

# State of Nebraska - INVITATION TO BID CONTRACT

Date	12/26/23	Page	1 of 3
Solicitation Number	6851 OF		
Opening Date and Time	02/21/24	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 Liquid Asphaltic Materials to the State of Nebraska as per the attached from the date of reward through November 30, 2024.

(BT 12/26/23)

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	DISTRICT 1 CRS-2P	4,050.0000	TN	<u>No Bid</u>	<u>No Bid</u>
2	DISTRICT 3 CRS-2P	4,405.0000	TN	<u>No Bid</u>	<u>No Bid</u>
3	DISTRICT 4 CRS-2P	4,195.0000	TN	<u>No Bid</u>	<u>No Bid</u>
4	DISTRICT 4 HFE-300	575.0000	TN	<u>No Bid</u>	<u>No Bid</u>

### BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: 0 % 30 DAYS

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within 1 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# 1895175  
 VENDOR: Ergon Asphalt & Emulsions, Inc.  
 Address: 4511 S. Industrial Road  
Cheyenne, WY 82007

Contact Sean Pellersels  
 Telephone 307/638-2633  
 Email Sean.pellersels@ergon.com

# State of Nebraska - INVITATION TO BID CONTRACT

Date	12/26/23	Page	2 of 3
Solicitation Number	6851 OF		
Opening Date and Time	02/21/24	2:00 pm	
Buyer	BRENDA SENSIBAUGH (AS)		

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

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
5	DISTRICT 4 MC-250	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
6	DISTRICT 5 CRS-2P	2,680.0000	TN	<u>\$ 673.77</u>	<u>\$ 1,805,703.60</u>
7	DISTRICT 5 CSS-1H (50/50)	10.0000	TN	<u>\$ 463.99</u>	<u>\$ 4,639.90</u>
8	DISTRICT 5 MC-250	5.0000	TN	<u>No Bid</u>	<u>No Bid</u>
9	DISTRICT 6 CRS-2P	2,480.0000	TN	<u>No Bid</u>	<u>No Bid</u>
10	DISTRICT 6 CSS-1H (50/50)	125.0000	TN	<u>\$ 418.73</u>	<u>\$ 52,341.25</u>
11	DISTRICT 6 CSS-1H (75/25)	1,045.0000	TN	<u>\$ 512.77</u>	<u>\$ 535,844.65</u>
12	DISTRICT 6 HFE-300	935.0000	TN	<u>No Bid</u>	<u>No Bid</u>
13	DISTRICT 6 MC-250	120.0000	TN	<u>No Bid</u>	<u>No Bid</u>
14	DISTRICT 7 CRS-2P	1,185.0000	TN	<u>No Bid</u>	<u>No Bid</u>
15	DISTRICT 7 CSS-1H STRAIGHT	52.0000	TN	<u>\$ 677.78</u>	<u>\$ 35,244.56</u>
16	DISTRICT 8 CRS-2P	2,155.0000	TN	<u>No Bid</u>	<u>No Bid</u>
17	DISTRICT 8 CSS-1H (75/25)	1,000.0000	TN	<u>No Bid</u>	<u>No Bid</u>
18	DISTRICT 8 HFE-150	17.0000	TN	<u>No Bid</u>	<u>No Bid</u>
19	DISTRICT 8 HFE-300	205.0000	TN	<u>No Bid</u>	<u>No Bid</u>
20	DISTRICT 8 HFE-1000	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
21	DISTRICT 8 MC-250	50.0000	TN	<u>No Bid</u>	<u>No Bid</u>
22	CRS-2L PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
23	CRS-2P PLANT PICK UP	25.0000	TN	<u>\$ 750.00</u>	<u>\$ 18,750.00</u>
24	CSS-1H PLANT PICK UP	25.0000	TN	<u>\$ 700.00</u>	<u>\$ 17,500.00</u>
25	CSS-1H (50/50) PLANT PICK UP	25.0000	TN	<u>\$ 425.00</u>	<u>\$ 10,625.00</u>
26	CSS-1H (75/25) PLANT PICK UP	25.0000	TN	<u>\$ 535.00</u>	<u>\$ 13,375.00</u>

# State of Nebraska - INVITATION TO BID CONTRACT

Date	12/26/23	Page	3 of 3
Solicitation Number	6851 OF		
Opening Date and Time	02/21/24	2:00 pm	
Buyer	BRENDA SENSIBAUGH (AS)		

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

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
27	SS-1H (50/50) PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
28	SS-1H (75/25) PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
29	CFS/FS-1 PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
30	CMS-1 PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
31	CMS-1W PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
32	MC-250 LANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
33	HFE-150 PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
34	HFE-300 PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
35	HFE-500 PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
36	HFE-1000 PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
37	HFMS-2L PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
38	HFM-2P PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
39	CRS-2P (80/20) PLANT PICK UP	25.0000	TN	<u>No Bid</u>	<u>No Bid</u>
40	CRS-2VHL PLANT PICK UP	25.0000	TN	<u>\$ 750.00</u>	<u>\$ 18,750.00</u>
41	RETURNED LOAD FEE (BILLED PER HWY MILE FROM POINT THE TRANSFER TRUCK IS NOTIFIED BACK TO THE SHIPPING POINT ORIGIN	1.0000	MI	<u>\$ 14.00</u>	<u>\$ 14.00</u>
42	DEMURRAGE CHARGE	1.0000	HR	<u>\$ 300.00</u>	<u>\$ 300.00</u>

**State of Nebraska (State Purchasing Bureau)**

<b>INVITATION TO BID NUMBER</b>	<b>RELEASE DATE</b>
ITB 6851 OF	January 24, 2024
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
February 21, 2024 2:00 p.m. Central Time	Brenda Sensibaugh

**PLEASE READ CAREFULLY  
SCOPE**

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for a commodity contract, ITB Number 6851 OF for the purpose of selecting a qualified Contractor to provide Liquid Asphaltic Materials. 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 contract is seasonal and does not contain any renewal options. The term of the contract will be commencing upon effective date of award through November 30, 2024. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

In the event that a contract with the awarded bidder(s) is cancelled or in the event that the State needs additional contractors to supply the solicited commodities, this ITB may be used to procure the solicited goods for up to eighteen (18) months from the date the Intent to Award is posted, provided that 1) the solicited goods will be provided by a bidder (or a successive owner) who submitted a bid pursuant to this ITB, 2) the bidder's bid was evaluated, and 3) the bidder will honor the bidder's original bid, including the proposed cost, allowing for any price increases that would have otherwise been allowed if the bidder would have received the initial award.

INFORMATION PERTINENT TO THIS INVITATION TO BID CAN BE FOUND ON THE INTERNET AT:  
<https://das.nebraska.gov/materiel/bidopps.html>

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.04, 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 Contractor's bid or response will be posted to a public website managed by DAS, which can be found at: <https://statecontracts.nebraska.gov> and [https://www.nebraska.gov/das/materiel/purchasing/contract\\_search/index.php](https://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php).

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

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

If the State determines it is required to release withheld 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 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 Invitation to Bid 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 Invitation to Bid, specifically waives any copyright or other protection the contract, bid, or response to the Invitation to Bid 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 Invitation to Bid, and award of a contract. Failure to agree to the reservation and waiver will result in the bid or response to the Invitation to Bid being found non-responsive and rejected.

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

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

<b>GLOSSARY OF TERMS</b> .....	<b>iv</b>
<b>ACRONYM LIST</b> .....	<b>viii</b>
<b>I. PROCUREMENT PROCEDURE</b> .....	<b>1</b>
A. GENERAL INFORMATION.....	1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS.....	1
C. SCHEDULE OF EVENTS.....	2
D. WRITTEN QUESTIONS AND ANSWERS.....	2
E. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Nonnegotiable).....	2
F. ETHICS IN PUBLIC CONTRACTING.....	2
G. DEVIATIONS FROM THE INVITATION TO BID.....	3
H. SUBMISSION OF BIDS.....	3
I. BID PREPARATION COSTS.....	4
J. FAILURE TO COMPLY WITH INVITATION TO BID.....	4
K. BID CORRECTIONS.....	4
L. LATE BIDS.....	4
M. BID OPENING.....	4
N. INVITATION TO BID REQUIREMENTS.....	4
O. EVALUATION OF BIDS.....	4
P. BEST AND FINAL OFFER.....	5
Q. REFERENCE AND CREDIT CHECKS.....	5
R. AWARD.....	5
S. SPECIFICATIONS.....	6
T. SAMPLES.....	6
U. ALTERNATE/EQUIVALENT BIDS.....	6
V. LUMP SUM OR "ALL OR NONE" BIDS.....	6
W. ALTERNATIVE SUBMISSION METHODS PROHIBITED.....	6
X. BID TABULATIONS.....	6
Y. REJECTION OF BIDS.....	7
Z. RESIDENT BIDDER.....	7
<b>II. TERMS AND CONDITIONS</b> .....	<b>8</b>
A. GENERAL.....	8
B. NOTIFICATION.....	8
C. NOTICE (POC).....	8
D. GOVERNING LAW (Nonnegotiable).....	8
E. AMENDMENT.....	9
F. CHANGE ORDERS OR SUBSTITUTIONS.....	9
G. RECORD OF VENDOR PERFORMANCE.....	9
H. NOTICE OF POTENTIAL CONTRACTOR BREACH.....	9
I. BREACH.....	9
J. NON-WAIVER OF BREACH.....	10
K. SEVERABILITY.....	10
L. INDEMNIFICATION.....	10
M. ATTORNEY'S FEES.....	10
N. ASSIGNMENT, SALE, OR MERGER.....	10
O. CONTRACTING WITH OTHER POLITICAL SUBDIVISIONS OF THE STATE OR ANOTHER STATE.....	11
P. FORCE MAJEURE.....	11
Q. CONFIDENTIALITY.....	11
R. EARLY TERMINATION.....	11
S. CONTRACT CLOSEOUT.....	12
<b>III. CONTRACTOR DUTIES</b> .....	<b>13</b>
A. INDEPENDENT CONTRACTOR / OBLIGATIONS.....	13
B. EMPLOYEE WORK ELIGIBILITY STATUS.....	13
C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION (Statutory).....	14
D. COOPERATION WITH OTHER CONTRACTORS.....	14
E. DISCOUNTS.....	14
F. PRICES.....	14
G. COST CLARIFICATION.....	14
H. PERMITS, REGULATIONS, LAWS.....	14

