

## North Dakota Department of Transportation

## INVITATION TO BID

NDDOT Contract 50230443

Bid Number: 745-10-23-050	Bid Opening Date & Time: 04/28/2023 02:00 PM
Items: Emulsified Asphalt, Minimac	Buyer: Vanessa Brosten
Bid Mailing Address: 608 East Boulevard Avenue	Telephone Number: 701-328-4466
City, State, Zip: Bismarck, North Dakota, 58505-0700	Email: vbrosten@nd.gov
Contract Period: 05/01/2023 TO 03/31/2024	Date Prepared: 04/13/2023

## BID RESPONSE

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

## CONTRACT

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

Vendor Name McAsphalt Industries Ltd.	Vendor Address 385 Softley Road, Winnipeg, MB
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(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 McAsphalt Industries Ltd.		
Mailing Address 385 Softley Road, Winnipeg, MB		
Telephone Number 204-997-1009	Fax Number 204-233-8690	E-mail Address mwiese@mcasphalt.com

Name & Title (Type or Print)

Matthew Kennedy, VP of Marketing

Signature

*Matt Kennedy*

Date

5/2/23

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 DocuSigned by: <i>Matt Linneman</i>	DS <i>WS</i>	DS <i>SS</i>	Date 5/9/2023
Recommended for approval DocuSigned by: <i>Brad Darr</i>	Date 5/4/2023	Approximate contract amount \$ 169,518.00	

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ATTORNEY GENERAL

APPROVED as to Execution

DocuSigned by:

*Clint Morgenstern*

5/8/2023

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 – **745-10-23-050**  
 BID OPENING DATE/TIME – **April 28, 2023; 2:00 PM Central**  
 N. D. DEPT. OF TRANSPORTATION  
 PROCUREMENT SECTION  
 608 E BOULEVARD AVE  
 BISMARCK ND 58505-0700

**BIDDERS INSTRUCTIONS**

1. **Additional Terms and Conditions.** Additional terms and conditions submitted with a bid response are of no effect unless accepted in writing by the Purchasing Agency. Bids with additional terms and conditions may be rejected as non-responsive. ([N.D.A.C. § 4-12-11-06](#))
2. **Assistance to Bidders with a Disability.** Bidders with a disability and/or language assistance, contact Civil Rights Division, NDDOT, 701-328-2978 or [civilrights@nd.gov](mailto:civilrights@nd.gov) or TTY 711, as soon as possible so that reasonable accommodations can be made. Additionally, the Request for Reasonable Accommodations form (SFN 60135) can be accessed at the following NDDOT website location: <http://www.dot.nd.gov/forms/sfn60135.pdf>.
3. **Award.** Award will be made to a responsive, responsible bidder with the lowest price considering conformity with specifications, terms of delivery, quality, and serviceability. NDDOT reserves the right to consider bids varying in minor respects from any specific requirements herein, but judged to meet the intent of this request. Bidders interested only in the total low bid for all items are to state 'all or nothing' on their bid response. Award will be made as follows:
  - All or none.
4. **Award – Preference Laws.** If bid responses are received from nonresident (out-of-state) bidders, the Procurement Officer will apply reciprocal preference, if applicable, in accordance with [N.D.C.C. §44-08-01](#). See [OMB Guidelines on North Dakota Preference Laws](#)
5. **Award – Tie Bid Preference.** After applying any reciprocal preference, if a tie occurs between two or more bidders with equal bid prices or offerors with identical evaluation scores:
  - Preference must first be given to bids submitted by resident North Dakota vendors.
  - If a tie remains, preference is given to approved vendors on the Bidders List.
  - If a tie still remains, award shall be made in accordance with [N.D.A.C. § 4-12-11-05](#).
6. **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.
7. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 30 days, unless stated otherwise.
8. **Bid Opening.** 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. Interested parties are invited to attend the bid opening.
9. **Bid Summary.** Interested parties may contact the Procurement Officer to obtain a summary of all bid responses received and the award. When bids are issued using the State's electronic bidding system, the bid summary will be posted and available for download from: <https://www.nd.gov/omb/vendor>. Bid summaries will be mailed to those bidders who supply a self-addressed, stamped envelope with their bid

response. A copy of the bid summary may also be obtained by visiting the NDDOT Procurement Office during normal working hours.

10. **Bidder Checklist.** HAVE YOU REMEMBERED TO:

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

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 April 20, 2023.** (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. **Corrections.** The bidder's authorized representative must initial any corrections and alterations (i.e. erasures, whiteouts, correction tape, etc.) made to the bid response. Those bid responses with corrections and alterations that are not initialed are subject to confirmation by the Procurement Officer.

