

State of Nebraska - INVITATION TO BID CONTRACT

Date	1/11/22	Page	1 of 2
Solicitation Number	6645 OF		
Opening Date and Time	02/08/22	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 Acrylic Resin Lead Free and Fast Dry Low Temperature Application Waterborne Yellow and White Traffic Paint 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 two (2) additional two (2) year periods when mutually agreeable to the vendor and the State of Nebraska.

(MH 1/6/22)

INVITATION

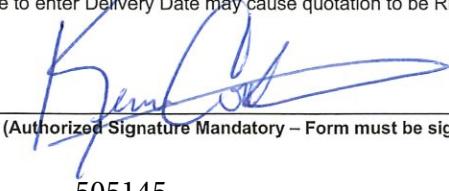
Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	ACRYLIC RESIN WATERBORNE TRAFFIC PAINT WHITE	350,000.0000	GL	\$12.055	\$4,219,250
2	ACRYLIC RESIN WATERBORNE TRAFFIC PAINT YELLOW	250,000.0000	GL	\$12.962	\$3,240,500
3	OPTIONAL: LOW TEMPERATURE WATERBORNE FAST DRY WHITE	15,000.0000	GL	\$11.883	\$178,245
4	OPTIONAL: LOW TEMPERATURE	15,000.0000	GL	\$12.104	\$181,560

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 15 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# 505145
VENDOR: Ennis-Flint, Inc
Address: 4161 Piedmont Parkway, Suite 370
Greensboro, NC 27410

Contact Kevin Cook
Telephone 800-331-8118
Email contracts@ennisflint.com

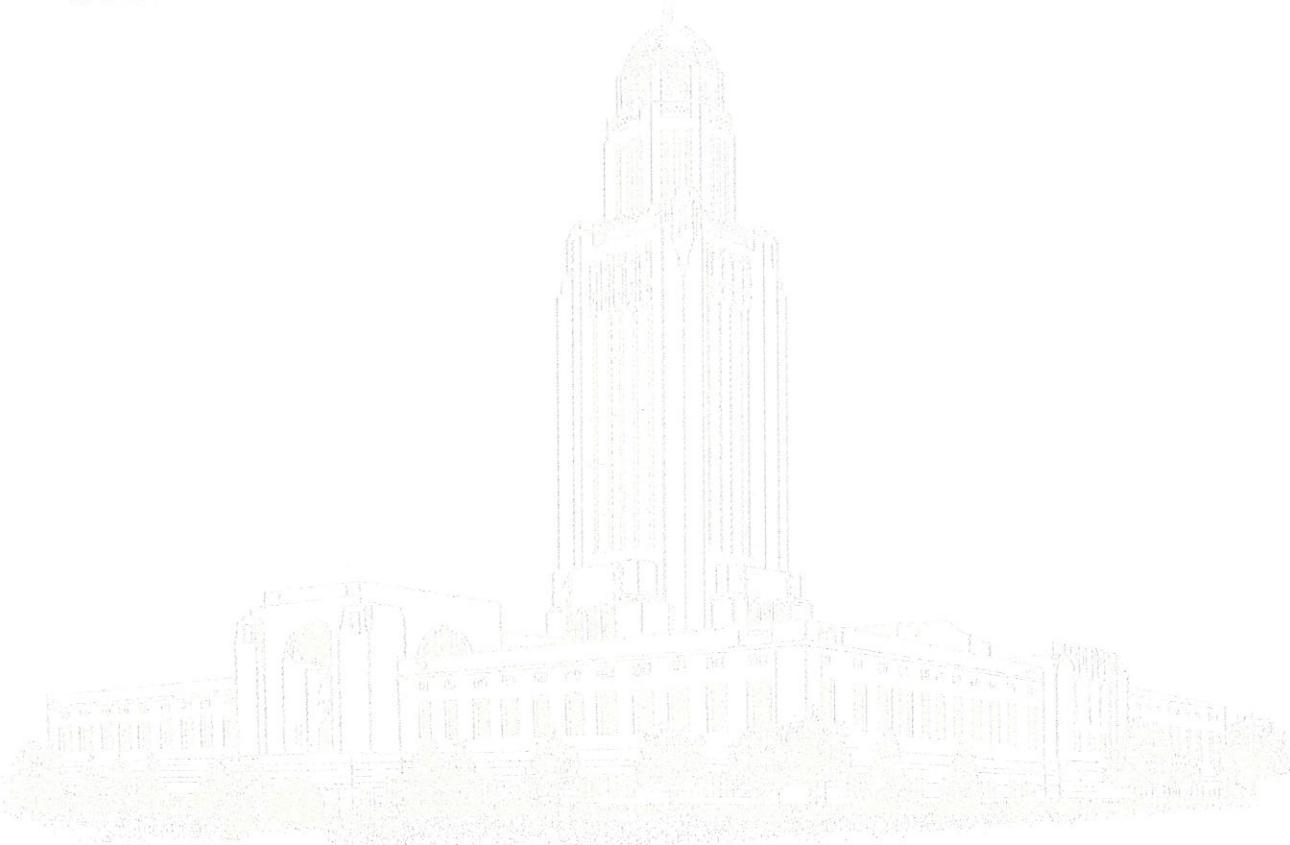
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
	WATERBORNE FAST DRY YELLOW				



INVITATION TO BID

Number 6645 OF

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for contract, ITB Number 6645 OF for the purpose of selecting a qualified Vendor to provide Acrylic Resin Lead Free and Fast Dry Low Temperature Application Waterborne Yellow and White Traffic Paint. 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 Award of the contract by the State. The Contract includes the option to renew for two (2) additional two (2) 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 into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the successful Vendor's bid or response will be posted to a public website managed by DAS, which can be found at:

<https://statecontracts.nebraska.gov>

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

These postings will include the entire bid or response. Bidder must request that proprietary information be excluded from the posting. The Bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The Bidder must submit a **detailed written document showing** that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE BIDDER MAY NOT ASSERT THAT THE ENTIRE BID OR RESPONSE IS PROPRIETARY. COST WILL NOT BE CONSIDERED PROPRIETARY AND IS A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

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

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, bid, or response to this solicitation 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 solicitation, specifically waives any copyright or other protection the contract, bid, or response to the solicitation 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 solicitation, and award of a contract. Failure to agree to the reservation and waiver will result in the bid or response to the solicitation being found non-responsive and rejected.

Any entity awarded a contract or submitting a bid or response to the solicitation 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 bid and responses to the solicitation, 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 bid will be awarded according to the provisions in the solicitation.

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

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

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

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: Monday through Friday, excluding Saturdays and Sundays and State/Federal holidays.

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

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

Catalog/Non-Core: A printed or electronic list of products a Vendor may provide at a discounted rate or discount off list price to the State. Initial contract award(s) is not based on Catalog/Non-Core items.

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

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

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

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

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

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

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

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

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

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

Contract Period: The duration of the contract.

Vendor: 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 solicitation upon which a bid is evaluated for award.

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

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

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

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

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

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

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

Free on Board 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.

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

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

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

Invitation to Bid: A written solicitation utilized for obtaining competitive offers for Services or Goods.

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

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

Mandatory: 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.

Non-core: See "Catalog".

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

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

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

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

Payroll & Financial Center: Electronic procurement system of record.

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

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

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

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

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

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

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

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

Bid: An offer, bid, or quote submitted by a vendor in a response to a written solicitation.

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 See "Grievance".

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

Quote: See "Bid"

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

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

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 solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

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 solicitation document.

Shall: See "Mandatory".

Should: Expected; suggested, but not necessarily mandatory.

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

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

SubVendor: Individual or entity with whom the Vendor 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-Vendors 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 solicitation 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

BAFO – Best and Final Offer

COI – Certificate of Insurance

CPU – Central Processing Unit

DAS – Department of Administrative Services

F.O.B. – Free on Board

ITB – Invitation to Bid

NIGP – National Institute for Governmental Purchasing

PA – Participating Addendum

RFI – Request for Information

RFP – Request for Bid

SPB – State Purchasing Bureau

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The solicitation is designed to solicit bids from qualified Vendor who will be responsible for providing Acrylic Resin Lead Free and Fast Dry Low Temperature Application Waterborne Yellow and White Traffic Paint at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Bid 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 solicitation. Prospective Vendors are expected to carefully examine all documents, schedules, and requirements in this solicitation, and respond to each requirement in the format prescribed. Bids may be found non-responsive if they do not conform to the solicitation.

