not applicable
Marine pollutant (Y/N)	Not available
Special precautions:	Not available

#### US DOT (ground)

Proper Shipping Description: This product is not regulated for shipping by US DOT.



**Safety Data Sheet AQUAPHALT PREMIUM 0/4.0, 0/6.0, 0/9.0, 0/12.0,**

---

Canadian TDG (ground)  
Proper Shipping Description: See US DOT

ICAO (air)  
Proper Shipping Description: See US DOT

IMDG (water)  
Proper Shipping Description: See US DOT

ADR/ RID  
Proper Shipping Description: See US DOT

ADN/ ADN R  
Proper Shipping Description: See US DOT

**SECTION 15: REGULATORY INFORMATION**

OSHA PROCESS SAFETY (29CFR1910.119): Not regulated.

Inventory Status  
United States (TSCA): All ingredients are on the inventory or exempt from listing.

**SECTION 16: OTHER INFORMATION**

NFPA 704: National Fire Protection Association  
Health – 0      Fire – 0      Reactivity – 1  
0 = minimal hazard, 1 = slight hazard, 2 = moderate hazard, 3 = severe hazard, 4 = extreme hazard

The above SDS complies with OSHA hazard communication standard 29 CFR 1910.1200(g), as revised in 2012.

To the best of our belief, information and knowledge, we believe the information contained in this MSDS to be accurate and reliable as of the date of this Material Safety Data Sheet. The above information is based on information received from raw material suppliers and other sources and references the products as currently formulated. We make no expressed or implied warranty regarding the accuracy or reliability of the data or results obtained from the use of the product and assume no responsibility or liability for personal injury or property damage incurred by the use of these materials due to the fact that the conditions of handling, use, and storage of these materials are beyond our control. Any and all materials should be used with caution and may present unknown hazards. The information and recommendations in this material safety data sheet are offered for the users' consideration and examination. It is each user's responsibility to determine if the information and data contained herein is suitable and to comply with all applicable international, federal, state, and local laws and regulations.

Modifications compared to a prior version are marked with the star symbol \* on the right margin.

Prepared by Roadstone Production LLC (revised by OHK Environmental Consulting, LLC, July 2015)



## Curing Guarantee / Limited Extended Warranty”



### ROADSTONE PRODUCTION LLC [“RSP”] DbA **AQUAPHALT™**

A. RoadStone Production LLC, a Virginia limited liability company [“RSP”], provides an **unlimited** “CURING GUARANTEE” to the Customer that **Aquaphalt™** product[s], produced by “RSP”, and sold by its authorized Distributors will cure, upon proper installation – as directed in written form by the manufacturer and applicable standards – within a reasonable time frame [24 hours to 120 hours] from the date of installation.

**A1.** **Aquaphalt™** guarantees that material installed correctly will cure within 2 to 12 hours, depending on the outside temperatures and will be able to be cored 24 hours after installation. The Marshall Stability [according to ASTM D 6927-06 Standard Test Method for Marshall Stability and Flow of Bituminous Mixtures], upon coring shall meet a minimum of >1KN.

B. Furthermore, “RSP” warrants that the ‘CURED’ **Aquaphalt™** product[s] will be free from manufacturing defects for at least thirty-six (36) months from the date of installation (the extended "Warranty Period"), normal wear and tear excepted. **This limited extended Warranty ("Limited Warranty")** is not transferable and shall extend only to the **Aquaphalt™** installation performed by the purchasing customer or it’s authorized Contractors. This Limited Warranty is subject to the following terms, conditions and limitations:

**B1.** The Limited Warranty applies to all **Aquaphalt™** products manufactured by “RSP” and sold through “RSP’s” authorized Distributors. The Limited Warranty shall not apply without a receipt of purchase and unless payment for the **Aquaphalt™** product[s] has been made in full.

**B2.** The Limited Warranty applies only to the following materials: (a) **Aquaphalt™** 12.0 mm; (b) **Aquaphalt™** 9.0 mm; (c) **Aquaphalt™** 6.0 mm; (d) **Aquaphalt™** 4.0 mm . No materials provided by the Customer or other third party will be warranted by “RSP”, and use of such materials will void this Limited Warranty in its entirety.

