STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: (402) 471-6500
Fax: (402) 471-2089

PAGE	ORDER DATE
1 of 5	03/09/20
BUSINESS UNIT	BUYER
27227020	BRENDA SENSIBAUGH (AS)

VENDOR NUMBER: 2511289

VENDOR ADDRESS:

OMG MIDWEST INC
DBA OMNI ENGINEERING
14012 GILES RD
OMAHA NE 68138-3603

CONTRACT NUMBER
15272 OC

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

APRIL 01, 2020 THROUGH MARCH 31, 2021

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Original/Bid Document 6211 OF

Contract to supply and deliver Bulk Bituminous Cold Patch to the State of Nebraska as per the attached specifications for the contract period April 1, 2020 through March 31, 2021. The contract may be renewed for two (2) additional one (1) year periods when mutually agreeable to the vendor and the State of Nebraska.

Omi Engineering bid UPM Bulk Bituminous Cold Patch Material.

Vendor Contact: Ryan Cornell
Phone: 402-215-8037
Fax: 402-215-8037
E-Mail: ryan.cornell@omni-engineering.com

(03/09/20 ml)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	DIST 1 BULK COLD PATCH LINCOLN SALT VALLEY	10.0000	TN	140.2500
2	DIST 1 BULK COLD PATCH AUBURN	30.0000	TN	143.9000
3	DIST 1 BULK COLD PATCH FALLS CITY	30.0000	TN	149.4600
4	DIST 1 BULK COLD PATCH BEATRICE	10.0000	TN	146.7600
5	DIST 1 BULK COLD PATCH	10.0000	TN	142.9500

3/12/20 Brenda Sensibaugh 3-10-20
BUYER
3/12/2020
MATERIEL ADMINISTRATOR

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27227020	BRENDA SENSIBAUGH (AS)

VENDOR NUMBER: 2511289

CONTRACT NUMBER
15272 OC

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	DAVID CITY			
6	DIST 1 BULK COLD PATCH DORCHESTER	10.0000	TN	145.4900
7	DIST 1 BULK COLD PATCH FAIRBURY	10.0000	TN	151.5200
8	DIST 1 BULK COLD PATCH NEBRASKA CITY	30.0000	TN	140.8900
9	DIST 1 BULK COLD PATCH PAWNEE CITY	10.0000	TN	145.3300
10	DIST 1 BULK COLD PATCH PALMYRA	30.0000	TN	140.2500
11	DIST 1 BULK COLD PATCH SEWARD	30.0000	TN	143.1100
12	DIST 1 BULK COLD PATCH TECUMSEH	30.0000	TN	142.3200
13	DIST 2 BULK COLD PATCH OMAHA 108TH	50.0000	TN	134.5400
14	DIST 1 BULK COLD PATCH WAHOO	50.0000	TN	138.1900
15	DIST 2 BULK COLD PATCH OMAHA SOUTH	50.0000	TN	134.8600
16	DIST 2 BULK COLD PATCH OMAHA MORMON	50.0000	TN	134.8600
17	DIST 2 BULK COLD PATCH FREMONT	50.0000	TN	138.1900
18	DIST 2 BULK COLD PATCH BLAIR	50.0000	TN	137.8700
19	DIST 2 BULK COLD PATCH GRETNA	50.0000	TN	134.5400
20	DIST 2 BULK COLD PATCH	50.0000	TN	137.0800

BS
BUYER INITIALS

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27227020	BRENDA SENSIBAUGH (AS)

VENDOR NUMBER: 2511289

CONTRACT NUMBER
15272 OC

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	PLATTSMOUTH			
21	DIST 2 BULK COLD PATCH ELKHORN	50.0000	TN	135.3400
22	DIST 3 BULK COLD PATCH ALBION	25.0000	TN	152.9500
23	DIST 3 BULK COLD PATCH BLOOMFIELD	25.0000	TN	158.3400
24	DIST 3 BULK COLD PATCH CLARKSON	25.0000	TN	145.8100
25	DIST 3 BULK COLD PATCH COLUMBUS	25.0000	TN	146.2800
26	DIST 3 BULK COLD PATCH HARTINGTON	25.0000	TN	155.1700
27	DIST 3 BULK COLD PATCH HUMPHREY	25.0000	TN	148.8200
28	DIST 3 BULK COLD PATCH LAUREL	25.0000	TN	152.0000
29	DIST 3 BULK COLD PATCH LYONS	25.0000	TN	144.0600
30	DIST 3 BULK COLD PATCH NELIGH	25.0000	TN	155.9600
31	DIST 3 BULK COLD PATCH NIOBRARA	25.0000	TN	162.7900
32	DIST 3 BULK COLD PATCH NORFOLK	25.0000	TN	150.4100
33	DIST 3 BULK COLD PATCH PLAINVIEW	25.0000	TN	156.1200
34	DIST 3 BULK COLD PATCH SO. SIOUX CITY	25.0000	TN	150.4100
35	DIST 3 BULK COLD PATCH	25.0000	TN	149.4600

BS
BUYER INITIALS

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27227020	BRENDA SENSIBAUGH (AS)

VENDOR NUMBER: 2511289

CONTRACT NUMBER
15272 OC

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	WAYNE			
36	DIST 3 BULK COLD PATCH WEST POINT	25.0000	TN	143.7500
37	DIST 4 BULK COLD PATCH AURORA	100.0000	TN	151.2000
38	DIST 4 BULK COLD PATCH GENEVA	30.0000	TN	150.7300
39	DIST 4 BULK COLD PATCH GRAND ISLAND	30.0000	TN	154.9600
40	DIST 4 BULK COLD PATCH HASTINGS	75.0000	TN	156.6000
41	DIST 4 BULK COLD PATCH HEBRON	30.0000	TN	154.8500
42	DIST 4 BULK COLD PATCH KEARNEY	30.0000	TN	160.4100
43	DIST 4 BULK COLD PATCH LOUP CITY	15.0000	TN	158.3400
44	DIST 4 BULK COLD PATCH OSCEOLA	30.0000	TN	146.1300
45	DIST 4 BULK COLD PATCH RAVENNA	30.0000	TN	159.9300
46	DIST 4 BULK COLD PATCH RED CLOUD	50.0000	TN	162.9500
47	DIST 4 BULK COLD PATCH SUPERIOR	50.0000	TN	160.0900
48	DIST 4 BULK COLD PATCH ST. PAUL	15.0000	TN	153.7400
49	DIST 4 BULK COLD PATCH YORK	30.0000	TN	147.8700
50	DIST 6 BULK COLD PATCH	50.0000	TN	166.1200

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BUSINESS UNIT	BUYER
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VENDOR NUMBER: 2511289

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Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	LEXINGTON			
51	DIST 6 BULK COLD PATCH NORTH PLATTE	50.0000	TN	174.6400
52	DIST 6 BULK COLD PATCH ALMA	15.0000	TN	168.5000
53	DIST 7 BULK COLD PATCH ARAPAHOE	15.0000	TN	169.7700
54	DIST 7 BULK COLD PATCH HOLDREGE	15.0000	TN	164.6900
55	DIST 7 BULK COLD PATCH MCCOOK	30.0000	TN	176.2700
56	OMAHA PLANT PICK UP BULK COLD PATCH	50.0000	TN	135.0000

BUYER INITIALS

State of Nebraska - INVITATION TO BID
CONTRACT

Return to:
State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: 402-471-6500
Fax: 402-471-2089

Date	12/23/19	**Page**	1 of 6
Solicitation Number	6211 OF		
Opening Date and Time	01/20/20	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 AFFADAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. " Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this ITB.

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

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

(12/20/19 ml)

INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	**DIST 1 BULK COLD PATCH** LINCOLN SALT VALLEY	10.0000	TN	140.25	1,402.50
2	**DIST 1 BULK COLD PATCH** AUBURN	30.0000	TN	143.90	4,317.00
3	**DIST 1 BULK COLD PATCH** FALLS CITY	30.0000	TN	149.46	4,483.80
4	**DIST 1 BULK COLD PATCH** BEATRICE	10.0000	TN	146.76	1,467.60

BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: 0 % 30 DAYS

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to (see Section III) and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within 7 days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

Sign Here Ryan Cornell
(Authorized Signature MANDATORY - MUST BE SIGNED IN INK)

VENDOR# 2026521
VENDOR: Omni Engineering
Address: 14012 Giles Road
Omaha, NE 68138

Enter Contact Information Below

Contact Ryan Cornell
Telephone (402) 215-8037
Facsimile (402) 215-8037
Email ryan.cornell@omni-engineering.com

State of Nebraska - INVITATION TO BID CONTRACT

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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
5	**DIST 1 BULK COLD PATCH** DAVID CITY	10.0000	TN	142.95	1,429.50
6	**DIST 1 BULK COLD PATCH** DORCHESTER	10.0000	TN	145.49	1,454.90
7	**DIST 1 BULK COLD PATCH** FAIRBURY	10.0000	TN	151.52	1,515.20
8	**DIST 1 BULK COLD PATCH** NEBRASKA CITY	30.0000	TN	140.89	4,226.70
9	**DIST 1 BULK COLD PATCH** PAWNEE CITY	10.0000	TN	145.33	1,453.30
10	**DIST 1 BULK COLD PATCH** PALMYRA	30.0000	TN	140.25	4,207.50
11	**DIST 1 BULK COLD PATCH** SEWARD	30.0000	TN	143.11	4,293.30
12	**DIST 1 BULK COLD PATCH** TECUMSEH	30.0000	TN	142.32	4,269.60
13	**DIST 1 BULK COLD PATCH** WAHOO	50.0000	TN	138.19	6,909.50
14	**DIST 2 BULK COLD PATCH** OMAHA 108TH	50.0000	TN	134.54	6,727.00
15	**DIST 2 BULK COLD PATCH** OMAHA SOUTH	50.0000	TN	134.86	6,743.00
16	**DIST 2 BULK COLD PATCH** OMAHA MORMON	50.0000	TN	134.86	6,743.00
17	**DIST 2 BULK COLD PATCH** FREMONT	50.0000	TN	138.19	6,909.50
18	**DIST 2 BULK COLD PATCH** BLAIR	50.0000	TN	137.87	6,893.50
19	**DIST 2 BULK COLD PATCH** GRETNA	50.0000	TN	134.54	6,727.00

State of Nebraska - INVITATION TO BID CONTRACT

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Buyer	BRENDA SENSIBAUGH (AS)		