B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

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

ITB#: 6645 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

From the date the solicitation is issued until the Intent to Award is issued, communication from the Bidder is limited to the POC listed above. After the Intent to Award is issued, the 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 solicitation. The POC will issue any answers, clarifications, or amendments regarding this solicitation in writing. Only the SPB or awarding agency can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this solicitation.

The following exceptions to these restrictions are permitted:

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

The State reserves the right to reject a Bidder's 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 solicitation	1-11-22
2.	Last day to submit written questions. Upload electronic submissions for Questions via ShareFile link: https://nebraska.sharefile.com/r-ra39eb32c033147f5b222fa8b1b3c1855	1-21-22
3.	State responds to written questions through a solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html	1-26-22
4.	Electronic Bid Opening 6645 OF Traffic Paint Upload electronic Bid submissions via ShareFile link: https://nebraska.sharefile.com/r-r9e88a30e38da492e8c783d3c85ecbbdf Join Zoom Meeting https://us02web.zoom.us/j/2629176739?pwd=NkhobXNpOU94UmFmTG1wYmJqTXhpUT09 Meeting ID: 262 917 6739 Passcode: 5VwBuR	2-8-22
5.	Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
6.	Contract award	TBD

D. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to SPB and clearly marked "ITB Number 6645 OF; Acrylic Resin Lead Free and Fast Dry Low Temperature Application Waterborne Yellow and White Traffic Paint 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.

Questions should be uploaded using the following ShareFile link:

<https://nebraska.sharefile.com/r-ra39eb32c033147f5b222fa8b1b3c1855>

It is recommended that Bidders submit questions using the following format.

ITB Section Reference	ITB Page Number	Question

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

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

All Vendors must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Vendor 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.

F. ETHICS IN PUBLIC CONTRACTING

The State reserves the right to reject bid, 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 bid, 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 subVendors.

G. DEVIATIONS FROM THE INVITATION TO BID

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

H. SUBMISSION OF BIDS

"The State is ONLY accepting electronically submitted responses for this ITB."

The Invitation to Bid form must be manually signed in an indelible manner 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 in order 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-conforming.

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

1. SUBMITTING ELECTRONIC RESPONSES:

Bidders are to upload response via the following ShareFile, link:
<https://nebraska.sharefile.com/r-r9e88a30e38da492e8c783d3c85ecbbdf>

Note to Bidders: Not all browsers are compatible with ShareFile. Currently Chrome, Internet Explorer and Firefox are compatible.

Instructions to upload files via ShareFile:

- a. Click the link, enter email address, First Name, Last Name and Company, and click "Continue"
- b. Drag your files from your computer into the "Drag Files Here" area OR brows files to select them manually. Click "Upload" when ready.
- c. A success message will be displayed once your upload is complete and the bidder should receive a confirmation email confirming the successful upload directly from ShareFile.

2. ELECTRONIC BID FILE NAMES

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

- a. ITB 6645 OF, Company Name
- b. If multiple files are submitted for one ITB bid, add number of files to file names: ITB 6645 OF Company Name, 1 of 2.
- c. If multiple ITB bid are submitted for the same ITB, add the bid number to the file names: ITB 6645 OF Company Name Bid 1 File 1 of 2.

I. BID PREPARATION COSTS

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

J. FAILURE TO COMPLY WITH INVITATION TO BID

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

1. Rejection of a Bidder's 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 relative to the seriousness of the violation, such period to be within the sole discretion of the State.

K. 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.

L. LATE BIDS

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

M. 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 bid aloud or allow bid be available for viewing by the public during the bid opening. Once the bid opening has concluded, the bid 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 Bidder, in accordance with the solicitation and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the [Public Records Act](#), or if ordered to release any withheld information, said information may then be released. The submitting Bidder will be notified of the release and it shall be the obligation of the submitting Bidder to take further action, if it believes the information should not be released.

N. INVITATION TO BID REQUIREMENTS

The bid 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.

O. EVALUATION COMMITTEE

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

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

P. EVALUATION OF BIDS

All bids 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 ITB's in determining the lowest responsible Bidder. Neb. Rev. Stat. §81-161 states, "All purchases, leases, or contracts which by law are required to be based on competitive bids shall be made to the lowest responsible Bidder, taking into consideration the best interests of the state, the quality or performance of the personal property proposed to be supplied, its conformity with Specifications, the purposes for which required, and the times of delivery. In determining the lowest responsible Bidder, in addition to price, the following elements shall be given consideration:

- (a) The ability, capacity, and skill of the Bidder to perform the contract required;
- (b) The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;

- (c) Whether the Bidder can perform the contract within the time specified;
- (d) The quality of performance of previous contracts;
- (e) The previous and existing compliance by the Bidder with laws relating to the contract;
- (f) The life-cycle costs of the personal property in relation to the purchase price and specific use of the item;
- (g) The performance of the personal property, taking into consideration any commonly accepted tests and standards of product usability and user requirements;
- (h) Energy efficiency ratio as stated by the Bidder for alternative choices of appliances or equipment;
- (i) The information furnished by each Bidder concerning life-cycle costs between alternatives for all classes of equipment, evidence of expected life, repair and maintenance costs, and energy consumption on a per-year basis;
- (j) The results of the United States Environmental Protection Agency tests on fleet performance of motor vehicles. Each Bidder Shall furnish information relating to such results; and
- (k) Such other information as May be secured having a bearing on the decision to Award the contract.

(2) Any appliance purchased or leased pursuant to this section Shall be energy star certified, except that the materiel administrator May exempt the purchase or lease of an appliance from this subsection if he or she determines that the cost of compliance would exceed the projected energy cost savings.

(3) All political subdivisions May follow the procurement principles set forth in this section if they are deemed applicable by the official authorized to make purchases for such political subdivision.

(4) For purposes of this section, energy star certified means approval of energy usage by the United States Environmental Protection Agency and the United States Department of Energy. Such approval May be signified by the display of the energy star label.”

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 solicitation, the Bidder grants to the State the right to contact or arrange a visit in person with any or all of the Bidder's clients. Reference and credit checks may be grounds to reject a bid, withdraw an intent to award, or rescind the award of a contract.

S. AWARD

The State reserves the right to evaluate bid 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 solicitation process, the State of Nebraska may take one or more of the following actions:

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

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

<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 solicitation 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 Bidder's 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 solicitation. 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 Bidder's 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 bid which are at variance from the express specifications of the solicitation. The State reserves the right to consider and accept such bid 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 solicitation 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. Bid 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 bid 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 bid if all items are purchased, but agrees to deliver individual items at the prices quoted.

X. EMAIL SUBMISSIONS

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

Y. BID TABULATIONS

Bid tabulations are available on the website at: <http://das.nebraska.gov/materiel/purchasing.html>

Z. REJECTION OF BIDS

The State reserves the right to reject any or all bid, 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 solicitation, 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 bid in response to the solicitation. The State reserves the right to reject bid that attempt to substitute the Bidder's commercial contracts and/or documents for this solicitation.

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

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

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

Invitation to Bid and Addenda;
Amendments to the solicitation;
Questions and Answers;
Bidder's bid response;
The executed Contract and any Addenda, if applicable, and properly submitted documents; and,
Amendments to the Contract

These documents constitute the entirety of the contract.

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

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. The Bidder should send notices to the Buyer listed in Section I. B. The State will send notices to the Authorized Contact provided on the ITB form. 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:
KME			

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

The Bidder 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 Bidder 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 Bidder'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:
ILME			

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 solicitation 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 VENDOR BREACH

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

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:
ILME			

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:
lwn			

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:
lwn			

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:
fm			

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

INTELLECTUAL PROPERTY

The Vendor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Vendor or its employees, SubVendors, consultants, representatives, and agents; provided, however, the State gives the Vendor prompt notice in writing of the claim. The Vendor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Vendor has indemnified the State, the Vendor shall, at the Vendor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Vendor, and the State may receive the remedies provided under this solicitation.

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:
KMC			

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:
KMC			

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 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:
1/16			

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 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:
1/16			

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

Q. CONFIDENTIALITY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
1/16			

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:
<i>KMC</i>			

The contract may be terminated as follows:

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

The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar 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.

