

# State of Nebraska - INVITATION TO BID

## CONTRACT

Date	01/07/22	Page	1 of 2
Solicitation Number	6615 OF		
Opening Date and Time	02/01/22	2:00 pm	
Buyer	BRENDA SENSIBAUGH (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 Polymer Modified Asphalt Pavement Repair Mastic 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.

(MH 12/29/21)

### INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	DIST 1 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB	_____	_____
2	DIST 1 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB	_____	_____
3	DIST 2 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB	_____	_____
4	DIST 2 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB	_____	_____

### BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: \_\_\_\_\_ % \_\_\_\_\_ DAYS

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

Sign

Here

(Authorized Signature Mandatory – Form must be signed manually in ink or by DocuSign)

Enter Contact Information Below

VENDOR#

VENDOR:

Address:

Contact

Telephone

Email

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 MULTIPLE DELIVERY LOCATIONS  
 PLEASE REFER TO DOCUMENTATION  
 FOR DELIVERY ADDRESSES.

### INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
5	DIST 3 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB		
6	DIST 3 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB		
7	DIST 4 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB		
8	DIST 4 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB		
9	DIST 5 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB		
10	DIST 5 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB		
11	DIST 6 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB		
12	DIST 6 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB		
13	DIST 7 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB		
14	DIST 7 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB		
15	DIST 8 POLYMER MODIFIED MELTABLE BLOCK	44,000.0000	LB		
16	DIST 8 POLYMER MODIFIED CARDBOARD BOX	44,000.0000	LB		

# INVITATION TO BID

## Number 6615 OF

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for a Polymer Modified Asphalt Pavement Repair Mastic contract, ITB Number 6615 OF for the purpose of selecting a qualified Bidder to provide Polymer Modified Asphalt Pavement Repair Mastic. A more detailed description can be found in Section VI. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be two (2) years commencing upon execution of the contract by the State and the Contractor (Parties)/notice to proceed. The Contract includes the option to renew for three (3) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

### INFORMATION PERTINENT TO THIS SOLICITATION CAN BE FOUND ON THE INTERNET AT:

<http://das.nebraska.gov/materiel/purchasing.html>

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.02, State contracts in effect as of January 1, 2014, and contracts entered thereafter, must be posted to a public website. The resulting contract, the ITB, and the successful Bidders bid, or response will be posted to a public website managed by DAS, which can be found at:

<https://statecontracts.nebraska.gov>

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

These postings will include the entire bid.. Bidders must request that proprietary information be excluded from the posting. The Bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method, or by DocuSign with the words "PROPRIETARY INFORMATION". The Bidder must submit a **detailed written document showing** that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE BIDDER MAY NOT ASSERT THAT THE ENTIRE BID IS PROPRIETARY. BIDS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA. BIDS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will determine, in its sole discretion, if the disclosure of the information designated by the Bidder as proprietary would 1) give advantage to business competitors and 2) serve no public purpose. The Bidder will be notified of the State's decision. Absent a determination by the State that the information may be withheld pursuant to Neb. Rev. Stat. § 84-712.05, the State will consider all information a public record subject to disclosure. If the agency determines it is required to release proprietary information, the Bidder will be informed. It will be the Bidder's responsibility to defend the Bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, bid, or response to this ITB for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a bid or response to this ITB, specifically waives any copyright or other protection the contract, bid, or response to the ITB may have; and acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a bid or response to this ITB, and award of a contract. Failure to agree to the reservation and waiver will result in the bid or response to the ITB being found non-responsive and rejected.

**Any entity awarded a contract or submitting a bid or response to the ITB agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the bids and responses to the ITB, awards, and other documents.**

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## GLOSSARY OF TERMS

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

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

**After Receipt of Order :** After Receipt of Order.

**Agency:** Using agencies shall mean and include all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations.

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

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

**Amendment:** A written correction or alteration to a document.

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

**Automated Clearing House :** Electronic network for financial transactions in the United States.

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

**Best and Final Offer :** In a competitive proposal, the final offer submitted which contains contractor's most favorable terms for price.

**Bid:** An offer, bid, or quote submitted by a contractor/vendor in a response to a written ITB.

**Bidder:** A Vendor who submits a bid in response to a written ITB.

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

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

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

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

**Cancellation:** To call off or revoke a proposal, purchase order or contract without expectation of conducting or performing at a later time.

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

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

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

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

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

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

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

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

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

**Contract Period:** The duration of the contract.

**Contractor:** An individual or entity lawfully conducting business in the State, who seeks or agrees to provide goods or services under the terms of a written contract. **Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

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

**Core List:** Items specifically listed on the ITB upon which a bid is evaluated for award.

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

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

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

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

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

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

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

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

**Invalid Bid:** A bid that does not meet the requirements of the ITB or cannot be evaluated against the other bids.

**Invitation to Bid :** A written ITB utilized for obtaining competitive offers for Goods.

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

**Mandatory/Must:** Required, compulsory, or obligatory.

**May:** Discretionary, permitted; used to express possibility.

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

**Must:** See Mandatory.

**National Institute for Governmental Purchasing :** National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and services.