I.	NOTICE OF POTENTIAL CONTRACTOR BREACH .....	15
J.	ANTITRUST.....	15
K.	CONFLICT OF INTEREST .....	15
L.	SITE RULES AND REGULATIONS.....	15
M.	ADVERTISING .....	15
N.	DISASTER RECOVERY/BACK UP PLAN.....	15
O.	DRUG POLICY .....	15
P.	WARRANTY .....	15
Q.	TIME IS OF THE ESSENCE.....	15
<b>IV.</b>	<b>PAYMENT .....</b>	<b>16</b>
A.	PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable).....	16
B.	TAXES (Nonnegotiable).....	16
C.	INVOICES (Nonnegotiable) .....	16
D.	INSPECTION AND APPROVAL .....	16
E.	PAYMENT (Nonnegotiable) .....	16
F.	LATE PAYMENT (Nonnegotiable).....	16
G.	SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Nonnegotiable).....	16
H.	RIGHT TO AUDIT (First Paragraph is Nonnegotiable) .....	16
<b>V.</b>	<b>SCOPE OF WORK .....</b>	<b>18</b>
A.	SCOPE .....	18
<b>VI.</b>	<b>TECHNICAL SPECIFICATIONS .....</b>	<b>19</b>
A.	CONTRACTOR INSTRUCTIONS.....	19
B.	NON-COMPLIANCE STATEMENT .....	19
C.	TECHNICAL SPECIFICATIONS: LIQUID ASPHALTIC MATERIALS.....	19
D.	SECTION 504 AND 513 .....	20
E.	SECTION 515.....	20
F.	EMULSIFIED ASPHALT (CRS-2P AND CRS-2P 80/20).....	21
G.	SECTIONS 1031 & 1032 .....	21
H.	ANNUAL USAGE, ESTIMATED .....	22
I.	USAGE REPORT .....	22
J.	DELIVERY ARO .....	22
K.	IDENTIFICATION OF TRUCK SHIPMENTS .....	23
L.	DELIVERY LOCATIONS/INSTRUCTIONS.....	23
M.	ORDERS .....	24
N.	CANCELLATION OF DELIVERY BY NDOT .....	25
O.	LATE OR NON-DELIVERY .....	25
P.	BASIS OF PAYMENT .....	26
Q.	ON-SITE PERSONNEL.....	28
R.	QUALITY CONTROL (QC) PROGRAM CERTIFICATION BY NDOT .....	29
S.	SUPPLIER CERTIFICATION .....	30
T.	CERTIFICATE OF COMPLIANCE TO ACCOMPANY SHIPMENTS .....	30
U.	QUALITY .....	31
V.	COLD MIX WINDROWS-MIX DESIGN (SAMPLES AND TESTING).....	31
W.	SPRAY APPLIED EMULSIONS FOR FOG SEALS.....	32
X.	2024 SUPPLIER CERTIFICATION/APPROVAL FOR THE QUALITY CONTROL PROGRAM.....	32
Y.	PRICES .....	33
Z.	SUBSTITUTIONS .....	33
AA.	PROHIBITED PRODUCTS.....	34

## 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 (ARO):** 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 (ACH):** Electronic network for financial transactions in the United States

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

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

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

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

**Bidder:** A contractor who submits an offer 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:** Any weekday, except State-recognized holidays

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

**Cancellation:** To call off or revoke a 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 contractor 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 (CPU):** Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software

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

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

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

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

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

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

General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

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

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

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

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

**Contractor:** 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 Contractor

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

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

**Evaluation:** The process of examining an offer after opening to determine the contractor'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 (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the contractor. Contractor is responsible for all claims associated with damages during delivery of product.

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

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

**Installation Date:** The date when the procedures described in "Installation by Contractor" and "Installation by State" as found in the 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 (ITB):** A written solicitation used 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 Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently



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

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

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

**Must:** See Mandatory/Must and Shall/Will/Must

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

**Non-core:** See Catalog

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

**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 that an organization may have previously performed internally or for which an organization has a new need to an independent organization from which the process is purchased back

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

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

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

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

**Pre-Bid 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 that produces unintended results or actions or that 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

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

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

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

**Quote:** See Bid

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

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

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

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

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

**Shall:** See Must

**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 contractor, or market conditions

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

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

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

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

**Termination:** Occurs when the contract expires or either party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date; all obligations that 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 subcontractors 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 contractor 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:** Inclusive term for any Bidder or Contractor.

**Will:** See Mandatory/Must/Shall

**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

**ICT** – Information and Communication Technology

**ITB** – Invitation to Bid

**NDOT** – Nebraska Department of Transportation

**NIGP** – National Institute for Governmental Purchasing

**PA** – Participating Addendum

**POC** – Point of Contact

**SPB** – State Purchasing Bureau

# I. PROCUREMENT PROCEDURE

## A. GENERAL INFORMATION

This Invitation to Bid is designed to solicit bids from qualified Contractors who will be responsible for providing **Liquid Asphaltic Materials** 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 Contractors 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 Number: 6851 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.materiebpurchasing@nebraska.gov](mailto:as.materiebpurchasing@nebraska.gov)

From the date the solicitation is issued until the Intent to Award is issued, communication from the Contractor is limited to the POC listed above. After the Intent to Award is issued, the Contractor 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. Contractors 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:

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

*The State reserves the right to reject a contractor'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 ITB	January 24, 2024
2.	Last day to submit written questions  Upload electronic Questions for 6851 OF via ShareFile to:  <a href="https://nebraska.sharefile.com/r-re0bf95551ed84b029ee6cf4d587376da">https://nebraska.sharefile.com/r-re0bf95551ed84b029ee6cf4d587376da</a>	February 05, 2024
3.	State responds to written questions through a solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="https://das.nebraska.gov/materiel/bidopps.html">https://das.nebraska.gov/materiel/bidopps.html</a>	February 08, 2024
4.	Electronic Bid Opening via Zoom Meeting Upload electronic Bid submissions for 6851 OF via ShareFile to:  <a href="https://nebraska.sharefile.com/r-r2af8d43bf8524d1a83746a85e52ff1b3">https://nebraska.sharefile.com/r-r2af8d43bf8524d1a83746a85e52ff1b3</a>  Join Zoom Meeting <a href="https://us02web.zoom.us/j/2629176739?pwd=NkhobXNpOU94UmFmTG1wYmJqTXhpUT09">https://us02web.zoom.us/j/2629176739?pwd=NkhobXNpOU94UmFmTG1wYmJqTXhpUT09</a>  Meeting ID: 262 917 6739 Passcode: 5VwBuR	February 21, 2024 2:00 PM Central Time
5.	Post "Notification of Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	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 6851 OF; **Liquid Asphaltic Materials** Questions". POC is not obligated to respond to questions that are received late per the Schedule of Events.

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

Questions should be uploaded using the ShareFile link provided in the ITB Schedule of Events, Section I.C. It is recommended that Contractors submit questions using the following format.

Solicitation Reference	Section Number	Solicitation Page Number	Question

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

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

All Contractors must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Contractor 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 bids, withdraw an intent to award or award, or terminate a contract if a Contractor 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. Using 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. Colluding with any person or entity to influence the bidding process, submit sham bids, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State.

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

Contractor shall report any violations of this clause throughout the bidding process and throughout the term of this contract for both the successful Contractor and its subcontractors.

**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. The State discourages deviations and reserves the right to reject proposed deviations.

**H. SUBMISSION OF BIDS**

The State is only accepting electronic responses submitted in accordance with this ITB. The State will not accept bids by mail, email, voice, or telephone, unless otherwise explicitly stated in writing by the State. Bids must be submitted via ShareFile by the date and time of the bid opening per the Schedule of Events. No late bids will be accepted.

Pages may be consecutively numbered for the entire bid or may be numbered consecutively within sections. Figures and tables should be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

It is the responsibility of the bidder to check the website for all information relevant to this ITB to include addenda and/or amendments issued prior to the opening date. The website can be found here: <https://das.nebraska.gov/materiel/bidopps.html>. 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.

**Note to bidders:** Not all browsers are compatible with ShareFile. Currently Chrome, Internet Explorer and Firefox are compatible. After the bidder clicks the bid submission link, the bidder will be prompted to enter contact information including an e-mail address. By entering an e-mail address, the bidder should receive a confirmation email confirming the successful upload directly from ShareFile.

The ShareFile link for uploading ITB response(s) is provided in the ITB Schedule of Events, Section I.C.

**\*\*\*UNLESS OTHERWISE NOTED, DO NOT SUBMIT DOCUMENTS THAT CAN ONLY BE ACCESSED WITH A PASSWORD\*\*\***

1. The Bid and Proprietary information should be uploaded as separate and distinct files.
  - a. If duplicated bids are submitted, the State will retain only the most recently submitted response.
  - b. If it is the bidder's intent to submit multiple bids, the bidder must clearly identify the separate submissions.
  - c. It is the bidder's responsibility to allow time for electronic uploading. All file uploads must be completed by the Opening date and time per the Schedule of Events. No late bids will be accepted.
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. 6851 OF, Liquid Asphaltic Materials NAME OF BIDDER Bid
  - b. If multiple files are submitted for one bid, add number of files to file names, e.g.,
    - i. 6851 OF, Liquid Asphaltic Materials NAME OF BIDDER Bid File 1 of 2;
    - ii. 6851 OF, Liquid Asphaltic Materials NAME OF BIDDER Bid File 2 of 2, etc.

The "Invitation to Bid for Commodities Contract" form must be signed manually in ink or by DocuSign and returned by the bid opening date and time along with the bidder's 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.

By signing the "Invitation to Bid for Commodities Contract" form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid.

**I. BID PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Contractors 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 Contractor's bid;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Negative documentation regarding vendor performance;
5. Termination of the resulting contract;
6. Legal action; or,
7. Suspension of the Contractor from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**K. BID CORRECTIONS**

A contractor 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 Contractor and at Contractor'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 bids aloud or allow bids be available for viewing by the public during the bid opening. Once the bid opening has concluded, the bids will not be available for viewing until the Intent to Award has been posted. An initial bid tabulation will be posted to the website as soon as feasible. Information identified as proprietary by the submitting contractor, 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 contractor will be notified of the release and it shall be the obligation of the submitting contractor to take further action, if it believes the information should not be released.

