



## Solicitation

1. Solicitation #: SW17081

2. Solicitation Issue Date: November 29, 2016

3. Brief Description of Requirement:

Solicitation for Statewide Contract for Asphalt.

4. Response Due Date<sup>1</sup>: December 29<sup>th</sup>, 2016

Time: 3:00PM CST/CDT

5. Issued By and RETURN SEALED BID TO<sup>2</sup>:

**Personal, U.S. Postal or Common Carrier Delivery:**

Office of Management and Enterprise Services  
Central Purchasing  
5005 N. Lincoln Blvd., Suite 300  
Oklahoma City, OK 73105

6. Solicitation Type (type "X" at one below):

- ☐ Invitation to Bid
- ☒ Request for Proposal
- ☐ Request for Quote

7. Requesting Agency: OMES Central Purchasing

8. Contracting Officer:

Name: Gerald Elrod  
Phone: 405/522-1037  
Email: Gerald.Elrod@omes.ok.gov

<sup>1</sup> Amendments to solicitation may change the Response Due Date (read GENERAL PROVISIONS, section 3, "Solicitation Amendments")

<sup>2</sup> If "U.S. Postal Delivery" differs from "Carrier Delivery", use "Carrier Delivery" for courier or personal deliveries



## Responding Bidder Information

*"Certification for Competitive Bid and Contract" MUST be submitted along with the response to the Solicitation.*

1. **RE: Solicitation #** \_\_\_\_\_

2. **Bidder General Information:**

FEI / SSN : \_\_\_\_\_

VEN ID: \_\_\_\_\_

Company Name: \_\_\_\_\_

3. **Bidder Contact Information:**

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Title: \_\_\_\_\_

Phone #: \_\_\_\_\_ FAX#: \_\_\_\_\_

Email: \_\_\_\_\_ Website: \_\_\_\_\_

4. **Oklahoma Sales Tax Permit<sup>1</sup>:**

☐ YES – Permit #: \_\_\_\_\_

☐ NO – Exempt pursuant to Oklahoma Laws or Rules

5. **Registration with the Oklahoma Secretary of State:**

☐ YES - Filing Number: \_\_\_\_\_

☐ NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming ([www.sos.ok.gov](http://www.sos.ok.gov) or 405-521-3911).

6. **Workers' Compensation Insurance Coverage:**

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☐ YES – include a certificate of insurance with the bid

☐ NO - attach a signed statement that provides specific details supporting the exemption you are claiming from the Workers' Compensation Act (Note: Pursuant to Attorney General Opinion #07-8, the exemption from 85 O.S. 2011, § 311 applies only to employers who are natural persons, such as sole proprietors, and does not apply to employers who are entities created by law, including but not limited to corporations, partnerships and limited liability companies.)<sup>2</sup>

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

<sup>1</sup> For frequently asked questions concerning Oklahoma Sales Tax Permit, see <http://www.tax.ok.gov/faq/faqbussales.html>

<sup>2</sup> For frequently asked questions concerning workers' compensation insurance, see <http://www.ok.gov/oid/faq.html#c221>



**NOTE:** A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Agency Name: \_\_\_\_\_ Agency Number: \_\_\_\_\_

Solicitation or Purchase Order #: \_\_\_\_\_

Supplier Legal Name: \_\_\_\_\_

**SECTION I [74 O.S. § 85.22]:**

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
  - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
  - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
  - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
  - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

**SECTION II [74 O.S. § 85.42]:**

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

**OR**

☐ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

\_\_\_\_\_  
Supplier Authorized Signature

\_\_\_\_\_  
Certified This Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

\_\_\_\_\_  
Fax Number

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## **A. GENERAL PROVISIONS**

### **A.1. Definitions**

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1. "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act;
- A.1.2. "Bid" means an offer in the form of a bid, proposal, or quote a bidder submits in response to a solicitation;
- A.1.3. "Bidder" means an individual or business entity that submits a bid in response to a solicitation;
- A.1.4. "Solicitation" means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or a request for quotation; and
- A.1.5. "Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