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

- a. if directed to do so by statute;
- b. 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;
- c. a trustee or receiver of the Vendor or of any substantial part of the Vendor's assets has been appointed by a court;
- d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Vendor, its employees, officers, directors, or shareholders;
- e. 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;
- f. a voluntary petition has been filed by the Vendor under any of the chapters of Title 11 of the United States Code;
- g. Vendor intentionally discloses confidential information;
- h. Vendor has or announces it will discontinue support of the deliverable; and,
- i. In the event funding is no longer available.

S. **CONTRACT CLOSEOUT**

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

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

Transfer all completed or partially completed deliverables to the State;
 Transfer ownership and title to all completed or partially completed deliverables to the State;
 Return to the State all information and data, unless the Vendor is permitted to keep the information or data by contract or rule of law. Vendor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Vendor's routine back up procedures;

Cooperate with any successor contactor, person or entity in the assumption of any or all of the obligations of this contract;
Cooperate with any successor contactor, person or entity with the transfer of information or data related to this contract;
Return or vacate any state owned real or personal property; and,
Return all data in a mutually acceptable format and manner.

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

III. VENDOR DUTIES

A. INDEPENDENT VENDOR / OBLIGATIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within ITB Response (Initial)	NOTES/COMMENTS:
1/202			

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 SubVendor, and shall be fully qualified to perform the work required herein. Personnel employed by the Vendor or a subVendor to fulfill the terms of the contract shall remain under the sole direction and control of the Vendor or the subVendor 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; Any and all vehicles used by the Vendor's employees, including all insurance required by state law; Damages incurred by Vendor's employees within the scope of their duties under the contract; Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law; Determining the hours to be worked and the duties to be performed by the Vendor's employees; and, All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Vendor, its officers, agents, or subVendors or subVendor's employees).

If the Vendor intends to utilize any subVendor, the SubVendor'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 SubVendors 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 SubVendor employee.

Vendor shall insure that the terms and conditions contained in any contract with a sub-Vendor 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 SubVendor 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 solicitation response.

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 Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

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

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 SubVendors, 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 solicitation.

D. COOPERATION WITH OTHER VENDORS

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

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, costs, and terms and conditions submitted in the bid shall remain fixed and valid commencing on the opening date of the bid until an award is made or the solicitation is cancelled.

Prices submitted on the cost bid form shall remain fixed for the first one-hundred twenty (120) days of the contract. Any request for a price increase subsequent to the first one-hundred twenty (120) days must be submitted in writing to SPB a minimum of thirty (30) days prior to proposed effective date of the increase. Documentation may be required by the State to support the price increase.

Vendor represents and warrants that all prices, now or subsequently specified, are as low as and no higher than prices which the Vendor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time.

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

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

G. COST CLARIFICATION

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any 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:
<i>lwe</i>			

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.

I. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

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

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Vendor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Vendor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

J. NOTICE OF POTENTIAL VENDOR BREACH

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

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.

K. ANTITRUST

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

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

L. CONFLICT OF INTEREST

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

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 Request for Bid 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.

M. ADVERTISING

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

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.

N. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

Vendor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or goods provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Vendor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

O. DISASTER RECOVERY/BACK UP PLAN

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

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

P. DRUG POLICY

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

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.

Q. WARRANTY

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

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

IV. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

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

B. TAXES (Statutory)

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The 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 agency requesting the services with sufficient detail to support payment. **Invoices should be submitted to ncc.sapp@nebraska.gov. Invoices should be submitted on a monthly basis for orders fulfilled in the previous month.** The terms and conditions included in the Vendor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. INSPECTION AND APPROVAL

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

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

The State and/or its authorized representatives shall have the right to enter any premises where the Vendor or SubVendor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

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)

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:
XMC			

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 solicitation.

A. SCOPE

It is the intent of this bid invitation to establish a contract to supply Acrylic Resin Lead Free and Fast Dry Low Temperature Application Waterborne Yellow and White Traffic Paint per the attached specifications from date of award for a period of one (1) year with the option to renew for an additional three (3) one-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 proposed shall be of the (REFURBISHED OR SPECIFIC ITEM COULD BE REQUIRED OR ACCEPTABLE) as of the date of the solicitation 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 White and Yellow Traffic Acrylic Resin Lead Free and Fast Dry Waterborne Low Temperature Paint 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 Vendor 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. GENERAL TRAFFIC PAINT TERMS

GENERAL PROVISIONS for ALL TYPES OF TRAFFIC PAINT

BIDDER INSTRUCTIONS

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

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

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

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

A. NON-COMPLIANCE STATEMENT

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your bid. Non-compliance to any single specification can void your bid.</p>
X			<p>2. It is the responsibility of Bidders to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Vendor.</p>
X			<p>3. No interpretation related to the meaning of solicitation specifications or other pre-bid documents will be made orally to any Bidder by the State. Any solicitation interpretation must be put in writing by the Bidder and Uploaded through ShareFile link: to: https://nebraska.sharefile.com/r-r6b6476bd64964db0b65b655639a278d5 by the last day to submit written questions per the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).</p>
NOTES/COMMENTS:			

B. ANNUAL USAGE, ESTIMATED

YES	NO	NO & PROVIDE ALTERNATIVE								
X			<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. Contractor shall not impose minimum order requirements.</p>							
X			<p>2. Acrylic Resin Waterborne Traffic Paint White and Yellow Lead Free:</p> <table border="1" style="margin-left: 20px;"> <tr> <td>Estimated Annual usage in Gallons White</td> <td>Estimated Annual Usage in Gallons Yellow</td> </tr> <tr> <td>350,000</td> <td>250,000</td> </tr> </table>				Estimated Annual usage in Gallons White	Estimated Annual Usage in Gallons Yellow	350,000	250,000
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X			<p>3. Fast Dry Waterborne Traffic Low Temperature Application White and Yellow Paint:</p> <table border="1" style="margin-left: 20px;"> <tr> <td>Estimated Annual usage in Gallons White</td> <td>Estimated Annual Usage in Gallons Yellow</td> </tr> <tr> <td>15,000</td> <td>15,000</td> </tr> </table>				Estimated Annual usage in Gallons White	Estimated Annual Usage in Gallons Yellow	15,000	15,000
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15,000	15,000									
<p>NOTES/COMMENTS:</p>										

C. USAGE REPORT

YES	NO	NO & PROVIDE ALTERNATIVE				
X			<p>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.</p>			
<p>NOTES/COMMENTS:</p>						

D. DELIVERY ARO

YES	NO	NO & PROVIDE ALTERNATIVE				
X			<p>1. Contractor shall maintain sufficient inventory to process and deliver within fifteen (15) business days after receipt of order(s). There will be no minimum order requirements. If delays in delivery or raw material are anticipated, the Contractor will immediately notify the Nebraska Department of Transportation (NDOT) of the expected delivery date. The order may be canceled if the delivery time is unsatisfactory, and the State may procure item(s) from other sources and the Contractor will be held responsible for any/all excess cost. Shipments will be accepted on flatbed trailers only.</p>			

X			<p>2. Deliveries of white and yellow acrylic resin lead free and fast dry low temperature waterborne paint shall be FOB destination to all NDOT locations specified on the purchase order or as directed by NDOT at the time of purchase in accordance with this Invitation To Bid.</p>
X			<p>3. 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>
X			<p>4. Deliveries of traffic paint may be combined whenever possible. NDOT reserves the right to order quantities to satisfy needs.</p>
X			<p>5. The Contractor shall guarantee the paint furnished meets the requirements of this Invitation to Bid and will not solidify in the paint heater and paint lines when heated to approximately 120 degrees Fahrenheit. Any paint which solidifies shall be assessed a labor charge of five hundred dollars (\$500.00) plus the cost of parts for replacement or repair of any damaged equipment. Such charge to be deducted from the monies due or to become due to NDOT. Additionally, there shall be "No Payment" for the paint (tote(s)) which fail to comply when heated to 120 degrees F. Any remaining totes within the batch that had a tote solidify in the paint heater will be subject to Special Provisions Sections VII and VIII within this Invitation To Bid.</p>
NOTES/COMMENTS:			