13. **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.
- Commodities – all property, including equipment, supplies, materials, printing, insurance, and the lease of equipment.
- 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.
- N.D.A.C. – North Dakota Administrative Code, rules with the force and effect of law.
- N.D.C.C. – North Dakota Century Code, state laws.
- Solicitation - the process of notifying prospective bidders that the State wishes to receive bids for furnishing goods or services.
- SPO Online – a procurement information website maintained by OMB State Procurement Office pursuant to [N.D.C.C. § 54-44.4-14](#).

14. **Email & Facsimile Bids.** Sealed bids are required; therefore, bids cannot be submitted by email or fax to the Procurement Officer. Bid responses emailed or faxed may be rejected as non-responsive. Bids may be emailed or faxed to a third party who will put it in a properly-addressed envelope and deliver it to the NDDOT Procurement Office before the date and time specified in the solicitation.

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

- A. This solicitation is posted on SPO Online at: <https://www.nd.gov/omb/vendor>
- B. Click on "Bidding Opportunities." Go to "Recent Solicitations" and find this solicitation.
- C. Use "Upload Response" to upload a maximum of five (5), clearly labeled documents before the deadline for receipt of proposals in the Bid Response closing deadline.
- D. The maximum file size allowed is 50mb per file.

E. All field entries must be alphanumeric. Dashes and underscores are allowed; however the system does not accept other special characters such as apostrophe, & symbol, quotation marks, etc.

F. Bidders will receive an email confirmation from [infospo@nd.gov](mailto:infospo@nd.gov) that the upload response was received including the "File Description" for the uploaded files. Review this email to ensure all files were successfully uploaded. If you do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If you do not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701-328-2740.

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

16. **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).
17. **Indemnification.** Bidders must review the attached Risk Management Appendix for indemnification and insurance requirements. The indemnification and insurance provisions are incorporated and made part of this solicitation and the resultant final contract. Objections to any of the provisions of the indemnification and insurance requirements must be made in writing to the attention of the Procurement Officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the Purchasing Agency or Entity in consultation with the North Dakota Risk Management Division. Upon receipt of the Notice of Award, the successful bidder must obtain the required insurance coverage and provide the Procurement Officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the Purchasing Agency or Entity, in consultation with the North Dakota Risk Management Division. A bidder's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.
18. **Late Bids.** It is the bidder's responsibility to ensure that a bid response is physically deposited with the NDDOT Procurement Office prior to the date and time specified for the opening. Late bids will be rejected, regardless of the degree of lateness, unless the delay is due to the error of the Purchasing Agency and discovered before the selection of the successful bidder.
19. **Minor Informalities.** The State reserves the right to waive minor informalities in bid responses in accordance with N.D.A.C. 4-12-10. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders.
20. **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.
21. **Negotiation.** NDDOT reserves the right to negotiate with the successful bidder to ensure the best possible consideration is afforded to all concerned.
22. **New Equipment and Materials.** Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials shall be new and under current production for use in the United States.
23. **Open Records Requests.** Bid responses are exempt records until the date and time of the bid opening. After the bid opening, all bid responses are subject to North Dakota open records laws. Interested parties may contact the Procurement Officer to request information related to this solicitation.
24. **Packaging.** All shipments are to be packaged according to accepted commercial practices to avoid damage in shipment.
25. **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.
26. **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.

27. **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.

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

29. **Rejection.** The State reserves the right to reject any and all bid responses in whole or in part. The Procurement Officer will send a rejection notice, including the reason for rejection. Bid responses may be rejected if:

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

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

30. **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).

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

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

33. **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.



34. **Taxes.** The State does not pay sales tax or federal excise tax. The state sales tax exemption number is E-2001. The federal tax-free transaction number is 45-70-0010K. The Purchasing Agency will furnish a tax-exempt certificate upon request.
35. **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](http://www.nd.gov/spo/vendor). Contact the ND State Procurement Office at 701-328-2683 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance.
- Placement on the bidders list does not guarantee a bidder will receive notice of every formal solicitation. Bidders must maintain current information by submitting a Notice of Change form to the State Procurement Office (Fax 701-328-1615). Visit the website for forms: [www.nd.gov/spo/vendor](http://www.nd.gov/spo/vendor).
36. **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.
37. **Withdrawals after the bid opening date and time.** After the bid opening, no changes may be made to the bid response. The bidder may make a written request to withdraw the bid response, subject to approval by the NDDOT Procurement Office. Vendors continually withdrawing bids after the bid opening may be removed from the Vendor Database.

