North Dakota Department of Transportation

INVITATION TO BID

Bid Number: 745-65/68-20-050	Bid Opening Date & Time: 06/11/2020 02:00 PM
Items: Mastic Products and Equipment Rentals	Buyer: Sean Lackner
Bid Mailing Address: 608 East Boulevard Ave	Telephone Number: (701) 328-2571
City, State, Zip: Bismarck, ND 58505	Email: selackner@nd.gov
Contract Period: 06/19/2020 TO 01/31/2021	Date Prepared: 05/22/2020

BID RESPONSE

Please submit your bid response on the attached forms in conformance with the instructions and specifications in the NDAC 04-12-01 – 04-12-16. One copy of your bid response must be returned to the North Dakota Department of Transportation (NDDOT) prior to the time and date specified for the bid opening. Bid responses received after the time and day specified for the bid opening will be rejected. Mark envelope with word "BID" and the opening time and date. **If your bid response is accepted by NDDOT, then your bid response will constitute a binding contract.**

CONTRACT

This contract is made and entered into by and between NDDOT for the state of North Dakota (hereinafter state) and

Vendor Name	Vendor Address
Midstates Equipment & Supply, Inc.	606 County Road 1 Mountain Lake, MN 56159

(hereinafter vendor). In consideration of and for the acceptance by the state of the offer made by the vendor pursuant to the bid response, the vendor agrees and promises to sell, furnish, and deliver to the state, at the time, places, and prices specified in the bid response, all goods, merchandise, supplies, commodities, equipment, or other items contained in the bid response and for which the vendor has been awarded this contract by the state. The vendor shall fully perform this contract in accordance with the terms and conditions contained in the bid response including all specifications, rules, or regulations mentioned therein, and shall comply with all applicable provisions of the NDAC 04-12-01 – 04-12-16 promulgated by the State Purchasing Division; such manual being made a part of this contract by reference. The Risk Management Appendix and Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.

The following must be completed by the vendor; failure to do so may result in the rejection of the vendors bid proposal.

Vendor Name Midstates Equipment & Supply, Inc.		
Mailing Address 606 County Road 1		
Telephone Number (507) 427-3807	Fax Number (507) 427-3709	E-mail Address midstates@midstatesequipment.net

Bradley J. Bargen - President
Name & Title (Type or Print)

Bradley J Bargen
Signature

June 8, 2020
Date

To be signed by **Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer** or bid may be rejected. (if signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

FOR ND DEPARTMENT OF TRANSPORTATION USE ONLY Accepted by the state according to provisions of award.

Authorized Signature		Date 7/6/2020
Recommended for approval Brad Jan	Date 6-23-2020	Approximate contract amount $

WS

NDDOT North Dakota Department of Transportation

APPROVED as to execution this 30th day of June 2020
ATTORNEY GENERAL
By
SPECIAL ASST. ATTORNEY GENERAL

CLA 7480 (Div. 50)

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

MAILING INSTRUCTIONS

Mail only one completed and signed request for bid document per envelope, unless instructed otherwise. Request for bid documents not signed or received after the date and time specified in the request for bid will be rejected.

BID IS: ☒ SEALED ☐ NOT SEALED

Address the envelope containing your response in the following manner:

BID NUMBER –	745-65/68-20-050
BID OPENING DATE/TIME –	June11, 2020 @ 2:00 PM CST
N. D. DEPT. OF TRANSPORTATION	
PROCUREMENT SECTION	
608 E BOULEVARD AVE	
BISMARCK ND 58505-0700	

BIDDERS INSTRUCTIONS

1. **Additional Terms and Conditions.** Additional terms and conditions submitted with a bid response are of no effect unless accepted in writing by the Purchasing Agency. Bids with additional terms and conditions may be rejected as non-responsive. (N.D.A.C. § 4-12-11-06)

2. **Assistance to Bidders with a Disability.** Bidders with a disability and/or language assistance, contact Civil Rights Division, NDDOT, 701-328-2978 or civilrights@nd.gov or TTY 711, as soon as possible so that reasonable accommodations can be made. Additionally, the Request for Reasonable Accommodations form (SFN 60135) can be accessed at the following NDDOT website location: http://www.dot.nd.gov/forms/sfn60135.pdf.

3. **Award.** Award will be made to a responsive, responsible bidder with the lowest price considering conformity with specifications, terms of delivery, quality, and serviceability. NDDOT reserves the right to consider bids varying in minor respects from any specific requirements herein, but judged to meet the intent of this request. Award will be made as follows:

   Split award per item

4. **Award – Tie Bid Preference.** After applying any reciprocal preference, if a tie occurs between two or more bidders with equal bid prices or offerors with identical evaluation scores:
   - Preference must first be given to bids submitted by resident North Dakota vendors.
   - If a tie remains, preference is given to approved vendors on the Bidders List.
   - If a tie still remains, award shall be made in accordance with N.D.A.C. § 4-12-11-05.

5. **Bid Bond.** Waived in this instance: however, bidder(s) failing to enter into a contract with this office, upon notification of award, may be subject to removal from the bidder's list.

6. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 30 days, unless stated otherwise.

7. **Bid Opening.** Due to COVID-19 restrictions in place, **public openings WILL NOT be conducted. The NDDOT Central Office location is closed to the public. Bidders who wish to hand deliver sealed bids to NDDOT MUST contact the Procurement Officer for drop off instruction.**

8. **Bid Summary.** Bid summaries are available when the bid has been awarded. When bids are issued using the State's electronic bidding system, the bid summary will be posted and available for download from: https://www.nd.gov/omb/vendor.

   Bid summaries will be mailed to those bidders who supply a self-addressed, stamped envelope with their bid response. A copy of the bid summary may also be obtained by visiting the NDDOT Procurement Office during normal working hours.

9. **Bidder Checklist.** HAVE YOU REMEMBERED TO:
   - Review all instructions, terms and conditions, and specifications to ensure your bid response complies?
   - Prepare your price in the specified unit of measure, F.O.B. Destination, Freight Prepaid to the delivery location listed on the cover sheet?
   - Indicate whether you can meet the delivery date indicated on the cover sheet?
   - Sign your bid response on the cover sheet?
   - Initial all changes and corrections?
   - Submit any required samples or enclosures, if applicable?
   - Mark the envelope as indicated above?
   - Review and complete all requirements contained in this solicitation to ensure compliance.