**B3.** This Limited Warranty is void if failure of the **Aquaphalt™** product[s] results from accident, abuse, expired/improper use, neglect, or any other cause not directly resulting from a defect of **Aquaphalt™** product[s]. If failure of curing results from any of the above conditions, all warranty work, including material and labor, shall be the sole responsibility of the Customer.



## Curing Guarantee / Limited Extended Warranty

---

**B4.** “RSP’s” sole obligation under this Limited Warranty shall be limited to (a) returning the purchase price or (b) replacing the Aquaphalt™ product[s], excluding repair costs, at “RSP”’s option after reasonable inspection. Any claim must be made within the Warranty Period. All warranty inspections must be performed either by “RSP” or by a “RSP’s” authorized Distributor. A warranty claim must be approved in writing by “RSP”. Replaced Aquaphalt™ Products under this Limited Warranty will be warranted for the remainder of the original limited warranty term.

**B5.** The Customer must make a reasonable documented installation inspection upon completion of installation and notify “RSP” or the territorial authorized distributor of any apparent defects within 30 days of completion of the installation.

**B6.** Customer agrees that the following will render the above Limited Warranty void: (i) alteration, removal or tampering with any of “RSP’s” Materials or (ii) any unauthorized modification of the “RSP” product[s]. In no event shall “RSP” be responsible for the cost of or any damage resulting from any changes, modifications, alterations to the “RSP” product[s] not expressly authorized in writing by “RSP”.

**B7.** “RSP” AND ITS AUTHORIZED DISTRIBUTOR[S] WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CLAIMED TO HAVE RESULTED FROM THE USE, OPERATION OR PERFORMANCE OF THE AQUAPHALT™ PRODUCT[S], REGARDLESS OF THE FORM OF ACTION. IN NO EVENT WILL MANUFACTURER BE LIABLE TO CUSTOMER FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY COVER, LOSS OF INFORMATION, PROFIT, REVENUE OR USE BASED UPON ANY CLAIM BY CUSTOMER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF RSP HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, OR (B) ANY CLAIM WHETHER IN CONTRACT OR TORT THAT AROSE MORE THAN ONE YEAR PRIOR TO INSTITUTION OF SUIT THEREON. “RSP” SHALL ONLY BE LIABLE FOR ACTUAL DAMAGES RESULTING FROM A MATERIAL BREACH OF THIS LIMITED WARRANTY AND FOR **PERSONAL INJURY** OR PROPERTY DAMAGES DIRECTLY RESULTING FROM GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT ON THE PART OF “RSP” **UP TO, BUT NOT EXCEEDING, THE PURCHASE PRICE FOR THE AQUAPHALT™ PRODUCT[S] PAID HEREUNDER.**

**B8.** THIS LIMITED WARRANTY CONSTITUTES THE SOLE AND EXCLUSIVE REMEDY OF THE CUSTOMER AND THE EXCLUSIVE LIABILITY OF “RSP”. THIS LIMITED WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, BASED IN STATUTE, COMMON LAW OR EQUITY, AS TO THE MERCHANTABILITY, FITNESS FOR PURPOSE SOLD, DESCRIPTION, QUALITY, OR FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE OR ANY OTHER MATTER.



## Curing Guarantee / Limited Extended Warranty”

---

**B9.** This Limited Warranty excludes all damage, including damage due to any of “RSP’s” product[s], due to: (a) failure to follow “RSP’s” proper installation instructions; (b) structural failure, inadequate foundation or ground, improper preparation and/or structural movements; (c) Acts of God; or (d) improper application by unauthorized persons/corporations. By accepting “RSP’s” Aquaphalt™ product[s], Customer agrees to carefully evaluate the suitability of “RSP’s” Aquaphalt™ product[s] for Customer’s intended use.