**N. INVITATION TO BID REQUIREMENTS**

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

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

**O. EVALUATION OF BIDS**

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

1. Neb. Rev. Stat. § 81-161 allows the State to consider a variety of factors, including, but not limited to, the quality of performance of previous contracts to be considered when evaluating responses to competitively bid solicitations in determining the lowest responsible bidder. Information obtained from any Vendor Performance Notice or any Vendor Improvement Request (See Terms & Conditions, Section H) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

2. 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 contractor, 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 contractor, 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 "Contractor 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 contractor within ten (10) business days of request:

- a. Documentation from the United States Armed Forces confirming service;
- b. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
- c. 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
- d. 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 contractor from consideration of the preference.

**P. BEST AND FINAL OFFER**

If best and final offers (BAFO) are requested by the State and submitted by the contractor, 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 contractor. However, a contractor should provide its best offer in its original bid. Contractors should not expect that the State will request a BAFO.

**Q. 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 contractor grants to the State the right to contact or arrange a visit in person with any or all of the contractor'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.

**R. AWARD**

The State reserves the right to evaluate bids and award contracts in a manner using 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 contractor bids that are not material, do not compromise the solicitation process or a contractor's bid, and do not improve a contractor'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 contractors; or,
9. Award one or more all-inclusive contracts.



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

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

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: <https://das.nebraska.gov/materiel/bidopps.html>

Any protests must be filed by a contractor 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: [https://das.nebraska.gov/materiel/docs/pdf/ProtestGrievanceWithGuidance\\_08042021.pdf](https://das.nebraska.gov/materiel/docs/pdf/ProtestGrievanceWithGuidance_08042021.pdf)

**S. 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 or his or her designee will be the sole judge of equivalency. The Contractor 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.

**T. SAMPLES**

When requested, samples should be furnished at the Contractor's expense prior to the opening of the bid, unless another time is specified. Each sample should be labeled clearly, and identify the Contractor'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 Contractor wishes to have the sample returned, it will be returned at the Contractor'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 Contractor shall have ten (10) calendar days to arrange for the return of the sample to the Contractor following any of the above dates. If no request from the Contractor 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.

**U. ALTERNATE/EQUIVALENT BIDS**

Contractor may offer bids which are at variance from the express specifications of the solicitation. The State reserves the right to consider and accept such bids if, in the judgment of SPB, the bid will result in goods and/or services equivalent to or better than those which would be supplied in the original bid specifications. Contractor 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. Bids which do not comply with these requirements are subject to rejection. In the absence of any stated deviation or exception, the bid will be accepted as in strict compliance with all terms, conditions and specification, and the Contractor shall be held liable therefore.

**V. 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. Contractors may submit a bid on an "all or none" or "lump sum" basis, but should also submit a bid on an item-by-item basis. The term "all or none" means a conditional bid which requires the purchase of all items on which bids are offered and bidder declines to accept award on individual items; a "lump sum" bid is one in which the bidder offers a lower price than the sum of the individual bids if all items are purchased, but agrees to deliver individual items at the prices quoted.

**"LUMP SUM" OR "ALL OR NONE" BIDS SHOULD BE CONSPICUOUSLY MARKED ON THE FIRST PAGE OF THE ITB AND BID SHEET (IF APPLICABLE)**

**W. ALTERNATIVE SUBMISSION METHODS PROHIBITED**

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

**X. BID TABULATIONS**

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

**Y. REJECTION OF BIDS**

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

**Z. 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

By signing the solicitation, Contractor agrees to be legally bound by all the accepted terms and conditions as well as 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 Contractor fail to agree on the final Terms and Conditions, the State reserves the right to reject the bid. The State is soliciting bids in response to the solicitation. The State reserves the right to reject bids that attempt to substitute the Contractor's commercial contracts and/or documents for this solicitation.

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

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

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

### A. GENERAL

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

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

These documents constitute the entirety of the contract.

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

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally; electronically, return receipt requested; or mailed, return receipt requested. All notices, requests, or communications shall be deemed effective upon receipt. Either Party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

### C. NOTICE (POC)

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

### D. GOVERNING LAW (Nonnegotiable)

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**

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

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

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

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

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

**G. RECORD OF VENDOR PERFORMANCE**

The State may document the vendor's performance, which may include, but is not limited to, the customer service provided by the vendor, the ability of the vendor, the skill of the vendor, and any instance(s) of products or services delivered or performed which fail to meet the terms of the purchase order, contract, and/or Invitation to Bid specifications. In addition to other remedies and options available to the State, the State may issue one or more notices to the vendor outlining any issues the State has regarding the vendor's performance for a specific contract ("Vendor Performance Notice"). The State may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Vendor Improvement Request"). The Vendor shall respond to any Vendor Performance Notice or Vendor Improvement Request in accordance with such notice or request. At the sole discretion of the State, such Vendor Performance Notices and Vendor Improvement Requests may be placed in the State's records regarding the vendor and may be considered by the State and held against the vendor in any future contract or award opportunity.

**H. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

**I. BREACH**

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 email, read-receipt requested; Certified Mail, Return Receipt

Requested; or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

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

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

**J. NON-WAIVER OF BREACH**

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**

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**

**1. GENERAL**

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

**2. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractors and their employees, provided by the Contractor.

**3. 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. If there is a presumed loss under the provisions of this contract, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (§ 81-8,294), Tort (§ 81-8,209), and Contract Claim Acts (§ 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**

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**

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

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the

contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**O. CONTRACTING WITH OTHER POLITICAL SUBDIVISIONS OF THE STATE OR ANOTHER STATE**

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

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

**P. FORCE MAJEURE**

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 an unforeseeable 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**

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**

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar days' written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;

- f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
- g. Contractor intentionally discloses confidential information;
- h. Contractor has or announces it will discontinue support of the deliverable; and,
- i. In the event funding is no longer available.

**S. CONTRACT CLOSEOUT**

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

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

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

### **III. CONTRACTOR DUTIES**

#### **A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

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

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

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

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

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

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

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

If the Contractor intends to use any subcontractor, the subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's bid. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its bid in the performance of the contract without the prior written authorization of the State. If the Contractor subcontracts any of the work, the Contractor agrees to pay any and all subcontractors in accordance with the Contractor's agreement with the respective subcontractor(s).

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

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

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

#### **B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.



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

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at [https://das.nebraska.gov/materiel/purchase\\_bureau/vendor-info.html](https://das.nebraska.gov/materiel/purchase_bureau/vendor-info.html). The completed United States Attestation Form should be submitted with the solicitation response.
2. If the Contractor indicates on the attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

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

**D. COOPERATION WITH OTHER CONTRACTORS**

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

**E. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the 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 contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

Prices quoted on ITB 6851 OF shall be unit price (per Ton) and shall be firm from date of award. through November 30, 2024,

No price increases are to be effective or billed to

**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**

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

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

**J. ANTITRUST**

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

**K. CONFLICT OF INTEREST**

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 Invitation to 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.

**L. SITE RULES AND REGULATIONS**

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

**M. ADVERTISING**

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

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

The Contractor shall have a disaster recovery and back-up plan to allow for continued delivery of goods or services under the specifications of the contract in the event of a disaster. The plan should include disaster contingency details related to equipment, personnel, facilities, and transportation. A copy of the disaster recovery and back-up plan should be provided upon request to the State.

**O. DRUG POLICY**

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

**P. WARRANTY**

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

**Q. TIME IS OF THE ESSENCE**

Time is of the essence with respect to Contractor's performance and deliverables pursuant to this contract.

## **IV. PAYMENT**

### **A. PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable)**

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 (Nonnegotiable)**

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

### **C. INVOICES (Nonnegotiable)**

Invoices for payments must be submitted by the Contractor to the agency requesting the goods or services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract. The State shall have forty-five (45) calendar days to pay after a valid and accurate invoice is received by the State.

### **D. INSPECTION AND APPROVAL**

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 Contractor or subcontractor 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 (Nonnegotiable)**

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 Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the effective date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

### **F. LATE PAYMENT (Nonnegotiable)**

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

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

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

### **H. RIGHT TO AUDIT (First Paragraph is Nonnegotiable)**

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

be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Contractor.

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

## V. SCOPE OF WORK

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

### A. SCOPE

It is the intent of this bid invitation to establish a contract to supply **LIQUID ASPHALTIC MATERIALS** per the attached specifications from date of award through 11/30/2024.

All items proposed shall be of the latest manufacture in production 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 **LIQUID ASPHALTIC MATERIALS** 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 Contractor may be required to submit requested information within three (3) business days of a written request. Failure to submit requested descriptive literature or advertising data sheets may be grounds to reject the bid.

## VI. TECHNICAL SPECIFICATIONS

### A. CONTRACTOR INSTRUCTIONS




Contractor must respond to each of the following statements. References and additions are made to Divisions 500 and 1000 of NDOT Standard Specifications for Highway Construction 2017. Specifications listed are minimum conditions that must be met in order for a Contractor to qualify for the award.

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



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

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







### B. NON-COMPLIANCE STATEMENT

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your bid. Non-compliance to any single specification can void your bid.
			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.
			3. No interpretation related to the meaning of solicitation specifications or other pre-bid 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, email questions to SPB. <a href="mailto:as.materielpurchasing@nebraska.gov">as.materielpurchasing@nebraska.gov</a> by the last day to submit written questions per the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).
NOTES/COMMENTS:			


### C. TECHNICAL SPECIFICATIONS: LIQUID ASPHALTIC MATERIALS

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Materials shall conform to Division 1000 of the NDOT Standard Specifications For Highway Construction 2017 Edition and their Special Provisions as amended in this specification for the following materials: CRS-2L, CRS-2P, CRS-2VHL, CSS-1H, CSS-1H 75/25, CSS-1H 50/50, SS-1H, SS-1H 75/25, SS-1H 50/50, CFS/FS-1, CMS-1, CMS-1W, MC-250, HFE-150, HFE-300, HFE-500, HFE-1000, HFMS-2L and HFMS-2P and CRS-2P 80/20.
			2. Due to field samples being approximately one (1) quart in volume, the AASHTO T 59 Sieve test, when tested by NDOT, will be run on a sample portion of less than the specified 1000 grams.
NOTES/COMMENTS:			