### **A.2. Bid Submission**

- A.2.1. Submitted bids shall be in strict conformity with the instructions to bidders and shall be submitted with a completed Responding Bidder Information, OMES-FORM-CP-076, and any other forms required by the solicitation.
- A.2.2. Bids shall be submitted to the Central Purchasing Division in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.
- A.2.3. The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", OMES-FORM-CP-004, must be made out in the name of the bidder and must be properly executed by an authorized person, with full knowledge and acceptance of all its provisions.
- A.2.4. All bids shall be legible and completed in ink or with electronic printer or other similar office equipment. Any corrections to bids shall be identified and initialed in ink by the bidder. Penciled bids and penciled corrections shall NOT be accepted and will be rejected as non-responsive. In addition to a hard copy submittal, the bidder will also be required to submit an electronic copy. Electronic responses must be submitted in the identical format contained in the solicitation (for example Microsoft Word, Microsoft Excel, but not Adobe PDF). In the event the hard copy of the price worksheets and electronic copy of the price worksheets do not agree, the electronic copy will prevail.
- A.2.5. All bids submitted shall be subject to the Oklahoma Central Purchasing Act, Central Purchasing Rules, and other statutory regulations as applicable, these General Provisions, any Special Provisions, solicitation specifications, required certification statement, and all other terms and conditions listed or attached herein—all of which are made part of this solicitation.

### **A.3. Solicitation Amendments**

- A.3.1. If an "Amendment of Solicitation", OMES-FORM-CP-011, is issued, the bidder shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the bid or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The Central Purchasing Division must receive the amendment acknowledgement(s) by the response due date and time specified for receipt of bids for the bid to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.
- A.3.2. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the Central Purchasing Division.
- A.3.3. It is the Bidder's responsibility to check the OMES/Central Purchasing Division website frequently for any possible amendments that may be issued. The Central Purchasing Division is not responsible for a bidder's failure to download any amendment documents required to complete a solicitation.

#### **A.4. Bid Change**

If the bidder needs to change a bid prior to the solicitation response due date, a new bid shall be submitted to the Central Purchasing Division with the following statement "This bid supersedes the bid previously submitted" in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

#### **A.5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By submitting a response to this solicitation:

- A.5.1. The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
  - A.5.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
  - A.5.1.2. Have not within a three-year period preceding this proposal been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - A.5.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.5.1.2. of this certification; and
  - A.5.1.4. Have not within a three-year period preceding this application/proposal had one or more public (Federal, State, or local) contracts terminated for cause or default.
- A.5.2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

#### **A.6. Bid Opening**

Sealed bids shall be opened by the Central Purchasing Division at 5005 N. Lincoln Blvd. Suite 300, Oklahoma City, Oklahoma, 73105 at the time and date specified in the solicitation as Response Due Date and Time.

#### **A.7. Open Bid / Open Record**

Pursuant to the Oklahoma Public Open Records Act, a public bid opening does not make the bid(s) immediately accessible to the public. The procurement or contracting agency shall keep the bid(s) confidential, and provide prompt and reasonable access to the records only after a contract is awarded or the solicitation is cancelled. This practice protects the integrity of the competitive bid process and prevents excessive disruption to the procurement process. The interest of achieving the best value for the State of Oklahoma outweighs the interest of vendors immediately knowing the contents of competitor's bids. [51 O.S. § 24A.5(5)]

Additionally, financial or proprietary information submitted by a bidder may be designated by the Purchasing Director as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. (2012) § 34.11.1(H)(2) and 74 O.S. (2011) § 85.10. Bidders claiming any portion of their bid as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. § 85.10. Otherwise, documents and information a bidder submits as part of or in connection with a bid are public records and subject to disclosure after contract award or the solicitation is cancelled.

#### **A.8. Late Bids**

Bids received by the Central Purchasing Division after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

#### **A.9. Legal Contract**

- A.9.1. Submitted bids are rendered as a legal offer and any bid, when accepted by the Central Purchasing Division, shall constitute a contract.
- A.9.2. The Contract resulting from this solicitation may consist of the following documents in order of preference:
  - A.9.2.1. Purchase order, as amended by Change Order (if applicable);
  - A.9.2.2. Solicitation, as amended (if applicable); and

A.9.2.3. Successful bid (including required certifications), to the extent the bid does not conflict with the requirements of the solicitation or applicable law.

A.9.3. Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.

#### **A.10. Pricing**

A.10.1. Bids shall remain firm for a minimum of sixty (60) days from the solicitation closing date.