10. **Clarifications, Bid Changes and Questions Deadline.** The Procurement Officer is the point of contact. Any irregularities, lack of clarity, requested bid changes and all questions regarding this bid and the procurement process must be addressed to the Procurement Officer referenced on the first page of this document **not later than end of business June 3, 2020.** (Contact information is indicated on cover page). If a bid amendment is required, it will generally be issued after this date.

    The bidder is cautioned that the requirement of this solicitation can be altered only by written amendments and that verbal communications from whatever source are of no effect.

11. **Corrections.** The bidder's authorized representative must initial any corrections and alterations (i.e. erasures, whiteouts, correction tape, etc.) made to the bid response. Those bid responses with corrections and alterations that are not initialed are subject to confirmation by the Procurement Officer.

12. **Definitions.**
    - Bidder - any person or firm submitting a competitive bid in response to a solicitation.
    - Bid summary - a summary of all bid responses received by the NDDOT Procurement Office.
    - Bid response - the executed document submitted by a bidder in response to a solicitation.
    - Contract - a deliberate written agreement between two or more competent persons to perform specific act or acts.
    - Contractor - any person or firm having a contract with a governmental body.
    - Solicitation - the process of notifying prospective bidders that the State wishes to receive bids for furnishing goods or services.

13. **Electronic & Facsimile Bids.** Bid responses are not to be email attached or faxed to the NDDOT. Bid responses email attached or faxed may be rejected as non-responsive. Bids may be faxed to a third party who will put it in a properly-addressed envelope and deliver it to the NDDOT Procurement Office before the date and time specified in the solicitation.

14. **Upload Response Through the State Procurement Online System (SPO Online)**
    Bidders may electronically submit Bid Responses through the State Procurement Online system (SPO Online) by the Bid Response Closing Deadline.

    a. This solicitation is posted on SPO Online at: https://www.nd.gov/omb/vendor.
    b. Click on "Bidding Opportunities." Go to "Recent Solicitations" and find this solicitation.
    c. Use "Upload Response" to upload a maximum of five (5), clearly labeled documents before the deadline for receipt of proposals in the Bid Response closing deadline.
    d. The maximum file size allowed is 50mb per file.
    e. All field entries must be alphanumeric. Dashes and underscores are allowed; however, the system does not accept other special characters such as apostrophe, & symbol, quotation marks, etc.
    f. Bidders will receive an email confirmation from infospo@nd.gov that the upload response was received including the "File Description" for the uploaded files. Review this email to ensure all files were successfully uploaded. If you do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If you do not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at infospo@nd.gov or 701-328-2740.

    Visit https://www.nd.gov/omb/vendor/bidder-resources for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

15. **Freight/F.O.B. Destination.** Freight and transportation charges are to be included in the price of the products, unless otherwise specified in the solicitation. (F.O.B. - Free On Board).

16. **Indemnification.** Bidders must review the attached Risk Management Appendix for indemnification and insurance requirements. The indemnification and insurance provisions are incorporated and made part of this solicitation and the resultant final contract. Objections to any of the provisions of the indemnification and insurance requirements must be made in writing to the attention of the Procurement Officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the Purchasing Agency or Entity in consultation with the North Dakota Risk Management Division. Upon receipt of the Notice of Award, the successful bidder must obtain the required insurance coverage and provide the Procurement Officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the Purchasing Agency or Entity, in consultation with the North Dakota Risk Management Division. A bidder's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

    The attached Equipment Rental Agreement will be incorporated into the contract.

    Bidders must review the attached Equipment Rental Agreement for indemnification and insurance requirements.

    Objections to any provisions must be in writing to the attention of the Procurement Officer by the time and date set for receipt of questions.

17. **Late Bids.** It is the bidder's responsibility to ensure that a bid response is physically deposited with the NDDOT Procurement Office prior to the date and time specified for the opening. Late bids will be rejected, regardless of the degree of lateness, unless the delay is due to the error of the Purchasing Agency and discovered before the selection of the successful bidder.

18. **Minor Informalities.** The State reserves the right to waive minor informalities in bid responses in accordance with N.D.A.C. 4-12-10. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders.

19. **Multiple Bid(s).** Bidders may submit more than one bid response(s) for the item(s) specified in the solicitation. Each bid submitted must comply in all aspects with the bid requirements and these instructions.

20. **Negotiation.** NDDOT reserves the right to negotiate with the successful bidder to ensure the best possible consideration is afforded to all concerned.

21. **New Equipment and Materials**. Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials shall be new and under current production for use in the United States.

22. **Open Records Requests.** Bid responses are exempt records until the date and time of the bid opening. After the bid opening, all bid responses are subject to North Dakota open records laws. Interested parties may contact the Procurement Officer to request information related to this solicitation.

23. **Packaging.** All shipments are to be packaged according to accepted commercial practices to avoid damage in shipment.

24. **Performance Bond.** Successful bidders will not be required to furnish a performance bond; however, failure to perform satisfactorily will result in the immediate termination of the contract(s) and bidders may be subject to removal from the bidder's list.

25. **Preparation of Bid.** Bids will be accepted on NDDOT forms only. If the document is located on the State Procurement Office website, then bidder is to download the document and type or write their responses as indicated by the bid document. Alteration of the bid document may be cause for bid rejection. Bidders are cautioned to examine specifications and all instructions. Failure to do so will be at the bidder's risk.

26. **Pricing.** Unit prices are to be stated in United States currency and based on the unit of measurement specified in the solicitation, F.O.B. Destination, to the NDDOT delivery locations specified herein.

    In the event of mathematical differences between the unit price and extended total, the unit price will prevail.

27. **Protests.** Protests of the solicitation must be received by the Procurement Officer within seven days before the bid closing deadline. Protests of the award or Notice of Intent to Award must be received by the Procurement Officer within seven days after receiving notice of award. Seven calendar days after award or issuance of the Notice of Intent to Award it will be assumed that all interested parties knew or should have known all the facts surrounding the award. Protests must be made in writing to the Procurement Officer and include the basis for the protest. (N.D.C.C. § 54-44.4-12; N.D.A.C. § 4-12-14.)