D. SECTION 504 AND 513

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The Supplier at their option may supply either CSS-1H OR SS-1H when either CSS-1H or SS-1H is requested.
			2. The Supplier at their option may supply either CFS-1 or FS-1 when either CFS-1 or FS-1 is requested
			3. The 50/50 rate of terminal-dilution of CSS-1H/SS-1H emulsified asphalt will be 1-part emulsified asphalt to part additional water. The percentage residue by distillation of the diluted emulsified asphalt is specified as 28.5% min. The Bill of Lading shall state the dilution rate.
			4. The 75/25 rate of terminal dilution of CSS-1H/SS-1H emulsified asphalt will be 75% emulsified asphalt and 25% additional water. The percentage residue by distillation of the diluted emulsified asphalt is specified as 42.7% min. The Bill of Lading shall state the dilution rate.
			5. The 80/20 rate of terminal dilution of CRS-2P emulsified asphalt will be 80% emulsified asphalt and 20% additional water. The percentage residue by distillation of the diluted emulsified asphalt is specified as 52% min. The Bill of Lading shall state that dilution rate.
			6. Field samples of diluted CSS-1H/SS-1H shall meet the requirements of NDOT Standard Specifications Subsections 1031.01 and 1032.01 with the exceptions of Saybolt Furol Viscosity, Storage Stability and Cement Mixing.
NOTES/COMMENTS:			





E. SECTION 515

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The temperature for all grades of emulsified asphalt used for Armor Coats being unloaded from truck transports shall be at a minimum of 160 degrees Fahrenheit upon arrival at the delivery site.
NOTES/COMMENTS:			

F. EMULSIFIED ASPHALT (CRS-2P AND CRS-2P 80/20)



YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. CRS-2P AND CRS-2P-80/20 shall meet the specifications of AASHTO M316 with the following changes:</p> <p>Penetration, 25°C (77°F), 100g, 5 sec 100-150 dmm            Ductility, 25°C (77°F), 5 cm/min Min. 40cm            Elastic Recovery (77°F), 5 cm/min Min. 55%            Storage Stability See note "b" of AASHTO M 208            Sieve Test See note "b" of AASHTO M 208            Force Ratio Test Not Required</p> <p>Evaporation residue:</p> <p>Distillation will be used for residue percentage determination and all residue testing. The distillation will be taken to 350± 5°F, and held for 20 minutes and otherwise in accordance with AASHTO T 59. CRS-2P 80/20 must contain 80% of the minimum residue as required in standard CRS-2P.</p>
			<p>2. Paragraph 3.1 of AASHTO M-316 is void and superseded by the following:</p> <p>3.1 CRS-2P and CRS-2P 80/20 - A cationic emulsion made with base asphalt binder modified with styrene butadiene or styrene-butadiene styrene block copolymers. All base stock asphalt used must be modified before emulsification. CRS-2P and CRS-2P 80/20 shall contain no latex polymer.</p>
NOTES/COMMENTS:			

G. SECTIONS 1031 & 1032


YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. The minimum temperature for all grades of emulsified asphalt used in mixing windrows at the delivery site shall be 140 degrees "F".</p>
			<p>2. An anti-strip agent will be added to HFE 300 and HFE 1000 Emulsions at the rate of a minimum of .25% by total weight of emulsion.</p>
			<p>3. TYPE HFE-500 shall be added to Table 1031.01. HFE 500 shall meet the requirements of HFE 1000 with the following exception: Viscosity by Vacuum Capillary Viscometer at 60 degrees "C", Poise shall be 100-300</p> <p>For the test of viscosity by Vacuum Capillary Viscometer of HFE-500 and HFE 1000, Cannon-Manning type will be used. The size selection will be determined by flow time of closest to 60+ seconds.</p>
			<p>4. All references to Grade CM-4 are replaced as Grade CMS-1</p> <p>Subsection 1032.02 is amended to include the following Emulsified Asphalt (CMS-1W). CMS-1W shall follow the requirements of Table 1032.01 with the following exception: Residue from distillation, Viscosity, Saybolt Furol, 82° C (180° F), sec shall be min. 200 to max. 400.</p>
NOTES/COMMENTS:			





H. ANNUAL USAGE, ESTIMATED

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Contractor shall not impose minimum order requirements.
			2. See Attachment A- ESTIMATED USAGE LIQUID ASPHALTIC MATERIALS.
NOTES/COMMENTS:			

I. USAGE REPORT

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The contractor shall, upon request, provide a usage report of this contract by state agencies and political subdivisions. Information will include agency name, item(s), and dollar amount and shall include the information of the time period requested. Information may be requested at any time by the SPB.
NOTES/COMMENTS:			

J. DELIVERY ARO





YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Delivery requirements as requested on Attachment A ESTIMATED USAGE LIQUID ASPHALTIC MATERIALS.
			2. At the time of delivery, a designated State employee will sign the invoice/package slip. This signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice/packing slip. This signature does not indicate all items were received in good condition and/or there is not possible hidden damage.
NOTES/COMMENTS:			

K. IDENTIFICATION OF TRUCK SHIPMENTS





YES	NO	NO & PROVIDE ALTERNATIVE	
sf			<p>1. Supplier from which truck shipments originate, shall identify each truck shipment by a number that shall apply only to that shipment. This number shall be shown on each copy of the certificate for the shipment. License numbers of the trucks or truck numbers are not acceptable identification in themselves, since the same truck may make 2 or more trips during one (1) day.</p> <p>Numbering system may be either a consecutive numbering system used by some suppliers for all truck shipments originating from their plant, regardless of destination, or a system of identification by weight ticket serial numbers.</p> <p>Regardless of the system used, it will be necessary to provide positive identification of each shipment on the applicable Certificate of Compliance or Bill of Lading.</p>
NOTES/COMMENTS:			

L. DELIVERY LOCATIONS/INSTRUCTIONS


YES	NO	NO & PROVIDE ALTERNATIVE	
sf			1. See Attachment ESTIMATED USAGE A LIQUID ASPHALTIC MATERIALS.
sf			2. Liquid Asphaltic Materials shall be delivered by truck transports in quantities such that legal load limits will not be exceeded, approximately 5800 to 6000 gallons, and shall be hauled by truck transport in fully insulated tanks capable of maintaining required temperatures.
sf			3. The Vendor shall furnish a delivery receipt to receiving personnel with each load showing type and grade of material, net tons of material, the Vendor, and Supplier's name, source of material, destination of material, consignee, and purchase order number. In addition to the above information, the receiving personnel shall note on the delivery receipt the specified delivery time, actual arrival time, time unloading started, time unloading was completed; and whether the unloading pump was ordered or used. A copy of the completed delivery receipt will be sent or faxed to the Vendor.
sf			4. Supplier must supply a Safety Data Sheet (SDS). The SDS will be provided with the first load at the delivery point.
sf			5. The Vendor will be required to make delivery to roadway destinations or supply tanks Monday through Friday. The time of delivery will be specified when the order is placed. If the Vendor notifies the NDOT of their inability to deliver the order as specified, or if the Vendor fails to deliver the order as specified, the State may procure the material from other sources and hold the Vendor responsible for any excess cost.
sf			6. In the event that the NDOT Materials and Research Division test results indicate a material consistently fails to meet specifications and referee testing confirms our test results or the Vendor fails to satisfactorily meet the delivery schedules for material, the state may cancel all or any part of the contract and obtain the required material elsewhere.

			7. The Vendor may expect at least an eighteen (18) to fifty-four (54) hour notice prior to the specified hour the material is to be delivered, with the understanding that the State of Nebraska may cancel the order, with reasonable notice. The Vendor agrees that the applicable receiving personnel will be notified of any breakdown or other happenings, which will delay delivery.
			8. Truck transport tanks and transfer lines shall be clean and free of residual build-ups, foreign materials, and other forms of contaminants that affect product performance, testing, or application in the field.
			9. Truck transport tanks shall have a sample valve attached that is in accordance with AASHTO Designation R66 Section 8.1, ASTM D 140, section 10, para. 10.1, or other NDOT-approved means for sampling as outlined in the Supplier's Quality Control program.
			10. Expected unloading time is defined as three (3) hours. In cases where there are unloading delays beyond three (3) hours and demurrage is to be charged, the Vendor shall furnish the Nebraska Department of Transportation with signed documents showing purchase order number, arrival and departure times, date, and charges for same. The receiving personnel shall sign documents.
NOTES/COMMENTS:			



M. ORDERS


YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Orders will be placed either by, phone, e-mail or Internet (if available and not to the exclusion of the other methods).
			2. In the event that the NDOT Materials and Research Division test results indicate a material consistently fails to meet specifications and referee testing confirms our test results or the Vendor fails to satisfactorily meet the delivery schedules for material, the state may cancel all or any part of the contract and obtain the required material elsewhere.
			3. The Vendor may expect at least an eighteen (18) to fifty-four (54) hour notice prior to the specified hour the material is to be delivered, with the understanding that the State of Nebraska may cancel the order, with reasonable notice. The Vendor agrees that the applicable receiving personnel will be notified of any breakdown or other happenings, which will delay delivery.
			4. All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order.
NOTES/COMMENTS:			

N. CANCELLATION OF DELIVERY BY NDOT




YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Occasionally it may be necessary for NDOT to cancel an order that has been dispatched due to circumstances beyond the Vendor's control. In the event that a load is cancelled under these circumstances, the vendor shall be entitled to recover transportation costs. These transportation costs will be billed per highway mile from the point the transport truck is notified of the cancellation back to the shipping point that the load originated from. No other costs may be recovered other than transportation cost based on the charge per highway mile.</p>
<p>NOTES/COMMENTS:</p>			

O. LATE OR NON-DELIVERY





YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Crews and equipment are mobilized to the worksite in advance of the project start time in order to be ready when the Liquid Asphaltic Material arrives. Delays in the arrival of material are costly in terms of lost production. Liquidated damages will be applied and deducted from the invoice at the rate of \$400.00/hour, calculated to the nearest half hour. Deliveries less than 15 minutes late will not be assessed liquidated damages. Failure to deliver product within two (2) hours of scheduled start time will be considered non-delivery and will be assessed \$1200.00 liquidated damages. Repeated failure to deliver product according to schedule will be grounds for immediate cancellation of the contract.</p>
			<p>2. Delays in the arrival of material are costly in terms of lost production.</p> <p>Per Neb. Rev. Stat. 81-2403 Goods or service; payment in full; when required (3) "no 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....". Thus, payment will not be made until all Liquid Asphaltic Material and whatever accompanying materials required to complete the project are delivered and work is finished (no extra charges from the awarded bidder may be applied to the State for loss of production due to delayed arrival of materials).</p>

