



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

## State of West Virginia Master Agreement

Order Date: 02-01-2024

CORRECT ORDER NUMBER MUST  
 APPEAR ON ALL PACKAGES, INVOICES,  
 AND SHIPPING PAPERS. QUESTIONS  
 CONCERNING THIS ORDER SHOULD BE  
 DIRECTED TO THE DEPARTMENT  
 CONTACT.

Order Number: CMA 0803 0066 DOT6624C027A 1	Procurement Folder: 1322263
Document Name: WINTER GRADE ASPHALT PATCHING MIXTURE	Reason for Modification:
Document Description: WINTER GRADE ASPHALT PATCHING MIXTURE	
Procurement Type: Central Master Agreement	
Buyer Name:	
Telephone:	
Email:	
Shipping Method: Best Way	Effective Start Date: 2024-02-05
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2025-02-04

VENDOR	DEPARTMENT CONTACT															
Vendor Customer Code: 000000193873 SEABOARD ASPHALT PRODUCTS CO 3601 FAIRFIELD RD  BALTIMORE MD 21226 US Vendor Contact Phone: 999-999-9999 Extension:	Requestor Name: Careasa M Nichols Requestor Phone: 304-414-3212 Requestor Email: careasa.m.nichols@wv.gov															
Discount Details:	<div style="font-size: 48px; font-weight: bold;">24</div> <div style="font-weight: bold;">FILE LOCATION _____</div>															
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Discount Allowed</th> <th>Discount Percentage</th> <th>Discount Days</th> </tr> </thead> <tbody> <tr> <td>#1 No</td> <td>0.0000</td> <td>0</td> </tr> <tr> <td>#2 No</td> <td></td> <td></td> </tr> <tr> <td>#3 No</td> <td></td> <td></td> </tr> <tr> <td>#4 No</td> <td></td> <td></td> </tr> </tbody> </table>		Discount Allowed	Discount Percentage	Discount Days	#1 No	0.0000	0	#2 No			#3 No			#4 No		
Discount Allowed		Discount Percentage	Discount Days													
#1 No		0.0000	0													
#2 No																
#3 No																
#4 No																

INVOICE TO	SHIP TO
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER  No City WV 99999 US	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER  No City WV 99999 US

*2-2-2466*

Total Order Amount:	Open End
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Purchasing Division's File Copy

*JE 2/1/24*

<b>PURCHASING DIVISION AUTHORIZATION</b> DATE: <i>Tina Hef 2/2/2024</i> ELECTRONIC SIGNATURE ON FILE
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<b>ATTORNEY GENERAL APPROVAL AS TO FORM</b> DATE: <i>John S. Gray</i> ELECTRONIC SIGNATURE ON FILE
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<b>ENCUMBRANCE CERTIFICATION</b> DATE: <i>Dan 2-6-24</i> ELECTRONIC SIGNATURE ON FILE
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*2/6/2024*

**Extended Description:**

The Vendor, Seaboard Asphalt Co., agrees to enter with the West Virginia Department of Transportation (WVDOT), West Virginia Division of Highways (WVDOH), into an open-end contract to provide Winter Grade Asphalt Patching Mixture per the Specifications, Terms and Conditions, Bid Requirements, Addendum\_1 dated 01/02/2024 and the Vendor's bid dated 01/03/2024, incorporated herein by reference and made apart hereof.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	30121601			LB	0.000000
	<b>Service From</b>	<b>Service To</b>			<b>Service Contract Amount</b>
					0.00

**Commodity Line Description:** Pre-Packaged Short Term Cold Mix - 60 # Pail

**Extended Description:**

SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	30121601			LB	0.000000
	<b>Service From</b>	<b>Service To</b>			<b>Service Contract Amount</b>
					0.00

**Commodity Line Description:** Pre-Packaged Short Term Cold Mix -Pallet (2940 pounds)

**Extended Description:**

SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	30121601			LB	0.000000
	<b>Service From</b>	<b>Service To</b>			<b>Service Contract Amount</b>
					0.00