28. **Rejection.** Bid responses may be rejected if:
    - The bid response is not legible.
    - The bid response is not completed as requested.
    - The bid response is faxed to the procurement office.
    - The bid response is not responsive to the specifications or other requirements of the solicitation.
    - The bid response is received after the time and date specified.
    - The bidder has not met Vendor Registration requirements or is suspended or debarred.
    - The bid document has been altered by the bidder.
    - The bidder is determined to be not responsible (N.D.A.C. 4-12-11-04).

    If all bids are rejected, the Procurement Officer will send written notice to bidders, including the reason all bids were rejected.

29. **Signature.** The bid must be signed manually in ink. The name and title of the person signing the bid response must be typed or printed above the signature. The bid must be signed by **Owner, Partner, Corp. Pres., Vice Pres., or other authorized Corp. Officer** or the bid may be rejected. If signed by other authorized Corp. Officer or representative, please attach a letter signed by the Owner, Partner, Corp. Pres., or Vice Pres. indicating the individual has authority to enter into a contract on behalf of the company (or a Power of Attorney).

30. **Specifications, Brand Name or Equivalent**. Unless otherwise indicated in the detailed specifications of this solicitation, the use of a specific brand name or make/model is for illustrative purposes only, and the State will consider equivalent products. If a commodity or service put forth by a bidder is rejected as not being equivalent, the Procurement Officer will notify the bidder of the rejection.

31. **Specifications, Compliance.** All Bid Responses must comply with the stated specifications, and the successful Bidder will be held responsible. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the stated specifications must contact the Procurement Officer by the deadline for questions or at least seven days before the Bid Response closing deadline, so the Procurement Officer can determine whether the specifications need to be amended.

32. **Supplemental Terms and Conditions.** Bids including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with any conditions contained in this ITB or that diminish the State's rights will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award.

    After award of contract:
    a) If a conflict arises between a supplemental term or condition included in the bid and a term or condition of the ITB, the term or condition of the ITB will prevail, and,
    b) If the State's rights would be diminished as a result of application of a supplemental term or condition included in the bid, the supplemental term or condition will be considered null and void.

    Changes, modifications, additions, or alterations to the bid document could be cause for rejection of the submitted bid at the sole discretion of the NDDOT. Contact the Procurement Officer in writing prior to the deadline for clarifications.

33. **Taxes.** The State does not pay sales tax or federal excise tax. The state sales tax exemption number is E-2001. The federal tax-free transaction number is 45-70-0010K. The Purchasing Agency will furnish a tax exempt certificate upon request.

34. **Vendor Registration.** Bids will be accepted from bidders who are not currently Approved Bidders for the State of North Dakota; however, the successful bidder may be required to become approved prior to award, in accordance with N.D.C.C. 54-44.4-09. To become an Approved Bidder, you must: 1) register with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidder List Application to the ND State Procurement Office. Registration instructions and forms are available on-line at: www.nd.gov/spo/vendor. Contact the ND State Procurement Office at 701-328-2683 or infospo@nd.gov for assistance.

    Placement on the bidders list does not guarantee a bidder will receive notice of every formal solicitation. Bidders must maintain current information by submitting a Notice of Change form to the State Procurement Office (Fax 701-328-1615). Visit the website for forms: www.nd.gov/spo/vendor.

35. **Withdrawal or changes to a bid response prior to the bid opening date and time.** A bidder may withdraw or make a change to his bid response prior to the bid opening date and time. The request to make a change or withdraw must be in writing by a representative of the firm. The request to withdraw or change must be signed by the bidder or his designated representatives.

36. **Withdrawals after the bid opening date and time.** After the bid opening, no changes may be made to the bid response. The bidder may make a written request to withdraw the bid response, subject to approval by the NDDOT Procurement Office. Vendors continually withdrawing bids after the bid opening may be removed from the Vendor Database.

GENERAL CONTRACT TERMS AND CONDITIONS

1. **Affirmative Action.** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of individuals with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.

2. **Applicable Law and Venue.** Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

3. **Billing and Payment Procedures.** Purchase orders will be issued by NDDOT Districts.

    Invoices are to be submitted as indicated on the purchase orders unless otherwise instructed. Failure to submit correct invoices to the appropriate NDDOT office may delay contractor payment.

    Payment will normally be made within thirty days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoice and payment inquiries must be directed to the purchasing agency.

4. **Binding Contract.** The acceptance of a bid response in writing by the purchasing agency constitutes a contract between the bidder and the State. Written acceptance from the purchasing agency may be made by execution of a contract, purchase order, or order using a state purchasing card. Any oral agreement or arrangement by a bidder with a State employee or purchasing agency will have no force or effect unless reduced to writing. This contract is not effective until fully executed by both parties.

5. **Compliance with Laws.** The contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations and policies, including those relating to nondiscrimination, affirmative action, accessibility and civil rights including Title VI of the Civil Rights Act of 1964. The contractor agrees to file all required reports on time, to make required payroll deductions, and to pay all taxes and premiums owed on time, including sales and use taxes and unemployment compensation and workers' compensation premiums. The contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

6. **Contract Amendments, Waivers.** After a binding contract has been entered into, no changes (i.e. additions, substitutions, subcontracting or a price adjustment) may be made, unless prior approval has been obtained

from the purchasing agency and Procurement Officer.

The terms of this contract shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

7. **Contract Management.** The day to day activities of the rental will be dealt with on the district level between district personnel and the awarded contractor. Any changes in the contract must be approved by the Procurement Officer.

8. **Contract Volume.** The quantities to be rented are unknown. NDDOT reserves the right to vary actual quantities throughout the term of the contract.

9. **Service Locations.** Service and repair are critical. Bidder must identify their nearest service locations by districts and describe their ability to keep their equipment running during the term of the rental with minimal down time.

10. **Contract Price Adjustment.** The Contract Unit Prices shall be firm for the eight (8) months of the contract period. On an annual basis, all unit prices may be subject to price adjustment (increase / decrease). The request for a price adjustment shall be submitted to the Procurement Office at least forty five (45) days before the scheduled contract expiration date and must include justification for the proposed change. The Procurement Officer will respond as follows:

    1. The request may be granted,
    2. The contract may be cancelled and solicitation may be re-advertised, or
    3. The contract may be continued without change.

    If a price increase is approved by the NDDOT, the date the increase will be effective along with the new unit prices will be included in an amendment document. Approval of any price increase renews the twelve month firm price period.

    The State shall also be advised of and receive the benefit of any price decrease. The same notification and review process will apply to a decrease in cost.