DESTINATION OF GOODS
MULTIPLE DELIVERY LOCATIONS
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
20	**DIST 2 BULK COLD PATCH** PLATTSMOUTH	50.0000	TN	137.08	6,854.00
21	**DIST 2 BULK COLD PATCH** ELKHORN	50.0000	TN	135.34	6,767.00
22	**DIST 3 BULK COLD PATCH** ALBION	25.0000	TN	152.95	3,823.75
23	**DIST 3 BULK COLD PATCH** BLOOMFIELD	25.0000	TN	158.34	3,958.50
24	**DIST 3 BULK COLD PATCH** CLARKSON	25.0000	TN	145.81	3,645.25
25	**DIST 3 BULK COLD PATCH** COLUMBUS	25.0000	TN	146.28	3,657.00
26	**DIST 3 BULK COLD PATCH** HARTINGTON	25.0000	TN	155.17	3,879.25
27	**DIST 3 BULK COLD PATCH** HUMPHREY	25.0000	TN	148.82	3,720.50
28	**DIST 3 BULK COLD PATCH** LAUREL	25.0000	TN	152.00	3,800.00
29	**DIST 3 BULK COLD PATCH** LYONS	25.0000	TN	144.06	3,601.50
30	**DIST 3 BULK COLD PATCH** NELIGH	25.0000	TN	155.96	3,899.00
31	**DIST 3 BULK COLD PATCH** NIOBRARA	25.0000	TN	162.79	4,069.75
32	**DIST 3 BULK COLD PATCH** NORFOLK	25.0000	TN	150.41	3,760.25
33	**DIST 3 BULK COLD PATCH** PLAINVIEW	25.0000	TN	156.12	3,903.00
34	**DIST 3 BULK COLD PATCH**	25.0000	TN	150.41	3,760.25

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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
	SO. SIOUX CITY				
35	**DIST 3 BULK COLD PATCH** WAYNE	25.0000	TN	149.46	3,736.50
36	**DIST 3 BULK COLD PATCH** WEST POINT	25.0000	TN	143.75	3,593.75
37	**DIST 4 BULK COLD PATCH** AURORA	100.0000	TN	151.20	15,120.00
38	**DIST 4 BULK COLD PATCH** GENEVA	30.0000	TN	150.73	4,521.90
39	**DIST 4 BULK COLD PATCH** GRAND ISLAND	30.0000	TN	154.96	4,648.80
40	**DIST 4 BULK COLD PATCH** HASTINGS	75.0000	TN	156.60	11,745.00
41	**DIST 4 BULK COLD PATCH** HEBRON	30.0000	TN	154.85	4,645.50
42	**DIST 4 BULK COLD PATCH** KEARNEY	30.0000	TN	160.41	4,812.30
43	**DIST 4 BULK COLD PATCH** LOUP CITY	15.0000	TN	158.34	2,375.10
44	**DIST 4 BULK COLD PATCH** OSCEOLA	30.0000	TN	146.13	4,383.90
45	**DIST 4 BULK COLD PATCH** RAVENNA	30.0000	TN	159.93	4,797.90
46	**DIST 4 BULK COLD PATCH** RED CLOUD	50.0000	TN	162.95	8,147.50
47	**DIST 4 BULK COLD PATCH** SUPERIOR	50.0000	TN	160.09	8,004.50
48	**DIST 4 BULK COLD PATCH** ST. PAUL	15.0000	TN	153.74	2,306.10

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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
49	**DIST 4 BULK COLD PATCH** YORK	30.0000	TN	147.87	4,436.10
50	**DIST 5 BULK COLD PATCH** ALLIANCE	1,000.0000	TN	202.93	202,930.00
51	**DIST 5 BULK COLD PATCH** BRIDGEPORT	1,000.0000	TN	197.54	197,540.00
52	**DIST 5 BULK COLD PATCH** CHADRON	3,000.0000	TN	211.18	633,540.00
53	**DIST 5 BULK COLD PATCH** CHAPPELL	1,000.0000	TN	189.92	189,920.00
54	**DIST 5 BULK COLD PATCH** CRAWFORD	1,000.0000	TN	211.82	211,820.00
55	**DIST 5 BULK COLD PATCH** GERING	3,000.0000	TN	202.46	607,380.00
56	**DIST 5 BULK COLD PATCH** GORDON	1,000.0000	TN	194.36	194,360.00
57	**DIST 5 BULK COLD PATCH** KIMBALL	1,000.0000	TN	200.23	200,230.00
58	**DIST 5 BULK COLD PATCH** SIDNEY	3,000.0000	TN	194.52	583,560.00
59	**DIST 6 BULK COLD PATCH** BROKEN BOW	50.0000	TN	167.71	8,385.50
60	**DIST 6 BULK COLD PATCH** LEXINGTON	50.0000	TN	166.12	8,306.00
61	**DIST 6 BULK COLD PATCH** NORTH PLATTE	50.0000	TN	174.64	8,782.00
62	**DIST 7 BULK COLD PATCH** ALMA	15.0000	TN	168.50	2,527.50
63	**DIST 7 BULK COLD PATCH** ARAPAHOE	15.0000	TN	169.77	2,546.55

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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
64	**DIST 7 BULK COLD PATCH** HOLDREGE	15.0000	TN	164.69	2,470.35
65	**DIST 7 BULK COLD PATCH** MCCOOK	30.0000	TN	176.27	5,288.10
66	**OMAHA PLANT PICK UP** BULK COLD PATCH	50.0000	TN	135	135.00
67	**LINCOLN PLANT PICK UP** BULK COLD PATCH	50.0000	TN	NA	
68	**NORTH PLATTE PLANT PICK UP** BULK COLD PATCH	50.0000	TN	NA	
69	**S SIOUX CITY PLANT PICK UP** BULK COLD PATCH	50.0000	TN	NA	
70	**SCOTTSBLUFF PLANT PICK UP** BULK COLD PATCH	50.0000	TN	NA	
71	**_____ PLANT PICK UP** BULK COLD PATCH	50.0000	TN	NA	

INVITATION TO BID

Number 6211 OF

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 6211 OF for the purpose of selecting a qualified Contractor to provide **Bulk Bituminous Cold Patch Material for Nebraska Department of Transportation area locations throughout the State of Nebraska.** A more detailed description can be found in Section VI. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

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

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

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, State contracts in effect as of January 1, 2014, and contracts entered 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

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

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

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

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

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GLOSSARY OF TERMS

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

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

After Receipt of Order (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 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 Vendor 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 bid/s (offers made in response to written solicitations)

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

Free on Board (F.O.B.) Destination: The delivery charges are included in the quoted price and prepaid by the 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 utilized for obtaining competitive offers for Services or Goods

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

Licensed Software Documentation: The user manuals and any other materials in any form or medium customarily provided by the 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Protest/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 utilized by the State as recommended by the Contractor.

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

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

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

Responsible 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 Bidder: A bidder 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

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

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

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

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

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

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

Trademark: A word, phrase, logo, or other graphic symbol used by a manufacturer or 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 Performance Report: A report completed by the using agency and submitted to State Purchasing Bureau documenting products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications.

Vendor: Inclusive term for any Bidder or Contractor.

Will: See Mandatory/Must/Shall

Work Day: See Business Day

ACRONYM LIST

AASHTO - American Association of State Highway and Transportation Officials

ARO – After Receipt of Order

ACH – Automated Clearing House

ASTM - American Society for Testing and Materials

AS - Administrative Services

BAFO – Best and Final Offer

COI – Certificate of Insurance

CPU – Central Processing Unit

DAS – Department of Administrative Services

DIST - District

F.O.B. – Free on Board

HWY - Highway

ITB – Invitation to Bid

JCT - Junction

MI - Mile(s)

NA - Not Applicable

NDOT - Nebraska Department of Transportation

NIGP – National Institute for Governmental Purchasing

PA – Participating Addendum

RFI – Request for Information

RFP – Request for Bid

RP - Reference Post

SPB – State Purchasing Bureau

TBA - To Be Announced

TBD - To Be Determined

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The solicitation is designed to solicit bids from qualified Contractors who will be responsible for providing **Bulk Bituminous Cold Patch Material** 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:

Solicitation Number:	6211 OF
Name:	Brenda Sensibaugh
Agency:	State Purchasing Bureau
Address:	1526 K Street, Suite 130 Lincoln, NE 68508
Telephone:	402-471-6500
E-Mail:	as.materielpurchasing@nebraska.gov

From the date the solicitation is issued until the Intent to Award is issued, communication from the 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 solicitation	December 23, 2019
2.	Last day to submit written questions	December 30, 2019
3.	State responds to written questions through a solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html	January 6, 2020
4.	Bid Opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	January 20, 2020 2:00 p.m. Central Time
5.	Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
6.	Contract award	February 15, 2020

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 6211 OF; **Bulk Bituminous Cold Patch Material** 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.

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

Solicitation Section Reference	Solicitation Page Number	Question

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

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

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

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

Contractor shall have an affirmative duty to report any violations of this clause by the Contractor throughout the bidding process, and throughout the term of this contract for the successful Contractor and their 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 Contractor in its bid and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the solicitation, solicitation requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this solicitation, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this solicitation. The State discourages deviations and reserves the right to reject proposed deviations.

H. SUBMISSION OF BIDS

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

Contractors should submit one bid marked on the first page: "ORIGINAL". If multiple bids are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The Contractor is solely responsible for any variance between the copies submitted. Bid responses should include the completed Form A, "Contractor Bid Point of Contact". Bids must reference the ITB number and be sent to the specified address. Please note that the address

label should appear as specified in Section I B. on the face of each container or contractor's bid response packet. If a recipient phone number is required for delivery purposes, 402-471-6500 should be used. The ITB number should be included in all correspondence. The State will not furnish packaging and sealing materials. It is the contractor's responsibility to ensure the ITB is received in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed bids must be received in the State Purchasing Bureau by the date and time of the bid opening per the Schedule of Events. No late bids will be accepted.

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

It is the responsibility of the contractor to check the website for all information relevant to this Invitation to Bid to include addenda and/or amendments issued prior to the opening date. Website address is as follows: http://das.nebraska.gov/materiel/purchasing.html

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

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

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

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 Vendor Performance Report(s)
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/BID REQUIREMENTS

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

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

O. EVALUATION OF BIDS

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

1. Cost Bid

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

Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone. When a state contract is to be awarded to the lowest responsible 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:

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

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the 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 utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the bids, or at any point in the solicitation process, the State of Nebraska may take one or more of the following actions:

1. Amend the solicitation;
2. Extend the time of or establish a new bid opening time;
3. Waive deviations or errors in the State's solicitation process and in 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:
http://das.nebraska.gov/materiel/purchasing.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:
http://das.nebraska.gov/materiel/purchasing.html

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 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.

1. 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.

T. 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 the Materiel Administrator, the bid will result in goods and/or services equivalent to or better than those which would be supplied in the original bid specifications. 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.

U. 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 Contractor declines to accept award on individual items; a "lump sum" bid is one in which the Contractor 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.