**Commodity Line Description:** Pre-Packaged High Performance Cold Mix - 60 # Bag

**Extended Description:**

SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	30121601			LB	0.000000
	<b>Service From</b>	<b>Service To</b>			<b>Service Contract Amount</b>
					0.00

**Commodity Line Description:** Pre-Packaged High Performance Cold Mix - 60 # Pail

**Extended Description:**

SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	30121601			LB	0.000000
	<b>Service From</b>	<b>Service To</b>			<b>Service Contract Amount</b>
					0.00

**Commodity Line Description:** Pre-Packaged High Performance Cold Mix-Pallet (2940 pounds)

**Extended Description:**

SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	30121601			LB	0.000000
	<b>Service From</b>	<b>Service To</b>			<b>Service Contract Amount</b>
				0.00	

**Commodity Line Description:** Pre-Packaged Short Term Cold Mix - 60 # Bag

**Extended Description:**  
SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

**Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of one (1) year from effective date. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

**Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

**Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

the contract will continue for \_\_\_\_\_ years;

the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

**One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

**Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

**Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

**Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

**Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

**Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

**One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**Construction:** This Contract is for construction activity more fully defined in the specifications.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

**Automobile Liability Insurance** in at least an amount of: 1,000,000.00 per occurrence.

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

**Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

**Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.



**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. VENUE:** All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

\_\_\_\_\_ for \_\_\_\_\_.

Liquidated Damages Contained in the Specifications.

Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy).

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES:** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.



**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) Shawn Campbell, VP Sales  
(Address) 3601 Fairfield Road, Baltimore, MD 21226  
(Phone Number) / (Fax Number) 410 355 0330 / 410 355 5864  
(email address) sales@seboardasphalt.com

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

*By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.*

Seppard Asphalt Products Company  
(Company)

Shawn Campbell  
(Signature of Authorized Representative)

Shawn Campbell, VP Sales 1/3/24  
(Printed Name and Title of Authorized Representative) (Date)

410 355 0330 / 410 355 5864  
(Phone Number) (Fax Number)

\_\_\_\_\_  
(Email Address)

**REQUEST FOR QUOTATION  
Winter Grade Asphalt Patching Mixture  
[Cold Mix]**

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**SPECIFICATIONS**

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Division of Highways to establish an open-end contract for the delivery of Winter Grade Asphalt Patching Mixture (Cold Mix), to be used for WVDOH maintenance and repair projects throughout the state of West Virginia.
  
- 2. DEFINITIONS:** The terms listed below shall have the following meanings assigned to them throughout and for the purpose of this Solicitation. Additional definitions can be found in Section 2 of the General Terms and Conditions.
  - 2.1 “AASHTO”** - used throughout this Solicitation means American Association of State Highway and Transportation Officials. Reference: [www.transportation.org](http://www.transportation.org).
  - 2.2 “ADO” and “Agency Delivery Order”** - A written order entered by WVDOH personnel in the wvOASIS financial system against a master agreement, authorizing quantities of commodities and/or services to be delivered in accordance with all terms, conditions, and prices stipulated in the original contract.
  - 2.3 “ASTM”** - used throughout this Solicitation means the American Society for Testing and Materials. Reference: [www.astm.org](http://www.astm.org)
  - 2.4 “Cold Mix”** - used throughout this Solicitation means Winter Grade Asphalt Patching Mixture.
  - 2.5 “Contract Items”** - The list of items available for Vendor to provide pricing as identified in Section 3.2 of this Solicitation and referenced throughout.
  - 2.6 “Emergency Work”** – Work or orders requiring to be done without delay owing to circumstances for which the WVDOH could not have reasonably expected and has been designated as such by a representative of the WVDOH.
  - 2.7 “FOB” or “Free on Board”** - Indicates that the price for goods includes delivery at the Vendor’s expense to a specified point, and that the Vendor retains liability for loss or damage until the goods are delivered.
  - 2.8 “Liquidated Damages”** - monetary compensation due from the Vendor in the event the Vendor’s performance falls short of contractual stipulation or breaches the contract. Delays in the delivery of goods and/or services or quality failures or corrections by the Vendor may result in the Agency assessing charges for such deficiencies per these contract Specifications, the Standard Specs Section 108.7, as amended, and calculated from the table posted in Section 6.3 of these Specifications.

