North Dakota Department of Transportation

INVITATION TO BID **NDDOT Contract #** 50140184

Bid Number: 745-10-14-050	Bid Opening Date & Time: 03/11/2014 02:00 PM
Items: Emulsified Asphalt, Minimac	Buyer: ~~Marilyn Langehaug~~ Vanessa Brosten
Bid Mailing Address: 608 East Boulevard Avenue	Telephone Number: 701-328-4466
City, State, Zip: Bismarck, ND 58505-0700	Email: ~~mlangehaug@nd.gov~~ vbrosten@nd.gov
Contract Period: 04/01/2014 TO 03/31/2015	Date Prepared: 02/07/2014

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 (NDOT) 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
McAsphalt Industries Ltd.	385 Saffley Road, Winnipeg, MB

(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 Civil Rights Appendix, both 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: McAsphalt Industries Ltd.		
Mailing Address: 385 Saffley Rodd, Winnipeg, MB, R2J0R7		
Telephone Number: 204-233-1424	Fax Number: 204-233-8690	E-mail Address: mwise@mcasphalt.com

Ron Vertz VP Marketing
Name & Title (Type or Print)

Signature

Feb 14/14
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: Grant Levi		Date: 3/25/14
Recommended for approval: Brad Dan	Date: 3-20-14	Approximate contract amount: $118,794.00

NDDOT North Dakota Department of Transportation

APPROVED as to execution this 24th day of March 2014
ATTORNEY GENERAL
By SPECIAL ASST. ATTORNEY GENERAL

CMS

CLA 7480 (Div. 50)

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 - 745-10-14-050
BID OPENING DATE/TIME - March 11, 2014; 2:00 p.m.
N. D. DEPT. OF TRANSPORTATION
PROCUREMENT SECTION
608 E BOULEVARD AVE
BISMARCK ND 58505-0700

BIDDERS INSTRUCTIONS

1. **Acceptance/Rejection/Waiver.** The state of North Dakota reserves the right to accept or reject any or all bids and to waive minor irregularities or technicalities, provided such waiver does not substantially change the offer or provide a competitive advantage to any vendor, in the judgment of the state.

2. **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.

3. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to the deadline for receipt of bids so that reasonable accommodations can be made.

4. **Alterations and/or Corrections.** The person signing the bid response must initial any or all manual alterations and/or corrections to the bid response. Those bid responses with alterations and/or corrections that are not initialed may be rejected.

5. **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.

Contracts are not awarded at the bid opening. Bid responses will be firm for 30 days, unless stated otherwise.

6. **Awards, Splitting of.** The state reserves the right to make awards by item, groups of items, or on the total low bid for all the items specified as indicated in the detailed specifications. Bidders interested only in the total low bid for all items are to state 'all or nothing' on their bid response.

7. **Bidder Checklist.** HAVE YOU REMEMBERED TO:
   - Bid F.O.B. Destination (Ship To: Address) Freight Prepaid.
   - Mark envelope as indicated.
   - Review Standard Terms and Conditions contained in this solicitation.
   - Sign your bid on the cover sheet.
   - Initial all bid/pricing changes you made.
   - Bid responses must be submitted in ink or type written.
   - Review and complete all requirements contained in this solicitation to ensure compliance.

8. **Bidder's Responsibility and 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 bid responses will not be opened and will be rejected and returned regardless of the degree of lateness or the reasons. It is the bidder's responsibility to comply with the State of North Dakota's laws and regulations.

9. **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: http://www.nd.gov/spo/

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.

10. **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.

11. **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 February 27, 2014.** (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.

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. **Deviation from Specifications Supplied by NDDOT.** Unless otherwise indicated by the bidder, it will be assumed that specifications will be met in all respects. Any deviation from the minimum specifications indicated herein must be clearly pointed out PRIOR TO THE DEADLINE FOR RECEIPT OF QUESTIONS; otherwise, it will be considered that the items offered are in strict compliance with these specifications, and the bidder will be held responsible.

14. **Electronic & Facsimile Bids.** Bid responses are not to be email attached or faxed to the NDDOT unless this transmittal method has been authorized by the Procurement Officer or bid document. (Contact the Procurement officer regarding additional requirements and exceptions.) Bid responses electronically submitted or faxed may be rejected as non-responsive.