**B10.** “RSP” reserves the right to make changes in design and improvements upon “RSP’s” Aquaphalt™ product[s] from time to time, and Customer understands that “RSP” shall have no obligation to upgrade any previously manufactured Aquaphalt™ product[s] to include any such changes.

**B11.** To the extent that any applicable law does not allow the exclusion or limitation of incidental, consequential or similar damages, the foregoing limitations regarding such damages shall not apply.

**B12.** This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from state to state. This Limited Warranty shall be governed by the laws of the Commonwealth of Virginia.

### **C. WARRANTY CLAIM PROCEDURES:**

**C1.** If you are having problems with “RSP’s” Aquaphalt™ product[s], you must first contact “RSP” or it’s authorized Distributor within 15 days of discovery of the alleged manufacturing defect. If you are unable to resolve the problem through your authorized Distributor, contact “RSP’s” Customer Service Department in Charlottesville, VA, at **866-784-5031** between 8:00 a.m. and 4:00 p.m. EST and ask to speak with a customer service representative.

**C2.** If a “RSP” Aquaphalt™ product[s] problem is confirmed as a result, a shipping date of the replacement Aquaphalt™ product[s] will be arranged. If, during inspection of the problem onsite, “RSP”, or its authorized Distributor determine the problem is covered by the Limited Warranty, required replacement Aquaphalt™ product[s] will be shipped to customer. If the problem is not covered by the Limited Warranty, you will be informed of the reason and be provided an estimate of replacement Aquaphalt™ product[s] costs. If you authorize “RSP” or its authorized Distributor to ship additional Aquaphalt™ product[s], such shipment will be arranged promptly. **You will be billed for costs for testing and adjustments not covered by the Limited Warranty, including travel and accommodation costs.** In most cases, authorized shipments will be arranged within 2 to 4 weeks.



**From:** [Bill Grant](#)  
**To:** [Botts, Rene](#)  
**Subject:** Re: 6112 OF, Water Activated Cold Patch clarification  
**Date:** Thursday, August 1, 2019 1:59:43 PM

---

A tech data sheet, SDS and brochure was included in the envelope with the completed bid form. Please confirm that you received the TDS, SDS and brochure.

Thank you, Bill Grant  
Stetson Building Products

Sent from my iPhone

On Aug 1, 2019, at 1:43 PM, Botts, Rene' <[rene.botts@nebraska.gov](mailto:rene.botts@nebraska.gov)> wrote:

Mr. Grant,

At your earliest convenience, please provide a copy of the Material Specification Sheet(s) for the Aquaphalt 6.0 product submitted in your bid.

Please respond to this email and attach a scan of the Aquaphalt 6.0 Material Specification Sheet(s). I will confirm receipt upon delivery.

Thank you,

**René A. Botts, C.L.S.S.Y.B.**

*Buyer III* | Materiel Division, State Purchasing Bureau  
1526 K Street, Suite 130 | Lincoln, NE 68508

**Nebraska Department of Administrative Services**

OFFICE 402-471-0971

FAX 402-471-2089

[rene.botts@nebraska.gov](mailto:rene.botts@nebraska.gov)

[das.nebraska.gov](http://das.nebraska.gov) | [Facebook](#) | [Twitter](#)

**II. TERMS AND CONDITIONS**

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

The Contractor should submit with their proposal any license, user agreement, service level agreement, or similar documents that the Contractor wants incorporated in the Contract. Upon notice of Intent to Award, the Contractor 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 Contractor's proposal. 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 Solicitation Response (Initial)	NOTES/COMMENTS:
wfg			

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

1. Invitation to Bid and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Contractor's proposal response;
5. The executed Contract and any Addenda, if applicable, and properly submitted documents; and,
6. 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 solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor's submitted Proposal.

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. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wjs</i>			

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties identified in the contract, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

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

**C. NOTICE (POC)**

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

**D. GOVERNING LAW (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this contract must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

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

**E. AMENDMENT**

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

**F. CHANGE ORDERS OR SUBSTITUTIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wjs</i>			

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

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

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

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

**G. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**H. BREACH**

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

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. OR In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

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)

**I. NON-WAIVER OF BREACH**

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

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.