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- 2.9** “Pricing Pages,” “Attachment A,” and “ATT A” - The schedule of prices attached hereto as Attachment A (ATT A) and used to evaluate Solicitation responses.
- 2.10** “Solicitation” - The official notice of an opportunity to supply the State with goods or services.
- 2.11** “Standard Specs” - used throughout this solicitation means the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, most recent edition, as modified or amended by all subsequent Supplemental Specifications.
- 2.12** “WVDOH” or “Agency” - Interchangeable terms for the West Virginia Division of Highways.
- 2.13** “Vendor” or “Contractor” - Interchangeably used throughout this Solicitation and in any cited Sections of the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted latest Standard Specs edition, as amended, including any Supplementals and refers to any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract, as context requires.

**3. GENERAL REQUIREMENTS:**

- 3.1 Standard Specifications Roads and Bridges:** The following Standard Specs Sections shall apply, as applicable, to the administration of this contract: 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110, as amended.

Materials, equipment, and performance of this contract shall conform to, but are not limited to, the requirements of Sections 401, 702, 703, and 705.

Free electronic copies of the Standard Specs and Supplementals are available at: <https://transportation.wv.gov/highways/TechnicalSupport/specifications/Pages/default.aspx>.

- 3.2 Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

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**3.2.1 Materials**

**3.2.1.1 Aggregate:** The coarse aggregate shall be a clean material consisting of crushed stone, crushed gravel, or slag, meeting the requirements of the Standard Specs Sections 703 respectively. Fine aggregate shall meet the requirements of the Standard Specs Section 702.3.

The allowable standard aggregate sizes shall be #89, #9 or a blend composed of #8 with a minimum of 50% #9. The aggregate gradation shall be as recommended by the liquid asphalt supplier.

The gradation shall be determined in accordance with AASHTO T27 and AASHTO T11, or AASHTO T30.

The aggregate fraction of the final mixture shall meet the crushed particle requirements of the Standard Specs 703.2.2. Questionable aggregates shall be tested as per WVDOH Materials Controls, Soils and Testing Division, Materials Procedure MP 703.00.21, except the #8 sieve will be used. For a copy of this Procedure, please reference: <https://transportation.wv.gov/highways/mcst/Pages/WVDOH-Materials-Procedures.aspx>.

**3.2.1.2 Asphalt Material:** The asphalt material shall conform to the requirements of Standard Spec 705.1, Winter Grade Cutback Asphalt, and shall be a liquid asphalt or emulsion containing a minimum of 2.5% chemical anti-stripping additives meeting the requirements of the liquid asphalt supplier.

Results from the following test methods and any additional tests conducted by the liquid asphalt supplier shall be presented to the respective WVDOH District Materials Engineer/Supervisor for review prior to production.

Modified Asphalt Test

- 1) Flash Point °C (°F) - AASHTO T79
- 2) Kinematic Viscosity in cSt at 60°C (140°F)  
Requirement – 350 to 500 cSt – AASHTO T201
- 3) Water (%) – Requirement – 0.2% maximum – ASTM D95
- 4) Distillate Test – AASHTO T78
  - % to 225°C (437°F)
  - % to 260°C (500°F)
  - % to 315°C (600°F)
  - Residue (%) at 360°C (680°F)

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Residue Tests

- 1) Ductility at 25°C (77°F) – AASHTO T51
- 2) Solubility Test – AASHTO T44

**3.2.1.3 Composition of Mixture:** The aggregates and asphalt material shall be combined in such proportions that the composition by weight of the finished mixture shall meet the requirements of the job mix formula.

The aggregate fraction of the mixture shall be evaluated in accordance with AASHTO T27 and AASHTO T11, or AASHTO T30, and shall meet the requirements of the job mix formula range. Any material failing to meet specification requirements on any sieve shall not be approved.