11. **Contract Term and Renewal Option.** The NDDOT will enter into a contract with an effective date **beginning June 19, 2020, and ending January 31, 2021**, inclusive. This contract may be renewed upon satisfactory completion of the initial contract term. The NDDOT reserves the right to execute up to two options to renew this contract for a period of twelve (12) months each, not to exceed thirty-two (32) months total. Renewals will be documented by amendment.

    The NDDOT reserves the right to renegotiate price and terms provided that such negotiated price and terms fall within the original scope of work for this bid. Negotiations may be conducted annually or at such times that additional and unexpected services falling within the scope of the contract may occur. Such changes will be documented by amendment to the contract.

12. **Contract Termination.**

    a. **Termination without Cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.

    b. **Termination for Lack of Funding or Authority.** The State may terminate this contract effective upon delivery of written notice to the contractor, or on any later date stated in the notice, under any of the following conditions:
        i. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate

a reduction in funds.

ii. If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

iii. If any license or certificate required by law or regulation to be held by the contractor to provide the services required by the contract is for any reason denied, revoked or not renewed.

Any such termination of this contract under (i), (ii), or (iii), above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

c. **Termination for Cause.** The State by written notice to the contractor may terminate the whole or any part of this contract:

i. If the contractor fails to provide services required by this contract within the time specified herein or any extension thereof; or

ii. If the contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms and after receipt of written notice from the State, fails to correct such failures within ten days or such longer period as NDDOT may authorize.

iii. The rights and remedies of the State provided in the above clause related to defaults by the contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

d. **Termination, Deliveries.** If the contract is terminated for any reason, the contractor is responsible for delivery of all commodities and services ordered prior to the termination, unless those orders had been canceled by the Purchasing Agency or Entity.

13. **Equipment Rental Agreement.** Attached is an example of NDDOT's Equipment Rental Agreement which will serve as the rental agreement for the Lessor and the Lessee. Suppliers' rental agreements will not apply to this rental. Where the bid document and the ERA conflict, the bid specifications will prevail.

    Objections to any of the provisions must be in writing to the attention of the Procurement Officer by the time and date set for receipt of questions.

    After the contract has been awarded and as soon as the required insurance information is available; ERA(s) will be provided to the Lessor(s), to be signed and returned to the NDDOT.

14. **Inspection and Investigations.** The State reserves the right to conduct inspections and investigations related to the bidder and the offered commodities or services, including but not limited to the firm, personnel, qualifications, and the commodities and services offered to make determinations regarding compliance with the bid requirements and responsibility of the bidder. All material and workmanship are subject to inspection and testing by the State at the point of manufacturer, place of storage, or upon receipt. The State reserves the right to reject any commodities or services and terminate the contract if the Contractor fails to comply with the specifications, terms and conditions, or the seller's express or implied warranties. Rejected commodities will be removed at the Contractor's expense. Failure to satisfactorily perform may result in suspension or debarment from the Bidders List.

15. **Materials and Workmanship.** All material and workmanship shall be subject to inspection and testing at the discretion of the purchasing agency either at the point of manufacturer, place of storage, or upon receipt.

16. **Receiving.** Deliveries must arrive at the designated destination(s) during normal business hours unless other shipping/receiving instructions are issued by NDDOT personnel. The contractor shall contact the NDDOT to schedule delivery dates and times at least 24 hours in advance of delivery.

    All NDDOT offices will be closed in recognition of State holidays. Any day declared a holiday by the President or Governor will also be recognized by office closure.

17. **Subcontracts, Assignment.** The contractor shall not subcontract, assign or transfer the contractor's interests or duties under this contract without express written consent of the purchasing agency. However, the contractor

may enter into subcontracts provided that any such subcontractor acknowledges the binding nature of this contract and incorporates this contract, including any attachments. The contractor is solely responsible for the performance of any subcontractor. The contractor shall not have the authority to contract for or incur obligations on behalf of the State.

18. **Successors in Interest.** The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

19. **Service Representative.** The contractor must provide a dedicated customer service representative to provide support for this contract. The contractor shall notify the Procurement Officer in the event the representative is changed.

NAME: Jackie Strom - Business Manager
(Name of person servicing this contract)

BUSINESS NAME: Midstates Equipment & Supply, Inc.

MAILING ADDRESS: 606 County Road 1

CITY & STATE: Mountain Lake, MN ZIP CODE: 56159

PHONE NUMBER: (507) 427-3807 TOLL FREE: (800) 929-3807

FAX NUMBER: (507) 427-3709 E-MAIL: midstates@midstatesequipment.net

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIFICATIONS
FOR
MASTIC PRODUCTS & EQUIPMENT RENTALS

Bids shall be for the following products and equipment or approved equal. Any bid that is for a product or equipment not listed is required to submit literature that verifies the product or equipment is equal. A field demonstration of an equal product or equipment is also required to be performed before approval.

Items 1, 2, 3, & 4
Fibrecrete Preservation Technologies or Approved Equal - Concrete Repair Products
These items shall be Fibrecrete Preservation Technologies products or approved equal. Item 1 shall be packaged in individual wrapped structural blocks which melt when placed in a mastic mixer (such as Polyskin™ or an approved equal). The blocks shall fit through the vat opening of the mastic mixers listed in the Mastic Mixer & Wheeled Hot Mastic Applicator Rental or equivalent mastic mixers. Items 2 and 3 shall be bagged when delivered. Item 4 shall be available in a 5 gallon pail or 55 gallon drum.

Item 1: Fibrecrete (Grey Color) or Approved Equal
Item 2: Bulking Stone or Approved Equal
Item 3: Topping Stone or Approved Equal
Item 4: Primer or Approved Equal

Item 5
Fibrecrete Preservation Technologies or Approved Equal - Asphalt Pavement Repair Product
This item shall be a Fibrecrete Preservation Technologies product or approved equal. Item 5 shall be packaged in individual wrapped structural blocks which melt when placed in a mastic mixer (such as Polyskin™ or an approved equal). The blocks shall fit through the vat opening of the mastic mixers listed in the Mastic Mixer & Wheeled Hot Mastic Applicator Rental or equivalent mastic mixers.