A.10.2. Bidders guarantee unit prices to be correct.

A.10.3. In accordance with 74 O.S. §85.40, ALL travel expenses to be incurred by the supplier in performance of the Contract shall be included in the total bid price/contract amount.

#### **A.11. Manufacturers' Name and Approved Equivalents**

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which they are an authorized representative, and which meets or exceeds the specification for any item(s). However, if bids are based on equivalent products, indicate on the bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their bid. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

#### **A.12. Clarification of Solicitation**

A.12.1. Clarification pertaining to the contents of this solicitation shall be directed in writing to the Central Purchasing Contracting Officer specified in the solicitation, and must be prior to the closing date of the solicitation.

A.12.2. If a bidder fails to notify the State of an error, ambiguity, conflict, discrepancy, omission or other error in the SOLICITATION, known to the bidder, or that reasonably should have been known by the bidder, the bidder shall submit a bid at its own risk; and if awarded the contract, the bidder shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a bidder takes exception to any requirement or specification contained in the SOLICITATION, these exceptions must be clearly and prominently stated in their response.

A.12.3. Bidders who believe proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a written request for administrative review to the contracting officer listed on the solicitation. This request must be made prior to the closing date of the solicitation.

#### **A.13 Negotiations**

A.13.1. In accordance with Title 74 §85.5, the State of Oklahoma reserves the right to negotiate with one, selected, all or none of the vendors responding to this solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that may mitigate the State's risks. The State shall consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more vendors, for any and all items in the vendor's offer.

A.13.2. Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:

A.13.3. Negotiations may be conducted in person, in writing, or by telephone.

A.13.4. Negotiations shall only be conducted with potentially acceptable offers. The State reserves the right to limit negotiations to those offers that received the highest rankings during the initial evaluation phase.

A.13.5. Terms, conditions, prices, methodology, or other features of the bidders offer may be subject to negotiations and subsequent revision. As part of the negotiations, the bidder may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the offer.

A.13.6. The requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.

#### **A.14. Rejection of Bid**

The State reserves the right to reject any bids that do not comply with the requirements and specifications of the solicitation. A bid may be rejected when the bidder imposes terms or conditions that would modify requirements of the solicitation or limit the bidder's liability to the State. Other possible reasons for rejection of bids are listed in OAC 260:115-7-32.

#### **A.15. Award of Contract**

- A.15.1. The State Purchasing Director may award the Contract to more than one bidder by awarding the Contract(s) by item or groups of items, or may award the Contract on an ALL OR NONE basis, whichever is deemed by the State Purchasing Director to be in the best interest of the State of Oklahoma.
- A.15.2. Contract awards will be made to the lowest and best bidder(s) unless the solicitation specifies that best value criteria is being used.
- A.15.3. In order to receive an award or payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: <https://www.ok.gov/dcs/vendors/index.php>.

#### **A.16. Contract Modification**

- A.16.1. The Contract is issued under the authority of the State Purchasing Director who signs the Contract. The Contract may be modified only through a written Contract Modification, signed by the State Purchasing Director.
- A.16.2. Any change to the Contract, including but not limited to the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Central Purchasing Division in writing, or made unilaterally by the supplier, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the supplier shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

#### **A.17. Delivery, Inspection and Acceptance**

- A.17.1. Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The bidder(s) awarded the Contract shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the supplier until accepted by the receiving agency. The supplier(s) awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.17.2. Supplier(s) awarded the Contract shall be required to deliver products and services as bid on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Central Purchasing Division.

#### **A.18. Invoicing and Payment**

- A.18.1. Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.
- A.18.2. Interest on late payments made by the State of Oklahoma is governed by 62 O.S. §34.71 and 62 O.S. §34.72.

#### **A.19. Tax Exemption**

State agency acquisitions are exempt from sales taxes and federal excise taxes. Bidders shall not include these taxes in price quotes.