V. EMAIL SUBMISSIONS

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

W. BID TABULATIONS

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

X. 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.

Y. 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

Contractors should complete Section II through VI as part of their bid. Contractor is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Contractor should also provide an explanation of why the Contractor rejected the clause or rejected the clause and provided alternate language using "Track Changes". Upon request an electronic copy of the bid with "Track Changes" must be submitted in an editable Word format. By signing the solicitation, Contractor is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the 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

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

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

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

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 or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

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

C. NOTICE (POC)

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

D. GOVERNING LAW (Statutory)

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

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

E. AMENDMENT

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

F. CHANGE ORDERS OR SUBSTITUTIONS

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

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. VENDOR PERFORMANCE REPORT(S)

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

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

H. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with

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

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

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

J. NON-WAIVER OF BREACH

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

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

K. SEVERABILITY

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

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

L. INDEMNIFICATION

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

1. GENERAL

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

2. **SELF-INSURANCE (Statutory)**
The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this contract, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this contract to the extent provided by law.

M. ATTORNEY'S FEES

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

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

N. ASSIGNMENT, SALE, OR MERGER

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

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 SUB-DIVISIONS OF THE STATE OR ANOTHER STATE

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

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

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

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

Q. CONFIDENTIALITY

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

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

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

R. EARLY TERMINATION

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

The contract may be terminated as follows:

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

2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

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

   a. if directed to do so by statute;

b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;

c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;

d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;

e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;

f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;

g. Contractor intentionally discloses confidential information;

h. Contractor has or announces it will discontinue support of the deliverable; and,

i. In the event funding is no longer available.

S. CONTRACT CLOSEOUT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. EMPLOYEE WORK ELIGIBILITY STATUS

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

program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

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

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

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

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

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

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

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

D. COOPERATION WITH OTHER CONTRACTORS

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

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 unit price (per ton) and shall be firm for one (1) year from date of an award and are to be net; including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, handling, fuel surcharge, packaging, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

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Any request for an increase must be submitted in writing to the State Purchasing Bureau a minimum of 30 days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties

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

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

G. COST CLARIFICATION

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

H. PERMITS, REGULATIONS, LAWS

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

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

I. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

J. ANTITRUST

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

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

K. CONFLICT OF INTEREST

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

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

Contractor further certifies that contractor will not employ any individual known by contractor to have a conflict of interest nor shall contractor 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, contractor shall provide with its bid a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

L. STATE PROPERTY

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

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

M. SITE RULES AND REGULATIONS

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

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

N. ADVERTISING

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

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

O. DISASTER RECOVERY/BACK UP PLAN

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

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

P. DRUG POLICY

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

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

Q. WARRANTY

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

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

IV. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

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

B. TAXES (Statutory)

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

C. INVOICES

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Payment will be made based on the net weight of the material received. Invoices are to be sent to the "Invoice to" address on the purchase order. Contractor must furnish copies of weight tickets to receiving personnel when orders are picked up or delivered. Please reference the NDOT District Location listing in section VI. D. 1-8 to determine address. Discrepancies on invoices will be corrected to the State's satisfaction within fifteen (15) days. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. PAYMENT (Statutory)

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the 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.

E. LATE PAYMENT (Statutory)

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

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

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

G. RIGHT TO AUDIT (First Paragraph is Statutory)

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

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

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds three percent (3%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

V. SCOPE OF WORK

Bidder shall supply Bulk Bit for the Nebraska Department of Transportation (NDOT).
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 and deliver **Bulk Bituminous Cold Patch Material for Nebraska Department of Transportation area locations throughout the State of Nebraska** per the attached specifications from date of award for a period of one (1) year with the option to renew for an additional two (2), one (1) year periods when mutually agreeable to the vendor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the vendor and the State.

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

ACCEPTABLE BRANDS; APPROVED BRANDS - Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the bidder's proposed product for Bulk Bituminous Cold Patch Material must be an "Approved Brand" by the Nebraska Department of Transportation (NDOT). Products that are not an "Approved Brand" will not be considered for this Invitation to Bid (ITB).

UPM High Performance Cold Patch, QPR, EZ Street, Proline or Perma Patch are considered "Approved Brands" which have previously been tested by the NDOT for meeting specification requirements.

Physical review(s) of utilized material performance may be conducted by the Contractor and NDOT throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract. Additionally, should the contract be terminated, the product may be removed from NDOT's Approved Brand and as such the product would not be considered in future ITB's.

PROCEDURE FOR PRE-APPROVAL/PRE-QUALIFICATION - If a vendor/supplier has a product which is not pre-approved by the Department of Transportation, the vendor /supplier may contact Operations Procurement, NDOT for information concerning the approval process (OperationsProcurement@nebraska.gov).

Proposed product must pass a field performance evaluation standard over a period that includes all four seasons. Overall testing period for both field testing and Materials & Research review of adherence to these specifications is one full year. If the product is approved, it will have the opportunity for inclusion on the "Approved Brands" for the next Bulk Bituminous Cold Patch Material bid solicitation.

VI. TECHNICAL SPECIFICATIONS

A. CONTRACTOR INSTRUCTIONS

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

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

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

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

All items bid shall conform to section 1033 in the 2017 Nebraska Department of Transportation Standard Specifications https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.aspx for highway construction and special provisions as specified in these bid documents.

Materials shall conform to the Nebraska Department of Transportation Standard Specifications for the Highway Construction 2017 Edition as amended in this Specification and amendments to the Division 1000.

B. NON-COMPLIANCE STATEMENT

YES	NO	NO & PROVIDE ALTERNATIVE		
✓			1.	Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your 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-proposal documents will be made orally to any Contractor by the State. Any solicitation interpretation must be put in writing by the Contractor to: the State Purchasing Bureau, E-mail questions to SPB. as.materielpurchasing@nebraska.gov 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. GENERAL SPECIFICATIONS: BULK BITUMINOUS COLD PATCH

YES	NO	NO & PROVIDE ALTERNATIVE		
✓			1.	The Bulk Bituminous Cold Patch Material bid shall be UPM High Performance Cold Patch, QPR, EZ Street, Proline or Perma Patch.
			2.	
✓			3.	Material bid must be manufactured in a plant owned and operated by the bidder. Contractor may be required to substantiate that he/she is the direct manufacturer. Proof, if required, must be submitted to State Purchasing within three (3) days of request.
✓			4.	The Bituminous Cold Patch Material will be designed in various seasonal grades for use when the outside ambient temperature is in the range of -15 degrees F (-26 degrees C) to 100 degrees F (38 degrees C).
			5.	
✓			6.	Each grade shall be manufactured specifically to accommodate anticipated climatic conditions.
✓			7.	The patching material must be able to withstand vehicular traffic immediately after placement and not strip, kick up or ravel out afterwards.
✓			8.	The material must be ready to use and require no on-site mixing or heating, or require special primers or bonding agents for placement, even in sub-freezing weather.
✓			9.	The Bituminous Cold Patch Material shall consist of asphalt and aggregate within prescribed quantities to make a mixture which will provide satisfactory coating, workability and adhesion characteristics.
			10.	
✓			11.	The patching mixture will be available in grades to function as a patch during cold and damp weather, and during hot weather in bituminous and concrete pavement.
NOTES/COMMENTS:				

D. MATERIAL REQUIREMENTS : LIQUID ASPHALT

YES	NO	NO & PROVIDE ALTERNATIVE		
			1.	**The bituminous material shall be a blend of asphalt cement and other additives, defined by the liquid supplier, which upon blending shall conform to the following requirements:**
✓			2.	Kinematic Viscosity @ 140 F (60 C), ASTM D 2170, 350 to 4000 cSt.
			3.	
✓			4.	Flash point, Tag Open Cup, ASTM D 1310, 200 F (93 C) min.
✓			5.	Percentage of water, ASTM D 95, less than 0.2%.
			6.	**Distillation to 680 F (360 C), ASTM D 402, see values listed below in section a through d:**

✓			**a.** Temperature: to 437 F (225 C) — Volume % Total Distillate Min/Max: 0 / 0 — Volume % Orig. Sample Min/Max: 0 / 0
✓			**b.** Temperature: to 500 F (260 C) — Volume % Total Distillate Min/Max: 0 / 0.5 — Volume % Orig. Sample Min/Max: 0 / 0
✓			**c.** Temperature: to 600 F (316 C) — Volume % Total Distillate Min/Max: 10 / 65 — Volume % Orig. Sample Min/Max: 0 / 18
✓			**d.** Temperature: Residue from distillation to 680 F (360 C) % Volume by difference — Volume % Total Distillate Min/Max: — Volume % Orig. Sample Min/Max: 73 95
✓			**5. Tests on Residue from Distillation, see values listed below in section a. through d:**
✓			**a.** Absolute viscosity @ 140 F (60 C), ASTM D 2171, 75 to 425 Poise.
✓			**b.** Penetration, Modified with Cone, ASTM D 5*, 180 min. Bidder please note: * Test is conducted in accordance with ASTM Method D 5, except utilize a penetration cone in place of the standard penetration needle. The cone shall conform to the requirements given in ASTM Method D 217, except that the interior construction may be modified as one desires. The total moving weight of the cone and attachments must be 150 +/- 0.1 gram. Also the level of water in the transfer dish shall be lowered to less than the height of the sample and decant water from the top of the sample before transferring from the bath to the penetrometer.
✓			**c.** Ductility, 39 F (4 C), 1 cm/minute, ASTM D 113, 100 min.
✓			**d.** Solubility in Trichloroethylene, ASTM D 2042, 99.0% min
NOTES/COMMENTS:			

E. AGGREGATE

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The aggregate shall be crushed stone and shall meet the following requirements listed below in section a. through f.:

✓			**a.** Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing 1/2" (12.5 mm): 100
✓			**b.** Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing 3/8" (9.5mm): 90 - 100
✓			**c.** Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #4 (4.75 mm): 20 - 55
✓			**d.** Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #8 (2.36 mm): 5 - 30
✓			**e.** Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #16 (1.18 mm): 0 - 10
✓			**f.** Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #50 (0.30 mm): 0 - 5
✓			**2.** Soundness Loss (Sodium, 5 cycles), ASTM C 88, 12.0 max.
✓			**3.** Los Angeles Abrasion Loss, ASTM C 131, 45.0% max.
✓			**4.** Specific Gravity, ASTM C 127, 2.45 - 2.85.
✓			**5.** Absorption, ASTM C 128, 3.0% max.
✓			**6.** Minus 200 Sieve (0.075mm) Wash Loss, ASTM C 117, 2.5% max.
NOTES/COMMENTS:			