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

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

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

**Payroll & Financial Center :** Electronic procurement system of record.

**Point of Contact :** The person designated to receive communications and to communicate.

**Pre-Bid Conference:** A meeting scheduled for the purpose of clarifying a written ITB and related expectations.

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

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

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

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

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

**Release Date:** The date of public release of the written ITB to seek offers.

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

**Request for Information :** A general invitation to vendor is requesting information for a potential future ITB. The RFI is typically used as a research and information gathering tool for preparation of an ITB.

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

**Responsive Vendor:** A Vendor who has submitted a bid which conforms to all requirements of the ITB document.

**Shall:** See "Mandatory".

**Should:** Expected; suggested, but not necessarily mandatory.

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

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

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

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

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

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

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

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. § 87-502(4)).

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

**Upgrade:** Any change that improves or alters the basic function of a product of service.



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

**Vendor:** Inclusive term for any Bidder or Vendor

**Will:** See "Mandatory".

**Work Day:** See "Business Day".

## ACRONYM LIST

**ARO** – After Receipt of Order

**ACH** – Automated Clearing House

**ASTM** – American Society for Testing and Materials

**BAFO** – Best and Final Offer

**COI** – Certificate of Insurance

**DAS** – Department of Administrative Services

**DIST** - District

**F.O.B.** – Free on Board

**ITB** – Invitation to Bid

**HWY** – Highway

**ITB** – Invitation to Bid

**NA** – None Applicable

**NDOT** – Nebraska Department of Transportation

**NIGP** – National Institute for Governmental Purchasing

**PA** – Participating Addendum

**POC** – Point of Contact

**RFI** – Request for Information

**RFP** – Request for Proposal

**SPB** – State Purchasing Bureau

**TBD** – To Be Determined

## I. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

The solicitation is designed to solicit bids from qualified Vendors who will be responsible for providing Polymer Modified Asphalt Pavement Repair Mastic at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Bids instructions, and Cost Bid Requirements may be found in Sections II through VI.

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

### B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

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

ITB#: 6615 OF  
Name: Brenda Sensibaugh, Procurement Contracts Officer  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508

Telephone: 402-471-6500

E-Mail: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

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

The following exceptions to these restrictions are permitted:

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

*The State reserves the right to reject a bidders bid, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.*

### C. SCHEDULE OF EVENTS

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

ACTIVITY		DATE/TIME
1.	Release ITB	1-7-22
2.	Last day to submit written questions  Upload electronic submissions via ShareFile to: <a href="https://nebraska.sharefile.com/r-r9295f546af6541eeb256162c6230f4b1">https://nebraska.sharefile.com/r-r9295f546af6541eeb256162c6230f4b1</a>	1-17-22
3.	State responds to written questions through an ITB "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	1-21-22

ACTIVITY		DATE/TIME
4.	<p><b>Electronic Bid Opening via Zoom Meeting:</b> Electronically submitted bids are being accepted due to the challenges of COVID-19.</p> <p><b>Upload electronic Bid submissions for 6559 OF via ShareFile to:</b> <a href="https://nebraska.sharefile.com/r-r1f29f74347004adf97202e5fdffda0ba">https://nebraska.sharefile.com/r-r1f29f74347004adf97202e5fdffda0ba</a></p> <p><b>Zoom Meeting Information:</b></p> <p><a href="https://us02web.zoom.us/j/2629176739?pwd=NkhobXNpOU94UmFmTG1wYmJqTXhpUT09">https://us02web.zoom.us/j/2629176739?pwd=NkhobXNpOU94UmFmTG1wYmJqTXhpUT09</a></p> <p>Meeting ID: 262 917 6739 Passcode: 5VwBuR</p> <p><b>IT IS THE BIDDERS' RESPONSIBILITY TO ENSURE ALL BIDS SHALL BE SUBMITTED AND RECEIVED BY THE DATE AND TIME INDICATED IN THE SCHEDULE OF EVENTS FOR EACH BID SUBMITTED.</b></p>	<p>2-1-22 2:00 PM Central Time</p>
5.	<p>Post "Notification of Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a></p>	TBD

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any ITB provision must be submitted in writing to SPB and clearly marked "ITB Number **ITB 6615 OF; Polymer Modified Asphalt Pavement Repair Mastic.**" Questions". POC is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should present, as questions, any assumptions upon which the Bidder's bid is or might be developed. Bids will be evaluated without consideration of any known or unknown assumptions of a Bidder. The contract will not incorporate any known or unknown assumptions of a Bidder.

**Bidders are to be sure to upload their Questions and Answers to the correct ShareFile link listed below:**

<https://nebraska.sharefile.com/r-r9295f546af6541eeb256162c6230f4b1>

It is recommended the Bidder submit questions using the following format:

ITB Section Reference	ITB Page Number	Question

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

**E. RECYCLING (§ 81-15,159(d)(2))**

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

The State also encourages the use of products utilizing soy or beets, however, the State cannot give a preference for using these products.