#### **A.20. Audit and Records Clause**

- A.20.1. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.20.2. The successful bidder(s) awarded the Contract(s) is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

#### **A.21. Non-Appropriation Clause**

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any



language to the contrary in the solicitation, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

#### **A.22. Choice of Law**

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

#### **A.23. Choice of Venue**

Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

#### **A.24. Termination for Cause**

- A.24.1. The supplier may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the Central Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the supplier.
- A.24.2. The State may terminate the Contract immediately, without a 30-day written notice to the supplier, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance.
- A.24.3. If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

#### **A.25. Termination for Convenience**

- A.25.1. The State may terminate the Contract, in whole or in part, for convenience if the State Purchasing Director determines that termination is in the State's best interest. The State Purchasing Director shall terminate the Contract by delivering to the supplier a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State Purchasing Director.
- A.25.2. If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the supplier.

#### **A.26. Insurance**

The successful bidder(s) awarded the Contract shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The supplier awarded the Contract shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the Central Purchasing Division and the procuring agency with evidence of such insurance and renewals.

#### **A.27. Employment Relationship**

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or the procuring agency. The supplier's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

#### **A.28. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007**

By submitting a bid for services, the bidder certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security and available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

#### **A.29. Compliance with Applicable Laws**

The products and services supplied under the Contract shall comply with all applicable Federal, State, and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

#### **A.30. Special Provisions**

Special Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

## **B. SPECIAL PROVISIONS**

### **B.1. Contract Period**

- B.1.1.** This contract is for a 12 month period, commencing from January 1, 2017 through December 31, 2018 with the option to renew for three (3) additional one year periods.

### **B.2. Authorized Users**

- B.2.1.** RFPs shall cover requirements during the specified period for all State Departments, Boards, Commissions, Agencies and Institutions. The Oklahoma Statutes state that Counties, Cities, School Districts and Municipalities may avail themselves of the contract subject to the approval of the successful contractor(s).

CHECK APPROPRIATE BLOCK

\_\_\_\_\_ Yes, permits usage by other than State Agencies

\_\_\_\_\_ No, permits usage by State Agencies only

### **B.3. Extension of Contract**

- B.3.1.** The State may extend the term of this contract up to 120 days if mutually agreed upon by both parties in writing.

### **B.4. Contractor Invoices**

- B.4.1.** The vendor shall be paid upon submission of proper certified invoices to the ordering agency at the prices stipulated on the contract. Invoices shall contain the contract number and purchase order number. Failure to follow these instructions may result in delay of processing invoices for payment. The Company or Corporation submitting a proposal shall be the only office authorized to receive orders, invoice and receive payment. If the vendor wishes to ship or provide service from a point other than the address listed on the face of the RFP, the vendor will furnish a list of these locations. No ordering or invoicing will be done at these locations.

- B.4.2.** Invoicing shall be made in accordance with instruction by agency or division issuing the purchase order.

- B.4.3.** If you are paid more than 45 days after submitting a proper invoice, you may be entitled to claim an interest penalty. Contact the Office of State Finance for a copy of the regulations.

- B.4.4.** In cases of partial delivery the state agency may make partial payment, dependent on the dollar value, or hold all invoices for final delivery to be completed.

### **B.5. Prompt Payment Discounts**

- B.5.1.** Payment terms will be net 45. Additional terms which provide discounts for earlier payment will be evaluated when making an award. Additional terms shall be no less than 10 days increasing in 5 day increments up to 30 days. The date from which discount time is calculated shall be the date of a valid invoice. An invoice is considered valid if sent to the proper recipient and goods or services have been received.

### **B.6. Gratuities**

- B.6.1.** The right of the successful vendor to perform under this contract may be terminated by written notice if the Contracting Officer determines that the successful vendor, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of Central Purchasing.

### **B.7. RFP Conformity**

- B.7.1.** By submitting a response to this solicitation, the vendor attests that the supplies or services conform to specified contract requirements.

### **B.8. Warranty**

- B.8.1.** The successful vendor agrees the products furnished under this contract shall be covered by the most favorable commercial warranties the contract gives to any customer for such products; and rights and remedies provided herein are in addition to and do not limit any rights afforded to the State of Oklahoma by any other clause of this contract.

### **B.9. Contract Usage Reporting Requirements**

- B.9.1.** Reports shall provide the total dollar amounts sold to all political entities that include but are not limited to State Agencies, Counties, Cities, Schools, hospitals and Municipalities.

- B.9.2.** Reports shall be submitted quarterly regardless of quantity. Failure to report sales may be cause for termination of contract.