F. MIXTURE SPECIFICATIONS

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			**1.** Coating, ASTM D 2489, greater than 95%.
✓			**2.** Stripping in distilled water*, visual. Less than 5%. *Place approximately 100 grams in a 250 ml glass beaker and cover with distilled water for 24 hours before observation.
✓			**3.** Extraction of Bituminous Material, ASTM D 2172, 3.5% min., 7.0% max.
✓			**4.** Sieve Analysis of Extracted Aggregate, ASTM C 136, see aggregate spec.
✓			**5.** -200 (0.075mm) of Extracted Aggregate, ASTM C 117 & ASTM C 136, 4.0% max. ** **This value shall not be confused with the 2.5% maximum allowed for the Minus 200 (0.075mm) Wash Loss on the raw aggregate before the production of the bituminous cold patch material. That value is necessary to minimize the effect of the plant when producing the finished bituminous cold patch material.
NOTES/COMMENTS:			

G. PRODUCTION OF BULK BITUMIINOUS COLD PATCH

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			**1.** The contractor of the bituminous cold patch material must provide a paved stockpile pad for the placement of this material during production.
✓			**2.** Any pad used to place the produced material must be free of all foreign material which could cause contamination of the produced material.
✓			**3.** The asphalt shall be heated to a temperature recommended by the liquid supplier.
✓			**4.** The mixture shall consist of an aggregate and asphalt combined in a pug mill in the following proportions: Asphalt 5.0 to 6.5% Aggregate 93.5 to 95%
✓			**5.** The mixture may be prepared with no heat to the aggregate when determined as acceptable by laboratory testing.
✓			**6.** Heat should be applied to the aggregate when determined as necessary by laboratory testing prior to production of the mixture. The minimum amount of heat necessary to obtain coating or facilitate the operation of the plant may be utilized, but is not to exceed under any circumstance, 175 F (80 C).
✓			**7.** When producing in a batch plant, wet mix time in the pug mill should be typically in the range of 30 to 45 seconds or until the aggregate is uniformly coated (greater than 95%), ASTM D 2489.

NOTES/COMMENTS:

H. PRODUCTION COMPLIANCE AND SUPERVISION

YES	NO	NO & PROVIDE ALTERNATIVE		
✓			1.	An authorized technical representative from the liquid supplier must be present at every production for quality assurance of the mix at no additional cost to NDOT. The supervision shall be at the expense of the liquid supplier.
✓			2.	All mix delivered to the NDOT must be accompanied with a Certificate of Compliance, with a second copy to NDOT Logistics, stating the mix type meets these specifications.
✓			3.	As a condition of this contract, the successful bidder must agree to furnish on site personnel, at no additional cost, to the NDOT to assist in resolving problems in event material problems develop.
NOTES/COMMENTS:				

I. ACCEPTABLE BRANDS

YES	NO	NO & PROVIDE ALTERNATIVE		
✓			1.	Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the bidder's proposed product for Bulk Bituminous Cold Patch Material must be an "Approved Brand" by the Nebraska Department of Transportation (NDOT). Products that are not on the "Approved Brand" will not be considered for this ITB.
✓			2.	All UPM High Performance Cold Patch, QPR, EZ Street, Proline or Perma Patch are considered "Approved Brands" which have previously been tested by the NDOT for meeting specification requirements.
✓			3.	Physical review(s) of utilized material performance may be conducted by the Contractor and NDOT throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract. Additionally, should the contract be terminated, the product may be removed from NDOT's Approved Products and as such the product would not be considered in future ITB's.
NOTES/COMMENTS:				

J. PROCEDURE FOR PRE-APPROVAL / PRE-QUALIFICATION

YES	NO	NO & PROVIDE ALTERNATIVE		
✓			1.	If a contractor/supplier has a product which is not pre-approved by the Department of Transportation, the contractor/supplier may contact Operations Procurement, NDOT for information concerning the approval process (OperationsProcurement@nebraska.gov).
✓			2.	Proposed product must pass a field performance evaluation standard over a period that includes all four seasons. Overall testing period for both field testing and Materials & Research review of adherence to these specifications is one full year. If the product is approved, it will have the opportunity for inclusion on the "Approved Brands" for the next Bulk Bituminous Cold Patch Material bid solicitation.
NOTES/COMMENTS:				

K. 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. Vendor shall not impose minimum order requirements.
✓			2.	Bulk Bituminous Cold Patch Material estimated statewide annual usage: 900.00 – 1500.00 TONS
NOTES/COMMENTS:				

L. USAGE REPORT

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

M. ORDERS

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

N. DELIVERY ARO

YES	NO	NO & PROVIDE ALTERNATIVE	
✓			1. Deliveries of Bulk Bituminous Cold Patch Material shall be FOB destination to all NDOT locations specified on the purchase order or as directed by NDOT at the time of purchase in accordance with this ITB. A NDOT District contact person and phone number will be given to the Contractor when an order is placed. Contractor must notify the NDOT District contact a minimum of 24 hours prior to the anticipated delivery. Contractor shall maintain sufficient inventory to process and deliver within 30 days after receipt of order(s). There will be no minimum order requirements.
✓			2. If the Contractor is unable to meet delivery schedules, the ordering District Superintendent must be notified within three (3) days from the date the order was placed. If it is nearing the delivery date and for some unforeseen reason the Contractor is unable to meet expected delivery, the ordering District shall be notified at least 48 hours in advance. The order may be cancelled if the delivery date is unsatisfactory, and the State may procure item(s) from other sources. The contractor may be held responsible for an/all excess cost. Failure to meet delivery requirements of the contract may constitute a breach of the contract.
✓			3. **District One:** **Address: 302 Superior Street Lincoln, NE 68521 -** **PHONE:** 402-471-0850 –Lincoln Superior, David City, Wahoo, Seward, Greenwood, Palmyra, Auburn, Nebraska City, Tecumseh, Falls City Beatrice, Lincoln Salt Valley, Dorchester, Fairbury, Pawnee City
✓			4. **District Two:** **Address: 4425 S 108th St Omaha, NE 68145 – PHONE:** 402-595-2497 – Locations: Omaha 108th, Omaha South, Omaha Mormon **Address: 2550 W 23rd Dr. Fremont, NE. 68026 – PHONE:** 402-727-3292 – Fremont, Blair **Address: 2829 N 204th Street Elkhorn, NE. 68022 – PHONE:** 402-289-4444 – Elkhorn, Gretna, Plattsmouth
✓			5. **District Three:** **Address: 3303 12th Street Columbus, NE. 68601 - PHONE:** 402-564-4126 – Columbus, Albion, Humphrey **Address: 910 E Highway 275 Neligh, NE. 68756 - PHONE:** 402-887-5441 – Neligh, Bloomfield, Plainview, Niobrara **Address: 1001 Alaska Ave. Norfolk, NE. 68701 – PHONE:** 402-370-3477 – Norfolk, West Point **Address: 500 W. 9th Street So. Sioux City, NE. 68776 - PHONE:** 402-494-6826 – So Sioux City, Lyons

			Address: 1300 E. 7th Street Wayne, NE. 68787 - PHONE: 402-375-7070 – Wayne, Hartington, Laurel
			6. **District Four:** **Address: 620 U Street Ord, NE. 68862 – PHONE:** 308-728-3761 – Fullerton, Ord, Central City, St. Paul, Greeley, Loup City **Address: 121 W. South 21st Street York, NE. 68467 – PHONE:** -402-362-5930 – Geneva, York, Hebron, Osceola **Address: 3305 W. Old Potash Hwy Grand Island, NE. 68802 – PHONE:** 308-385-6263– Kearney, Grand Island, Ravenna **Address: 111 E. Highway 6 Hastings, NE. 68902 – PHONE:** 402-462-1996 – Hastings, Red Cloud, Superior, Aurora
			7. **District Five:** **Address: 700 Maple Street Chadron, NE. 69337 – PHONE:** 308-432-6141 – Chadron, Gordon, Crawford, Alliance **Address: 140375 Rundell Rd. Gering, NE. 69341- PHONE:** 308-436-6587 – Gering, Bridgeport **Address: 2320 Illinois Street Ste. B Sidney, NE. 69162 – PHONE:** 308-254-6932 – Sidney, Chappell, Kimball
			8. **District Six**: **Address: 2812 Plum Creek Pkwy. Lexington, NE. 68850 – PHONE:** 308-324-3885 Lexington, Gothenburg **Address: 2400 W. 14th Street North Platte, NE. 69103 – PHONE:** 308-535-8010 – North Platte, **Address: 307 E. D Street S. Ogallala, NE. 69153 – PHONE:** 308-284-8070 – Ogallala, Big Springs **Address: 515 E. South E. Street Broken Bow, NE. 68822 – PHONE:** 308-872-6733 Broken Bow, Ansley **Address: 402 S.E. 1st Street Mullen, NE. 69152 PHONE:** 308-546-2241 – Mullen, Stapleton
			9. **District Seven:** **Address: 38764 US Highway 6 McCook, NE. 69001 – PHONE:** 308-345-8495 – McCook, Arapahoe, Curtis **Address: 1013 W. 4th Ave. Holdrege, NE. 68949 – PHONE:** 308-995-4242 – Alma, Minden, Holdrege **Address: 101 South Street Imperial, NE. 69033 – PHONE:** 308-882-4252 – Imperial, Benkelman
			10. **District Eight:** **Address: 736 E. 4th Street Ainsworth, NE. 69210**-402-387-2472 - Ainsworth **Address: 602 E. 1st Street Valentine, NE. 69201 – PHONE:** 402-376-1350 – Valentine, Merriman **Address: 404 W. Douglas Street O'Neill, NE 68763 – PHONE:** 402-336-2051 – O'Neill, Burwell, Spencer
			11. Plant Pick-up of Bulk Bituminous Cold Patch Material shall be an available option. District personnel will make arrangements with the Contractor to schedule the pick-up of material (including same day pick-up).
			12. Deliveries shall be made during normal working hours between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday (excluding State holidays and / or as otherwise directed). If an emergency exists, delivery may be made through prior arrangements with receiving personnel.