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.** The attached Risk Management will be incorporated into the contract. The successful Bidder may be required to furnish proof of insurance, as detailed in the Risk Management Appendix.

17. **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.

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

19. **Open Records.** After award, bid documents will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately. Those interested in reviewing the bid file, are to make arrangements, with the NDDOT Procurement Office. The NDDOT Procurement Office hours are 8:00 a.m. - 12:00 p.m. and 1:00 p.m. - 5:00 p.m. Monday through Friday.

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

21. **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.

22. **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.

23. **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.

24. **Protest of Award.** An interested party may protest the award within seven days after receiving notice in accordance with N.D.C.C. 54-44.4-12 and N.D.A.C. 4-12-14.

25. **Receipt of Bids.** All sealed bids received by the NDDOT Procurement Office will be opened and read at 608 East Boulevard Avenue, Bismarck, North Dakota, at the time specified in the solicitation.

26. **Rejection.** Bid responses may be rejected if:

- The bid response is not legible.
- The bid response is not submitted on the form supplied.
- The bid response is not completed as requested.
- The bid response is completed and/or signed in pencil.
- The bid response is faxed to the procurement office.
- The bid response is not signed by an authorized company representative.
- The bid response is not responsive to the specifications or other requirements of the solicitation.
- Changes to the bid response are not initialed.
- 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).
- The price is not fair and reasonable
- Or a combination of above.

27. **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).

28. **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.

29. **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 45-0309764.

30. **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.

31. **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.

32. **Withdrawals after the bid opening date and time.** Withdrawals after the bid opening will be allowed only upon written approval from 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. **Applicable Law and Venue.** Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

2. **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 will be in the form of a purchase order, notification of award, or contract. 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.

3. **Compliance with Laws, Nondiscrimination and Affirmative Action.** 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.

4. **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.

5. **Contract Term and Renewal Option.** The NDDOT will enter into a contract with an effective date **beginning April 1, 2014, and ending March 31, 2015**, 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-six (36) 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.

6. **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 of default 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.

7. **Contract Price Adjustment:** The Contract Unit Prices shall be firm for the twelve (12) 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.

8. **Materials and Workmanship.** All material and workmanship shall be subject to inspection and testing at the discretion of the purchasing agency.

9. **Inspection and Investigations.** The State reserves the right to conduct inspections and investigations related to the bidder and offered commodities or services to make determinations regarding compliance with the bid requirements and responsibility of the bidder.

10. **Billing and Payment Procedures:** Orders will be placed by District Maintenance personnel

Invoices are to be submitted as indicated by district personnel. 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.

11. **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

12. **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.

13. **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.

14. **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: Mark Wiese
(Name of person servicing this contract)

BUSINESS NAME: McAsphalt Industries Ltd.

MAILING ADDRESS: 385 Softley Road

CITY & STATE: Winnipeg, MB ZIP CODE: R2J 0R7

PHONE NUMBER: 204-233-1424 TOLL FREE: N/A

FAX NUMBER: 204-233-8690 E-MAIL: mwiese@mcasphalt.com

Emulsified Asphalt Specifications for Micro-Surfacing

The North Dakota Dept. of Transportation (NDDOT) will operate four VSS Minimac Microsurfacing machines for pavement preservation in order to preserve our existing roadway network. The NDDOT and the supplier will work together to determine which composition of materials will work in the Minimac without complications. The State reserves the right to award contracts which optimize equipment usage and minimize the number of mix designs and recalibrations.

Aggregate suppliers will provide sufficient sample material, initially a five gallon container, to allow design development. Working with the NDDOT District Materials Coordinators and using the site specific material, the emulsion supplier will develop a mix design. The design and testing must be completed in a timely manner to allow for the availability of materials for the upcoming maintenance season. It is estimated that a minimum of two weeks will be required to develop each design. Initial delivery of materials to specified NDDOT tank locations shall be on or before May 14th, 2014. A written mix design report will be provided to the District Materials Coordinator, the NDDOT Materials & Research Laboratory representative, and the NDDOT Maintenance Division.

Material Requirements

The emulsified asphalt shall be quick-set polymer modified cationic type CQS-1HP emulsion and conform to the requirements specified in AASHTO M208 and ASTM 2397 as well as Section 420.02 and Section 818 of the 2008 NDDOT Standard Specifications. It shall pass all applicable storage and settlement tests and have a minimum residue after distillation of 62%. Special quick-setting emulsifier agents shall be milled into the asphalt emulsion. The cement mixing test will be waived for this emulsion.