**J. SEVERABILITY**

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

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.

**K. INDEMNIFICATION**

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

**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 contract, 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 contract to the extent provided by law.

**L. ATTORNEY'S FEES**

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

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

**M. ASSIGNMENT, SALE, OR MERGER**

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

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.

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

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

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.

**O. FORCE MAJEURE**

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

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 man-made event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

**P. CONFIDENTIALITY**

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

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.

**Q. EARLY TERMINATION**

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

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.

**R. CONTRACT CLOSEOUT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>WJG</i>			

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

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

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 Solicitation Response (Initial)	NOTES/COMMENTS:
Wefj			

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 proposal 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 proposal. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its proposal 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 solicitation 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 solicitation.

**D. COOPERATION WITH OTHER CONTRACTORS**

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

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. 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 proposal. 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.

**F. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

All prices, costs, and terms and conditions outlined in the bid shall remain fixed and valid commencing on the opening date of the bid until the contract is awarded or the ITB is cancelled. Prices quoted on the ITB form or Cost Sheet shall remain fixed for one (1) year of the contract period. Any request for a price increase subsequent to the initial one (1) year period must be submitted in writing to the SPB for approval, and be accompanied by documentation justifying the price increase. These documents include, but are not limited to: 1) invoices for physical components of contracted item(s) Further documentation may be required by the State to justify the increase.

The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State will be given full proportionate benefit of any decreases for the term of the contract.

**G. COST CLARIFICATION**

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

**H. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wey</i>			N/A

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.

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wey</i>			

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.

**J. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
<i>wey</i>			

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.

**K. CONFLICT OF INTEREST**

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

By submitting a proposal, 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 solicitation 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 and services 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 (2) years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the solicitation or project, or who had any influence on decisions affecting the solicitation or project.

**L. STATE PROPERTY**

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

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.

**M. SITE RULES AND REGULATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
WJS			N/A

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.

**N. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
WJS			N/A

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

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

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

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

**P. DRUG POLICY**

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

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.

**Q. WARRANTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
WJG			Per Manufacturer Warranty

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Contract. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**IV. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

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

**B. TAXES (Statutory)**

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**

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Payment will be made based on 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 Solicitation Response (Initial)	NOTES/COMMENTS:
WJS			

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

**E. PAYMENT**

Payment will be made by the responsible agency. The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and 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. 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.

**G. RIGHT TO AUDIT (First Paragraph is 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.

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

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 Contractor must provide the following information in response to this solicitation.

### A. SCOPE

It is the intent of this proposal invitation to establish a contract to supply **Water Activated Cold Patch Material for the Nebraska Department of Transportation area locations throughout the State of Nebraska** per the attached specifications from date of award for a period of two (2) years with the option to renew for an additional three (3) one (1) year periods when mutually agreeable to the contractor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the contractor and the State.

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

**ACCEPTABLE MATERIALS** - Products bid must meet the material specifications.

Physical review(s) of utilized material performance may be conducted by the Contractor and NDOT throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract.

### **PROCEDURE FOR PRODUCT CERTIFICATION –**

The manufacturer must provide a signed product Certification of Compliance meeting all of the material specifications within this ITB. Manufacturer's current descriptive literature and/or advertising data sheets with cuts or photographs must also be included with the bid. 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.

**VI. TECHNICAL SPECIFICATIONS**

**A. CONTRACTOR INSTRUCTIONS**

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

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

“NO” response means the Contractor 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 Contractor’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 Contractor’s alternative is an acceptable alternative.