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

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

**G. ETHICS IN PUBLIC CONTRACTING**

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

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process.
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process.
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity:
4. Submitting a bid on behalf of another party or entity;
5. Collude with any person or entity to influence the bidding process, submit sham bids, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State.

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

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

**H. DEVIATIONS FROM THE INVITATION TO BID**

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

**I. SUBMISSION OF BIDS**

**\*\*\*ALL BIDS MUST BE SUBMITTED ELECTRONICALLY!\*\*\***

The State is accepting only electronically submitted responses for this ITB.

It is the Bidders responsibility to ensure the bid is submitted and received by the date and time indicated in the Schedule of Events. All electronic bids must be received by the State Purchasing Bureau by the date and time of the bid opening per the Schedule of Events.

**"No late bids will be accepted."**

The State shall not incur any liability for any costs incurred by bidders in replying to this ITB, in the demonstrations and/or oral presentations, or in any other activity related to bidding on this ITB.

The ITB form must be manually signed in an indelible manner or by DocuSign and returned by the bid opening date and time along with the bidder's Invitation to Bid and any other requirements as stated in the Invitation to Bid document for the bidder's Invitation to Bid response to be evaluated.

It is the responsibility of the bidder to check the website for all information relevant to this Invitation to Bid to include addenda and/or amendments issued prior to the opening date.

Website address is as follows: <http://das.nebraska.gov/materiel/purchasing.html>.

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

By signing the Invitation to Bid, the Bidder guarantees compliance with the provisions stated in this ITB.

#### **BIDDERS SUBMITTING ELECTRONIC RESPONSES:**

##### **1. ELECTRONICALLY UPLOADING BID(S) TO SHAREFILE**

- a. Bidders should upload bid(s) via ShareFile Link to:  
<https://nebraska.sharefile.com/r-r3edf7c171dda41f9991b06581d5bcdd1>
- b. **Bidders are to be sure to upload their Bid(s) to the correct ShareFile link listed in the bid.**
- c. ShareFile works with Firefox, Internet Explorer and Chrome. It does not work with Microsoft Edge. The ITB, Cost Sheet (if applicable), and Proprietary Information (if applicable) Should be uploaded as separate and distinct files. If multiple bids are submitted, the State Will retain only the most recently submitted response.
- d. **After the bidder clicks the bid submission link, the bidder will be prompted to enter contact information including an e-mail address so that the bidder will receive a confirmation email confirming the successful upload directly from ShareFile.**

##### **2. OTHER BID DOCUMENTS TO UPLOAD TO SHAREFILE**

- a. Any "Proprietary information" (if applicable) should be uploaded as separate and distinct files. "6615 OF<<NAME OF BIDDER>> PROPRIETARY".
- b. If it is the bidder's intent to submit multiple bids, the bidder must clearly identify each submission separately (see "Electronic ITB File Names" below).
- c. It is the Bidder's responsibility to submit the Electronic Bid(s) and be received by the date and time of the Bid Opening indicated in the Schedule of Events.
- d. **No late Bids will be accepted.**
- e. **Hardware, software, internet, user, or electronic issues will not excuse a late bid.**

##### **3. ELECTRONIC BID FILE NAMES**

The Bidder Should clearly identify the uploaded ITB bid files. To assist in identification please use following naming convention:

- a. ITB 6615 OF ABC Company
- b. If multiple files are submitted for one ITB bid, add number of files to file names: ITB 6615 OF ABC Company File 1 of 2.
- c. If multiple ITB bids are submitted for the same ITB, add the bid number to the file names: ITB 6615 OF ABC Company Proposal 1 File 1 of 2.

**Do not submit** bid/bid documents more than **30 days prior to the Bid Opening**. Once the bid/bid documents are uploaded they are only available for 30 days.

**J. BID PREPARATION COSTS**

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

**K. FAILURE TO COMPLY WITH INVITATION TO BID**

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

1. Rejection of a Bidders Bid;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Negative Vendor Performance Report(s)
5. Termination of the resulting contract.
6. Legal action; or,
7. Suspension of the Bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**L. BID CORRECTIONS**

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changing a bid after opening may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

**M. LATE BIDS**

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

**N. BID OPENING**

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

**O. INVITATION TO BID REQUIREMENTS**

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

1. Original Commodity ITB form signed using an indelible method (electronic signatures are acceptable).
2. Clarity and responsiveness of the bid;
3. Completed Sections II through VI;
4. Completed ITB Form or State's Cost Sheet.

**P. EVALUATION OF BIDS**

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

1. Cost Bid

**Neb. Rev. Stat. §81-161 allows the quality of performance of previous contracts to be considered when evaluating responses to competitively bid solicitations in determining the lowest responsible bidder.** Information obtained from any Vendor Performance Report (See Terms & Conditions, Section H) may be used in evaluating responses to ITB's for goods and services to determine the best value for the State.