Item 5: Samiscreed (Black Color) or Approved Equal

Item 6
Crafco or Approved Equal - Asphalt Pavement Repair Product
This item shall be a Crafco product or approved equal. Item 6 shall be packaged in individual wrapped structural blocks which melt when placed in a mastic mixer (such as Polyskin™ or an approved equal). The blocks shall fit through the vat opening of the mastic mixers listed in the Mastic Mixer & Wheeled Hot Mastic Applicator Rental or equivalent mastic mixers.

Item 6: Mastic One or Approved Equal

Items 7, 8, & 9
Maxwell Products or Approved Equal - Asphalt Pavement Repair Products
These items shall be Maxwell Products or approved equal. Items 7 and 8 shall be packaged in individual wrapped structural blocks which melt when placed in a mastic mixer (such as Polyskin™ or an approved equal). The blocks shall fit through the vat opening of the mastic mixers listed in the Mastic Mixer & Wheeled Hot Mastic Applicator Rental or equivalent mastic mixers.

Item 7: Gap Mastic Mod 201 or Approved Equal
Item 8: Gap Patch 330 or Approved Equal
Item 9: Gap Primer or Approved Equal

Items 10, 11, 12, 13, & 14
Mastic Mixer & Wheeled Hot Mastic Applicator Rental
The bid price for the rental of mastic mixers shall include the use of the mastic mixer, necessary mastic application tools, and delivery and pickup of the mastic mixer and tools to and from any NDDOT District Headquarters. An example of necessary mastic application tools would be at least two flat irons, a 10" to 18" box screed, and a poker. Locations of NDDOT District Headquarters are listed below.

Mastic mixer serial numbers shall be provided to the NDDOT as soon as they become available to allow for adequate time for insurance processing. NDDOT will carry physical damage insurance on the mastic mixer. NDDOT will accept responsibility for any breakage due to negligence done by them. Mastic mixers will have normal wear and tear from use. The lessor and a NDDOT representative must complete the attached Mastic Mixer Condition Form at the time of both delivery and pickup.

NDDOT personnel will be responsible for daily maintenance, checking fluids, and keeping the mastic mixer clean. Lessor, or an authorized representative, shall provide all oil and filters for routine maintenance at no charge to the NDDOT.

Lessor, or an authorized representative, shall at the time of delivery be available to make recommendations to prevent damage to the mastic mixer. Lessor, or an authorized representative, shall also at the time of delivery provide familiarization training to ensure efficient operation, identify daily maintenance items, lessor's requirements on mastic mixer cleanliness, and basic operation to prevent damage to the mastic mixer.

Item 10: Cimline C1 150 Gallon Mastic Mixer or Approved Equal
Item 11: Crafco 200 Gallon Mastic Mixer or Approved Equal
Item 12: Marathon 250 Gallon Mastic Mixer or Approved Equal
Item 13: Marathon 350 Gallon Mastic Mixer or Approved Equal
Item 14: Wheeled Hot Mastic Applicator

NDDOT District Headquarters

Bismarck District
218 Airport Road
Bismarck, ND 58504-6003

Devils Lake District
316 Sixth Street SE
Devils Lake, ND 58301-3628

Dickinson District
1700 Third Avenue West, Suite 101
Dickinson, ND 58601-3009

Fargo District
503 38th Street South
Fargo, ND 58103-1198

Grand Forks District
1951 N Washington St
Grand Forks, ND 58203-1420

Minot District
1305 Highway 2 Bypass East
Minot, ND 58701-7922

Valley City District
1524 Eighth Avenue SW
Valley City, ND 58072-4200

Williston District
605 Dakota Parkway West
Williston, ND 58802-0698

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
BID SHEET
FOR
MASTIC PRODUCTS & EQUIPMENT RENTALS

Fibrecrete Preservation Technologies or Approved Equal - Concrete Repair Products

Item Number	Product	Unit	Unit Price
1a	Fibrecrete (Grey Color) or Approved Equal - Product Only	Pound	$ No Bid
2	Bulking Stone or Approved Equal	Pound	$ No Bid
3	Topping Stone or Approved Equal	Pound	$ No Bid
4	Primer or Approved Equal	Gallon	$ No Bid
1b*	Fibrecrete (Grey Color) or Approved Equal - Includes Application Equipment	Pound	$ No Bid
Shipping		**Unit**	**Unit Price**
FOB Any NDDOT District		Truckload	$ No Bid
Additional NDDOT District Drops Per Truckload		Drop	$ No Bid
Maximum Number NDDOT District Drops Per Truckload:			
Maximum Truckload Capacity (Pounds):			

Fibrecrete Preservation Technologies or Approved Equal - Asphalt Pavement Repair Product

Item Number	Product	Unit	Unit Price
5a	Samiscreed (Black Color) or Approved Equal - Product Only	Pound	$ No Bid
5b*	Samiscreed (Black Color) or Approved Equal - Includes Application Equipment	Pound	$ No Bid
Shipping		**Unit**	**Unit Price**
FOB Any NDDOT District		Truckload	$ No Bid
Additional NDDOT District Drops Per Truckload		Drop	$ No Bid
Maximum Number NDDOT District Drops Per Truckload:			
Maximum Truckload Capacity (Pounds):			

Crafco or Approved Equal - Asphalt Pavement Repair Product

Item Number	Product	Unit	Unit Price
6a	Mastic One or Approved Equal - Product Only	Pound	$ No Bid
6b*	Mastic One or Approved Equal - Includes Application Equipment	Pound	$ No Bid
Shipping		**Unit**	**Unit Price**
FOB Any NDDOT District		Truckload	$ No Bid
Additional NDDOT District Drops Per Truckload		Drop	$ No Bid
Maximum Number NDDOT District Drops Per Truckload:			
Maximum Truckload Capacity (Pounds):			

Maxwell Products or Approved Equal - Asphalt Pavement Repair Products

Item Number	Product	Unit	Unit Price
7a	Gap Mastic Mod 201 or Approved Equal - Product Only	Pound	$ 0.60/lb (truckload pricing)
8a	Gap Patch 330 or Approved Equal - Product Only	Pound	$ 0.53/lb (truckload pricing)
9	Gap Primer or Approved Equal (55 gallon Drum)	Gallon	$ 40.95/gallon
7b*	Gap Mastic Mod 201 or Approved Equal - Includes Application Equipment	Pound	$ No Bid
8b*	Gap Patch 330 or Approved Equal - Includes Application Equipment	Pound	$ No Bid