The minimum amount of asphalt shall be as indicated in the table below. The amount of asphalt shall be sufficient to thoroughly coat the aggregate particles and provide enough adhesion to hold the compacted particles together under traffic conditions when properly placed and to assure that the aggregate particles remain sufficiently coated after stockpiling.

Minimum Asphalt Content for Cold Mix Mixture		
Aggregate Type	#89 or Blend of #8 with minimum of 50% #9	#9
% Asphalt - Note <sup>1</sup>	5.5%	6.0%

Note<sup>1</sup>: Add a minimum additional 0.5% asphalt to the above values for mixtures containing high-absorptive aggregates (>1.5%)

**3.2.1.4 Job Mix Formula:** The job mix formula shall be in accordance with the recommendations of the liquid asphalt supplier. The job mix formula composition report, which shall include the percentage of chemical anti-stripping additive, shall be forwarded to the WVDOH District Materials Supervisor/Engineer before the mixture is produced.

Should the Contractor at any time propose to change the job mix formula by changing the source of aggregate in the mixture, the definite asphalt content or change the source of the asphalt material, the provisions of the Standard Specs Section 401.4.2 shall apply.

**3.2.2 Quality Control Testing:** Quality control shall be the responsibility of the Vendor. Quality control testing shall include daily asphalt content and

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gradation analysis of the design aggregate structure during production. Since the aggregate and asphalt material are required to be measured separately and accurately to the proportions of the job mix formula, the asphalt content may be determined by calculating the percentage by total weight of mixture. However, all standard methods of determining the asphalt content of the mixture that are allowed for hot mix asphalt under Section 401 of the Standard Specs are acceptable. The ignition oven test method, AASHTO T308, would require an asphalt content correction factor; however, due to the low flash point of most asphalt used in Cold Mix, this test method is not recommended. If the AASHTO T164 solvent extraction test method is used, a non-chlorinated solvent may be substituted for the standard specified solvent and the test method may be modified as per the recommendations of the solvent manufacturer/supplier.

In addition, for each day of production, the completed mixture shall be tested for aggregate coating as follows:

Obtain a 100-150 gram sample and allow it to cure to normal laboratory temperature. Place the sample in a glass jar of sufficient size that the loose sample will protrude to a level of no more than half of its capacity. Cover the sample with water to approximately three-quarters of the capacity of the jar. Place a tight-fitting cover on the jar and allow it to stand for a period of 20 to 24 hours at normal laboratory temperature. The sample jar shall then be vigorously agitated for a period of 30 seconds. Pour the water from the jar, remove the sample and spread it on a flat light-colored surface (non-stick laboratory paper is recommended). Allow the sample to air dry and visually examine it for stripping of the asphalt film from the aggregate. Estimate the amount of coated aggregate. Any thin brownish, translucent areas are to be considered fully coated with an asphalt film. Document the results of this test. The mixture shall be considered acceptable if at least 95% of the aggregate is coated. Insufficient coating may require reworking of the mixture and/or an additional amount of anti-stripping additive.

- 3.2.3 Bulk Delivery Asphalt Patching Mixture:** The vendor shall deliver bulk cold mix patching mixture to the delivery/storage location listed on the Agency Delivery Order identified on the ATT A. All locations accommodate delivery using a tri-axle truck. Vendor will be responsible for the unloading of materials at each of the delivery/storage locations listed on the Agency Delivery Order. Delivery shall be included in the bid price per ton.

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**3.2.4 Pre-Packaged Asphalt Patching Mixture:** Pre-Packaged Asphalt Patching Mixture shall consist of the same black, cold-applied, single-component, pavement patching materials for the purpose of repairing potholes, cracks, and other asphalt voids or distress. The mixture shall adhere to cold and damp asphalt without mixing, heating, and/or special application equipment. The materials shall be suitable for “throw and go” repair situations and be able to develop strength after compaction by tampers and/or vehicle tires. Materials shall comply with the requirements specified in Section 3.2.1. Package size and type may vary by each Vendor. Vendor shall specify package size, type, and bid price in pounds on the Pricing Pages (ATT A).