Distillation of residue will be at a temperature of 350 ^{O}F for 20 minutes. Softening point of the residue shall be 140 ^{O}F minimum, absolute viscosity shall be 8,000 poise minimum using the average of two bulbs with the methods of ASTM 2171 and #13 Canon-Manning viscosity tubes.

The emulsified asphalt shall be so formulated that when the paving mixture is applied at a thickness of one inch with the relative humidity at 59% or less and the ambient air temperature at 75 ^{O}F or higher, the material shall cure sufficiently to carry rolling traffic in one hour with no damage to the surface, as verified by NDDOT.

A qualified laboratory shall develop a mix design and present certified test results for approval by NDDOT. Compatibility of the aggregate and emulsion shall be certified by the emulsion manufacturer in accordance with ASTM D3910, applicable tests. NDDOT approved aggregate suppliers will provide samples of Type II Micro-Surfacing aggregates. All component material used in the mix design shall be representative of the material proposed by NDDOT for use.

The NDDOT will approve the design mix. The component materials shall be within the following limits.

Residual Asphalt -	5% to 9% by dry weight of aggregate
Mineral Additive -	0.5% to 3% by dry weight of aggregate
Latex Modifier -	As required to provide specified properties
Field Control Additive -	As required to provide the specified properties
Water -	As required to produce consistency

Estimated Quantity

It is estimated that approximately **35,600 gallons** of emulsified asphalt will be used during the 2014 construction season. The quantities of materials specified herein are good estimates based on the scope of operation using the four Minimac machines.

Delivery of Emulsified Asphalt

1. Emulsified asphalt shall be delivered to the specified NDDOT District Maintenance or section yard. The supplier agrees to provide materials at the time and place specified by the individual Districts. Please note the shipping point in your response.

2. There are eight 7,000 gallon capacity emulsion tanks located in the state. The tank locations are in Bismarck, Jamestown, Devils Lake, Dickinson, Minot, Grand Forks, Williston, and Casselton.

3. All truck transports shall be equipped with transfer pumps to unload the liquid material from the transports to NDDOT trucks or facilities.

4. All transports will have sampling devices on the units making delivery to the Department. Two samples will be taken from each transport tank. The supplier's delivery person shall extract these samples in the presence of a Department employee. One sample will be tested by NDDOT. The second sample will be retained at the district as a check sample.

5. The supplier is responsible for weighing each shipment at the supply source, sealing the tank, recording the type of bitumen, its specific gravity, and the gross, tare, and net weight on the shipment manifest.

6. The NDDOT reserves the right to weigh any load at the destination.

7. The supplier will be required to meet local haul limitations for roadway systems leading to the point of destination.

8. When ordering product, the NDDOT will indicate to the contractor the necessary destination point and arrival time, and the purchase order number. If the supplier is unable to meet the order requirements, the supplier must advise the NDDOT within 24 hours of the time the order was placed by facsimile or e-mail.

9. Two hours per container of free time will be allowed for unloading by the supplier at the destination point. After the initial free time for unloading, the NDDOT will reimburse the supplier at $60.00 per hour or $15.00 per 15-minute period and any portion thereof. Free time will commence at the supplier's requested arrival time or when the shipment arrives during scheduled work, whichever is later.

Measurement and Payment:

1. Measurement, payment, and price reductions for material failing to meet specifications shall comply with section 109 of the NDDOT Standard Specifications for Road and Bridge Construction, adopted October 2008.

2. The cost of the material and all costs of shipping and handling shall be included in the bid.

3. The supplier will bill the NDDOT on a single invoice for supplying and delivering the material. Cost of material (F.O.B. refinery) and the freight cost shall be listed separately on the invoice. Suppliers will indicate the order number(s) on their invoice.

4. Liquidated damages will be assessed for late delivery of emulsified asphalt and/or for failure of the product to meet delivery specifications that result in a work delay for NDDOT personnel. The liquidated damages will be assessed $100 per hour. Districts will notify the Maintenance Division regarding all late deliveries causing work delay. The contractor will receive a written notice of deduction from the NDDOT.

BID RESPONSE

Emulsified asphalt material for maintenance purposes may be ordered by the North Dakota Department of Transportation during the CONSTRUCTION SEASON, in accordance with the terms and conditions contained herein and all material to conform to the specifications herein.