Shipping	Unit	Unit Price
FOB Any NDDOT District	Truckload	$ 0
Additional NDDOT District Drops Per Truckload	Drop	$ 150.00/drop

Maximum Number NDDOT District Drops Per Truckload: 3 ($150.00/stop x 3 = $450.00)

Maximum Truckload Capacity (Pounds): estimated 46,500 lbs/truckload

Mastic Mixer & Wheeled Hot Mastic Applicator Rental

Item Number	Rental Equipment	Rental Period	Rental Period Price
10	Cimline C1 150 Gallon Mastic Mixer or Approved Equal	Month	$ No Bid
11	Crafco 200 Gallon Mastic Mixer or Approved Equal	Month	$ No Bid
12	Marathon 250 Gallon Mastic Mixer or Approved Equal	Month	$ 6,995.00/month
13	Marathon 350 Gallon Mastic Mixer or Approved Equal	Month	$ 7,695.00/month
14	Wheeled Hot Mastic Applicator	Month	$ No Bid

Available Mastic Application Tools:

Included with Rental:
1 - 6" Box
1 - 10" Box
1 - 18" Box
1 - 24" Box
4 - Flat Irons
We also supply oil, grease, and filters at no charge. Grease daily and change oil and filters every 100 hours.

*****If our Marathon melters are rented we require that Maxwell Products, purchased from Midstates Equipment & Supply, Inc., only be used in our rental melters.*****

*If a mastic mixer and tools will be included as part of purchasing the product, enter a unit price in this row for the product plus use, delivery, and pickup of a mastic mixer and tools. A unit price for only purchasing product is still needed in all other rows with an item number. Do not enter a unit price here if it is not intended for a mastic mixer and tools to be provided as part of purchasing the product. A separate bid on mastic mixer and tool rentals can be made for items in the Mastic Mixer & Wheeled Hot Mastic Applicator Rental.

SAMPLE DOCUMENT

EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation
Financial Management Division, Rm. 22
608 East Boulevard Avenue
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
		ND DEPARTMENT OF TRANSPORTATION
ADDRESS		608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE		BISMARCK ND 58505-0700
CONTACT		MARILYN K. LANGEHAUG
PHONE NO		701-328-4466

DATE			RENTAL TERM	BEGINS ON	ENDS ON
RENTAL RATES *			TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)	$		MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
WEEK (44HRS.)	$				
MONTH (176 HRS.)	$				
EXCESS HOURS BILLED AT	$				
* RENTAL RATES ARE BASED ON HOUR METER USAGE					
EQUIPMENT WILL BE USED AT					LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION		UNIT VALUE

BILL TO INFORMATION					
NAME					
ADDRESS					
CITY		STATE		ZIP	
CONTACT		PHONE NO			

TERMS AND CONDITIONS

AGREEMENT:
Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

AMENDMENTS:
The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

TRANSPORTATION CHARGES:
Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

OPERATION OF EQUIPMENT:
Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

REPAIRS:
The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

WARRANTY:
Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:
Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

LIABILITY:
Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

INSURANCE:
Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of $250,000 per person and $1,000,000 per occurrence.

2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
4) Failure to provide insurance as required in this agreement is a material breach of contract.

TAXES:
The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is
45-70-0010K. the federal employer identification number is 45-6002432.

INSPECTION:
Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

TERMINATION:

a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 days notice, in writing or delivered by certified mail or in person.

b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:

1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or(3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

c. Either party, by written notice, may terminate the whole or any part of this agreement:

1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

LESSEE AGREES TO:

1 Notify Lessor of any change in agreed location.
2 Not sublease, rent or loan above equipment.
3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
5 Pay a clean up charge for excessively dirty equipment.

PURCHASE ORDER:
A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

RENTAL PAYMENTS:
Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

LATE PAYMENTS:
Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

EXTENDED RENTAL PERIOD:
Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

REQUEST FOR BID:
If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

GOVERNING LAW AND VENUE:
Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

MERGER AND WAIVER:
This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

LESSOR (Vendor) TO BE SIGNED BY **OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT.** OR **OTHER AUTHORIZED CORPORATE OFFICER** OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT) :	TITLE :
SIGNATURE :	DATE :

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY :	DATE :
AGENCY DIRECTOR SIGNATURE :	DATE:

SAMPLE DOCUMENT

If a mastic mixer and tools will be included as part of purchasing the product the lessor and a NDDOT representative must complete the following Mastic Mixer Condition Form at the time of both delivery and pickup.

MASTIC MIXER CONDITION FORM

Model: _____

Serial Number: _____

Lessor: _____

NDDOT District: _____

Existing Damage or Issues:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Delivery Date: _____

Lessor Signature: _____

NDDOT Signature: _____

New Damage or Issues:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Pickup Date: _____

Lessor Signature: _____

NDDOT Signature: _____

Risk Management Appendix

Supply Contracts with Private Individuals, Companies, Corporations, Etc.:

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Contractor, or Contractor's delivery agent, shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:

1) **Commercial general liability** and **automobile liability** insurance.
2) **Workers compensation** insurance.

Contractor shall produce certificates of insurance or copies of insurance policies upon request by the State.

When a portion of a Contract is sublet, the Contractor shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Contractor and the State as a result of work undertaken by the Subcontractor. In addition, the Contractor shall ensure that any and all parties performing work under the Contract are covered by public liability insurance as outlined above. All Subcontractors performing work under the Contract are required to maintain the same scope of insurance required of the Contractor. The Contractor shall be held responsible for ensuring compliance with those requirements by all Subcontractors.

RM Consulted 2007
Revised 6-07

NDDOT
North Dakota
Department of Transportation

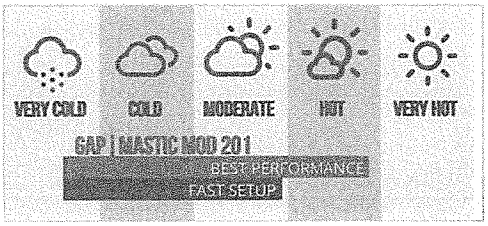
MAXWELL PRODUCTS

GAP | MASTIC MOD 201

DATA SHEET

MAXWELL PRODUCTS, INC.
SALT LAKE CITY, UT
800.266.2090

GAP-Mastic is a hot-applied polymer modified asphalt mixed with engineered aggregates and modifiers designed to fill wide cracks and defects to prevent water infiltration and restore ride quality. It is designed as a permanent repair solution for wide thermal cracks, fatigue cracking, rutting and depressed broken-up areas. It is also recommended for use around solid structures in flexible pavements like manholes, gutters, and drains.



