NDDOT Contract # 50150476

North Dakota Department of Transportation
INVITATION TO BID

Bid Number: 745-56-15-050-02	Bid Opening Date & Time: 03/25/2015 02:00 PM
Items: Joint Sealant	Buyer: Vanessa Brosten
Bid Mailing Address: 608 East Boulevard Avenue, Rm 222	Telephone Number: 701-328-2571
City, State, Zip: Bismarck, ND 58505	Email: vbrosten@nd.gov
Contract Period: 04/01/2015 TO 03/31/2016	Date Prepared: 3/11/2015

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
Midstates Equipment + Supply	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		
Mailing Address 606 County Road 1 Mountain Lake, MN 56159		
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

March 20, 2015
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 4/17/15
Recommended for approval	Date 4-17-15	Approximate contract amount $ UNKNOWN

NDDOT North Dakota Department of Transportation

APPROVED as to execution this
17 day of April 2015
ATTORNEY GENERAL
By
SPECIAL ASST. ATTORNEY GENERAL

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 - **745-56-15-050-02**
BID OPENING DATE/TIME - **March 25, 2015; 2:00 PM Central**
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 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.

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 March 18, 2015.** (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, 2015, and ending March 31, 2016**, 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.

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.

6. **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.

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

8. **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.

9. **Billing and Payment Procedures.** Purchase orders will be issued by NDDOT Procurement office to the awarded contractor.

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.

10. **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.

11. **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.

12. **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.

13. **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: Bradley J. Bargen
(Name of person servicing this contract)

BUSINESS NAME: Midstates Equipment + Supply

MAILING ADDRESS: 1606 County Road 1

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

PHONE NUMBER: 507-427-3807 TOLL FREE: 1-800-929-3807

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIFICATION
FOR
POLYMER MODIFIED JOINT SEALANT

General. This sealant shall be a self-leveling, low modulus, hot applied sealant consisting of petropolymers that is used to seal cracks in asphaltic pavements and joints in concrete pavements. The sealant shall remain pliable at temperatures to minus 40^0 F (-4^0 C) and meet the requirements of AASHTO M 324 Type IV with the following modifications:

Requirements. Sealant shall meet the requirements of ASTM D 6690, Type IV, (AASHTO M 324, Type IV) with the following modifications:

Penetration at 77^0 F = 120 - 150
Bond at -20^0 F., 3 cycles, 200% extension = Pass
The sealant shall weigh not less than 9.0 nor more than 9.35 lbs/gallon

Acceptance. The Department will accept the sealant based on the manufacturer's certification of the supplied product. The Department reserves the right to select a sample from each lot of material supplied. If any of the sealant fails to meet the properties specified, but the quality deviation is not serious enough to materially affect the work quality, payment for the sealant will be reduced at the following rate up to 20% of the invoice price per ton.

Price Reduction Criteria.

Reduce payment for the crack sealer by 20% if the bond or flow fails.

The payment for resilience shall be reduced by the following schedule:

Percent Recovery	Deduct Factor
50-59.9%	10%
< 50%	20%

The payment for penetration shall be reduced by the following schedule.

Variation of Penetration *	Deduct Factor
0.1-5%	5%
5.1-10%	10%
10.1-15%	15%
> 15%	20%

*Use the average of the original and check sample to determine the percentage of variation.

If the material is found to be unacceptable, the sealant shall be replaced at no cost to the NDDOT.

Packaging. The materials shall be packaged in sealed cardboard containers with polyethylene liners or in individual structural containers which melt when placed in the crack sealant machine (such as Polyskin™ or an approved equal). Each container shall be clearly marked with the name of the manufacturer, trade name of the sealant, the type of sealant, the weight, the manufacturer's batch number, the pouring temperature, and the safe heating temperature. The material shall be divided into blocks, and each block shall be individually packaged. Boxes containing one block shall not weigh more than 40 pounds (18.14 kg) per box. Boxes containing two blocks shall not exceed 65 pounds (29 kg) in weight per box.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIFICATION
FOR
CRUMB-RUBBER JOINT SEALANT

General. This sealant shall be used in sealing cracks and the depressed areas adjacent to the cracks in asphalt or concrete pavements. Many of the depressed crack areas are one half inch deep and four inches wide. A sealant with a high viscosity is necessary to fill the depressed cracks. The sealant will be used in a climate where the ambient temperature commonly drops below -10^0 F (-23^0 C) in the winter and summer temperatures exceed 90^0 F (32^0 C).

The joint sealant material shall be a single component, hot-poured sealant meeting the requirements of ASTM D 6990, Type I (AASHTO M 324, Type I) and shall have a minimum softening point of 190^0 F (88^0 C), as determined by ASTM D 36. The sealant shall resist softening and pickup by vehicle tires in the summer and cracking in the winter when used in this application. Plasticizers and fillers may be added as necessary to meet the requirements specified.

The sealant shall consist of a blend of asphalt cement and vulcanized granulated crumb tire rubber. The asphalt cement shall meet the requirements of AASHTO M-20 or M-226. The minimum percentage of crumb tire rubber added shall be 12% of the total weight of the sealant-rubber mixture.

The granulated crumb tire rubber shall be free of fabric, wire, cord, and other foreign material. Calcium carbonate may be added at a rate not to exceed 4 % of the total weight of the crumb rubber to prevent the rubber particles from sticking together. The granulated crumb rubber shall meet the following requirements:

a. **Gradation.**

Sieve Size	Percent Passing
# 8	100
# 10	95-100
# 30	0-20
# 50	0-5

b. **Specific Gravity.** 1.15 ∀ 0.02

Acceptance. The Department will accept the sealant based on the manufacturer's certification of the supplied product. The Department reserves the right to select a sample from each lot of material supplied. If any of the sealant fails to meet the properties specified, but the quality deviation is not serious enough to materially affect the work quality, payment for the sealant will be reduced at the following rate up to 20% of the invoice price per ton.