Unit #1 Microsurfacing Combined Districts (Quantities To Be Delivered To Bismarck District Tank and Dickinson District Tank)						
Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 1	DICKINSON	0		$	$	$
No. 2	BISMARCK	6,800		$	$	$
Unit #2 Microsurfacing Combined Districts (Total Quantity To Be Delivered To Minot District Tank and Williston District Tank)						
Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 3	WILLISTON	3,000		$	$	$
No. 4	MINOT	3,750		$	$	$
Unit #3 Microsurfacing Combined Districts (Total Quantity To Be Delivered To Devils Lake District Tank and Grand Forks District Tank)						
Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 4	DEVILS LAKE	0		$	$	$
No. 4	GRAND FORKS	4,050		$	$	$
Unit #4 Microsurfacing Combined Districts (Total Quantity To Be Delivered Jamestown Section Tank and Casselton Section Tank)						
Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 5	VALLEY CITY (Jamestown)	12,000		$	$	$
No. 5	FARGO (Casselton)	6,000		$	$	$
Total All		35,600				

Tanker size equals _____ gallons.

Minimum order quantity per delivery equals _____ gallons.

Bidder will supply _____ mix designs per District free of charge.
(insert quantity)

If a District exceeds this quantity, the laboratory charge will be $ _____ for each additional mix design.

PLEASE INITIAL ALL ALTERATIONS AND/OR CORRECTIONS TO THE UNIT OR TOTAL PRICE.

BIDDER _____

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

MATERIALS COORDINATOR	CONSTRUCTION COORDINATORS
BISMARCK:	
JIM GLICK	KIRK HOFF
NDDOT - 218 SOUTH AIRPORT ROAD	
BISMARCK ND 58504	
(701) 328-6927 PHONE; (701) 328-6933 FAX	(701) 328-6949
VALLEY CITY:	
KEVIN HANSON	JAY PRASKA
NDDOT - 1524 8TH AVENUE SW	
VALLEY CITY ND 58072	
(701) 845-8807 PHONE; (701) 845-8804 FAX	(701) 845-8810
DEVILS LAKE:	
MIKE PIKE	GREG SEMENKO
NDDOT - 316 6TH ST SE	
DEVILS LAKE ND 58301	
(701) 665-5117 PHONE; (701) 328-0329 FAX	(701) 665-5105
MINOT:	
GREG OLSON	BOB ALLEN
NDDOT - 1305 HIGHWAY 2 BYPASS EAST	
MINOT ND 58701-7922	
(701) 857-6912 PHONE; (701) 857-6932 FAX	(701) 857-6911
DICKINSON:	
BELINDA URLACHER	ROB RAYHORN
NDDOT - 1700 3RD AVE W, SUITE 101	
DICKINSON ND 58601-3009	
(701) 227-6520 PHONE; (701) 227-6505 FAX	(701) 227-6511
GRAND FORKS:	
CURT DUNN	ED PAVLISH
NDDOT - 1951 NORTH WASHINGTON	
PO BOX 13077	
GRAND FORKS ND 58208-3077	
(701) 787-6525 PHONE; (701) 787-6515 FAX	(701) 787-6506
WILLISTON:	
BILL GATHMAN	JOEL WILT
NDDOT - 605 DAKOTA PARKWAY WEST	
PO BOX 698	
WILLISTON ND 58802-0698	
(701) 774-2734 PHONE; (701) 774-2704 FAX	(701) 774-2711
FARGO:	
WILLIE SCHACHER	KEVIN GORDER
NDDOT - 503 - 38TH STREET SOUTH	
FARGO ND 58103-1198	
(701) 239-8906 PHONE; (701) 239-8915 FAX	(701) 239-8904

MATERIALS AND RESEARCH LABORATORY	
JOE DAVIS – EMULSIONS	SCOTT WUTSKE, AGGREGATE
NDDOT - 300 AIRPORT ROAD	
BISMARCK ND 58504-6005	
(701) 328-6912 PHONE; (701) 328-0310 FAX	(701) 328-6902

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
CIVIL RIGHTS APPENDIX

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 shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status.**

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

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

   a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
   b. cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.