D. ORDERS

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

E. PACKAGING

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. All finished paint shall be furnished in cubic shaped 250-gallon bulk totes. Shipments shall be delivered to the districts in either plastic or stainless steel totes. Whether plastic or stainless steel totes are used during shipment will be left to the discretion of the district.</p>
X			<p>2. Each tote shall have a maximum capacity of 255 gallons, but for the purpose of this contract shall be filled with 250 gallons of traffic paint. Before filling with paint, each tote shall be thoroughly dry and clean. Each tote shall be fabricated to be lifted with either a crane or a forklift when full. Each tote shall be capable of being stacked at least three high. Top openings (manhole and fill cap) shall be of sufficient size for use intended. The bottom outlet shall be fabricated to permit a non-restrictive full flow of paint. The tank outlet must be furnished with compatible couplers. All totes are to remain the property of the traffic paint supplier. Due to limited storage space within NDOT locations, time is of the essence for the Contractor to retrieve any and all excess totes from NDOT locations at Contractor's expense.</p>
X			<p>3. Each shipping container must comply with the Code of Federal Regulations, Title 49 and all other applicable Federal and State Regulations governing their use.</p>
X			<p>4. Each size container shall be plainly marked with the type of traffic paint, color, date of manufacture, lot/batch number, tote identifier, gallon age, net weight, and tare weight.</p>

F. QUALITY

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

G. PRICES

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. Price quoted shall be unit price (per gallon) statewide and shall be firm for one-hundred twenty (120) days from date of an award and are to be net, including transportation and delivery charges fully prepaid by the Bidder F.O.B. Destination as specified. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern. Any invitation to an increase must be submitted in writing to the State Purchasing Bureau a minimum of thirty (30) days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.</p> <p>2. The State will be given full proportionate benefit of any decrease for the term of the contract. Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services. Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and conditions of the contract must be met by political sub-divisions, cities, and counties.</p>
NOTES/COMMENTS:			

H. SUBSTITUTIONS

YES	NO	NO & PROVIDE ALTERNATIVE	
X			1. Vendor will not substitute any item that has been awarded without prior written approval of State Purchasing Bureau.
NOTES/COMMENTS:			

END of GENERAL PROVISIONS for ALL TYPES OF TRAFFIC PAINT

VII. INVITATION TO BID – SPECIAL PROVISIONS AND MATERIAL / TECHNICAL SPECIFICATIONS FOR EACH TYPE OF TRAFFIC PAINT

**Special Provisions for White and Yellow Acrylic Resin Waterborne Lead Free Traffic Paint
6645 OF**

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 Bidders' 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 of Nebraska shall determine at its sole discretion whether or not the Bidders' alternative is an acceptable alternative.

A. NON-COMPLIANCE STATEMENT

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

B. GENERAL REQUIREMENTS: WHITE AND YELLOW TRAFFIC ACRYLIC RESIN WATERBORNE LEAD FREE PAINT

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. The traffic paint shall be low VOC acrylic resin waterborne lead free paint for application on bituminous or Portland cement concrete pavement.</p>
X			<p>2. The traffic paint shall be capable of receiving and holding glass beads for producing reflectorized traffic markings.</p>

X			3. The traffic paint shall be furnished ready-mixed in two colors (white and yellow).
X			4. The traffic paint shall be suitable for use with Type I, drop-on, dual-coated, moisture-resistant glass beads.
X			5. The traffic paint shall bind glass beads in such a manner as to produce maximum adhesion, reflection, and refraction. The paints shall show proper capillary action at the interstices existing between the beads to provide good anchorage and refraction.
X			6. Reflectorized stripes on the pavement shall show good durability and good night visibility throughout their useful life.
X			7. The volatile content of the finished paint shall contain less than 150 grams of volatile organic matter per liter of total non-volatile paint material in accordance with ASTM D 3960. Certification of volatile organic content will be required for each batch of paint.
X			8. The paint shall be free of any lead, mercury, cadmium, hexavalent chromium, any other toxic heavy metals, toluene, chlorinated solvents, hydrolyzable chlorine derivatives, ethylene-based glycol ethers and their acetates, and any carcinogens.

NOTES/COMMENTS:

C. MATERIAL REQUIREMENTS: WHITE AND YELLOW ACRYLIC RESIN WATERBORNE LEAD FREE TRAFFIC PAINT

YES	NO	NO & PROVIDE ALTERNATIVE	
X			1. The paint shall contain no lead and/or chromium and shall have limited Volatile Organic Content, as noted herein.
X			2. Pigment: Titanium Dioxide - This material shall comply with the latest revision of the specification for Titanium Dioxide Pigments, ASTM D 476, Type II Rutile.
X			3. Pigment: Yellow C.I. #65 - The material shall have very good light and weather fastness. The material shall be first quality paint grade pigment and shall be free from toxic heavy metals.
X			4. Pigment: Yellow Iron Oxide - The material shall have very good light and weather fastness. The material shall comply with ASTM D 768 and shall be free from toxic heavy metals.
X			5. Pigment: Calcium Carbonate - This material shall comply with the specification for Calcium Carbonate Pigments, ASTM D 1199.

NOTES/COMMENTS:

D. VEHICLE REQUIREMENTS: WHITE AND YELLOW ACRYLIC RESIN WATERBORNE LEAD FREE TRAFFIC PAINT

YES	NO	NO & PROVIDE ALTERNATIVE	
X			1. Acrylic Emulsion Polymer - The non-volatile portion of the vehicle shall be a 100% acrylic polymer such as Fastrack 3427 or DT 250. State in Comments which acrylic polymer product is used and supply certification confirming 100% acrylic polymer. Vendor is required to disclose and/or receive approval prior to any proposed resin change.
X			2. Methyl Alcohol - ASTM D 287 or equivalent.
X			3. Propylene Glycol - ASTM D 5164

X		4. Water - Potable.
NOTES/COMMENTS:		

E. MISCELLANEOUS MATERIALS: WHITE AND YELLOW ACRYLIC RESIN WATERBORNE LEAD FREE TRAFFIC PAINT

YES	NO	NO & PROVIDE ALTERNATIVE							
X			<p>1. The type and/or composition of the following materials shall be left to the discretion of the manufacturer as long as the finished product meets the traffic paint requirements as specified herein:</p> <table border="1"> <tr> <td>Dispersant</td> <td>Rheology Modifier</td> </tr> <tr> <td>Surfactant</td> <td>Coalescent</td> </tr> <tr> <td>Defoamer</td> <td>Preservative</td> </tr> </table>	Dispersant	Rheology Modifier	Surfactant	Coalescent	Defoamer	Preservative
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Defoamer	Preservative								
NOTES/COMMENTS:									

F. STANDARD FORMULATION REQUIREMENTS: WHITE AND YELLOW ACRYLIC RESIN WATERBORNE LEAD FREE TRAFFIC PAINT

YES	NO	NO & PROVIDE ALTERNATIVE																																																				
X			<p>1. The following Standard Formulas shall be the basis for the paint. No variations will be permitted except for the replacement of volatiles lost in processing or those approved by the NDOT Chemistry Laboratory. Amounts are shown in pounds of material:</p> <table border="1"> <thead> <tr> <th></th> <th>White</th> <th>Yellow</th> </tr> </thead> <tbody> <tr> <td>C. I. Pigment Yellow 65</td> <td>---</td> <td>50</td> </tr> <tr> <td>Titanium Dioxide, Rutile Type II</td> <td>100</td> <td>40</td> </tr> <tr> <td>Yellow Iron Oxide</td> <td>---</td> <td>2</td> </tr> <tr> <td>Calcium Carbonate, Type PC</td> <td>150</td> <td>125</td> </tr> <tr> <td>Calcium Carbonate, Type GC</td> <td>430</td> <td>450</td> </tr> <tr> <td>Rheology Modifier</td> <td>0.5*</td> <td>0.3*</td> </tr> <tr> <td>Acrylic Emulsion, 50% Solids</td> <td>541</td> <td>535</td> </tr> <tr> <td>Coalescent</td> <td>24</td> <td>23</td> </tr> <tr> <td>Defoamer</td> <td>5</td> <td>6</td> </tr> <tr> <td>Dispersant</td> <td>8</td> <td>10</td> </tr> <tr> <td>Surfactant</td> <td>2</td> <td>2</td> </tr> <tr> <td>Methyl Alcohol</td> <td>15</td> <td>15</td> </tr> <tr> <td>Propylene Glycol</td> <td>15</td> <td>14</td> </tr> <tr> <td>Preservative</td> <td>1.5</td> <td>1.5</td> </tr> <tr> <td>Water</td> <td>10</td> <td>15</td> </tr> <tr> <td>Total Pounds</td> <td>1302</td> <td>1288.8</td> </tr> </tbody> </table>		White	Yellow	C. I. Pigment Yellow 65	---	50	Titanium Dioxide, Rutile Type II	100	40	Yellow Iron Oxide	---	2	Calcium Carbonate, Type PC	150	125	Calcium Carbonate, Type GC	430	450	Rheology Modifier	0.5*	0.3*	Acrylic Emulsion, 50% Solids	541	535	Coalescent	24	23	Defoamer	5	6	Dispersant	8	10	Surfactant	2	2	Methyl Alcohol	15	15	Propylene Glycol	15	14	Preservative	1.5	1.5	Water	10	15	Total Pounds	1302	1288.8
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NOTES/COMMENTS:

G. PHYSICAL PROPERTIES: WHITE AND YELLOW ACRYLIC RESIN WATERBORNE LEAD FREE TRAFFIC PAINT

YES	NO	NO & PROVIDE ALTERNATIVE	1. The paint shall conform to the following physical property requirements as provided in the tables below:																																									
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H. DETAILED REQUIREMENTS: WHITE AND YELLOW ACRYLIC RESIN WATERBORNE LEAD FREE TRAFFIC PAINT

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. Condition in Container – The paint shall be finely ground. It shall not show excessive settling. There shall not be gelling, curdling, livering, caking, lumps, skins, or color separation and shall be easily dispersed with a hand paddle to a smooth, homogeneous state. The pigment shall be readily dispersed and the consistency of the paint shall not have changed by more than 5 KU (Krebs Units) from that of the freshly delivered paint, after storage for periods up to 1 year from the date of packaging.</p>
X			<p>2. Color - For white traffic paint, the color after drying shall be a flat white, free from tint, furnishing good opacity and visibility under both daylight and artificial light. For yellow, the color shall closely match Color 33538 of Federal Standard 595b and shall be \pm 6% from the PR #1 chart central color when read over the black portion of a Leneta black and white paper chart. Measurements shall be performed according to NDT E 1349 using a color spectrophotometer with a 45°/0° circumferential viewing geometry, illuminate "C", and an observer of 2.</p>
X			<p>3. Drying Time, No Tracking - No tracking shall be the time in minutes required for the line to withstand the running of a standard automobile over the line at a speed of approximately 40 mph, simulating a passing procedure without tracking of the reflectorized line when viewed from a distance of 50 feet.</p> <p>The paint shall dry to no tracking conditions under traffic in three minutes maximum. When 15 mils is applied, the maximum tracking time shall not be exceeded when the pavement surface temperature varies from 50°F to 120°F at a relative humidity of 80% or less.</p>
X			<p>4. Spraying Properties - The traffic paints (as received) shall have satisfactory spraying properties.</p>
X			<p>5. Appearance of Dry Film - The sprayed paints shall dry to a smooth, uniform finish free from roughness, grit, unevenness, and other surface imperfections. There shall be no bleeding, streaking, separation, blistering, wrinkling, or cracking.</p>
X			<p>6. Bleeding - The paint shall have a minimum bleeding ratio of 0.96 when tested in accordance with Federal Specification TT-P-1952F. The asphalt saturated felt shall conform to ASTM D 226 for Type I.</p>
X			<p>7. Flexibility - The paint shall show no cracking or flaking when tested in accordance with Federal Specification TT-P-1952F.</p>
X			<p>8. Water Resistance - The paint shall conform to NDT 1952. There shall be no blistering or appreciable loss of adhesion, softening, or other deterioration after examination.</p>
X			<p>9. Dilution Test - The paint shall be capable of dilution with water at all levels without curdling or precipitation such that the wet paint can be readily cleaned up with water only.</p>
X			<p>10. Accelerated Package Stability – (ASTM D1849 & TT-P-1952F). Fill a clean 500 mL (1 pint) resin-lined friction-top can with thoroughly mixed sample. Measure the initial consistency. Close the can tightly to prevent evaporation loss. Store this can in an oven at a temperature of 52°C for two weeks. After two weeks, remove the can from the oven and allow it to cool to room temperature. Examine the paint for livering and hard settling. Hand stir the sample for 5 minutes to ensure uniform distribution. The paint shall show no caking, skinning, livering or hard settling. It shall be dispersible by hand stirring for 5 minutes to a smooth, homogeneous state. When compare to the initial consistency, the sample shall show no change greater than 5 Krebs Units after this heated storage period.</p>

NOTES/COMMENTS:

I. REQUIREMENTS PRIOR TO AWARD

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. Samples of each of the colors of the traffic paint bid shall be required prior to an award. Upon a written request from the Nebraska Purchasing Bureau, bidder(s) shall submit, within three (3) business days, two one-quart preliminary samples of each of the colors of the traffic paint that they propose to furnish to the NDOT Chemistry Laboratory. Each sample shall be accompanied by a copy of the certified test results for each test stipulated in this specification, along with a copy of the materials' latest Safety Data Sheet. Each bidder shall completely fill out the "Detailed Analysis" Attachment B for each traffic paint submitted, listing the trade names and manufacturers and/or suppliers of the ingredient materials proposed for use.</p> <p>Failure to supply samples, and/or samples that do not meet specification may be grounds to reject the bid.</p>
X			<p>2. Upon a written request from the Nebraska State Purchasing Bureau, Bidders shall submit the standard traffic paints (see below) to an independent lab, approved by the State of Nebraska, for Titanium Dioxide analysis. All remaining material of the standard traffic paints after independent analysis shall be provided to the NDOT Chemistry Laboratory including the analysis report from the independent lab. Once the standard traffic paints are submitted to NDOT, the titanium dioxide content determined by the independent lab will be used for preliminary sample analyses of titanium dioxide content. The test method NDT D4764 is used to determine the Titanium Dioxide content of the traffic paint. The standard traffic paint referenced in NDT D4764 shall contain a known amount of titanium dioxide. It shall be used as a reference in the analysis of traffic paint batches submitted for approval for use by the State of Nebraska. It shall be prepared as according to the formula stated in the contract in volumes of one quart per color. Bidders shall be responsible for providing the white and yellow standard traffic paints and any expenses associated with producing, testing, and shipping the standard traffic paints.</p> <p>Bidders shall submit to the State the required analysis report and standard traffic paints within thirty (30) calendar days. Failure to supply the required documentation and standard traffic paints may be grounds to reject the bid.</p>
X			<p>3. Upon a written request from the State of Nebraska Purchasing Bureau, Bidders shall submit dry film containing the pigments Yellow C.I. #65 and Yellow Iron Oxide to an independent lab, approved by the State of Nebraska, for EPA TCLP toxic metal limits for arsenic, barium, cadmium, chromium, lead, mercury, and selenium. Failure to provide compliant documentation to the State within thirty (30) calendar days may be grounds to reject the bid.</p>
X			<p>4. Upon a written request from the State of Nebraska Purchasing Bureau, sample(s), standards, and documentation shall be shipped to:</p> <p>Nebraska Department of Transportation Materials and Research Division Chemistry Laboratory 1400 Hwy. 2 Lincoln, NE 68502</p>

X			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.
X			5. Failure to comply with any of the requirements stated in this section may be grounds to reject the bid.
NOTES/COMMENTS:			

I. QUALITY ASSURANCE TESTING OF TRAFFIC PAINT PRIOR TO DELIVERY THROUGHOUT THE LIFE OF THE CONTRACT

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. Prior to delivery, Contractor(s) shall provide a one-pint sample, representative of each batch/lot of paint to be supplied, for testing and evaluation purposes. Each sample shall be identified by the manufacturer's code number, type of paint, batch/lot number, and total gallons of paint represented. The manufacturer shall arrange for overnight delivery of the sample, at no additional charge to NDOT. Samples are to be submitted to:</p> <p>Nebraska Department of Transportation Materials and Research Division Chemistry Laboratory 1400 Hwy. 2 Lincoln, NE 68502</p> <p>Deliveries of samples 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>
X			<p>2. Documentation: Each one-pint sample of every batch/lot of traffic paint submitted to the NDOT for quality assurance testing shall be accompanied by a copy of the certified test results as performed by the contractor(s).</p>
X			<p>3. Final acceptance of the material will be determined by tests performed by the NDOT Chemistry Laboratory. The required testing will take approximately ten (10) business days to accomplish.</p>
X			<p>4. Any sample which fails to comply with the specifications and representations contained in this Invitation to Bid, shall be rejected and a charge of five hundred dollars (\$500.00) for the batch tested shall be assessed. Such charge shall be deducted from the monies due or to become due to NDOT. A retain sample of the failing batch will not be accepted as a replacement sample for the failing batch.</p>
X			<p>5. If the sample fails, the entire batch shall be considered rejected and shall not be delivered to NDOT.</p>
X			<p>6. Any material batch that is rejected as a result of the failed manufacturer sample, will not count toward the required quantity on the original purchase order. The Contractor shall be responsible for fulfilling the original PO by replacing any rejected material batches with new batches within fifteen (15) business days after notification. Replacement material batches shall be subject to quality assurance testing prior to delivery as specified in this section.</p>
X			<p>7. If the material is delivered to NDOT prior to the NDOT Chemistry Laboratory testing the sample and providing notification to the Contractor of the sample results the following then occurs;</p>