SPECIFICATION

BINDER	
TEST METHOD:	RESULT:
CONE PENETRATION : 77°F (25°C), 150G, 5S : ASTM D5329	70 DMM MAX
CONE PENETRATION : 39°F (4°C), 200G, 60S : ASTM D5329	70 DMM MAX
SOFTENING POINT : ASTM D36	200°F (93°C) MIN
FLEXIBILITY : 1 IN (25MM) MANDREL, 90 DEG BEND, 2S : ASTM D3111	PASS -15°F (-26°C)
TENSILE ADHESION : 77°F (25°C) : ASTM D5329	600% MIN
RESILIENCE : 77°F (25°C) : ASTM D5329	35% MIN
DENSITY : 77°F (25°C) : ASTM D70	12.5 LBS/GAL

AGGREGATE	
TEST METHOD:	RESULT:
SIEVE ANALYSIS : NO. 4 SIEVE, PASSING : MANUFACTURER'S CERTIFICATION	90% MIN
SIEVE ANALYSIS : NO. 16 SIEVE, PASSING : MANUFACTURER'S CERTIFICATION	10% MAX

ASTM D8260 TYPE II	
TEST METHOD:	RESULT:
MASTIC RESILIENCE : ASTM D8260	50% MIN
EFFECTS OF RAPID DEFORMATION : 8 N-M, 0°F (-18°C), 3 SPECIMENS : ASTM D2794	PASS
CRACK BRIDGING : 3 CYCLES, 0°F (-18°C) : ASTM C1305	PASS
MASTIC STABILITY : 140°F (60°C) : ASTM D8260	40.0 MM MAX

MEETS REQUIREMENTS OF: ASTM D8260, TYPE 2

APPLICATION INSTRUCTIONS

Read and follow application instructions before use. This product must be heated using indirect heating methods, either a double boiler or hot oil circulating kettle. Equipment must be capable of maintaining constant agitation to the material to keep aggregate suspended evenly.
Maximum safe heating temperature: 400°F (204°C).
Recommended application temperature: 370°F (188°C).

WARRANTY

Maxwell Products, Inc. warrants that our products will be free from defects in material or workmanship and will conform to our published specifications at the time of shipment. Due to the many differing procedures used in preparing and installing materials, and differing surfaces on which our products may be applied, Maxwell Products assumes no liability for the failure of our products due to improper surface preparation, surface composition, installation, equipment failure or operator errors. In the event our products fail to conform to our published specifications at the time of shipment, we will, at our expense and sole option, replace our defective product or give you a full or partial refund of the purchase price from Maxwell Products. Claims must be made within three (3) months of the date of purchase. MAXWELL PRODUCTS HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

Generated June 8, 2020.
Please visit http://maxwellproducts.com for the current version of this document.

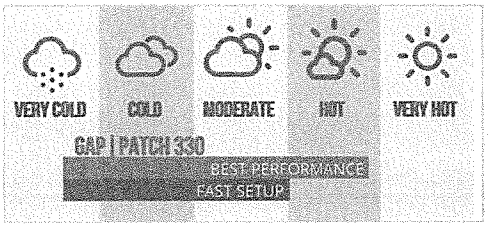
MAXWELL PRODUCTS

GAP | PATCH 330

DATA SHEET

MAXWELL PRODUCTS, INC.
SALT LAKE CITY, UT
800.266.2090

GAP-Patch 330 is a robust, hot-applied, permanent repair for potholes in highways and municipal streets. Able to be applied in winter weather under imperfect conditions, it is ideally suited for concrete and asphalt pavement repairs of at least two inches deep and between one half square foot and 10 square feet in area. Patch material is hot-applied and formulated with flexible, polymer-modified asphalt (designed to accommodate ground movement) and durable, engineered aggregates (capable of bearing heavy loads and traffic).



SPECIFICATION

BINDER	
TEST METHOD:	**RESULT:**
CONE PENETRATION : 77°F (25°C), 150G, 5S : ASTM D5329	70 DMM MAX
SOFTENING POINT : ASTM D36	200°F (93°C) MIN
FLEXIBILITY : 1 IN (25MM) MANDREL, 90 DEG BEND, 2S : ASTM D3111	PASS -15°F (-26°C)
ASPHALT COMPATIBILITY : 140°F (60°C), 72 HR : ASTM D5329	PASS

AGGREGATE	
TEST METHOD:	**RESULT:**
AGGREGATE PREPARATION	WASHED, CLEAN & DRIED
SIEVE ANALYSIS : 3/4" SIEVE, PASSING : MANUFACTURER'S CERTIFICATION	95% MIN
SIEVE ANALYSIS : NO. 4 SIEVE, PASSING : MANUFACTURER'S CERTIFICATION	15% MAX
SIEVE ANALYSIS : NO. 16 SIEVE, PASSING : MANUFACTURER'S CERTIFICATION	3% MAX
FRACTURED FACE : 2 OR MORE FACES : MANUFACTURER'S CERTIFICATION	85% MIN

APPLICATION INSTRUCTIONS

Read and follow application instructions before use. This product must be indirectly heated using a oil jacketed kettle. Material must be constantly agitated to keep aggregate evenly suspended. Remove standing water and debris from the pothole and reduce moisture content in the top 2 inches of the repair to 12% or less.
Maximum safe heating temperature: 390°F (204°C).
Recommended application temperature: 320°F (193°C).

WARRANTY

Maxwell Products, Inc. warrants that our products will be free from defects in material or workmanship and will conform to our published specifications at the time of shipment. Due to the many differing procedures used in preparing and installing materials, and differing surfaces on which our products may be applied, Maxwell Products assumes no liability for the failure of our products due to improper surface preparation, surface composition, installation, equipment failure or operator errors. In the event our products fail to conform to our published specifications at the time of shipment, we will, at our expense and sole option, replace our defective product or give you a full or partial refund of the purchase price from Maxwell Products. Claims must be made within three (3) months of the date of purchase. MAXWELL PRODUCTS HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

Generated June 8, 2020.
Please visit http://maxwellproducts.com for the current version of this document.