- B.9.3.** Usage Reports shall be delivered to Central Purchasing within 45 calendar days upon completion of performance quarter period cited in paragraph "d" of this contract provision. Usage Reports must be delivered to Central Purchasing Strategic Sourcing group at [strategic.sourcing@omes.ok.gov](mailto:strategic.sourcing@omes.ok.gov).

**B.9.4.** Contract quarterly reporting periods shall be:

**B.9.4.1.** January 1 through March 31

**B.9.4.2.** April 1 through June 30

**B.9.4.3.** July 1 through September 30

**B.9.4.4.** October 1 through December 31

**B.9.5.** Failure to provide usage reports shall result in cancellation or suspension of contract.

**B.9.6.** Usage Reports shall be submitted in the Excel form listed as Attachment "A"

**B.10. Contract Management Fee**

**B.10.1.** As provided by Oklahoma State Statute 74 O.S. §85.33A, the Office of Management and Enterprise Services assesses a Contract Management Fee in the sum of 1 % on all sales transacted by any entity under this contract.

**B.10.2.** Supplier agrees to annotate the resultant amount on the quarterly "Contract Usage Report" as listed in Section B19.6 and make payment by company check to OMES – Central Purchasing Division within forty five (45) calendar days from the completion of the quarterly reporting period as listed in Section B9.4. To ensure the payment is credited properly, the supplier must identify the check as a "Contract Management Fee" and include the following information with the payment: LIST SW# and Contract Title, the report amount and the reporting period covered. The Contract Management Fee shall be mailed to:

OMES – Central Accounting and Reporting

5005 N. Lincoln, Suite 200

Oklahoma City, OK 73105

**B.10.3.** Failure to remit the fee quarterly may result in the cancellation of the contract. The State Contract Management Fee is non-refundable when an item is rejected, returned or declined due to the Supplier's failure to perform or comply with specifications or requirements of the contract.

**B.11. Energy Conservation**

**B.11.1.** Oklahoma is an energy conservation State and we welcome any comments on your RFP that would indicate energy savings.

**B.12. Conflict of Interest**

**B.12.1.** The RFP hereunder is subject to the provisions of the Oklahoma Statutes. All vendors must disclose with the RFP the name of any officer, director or agent who is also an employee of the State of Oklahoma or any of its agencies. Further, all vendors must disclose the name of any State Employee who owns, directly or indirectly, an interest of five percent (5%) or more in the supplies firm or any of its branches.

**B.13. Patents and Royalties**

**B.13.1.** The vendor, without exception, shall indemnify and save harmless the State of Oklahoma and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the State of Oklahoma. If the vendor uses any design, device or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the RFP prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

**B.14. Required Delivery**

**B.14.1.** Material must be manufactured within forty-eight (48) hours after receipt of order by the successful vendor.

**B.15. Product Availability**

**B.15.1.** Product bid must be current and available for general marketing purposes at the opening of this proposal. Vendor must use best effort to assure product availability through duration of contract period.

**B.16. MSDS Sheets**

**B.16.1.** MSDS sheets must be supplied for products with delivery of product to requesting agency.

**B.17. Testing for Conformance**

**B.17.1.** Items may be tested for compliance with specifications by appropriate testing laboratories. The data derived from any test for compliance with specifications are public records and open to examination thereto in accordance with Oklahoma Statutes.

**B.17.2.** Items delivered not conforming to specifications may be rejected. Any violation of these stipulations may result in supplier's name being removed from the Central Purchasing Supplier mailing list.

**B.17.3.** In all cases when material fails to meet specifications the cost of testing shall be paid for by the vendor, both on samples and delivered material.

**B.18. State Purchase Card (P-Card)**

**B.18.1.** The State currently has a contract with Bank of America to enable selected State employees to purchase needed goods and services using a State of Oklahoma purchasing card. This card functions as any consumer or commercial VISA card. There shall be no additional cost to a using entity for use of purchasing cards as a payment method. All purchase card transactions must be included and reported in the quarterly usage reports. Please complete the information below as to whether your company will accept the State of Oklahoma purchasing card.

\_\_\_\_\_ Yes – we will accept the State of Oklahoma purchasing card.

\_\_\_\_\_ No – we will not accept the State of Oklahoma purchasing card.