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

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

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

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

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

**Q. BEST AND FINAL OFFER**

If best and final offers (BAFO) are requested by the State and submitted by the bidder, they will be evaluated (using the stated BAFO criteria) and ranked by the Evaluation Committee. The State reserves the right to conduct more than one BAFO. The award will then be granted to the lowest responsible bidder. However, a bidder should provide its best offer in its original bid. Bidders should not expect that the State will request a BAFO.

**R. REFERENCE AND CREDIT CHECKS**

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

**S. AWARD**

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

1. Amend the ITB
2. Extend the time of or establish a new bid opening time;
3. Waive deviations or errors in the State's ITB process and in bidders bids that are not material, do not compromise the ITB process or a bidders bid, and do not improve a bidders competitive position;
4. Accept or reject a portion of or all of a bid;
5. Accept or reject all bids;
6. Withdraw the ITB
7. Elect to rebid the ITB;
8. Award single lines or multiple lines to one or more bidders; or,
9. Award one or more all-inclusive contracts.

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



1. Price;
2. Location;
3. Quality;
4. Delivery time;
5. Vendor qualifications and capabilities;
6. State contract management requirements and/or costs; and,

The ITB does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

Any protests must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

**T. SPECIFICATIONS**

Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for reference and not intended to limit competition, but will be used as the standard by which equivalent material offered will be judged. The Materiel Administrator will be the sole judge of equivalency. The Bidder may offer any brands which meets or exceeds the specification. When a specific product is required, the ITB will so state. Any item bid is to be the latest current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

**U. SAMPLES**

When requested, samples should be furnished at the Bidder's expense prior to the opening of the bid, unless another time is specified. Each sample should be labeled clearly and identify the Bidders name, the ITB number, item number, and the brand and model number, if applicable. Samples submitted must be the commodities or equipment which would be delivered if awarded the bid. The State reserves the right to request samples even though this may not have been set forth in the ITB. Samples may be destroyed in testing. If a sample is not destroyed in testing and a Bidder wishes to have the sample returned, it will be returned at the Bidders expense upon request. The sample will not be returned until thirty (30) calendar days after any bid protest or, the execution of a contract. The Bidder shall have ten (10) calendar days to arrange for the return of the sample to the Bidder following any of the above dates. If no request from the Bidder is received within the above dates, the State reserves the right to use, donate, or surplus the samples in accordance with the State's policies.

**V. ALTERNATE/EQUIVALENT BIDS**

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

**W. LUMP SUM OR "ALL OR NONE" BIDS**

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

**X. EMAIL SUBMISSIONS**

SPB will not accept bids by email, electronic, voice, or telephone bids **except** for one-time purchases under \$50,000.00.

**Y. BID TABULATIONS**

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

**Z. REJECTION OF BIDS**

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

**AA. RESIDENT BIDDER**

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

## II. TERMS AND CONDITIONS

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

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

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

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

### A. GENERAL

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

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

4. Invitation to Bid and Addenda;
5. Amendments to the ITB;
6. Questions and Answers;
7. Bidder's bid response;
8. The executed Contract and any Addenda, if applicable, and properly submitted documents; and,
9. Amendments to the Contract

These documents constitute the entirety of the contract.

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

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

**B. NOTIFICATION**

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

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses, 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 Bidder will be provided a copy of the appointment document, and is expected to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

**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 ITB Response (Initial)	NOTES/COMMENTS:

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

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

No change shall be implemented by the Bidder 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.

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

**G. VENDOR PERFORMANCE REPORT(S)**

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

The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or IBT specifications. The State Purchasing Bureau may contact the Vendor regarding any such report. Vendor performance report(s) will become a part of the permanent record of the Vendor.

**H. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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

**I. BREACH**

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the

default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Vendor, 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 vendor. The State may recover from the Vendor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Vendor's breach. OR In case of default of the Vendor, the State may contract the service from other sources and hold the Vendor responsible for any excess cost occasioned thereby.

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

**J. NON-WAIVER OF BREACH**

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

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

**K. SEVERABILITY**

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

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

**L. INDEMNIFICATION**

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

**1. GENERAL**

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

**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, Vendor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (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.

**M. ATTORNEY'S FEES**

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

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

**N. ASSIGNMENT, SALE, OR MERGER**

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

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

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

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

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

The Vendor 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 Vendor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be

contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**P. FORCE MAJEURE**

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

Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or 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.

**Q. CONFIDENTIALITY**

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

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

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

**R. EARLY TERMINATION**

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

The contract may be terminated as follows:

1. The State and the Vendor, 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 Vendor. Such termination shall not relieve the Vendor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Vendor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.



3. The State may terminate the contract immediately for the following reasons:
- if directed to do so by statute;
  - Vendor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - a trustee or receiver of the Vendor or of any substantial part of the Vendor's assets has been appointed by a court;
  - fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Vendor, its employees, officers, directors, or shareholders;
  - an involuntary proceeding has been commenced by any party against the Vendor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Vendor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Vendor has been decreed or adjudged a debtor;
  - a voluntary petition has been filed by the Vendor under any of the chapters of Title 11 of the United States Code;
  - Vendor intentionally discloses confidential information;
  - Vendor has or announces it will discontinue support of the deliverable; and,
  - In the event funding is no longer available.