Amendment No. 1

To: ALL INTERESTED SUPPLIERS

From: North Dakota Department of Transportation

Date: June 5, 2020

Re: Amendment to ITB 745-65/68-20-050, Mastic Products and Equipment Rentals

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Bidders Instruction #10 of the solicitation established a deadline for receipt of questions. The responses to these questions are provided as addenda to the solicitation. When necessary, the solicitation has been amended.

Question 1:

Crafco distributors offer an alternative product to the Fiber Crete product spelled out in the document. Our Product is called Techcrete it comes in two stone sizes (premixed) in meltable bags not blocks, has primer separate cost and dressing stone again at a separate cost. This product is/has been used on SDDOT projects and is a bid item on the SDDOT bituminous materials maintenance contract. It's listed as "Grey Mastic" on their bid document.

Answer:

Bidders are welcome to submit a bid for an alternative product. The approval process will take place after a bid has been submitted for a product not listed in the specifications. The technical data should be included in the bid documentation that is submitted.

Question 2:

Our rental equipment can only be used with materials bought from our company, it's our company policy. We will put in a bid price for materials only and there will have to be noted our company policy of using our company owned equipment with materials bought from our company on our response for materials and equipment.

Answer:

A price for equipment rental can be submitted for this situation. A note will need to be made in their bid submittal that the equipment is only available when certain products are purchased through them. This information will be communicated to the districts if the equipment rental is awarded.

The following changes have been made:

BIDDERS ARE INSTRUCTED TO ADD: On page 12 of 17, Rental Equipment items 10-14, Mastic Mixer & Wheeled Hot Mastic Applicator Rental:
The Invitation to Bid information that is received by the NDDOT will be used to create a vendor pool for equipment rental. The NDDOT will base contractor selection on the low bid with available rental selection at the time needed. This means the low bid per rental period will not always be the successful contractor.

If renting equipment do you require NDDOT to use only your materials in that equipment. _x_YES ____NO

If lessor requires that only their product be used in the rental equipment, NDDOT will not purchase the product from the low bid for materials. If lessor only allows their product to be used, low bidder determination will be decided on cost of rental plus cost of material.

The bid is hereby amended.

Vendors are instructed to acknowledge receipt of and compliance with this amendment by signing below and returning this acknowledgement with your bid or proposal.

Any questions regarding this amendment must be submitted in writing to the undersigned Procurement Officer.

Sean Lackner, Procurement Officer
PHONE: 701-328-2571
E-MAIL: selackner@nd.gov

By my signature below, I hereby acknowledge receipt of and compliance with this amendment to the above referenced solicitation.

COMPANY NAME Midstates Equipment & Supply, Inc.	
PRINTED NAME OF BIDDER OR OFFEROR and TITLE Bradley J. Bargen - President	
SIGNATURE Bradley J. Bargen	DATE June 8, 2020

Amendment No. 2

To: ALL INTERESTED SUPPLIERS

From North Dakota Department of Transportation

Date: June 9, 2020

Re: Amendment to ITB 745-65/68-20-050, Mastic Products and Equipment Rentals

Bidders Instruction #10 of the solicitation established a deadline for receipt of questions. The responses to these questions are provided as addenda to the solicitation. When necessary, the solicitation has been amended.

Question 1:
Our gray material is packaged in 50 lb. meltable bags. Our SamiScreed is packaged in meltable bags also. We would like that language change.

Answer:
Bags will also be an acceptable form of packaging for items 1, 5, 6, 7, and 8. The mastic products may be packaged in either bags or wrapped structural blocks. Both the bags and wrapped structural blocks must melt when placed in a mastic mixer and fit into the vat opening of the mastic mixers listed in the Mastic Mixer & Wheeled Hot Mastic Applicator Rental or equivalent mastic mixers.

The bid is hereby amended.

Vendors are instructed to acknowledge receipt of and compliance with this amendment by signing below and returning this acknowledgement with your bid or proposal.

Any questions regarding this amendment must be submitted in writing to the undersigned Procurement Officer.

Sean Lackner, Procurement Officer
PHONE: 701-328-2571
E-MAIL: selackner@nd.gov

By my signature below, I hereby acknowledge receipt of and compliance with this amendment to the above referenced solicitation

COMPANY NAME Midstates Equipment & Supply, Inc

PRINTED NAME OF BIDDER OR OFFEROR
Bradley J. Bargen - President

DATE
June 9, 2020

North Dakota Department of Transportation

AMENDMENT TO CONTRACT NO. 50200608

Project No. Mastic Products and Equipment Rentals

THIS AMENDMENT to the above-referenced contract is entered into by and between the State of North Dakota, acting through its Director of Transportation, hereinafter known as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Midstate Equipment & Supply, Inc, hereinafter known as the Contractor, whose address is 606 County Road 1, Mountain Lake, MN 56159.

WHEREAS, the parties entered into a contract on 07/06/2020; and

WHEREAS, the contractor and the NDDOT have agreed to add Gap Mastic Mod 202 to the contract; and

NOW THEREFORE, the Contractor and NDDOT agree that the contract will include Gap Mastic Mod 202 at the price of $0.605/lb for full semi loads.

All other terms and conditions of the above-referenced contract are incorporated herein by reference and remain in full force and effect.

EXECUTED the date last below signed.

WITNESS:

Jacquelyn Strom
NAME (TYPE OR PRINT)

Jacquelyn Strom
SIGNATURE

To be signed by **Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer.** (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

CONTRACTOR:

Midstates Equipment & Supply, Inc.
COMPANY NAME

Bradley J. Bargen
OFFICER'S NAME (TYPE OR PRINT)

Bradley J. Bargen
SIGNATURE

President
TITLE

7-8-2020
DATE

WITNESS:

Sondra Goebel
NAME (TYPE OR PRINT)

Sondra Goebel
SIGNATURE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Sam for RONALD J. HENKE
DIRECTOR (TYPE OR PRINT)

SIGNATURE

7/16/2020
DATE

APPROVED as to substance by:

Brad Darr
DIVISION DIRECTOR (TYPE OR PRINT)

Brad Darr
SIGNATURE

7-9-20
DATE

CLA 52494 (Div. 06)
L.D. Approved 5-19-00; 5-03

APPROVED as to execution this
16th day of July 2020
ATTORNEY GENERAL
By
SPECIAL ASST. ATTORNEY GENERAL

NDDOT
North Dakota
Department of Transportation