Risk Management Appendix

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

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Contractor 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 – minimum limits of liability required are **$250,000 per person** and **$1,000,000 per occurrence.**
2) **Workers compensation** insurance meeting all statutory limits.
3) The State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an **additional insured** on the commercial general liability and automobile liability policies.
4) Said endorsements shall contain a **"Waiver of Subrogation"** in favor of the state of North Dakota.
5) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

Contractor shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the undersigned State representative prior to commencement of this agreement.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08.

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.

Contractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State. Any insurance, self-insurance or self-retention maintained by the State shall be excess of the Contractor's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the Contractor. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above.

RM Consulted 2007
Revised 5-09

NDDOT
North Dakota Department of Transportation

Amendment No. 1

To: ALL INTERESTED SUPPLIERS

From: Marilyn Langehaug, Financial Management Division, Procurement Office
North Dakota Department of Transportation

Date: March 3, 2014

Re: ITB 745-10-14-050, Emulsified Asphalt, Minimac

ITB 745-10-14-050, Emulsified Asphalt, Minimac, is amended as follows:

Delete Bid Response, Page 9 of 9.

Replace with Bid Response which is Page 2 of Amendment No. 1

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.

Marilyn Langehaug, Procurement Officer
PHONE: 701-328-4466
FAX: 701-328-0310
E-MAIL: mlangehaug@nd.gov

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

PRINTED NAME OF BIDDER OR OFFEROR and TITLE	
Mark Wiese, McAsphalt Industries, Marketing Rep	
SIGNATURE	DATE
	3/6/14

BID RESPONSE

Emulsified asphalt material for maintenance purposes may be ordered by the North Dakota Department of Transportation during the CONSTRUCTION SEASON, in accordance with the terms and conditions contained herein and all material to conform to the specifications herein.

Unit #1 Microsurfacing Combined Districts
(Quantities To Be Delivered To Bismarck District Tank and Dickinson District Tank)

Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 1	DICKINSON	0		$	$	$
No. 2	BISMARCK	6,800	Wpg	$ .42	$ 3.42	$ 23256.00

Unit #2 Microsurfacing Combined Districts
(Total Quantity To Be Delivered To Minot District Tank and Williston District Tank)

Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 3	WILLISTON	3,000	Wpg	$ .43	$ 3.43	$ 10290.00
No. 4	MINOT	3,750	Wpg	$ .33	$ 3.33	$ 12487.50

Unit #3 Microsurfacing Combined Districts
(Total Quantity To Be Delivered To Devils Lake District Tank and Grand Forks District Tank)

Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 5	DEVILS LAKE	0		$	$	$
No. 6	GRAND FORKS	4,050	Wpg	$ .21	$ 3.21	$ 13000.50

Unit #4 Microsurfacing Combined Districts
(Total Quantity To Be Delivered Jamestown Section Tank and Casselton Section Tank)

Item	DISTRICT	Estimated Quantity (Gallons)	Supplier Shipping Point	Freight Price per Gallon	District Price for Emulsified Asphalt per Gallon	TOTAL PRICE (Quantity x Total Price per Gallon including freight)
No. 7	VALLEY CITY (Jamestown)	12,000	Wpg	$ .34	$ 3.34	$ 40080.00
No. 8	FARGO (Casselton)	6,000	Wpg	$ .28	$ 3.28	$ 19680.00
Total All		35,600				$ 118794.00

Tanker size equals Mhart 6300 gallons.

Minimum order quantity per delivery equals Mhart 5800 gallons.

Bidder will supply (1) ONE mix designs per District free of charge.
(insert quantity)

If a District exceeds this quantity, the laboratory charge will be $ 3500.00 for each additional mix design.

PLEASE INITIAL ALL ALTERATIONS AND/OR CORRECTIONS TO THE UNIT OR TOTAL PRICE.

McAsphalt Industries Ltd.

CANADIAN INSURANCE
BROKERS INC.

1 Eglinton Avenue East, Suite 415
Toronto, ON, M4P 3A1 Canada
(t) 416.855.1887 (f) 416.489.5311 (toll) 800.790.0951
Email: ellar@cibi.ca www.cibi.ca

March 14, 2014

CERTIFICATE OF INSURANCE

TO: North Dakota Department of Transportation
Procurement Office
608 East Boulevard Avenue, Rm. 222
Bismarck, ND 58505-0700

This certificate of insurance neither affirmatively or negatively amends, extends or alters the coverage afforded by the policies scheduled herein. It is furnished as a matter of information only, confers no rights upon the holder and is issued with the understanding that the rights and liability of the parties will be governed by the original policy or policies as they may be lawfully amended by endorsement from time to time.