✓			13. At the time of delivery, a designated State of Nebraska employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.
NOTES/COMMENTS:			

O. PERFORMANCE GUARANTEE

YES	NO	NO & PROVIDE ALTERNATIVE	NOTE: The supplier of the bituminous cold patch material shall guarantee the performance of the patching mix to meet the following requirements.
✓			1. The material shall remain workable, without heating, to accommodate climate conditions, in a covered stockpile for a period of not less than twelve 12 months.
✓			2. Repaired potholes shall not show any significant signs of shoving, rutting, tracking, kick-up or ravel-out within a period of 12 months from the time of repair.
✓			3. The material shall be capable of being overlaid with hot mix asphalt after placement and compaction and shall not bleed through or affect the performance of the hot mix asphalt.
✓			4. For any uncompliant materials not meeting specifications and representations provided on the ITB, NDOT in its sole discretion shall have the right to either accept the materials at a Pay Factor of 40% as listed within section VI., R. of this ITB or reject the material and request replacement material by Contractor, at the Contractor's expense, within 15 business days FOB destination to the location on the original purchase order.
✓			5. NDOT, in its sole discretion, shall have the right to require any uncompliant stockpiled material be removed by the Contractor from State of Nebraska property at no additional cost to the NDOT.
NOTES/COMMENTS:			

P. QUALITY

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

Q. ACCEPTANCE AND PAY FACTOR

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

R. SAMPLES TESTING THROUGHOUT THE LIFE OF THE CONTRACT

YES	NO	NO & PROVIDE ALTERNATIVE		
✓			1.	NDOT reserves the right to acquire a random sample of liquid asphalt and aggregate at any time during the term of the contract for testing to determine specification compliance as provided in the ITB.
✓			2.	The mix design and samples of the liquid asphalt and aggregates shall be submitted and reviewed by the NDOT Materials and Research Flexible Pavements Engineer. The materials shall conform to the technical requirements following material specifications and representations provided in this ITB within section VI. Technical Specifications.
NOTES/COMMENTS:				

Form A
Contractor Contact Sheet
Invitation To Bid Number 6211 OF

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

Preparation of Solicitation Contact Information	
Contractor Name:	Omni Engineering
Contractor Address:	14012 Giles Road Omaha, NE 68138
Contact Person & Title:	Ryan Cornell Material Sales
E-mail Address:	ryan.cornell@omni-engineering.com
Telephone Number (Office):	(402) 895-6666
Telephone Number (Cellular):	(402) 215-8037
Fax Number:	(402) 895-3697

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

Communication with the State Contact Information	
Contractor Name:	Omni Engineering
Contractor Address:	14012 Giles Road Omaha, NE 68138
Contact Person & Title:	Ryan Cornell Material Sales
E-mail Address:	ryan.cornell@omni-engineering.com
Telephone Number (Office):	(402) 895-6666
Telephone Number (Cellular):	(402) 215-8037
Fax Number:	(402) 895-3697

ADDENDUM TWO
REVISED SCHEDULE OF EVENTS

Date: January 8, 2020

To: All Bidders

From: Brenda Sensibaugh, Buyer
AS Materiel Purchasing

RE: Addendum for ITB Number 6211 OF to be opened ~~January 20, 2020 at 2:00 p.m. Central Time~~ **January 21, 2020 at 2:00 p.m. Central Time**

Schedule of Events

The State expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change. It is the Bidder's responsibility to check the State Purchasing Bureau website for all addenda or amendments.

	ACTIVITY	DATE/TIME
4.	Bid Opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	~~January 20, 2020~~ ~~2:00 p.m.~~ ~~Central Time~~ **January 21, 2020** **2:00 p.m.** **Central Time**
5.	Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
6.	Contract award	February 15, 2020

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

Omni Engineering
14012 Giles Road
Omaha, NE 68138

ITB 6211 OF

State Purchasing Bureau
1526 K street, Suite 130
Lincoln, NE 68508

#3

2020 JAN 21 AM 10:51

ADDENDUM TWO
REVISED SCHEDULE OF EVENTS

Date: January 8, 2020

To: All Bidders

From: Brenda Sensibaugh, Buyer
AS Materiel Purchasing

RE: Addendum for ITB Number 6211 OF to be opened ~~January 20, 2020 at 2:00 p.m. Central Time~~ **January 21, 2020 at 2:00 p.m. Central Time**

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5.	Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
6.	Contract award	February 15, 2020

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

ADDENDUM ONE
QUESTIONS and ANSWERS

Date: January 6, 2020

To: All Bidders

From: Brenda Sensibaugh, Buyer
AS Materiel State Purchasing

RE: Addendum for Invitation to Bid Number 6211 OF to be opened January 20, 2020 at 2:00 p.m. Central Time

Questions and Answers

Following are the questions submitted and answers provided for the above mentioned Invitation to Bid. The questions and answers are to be considered as part of the Invitation to Bid. It is the Bidder's responsibility to check the State Purchasing Bureau website for all addenda or amendments.

Question Number	ITB Section Reference	ITB Page Number	Question	State Response
1.	Section V A. "Scope of Work"	22	This section states: ACCEPTABLE BRANDS; APPROVED BRANDS - Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the bidder's proposed product for Bulk Bituminous Cold Patch Material must be an "Approved Brand" by the Nebraska Department of Transportation (NDOT). Products that are not an "Approved Brand" will not be considered for this Invitation to Bid (ITB). UPM High Performance Cold Patch, QPR, EZ Street, Proline or Perma Patch are considered "Approved Brands" which have previously been tested by the NDOT for meeting specification requirements. However, Section VI C.3 of page 24 states: 3. Material bid must be manufactured in a plant owned	Yes, the Approved Materials apply to both bulk and bagged materials and have underwent the approved criteria listed.

			and operated by the bidder. Contractor may be required to substantiate that he/she is the direct manufacturer. Proof, if required, must be submitted to State Purchasing within three (3) days of request. 1. Therefore, with the above stated in mind, there seems to be some discrepancy between biding an "Approved Brand" and "Contractor must substantiate that he/she is the direct manufacturer." Is the State of Nebraska expecting this ITB to be for simply supplying bulk bags of the "Approved Brand?" If so, for what purpose are the specifications of the "Bulk Bituminous Cold Patch Material" outlined in section VI, if in fact, the contractor is to only bid a pre-approved brand listed in Section VI. C. 1.? Furthermore, if Section VI C.3 is in fact the State's intention, then our understanding is that only the original manufacture of the "Approved Brands" may bid on This ITB, is that correct? Yes, the Approved Materials apply to both bulk and bagged materials and have underwent the approved criteria listed.	
2.			2. May the contractor manufacture their own "Bulk Bituminous Cold Patch Material" for this ITB as long as it meets the specifications set forth in Section "VI. Technical Specifications?"	A contractor may manufacture the bulk materials that are on the approved list, not just the technical specifications. If asking - can they bid based on technical specs and not an approved brand - they must be an approved brand/vendor.

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

State of Nebraska - INVITATION TO BID
CONTRACT

Return to:
State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: 402-471-6500
Fax: 402-471-2089

Date	12/23/19	**Page**	1 of 6
Solicitation Number	6211 OF		
Opening Date and Time	01/20/20	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 AFFADAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. " Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this ITB.

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

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

(12/20/19 ml)

INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	**DIST 1 BULK COLD PATCH** LINCOLN SALT VALLEY	**10.0000**	**TN**	_____	_____
2	**DIST 1 BULK COLD PATCH** AUBURN	**30.0000**	**TN**	_____	_____
3	**DIST 1 BULK COLD PATCH** FALLS CITY	**30.0000**	**TN**	_____	_____
4	**DIST 1 BULK COLD PATCH** BEATRICE	**10.0000**	**TN**	_____	_____

BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS:_____% _____ DAYS

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

Sign Here _____
(Authorized Signature MANDATORY - MUST BE SIGNED IN INK)

Enter Contact Information Below

VENDOR# _____
VENDOR: _____
Address: _____
_____
_____

Contact _____
Telephone _____
Facsimile _____
Email _____

State of Nebraska - INVITATION TO BID CONTRACT

Return to:
State Purchasing Bureau
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Lincoln, Nebraska 68508

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Date	12/23/19	**Page**	2 of 6
Solicitation Number	6211 OF		
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Buyer	BRENDA SENSIBAUGH (AS)		

DESTINATION OF GOODS

**MULTIPLE DELIVERY LOCATIONS
PLEASE REFER TO DOCUMENTATION
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
5	**DIST 1 BULK COLD PATCH** DAVID CITY	**10.0000**	**TN**		
6	**DIST 1 BULK COLD PATCH** DORCHESTER	**10.0000**	**TN**		
7	**DIST 1 BULK COLD PATCH** FAIRBURY	**10.0000**	**TN**		
8	**DIST 1 BULK COLD PATCH** NEBRASKA CITY	**30.0000**	**TN**		
9	**DIST 1 BULK COLD PATCH** PAWNEE CITY	**10.0000**	**TN**		
10	**DIST 1 BULK COLD PATCH** PALMYRA	**30.0000**	**TN**		
11	**DIST 1 BULK COLD PATCH** SEWARD	**30.0000**	**TN**		
12	**DIST 1 BULK COLD PATCH** TECUMSEH	**30.0000**	**TN**		
13	**DIST 1 BULK COLD PATCH** WAHOO	**50.0000**	**TN**		
14	**DIST 2 BULK COLD PATCH** OMAHA 108TH	**50.0000**	**TN**		
15	**DIST 2 BULK COLD PATCH** OMAHA SOUTH	**50.0000**	**TN**		
16	**DIST 2 BULK COLD PATCH** OMAHA MORMON	**50.0000**	**TN**		
17	**DIST 2 BULK COLD PATCH** FREMONT	**50.0000**	**TN**		
18	**DIST 2 BULK COLD PATCH** BLAIR	**50.0000**	**TN**		
19	**DIST 2 BULK COLD PATCH** GRETNA	**50.0000**	**TN**		

State of Nebraska - INVITATION TO BID
CONTRACT

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Date	12/23/19	**Page**	3 of 6
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Buyer	BRENDA SENSIBAUGH (AS)		

DESTINATION OF GOODS
MULTIPLE DELIVERY LOCATIONS
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
20	**DIST 2 BULK COLD PATCH** PLATTSMOUTH	**50.0000**	**TN**		
21	**DIST 2 BULK COLD PATCH** ELKHORN	**50.0000**	**TN**		
22	**DIST 3 BULK COLD PATCH** ALBION	**25.0000**	**TN**		
23	**DIST 3 BULK COLD PATCH** BLOOMFIELD	**25.0000**	**TN**		
24	**DIST 3 BULK COLD PATCH** CLARKSON	**25.0000**	**TN**		
25	**DIST 3 BULK COLD PATCH** COLUMBUS	**25.0000**	**TN**		
26	**DIST 3 BULK COLD PATCH** HARTINGTON	**25.0000**	**TN**		
27	**DIST 3 BULK COLD PATCH** HUMPHREY	**25.0000**	**TN**		
28	**DIST 3 BULK COLD PATCH** LAUREL	**25.0000**	**TN**		
29	**DIST 3 BULK COLD PATCH** LYONS	**25.0000**	**TN**		
30	**DIST 3 BULK COLD PATCH** NELIGH	**25.0000**	**TN**		
31	**DIST 3 BULK COLD PATCH** NIOBRARA	**25.0000**	**TN**		
32	**DIST 3 BULK COLD PATCH** NORFOLK	**25.0000**	**TN**		
33	**DIST 3 BULK COLD PATCH** PLAINVIEW	**25.0000**	**TN**		
34	**DIST 3 BULK COLD PATCH**	**25.0000**	**TN**		