**B.19. Travel**

**B.19.1.** No reimbursable travel is contemplated under the terms of this contract.

**B.20. Price Adjustments**

**B.20.1.** A price adjustment clause is included in this contract to provide additional compensation to the Vendor or a credit to the Department for fluctuations in asphalt binder prices. This price adjustment is dependent upon a change in the average price of asphalt binder which results in an increase or decrease in the price of products utilized on this contract.

**B.20.2.** Payment will be made to the Vendor for monthly fluctuation in the cost of asphalt binder used in performing the applicable items of Superpave work as listed in the table below when the asphalt binder cost fluctuates by more than 3% from the base price defined below. Payments may be positive, negative, or nonexistent depending on circumstances. Payments or deductions will only be calculated on that portion of the asphalt binder cost fluctuation that exceeds the 3% specified above. Payments or deductions for the asphalt binder cost adjustment will be included in the Vendor's work orders; and the payment or deduction authorized for each work order will be based upon the algebraic difference between the quantities for applicable items of work. In the event that the Market Price for Asphalt Binder is observed to fluctuate more than 3% for three (3) consecutive weeks, the vendor may request that the State of Oklahoma switch from monthly calculation for price fluctuation to a weekly calculation for price fluctuation. It will be at the State of Oklahoma's discretion whether to switch from monthly calculation to weekly calculation and when to switch back to monthly calculation. The State of Oklahoma reserves the right to maintain the standard monthly calculation for price fluctuation despite the observed market volatility.

**B.20.3.** The Asphalt Binder Cost Adjustment (ACA) for the current estimate will be computed according to the following formula:

$$ACA = F \times D$$

where

ACA = Asphalt binder cost adjustment in dollars per ton of mix;

F = The Asphalt Binder Use Factor for the applicable items of work subject to this price adjustment, as listed in the following table, are:

ITEM OF WORK	SPECIFICATION NUMBER	CONTRACT TYPE	ASPHALT BINDER USE FACTOR PER UNIT (metric and U.S. Customary units)
Superpave, Type S-6	411(S6)	D & Cold Patch	0.058 ton of binder per ton of mix
Superpave, Type S-5	411(S5)	C & MC-800	0.053 ton of binder per ton of mix
Superpave, Type S-4	411(S4)	B	0.048 ton of binder per ton of mix
Superpave, Type S-3	411(S3)	A	0.042 ton of binder per ton of mix
Superpave, Type S-2	411(S2)		0.037 ton of binder per ton of mix

Note: When the units of measure in this contract for the Items of Work listed in the table do not correspond with the units shown in the table (i.e. Superpave paid by the square yard, etc.), those Items will not be subject to the terms of this special provision or any asphalt binder price adjustment.

D = Allowable price differential, in dollars;

The allowable price differential, "D", for the current estimate will be computed according to the following formulas:

If the current price, P, is greater than the base price, P<sub>(b)</sub>.

$$D = P - (1.03 \times P_{(b)}), \text{ but not less than zero.}$$

If the current price, P, is less than the base price, P<sub>(b)</sub>.

$$D = P - (0.97 \times P_{(b)}), \text{ but not greater than zero.}$$

In either case, P<sub>(b)</sub> shall be the base asphalt binder price, in dollars per ton (mton), determined to be the current market value at the time of contract award. This price is taken from the last issue of Asphalt Weekly Monitor® for the month prior to the month in which the bids for the work were received<sup>1</sup>. This document is furnished by Poten & Partners, Inc.

In either case, P shall be the asphalt binder price, in dollars per ton (mton), taken from the current issue of Asphalt Weekly Monitor®. The publication used as the current issue will be the last issue published in the month prior to the month where the current purchase price is calculated.<sup>1</sup> ODOT will verify this price monthly by the first Monday of each month.

**B.20.4.** Items included in the contract that are listed in the table above are subject to adjustment in accordance with this provision, regardless of any amount of overrun to the work order quantity.

**B.20.5.** Adjustments will be posted to the DCS Website on the first Wednesday of each month.

**B.20.6.** Adjustments posted after the first calendar day of each month, will be retroactive to the first calendar day of the month. For example, an adjustment posted on the 4<sup>th</sup>, will be retroactive to orders placed beginning on the 1<sup>st</sup>.