INSURED: McASPHALT INDUSTRIES LIMITED
8800 Sheppard Avenue East,
Scarborough, Ontario M1B 5R4

COMMERCIAL GENERAL LIABILITY

Insurance Company:	AIG Insurance Company of Canada
Policy Number:	RMGL9895506
Expiry Date:	February 28, 2015
Bodily Injury & Property Damage Inclusive Limit:	$2,000,000.00 CDN

ADDITIONAL INSURED:
The State of North Dakota, its agencies, officers and employees (State) are hereby included as Additional Insured but only with respect to liability arising out of the operations of the Named Insured regarding the below-noted contract/operations. The policy also contains a Waiver of Subrogation clause in favour of The State of North Dakota.

DESCRIPTION OF OPERATIONS:
Re: NDDOT Bid No. 745-10-14-050. Emulsified Asphalt – Minimac Micro-Surfacing.

AUTOMOBILE INSURANCE

Insurance Company:	AIG Insurance Company of Canada
Policy Number:	RMBA2651884
Expiry Date:	February 28, 2015
Bodily Injury & Property Damage Inclusive Limit:	$2,000,000.00 CDN

*Should any of the above described policies be cancelled before the expiration date thereof, the Insurer(s) will endeavour to mail **30 days** written notice to the Certificate Holder, but failure to mail such notice shall impose no obligation or liability of any kind upon either the Insurer(s) or Canadian Insurance Brokers Inc.*

CANADIAN INSURANCE BROKERS INC.

per: _____
Authorized Representative

NDDOT Contract No. 50140184A

North Dakota Department of Transportation

AMENDMENT TO CONTRACT NO. 50140184

Project No.

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 McAsphalt Industries Ltd., hereinafter known as the Contractor, whose address is 385 Softley Road, Winnipeg, MB, R2J0R7.

WHEREAS, the parties entered into a contract on April 1, 2014; and

WHEREAS, the contract was competitively bid and awarded to the Contractor; and

WHEREAS, the Contractor has performed satisfactorily under the terms of the contract; and

WHEREAS, the Contractor has expressed a willingness to extend the term of the above-referenced contract for an additional twelve (12) months; and

NOW THEREFORE, the Contractor and NDDOT agree that the term of the contract is extended through March 31, 2016.

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:

Mark Wiese
NAME (TYPE OR PRINT)

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:

McAsphalt Industries
COMPANY NAME

Ron Vertz
OFFICER'S NAME (TYPE OR PRINT)

SIGNATURE

VP Marketing
TITLE

March 16/15
DATE

WITNESS:

Sondra Goebel
NAME (TYPE OR PRINT)

Sondra Goebel
SIGNATURE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Grant Levi
DIRECTOR (TYPE OR PRINT)

Grant Levi
SIGNATURE

3/31/15
DATE

APPROVED as to substance by:

Brad Dorr
DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

3-26-15
DATE

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

APPROVED as to execution this 17 day of March 20 15
ATTORNEY GENERAL
By
SPECIAL ASST. ATTORNEY GENERAL

NDDOT
North Dakota Department of Transportation

North Dakota Department of Transportation

AMENDMENT TO CONTRACT NO. 50140184

Project No.

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NDDOT
North Dakota Department of Transportation

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EXECUTED the date last below signed.

WITNESS:

Mark Wiese
NAME (TYPE OR PRINT)

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:

McAsphalt Industries
COMPANY NAME

Ron Vertz
OFFICER'S NAME (TYPE OR PRINT)

SIGNATURE

VP. Marketing
TITLE

Feb 16 / 2016
DATE

WITNESS:

Sondra Goebel
NAME (TYPE OR PRINT)

Sandra Goebel
SIGNATURE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Grant Levi
DIRECTOR (TYPE OR PRINT)

Grant Levi
SIGNATURE

2/29/16
DATE

APPROVED as to substance by:

Brad Darr
DIVISION DIRECTOR (TYPE OR PRINT)

Brad Darr
SIGNATURE

2-25-16
DATE

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

APPROVED as to execution this
26 day of February, 2016
ATTORNEY GENERAL
By
SPECIAL ASST. ATTORNEY GENERAL

NDDOT
North Dakota
Department of Transportation