**S. CONTRACT CLOSEOUT**

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

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

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

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

### III. VENDOR DUTIES

#### A. INDEPENDENT VENDOR / OBLIGATIONS

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

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

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

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

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

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

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

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Vendor's employees, including all insurance required by state law;
3. Damages incurred by Vendor'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 Vendor'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 Vendor, its officers, agents, or subcontractors or subcontractor's employees).

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

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

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

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

#### B. EMPLOYEE WORK ELIGIBILITY STATUS

The Vendor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing 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 Vendor is an individual or sole proprietorship, the following applies:

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

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

2. If the Vendor indicates on such attestation form that he or she is a qualified alien, the Vendor 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 Vendor understands and agrees that lawful presence in the United States is required and the Vendor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

The Vendor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Vendors of the State, 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 Vendor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Vendor shall insert a similar provision in all Subcontracts for goods or services to be covered by any contract resulting from this ITB.

**D. COOPERATION WITH OTHER VENDORS**

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

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

**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 bid. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.

**F. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the vendor, F.O.B. destination named in the ITB. 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, cost, and terms and conditions outlined in the bid shall remain fixed and valid commencing on the opening date of the bid until an award is made, or the ITB is cancelled.

Prices quoted on the ITB 6515 OF Polymer Modified Asphalt Pavement Repair Mastic shall remain fixed for the first 180 days of the contract. Any request for a price increase subsequent to the first year must be submitted in writing to the SPB for approval a minimum of 30 days prior to proposed effective date of increase, and be accompanied by documentation justifying the price increase. These documents include, but are not limited to the following:

1. Invoices for physical components of contracted items.
2. Manufacturer letter of price increase, if applicable. 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.**

**Vendor also represents and warrants that all prices set for the in the contract and all prices in addition, which Vendor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal. Law or regulations concerning rice discrimination and/or price fixing. Vendor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.**

**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 bid 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 ITB Response (Initial)	NOTES/COMMENTS:

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

**4. EVIDENCE OF COVERAGE**

The Vendor should furnish the State, prior to beginning work and upon, a certificate of insurance coverage complying with the above requirements to the attention of:

Agency: Department of Administrative Services, State Purchasing Bureau  
Attention: Brenda Sensibaugh, 1526 K Street Suite 130  
Lincoln NE 68508

These certificates or the cover sheet shall reference the ITB number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Vendor to maintain such insurance, then the Vendor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to Contract Procurement Officer when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**I. NOTICE OF POTENTIAL VENDOR BREACH**

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

If Vendor breaches the contract or anticipates breaching the contract the Vendor shall immediately give written notice to the State. The notice shall explain the breach or potential breach 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 ITB Response (Initial)	NOTES/COMMENTS:

The Vendor hereby assigns to the State 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 ITB Response (Initial)	NOTES/COMMENTS:

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

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

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

**L. STATE PROPERTY**

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

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

**M. SITE RULES AND REGULATIONS**

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

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

**N. ADVERTISING**

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

The Vendor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods 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. DRUG POLICY**

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

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

#### 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 ITB. The Vendor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Vendor's equipment which may be installed in a state-owned facility is the responsibility of the Vendor.

**C. INVOICES**

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

**D. INSPECTION AND APPROVAL**

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

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

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

**E. PAYMENT (Statutory)**

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Vendor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Vendor prior to the Effective Date of the contract, and the Vendor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

Except when exempted by Neb. Rev. Stat. §§ 81-2407, the Vendor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408)

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

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

**H. RIGHT TO AUDIT (First Paragraph is Statutory)**

The State shall have the right to audit the Vendor's performance of this contract upon a thirty (30) day written notice. Vendor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev.

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

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

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



## **V. SCOPE OF WORK**

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

It is the intent of this bid invitation to establish a contract to supply Polymer Modified Asphalt Pavement Repair Mastic. This specification describes a product that is a hot applied, single component, pourable aggregate filled, pre-packaged, ready to melt overband mastic repair material for concrete and asphalt pavements. This product is used for extra wide pavement cracks, joint separations, bridge approaches and other pavement distresses when installation is not recessed into existing pavement.

ACCEPTABLE BRANDS; APPROVED BRAND - Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the Bidders' proposed product for Polymer Modified Asphalt Pavement Repair Mastic must be an "Approved Brand" by the Nebraska Department of Transportation (NDOT). Products that are not on the "Approved Brand" list will not be considered for this Invitation to Bid (ITB).

Crafco Mastic One, Deery Level-N-Go, and Nuvo Gap are considered "Approved Brands" which have previously been tested by the Nebraska Department of Roads for meeting specification requirements.

Physical review(s) of utilized material performance may be conducted by the Vendor 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. Additionally, should the contract be terminated, the product may be removed from NDOT's Approved Products List and as such the product would not be considered in future ITB's.