			<p>3. All documents must be filled out completely and plainly show arrival and departure times.</p> <p><b><u>Charges for demurrage must be included on the invoice for the Liquid Asphalt Material. Arrival and departure times shown must be for appropriate time zones.</u></b></p> <p>When the Vendor ships material prior to the completion of their testing, and subsequently learns that the material is out of specification while the material is still in transit, NDOT MUST BE NOTIFIED IMMEDIATELY BY CONTACTING THE MATERIAL AND RESEARCH DIVISION @ (402) 479-3742 or (402) 479-3839 and the Field Representative's office expecting the delivery.</p> <p>Any out of specification material which has been incorporated into the work, sections (b), (c) and (d) of the Basis of Payment will apply. The cost of shipping a load of out of specification material, which is returned to the Vendor, will be the responsibility of the Vendor.</p> <p>Purchase orders will be issued by NDOT, Operations Division, Procurement Unit, PO Box 94759, Lincoln, Nebraska, 68509-4759.</p> <p>Occasionally it may be necessary for NDOT to cancel an order that has been dispatched due to circumstances beyond the vendor's control. In the event that a load is cancelled under these circumstances, the vendor shall be entitled to recover transportation costs. These transportation costs will be billed per highway mile from the point the transport truck is notified of the cancellation back to the shipping point that the load originated from. No other costs may be recovered other than transportation cost based on the charge per highway mile.</p>
NOTES/COMMENTS:			


P. BASIS OF PAYMENT

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. <b>Liquid Asphaltic Materials</b> which comply with specifications and are furnished in accordance with the instructions herein shall be paid for at the unit price/per ton.</p> <p>Samples shall pass specifications when tested after being stored at room temperature (~75°F) for periods of up to fourteen (14) days after sampling. When test results of on-site asphalt materials are outside of the specified property ranges, the material shall be paid for at the contract unit price multiplied by the Pay Factors in Table 504.01A.</p>
			<p>2. <b>Table 504.01a Asphalt Materials – Pay Factors Test of Residue Percentage pre diluted CSS/SS-1H and all straight emulsions.</b></p> <p>1.00 for a deviation of minus less than or equal 1.0%</p> <p>0.85 for deviation of minus greater than 1.0# to less than or equal 3.0%</p> <p>0.70 for deviation of minus greater than 3.0% to less than or equal to 5.0%</p> <p>0.40 or Reject for deviation of minus greater than 5.0%</p>
			<p>3. <b>Test of Residue Percentage post diluted 75/25 CSS/SS-1H emulsion.</b></p> <p>1.00 for a deviation of minus less than or equal to 3.0%</p> <p>0.85 for deviation of minus greater than .08% to less than or equal 2.3%</p> <p>0.70 for deviation of minus greater than 2.3% to less than or equal 3.8%</p>

			0.40 or Reject for deviation of minus greater than 3.8%
SP			<p>4. <b>Test of Residue Percentage post-diluted 50/50 CSS/SS-1H emulsion</b></p> <p>1.00 for a deviation of minus less than or equal to 0.5%  0.85 for deviation of minus greater than 0.5% to less than or equal to 1.5%  0.70 for deviation of minus greater than 1.5% to less than or equal to 2.5%  0.40 or Reject for deviation of minus greater than 2.5%</p>
SP			<p>5. <b>Elastic Recovery</b></p> <p>1.00 for a deviation of minus less than or equal to 5.5%  0.75 for deviation of minus greater than 5.5% to less than or equal to 11%  0.40 or Reject for deviation of minus greater than 11%</p>
SP			<p>6. <b>Softening Point</b></p> <p>1.00 for a deviation of minus less than or equal to 3.5oF  0.75 or Reject for deviation of minus greater than 3.5oF</p>
SP			<p>7. <b>Test of Penetration, CRS-2L and CRS-2VHL</b></p> <p>1.00 for test result of 65 – 130 dmm  0.75 for test result of 55 – 64 or 131 – 140 dmm  0.40 or Reject for test result of &lt;55 dmm or &gt;140 dmm</p>
SP			<p>8. <b>Tests for all other Properties Specified* (Unless otherwise noted)</b></p> <p>1.00 for a deviation of +/- less than or equal to 10%  0.75 for a deviation of +/- greater than 10% to less than or equal to 25%  0.40 or Reject for deviation of +/- greater than 25%</p>
SP			<p>9. When the specification requirement is stated as a percentage, the test result deviation from the specification will be divided by the specification value. The resulting deviation percentage is then applied to the listed criteria.</p>
SP			<p>10. <b>Note 1: Material not meeting a Pass/Fail requirement falls under the Pay Factor of 0.40 or Reject.</b></p>
SP			<p>11. <b>Note 2: When more than one specified property exceeds specification tolerances, the single largest Pay Factor Reduction will be the one applied.</b></p>
SP			<p>12. <b>When, on the basis of departmental testing and/or unacceptable workability in the field, it is determined that the liquid asphaltic material does not comply with the material or performance specifications of this contract, such material will be accepted or rejected in accordance with:</b></p> <ul style="list-style-type: none"> <li>a. If the out of specification material is found to have a resultant pay factor of less than 1.0, it shall be rejected if not already used.</li> <li>b. If the material is found to be out of specification, and the material has been used and it is determined by the receiving personnel that the resultant material can be used in some manner beneficial to the State, the pay factor for the material shall be determined on NDOT Quality Assurance Testing.</li> <li>c. If 1) the material has been used and is found to be out of specification or 2) material that meets specifications but results in an unacceptable material after mixing and spraying, and it is determined by the receiving personnel that the resultant material cannot be used in a manner beneficial to the State, the supplied material will be rejected, the Vendor will not be paid for the supplier material. The Vendor will be responsible to the NDOT for the cost of any State-owned material that is determined unusable. This cost will be established by</li> </ul>

			<p>purchase order invoice amounts. The Vendor will be notified in writing within twenty-one (21) working days of all such costs.</p> <p>d. In addition to the material specifications, any mixing grade emulsion used in blade mixed windrow cold patching material must be formulated from a base asphalt that will result in a material suitable for patching. A "full load" test strip will be mixed and if following mixing it results in an unacceptable patching material the emulsion used will be rejected and paragraph (D) will apply. (See the paragraph on COLD MIX WINDROWS—MIX DESIGN below).</p> <p>e. On-site filed samples received within fourteen (14) days of sampling, that demonstrate residue, water, and/or polymer separation prior to testing, not caused by freezing during transport, that cannot be made homogenous by the applicable AASHTO conditioning test procedure, cannot be tested. The material represented by the sample will be subject to a pay factor of 0.75 or rejection, dependent upon the degree of success of the field application.</p>
			<p>13. The analysis of Liquid Asphalt Material by the Material and Research Division, NDOT, including NDOT referee testing policies, shall govern the rate of payment.</p>
			<p>14. When an on-site sample from a transport demonstrates test results that incur a reduced pay factor, the process of resolving the degree of sample failure will include the following actions as applicable:</p> <p>a. The Bituminous Lab will confirm sampling, handling, and custody of the sample.</p> <p>b. If the Vendor wishes to dispute any test results, the Vendor can request referee testing. It is the sole responsibility of the Vendor to request referee testing. The request must be made to the Bituminous Lab with ninety-six (96) hours of awareness of the test results. If a request is received within the time allotted, the Bituminous Lab will select an independent laboratory which will perform testing on the remainder of the sample. The identity of the independent laboratory will be revealed after referee testing is completed. Due to scheduling, logistics, workloads, etc., the request for referee testing is also affirmation and agreement that the testing may occur beyond the fourteen (14)-day testing timeframe of the asphaltic emulsion specifications.</p> <p>c. If the independent lab's tests indicate failing results and pay deductions equal to or greater than the NDOT's, the Vendor will reimburse the NDOT for the cost of the testing. If the independent lab's tests indicate that the material meets specification or is at a pay deduction less than the NDOT's, the NDOT will assume the cost of testing. When independent lab's tests indicate a pay deduction, the lesser of the NDOT's and independent lab's deductions will be applied.</p>
			<p>15. The referee test methods of the asphaltic material shall follow AASHTO procedures. Where AASHTO procedures are not applicable, ASTM and other listed applicable test procedures shall be used.</p>
<b>NOTES/COMMENTS:</b>			

**Q. ON-SITE PERSONNEL**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. The supplier shall furnish on-site personnel within any given 24-hour workday, at no additional cost To the State, to assist in the resolution of material problems, should they develop.</p>

NOTES/COMMENTS:






R. QUALITY CONTROL (QC) PROGRAM CERTIFICATION BY NDOT

YES	NO	NO & PROVIDE ALTERNATIVE	
sl			1. All Quality Control Programs must be approved/certified by NDOT prior to contract award.
sl			2. Suppliers who do not have a current annual approval/certification from NDOT may submit a response to the Invitation to Bid but must complete certification prior to contract award.
sl			3. If a Supplier's Quality Control Program has not been approved/certified by NDOT for the current year, the Supplier may submit their Quality Control Program documentation with the ITB response.
sl			4. If the Supplier does not submit the Quality Control Program Documentation with the bid response, they will provide all documentation within ten business days of a written request. Time is of the essence for Supplier provision of documentation. Asad Sahak, (402) 479-3742 or Asadullah.sahak@nebraska.gov will be the contact for Supplier certification, after the Invitation to Bid has opened.
sl			5. Suppliers making shipments of Liquid Asphalt Material to be used in Nebraska Highway Maintenance shall furnish their Quality Control (QC) Program to NDOT, Materials and Research Division, for annual approval, as a requirement for Supplier Certification. This QC program will include the types and frequency of sampling and testing for all products supplied. The QC program must state that all products supplied were tested in accordance with the QC program and conform to the State of Nebraska specifications. All terminals and locations covered by the QC program shall be listed. The QC program will include the names of supplier representatives authorized to sign the Certificates of Compliance, as well as the name and telephone number of the person responsible for quality control at the facility. The QC program shall provide an outline of the procedure to be followed for checking transport vehicles before loading to prevent contamination of shipments. The outline shall include a statement that the transport vehicle inspection report, signed by the responsible inspector, shall be maintained in the Supplier's records, and will be made available to the NDOT on request. The QC program will list alternative sampling methods from transports when sample valves as per AASHTO R66 paragraphs 8 (ASTM D 140 paragraph 10.1) are either not present or are found to be non-functional.
sl			6. Supplier shall state specific plans for notification to the NDOT when non-compliant material is discovered during or after shipment. The supplier shall not knowingly ship material that does not meet contract specifications.
sl			7. State all other program requirements the Supplier deems necessary for their QC program, including but not limited to, what is required in this document. A recommendation is to follow AASHTO R26, Section 9, where applicable.