## **B.21. Price Decreases**

**B.21.1.** Price decreases are expected to be passed on to the State as supplier(s) receive them from the manufacturers. Supplier(s) are to notify the Contracting Officer in writing regarding price decreases and include a list of all line items with their new prices. The State will have up to 30 days to implement any requests for price decreases.

## **B.22. Indexes**

**B.22.1.** Supplier to submit the raw material index used upon which pricing is based:

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## **B.23. Additional Plant Locations**

**B.23.1.** The State reserves the right to add additional plant locations at any time.

## **B.24. Type of Contract**

**B.24.1.** This will be a mandatory statewide contract that is available to all state agencies. Other governmental entities may avail themselves of this contract.

**B.24.2.** All state agencies must use the contract for the services/products specified herein, unless the Ordering Agency has received a written exception from the Contracting Officer. The State of Oklahoma reserves the right to conduct separate procurement process(s) to establish contract(s) for the same or similar services for any agency's specific project.

**B.24.3.** The State of Oklahoma shall not guarantee any minimum or maximum amount under this contract.

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<sup>1</sup> Price defined as the average of the minimum and maximum prices shown for performance-graded binder using the Selling Price of PG64-22 paving grade, F.O.B. manufacturer's terminal, as listed under "Midwest/Mid-Continent Market – Tulsa, Oklahoma/Southern Kansas area".

## **C. SOLICITATION SPECIFICATIONS**

### **C.1. Reference Attachment B for Specifications and Cost Sheet.**

## **D. EVALUATION**

### **D.1. Method of Evaluation**

- D.1.1.** The State will award the contract to the respondent(s) whose offer is determined to be of the Best Value to the State.
- D.1.2.** The evaluation and selection of a Contractor will be based on the information submitted in a Proposal. Failure to respond to each of the requirements in the RFP may be the basis for rejecting a response.

### **D.2. Best Value Criteria**

- D.2.1.** The State intends to award to multiple Suppliers as a result of this Request for Proposal (RFP). Said contract will be awarded to the responsible Supplier(s) whose response, conforming to the RFP, is deemed best value.
- D.2.2.** An evaluation team will conduct evaluation of responses and prices received in response to this solicitation according to these criteria:
  - D.2.2.1.** cost

### **D.3. Competitive Negotiations of Proposals**

In accordance with Oklahoma Statutes, 74 O.S. § 85.5, the State of Oklahoma reserves the right to negotiate with one, selected, all or none of the Bidders responding to this solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that mitigate the State's risks. The State will consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more Bidders, for any and all items in the Bidder's proposal.

Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item will face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:

- D.3.1.** Negotiations may be conducted in person, in writing, or by telephone.
- D.3.2.** Negotiations will only be conducted with potentially acceptable proposals. The State reserves the right to limit negotiations to those proposals that received the highest rankings during the initial evaluation phase.
- D.3.3.** Terms, conditions, prices, methodology, or other features of the Bidder's proposal may be subject to negotiations and subsequent revision. As part of the negotiations, the Bidder may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the proposal.
- D.3.4.** The mandatory requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.
- D.3.5.** BEST and FINAL – The state may request best and final offers if deemed necessary, and will determine the scope and subject of any best and final request. However, the Bidder should not expect that the state will ask for best and finals to give the Bidder an opportunity to strengthen your proposal. Therefore, the Bidder must submit your best offer based on the terms and condition set forth in this solicitation.

## **E. INSTRUCTIONS TO SUPPLIER**

### **E.1. Introduction**

Prospective Bidders are urged to read this solicitation carefully. Failure to do so will be at the Bidder's risk. Provisions, terms, and conditions may be stated or phrased differently than in previous solicitations. Irrespective of past interpretations, practices or customs, proposals will be evaluated and any resultant contract(s) will be administered in strict accordance with the plain meaning of the contents hereof. The Bidder is cautioned that the requirements of this solicitation can be altered only by written amendment approved by the state and that verbal communications from whatever source are of no effect. In no event shall the Bidder's failure to read and understand any term or condition in this solicitation constitute grounds for a claim after contract award.