State of Nebraska - INVITATION TO BID
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Buyer	BRENDA SENSIBAUGH (AS)		

DESTINATION OF GOODS
MULTIPLE DELIVERY LOCATIONS
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
	SO. SIOUX CITY				
35	**DIST 3 BULK COLD PATCH** WAYNE	**25.0000**	**TN**	_____	_____
36	**DIST 3 BULK COLD PATCH** WEST POINT	**25.0000**	**TN**	_____	_____
37	**DIST 4 BULK COLD PATCH** AURORA	**100.0000**	**TN**	_____	_____
38	**DIST 4 BULK COLD PATCH** GENEVA	**30.0000**	**TN**	_____	_____
39	**DIST 4 BULK COLD PATCH** GRAND ISLAND	**30.0000**	**TN**	_____	_____
40	**DIST 4 BULK COLD PATCH** HASTINGS	**75.0000**	**TN**	_____	_____
41	**DIST 4 BULK COLD PATCH** HEBRON	**30.0000**	**TN**	_____	_____
42	**DIST 4 BULK COLD PATCH** KEARNEY	**30.0000**	**TN**	_____	_____
43	**DIST 4 BULK COLD PATCH** LOUP CITY	**15.0000**	**TN**	_____	_____
44	**DIST 4 BULK COLD PATCH** OSCEOLA	**30.0000**	**TN**	_____	_____
45	**DIST 4 BULK COLD PATCH** RAVENNA	**30.0000**	**TN**	_____	_____
46	**DIST 4 BULK COLD PATCH** RED CLOUD	**50.0000**	**TN**	_____	_____
47	**DIST 4 BULK COLD PATCH** SUPERIOR	**50.0000**	**TN**	_____	_____
48	**DIST 4 BULK COLD PATCH** ST. PAUL	**15.0000**	**TN**	_____	_____

State of Nebraska - INVITATION TO BID CONTRACT

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Date	12/23/19	**Page**	5 of 6
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DESTINATION OF GOODS

**MULTIPLE DELIVERY LOCATIONS
PLEASE REFER TO DOCUMENTATION
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
49	**DIST 4 BULK COLD PATCH** YORK	**30.0000**	**TN**		
50	**DIST 5 BULK COLD PATCH** ALLIANCE	**1,000.0000**	**TN**		
51	**DIST 5 BULK COLD PATCH** BRIDGEPORT	**1,000.0000**	**TN**		
52	**DIST 5 BULK COLD PATCH** CHADRON	**3,000.0000**	**TN**		
53	**DIST 5 BULK COLD PATCH** CHAPPELL	**1,000.0000**	**TN**		
54	**DIST 5 BULK COLD PATCH** CRAWFORD	**1,000.0000**	**TN**		
55	**DIST 5 BULK COLD PATCH** GERING	**3,000.0000**	**TN**		
56	**DIST 5 BULK COLD PATCH** GORDON	**1,000.0000**	**TN**		
57	**DIST 5 BULK COLD PATCH** KIMBALL	**1,000.0000**	**TN**		
58	**DIST 5 BULK COLD PATCH** SIDNEY	**3,000.0000**	**TN**		
59	**DIST 6 BULK COLD PATCH** BROKEN BOW	**50.0000**	**TN**		
60	**DIST 6 BULK COLD PATCH** LEXINGTON	**50.0000**	**TN**		
61	**DIST 6 BULK COLD PATCH** NORTH PLATTE	**50.0000**	**TN**		
62	**DIST 7 BULK COLD PATCH** ALMA	**15.0000**	**TN**		
63	**DIST 7 BULK COLD PATCH** ARAPAHOE	**15.0000**	**TN**		

State of Nebraska - INVITATION TO BID
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DESTINATION OF GOODS

MULTIPLE DELIVERY LOCATIONS
PLEASE REFER TO DOCUMENTATION
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
64	**DIST 7 BULK COLD PATCH** HOLDREGE	**15.0000**	**TN**		
65	**DIST 7 BULK COLD PATCH** MCCOOK	**30.0000**	**TN**		
66	**OMAHA PLANT PICK UP** BULK COLD PATCH	**50.0000**	**TN**		
67	**LINCOLN PLANT PICK UP** BULK COLD PATCH	**50.0000**	**TN**		
68	**NORTH PLATTE PLANT PICK UP** BULK COLD PATCH	**50.0000**	**TN**		
69	**S SIOUX CITY PLANT PICK UP** BULK COLD PATCH	**50.0000**	**TN**		
70	**SCOTTSBLUFF PLANT PICK UP** BULK COLD PATCH	**50.0000**	**TN**		
71	_____ **PLANT PICK UP** BULK COLD PATCH	**50.0000**	**TN**		

INVITATION TO BID

Number 6211 OF

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 6211 OF for the purpose of selecting a qualified Contractor to provide **Bulk Bituminous Cold Patch Material for Nebraska Department of Transportation area locations throughout the State of Nebraska.** A more detailed description can be found in Section VI. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

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

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

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, State contracts in effect as of January 1, 2014, and contracts entered 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

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

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

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

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

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GLOSSARY OF TERMS

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

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

After Receipt of Order (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 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 Vendor 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 bid/s (offers made in response to written solicitations)

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

Free on Board (F.O.B.) Destination: The delivery charges are included in the quoted price and prepaid by the 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 utilized for obtaining competitive offers for Services or Goods

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

Licensed Software Documentation: The user manuals and any other materials in any form or medium customarily provided by the 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Protest/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 utilized by the State as recommended by the Contractor.

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

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

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

Responsible 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 Bidder: A bidder 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

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

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

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

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

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

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

Trademark: A word, phrase, logo, or other graphic symbol used by a manufacturer or 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 Performance Report: A report completed by the using agency and submitted to State Purchasing Bureau documenting products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications.

Vendor: Inclusive term for any Bidder or Contractor.

Will: See Mandatory/Must/Shall

Work Day: See Business Day

ACRONYM LIST

AASHTO - American Association of State Highway and Transportation Officials

ARO – After Receipt of Order

ACH – Automated Clearing House

ASTM - American Society for Testing and Materials

AS - Administrative Services

BAFO – Best and Final Offer

COI – Certificate of Insurance

CPU – Central Processing Unit

DAS – Department of Administrative Services

DIST - District

F.O.B. – Free on Board

HWY - Highway

ITB – Invitation to Bid

JCT - Junction

MI - Mile(s)

NA - Not Applicable

NDOT - Nebraska Department of Transportation

NIGP – National Institute for Governmental Purchasing

PA – Participating Addendum

RFI – Request for Information

RFP – Request for Bid

RP - Reference Post

SPB – State Purchasing Bureau

TBA - To Be Announced

TBD - To Be Determined

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The solicitation is designed to solicit bids from qualified Contractors who will be responsible for providing **Bulk Bituminous Cold Patch Material** 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:

Solicitation Number:	6211 OF
Name:	Brenda Sensibaugh
Agency:	State Purchasing Bureau
Address:	1526 K Street, Suite 130 Lincoln, NE 68508
Telephone:	402-471-6500
E-Mail:	as.materielpurchasing@nebraska.gov

From the date the solicitation is issued until the Intent to Award is issued, communication from the 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 solicitation	December 23, 2019
2.	Last day to submit written questions	December 30, 2019
3.	State responds to written questions through a solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html	January 6, 2020
4.	Bid Opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	January 20, 2020 2:00 p.m. Central Time
5.	Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
6.	Contract award	February 15, 2020

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 6211 OF; **Bulk Bituminous Cold Patch Material** 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.

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

Solicitation Section Reference	Solicitation Page Number	Question

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

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

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

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

Contractor shall have an affirmative duty to report any violations of this clause by the Contractor throughout the bidding process, and throughout the term of this contract for the successful Contractor and their 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 Contractor in its bid and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the solicitation, solicitation requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this solicitation, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this solicitation. The State discourages deviations and reserves the right to reject proposed deviations.

H. SUBMISSION OF BIDS

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

Contractors should submit one bid marked on the first page: "ORIGINAL". If multiple bids are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The Contractor is solely responsible for any variance between the copies submitted. Bid responses should include the completed Form A, "Contractor Bid Point of Contact". Bids must reference the ITB number and be sent to the specified address. Please note that the address

label should appear as specified in Section I B. on the face of each container or contractor's bid response packet. If a recipient phone number is required for delivery purposes, 402-471-6500 should be used. The ITB number should be included in all correspondence. The State will not furnish packaging and sealing materials. It is the contractor's responsibility to ensure the ITB is received in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed bids must be received in the State Purchasing Bureau by the date and time of the bid opening per the Schedule of Events. No late bids will be accepted.

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

It is the responsibility of the contractor to check the website for all information relevant to this Invitation to Bid to include addenda and/or amendments issued prior to the opening date. Website address is as follows: http://das.nebraska.gov/materiel/purchasing.html

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

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

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

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 Vendor Performance Report(s)
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/BID REQUIREMENTS

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

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

O. EVALUATION OF BIDS

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

1. Cost Bid

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

Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone. When a state contract is to be awarded to the lowest responsible 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:

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

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the 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 utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the bids, or at any point in the solicitation process, the State of Nebraska may take one or more of the following actions:

1. Amend the solicitation;
2. Extend the time of or establish a new bid opening time;
3. Waive deviations or errors in the State's solicitation process and in 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:
http://das.nebraska.gov/materiel/purchasing.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:
http://das.nebraska.gov/materiel/purchasing.html

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 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.

1. 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.

T. 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 the Materiel Administrator, the bid will result in goods and/or services equivalent to or better than those which would be supplied in the original bid specifications. 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.

U. 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 Contractor declines to accept award on individual items; a "lump sum" bid is one in which the Contractor 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.

V. EMAIL SUBMISSIONS

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

W. BID TABULATIONS

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

X. 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.

Y. 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

Contractors should complete Section II through VI as part of their bid. Contractor is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Contractor should also provide an explanation of why the Contractor rejected the clause or rejected the clause and provided alternate language using "Track Changes". Upon request an electronic copy of the bid with "Track Changes" must be submitted in an editable Word format. By signing the solicitation, Contractor is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the 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

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

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

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

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 or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

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

C. NOTICE (POC)

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

D. GOVERNING LAW (Statutory)

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

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

E. AMENDMENT

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

F. CHANGE ORDERS OR SUBSTITUTIONS

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

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. VENDOR PERFORMANCE REPORT(S)

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

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

H. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with

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

In case of breach by the 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

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

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

K. SEVERABILITY

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

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

L. INDEMNIFICATION

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

1. GENERAL

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

2. SELF-INSURANCE (Statutory)

The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this contract, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this contract to the extent provided by law.