Price Reduction Criteria.

Reduce payment for the crumb rubber joint sealer by 20% if the bond or flow fails.

The payment for penetration is reduced by the following schedule:

Variation of Penetration *	Deduct Factor
0.1-5%	5%
5.1-10%	10%
10.1-15%	15%
> 15%	20%

*Use the average of the original and check sample to determine the percentage of variation. The payment for softening point shall be reduced by the following schedule:

Temperature Variation (Degrees C) *	Deduct Factor
85-87.9	5%
80-84.9	10%
< 80	20%

*Use the average of the original and check sample to determine the temperature variation.

If the material is found to be unacceptable, the sealant shall be replaced at no cost to the Department.

Packaging. The materials shall be packaged in sealed cardboard containers with polyethylene liners or in individual structural containers which melt when placed in the crack sealant machine (such as Polyskin™ or an approved equal). Each container shall be clearly marked with the name of the manufacturer, trade name of the sealant, the type of sealant, the weight, the manufacturer's batch number, the pouring temperature, and the safe heating temperature. The material shall be divided into blocks, and each block shall be individually packaged. Boxes containing one block shall not weigh more than 40 pounds (18.14 kg) per box. Boxes containing two blocks shall not exceed 65 pounds (29 kg) in weight per box.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
BID SHEET
FOR
JOINT SEALING MATERIAL

POLYMER:
MANUFACTURER Maxwell Products, Inc. **BRAND NAME** ElastoFlex 71

F.O.B. Delivery Point	Bid Price Per Ton
Bismarck, ND 58504	$1,270.60
Valley City, ND 58072	$1,282.60
Devils Lake, ND 58301	$1,286.60
Minot, ND 58701	$1,276.60
Dickinson, ND 58601	$1,260.60
Grand Forks, ND 58208	$1,292.60
Williston, ND 58802	$1,264.60
Fargo, ND 58103	$1,288.60
Total	$10,222.80

TRUCKLOAD QUANTITY (MINIMUM ORDER) EQUALS 23 TONS.

CRUMB-RUBBER:
MANUFACTURER Maxwell Products, Inc. **BRAND NAME** ElastoFlex 52

F.O.B. Delivery Point	Bid Price Per Ton
Bismarck, ND 58504	$1,008.60
Valley City, ND 58072	$1,020.60
Devils Lake, ND 58301	$1,024.60
Minot, ND 58701	$1,014.60
Dickinson, ND 58601	$998.60
Grand Forks, ND 5820	$1,030.60
Williston, ND 58802	$1,002.60
Fargo, ND 58103	$1,026.60
TOTAL	$8,126.80

TRUCKLOAD QUANTITY (MINIMUM ORDER) EQUALS 23 TONS.

BIDDER Midstates Equipment + Supply

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 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).

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

Amendment No. 1

To: ALL INTERESTED SUPPLIERS

From: Vanessa Brosten, Purchasing Agent II
North Dakota Department of Transportation

Date: March 13, 2015

Re: NDDOT bid no.745-56-15-050-02, Joint Sealant

Bidders Instruction #11 of the solicitation established a deadline for receipt of questions. The responses to these questions are provided as addenda to the solicitation. The solicitation is amended to include any new information provided in this amendment.

On page 7 of 10 and page 9 of 10, Packaging; delete paragraph.

Replace with:

Packaging. *The materials shall be packaged in individual structural containers which melt when placed in the* crack sealant machine (such as Polyskin™ or an approved equal). Each container shall be clearly marked with the name of the manufacturer, trade name of the sealant, the type of sealant, the weight, the manufacturer's batch number, the pouring temperature, and the safe heating temperature. The material shall be divided into blocks, and each block shall be individually packaged. Boxes containing one block shall not weigh more than 40 pounds (18.14 kg) per box. Boxes containing two blocks shall not exceed 65 pounds (29 kg) in weight per box.

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.

Vanessa Brosten, Procurement Officer
PHONE: 701-328-4466
FAX: 701-328-0310
E-MAIL: vbrosten@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	
Midstates Equipment + Supply by Bradley J. Bargen - President	
SIGNATURE	DATE
Bradley J. Bargen	March 20, 2015

North Dakota Department of Transportation

AMENDMENT TO CONTRACT NO. 50150476

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 Midstates Equipment and Supply, hereinafter known as the Contractor, whose address is 606 County Road 1 Mountain Lake, MN 56159.

WHEREAS, the parties entered into a contract on April 17, 2015; and

WHEREAS, the contract stated the name of the product to be Elastoflex 52; and

NOW THEREFORE, the Contractor and NDDOT agree that the products shall be known as Elastoflex 410.

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 K. Strom
NAME (TYPE OR PRINT)

Jacquelyn K. 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
COMPANY NAME

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

Bradley J Bargen
SIGNATURE

President
TITLE

5-6-2015
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

5/18/15
DATE

APPROVED as to substance by:

Brad Darr
DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

5-11-15
DATE

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

APPROVED as to execution this 18th day of May, 2015
ATTORNEY GENERAL
By
SPECIAL ASST. ATTORNEY GENERAL

NDDOT
North Dakota
Department of Transportation