PROCEDURE FOR PRE-APPROVAL/PRE-QUALIFICATION - If a vendor/supplier has a product which is not pre-approved by the Department of Transportation, the vendor/supplier may contact Doug Churchwell, Hwy Quality Assurance Mgr., NDOT for information concerning the approval process ([doug.churchwell@nebraska.gov](mailto:doug.churchwell@nebraska.gov)).

Proposed product must pass a field performance evaluation standard over a period that includes all four seasons. Overall testing period for both field testing and Materials & Research review of adherence to these specifications is one (1) full year. If the product is approved, it will have the opportunity for inclusion on the "Approved Brands" list for the next Polymer Modified Asphalt Pavement Repair Mastic bid ITB.

It is the intent of this bid invitation to establish a contract to supply Polymer Modified Asphalt Pavement Repair Mastic bid 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 vendor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the vendor and the State.

All items bid shall be of the latest manufacture in production as of the date of the ITB and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the Polymer Modified Asphalt Pavement Repair Mastic bid whether or not they may be specifically mentioned below.

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

## VI. TECHNICAL SPECIFICATIONS

### Special Provisions Polymer Modified Asphalt Pavement Repair Mastic bid

#### BIDDER INSTRUCTIONS

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

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

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

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

#### A. NON-COMPLIANCE STATEMENT

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to IBT response. Any noncompliance may void your bid. Non-compliance to any single specification can void your bid.
			2. It is the responsibility of Vendors to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this IBT by any Vendor.
			3. No interpretation related to the meaning of ITB specifications or other pre-bid documents will be made orally to any Vendor by the State. Any ITB interpretation must be put in writing by the Vendor 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).
NOTES/COMMENTS:			

#### B. TECHNICAL SPECIFICATIONS: MATERIAL SPECIFICATIONS POLYMER MODIFIED ASPHALT PAVEMENT REPAIR MASTIC

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Polymer Modified Asphalt Pavement Repair Mastic bid shall be Crafco Mastic One, Deery Level-N-Go Repair Mastic, or Nuvo Gap.
			2. The repair mastic material bid shall be formulated to be used in unconfined and feathered edge repairs, such as filling and leveling of wide transverse depressed cracks and joints

			3. Repair mastic material bid shall form a well-bonded, flexible, waterproof, durable, traffic resistant repair when properly applied
			4. Repair mastic material shall be able to withstand vehicular traffic when it has cooled to solidify and not strip, kick up or ravel out afterwards
			5. Repair mastic material must be ready to use when mixed and heated in an appropriate Melter until application temperature is reached, then poured into the prepared repair area and then leveled
			6. Repair mastic material shall consist of polymer modified asphalt and aggregate to ensure a mixture which will provide satisfactory pavement repair characteristics
NOTES/COMMENTS:			

**C. TECHNICAL SPECIFICATIONS: POLYMER MODIFIED BINDER**

YES		NO	NO & PROVIDE ALTERNATIVE	
				1. The <b>bituminous binder shall be a blend of asphalt cement and other additives, which upon blending shall conform to the following requirements</b>
				a. Cone Penetration @ 77° F (25° C), 150 g, 5 sec , ASTM D 5329 shall be 50 dmm
				b. Elastic Recovery, 77° F, AASHTO T 301, shall be 90% Minimum
				c. Flexibility shall be run as per ASTM D 3111 with the following exceptions: 0° F, 1" mandrel, 180° bend, 10 seconds. The sample test strips shall be 4" long, 1" wide, 1/8" thick. Minimally, two of three
	NOTES/COMMENTS:			

**D. TECHNICAL SPECIFICATIONS: AGGREGATE**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Resistant to Abrasion and Impact (Grading D) ASTM C 131 40% degradation Maximum
			2. Product shall have a selected gradation that provides uniform repair for both narrow and deep applications, and is also capable of feathering the material to provide smooth transitions to existing materials.
NOTES/COMMENTS:			

**E. TECHNICAL SPECIFICATIONS: FINISHED BLENDED PRODUCT**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Minimum Application Temperature shall be 380° F (193° C) or less.
			2. Maximum Heating Temperature shall be 410° F (210° C)
<b>NOTES/COMMENTS:</b>			

**F. USAGE REPORT**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The vendor shall, upon request by the State of Nebraska, provide an annual usage report of this contract by state agencies. Information will include agency name, item, and dollar amount. Information may be requested at any time by the State Purchasing Bureau, but may typically be requested at the end of the contract period or upon renewal of the contract, or at other intervals (monthly, quarterly, etc.) as determined by the State.
<b>NOTES/COMMENTS:</b>			

**G. ACCEPTABLE BRANDS**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the bidder's proposed product for Polymer Modified Asphalt Pavement Repair Mastic must be an "Approved Brand" by the Nebraska Department of Roads. Products that are not on the "Approved Brand" list will not be considered for this Invitation to Bid (ITB).
<b>NOTES/COMMENTS:</b>			