			<p>If the product <u>passes the testing</u>, the entire batch shall be subject to a price reduction of <u>50%</u></p> <p>OR;</p> <p>If the sample <u>fails the testing</u>, the entire batch shall be subject to a <u>NO PAY</u>:</p> <p>In the event the Contractor has delivered any failed batches prior to NDOT Chemistry Laboratory testing, it will be at NDOT's sole discretion to determine if additional material may be required where the failing batch was utilized. Additional material may be required by the Contractor within fifteen (15) business days FOB destination to the location on the original purchase order. Any additional material required, shall be subject to quality assurance testing prior to delivery as specified in this section of the Invitation to Bid.</p> <p>In the event the failed batches have not been utilized, at NDOT's sole discretion, the batches may be replaced by the Contractor at the Contractor's expense within fifteen (15) business days FOB destination to the location on the original purchase order. Any replacement batches shall be subject to quality assurance testing prior to delivery as specified in this section of the Invitation to Bid</p>
X			<p>8. Contractor will be required to send shipment notifications to the NDOT Chemistry Laboratory. The notifications shall be provided within twenty-four (24) hours of shipment, including, but not limited to, batch number, tote identification, bill of lading, and shipment location within NDOT. The notifications shall be submitted to:</p> <p>Chemistry Tests Manager Nebraska Department of Transportation Materials and Research Division 1400 Hwy. 2 Lincoln, NE 68502</p> <p>By either fax - 402-479-3975, e-mail at ndot.MRChemistryLab@nebraska.gov or Internet (if available and not to the exclusion of the other methods).</p>
X			<p>9. Additionally, during the life of the contract, upon a written request from NDOT, traffic paint standards for titanium dioxide analysis shall be prepared according to the formula stated in the contract in volumes of one quart per color. Contractor shall be responsible for providing the white and yellow standard traffic paints and any expenses associated with producing, testing, and shipping the standard traffic paints.</p> <p>Contractor shall submit the standard traffic paints to an independent lab, approved by the State of Nebraska, for Titanium Dioxide analysis. All remaining material of the standard traffic paints after independent analysis shall be provided to the NDOT Chemistry Lab including the analysis report from the independent lab. Once the standard traffic paints are submitted to NDOT, the titanium dioxide content determined by the independent lab will be used for future batch approval analyses.</p> <p>Upon a written request from NDOT, standards and documentation shall be shipped to:</p> <p>Nebraska Department of Transportation Materials and Research Division Chemistry Laboratory 1400 Hwy. 2 Lincoln, NE 68502</p>

X			<p>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>The traffic paint standards shall be provided annually or more frequently if given written notice by NDOT. Contractor shall submit the required documentation and standards within 30 calendar days upon a written request from NDOT. Failure to supply the required documentation and standards may result in the Contractor being in breach of the contract and may be grounds for termination of the contract.</p>
			NOTES/COMMENTS:

J. FIELD SAMPLING & QUALITY ASSURANCE (TESTING OF TRAFFIC PAINT THROUGHOUT THE LIFE OF THE CONTRACT)

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. In addition to prior approval of the manufacturer sample, NDOT reserves the right to test any traffic paint delivered to NDOT. NDOT shall perform field sampling on the paint totes per ASTM D8008 Section 6.2.5.</p> <p>a. Any material delivered to NDOT that fails to meet the requirements stipulated by this specification shall be subject to the Price Adjustment Guide listed in Attachment A.</p> <p>b. In the event that the product fails more than one (1) test specification, resulting in more than one (1) price adjustment, the highest resulting price adjustment will be applied.</p> <p>c. Any material batch that does not meet the required specifications and is subject to a price adjustment may not count towards the required quantity on the original purchase order. NDOT shall determine at its sole discretion whether or not additional material may be required by the Contractor within fifteen (15) business days. Any additional material required, shall be subject to quality assurance testing prior to delivery as specified in Special Provisions Section VII, Subsection J of the Invitation to Bid.</p> <p>In the event the failed batches have not been utilized, at NDOT's sole discretion, the batches may be replaced by the Contractor at the Contractor's expense within fifteen (15) business days FOB destination to the location on the original purchase order. Any replacement batches shall be subject to quality assurance testing prior to delivery as specified in Special Provisions Section VII, Subsection J of the Invitation to Bid.</p>

NOTES/COMMENTS:

End of Specifications for Acrylic Resin Waterborne Traffic Paint White/Yellow Lead Free

VIII. SPECIAL PROVISIONS FOR WHITE AND YELLOW FAST DRY WATERBORNE TRAFFIC PAINT LOW TEMPERATURE APPLICATION

For each type of Fast Dry Waterborne Traffic Low Temperature Application White and Yellow Paint

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 Bidders' 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 of Nebraska shall determine at its sole discretion whether or not the Bidders' alternative is an acceptable alternative

A. NON-COMPLIANCE STATEMENT

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<ol style="list-style-type: none">1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your proposal.
X			<ol style="list-style-type: none">2. It is the responsibility of Contractors to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Contractor.
X			<ol style="list-style-type: none">3. No interpretation related to the meaning of solicitation specifications or other pre-proposal documents will be made orally to any Contractor by the State. Any solicitation interpretation must be put in writing by the Contractor to: the State Purchasing Bureau, Send questions through Sharefile using the following link: https://nebraska.sharefile.com/r-ra39eb32c033147f5b222fa8b1b3c1855 before 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).

B. GENERAL REQUIREMENTS (FAST DRY WATERBORNE TRAFFIC LOW TEMPERATURE APPLICATION WHITE AND YELLOW PAINT)

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<ol style="list-style-type: none">1. The traffic paint shall be low VOC acrylic resin lead free and fast dry low temperature waterborne paint for application on bituminous Portland cement concrete pavement.
X			<ol style="list-style-type: none">2. The traffic paint shall be capable of receiving and holding glass beads for producing reflectorized traffic markings.
X			<ol style="list-style-type: none">3. The traffic paint shall be furnished ready-mixed in two colors (white and yellow).
X			<ol style="list-style-type: none">4. The traffic paint shall be suitable for use with Type I, drop-on, dual-coated, moisture-resistant glass beads.
X			<ol style="list-style-type: none">5. The traffic paint shall bind glass beads in such a manner as to produce maximum adhesion, reflection, and refraction. The paints shall show proper capillary action at the interstices existing between the beads to provide good anchorage and refraction.
X			<ol style="list-style-type: none">6. Reflectorized stripes on the pavement shall show good durability and good night visibility throughout their useful life.