The WV DOH shall, at its sole discretion, determine if a proposed “equal to” is an acceptable equivalent to the specific item being bid. Vendors proposing an “equal to” product should provide the product data sheet for the proposed product for evaluation with their bid. The Agency may contact the Vendor if more information is needed to determine equivalency. Failure to provide requested information to the Agency within 10 calendar days shall result in the disqualification of the “equal to” item bid.

**4. CONTRACT AWARD:**

**4.1 Contract Award:** This Contract is intended to provide Agencies with a purchase price for Winter Grade Asphalt Patching Mixture (Bulk and Pre-Packaged) for all WVDOH locations. This is a multiple vendor award contract. Qualified responsible Vendors shall be awarded a contract that provides the Contract Items meeting the required specifications with the lowest bid price per unit of measure, per delivery/storage location and the lowest bid price per distribution size for pre-packaged Cold Mix.

**4.2 Pricing Pages, Attachment A (“ATT A”):** Vendor shall complete the Pricing Pages by providing a bid price for each Contract Item listed. Vendor shall factor into their bid prices all equipment, materials, delivery, and labor required to provide Contract Items. Vendors may bid on any or all Districts. Vendor shall complete the Pricing Pages for each Contract Item bid in their entirety as failure to do so may result in Vendor’s bids being disqualified. All bids or pricing submitted shall be held and honored by the Vendor for 90 days after the bid opening date.

**4.2.1** The Pricing Pages contain a list of Contract Items and estimated purchase volumes. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

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**4.2.2** Vendor should type or electronically enter the information into the Pricing Pages spreadsheet to prevent errors in the evaluation. In most cases, the Pricing Pages are available in wvOASIS within the solicitation attachments, however, Vendors may request an electronic copy of the Pricing Pages spreadsheet for bid purposes by sending an email request to the following address: [John.W.Estep@wv.gov](mailto:John.W.Estep@wv.gov).

**4.2.3** Changing a column or row description, Contract Item description, unit of measure, or estimated quantities on the **Pricing Pages, Attachment A (ATT A)**, shall result in the disqualification of Contract Item bid on the altered line. In circumstances when all Contract Items must be bid for bid evaluation and contract award, the disqualification of any Contract Item will result in the disqualification of the entire bid.

Submitting Pricing Pages other than those provided with this solicitation, as described in Section 4.2 shall result in the disqualification of the Vendor's bid in its entirety.

Vendor entries of bid prices or other notations made in wvOASIS commodity line descriptions will not be considered for bid evaluation or award.

**4.3 Contract Award Transition:** Upon award of this contract, the WVDOH Operations Division will announce the effective date of use of this contract to the Districts and the Vendors, whether it is by the effective date, the completed and encumbered date, or an established date by the WVDOH. Upon the announced effective date of use, any order issued prior to the award of the contract shall remain in effect and should not be cancelled until that order is filled; however, after 10 working days of the Districts and Vendors notice, any order that has not been completely filled by the Vendors shall NOT be completed and a cancellation notice will be sent to that Vendor from the issuing District for cancellation of the balance of that order only. No orders from prior contracts should be held open by the Districts or Vendors longer than 10 working days after the effective date of use is announced for the new contract.

**4.4 Cooperative Contracting:** The purchase prices on all Contract Items herein, available for the WVDOH, shall be adoptable for other public agencies upon their request. Agencies under the authority of the West Virginia Purchasing Division must receive prior approval by the Purchasing Director.