NOTES/COMMENTS:




S. SUPPLIER CERTIFICATION


YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Division 1000 is amended to include the following:
			2. Only Certified Suppliers will be allowed to supply materials outlined in this contract. For questions or information on Supplier Certifications contact Asad Sahak, (402) 479-3742 or <a href="mailto:Asadullah.sahak@nebraska.gov">Asadullah.sahak@nebraska.gov</a> .
			3. NDOT Maintenance Staff will ship samples for testing based on current NDOT Sampling Guide.
			4. In cases of In-Line mixing intended for a single transport shipment of emulsion or cutback, a batch will be defined either as an initial formulation of the Contract product, or as well any subsequent formulation change(s) from the initial formulation, and not necessarily each individual transport.
			5. The NDOT, for purposes of Quality Assurance, acceptance and pay factor determination, will be based on samples tested on transport delivered materials. Material shall be identified by Batches submitted and tested as stated below: <ul style="list-style-type: none"> <li>a. For each maintenance project, the NDOT will obtain a random field sample on each project location. Field samples will represent the transport they are taken from. NDOT may change the amount of field samples taken at any time on any project. Field samples are subject to the "Basis of Payment" section of this contract. At the NDOT's discretion, failing field samples may also cause loss of Supplier Certification.</li> <li>b. Random field samples shall be obtained by NDOT personnel trained and certified to do so. Failing test results from field samples taken by uncertified personnel will not be used in determining pay factors, or in determining Supplier Certification status.</li> <li>c. Frozen samples, or samples collected without following the proper NDOT sampling guidelines will not be tested for acceptance.</li> <li>d. If Supplier de-certification occurs, a notification will be provided in writing. If the Supplier desires re-certification, documentation must be submitted to NDOT explaining why decertification occurred, and what actions the Supplier has taken to correct the problems identified. Decisions regarding the future qualification for re-certification of a Supplier shall be at the NDOT's discretion.</li> </ul>
NOTES/COMMENTS:			

T. CERTIFICATE OF COMPLIANCE TO ACCOMPANY SHIPMENTS



YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Suppliers making shipments of Liquid Asphalt Material to be used for purposes of this contract shall furnish a Certificate of Compliance to the Nebraska Department of Transportation for each truck load shipped.  The Certificate of Compliance shall contain the following information: <ul style="list-style-type: none"> <li>a. A statement by the supplier that the material shipped complies with the requirements of the contract specifications for the type and grade specified.</li> </ul>

			<ul style="list-style-type: none"> <li>b. Gallon data for truck shipments based on the net weight. The gallons "@60oF" and/or Wt./Gal. "@60°F" will be displayed. Gallon Data will be used for reference only.</li> <li>c. Goss, tare, and net weight.</li> <li>d. An authorized supplier employee shall sign the Certificate of Compliance</li> <li>e. One (1) copy of the Certificate of Compliance shall be sent with the shipment to the designated Representative of the NDOT as shown on the shipping order. A Bill of Lading may serve as a Certificate of Compliance provided it contains all the information requested above.</li> </ul>
NOTES/COMMENTS:			

**U. QUALITY**




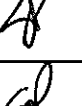

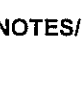
YES	NO	NO & PROVIDE ALTERNATIVE	
			<ol style="list-style-type: none"> <li>1. Product quality must meet specifications and be consistent for the term of the contract. A guarantee of satisfactory performance by the supplier and meeting delivery dates are an integral part of the purchase contract resulting 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.</li> </ol>
NOTES/COMMENTS:			

**V. COLD MIX WINDROWS-MIX DESIGN (SAMPLES AND TESTING)**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<ol style="list-style-type: none"> <li>1. The awarded bidder will communicate the Mix design test results to the NDOT District Operations Manager and the NDOT Maintenance Manager and the mix design requirements used to help ensure that the proper materials and combined aggregate gradations are designed into all Cold Mix Windrow materials.</li> </ol>
			<ol style="list-style-type: none"> <li>2. The awarded bidder will have thirty (30) days to provide NDOT with the cold mix windrow mix design. The mix design shall be a 50 blow Marshal Mix Design. The mix design testing parameters shall be submitted to NDOT for review. <ul style="list-style-type: none"> <li>a. The mix design shall show the percentage of aggregate, emulsion and filler required</li> </ul> </li> </ol>


NOTES/COMMENTS:

**W. SPRAY APPLIED EMULSIONS FOR FOG SEALS**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Type CSS/SS-1H spray applied emulsions for use as fog seals will be formulated and/or diluted in such a manner as to expect the time to break to be one (1) hour or less, at sixty (60) degrees "F" and forty percent (40%) humidity, following the spray application. The expected time to break will vary with changes in temperature and humidity.
			2. Type CFS-1/FS-1 (fast set) spray applied emulsion shall be formulated for an accelerated breaking time as compared to the breaking time definition above.
			3. CRS-2P 80/20 will be used on some selected fog seal projects, a conference call coordinated by the awarded bidder with the NDOT district maintenance personnel and personnel from Materials and Research must be performed seven (7) days prior to application to discuss formulation and project application specifics.
			4. Material upon arrival shall not exhibit signs of excessive foaming to the degree that transfer and/or application of the product is hampered.
			5. If the awarded bidder's material routinely fails to meet requirements, there may be cause to suspend the use of the awarded bidders' material until such time that the awarded bidder can demonstrate compliance.
			6. For fog seals produced by In-Line single transport mixing, refer to the "Supplier Certification" section of the Contract dedicated to Terminal In-Line mixing.







NOTES/COMMENTS:

**X. 2024 SUPPLIER CERTIFICATION/APPROVAL FOR THE QUALITY CONTROL PROGRAM**


YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Please respond accordingly to a - c (do not answer "YES" or "NO" to all three):
			a. The bidder has current "2024 NDOT certification/approval" for the "Quality Control Program".
			b. The bidder does not have current "2024 NDOT certification/approval" but has submitted the "Quality Control Plan" with their bid.
			c. The bidder has not submitted current "2024 NDOT Quality Control Plan" with their bid but will submit upon written request to be considered for contract award.

NOTES/COMMENTS:




Y. PRICES

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Prices quoted shall be net including transportation and delivery charges fully prepaid by the Vendor, and FOB Destination as named in the ITB. <b>No additional charges will be allowed for packing, packages, or partial delivery costs.</b> When an arithmetic error has been made in the extended total the unit price will govern.
			2. Prices quoted on 6738 OF shall be unit price (per Ton) and shall be firm from the date of award through November 30, 2024.
			3. Requests for an increase must be submitted in writing to SPB. SPB has a minimum of thirty (30) days to review and award any Price increase or decrease (after documentation is approved). Documentation will be required by the State to support the price increase.
			4. The State reserves the right to deny any requested price increases.
			5. No price increases are to be billed to the State prior to an Amendment to the Contract, which has been signed and completed by both the State and the awarded bidder, the Amendment is posted to the State Purchasing Bureau website and written notice has been given to both the State and the awarded bidder.
			6. The State will be given full proportionate benefit of any decreases for the term of the contract.
NOTES/COMMENTS:			

Z. SUBSTITUTIONS

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

AA. PROHIBITED PRODUCTS

YES	NO		
			1. The State will not accept Gray Market Products for this solicitation. Gray Market is defined as the trade of a commodity through distribution channels which, while legal, are unofficial, unauthorized, or unintended by the original manufacturer. Gray Market items are not designed to be sold in a particular market and cannot be supported by the authorized importer because of various reasons.
			2. The State will not accept any products made by a company owned by the Chinese Communist Party. Furthermore, pursuant to Executive Order No. 23-05, the State will not accept any communications equipment or services developed by organizations on the Federal Communications Commission's Covered List.
			3. The State will not accept goods from countries or persons identified on the Office of Foreign Assets Control Sanctions List.
NOTES/COMMENTS:			

**ADDENDUM ONE  
NO QUESTIONS and ANSWERS RECEIVED  
6851 OF**

Date: February 8, 2024

To: All Bidders

From: Brenda Sensibaugh, Procurement Contracts Officer  
AS Materiel State Purchasing Bureau (SPB)

RE: Addendum for Invitation to Bid (ITB) Number 6851 OF for Liquid Asphaltic Materials, to be  
opened on February 21, 2024, at 2:00 p.m. Central Time

*SP*  
*2/19/2024*

---

**Questions and Answers**

No questions were received for ITB Number 6851 OF.

This Addendum will become part of the ITB and should be acknowledged with the ITB.

# STATE OF NEBRASKA

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

Secretary of State  
State Capitol  
Lincoln, Nebraska

I, Robert B. Evnen, Secretary of State of the  
State of Nebraska, do hereby certify that

**ERGON ASPHALT & EMULSIONS, INC.**

**a Michigan corporation is authorized to transact business in Nebraska;**

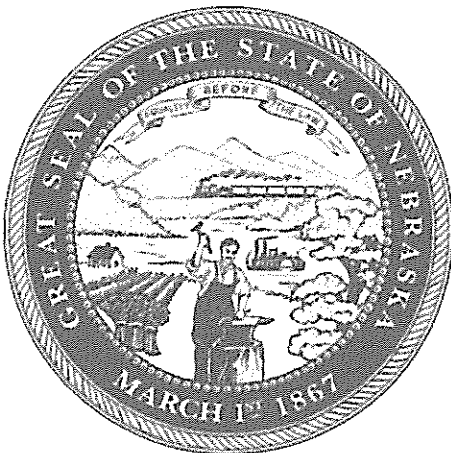
**that no occupation taxes due from and assessable against the Corporation are  
unpaid and have become delinquent;**

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

**that a Certificate of Withdrawal has not been filed.**

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

In Testimony Whereof,



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

**February 5, 2024**

A handwritten signature in black ink, appearing to read "Robert B. Evnen".

Secretary of State

# APPLICATION FOR CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS

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

Submit in Duplicate

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

Name of Corporation ERGON ASPHALT & EMULSIONS, INC.