H. ANNUAL USAGE, ESTIMATED

YES	NO	NO & PROVIDE ALTERNATIVE																																																																
			<p>1. Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Vendor shall not impose minimum order requirements.</p>																																																															
			<p>2. <b>Polymer Modified Asphalt Pavement Repair statewide annual usage: 1,128,000.00 Pounds</b></p>																																																															
			<p>3. <b>District Superintendent and Location Listing: The tables listed below provide bidders with information on the locations that intend to order Polymer Modified Asphalt Pavement Repair Mastic, including the estimated annual usage for these locations. Also, any District location listed below with no current estimated quantity shall have the ability to order the product should the need arise at the bidder's District wide price.</b></p> <p><b>District One Superintendents:</b>  <b>Jeff Havalat</b> - 402-471-0850  Lincoln Superior (302 Superior St, Lincoln, NE),  David City, Wahoo, Seward, Greenwood  <b>Andrew Buchmeier</b> - 402-471-0850  Nebraska City (6170 Highway 75, Nebraska City, NE),  Palmyra, Auburn, Tecumseh, Falls City  <b>Todd Cecrle</b> – 402-471-0850  Lincoln Salt Valley (5300 Salt Valley View St, Lincoln, NE),  Beatrice, Dorchester, Fairbury, Pawnee City</p> <table border="1"> <thead> <tr> <th>DISTRICT</th> <th>LOCATION</th> <th>POUNDS</th> <th></th> <th>DISTRICT</th> <th>LOCATION</th> <th>POUNDS</th> </tr> </thead> <tbody> <tr> <td>D-1</td> <td>LINCOLN SUPERIOR</td> <td>80,000</td> <td></td> <td>D-1</td> <td>GREENWOOD</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>LINCOLN SALT VALLEY</td> <td>80,000</td> <td></td> <td>D-1</td> <td>NEBRASKA CITY</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>AUBURN</td> <td>-</td> <td></td> <td>D-1</td> <td>PAWNEE CITY</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>BEATRICE</td> <td>-</td> <td></td> <td>D-1</td> <td>PALMYRA</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>DAVID CITY</td> <td>-</td> <td></td> <td>D-1</td> <td>SEWARD</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>DORCHESTER</td> <td>-</td> <td></td> <td>D-1</td> <td>TECUMSEH</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>FAIRBURY</td> <td>-</td> <td></td> <td>D-1</td> <td>WAHOO</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>FALLS CITY</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	DISTRICT	LOCATION	POUNDS		DISTRICT	LOCATION	POUNDS	D-1	LINCOLN SUPERIOR	80,000		D-1	GREENWOOD	-	D-1	LINCOLN SALT VALLEY	80,000		D-1	NEBRASKA CITY	-	D-1	AUBURN	-		D-1	PAWNEE CITY	-	D-1	BEATRICE	-		D-1	PALMYRA	-	D-1	DAVID CITY	-		D-1	SEWARD	-	D-1	DORCHESTER	-		D-1	TECUMSEH	-	D-1	FAIRBURY	-		D-1	WAHOO	-	D-1	FALLS CITY	-				
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**John Lutz** – 308-436-6587

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D-7	BENKELMAN	-				
D-7	CURTIS	-				
D-7	HOLDREGE	44,000				
D-7	IMPERIAL	44,000				
D-7	MCCOOK	44,000				



District Eight Superintendents:  
Chuck Osborn – 402-387-2472  
Ainsworth  
Dennis Connot – 402-376-1350  
Valentine (602 E 1<sup>st</sup> St, Valentine, NE),  
Merriman  
Rob Lowe – 402-336-2051  
O’Neill (404 W Douglas St, O’Neill, NE),  
Burwell, Spencer

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D-8	AINSWORTH	-				
D-8	BURWELL	-				
D-8	MERRIMAN	-				
D-8	O’NEILL	44,000				
D-8	SPENCER	--				
D-8	VALENTINE	44,000				

NOTES/COMMENTS:

**I. DELIVERY ARO**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Deliveries of Polymer Modified Asphalt Pavement Repair Mastic shall be FOB destination to all Department of Transportation locations specified on the Purchase order or as directed by NDOT at the time of purchase in accordance with this Invitation To Bid. Vendor shall maintain sufficient inventory to process and deliver within 30 days after receipt of order(s). There will be no minimum order requirements.
			2. If the Vendor 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 Vendor 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 vendor may be held responsible for an/all excess cost. Failure to meet delivery requirements of the contract may constitute a breach of the contract.
			3. <b>All loads must be palletized. Pallets shall not exceed 42" in width.</b>

			<p>4. 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>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>
NOTES/COMMENTS:			