**5. ORDERING AND PAYMENT:**



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- 5.1 Ordering:** Vendor shall accept orders through regular mail, facsimile, email, or any other written forms of communication. Vendor shall maintain and keep current its phone numbers, fax number, email address, locations, and ordering/billing/payment addresses with WVDOH and in wvOASIS. Vendor may, but is not required to, accept online orders through a secure internet ordering portal/website. If Vendor can accept online orders, it shall include in its response a brief description of how Agencies may utilize the online ordering system. Vendor shall ensure that its online ordering system is properly secured prior to processing Agency orders online.
- 5.1.1 Emergency Orders:** Emergency orders as placed by WVDOH District Engineer, or their designee is work that shall be initiated within 48 hours from when the order is received by the vendor. The determination of emergency work will be in accordance with Section 2.6 of this Solicitation and prominently noted on ADO. Designated emergency requests will be paid at 1.50 times the vendor's bid price.
- 5.2 Agency Delivery Order ("ADO"):** District personnel must issue an ADO from wvOASIS for specific quantities of materials based on each project's requirements and detailing the need and location information of work to be completed per Contract Items, as well as the start and end dates, which will become the agreed upon official start and end dates. The ADO must be created in wvOASIS and approved to "Final", prior to placing the order with the Vendor. The District is responsible for creating the ADO in wvOASIS and is required to submit the approved order, in writing, directly to the Vendor via mail, email or fax. **Verbal communication with the Vendor is not considered an official order.** In the event the Vendor denies an order or if there are changes to an ADO, the District must process a change order to the approved ADO issued from wvOASIS.
- 5.3 Payment:** Upon completion of the work indicated on the ADO, Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, as well as Electronic Funds Transfer as methods to process payment for goods and services. The Vendor shall accept the State of West Virginia's Purchasing Card and Electronic Funds Transfer for payment of orders under this Contract. Electronic Funds Transfer for payment is available through the WV State Auditor's Office. The Vendor may visit the WV State Auditor's website ([wvsao.gov](http://wvsao.gov)) for all necessary forms and instructions. Payment method may be dictated at WVDOH's discretion.

**6. PROJECT ACCEPTANCE, DELIVERY AND RETURN:**

- 6.1 Project Acceptance and Written Verification of Receipt:** Upon receipt of a

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WVDOH ADO, the Vendor shall advise the WVDOH in writing within five (5) calendar days of their acceptance or refusal of the ADO. As verification of receipt, Vendor must provide written acknowledgement of any ADOs and any Revisions/Modifications thereto sent by WVDOH. Failure to provide the WVDOH with written acknowledgement of any ADOs/Revisions within five (5) days of the Order being sent shall be considered refusal of the ADO. In the event of refusal, the WVDOH at its own discretion shall cancel the ADO and may seek to obtain the goods or services from the next low bid Vendor or proceed with an emergency purchase from the open market.

- 6.2 Delivery Time:** Vendor shall deliver standard orders within 10 working days after orders are received. Vendor shall deliver emergency orders within two working days after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 6.3 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from another awarded vendor or proceed with an Emergency Purchase from the open market.

The Agency placing the ADO under this Contract must be notified in writing by the Vendor no later than five business days prior to the scheduled delivery date noted on the Agency's order. Any failure to notify, acknowledge receipt of WVDOH's written ADOs/ Revisions resulting in delivery delay, or failure to start or complete the project per the WVDOH scheduled due dates may be determined by the WVDOH at its sole discretion as harmful to the Agency and as such, shall result in WVDOH's cancellation of the ADO and application of Liquidated Damages.

Any Agency seeking to obtain items from the open market under this provision must first obtain approval of the West Virginia Division.

- 6.3.1 Liquidated Damages:** If the Vendor's work completion or corrections of deficient work exceeds the ADO completion due date or timeframe, the Vendor shall agree that no extension of contract time will be granted unless Liquidated Damages are applied by the WVDOH in the form of an off-set reduction to the total amount of the Vendor's final invoice. The WVDOH shall calculate Liquidated Damages per project beginning on day one (1) after the WVDOH's specified ADO due date and in accordance with this Section, the Contract's Terms and Conditions, Standard Specs Section 108.7, and the following Standard Specs Section Table 108.7.1 - Schedule of Liquidated Damages, as amended:

**Table 108.7.1**

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**Schedule of Liquidated Damages**

Original Contract Amount		Daily Charges Per Calendar Day
For More Than	To and Including	
\$0	\$500,000	\$350
\$500,000	\$2,000,000	\$650
\$2,000,000	\$10,000,000	\$1,600
\$10,000,000	\$25,000,000	\$3,100
\$25,000,000		\$4,200

**6.3.2 Force Majeure:** It shall be further noted that the Vendor is not responsible for and shall not be penalized for delays in its delivery of goods and/or services when caused by factors or events outside Vendor's control, including but not limited to acts or omissions of the Agency or third parties, acts of civil or military authority, civil disturbance, war, terrorism, pandemics, explosions, fire, floods, tornadoes, or other natural disasters or acts of God.