Fictitious Name of Corporation \_\_\_\_\_  
(to be used only if actual corporate name is unavailable for use or does not comply with Nebraska law)

Incorporated under the laws of Mississippi

Date Incorporation September 24, 1982  
Year

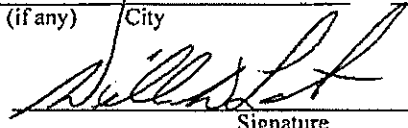
Period of Duration Perpetual

Address of Principal Office 2829 Lakeland Drive Jackson MS 39232  
Street Address City State Zip

Registered Agent C T Corporation System

Registered Office 1024 K Street Lincoln NE 68508  
Street Address and Post Office Box (if any) City State Zip

DATED 3-24-2010

  
Signature  
William W. Lampton/President  
Printed Name/Title

NOTE: The Business Corporation Act requires that every filing 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.

NOTE: To complete this form, you must list officers and directors on back

FILING FEE: \$145.00 (if you have more than one page listing officers and directors please add \$5.00 a page for each additional page)

Revised 12/30/2008

Neb. Rev. Stat. 21-20,170



**OFFICERS:**

Leslie B. Lampton/Chairman  
 Name/Title  
 2829 Lakeland Dr/PO Box 2401 (39225)  
 Street Address  
 Jackson MS 39225  
 City State Zip

William W. Lampton/President  
 Name/Title  
 2829 Lakeland Dr/PO Box 2401 (39225)  
 Street Address  
 Jackson MS 39225  
 City State Zip

A. Patrick Busby/Executive V.P. & CFO  
 Name/Title  
 2829 Lakeland Dr/PO Box 2401 (39225)  
 Street Address  
 Jackson MS 39225  
 City State Zip

J. Baxter Burns, II/Executive V.P. & Gen. Mgr.  
 Name/Title  
 2829 Lakeland Dr/PO Box 2401(39225)  
 Street Address  
 Jackson MS 39225  
 City State Zip

Kathryn W. Stone/Secretary-Treasurer  
 Name/Title  
 2829 Lakeland Drive/PO Box 2401 (39225)  
 Street Address  
 Jackson MS 39225  
 City State Zip

Name/Title  
 Street Address  
 City State Zip

**DIRECTORS:**

A. Patrick Busby  
 Name  
 PO Box 2401  
 Street Address  
 Jackson MS 39225  
 City State Zip

J. Baxter Burns, II  
 Name  
 PO Box 2401  
 Street Address  
 Jackson MS 39225  
 City State Zip

Leslie B. Lampton  
 Name  
 PO Box 2401  
 Street Address  
 Jackson MS 39225  
 City State Zip

Robert H. Lampton  
 Name  
 PO Box 2401  
 Street Address  
 Jackson MS 39225  
 City State Zip

William W. Lampton  
 Name  
 PO Box 2401  
 Street Address  
 Jackson MS 39225  
 City State Zip

Name  
 Street Address  
 City State Zip

Please Copy this page and submit additional pages if needed.

**POWER OF ATTORNEY**

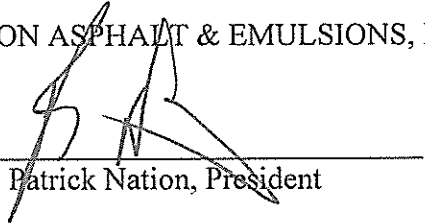
Ergon Asphalt & Emulsions, Inc., a Mississippi Corporation, hereby nominates and appoints each of Evan Heninger, Sean Peillersels, Stan Brogdon, Josh Giudice, Hank Cuevas and Steve Van De Bogert, as its agent and attorney-in-fact with the authority and for the purpose of executing and delivering bid proposals and contracts and/or agreements in connection therewith for the supply of up to 20,000 tons and/or 5,000,000 gallons of asphalt materials per single bid for the States of Washington, Oregon, Montana, Idaho, Colorado, Wyoming, North Dakota, South Dakota and Nebraska for and on behalf of Ergon Asphalt & Emulsions, Inc.

The address of Ergon Asphalt & Emulsions, Inc.'s home office is 2829 Lakeland Drive, Flowood, Mississippi 39232.

This Power of Attorney shall remain in full force and effect from and after the effective date until December 31, 2024, or such earlier time as it may be revoked by action of the Board of Directors of Ergon Asphalt & Emulsions, Inc.

Effective as of January 1, 2024

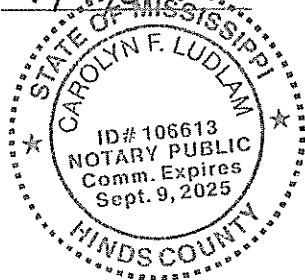
ERGON ASPHALT & EMULSIONS, INC.

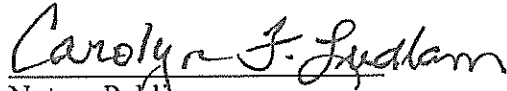
By:   
Patrick Nation, President

STATE OF MISSISSIPPI  
COUNTY OF RANKIN

Sworn to and subscribed before me this 8 day of February 2024, by Patrick Nation, President of Ergon Asphalt & Emulsions, Inc.

My commission expires: 9/9/2025



  
Notary Public

*2/19/2024*

ATTACHMENT A											
ASPHALTIC ROAD OIL 2023 / 2024 SEASON ESTIMATES											
DISTRICT	CRS-2P-LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS
1		Area 110		1		Area 130		1			
1	3 miles North of Seward	63,440	267.71	1	Palmyra	59,683	246.00	1	Palmyra	59,683	246.00
1	South Bend	28,670	120.98	1	Nebraska City	75,512	311.00	1	Nebraska City	75,512	311.00
1	Prague	120,841	509.94	1	Auburn	105,957	437.00	1	Auburn	105,957	437.00
1	15/66 Jct.	67,893	286.50	1	Falls City	18,973	78.00	1	Falls City	18,973	78.00
1	92/S12E Jct.	29,000	122.38	1	Falls City	30,302	125.00	1	Falls City	30,302	125.00
1	Emerald	31,110	131.28	1				1			
1	Alvo	30,500	128.71	1				1			
1	Raymond	2,400	10.12	1				1			
1	Davey	6,811	28.74	1				1			
1	15/64 Jct.	32,940	139.00	1				1			
1		Area 120		1				1			
1	Dorchester #33 MP 3	36,000	152.00	1				1			
1	P.C. #8 MP 126	59,000	249.00	1				1			
1	Fairbury #15 MP 24	110,400	466.00	1				1			
1	Beatrice #136 MP 172	57,000	241.00	1				1			
1				1				1			
DISTRICT	CRS-2VHL- LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS
1				1				1			
1				1				1			
1				1				1			
1				1				1			
DISTRICT	CSS-1H STRAIGHT- LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS
1				1				1			
1				1				1			
1				1				1			
1				1				1			
DISTRICT	HFE-300 - LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS
1				1				1			
1				1				1			
1				1				1			
1				1				1			
DISTRICT	MC-250- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS
1				1				1			
1				1				1			
1				1				1			
1				1				1			

*2/19/2024*

ATTACHMENT A									
ASPHALTIC ROAD OIL 2023 / 2024 SEASON ESTIMATES									
DISTRICT	CRS-2P-LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION
3	Hwy 14 & 84 Jct	58,000	244.63	3	Hwy 24 MP 2	33,000	139.00	3	Hwy 24 MP 2
3	Jct 45 & 32	67,000	282.59	3	Hwy 35 MP 4	46,000	194.00	3	Hwy 35 MP 4
3	Jct 39 & 56	44,500	187.69	3	Hwy 13 MP 3	30,000	127.00	3	Hwy 13 MP 3
3	Jct 91 & 52	55,800	235.36	3				3	
3	Jct 91 & 57	32,000	134.97	3				3	
3	Jct 81 & 91	48,000	202.46	3				3	
3	Hwy 81 & 32 Jct	74,800	315.49	3				3	
3	Hwy 9 & 51 Jct	66,500	271.47	3				3	
3	Hwy 57 & 98 Jct	65,000	274.16	3				3	
3	Hwy 32 & 77 Jct	68,400	288.50	3				3	
3	Homer	28,000	118.10	3				3	
3	Hwy 20 & 9 Jct	70,000	295.25	3				3	
3	Hwy 20 & 121 Jct	35,000	147.62	3				3	
3	Hwy 59 & 14 Jct	75,000	316.34	3				3	
3	Wausa	40,000	168.71	3				3	
3	Hwy 14 & 84 Jct	58,000	244.63	3				3	
3	Hwy 20 & 57 Jct	46,000	194.12	3				3	
3	Jct 81 and 71B	5,000	20.97	3				3	
DISTRICT	CRS-2VHL- LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION
3				3	Plant Pickup	4000	16.88	3	Plant Pickup
3				3				3	
3				3				3	
DISTRICT	CSS-1H 50/50- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION
3	Plant Pickup	3,500	14.91	3				3	
3				3				3	
3				3				3	
3				3				3	
DISTRICT	CSS-1H STRAIGHT- LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION
3				3				3	
3				3				3	
3				3				3	
3				3				3	
DISTRICT	HFE-300 - LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION
3				3				3	
3				3				3	
3				3				3	
DISTRICT	MC-250- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION
3				1				1	
3				3				3	
3				3				3	
3				3				3	

SP  
2/19/2024

ATTACHMENT A									
ASPHALTIC ROAD OIL 2023 / 2024 SEASON ESTIMATES									
DISTRICT	CRS-2P-LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION
4	Clarks Hwy 92 MP 376-382	54,530	230.00		4				
4	St Paul Hwy 92 MP 332-349	100,763	425.00		4				
4					4				
4	Cairo Hwy 2 MP 327-344	168,333	710.00		4				
4	Hwy 11 Wood River MP 5-23	112,617	475.00		4				
4	Shelton Hwy 30 MP 285-293	80,610	340.00		4				
4	Litchfield Hwy 2 MP 307-311	17,782	75.00		4				
4					4				
4	Alexandria Hwy 53 MP 0-12	71,127	300.00		4				
4	Geneva Hwy 41 MP 25-37	71,127	300.00		4				
4	York Hwy 81 MP 64-73	53,345	225.00		4				
4	Waco Spur 93B MP 0-5	29,636	125.00		4				
4					4				
4	Nelson Hwy 14 MP 7-16	80,610	340.00		4				
4	Guide Rock Hwy 78 MP 0-20	118,544	500.00		4				
4	Giltner Spur 41B MP 0-6	35,563	150.00		4				
4					4				
DISTRICT	CRS-2VHL- LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION
4				4				4	
4				4				4	
4				4				4	
4				4				4	
4				4				4	
DISTRICT	CSS-1H STRAIGHT- LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION
4				4				4	
4				4				4	
DISTRICT	HFE-300 - LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION
4	Site 401 Hwy 281 mp 95 St Paul	36,000	150.00	4				4	
4	Site 402 Hwy 281 mp 89.34 ST Paul	30,000	125.00	4				4	
4	Site 403 Hwy 58 mp 29.18 Loup City	24,000	100.00	4				4	
4	Site 418 Hwy 92 mp 320.15 Loup City	12,000	50.00	4				4	
4	Site 404 Hwy 281 mp 120 Greeley	18,000	75.00	4				4	
4	Site 420 Hwy 281 mp 125 Greeley	18,000	75.00	4				4	
4				4				4	
DISTRICT	MC-250- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION
4	York Maintenance Yard		25.00	1				4	
4	Ravenna Yard		25.00	4				4	
4				4				4	
4				4				4	