#### **E.1.1. MANDATORY AND NON-MANDATORY TERMS**

- E.1.1.1.** Whenever the terms "shall", "must", "will", or "is required" are used in this RFP, the specification being referred to is a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the Bidder's Proposal.
- E.1.1.2.** Whenever the terms "can", "may", or "should" are used in this RFP, the specification being referred to is a desirable item and failure to provide any item so termed will not be cause for rejection.

### **E.2. Technical Questions**

Technical questions concerning the RFP should be submitted in writing to the contracting officer listed on the front page of the

solicitation no later than December 8th, 2016 at 3:00PM.

### **E.3. RFP Submission Requirements**

- E.3.1.** Supplier should submit one (1) hard copy response labeled "MASTER".
- E.3.2.** Supplier should submit two (2) CDs, DVDs or Flash Drives containing an electronic copy of the proposal which must be clearly marked with the Supplier's name, solicitation number and date of solicitation closing.
  - E.3.2.1.** All electronic documents must be in one of the following software formats:
    - E.3.2.1.1.** MS Word (.doc or .docx), MS Excel (.xls or .xlsx), or Adobe PDF (.pdf)
    - E.3.2.1.2.** Graphic samples must be in tif, gif, jpeg or pdf
- E.3.3.** Where the MASTER and electronic copies differ, the MASTER will take precedence.
- E.3.4.** Each Supplier shall submit a complete proposal, and should clearly describe Supplier's ability to meet or exceed every requirement detailed in the Solicitation Request and this RFP.
- E.3.5.** Each Supplier shall submit the required forms in the front of the Solicitation Packet.
  - E.3.5.1.** OMES-FORM-CP-076
  - E.3.5.2.** OMES-FORM-CP-004

### **E.4. Anticipated Timeline**

<b>RFP Milestones</b>	<b>Estimated Completion Dates</b>
<b>RFP Issue Date</b>	<b>November 29, 2016</b>
<b>Deadline for Questions Submission</b>	<b>December 8, 2016</b>
<b>Responses to RFP Due</b>	<b>December 29, 2016</b>

## **F. OTHER**

### **F.1. Fuel Surcharge**

Attached below is an Adjustment for Market Cost (Diesel) of Fuel chart. Suppliers are to complete Fuel Surcharge (Per Ton). This is a set rate – price per ton. It is not a percentage rate. If fuel reaches ranges listed then the successful vendors will be allowed to add a Fuel Surcharge to their invoices. If fuel costs drop dramatically, the State of Oklahoma reserves the right to renegotiate all pricing including Fuel Surcharges.

<b>SW081 ASPHALT</b>	
<b>ADJUSTMENT FOR MARKET COST OF FUEL</b>	
<u><b>COST PER GALLON</b></u>	<u><b>FUEL SURCHARGE (PER TON)</b></u>
<b>\$4.00 &amp; BELOW</b>	<b>NO CHARGE</b>
<b>\$4.00 - \$4.20</b>	
<b>\$4.21 - \$4.40</b>	
<b>\$4.41 - \$4.60</b>	
<b>\$4.61 - \$4.80</b>	
<b>\$4.81 - \$5.00</b>	
<b>\$5.01 - \$5.20</b>	
<b>\$5.21 - \$5.40</b>	
<b>\$5.41 - \$5.60</b>	
<b>\$5.61 - \$5.80</b>	
<b>\$5.81 - \$6.00</b>	
<b>\$6.01 - \$6.20</b>	
<b>\$6.21 - \$6.40</b>	
<b>\$6.41 - \$6.60</b>	

\$6.61 - \$6.80	
\$6.81 - \$7.00	
+ \$0.20 (EACH ADDITIONAL OVER \$7.00)	

## F.2. Oklahoma Department of Transportation Division Map

An Oklahoma Department of Transportation Division map is included for reference on general delivery areas.

## G. PRICE AND COST

### G.1. Pricing Submission

- G.1.1. A completed Price Grid (Attachment B) is to be submitted as an original hard copy as part of your completed proposal.
- G.1.2. An electronic copy (CD) is also to be submitted with your proposal.
- G.1.3. It is the vendor's responsibility to contact the Contracting Officer in writing as soon as possible (before submission of proposal) if unable to submit pricing as specified in G.1.2. and G.1.3. **Failure to do so may result in vendor's proposal being deemed as non-responsive.**