**6.4 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost/discount of standard order delivery charges in its bid pricing and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

Deliveries made by the vendor shall be comprised only of Contract Items intended for delivery at that location and specified in the pricing pages, contract specifications or Agency Delivery Order. At no time shall property belonging to the West Virginia Department of Transportation be utilized as a lay-down or storage facility by the vendor, or items left with the intention of being distributed to an alternate location.

**6.5 Project Acceptance Criteria:** The WVDOH District Engineer or their designee shall have final acceptance of the work done by the Vendor, per project. Any work found by the WVDOH District Engineer or their designee not performed in accordance with these contract specifications or the Standard Specs, as amended, and/or found deficient and unacceptable by visual inspection will be rejected and, at the Vendor's/Contractor's expense, will be removed and replaced by the Vendor with work being continual until the Vendor's deficient work corrections are completed and deemed acceptable and approved by the WVDOH District Engineer or their designee. Under no circumstance shall the Vendor's deficiency corrections exceed 20 calendar days unless otherwise declared in writing by the WVDOH District Engineer or their designee and may be subject to Liquidated Damages as

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per Section 6.3.1 of these Contract Specifications.

- 6.6 Return of Unacceptable Items:** The decision of the WVDOH District Engineer or their designee regarding materials, workmanship, quality etc., shall be final per the Standard Specs Section 105.1, as amended. If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either arrange for the return within five (5) days of being notified that items are unacceptable or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 6.7 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**7. VENDOR DEFAULT:**

- 7.1** The following shall be considered a vendor default under this Contract.
- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

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- 7.2 The following remedies shall be available to Agency upon default.
- 7.2.1 Immediate cancellation of the Contract.
  - 7.2.2 Immediate cancellation of one or more release orders issued under this Contract.
  - 7.2.3 Any other remedies available in law or equity.

**8. MISCELLANEOUS:**

- 8.1 **No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 **Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.
- 8.3 **Reports:** Vendor shall provide the Agency with quarterly reports, annual summaries, and/or monthly reports as requested by the Agency and/or the West Virginia Purchasing Division showing quantities, total dollar value of the Contract Items purchased, ordered, shipped & invoiced with dates in spreadsheet format as defined by the Agency. Failure to supply such reports may be grounds for cancellation of this Contract.
- 8.4 **Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract Manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract Manager and his or her contact information below.

Contract Manager:

*Shawn Campbell*

Telephone Number:

*410 355 0330*

Fax Number:

*410 355 5864*

Email Address:

*sales@seaboardasphalt.com*

Vendor shall inform the Agency in writing of any changes to the information provided above within 10 calendar days of such changes. Failure to comply may be grounds for cancellation of this contract.



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

**State of West Virginia  
 Centralized Request for Quote  
 Highways**

<b>Proc Folder:</b> 1322263			<b>Reason for Modification:</b> ADDENDUM NO_1 Vendor Question and Response
<b>Doc Description:</b> WINTER GRADE ASPHALT PATCHING MIXTURE			
<b>Proc Type:</b> Central Master Agreement			
<b>Date Issued</b>	<b>Solicitation Closes</b>	<b>Solicitation No</b>	<b>Version</b>
2024-01-02	2024-01-04 13:30	CRFQ 0803 DOT2400000055	2

**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

**Vendor Customer Code:**

**Vendor Name :**

**Address :**

**Street :**

**City :**

**State :** **Country :** **Zip :**

**Principal Contact :**

**Vendor Contact Phone:** **Extension:**

**FOR INFORMATION CONTACT THE BUYER**  
 John W Estep  
 304-558-2566  
 john.w.estep@wv.gov

**Vendor Signature X** **FEIN#** **DATE**

All offers subject to all terms and conditions contained in this solicitation

**ADDITIONAL INFORMATION****ADDEENDUM NO\_1**

Addendum No\_1 Issued to publish and distribute the attached information to the Vendor Community.