M. ATTORNEY'S FEES

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

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

N. ASSIGNMENT, SALE, OR MERGER

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

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

The 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 SUB-DIVISIONS OF THE STATE OR ANOTHER STATE

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

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

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

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

Q. CONFIDENTIALITY

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

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

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

R. EARLY TERMINATION

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

The contract may be terminated as follows:

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

2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

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

   a. if directed to do so by statute;

b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;

c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;

d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;

e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;

f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;

g. Contractor intentionally discloses confidential information;

h. Contractor has or announces it will discontinue support of the deliverable; and,

i. In the event funding is no longer available.

S. CONTRACT CLOSEOUT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. EMPLOYEE WORK ELIGIBILITY STATUS

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

program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

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

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

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

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

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

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

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

D. COOPERATION WITH OTHER CONTRACTORS

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

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 unit price (per ton) and shall be firm for one (1) year from date of an award and are to be net; including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, handling, fuel surcharge, packaging, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

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Any request for an increase must be submitted in writing to the State Purchasing Bureau a minimum of 30 days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties

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

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

G. COST CLARIFICATION

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

H. PERMITS, REGULATIONS, LAWS

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

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

I. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

J. ANTITRUST

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

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

K. CONFLICT OF INTEREST

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

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

Contractor further certifies that contractor will not employ any individual known by contractor to have a conflict of interest nor shall contractor 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, contractor shall provide with its bid a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

L. STATE PROPERTY

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

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

M. SITE RULES AND REGULATIONS

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

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

N. ADVERTISING

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

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

O. DISASTER RECOVERY/BACK UP PLAN

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

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

P. DRUG POLICY

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

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

Q. WARRANTY

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

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

IV. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

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

B. TAXES (Statutory)

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

C. INVOICES

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Payment will be made based on the net weight of the material received. Invoices are to be sent to the "Invoice to" address on the purchase order. Contractor must furnish copies of weight tickets to receiving personnel when orders are picked up or delivered. Please reference the NDOT District Location listing in section VI. D. 1-8 to determine address. Discrepancies on invoices will be corrected to the State's satisfaction within fifteen (15) days. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. PAYMENT (Statutory)

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the 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.

E. LATE PAYMENT (Statutory)

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

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

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

G. RIGHT TO AUDIT (First Paragraph is Statutory)

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

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

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds three percent (3%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

V. SCOPE OF WORK

Bidder shall supply Bulk Bit for the Nebraska Department of Transportation (NDOT).
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 and deliver **Bulk Bituminous Cold Patch Material for Nebraska Department of Transportation area locations throughout the State of Nebraska** per the attached specifications from date of award for a period of one (1) year with the option to renew for an additional two (2), one (1) year periods when mutually agreeable to the vendor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the vendor and the State.

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

ACCEPTABLE BRANDS; APPROVED BRANDS - Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the bidder's proposed product for Bulk Bituminous Cold Patch Material must be an "Approved Brand" by the Nebraska Department of Transportation (NDOT). Products that are not an "Approved Brand" will not be considered for this Invitation to Bid (ITB).

UPM High Performance Cold Patch, QPR, EZ Street, Proline or Perma Patch are considered "Approved Brands" which have previously been tested by the NDOT for meeting specification requirements.

Physical review(s) of utilized material performance may be conducted by the Contractor and NDOT throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract. Additionally, should the contract be terminated, the product may be removed from NDOT's Approved Brand and as such the product would not be considered in future ITB's.

PROCEDURE FOR PRE-APPROVAL/PRE-QUALIFICATION - If a vendor/supplier has a product which is not pre-approved by the Department of Transportation, the vendor /supplier may contact Operations Procurement, NDOT for information concerning the approval process (OperationsProcurement@nebraska.gov).

Proposed product must pass a field performance evaluation standard over a period that includes all four seasons. Overall testing period for both field testing and Materials & Research review of adherence to these specifications is one full year. If the product is approved, it will have the opportunity for inclusion on the "Approved Brands" for the next Bulk Bituminous Cold Patch Material bid solicitation.

VI. TECHNICAL SPECIFICATIONS

A. CONTRACTOR INSTRUCTIONS

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

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

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

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

All items bid shall conform to section 1033 in the 2017 Nebraska Department of Transportation Standard Specifications https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.aspx for highway construction and special provisions as specified in these bid documents.

Materials shall conform to the Nebraska Department of Transportation Standard Specifications for the Highway Construction 2017 Edition as amended in this Specification and amendments to the Division 1000.

B. NON-COMPLIANCE STATEMENT

YES	NO	NO & PROVIDE ALTERNATIVE		
			1.	Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your 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-proposal documents will be made orally to any Contractor by the State. Any solicitation interpretation must be put in writing by the Contractor to: the State Purchasing Bureau, E-mail questions to SPB. as.materielpurchasing@nebraska.gov 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. GENERAL SPECIFICATIONS: BULK BITUMINOUS COLD PATCH

YES	NO	NO & PROVIDE ALTERNATIVE		
			1.	The Bulk Bituminous Cold Patch Material bid shall be UPM High Performance Cold Patch, QPR, EZ Street, Proline or Perma Patch.
			2. **3.**	Material bid must be manufactured in a plant owned and operated by the bidder. Contractor may be required to substantiate that he/she is the direct manufacturer. Proof, if required, must be submitted to State Purchasing within three (3) days of request.
			4. **5.**	The Bituminous Cold Patch Material will be designed in various seasonal grades for use when the outside ambient temperature is in the range of -15 degrees F (-26 degrees C) to 100 degrees F (38 degrees C).
			6.	Each grade shall be manufactured specifically to accommodate anticipated climatic conditions.
			7.	The patching material must be able to withstand vehicular traffic immediately after placement and not strip, kick up or ravel out afterwards.
			8.	The material must be ready to use and require no on-site mixing or heating, or require special primers or bonding agents for placement, even in sub-freezing weather.
			9. **10.**	The Bituminous Cold Patch Material shall consist of asphalt and aggregate within prescribed quantities to make a mixture which will provide satisfactory coating, workability and adhesion characteristics.
			11.	The patching mixture will be available in grades to function as a patch during cold and damp weather, and during hot weather in bituminous and concrete pavement.
NOTES/COMMENTS:				

D. MATERIAL REQUIREMENTS : LIQUID ASPHALT

YES	NO	NO & PROVIDE ALTERNATIVE		
			1.	**The bituminous material shall be a blend of asphalt cement and other additives, defined by the liquid supplier, which upon blending shall conform to the following requirements:**
			2. **3.**	Kinematic Viscosity @ 140 F (60 C), ASTM D 2170, 350 to 4000 cSt.
			4.	Flash point, Tag Open Cup, ASTM D 1310, 200 F (93 C) min.
			5.	Percentage of water, ASTM D 95, less than 0.2%.
			6.	**Distillation to 680 F (360 C), ASTM D 402, see values listed below in section a through d:**

			a. Temperature / Volume % Total Distillate Min/Max / Volume % Orig. Sample Min/Max to 437 F (225 C) / 0 / 0 / 0
			b. Temperature / Volume % Total Distillate Min/Max / Volume % Orig. Sample Min/Max to 500 F (260 C) / 0 / 0.5 / 0 / 0
			c. Temperature / Volume % Total Distillate Min/Max / Volume % Orig. Sample Min/Max to 600 F (316 C) / 10 / 65 / 0 / 18
			d. Temperature / Volume % Total Distillate Min/Max / Volume % Orig. Sample Min/Max Residue from distillation to 680 F (360 C) % Volume by difference / 73 95
			5. Tests on Residue from Distillation, see values listed below in section a. through d:
			a. Absolute viscosity @ 140 F (60 C), ASTM D 2171, 75 to 425 Poise.
			b. Penetration, Modified with Cone, ASTM D 5*, 180 min. Bidder please note: * Test is conducted in accordance with ASTM Method D 5, except utilize a penetration cone in place of the standard penetration needle. The cone shall conform to the requirements given in ASTM Method D 217, except that the interior construction may be modified as one desires. The total moving weight of the cone and attachments must be 150 +/- 0.1 gram. Also the level of water in the transfer dish shall be lowered to less than the height of the sample and decant water from the top of the sample before transferring from the bath to the penetrometer.
			c. Ductility, 39 F (4 C), 1 cm/minute, ASTM D 113, 100 min.
			d. Solubility in Trichloroethylene, ASTM D 2042, 99.0% min
NOTES/COMMENTS:			

E. AGGREGATE

YES	**NO**	**NO & PROVIDE ALTERNATIVE**	
			1. The aggregate shall be crushed stone and shall meet the following requirements listed below in section a. through f.:

			a. Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing 1/2” (12.5 mm): 100
			b. Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing 3/8” (9.5mm): 90 - 100
			c. Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #4 (4.75 mm): 20 - 55
			d. Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #8 (2.36 mm): 5 - 30
			e. Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #16 (1.18 mm): 0 - 10
			f. Sieve Analysis: ASTM C 136 #89 ASTM D 448 Percent Passing #50 (0.30 mm): 0 - 5
			2. Soundness Loss (Sodium, 5 cycles), ASTM C 88, 12.0 max.
			3. Los Angeles Abrasion Loss, ASTM C 131, 45.0% max.
			4. Specific Gravity, ASTM C 127, 2.45 - 2.85.
			5. Absorption, ASTM C 128, 3.0% max.
			6. Minus 200 Sieve (0.075mm) Wash Loss, ASTM C 117, 2.5% max.
NOTES/COMMENTS:			

F. MIXTURE SPECIFICATIONS

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Coating, ASTM D 2489, greater than 95%.
			2. Stripping in distilled water*, visual. Less than 5%. *Place approximately 100 grams in a 250 ml glass beaker and cover with distilled water for 24 hours before observation.
			3. Extraction of Bituminous Material, ASTM D 2172, 3.5% min., 7.0% max.
			4. Sieve Analysis of Extracted Aggregate, ASTM C 136, see aggregate spec.
			5. -200 (0.075mm) of Extracted Aggregate, ASTM C 117 & ASTM C 136, 4.0% max. ** **This value shall not be confused with the 2.5% maximum allowed for the Minus 200 (0.075mm) Wash Loss on the raw aggregate before the production of the bituminous cold patch material. That value is necessary to minimize the effect of the plant when producing the finished bituminous cold patch material.
NOTES/COMMENTS:			

G. PRODUCTION OF BULK BITUMIINOUS COLD PATCH

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The contractor of the bituminous cold patch material must provide a paved stockpile pad for the placement of this material during production.
			2. Any pad used to place the produced material must be free of all foreign material which could cause contamination of the produced material.
			3. The asphalt shall be heated to a temperature recommended by the liquid supplier.
			4. The mixture shall consist of an aggregate and asphalt combined in a pug mill in the following proportions: Asphalt 5.0 to 6.5% Aggregate 93.5 to 95%
			5. The mixture may be prepared with no heat to the aggregate when determined as acceptable by laboratory testing.
			6. Heat should be applied to the aggregate when determined as necessary by laboratory testing prior to production of the mixture. The minimum amount of heat necessary to obtain coating or facilitate the operation of the plant may be utilized, but is not to exceed under any circumstance, 175 F (80 C).
			7. When producing in a batch plant, wet mix time in the pug mill should be typically in the range of 30 to 45 seconds or until the aggregate is uniformly coated (greater than 95%), ASTM D 2489.