X			7. The volatile content of the finished paint shall contain less than 150 grams of volatile organic matter per liter of total non-volatile paint material in accordance with ASTM D 3960. Certification of volatile organic content will be required for each batch of paint.
X			8. The paint shall be free of any lead, mercury, cadmium, hexavalent chromium, any other toxic heavy metals, toluene, chlorinated solvents, hydrolyzable chlorine derivatives, ethylene-based glycol ethers and their acetates, and any carcinogens.
NOTES/COMMENTS:			

C. DETAILED REQUIREMENTS (FAST DRY WATERBORNE TRAFFIC LOW TEMPERATURE APPLICATION WHITE AND YELLOW PAINT)

YES	NO	NO & PROVIDE ALTERNATIVE	
X			1. Condition in Container – The paint shall be finely ground. It shall not show excessive settling. There shall not be gelling, curdling, livering, caking, lumps, skins, or color separation and shall be easily dispersed with a hand paddle to a smooth, homogeneous state. The pigment shall be readily dispersed and the consistency of the paint shall not have changed by more than five (5) KU (Krebs Units) from that of the freshly delivered paint, after storage for periods up to one (1) year from the date of packaging.
X			2. Color - For white traffic paint, the color after drying shall be a flat white, free from tint, furnishing good opacity and visibility under both daylight and artificial light. For yellow, the color shall closely match Color 33538 of Federal Standard 595b and shall be \pm 6% from the PR #1 chart central color when read over the black portion of a Leneta black and white paper chart. Measurements shall be performed according to NDT E 1349 using a color spectrophotometer with a 45°/0° circumferential viewing geometry, illuminate "C", and an observer of 2.
X			3. Spraying Properties - The traffic paints (as received) shall have satisfactory spraying properties.
X			4. Appearance of Dry Film - The sprayed paints shall dry to a smooth, uniform finish free from roughness, grit, unevenness, and other surface imperfections. There shall be no bleeding, streaking, separation, blistering, wrinkling, or cracking.
X			5. Bleeding - The paint shall have a minimum bleeding ratio of 0.96 when tested in accordance with Federal Specification TT-P- 1952F. The asphalt saturated felt shall conform to ASTM D 226 for Type I.
X			6. Flexibility - The paint shall show no cracking or flaking when tested in accordance with Federal Specification TT-P-1952F.
X			7. Water Resistance - The paint shall conform to NDT 1952 . There shall be no blistering or appreciable loss of adhesion, softening, or other deterioration after examination.
X			8. Dilution Test - The paint shall be capable of dilution with water at all levels without curdling or precipitation such that the wet paint can be readily cleaned up with water only.
NOTES/COMMENTS:			

D. QUALITY ASSURANCE (TESTING OF TRAFFIC PAINT PRIOR TO AWARD)

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. Samples of each of the colors of the traffic paint bid shall be required prior to an award. Upon a written request from the State of Nebraska Purchasing Bureau, bidder(s) shall submit, within three (3) business days, two one-quart preliminary samples of each of the colors of the traffic paint that they propose to furnish to the NDOT Chemistry Laboratory. Each sample shall be accompanied by a copy of the certified test results for each test stipulated in this specification, along with a copy of the materials' latest Safety Data Sheet. Each bidder shall completely fill out the "Detailed Analysis" Attachment B for each traffic paint submitted, listing the trade names and manufacturers and/or suppliers of the ingredient materials proposed for use.</p> <p>Failure to supply samples, and/or samples that do not meet specification may be grounds to reject the bid.</p> <p>Upon a written request from the State of Nebraska Purchasing Bureau, sample(s) shall be shipped to:</p> <p style="margin-left: 40px;">Nebraska Department of Transportation Materials and Research Division Chemistry Laboratory 1400 Hwy. 2 Lincoln, NE 68502</p> <p>Deliveries of samples 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>2. Failure to supply samples, and/or samples that do not meet specifications may be grounds to reject the bid.</p>
NOTES/COMMENTS:			

E. QUALITY ASSURANCE (TESTING OF TRAFFIC PAINT PRIOR TO DELIVERY THROUGHOUT THE LIFE OF THE CONTRACT)

YES	NO	NO & PROVIDE ALTERNATIVE	
X			<p>1. Prior to delivery, Contractor(s) shall provide a one-pint sample, representative of each batch/lot of paint to be supplied, for testing and evaluation purposes. Each sample shall be identified by the manufacturer's code number, type of paint, batch/lot number, and total gallons of paint represented. The manufacturer shall arrange for overnight delivery of the sample, at no additional charge to NDOT. Samples are to be submitted to:</p> <p style="margin-left: 40px;">Nebraska Department of Transportation Materials and Research Division Chemistry Laboratory 1400 Hwy. 2 Lincoln, NE 68502</p> <p>Deliveries of samples 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>

X			<p>2. Documentation: Each one-pint sample of every batch/lot of traffic paint submitted to the NDOT for quality assurance testing shall be accompanied by a copy of the certified test results as performed by the contractor(s).</p>
X			<p>3. Final acceptance of the material will be determined by tests performed by the NDOT Chemistry Laboratory. The required testing will take approximately ten (10) business days to accomplish.</p>
X			<p>4. Any sample which fails to comply with the specifications and representations contained in this Invitation to Bid, shall be rejected and a charge of five hundred dollars (\$500.00) for the batch tested shall be assessed. Such charge shall be deducted from the monies due or to become due to NDOT. A retain sample of the failing batch will not be accepted as a replacement sample for the failing batch.</p>
X			<p>5. If the sample fails, the entire batch shall be considered rejected and shall not be delivered to NDOT.</p>
X			<p>6. Any material batch that is rejected as a result of the failed manufacturer sample, will not count toward the required quantity on the original purchase order. The Contractor shall be responsible for fulfilling the original PO by replacing any rejected material batches with new batches within fifteen (15) business days after notification. Replacement material batches shall be subject to quality assurance testing prior to delivery as specified in this section.</p>
X			<p>7. If the material is delivered to NDOT prior to the NDOT Chemistry Laboratory testing the sample and providing notification to the Contractor of the sample results the following then occurs;</p> <p>If the product passes the testing, the entire batch shall be subject to a price reduction of 50% at NO PAY</p> <p>OR;</p> <p>If the sample fails the testing, the entire batch shall be subject to a NO PAY.</p> <p>In the event the Contractor has delivered any failed batches prior to NDOT Chemistry Laboratory testing, it will be at NDOT's sole discretion to determine if additional material may be required where the failing batch was utilized. Additional material may be required by the Contractor within fifteen (15) business days FOB destination to the location on the original purchase order. Any additional material required, shall be subject to quality assurance testing prior to delivery as specified in this section of the Invitation to Bid.</p> <p>In the event the failed batches have not been utilized, at NDOT's sole discretion, the batches may be replaced by the Contractor at the Contractor's expense within 15 business days FOB destination to the location on the original purchase order. Any replacement batches shall be subject to quality assurance testing prior to delivery as specified in this section of the Invitation to Bid.</p>
X			<p>8. Contractor will be required to send shipment notifications to the NDOT Chemistry Laboratory. The notifications shall be provided within twenty four (24) hours of shipment, including, but not limited to, batch number, tote identification, bill of lading, and shipment location within NDOT. The notifications shall be submitted to:</p> <p>Chemistry Tests Manager Nebraska Department of Transportation Materials and Research Division 1400 Hwy. 2 Lincoln, NE 68502</p> <p>By either fax - 402-479-3975,</p>

X			e-mail at ndot.MRChemistryLab@nebraska.gov or Internet (if available and not to the exclusion of the other methods).
NOTES/COMMENTS:			

F. PHYSICAL PROPERTIES:: FAST DRY WATERBORNE TRAFFIC LOW TEMPERATURE APPLICATION WHITE AND YELLOW PAINT

YES	NO	NO & PROVIDE ALTERNATIVE																															
X			<p>1. The following physical properties shall be the basis for the paint. No variations will be permitted except for those approved by the NDOT Chemistry Laboratory.</p> <table border="1"> <thead> <tr> <th>Physical Property</th> <th>Specification</th> <th>Test Method</th> </tr> </thead> <tbody> <tr> <td>Solvent</td> <td>Water</td> <td>---</td> </tr> <tr> <td>Consistency, 77°F</td> <td>75 – 95 KU</td> <td>ASTM D562</td> </tr> <tr> <td>Weight per Gallon, lbs.</td> <td>12.7 – 14.6</td> <td>NDT D1475</td> </tr> <tr> <td>%Pigment by Weight</td> <td>56 – 67%</td> <td>NDT D3723</td> </tr> <tr> <td>%Solids by weight</td> <td>63% minimum</td> <td>NDT D2369</td> </tr> <tr> <td>Directional Reflectance</td> <td>83 minimum (white) 50 minimum (yellow)</td> <td>NDT E1349</td> </tr> <tr> <td>Contrast Ratio</td> <td>0.96 minimum</td> <td>NDT D2805</td> </tr> <tr> <td>Dry to No Pickup, minutes</td> <td>10 maximum</td> <td>NDT D711</td> </tr> <tr> <td>Grind a.</td> <td>3 minimum</td> <td>ASTM D1210</td> </tr> </tbody> </table>	Physical Property	Specification	Test Method	Solvent	Water	---	Consistency, 77°F	75 – 95 KU	ASTM D562	Weight per Gallon, lbs.	12.7 – 14.6	NDT D1475	%Pigment by Weight	56 – 67%	NDT D3723	%Solids by weight	63% minimum	NDT D2369	Directional Reflectance	83 minimum (white) 50 minimum (yellow)	NDT E1349	Contrast Ratio	0.96 minimum	NDT D2805	Dry to No Pickup, minutes	10 maximum	NDT D711	Grind a.	3 minimum	ASTM D1210
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Grind a.	3 minimum	ASTM D1210																															
NOTES/COMMENTS:																																	