All items bid shall conform to section 1033 in the 2017 Nebraska Department of Transportation Standard Specifications <https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.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 2017 Edition as amended in this Specification and amendments to the Division 1000.**

**B. NON-COMPLIANCE STATEMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
wfg			<p>1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your proposal.</p>
wfg			<p>2. It is the responsibility of Contractors to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Contractor.</p>
wfg			<p>3. No interpretation related to the meaning of solicitation specifications or other pre-proposal documents will be made orally to any Contractor by the State. Any solicitation interpretation must be put in writing by the Contractor to: the State Purchasing Bureau, E-mail questions to SPB. <a href="mailto:as.materieipurchasing@nebraska.gov">as.materieipurchasing@nebraska.gov</a> by the last day to submit written questions per the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).</p>
<p><b>NOTES/COMMENTS:</b></p>			

C. GENERAL SPECIFICATIONS: WATER ACTIVATED COLD PATCH MATERIAL

YES	NO	NO & PROVIDE ALTERNATIVE	
yes			1. The Bituminous Cold Patch Material will be designed in size ¼ inch (6 mm).
yes			2. Grade shall be manufactured so it can perform and when applied within the temperature range of 0 to 120 degrees Fahrenheit.
yes			3. The patching material must be able to withstand vehicular traffic immediately after placement and not strip, kick up or ravel out afterwards and designed to be fully cured in 24 hours.
yes			4. The material must be ready to use and only require water for placement, even in sub-freezing weather.
yes			5. The Water Activated Cold Patch Material shall consist of a binder and aggregate within prescribed quantities to make a mixture which will provide satisfactory workability and adhesion characteristics.
yes			6. The patching mixture will be able to function as a patch during cold and damp weather, and during hot weather in bituminous and concrete pavement.
NOTES/COMMENTS:			

D. MATERIAL REQUIREMENTS: LIQUID ASPHALT

YES	NO	NO & PROVIDE ALTERNATIVE	
yes			1. The binder shall be a combination of plant based binders and bitumen at 5 to 9% binder by weight of mix.
yes			2. Liquid Asphalt shall meet the following AASHTO and ASTM Test requirements: <ul style="list-style-type: none"> <li>o AASHTO T-85, Specific Gravity &lt;=3.0 ✓</li> <li>o AASHTO T-176, SE value &gt;80 ✓</li> <li>o AASHTO T-304, FAA value &gt;45 ✓</li> <li>o AASHTO T-11, % passing #200 ✓</li> <li>o AASHTO T-27, uniform consistency of material ✓</li> <li>o AASHTO T-308, 5-9% binder and obtain raw aggregate ✓</li> <li>o AASHTO T-30, Gradation Requirements ✓</li> <li>o AASHTO T-209, Max Density ✓</li> <li>o AASHTO T-245, Stability and Flow ✓</li> <li>o AASHTO TP-43, workability of product at 4 +/- 1 deg C ✓</li> </ul>
NOTES/COMMENTS:			

**E. AGGREGATE**

YES	NO	NO & PROVIDE ALTERNATIVE					
wjg			1. Aggregate shall be crushed stone and shall meet the following requirements:				
wjg			2. <table border="1"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>1/2" (12.5 mm)</td> <td>100</td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	1/2" (12.5 mm)	100
Sieve Analysis	Percent Passing						
1/2" (12.5 mm)	100						
wjg			3. <table border="1"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>3/8" (9.5mm)</td> <td>90 - 100</td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	3/8" (9.5mm)	90 - 100
Sieve Analysis	Percent Passing						
3/8" (9.5mm)	90 - 100						
wjg			4. <table border="1"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#4 (4.75 mm)</td> <td>85 - 100 <i>90% max</i></td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#4 (4.75 mm)	85 - 100 <i>90% max</i>
Sieve Analysis	Percent Passing						
#4 (4.75 mm)	85 - 100 <i>90% max</i>						
wjg			5. <table border="1"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#8 (2.36 mm)</td> <td>20 - 67 <i>32-67</i></td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#8 (2.36 mm)	20 - 67 <i>32-67</i>
Sieve Analysis	Percent Passing						
#8 (2.36 mm)	20 - 67 <i>32-67</i>						
wjg			6. <table border="1"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#16 (1.18 mm)</td> <td>-----</td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#16 (1.18 mm)	-----
Sieve Analysis	Percent Passing						
#16 (1.18 mm)	-----						
wjg			7. <table border="1"> <thead> <tr> <th>Sieve Analysis</th> <th>Percent Passing</th> </tr> </thead> <tbody> <tr> <td>#200 (0.075 mm)</td> <td>2 - 10</td> </tr> </tbody> </table>	Sieve Analysis	Percent Passing	#200 (0.075 mm)	2 - 10
Sieve Analysis	Percent Passing						
#200 (0.075 mm)	2 - 10						
wjg			8. Soundness Loss (Sodium, 5 cycles), ASTM C 88, 12.0 max.				
wjg			9. Los Angeles Abrasion Loss, ASTM C 131, 45.0% max.				
wjg			10. Specific Gravity, ASTM C 127, 2.45 - 2.85.				
wjg			11. Absorption, ASTM C 128, 3.0% max.				
wjg			12. Minus 200 Sieve (0.075mm) Wash Loss, ASTM C 117, 2.5% max.				
<b>NOTES/COMMENTS:</b>							