NOTES/COMMENTS:

H. PRODUCTION COMPLIANCE AND SUPERVISION

YES	NO	NO & PROVIDE ALTERNATIVE		
			1.	An authorized technical representative from the liquid supplier must be present at every production for quality assurance of the mix at no additional cost to NDOT. The supervision shall be at the expense of the liquid supplier.
			2.	All mix delivered to the NDOT must be accompanied with a Certificate of Compliance, with a second copy to NDOT Logistics, stating the mix type meets these specifications.
			3.	As a condition of this contract, the successful bidder must agree to furnish on site personnel, at no additional cost, to the NDOT to assist in resolving problems in event material problems develop.
NOTES/COMMENTS:				

I. ACCEPTABLE BRANDS

YES	NO	NO & PROVIDE ALTERNATIVE		
			1.	Products bid must be the brand(s) as specified within the specifications. The State of Nebraska will not be accepting alternatives to the brands specified for contract award(s). In order to submit a bid for this solicitation, the bidder's proposed product for Bulk Bituminous Cold Patch Material must be an "Approved Brand" by the Nebraska Department of Transportation (NDOT). Products that are not on the "Approved Brand" will not be considered for this ITB.
			2.	All UPM High Performance Cold Patch, QPR, EZ Street, Proline or Perma Patch are considered "Approved Brands" which have previously been tested by the NDOT for meeting specification requirements.
			3.	Physical review(s) of utilized material performance may be conducted by the Contractor and NDOT throughout the life of the contract. Failure of the product performing to the specifications and representations provided in the ITB, may constitute a breach of the contract and may be cause for termination of the contract. Additionally, should the contract be terminated, the product may be removed from NDOT's Approved Products and as such the product would not be considered in future ITB's.
NOTES/COMMENTS:				

J. PROCEDURE FOR PRE-APPROVAL / PRE-QUALIFICATION

YES	NO	NO & PROVIDE ALTERNATIVE		
			1.	If a contractor/supplier has a product which is not pre-approved by the Department of Transportation, the contractor/supplier may contact Operations Procurement, NDOT for information concerning the approval process (OperationsProcurement@nebraska.gov).
			2.	Proposed product must pass a field performance evaluation standard over a period that includes all four seasons. Overall testing period for both field testing and Materials & Research review of adherence to these specifications is one full year. If the product is approved, it will have the opportunity for inclusion on the "Approved Brands" for the next Bulk Bituminous Cold Patch Material bid solicitation.
NOTES/COMMENTS:				

K. 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. Vendor shall not impose minimum order requirements.
			2.	Bulk Bituminous Cold Patch Material estimated statewide annual usage: 900.00 – 1500.00 TONS
NOTES/COMMENTS:				

L. USAGE REPORT

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

M. ORDERS

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

N. DELIVERY ARO

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Deliveries of Bulk Bituminous Cold Patch Material shall be FOB destination to all NDOT locations specified on the purchase order or as directed by NDOT at the time of purchase in accordance with this ITB. A NDOT District contact person and phone number will be given to the Contractor when an order is placed. Contractor must notify the NDOT District contact a minimum of 24 hours prior to the anticipated delivery. Contractor shall maintain sufficient inventory to process and deliver within 30 days after receipt of order(s). There will be no minimum order requirements.
			2. If the Contractor is unable to meet delivery schedules, the ordering District Superintendent must be notified within three (3) days from the date the order was placed. If it is nearing the delivery date and for some unforeseen reason the Contractor is unable to meet expected delivery, the ordering District shall be notified at least 48 hours in advance. The order may be cancelled if the delivery date is unsatisfactory, and the State may procure item(s) from other sources. The contractor may be held responsible for an/all excess cost. Failure to meet delivery requirements of the contract may constitute a breach of the contract.
			3. District One: **Address: 302 Superior Street Lincoln, NE 68521 -** **PHONE:** 402-471-0850 –Lincoln Superior, David City, Wahoo, Seward, Greenwood, Palmyra, Auburn, Nebraska City, Tecumseh, Falls City Beatrice, Lincoln Salt Valley, Dorchester, Fairbury, Pawnee City
			4. District Two: **Address: 4425 S 108th St Omaha, NE 68145 – PHONE:** 402-595-2497 – Locations: Omaha 108th, Omaha South, Omaha Mormon **Address: 2550 W 23rd Dr. Fremont, NE. 68026 – PHONE:** 402-727-3292 – Fremont, Blair **Address: 2829 N 204th Street Elkhorn, NE. 68022 – PHONE:** 402-289-4444 – Elkhorn, Gretna, Plattsmouth
			5. District Three: **Address: 3303 12th Street Columbus, NE. 68601 - PHONE:** 402-564-4126 – Columbus, Albion, Humphrey **Address: 910 E Highway 275 Neligh, NE. 68756 - PHONE:** 402-887-5441 – Neligh, Bloomfield, Plainview, Niobrara **Address: 1001 Alaska Ave. Norfolk, NE. 68701 – PHONE:** 402-370-3477 – Norfolk, West Point **Address: 500 W. 9th Street So. Sioux City, NE. 68776 - PHONE:** 402-494-6826 – So Sioux City, Lyons

			Address: 1300 E. 7th Street Wayne, NE. 68787 - PHONE: 402-375-7070 – Wayne, Hartington, Laurel
			6. District Four: **Address: 620 U Street Ord, NE. 68862 – PHONE:** 308-728-3761 – Fullerton, Ord, Central City, St. Paul, Greeley, Loup City **Address: 121 W. South 21st Street York, NE. 68467 – PHONE:** -402-362-5930 – Geneva, York, Hebron, Osceola **Address: 3305 W. Old Potash Hwy Grand Island, NE. 68802 – PHONE:** 308-385-6263– Kearney, Grand Island, Ravenna **Address: 111 E. Highway 6 Hastings, NE. 68902** – **PHONE:** 402-462-1996 – Hastings, Red Cloud, Superior, Aurora
			7. District Five: **Address: 700 Maple Street Chadron, NE. 69337 – PHONE:** 308-432-6141 – Chadron, Gordon, Crawford, Alliance **Address: 140375 Rundell Rd. Gering, NE. 69341- PHONE:** 308-436-6587 – Gering, Bridgeport **Address: 2320 Illinois Street Ste. B Sidney, NE. 69162 – PHONE:** 308-254-6932 – Sidney, Chappell, Kimball
			8. District Six: **Address: 2812 Plum Creek Pkwy. Lexington, NE. 68850 – PHONE:** 308-324-3885 Lexington, Gothenburg **Address: 2400 W. 14th Street North Platte, NE. 69103 – PHONE:** 308-535-8010 – North Platte, **Address: 307 E. D Street S. Ogallala, NE. 69153 – PHONE:** 308-284-8070 – Ogallala, Big Springs **Address: 515 E. South E. Street Broken Bow, NE. 68822 – PHONE:** 308-872-6733 Broken Bow, Ansley **Address: 402 S.E. 1st Street Mullen, NE. 69152 PHONE:** 308-546-2241 – Mullen, Stapleton
			9. District Seven: **Address: 38764 US Highway 6 McCook, NE. 69001 – PHONE:** 308-345-8495 – McCook, Arapahoe, Curtis **Address: 1013 W. 4th Ave. Holdrege, NE. 68949 – PHONE:** 308-995-4242 – Alma, Minden, Holdrege **Address: 101 South Street Imperial, NE. 69033 – PHONE:** 308-882-4252 – Imperial, Benkelman
			10. District Eight: **Address: 736 E. 4th Street Ainsworth, NE. 69210**-402-387-2472 - Ainsworth **Address: 602 E. 1st Street Valentine, NE. 69201 – PHONE:** 402-376-1350 – Valentine, Merriman **Address: 404 W. Douglas Street O'Neill, NE 68763 – PHONE:** 402-336-2051 – O'Neill, Burwell, Spencer
			11. Plant Pick-up of Bulk Bituminous Cold Patch Material shall be an available option. District personnel will make arrangements with the Contractor to schedule the pick-up of material (including same day pick-up).
			12. Deliveries shall be made during normal working hours between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday (excluding State holidays and / or as otherwise directed). If an emergency exists, delivery may be made through prior arrangements with receiving personnel.

			13. At the time of delivery, a designated State of Nebraska employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.
NOTES/COMMENTS:			

O. PERFORMANCE GUARANTEE

YES	NO	NO & PROVIDE ALTERNATIVE	NOTE: The supplier of the bituminous cold patch material shall guarantee the performance of the patching mix to meet the following requirements.
			1. The material shall remain workable, without heating, to accommodate climate conditions, in a covered stockpile for a period of not less than twelve 12 months.
			2. Repaired potholes shall not show any significant signs of shoving, rutting, tracking, kick-up or ravel-out within a period of 12 months from the time of repair.
			3. The material shall be capable of being overlaid with hot mix asphalt after placement and compaction and shall not bleed through or affect the performance of the hot mix asphalt.
			4. For any uncompliant materials not meeting specifications and representations provided on the ITB, NDOT in its sole discretion shall have the right to either accept the materials at a Pay Factor of 40% as listed within section VI., R. of this ITB or reject the material and request replacement material by Contractor, at the Contractor's expense, within 15 business days FOB destination to the location on the original purchase order.
			5. NDOT, in its sole discretion, shall have the right to require any uncompliant stockpiled material be removed by the Contractor from State of Nebraska property at no additional cost to the NDOT.
NOTES/COMMENTS:			

P. QUALITY

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

Q. ACCEPTANCE AND PAY FACTOR

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

R. SAMPLES TESTING THROUGHOUT THE LIFE OF THE CONTRACT

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. NDOT reserves the right to acquire a random sample of liquid asphalt and aggregate at any time during the term of the contract for testing to determine specification compliance as provided in the ITB.
			2. The mix design and samples of the liquid asphalt and aggregates shall be submitted and reviewed by the NDOT Materials and Research Flexible Pavements Engineer. The materials shall conform to the technical requirements following material specifications and representations provided in this ITB within section VI. Technical Specifications.
NOTES/COMMENTS:			

Form A
Contractor Contact Sheet
Invitation To Bid Number 6211 OF

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

Preparation of Solicitation Contact Information	
Contractor Name:	
Contractor Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

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

Communication with the State Contact Information	
Contractor Name:	
Contractor Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	