### **GENERAL CONTRACT TERMS AND CONDITIONS**

1. **Affirmative Action.** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of individuals with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
2. **Applicable Law and Venue.** Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.
3. **Billing and Payment Procedures.** Orders will be placed by individual district locations as need arises.  
  
Invoices are to be submitted as indicated on the purchase orders unless otherwise instructed. Failure to submit correct invoices to the appropriate NDDOT office may delay contractor payment.  
  
Payment will normally be made within thirty days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoice and payment inquiries must be directed to the purchasing agency.
4. **Binding Contract.** The acceptance of a bid response in writing by the purchasing agency constitutes a contract between the bidder and the State. Written acceptance from the purchasing agency may be made by execution of a contract, purchase order, or order using a state purchasing card. Any oral agreement or arrangement by a bidder with a State employee or purchasing agency will have no force or effect unless reduced to writing. This contract is not effective until fully executed by both parties. Use only black text language if RFB.
5. **Compliance with Laws.** The contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations and policies, including those relating to nondiscrimination, affirmative action, accessibility and civil rights including Title VI of the Civil Rights Act of 1964. The contractor agrees to file all required reports on time, to make required payroll deductions, and to pay all taxes and premiums owed on time, including sales and use taxes and unemployment compensation and workers' compensation premiums. The contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

6. **Contract Amendments, Unanticipated Amendment.** 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 contractor may request changes, such as substitutions of a product, by submitting a written request to the Procurement Officer. Unanticipated amendments must be within the scope of the original contract, authorized by the terms of the contract due to legitimate, unforeseen circumstances. ([N.D.A.C. ch. 4-12-13](#))

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

7. **Contract 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. **Contract Term and Renewal Option.** The NDDOT will enter into a contract with an effective date **beginning May 1, 2023, and ending March 31, 2024**, 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-five (35) 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.

9. **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.

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

If commodities or services are rejected as being not compliant with the requirements of this solicitation, the State will inform the CONTRACTOR in writing. The Purchasing Agency may provide the CONTRACTOR with a reasonable opportunity to cure, whenever practicable, as set forth in writing by the Purchasing Agency.

11. **Materials and Workmanship.** All material and workmanship shall be subject to inspection and testing at the discretion of the purchasing agency either at the point of manufacturer, place of storage, or upon receipt.
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. **Responsibility of the Bidder.** The Procurement Officer, at any time, may make a supplementary investigation as to the responsibility of any bidder, even though the Bidder may be on the Bidders List. If a bidder is determined to be not responsible, that bid response will be rejected even if it is the lowest bid response received, and the bidder may be debarred or suspended from the bidders list. ([N.D.A.C. § 4-12-11-04](#))
14. **Subcontracts, Assignment.** The contractor shall not subcontract, assign or transfer the contractor's interests or duties under this contract without express written consent of the purchasing agency. However, the contractor may enter into subcontracts provided that any such subcontractor acknowledges the binding nature of this contract and incorporates this contract, including any attachments. The contractor is solely responsible for the performance of any subcontractor. The contractor shall not have the authority to contract for or incur obligations on behalf of the State.



15. **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.
16. **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, Winnipeg, MB, Canada, R2J0R7

CITY & STATE: Winnipeg, MB ZIP CODE: R2J0R7

PHONE NUMBER: 204-997-1009 TOLL FREE: \_\_\_\_\_

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. 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 818 of the 2022 NDDOT Standard Specifications with Supplemental Specifications published on January 1, 2022. 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 °F for 20 minutes. Softening point of the residue shall be 135 °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 °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 **17,300 gallons** of emulsified asphalt will be used during the 2023 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 January 2022.
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.

**BIDDERS: PLEASE INDICATE PRICE FOR ALL ITEMS, INCLUDING ITEMS WITHOUT QTY IN THE EVENT ORDERS NEED TO BE PLACED DURING THE COURSE OF THE CONTRACT PERIOD.**

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	0		\$	\$	\$
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	0		\$	\$	\$
No. 4	MINOT	3,000	Regina, SK	\$.32	\$3.36	\$ 10,080.00
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	8,000	Winnipeg, MB	\$.24	\$3.28	\$ 26,240.00
No. 6	GRAND FORKS	6,300	Winnipeg, MB	\$.18	\$3.22	\$ 20,286.00
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)	0		\$	\$	\$
No. 8	FARGO (Casselton)	0		\$	\$	\$
<b>Total All</b>		<b>17,300</b>				

Tanker size equals 6000 gallons.

Minimum order quantity per delivery equals 6000 gallons.

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

If a District exceeds this quantity, the laboratory charge will be \$ 2500.00 for each additional mix design.

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

BIDDER McAsphalt Industries Ltd.

## **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  
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**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.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