*Handwritten signature and date: 2/19/2024*

ATTACHMENT A									
ASPHALTIC ROAD OIL 2023/2024 SEASON ESTIMATES									
DISTRICT	CRS-2P-LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION
5	Gering/Hwy 92 RP 0-12	59,136	249.55	5				5	
5	Gering/Hwy 29 RP 13-30	83,776	353.53	5				5	
5	Bridgeport/Hwy 385 RP 52-54	9,856	41.59	5				5	
5	Gering/Hwy 92 RP 48-61	64,064	270.35	5				5	
5	Sidney/Hwy 385 RP 39-52	64,097	270.48	5				5	
5	Alliance/Hwy 87 RP 1-6	28,747	121.31	5				5	
5	Chadron/Hwy 385 RP 170-178	39,424	166.36	5				5	
5	Chadron/Hwy 87 RP 16-32	78,848	332.73	5				5	
5	Crawford/Hwy 71 RP 110-125	123,200	519.9	5				5	
5	Gordon/Hwy 250 RP 31-48	83,776	353.53	5				5	
5				5				5	
DISTRICT	CRS-2VHL- LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION
5				5				5	
5				5				5	
5				5				5	
DISTRICT	CSS-1H 50/50- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION
5	Hwy 71 RP 40-44	2,000	8.52						
5									
5									
DISTRICT	CSS-1H STRAIGHT- LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION
5									
5									
5									
5									
DISTRICT	HFE-300 - LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION
5				5				5	
5				5				5	
5				5				5	
DISTRICT	MC-250- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION
5	D5 tack oil	1,200	4.86	1				1	
5				5				5	
5				5				5	
5				5				5	

**ATTACHMENT A**

**ASPHALTIC ROAD OIL 2023/2024 SEASON ESTIMATES**

DISTRICT	CRS-2P-LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS
6	North Platte North - N 97 MP 16 to 10	36,000	151.80	6	Arthur East Hwy N-92 MP 169-176	49,280	203.00
6	Arthur NE - 118 W Hawkins ST	84,480	356.51	6	Theford North US 83 MP 149-157	56,328	232.00
6	Dunning Southeast Hwy N-2 MP 237-248	77,748	319.00	6	Theford East Hwy N-2 MP 213-221	56,328	232.00
6	Hwy N-70 MP 89-99	70,400	290.00	6	Summer to Miller N-40 MP 57 to 65	56,328	232.00
6	Brewster West Hwy N-91 MP 9-15	42,240	174.00	6	Gothenburg South N-47		
6	Mullen North Hwy N- 97 MP 80-95	70,400	290.00	6			
6				6			
6				6			
6				6			
DISTRICT	CRS-2VHL- LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS
6				6			
DISTRICT	CSS-1H 50/50- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION	GALLONS	TONS
6	Stapleton North US 83 MP 124-136	28,725	123	6	Dunning Southeast Hwy N-2 MP 237-248	26,332	112
6				6	Hwy N-70 MP 89-99	23,936	102
6				6	Brewster West Hwy N-91 MP 9-15	14,361	61
6				6	Mullen North Hwy N- 97 MP 80-95	23,936	102
6				6	Arthur East Hwy N-92 MP 169-176	16,755	72
6				6	Theford North US 83 MP 149-157	19,151	82
6				6	Theford East Hwy N-2 MP 213-221	19,151	82
6				6	Stapleton North US 83 MP 124-136	28,725	123
6				6	Summer to Miller N-40 MP 57 to 65	19,151	82
6				6	Lex to Overton 236 - 246	23,936	102
6				6	Overton Link 0-3.48	8,330	36
6				6	Arthur NE 118 W Hawkins ST	20,275	86.38
DISTRICT	CSS-1H STRAIGHT- LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS
6				6			
DISTRICT	HFE-300 - LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS
6	Sutherland site 609 hwy 25 mp 104	18,000	82.98	6			
6	Dickens site 611 hwy 23 mp 57	36,000	149.79	6			
6	NP North - Site 602 hwy 97 mp 9	24,000	98.64	6			
6	Tryon East N-92 MP 205 - 2 miles east of Tryon	24,000	100	6			
6	Mullen West Site # 604 Hwy N-2 MP 174	24,000	100	6			
6	Mullen West Site # 605 Hwy N-2 MP 184	24,000	100	6			
6	Arthur North - Site # 616 Hwy N- 61 MP 131	24,000	100	6			
6	Hyannis West Site# 617 Hwy N-2 MP 144	24,000	100	6			
6	Arthur North Site# 619 Hwy N-61 MP 126	24,000	100	6			
DISTRICT	MC-250- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS
6	North Platte North US 83 - 703 Hall School Rd	5,000	20.28	6			
6	Mullen NDOT yard Hwy N- 2 in Mullen	12,000	50	6			
6	Broken bow yard Hwy N-2 in Broken Bow	12,000	50	6			

*2/19/23*

*Ed 2/19/2024*

ATTACHMENT A									
ASPHALTIC ROAD OIL 2023 / 2024 SEASON ESTIMATES									
DISTRICT	CRS-2P-LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS		
7	Bertrand	36,400	154.00	7					
7	Loomis	50,400	213.00	7					
7	Orleans	25,800	109.00	7					
7	Benkelman	60,406	254.79	7					
7	Venango	52,122	219.85	7					
7	Grant	55,163	232.68	7					
7				7					
DISTRICT	CRS-2VHL- LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS		
7				7					
7				7					
7				7					
DISTRICT	CSS-1H 50/50- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION	GALLONS	TONS		
7				7					
7				7					
7				7					
DISTRICT	CSS-1H STRAIGHT- LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS		
7	Holdrege	6,000	25.56	7					
7	McCook	6,000	25.56	7					
7				7					
DISTRICT	HFE-300 - LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS		
7				7					
7				7					
7				7					
DISTRICT	MC-250- LOCATION	GALLONS	TONS	1	OTHER- LOCATION				
7				7					
7				7					
7				7					
7				7					



*Handwritten signature and date: 2/19/2024*

ATTACHMENT A											
ASPHALTIC ROAD OIL 2023/2024 SEASON ESTIMATES											
DISTRICT	CRS-2P-LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS	DISTRICT	CRS-2P- LOCATION	GALLONS	TONS
8	Springview	38,000	160	8	BURWELL	53,692	226	8	BURWELL	53,692	226
8	Burton	50,000	210	8	BARTLETT	24,405	103	8	BARTLETT	24,405	103
8	Ainsworth	73,000	307	8	Hwy 83 approx. 16m South of Valentine	53,692	226	8	Hwy 83 approx. 16m South of Valentine	53,692	226
8	PAGE	20500	87	8	Hwy 61 approx. 47m South of Merriman	39,048	164.00	8	Hwy 61 approx. 47m South of Merriman	39,048	164.00
8	ONEILL	68334	291	8	Hwy 20 approx. 20 East of Merriman	43,930	185.00	8	Hwy 20 approx. 20 East of Merriman	43,930	185.00
8	EWING	28,456	121	8				8			
8	SPENCER	18,000	75	8				8			
DISTRICT	CRS-2VHL- LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS	DISTRICT	CRS-2 STRAIGHT LOCATION	GALLONS	TONS
8				8				8			
8				8				8			
DISTRICT	CSS-1H 50/50- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION	GALLONS	TONS	DISTRICT	CSS-1H 75/25- LOCATION	GALLONS	TONS
8				8	Springview	14000	59	8	Springview	14000	59
8				8	Burton	19000	80	8	Burton	19000	80
8				8	Ainsworth	27000	113	8	Ainsworth	27000	113
8				8	PAGE	7686	33	8	PAGE	7686	33
8				8	ONEILL	25620	109	8	ONEILL	25620	109
8				8	SPENCER	12000	51	8	SPENCER	12000	51
8				8	BURWELL	21,605	92	8	BURWELL	21,605	92
8				8	BARTLETT	9,965	42	8	BARTLETT	9,965	42
8				8	EWING	10,671	45	8	EWING	10,671	45
8				8	Hwy 83 approx. 16m South of Valentine	38720	164	8	Hwy 83 approx. 16m South of Valentine	38720	164
8				8	Hwy 61 approx. 47m South of Merriman	18304	77	8	Hwy 61 approx. 47m South of Merriman	18304	77
8				8	Hwy 20 approx. 20m East of Merriman	31680	134	8	Hwy 20 approx. 20m East of Merriman	31680	134
DISTRICT	CSS-1H STRAIGHT- LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS	DISTRICT	HFE-150-LOCATION	GALLONS	TONS
8				8	Ainsworth	4,000	17.00	8	Ainsworth	4,000	17.00
8				8				8			
8				8				8			
8				8				8			
DISTRICT	HFE-300 - LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS	DISTRICT	HFE-1000- LOCATION	GALLONS	TONS
8	Bassett	12,000	50	8	Hwy 20 approx. 1m West of Merriman	6,000	25.00	8	Hwy 20 approx. 1m West of Merriman	6,000	25.00
8	Hwy 20 approx. 1m West of Merriman	12,000	51	8	Hwy 20 approx. 5m SE of Valentine	6000.00	25.00	8	Hwy 20 approx. 5m SE of Valentine	6000.00	25.00
8	Hwy 20 approx. 3m West of Nenzel	6,000	25	8				8			
8	Hwy 20 approx. 5 SE of Valentine	12,000	51	8				8			
8	Hwy 12 approx. 19m East of Valentine	6,000	25	8				8			
DISTRICT	MC-250- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS	DISTRICT	OTHER- LOCATION	GALLONS	TONS
8	Ainsworth	6000	25	1				8			
8	Hwy 20/83 approx 2m SE of Valentine	6000	25	8				8			
8				8				8			
8				8				8			