**J. DELIVERY LOCATIONS / INSTRUCTIONS (CONTRACTOR AGREES THAT THEY CAN MEET THE DELIVERY LOCATIONS/INSTRUCTIONS)**

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			<p>1. District Superintendent and Location Listing: The tables listed below provide bidders with information on the locations that intend to order Polymer Modified Asphalt Pavement Repair Mastic, including the estimated annual usage for these locations. Also, any District location listed below with no current estimated quantity shall have the ability to order the product should the need arise at the bidder's District wide price.</p> <p><b>District One Superintendents:</b>  <u>Jeff Havalat</u> - 402-471-0850  Lincoln Superior (302 Superior St, Lincoln, NE),  David City, Wahoo, Seward, Greenwood  <u>Andrew Buchmeier</u> - 402-471-0850  Nebraska City (6170 Highway 75, Nebraska City, NE),  Palmyra, Auburn, Tecumseh, Falls City  <u>Todd Cecrle</u> – 402-471-0850  Lincoln Salt Valley (5300 Salt Valley View St, Lincoln, NE),  Beatrice, Dorchester, Fairbury, Pawnee City</p> <table border="1"> <thead> <tr> <th>DISTRICT</th> <th>LOCATION</th> <th>POUNDS</th> <th></th> <th>DISTRICT</th> <th>LOCATION</th> <th>POUNDS</th> </tr> </thead> <tbody> <tr> <td>D-1</td> <td>LINCOLN SUPERIOR</td> <td>80,000</td> <td></td> <td>D-1</td> <td>GREENWOOD</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>LINCOLN SALT VALLEY</td> <td>80,000</td> <td></td> <td>D-1</td> <td>NEBRASKA CITY</td> <td>44,100</td> </tr> <tr> <td>D-1</td> <td>AUBURN</td> <td>-</td> <td></td> <td>D-1</td> <td>PAWNEE CITY</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>BEATRICE</td> <td>-</td> <td></td> <td>D-1</td> <td>PALMYRA</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>DAVID CITY</td> <td>-</td> <td></td> <td>D-1</td> <td>SEWARD</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>DORCHESTER</td> <td>-</td> <td></td> <td>D-1</td> <td>TECUMSEH</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>FAIRBURY</td> <td>-</td> <td></td> <td>D-1</td> <td>WAHOO</td> <td>-</td> </tr> <tr> <td>D-1</td> <td>FALLS CITY</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	DISTRICT	LOCATION	POUNDS		DISTRICT	LOCATION	POUNDS	D-1	LINCOLN SUPERIOR	80,000		D-1	GREENWOOD	-	D-1	LINCOLN SALT VALLEY	80,000		D-1	NEBRASKA CITY	44,100	D-1	AUBURN	-		D-1	PAWNEE CITY	-	D-1	BEATRICE	-		D-1	PALMYRA	-	D-1	DAVID CITY	-		D-1	SEWARD	-	D-1	DORCHESTER	-		D-1	TECUMSEH	-	D-1	FAIRBURY	-		D-1	WAHOO	-	D-1	FALLS CITY	-				
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D-7	IMPERIAL	44,000				
D-7	MCCOOK	44,000				

			<p><b>District Eight Superintendents:</b>  <b>Chuck Osborn</b> – 402-387-2472  Ainsworth  <b>Dennis Connot</b> – 402-376-1350  Valentine (602 E 1<sup>st</sup> St, Valentine, NE),  Merriman  <b>Rob Lowe</b> – 402-336-2051  O’Neill (404 W Douglas St, O’Neill, NE),  Burwell, Spencer</p>																																																	
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<p><b>NOTES/COMMENTS:</b></p>																																																				

## K. PACKAGING

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. <b>*NOTE* - The State will be requesting pricing per pound for Polymer Modified Asphalt Pavement Repair Mastic for the two different types of packaging listed below. Both types of packaging items will be awarded a contract. Bidders are encouraged to bid both packaging styles if possible.</b>
			2. Cardboard box with inner quick melt liner which dissolves into the product without altering the performance, approximately 40 lbs. per box
			3. Environmentally safe, fully meltable packaged block, which dissolves into the product without altering the performance, approximately 40 lbs. per block.
NOTES/COMMENTS:			

## L. ORDERS

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

**M. QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
			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.
			2. A guarantee of satisfactory performance by the vendor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation.
			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:			

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

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Samples of materials bid may be required prior to an award. Samples are to be provided within five (5) calendar days of a request. Failure to provide samples or samples not meeting the specifications may be grounds to reject the bid.
			2. Nebraska Department of Transportation reserves the right to acquire a random sample of the aggregate at any time during the term of the contract for testing to determine specification compliance as provided on the Invitation to Bid. Any uncompliant material will not count toward the required delivered quantity. Additional material may be required by the Vendor within fifteen (15) calendar days after notification at the vendor's expense, including transportation and delivery charges,
NOTES/COMMENTS:			

**Form A**  
**Bidder Contact Sheet**  
**Invitation To Bid Number 6615 OF**

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

<b>Preparation of ITB Contact Information</b>	
<b>Bidder Name:</b>	
<b>Bidder Address:</b>	
<b>Contact Person &amp; Title:</b>	
<b>E-mail Address:</b>	
<b>Telephone Number (Office):</b>	
<b>Telephone Number (Cellular):</b>	
<b>Fax Number:</b>	

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

<b>Communication with the State Contact Information</b>	
<b>Bidder Name:</b>	
<b>Bidder Address:</b>	
<b>Contact Person &amp; Title:</b>	
<b>E-mail Address:</b>	
<b>Telephone Number (Office):</b>	
<b>Telephone Number (Cellular):</b>	
<b>Fax Number:</b>	