**F. PRODUCTION AND COMPLIANCE**

YES	NO	NO & PROVIDE ALTERNATIVE	
Wgg			1. All mix delivered to the NDOT must be accompanied with a Certificate of Compliance stating the mix type meets these specifications.
Wgg			2. As a condition of this contract, the successful bidder must agree to furnish on site personnel, at no additional cost, to the NDOT to assist in resolving problems in event material problems develop.
NOTES/COMMENTS:			

**G. ANNUAL USAGE, ESTIMATED**

YES	NO	NO & PROVIDE ALTERNATIVE	
Wgg			1. Annual usage figures provided on the bid lines 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. Contractor shall not impose minimum order requirements.
NOTES/COMMENTS:			

**H. USAGE REPORT**

YES	NO	NO & PROVIDE ALTERNATIVE	
Wgg			1. The contractor shall, upon request, 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:			

I. PRICES

YES	NO	NO & PROVIDE ALTERNATIVE	
<i>wjs</i>			<p>1. Price quoted shall be unit price (per pound) 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 increase 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.</p>
<p>NOTES/COMMENTS:</p>			

J. DELIVERY ARO

YES	NO	NO & PROVIDE ALTERNATIVE	
<i>wjs</i>			<p>1. Deliveries of Water Activated Cold Patch Material shall be FOB destination to all NDOT locations specified on the purchase order or as directed by NDOT at the time of purchase in accordance with this ITB. A NDOT District contact person and phone number will be given to the Contractor when an order is placed. Contractor must notify the NDOT District contact a minimum of 24 hours prior to the anticipated delivery. Contractor shall maintain sufficient inventory to process and deliver within 30 days after receipt of order(s). There will be no minimum order requirements.</p>
<i>wjs</i>			<p>2. If the Contractor is unable to meet delivery schedules, the ordering District Superintendent must be notified within three (3) days from the date the order was placed. If it is nearing the delivery date and for some unforeseen reason the Contractor is unable to meet expected delivery, the ordering District shall be notified at least 48 hours in advance. The order may be cancelled if the delivery date is unsatisfactory, and the State may procure item(s) from other sources. The contractor may be held responsible for an/all excess cost. Failure to meet delivery requirements of the contract may constitute a breach of the contract.</p>