End of Specifications for Fast Dry Waterborne Traffic Low Temperature Application White and Yellow Paint

Form A
Vendor Contact Sheet
Invitation To Bid Number 6645 OF

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

Preparation of Solicitation Contact Information	
Vendor Name:	Ennis-Flint, Inc
Vendor Address:	4161 Piedmont Parkway, Suite 370 Greensboro, NC 27410
Contact Person & Title:	Sherry Murr, Contract Administrator
E-mail Address:	SherryMurr@ppg.com
Telephone Number (Office):	336-308-3807
Telephone Number (Cellular):	
Fax Number:	

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

Communication with the State Contact Information	
Vendor Name:	Ennis-Flint, Inc.
Vendor Address:	4161 Piedmont Parkway, Suite 370 Greensboro, NC 27410
Contact Person & Title:	Sherry Murr, Contract Administrator
E-mail Address:	SherryMurr@ppg.com
Telephone Number (Office):	336-308-3807
Telephone Number (Cellular):	
Fax Number:	

APPLICATION FOR AMENDED CERTIFICATE OF AUTHORITY

John A. Gale, Secretary of State
Room 1301 State Capitol, P.O. Box 94608
Lincoln, NE 68509
<http://www.sos.ne.gov>

NE Sec of State John A Gale - CORP NN

1001477508 Pgs: 2
ENNIS-FLINT, INC.
Filed: 01/29/2018 01:52 PM

Attach a certificate stating the name change amendment duly authenticated by the official having custody of the corporate records in the state or country under whose law it is incorporated. Such certificate shall not be more than 60 days old. A certified copy of the name change amendment should not be submitted and is not acceptable in lieu of such certificate.

Name of Corporation Ennis Paint, Inc.

Incorporated under the laws
of TX

Amended Name of Corporation Ennis-Flint, Inc.

Date Incorporation 12/31, 2017
Year

Period of Duration Perpetual

Address of Principal Office 4161 Piedmont Pkwy, Suite 370 Greensboro
Street Address City NC 27410
State Zip

Registered Agent CSC-Lawyers Incorporating Service Company
Registered Office 233 S. 13th St., Suite 1900 Lincoln NE 68508
Street Address and Post Office Box number (if any) City Zip

Effective date if other than date filed _____

Laura A. Greer
Signature

Laura A. Greer, Secretary

Printed Name/Title

NOTE: Every filing must be signed by the chairperson of the board of directors, the president, or one of the officers of the corporation. If the corporation has not yet been formed or directors have not yet been selected, the filing shall be signed by an incorporator. If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, the filing shall be signed by that fiduciary.

Filing Fee: \$30.00, plus \$5.00 per page for attachments & for the certificate (if required).

Revised January 1, 2017

Neb. Rev. Stat. §21-2, 206

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



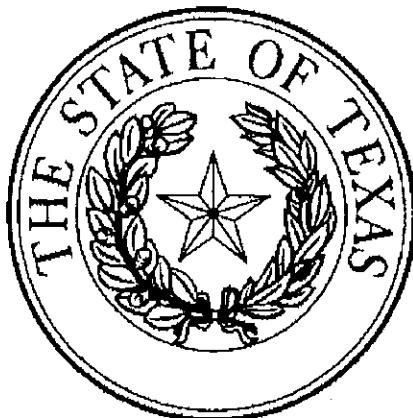
Rolando B. Pablos
Secretary of State

Office of the Secretary of State

Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that a certificate of conversion was filed on December 19, 2017 with an effective date of December 31, 2017 10:56pm, by Ennis-Flint, Inc., a Foreign For-Profit Corporation, converting the entity from Ennis Paint, Inc., a Texas Domestic For-Profit Corporation, file number 140482300.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on January 19, 2018.



A handwritten signature in black ink, appearing to read "RBP".

Rolando B. Pablos
Secretary of State

APPLICATION FOR AMENDED CERTIFICATE OF AUTHORITY

John A. Gale, Secretary of State
Room 1301 State Capitol, P.O. Box 94608
Lincoln, NE 68509
<http://www.sos.ne.gov>

NE Sec of State John A Gale - CORP A

1001477509
ENNIS-FLINT, INC.
Filed: 01/29/2018 01:52 PM
Page: 2

Attach a certificate stating the name change amendment duly authenticated by the official having custody of the corporate records in the state or country under whose law it is incorporated. Such certificate shall not be more than 60 days old. A certified copy of the name change amendment should not be submitted and is not acceptable in lieu of such certificate.

Name of Corporation Ennis-Flint, Inc.

Incorporated under the laws
of NC

Amended Name of Corporation _____

Date Incorporation 12/31, 2017
Year

Period of Duration Perpetual

Address of Principal Office	<u>4161 Piedmont Pkwy, Suite 370 Greensboro</u>	NC	27410
Street Address	City	State	Zip

Registered Agent CSC-Lawyers Incorporating Service Company

Registered Office	<u>233 S. 13th St., Suite 1900</u>	Lincoln	NE 68508
Street Address and Post Office Box number (if any)	City	State	Zip

Effective date if other than date filed _____

Laura A. Greer
Signature

Laura A. Greer, Secretary

Printed Name/Title

NOTE: Every filing must be signed by the chairperson of the board of directors, the president, or one of the officers of the corporation. If the corporation has not yet been formed or directors have not yet been selected, the filing shall be signed by an incorporator. If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, the filing shall be signed by that fiduciary.

Filing Fee: \$30.00, plus \$5.00 per page for attachments & for the certificate (if required).

Revised January 1, 2017

Neb. Rev. Stat. §21-2, 206



NORTH CAROLINA

Department of the Secretary of State

CERTIFICATE OF EXISTENCE

I, Elaine F. Marshall, Secretary of State of the State of North Carolina, do hereby certify that

ENNIS-FLINT, INC.

is a corporation duly incorporated under the laws of the State of North Carolina, having been incorporated on the 31st day of December, 2017, with its period of duration being Perpetual.

I FURTHER certify that, as of the date set forth hereunder, the said corporation's articles of incorporation are not suspended for failure to comply with the Revenue Act of the State of North Carolina; that the said corporation is not administratively dissolved for failure to comply with the provisions of the North Carolina Business Corporation Act; that its most recent annual report required by N.C.G.S. 55-16-22 has been delivered to the Secretary of State; and that the said corporation has not filed articles of dissolution as of the date of this certificate.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 4th day of January, 2018.

Elaine F. Marshall

Secretary of State

STATE OF NEBRASKA

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

Secretary of State
State Capitol
Lincoln, Nebraska

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

ENNIS-FLINT, INC.

a North Carolina corporation is authorized to transact business in Nebraska;

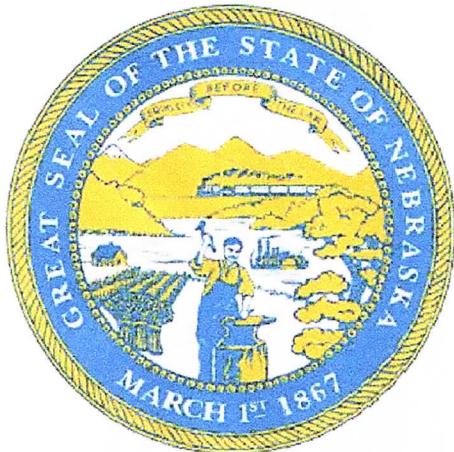
**that no occupation taxes due from and assessable against the Corporation are
unpaid and have become delinquent;**

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

that a Certificate of Withdrawal has not been filed.

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

In Testimony Whereof,



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

January 30, 2018

A handwritten signature in black ink that reads "John A. Gale".

John A. Gale
Secretary of State