**REQUEST FOR QUOTATION:**

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Division of Highways to establish an open-end contract for the delivery of Winter Grade Asphalt Patching Mixture (Cold Mix), to be used for WVDOH maintenance and repair projects throughout the state of West Virginia. Per the Bid Requirements, Specifications, Terms and Conditions attached to this solicitation.

INVOICE TO		SHIP TO	
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City US	WV	No City US	WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Bulk Winter Grade Asphalt Patching Mixture (Cold Mix)	0.00000	TON		

Comm Code	Manufacturer	Specification	Model #
30121601			

**Extended Description:**  
SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

INVOICE TO		SHIP TO	
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City US	WV	No City US	WV

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Pre-Packaged Winter Grade Asphalt Patching Mixture (Cold Mix)	0.00000	LB		

Comm Code	Manufacturer	Specification	Model #
30121601			

**Extended Description:**  
SEE ATTACHED PRICING PAGE, ATTACHMENT A, FOR ACTUAL COST

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Tech Questions due by 10:00am	2023-12-27



**SOLICITATION NUMBER: CRFQ DOT2400000055**

**Addendum Number: 1**

The purpose of this addendum is to modify the solicitation identified as CRFQ DOT2400000055 (“Solicitation”) to reflect the change(s) identified and described below.

**Applicable Addendum Category:**

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error
- Other

**Additional Documentation:**

Vendor Questions and Responses

Bid Opening remains 01/04/2024 at 1:30pm

**Terms and Conditions:**

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**Solicitation Number CRFQ DOT2400000055**

**Responses to Questions from Vendors**

**Question 1**

In regards to solicitation CRFQ-0803-DOT2400000055-1, is there a minimum tonnage order for delivery? To provide consistent, fair and accurate pricing, it would be helpful to have a minimum order for purchase as most trucking rates are based per hour. With this in mind, spreading the transportation cost over 1 to 25 tons is going to drastically impact the price per ton. Please advise.

**Answer 1**

This contract does not have a minimum set quantity per delivery. The Pricing Pages contain a list of Contract Items and estimated purchase volumes. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: CRFO DOT240000055**

**Instructions:** Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

**Acknowledgment:** I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

**Addendum Numbers Received:**

(Check the box next to each addendum received)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2            | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3            | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4            | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5            | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Seaboard Asphalt  
Company  
Shawn Campbell  
Authorized Signature  
1/3/2024  
Date

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.

**Winter Grade Asphalt Patching Mixture  
(Cold Mix)  
ATTACHMENT A-PRICING PAGE**

**Vendor Name :** Seaboard Asphalt Products Company

**Vendor Instructions:** Please provide a bid price, including delivery, of Pre-Packaged Winter Grade Asphalt Patching Mixture (Cold Mix) Material per pound for various WVDOH storage sites statewide. Separate delivery charges will not be allowed. This is a Multiple Vendor award contract. Qualified responsible vendors shall be awarded a contract that provides the Contract Items meeting the required specifications and the lowest bid price per distribution size for pre-packaged Cold Mix.

**Pre-Packaged Winter Grade Asphalt Patching Mixture (Cold Mix)**

<b>Contract Item</b>	<b>Package Sizes/Quantities</b> Enter amounts per Unit of Measure (unless already noted) for item bid.	<b>Cost per Pound</b>
<b>Pre-Packaged for Short-Term Single Season Use</b>	60 pounds per bag	0.1941
	60 pounds per pail	0.304
	2940 pounds per pallet	0.1941
<b>High Performance Cold Mix-UPM Cold Mix or Equal</b>	60 pounds per bag	0.1941
	60 pounds per pail	0.304
	2940 pounds per pallet	0.1941