			<p><b>3. NDOT Superintendent Phone Listing</b></p> <ul style="list-style-type: none"> <li>• District One – Lincoln, NE. Phone: 402-471-0850</li>   <li>• District Two – Omaha, NE. Phone: 402-935-5438 Fremont, NE. Phone: 402-727-3292 Elkhorn, NE. Phone: 402-289-4444</li>   <li>• District Three – Norfolk, NE. Phone: 402-370-3477 Columbus, NE. Phone: 402-564-4126 Neligh, NE. Phone: 402-887-5441 South Sioux City, NE. Phone: 402-494-6826 Wayne, NE. Phone: 402-375-7070</li>   <li>• District Four – Grand Island, NE. Phone: 308-385-6263 Hastings, NE. Phone: 402-462-1996 Ord, NE. Phone: 308-728-3761 York, NE. Phone: 402-362-5930</li>   <li>• District Five – Gering, NE. Phone: 308-436-6587 Chadron, NE. Phone: 308-432-6141 Sidney, NE. Phone: 308-254-6932</li>   <li>• District Six - North Platte, NE. Phone: 308-535-8010 Lexington, NE. Phone: 308-324-3885 Ogallala, NE. Phone: 308-284-8070 Broken Bow, NE. Phone: 308-872-6733 Mullen, NE. Phone: 308-546-2241</li>   <li>• District Seven – McCook, NE. Phone: 308-345-8495 Holdrege, NE. Phone: 308-995-4242</li>   <li>• District Eight – Ainsworth, NE Phone: 402-387-2472 Valentine, NE. Phone: 402-376-1350 O'Neill, NE. Phone: 402-336-2051</li> </ul>
			<p><b>4.</b> Deliveries shall be made during normal working hours between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday (excluding State holidays and / or as otherwise directed). If an emergency exists, delivery may be made through prior arrangements with receiving personnel.</p>
			<p><b>5.</b> At the time of delivery, a designated State of Nebraska employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.</p>
<p><b>NOTES/COMMENTS:</b></p>			

**K. PACKAGING**

YES	NO	NO & PROVIDE ALTERNATIVE	
wjg			1. Packages are to be clearly marked with aggregate size, and weight.
wjg			2. Packaging must be of suitable size and of sufficient strength to protect the contents during shipping, handling and storage.
wjg			3. Packaging must be weather/waterproof, sold in buckets or bags with a shelf life of at least one year.  State package type here: <u>50Lb Pail</u>
NOTES/COMMENTS: k. 3. 36 Pails Per Pallet			

**L. ORDERS**

YES	NO	NO & PROVIDE ALTERNATIVE	
wjg			1. Orders will be placed either by, phone, fax, e-mail or Internet (if available and not to the exclusion of the other methods).
wjg			2. All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order.
NOTES/COMMENTS:			

**M. QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
wjg			1. Product quality must meet specifications and be consistent for the term of the contract. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance.
wjg			2. A guarantee of satisfactory performance by the contractor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this proposal invitation.
wjg			3. 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. 3. Per Manufacturer Warranty			

**N. AUTHORIZED DEALER & WARRANTY**

YES	NO	NO & PROVIDE ALTERNATIVE	
yes			1. To the extent required by the manufacturer, the Contractor shall be an authorized dealer. Contractor may be required to substantiate that he/she is an authorized dealer. Proof, if required, must be submitted to SPB within three (3) business days of the request and prior to the award of any contract.
yes			2. The terms of the original manufacturer's standard warranty shall apply to all product acquired from this solicitation for the entire warranty period.
NOTES/COMMENTS:			

**O. PERFORMANCE GUARANTEE**

YES	NO	NO & PROVIDE ALTERNATIVE	
yes			1. The material shall remain workable in the application temperature range for a period of not less than twelve (12) months.
yes			2. Repaired potholes shall not show any significant signs of shoving, rutting, tracking, kick-up or ravel-out within a period of twelve (12) months from the time of repair.
yes			3. The material shall be capable of being overlaid with hot mix asphalt after placement and compaction and shall not bleed through or affect the performance of the hot mix asphalt.
yes			4. For any uncompliant materials not meeting specifications and representations provided on the ITB, NDOT in its sole discretion shall have the right to either accept the materials at a Pay Factor of 40% as listed within section VI., P. of this ITB or reject the material and request replacement material by Contractor, at the Contractor's expense, within fifteen (15) business days FOB destination to the location on the original purchase order.
NOTES/COMMENTS: 0, 2. when Installed Per Manufacturer Installation Instructions. No Training NEEDED. Technical Data Sheet will Be Provided upon Request.			

**P. ACCEPTANCE AND PAY FACTOR**

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

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

YES	NO	NO & PROVIDE ALTERNATIVE	
WJG			<p>1. NDOT reserves the right to acquire a random sample of the materials at any time during the term of the contract for testing to determine specification compliance as provided in the ITB.</p>
<p>NOTES/COMMENTS:</p>			