

Extended Description:

The Vendor, New Enterprise Stone & Lime 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 Asphalt-Pickup per the Specifications, Terms and Conditions, Bid Requirements, and the Vendor's bid dated 09/17/2024, incorporated herein by reference and made apart hereof.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - Base I

Extended Description:

Asphalt Section 401 - Base I

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - 25mm Superpave

Extended Description:

Asphalt Section 401 - 25mm Superpave

wvOASIS Commodity Note VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - Base II

Extended Description:

Asphalt Section 401 - Base II

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - Patch and Level

Extended Description:

Asphalt Section 401 - Patch and Level

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - Wearing IV

Extended Description:
Asphalt Section 401 - Wearing IV

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 402 - Wearing IV

Extended Description:
Asphalt Section 402 - Wearing IV

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - 19mm Superpave

Extended Description:
Asphalt Section 401 - 19mm Superpave

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - Scratch Course

Extended Description:
Asphalt Section 401 - Scratch Course

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
9	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 402 - 9.5mm Superpave

Extended Description:
Asphalt Section 402 - 9.5mm Superpave

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
10	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - Wearing 1

Extended Description:

Asphalt Section 401 - Wearing 1

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
11	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 402 - Wearing 1

Extended Description:

Asphalt Section 402 - Wearing 1

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
12	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - 4.75mm Superpave

Extended Description:

Asphalt Section 401 - 4.75mm Superpave

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
13	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 402 - 4.75mm Superpave

Extended Description:

Asphalt Section 402 - 4.75mm Superpave

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
14	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - Wearing III

Extended Description:

Asphalt Section 401 - Wearing III

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
15	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 402 - Wearing III

Extended Description:

Asphalt Section 402 - Wearing III

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
16	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 401 - 12.5mm Superpave

Extended Description:

Asphalt Section 401 - 12.5mm Superpave

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
17	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Section 402 - 12.5mm Superpave

Extended Description:

Asphalt Section 402 - 12.5mm Superpave

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
18	30121600			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Asphalt Plant Run

Extended Description:

Asphalt Plant Run

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
19	12161804			TON	0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Surcharge for PG Binder 58-28S

Extended Description:

Surcharge for PG Binder 58-28S

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
20	12161804			TON	0.000000
	Service From	Service To	Service Contract Amount		
			0.00		

Commodity Line Description: Surcharge for PG Binder 64H-22

Extended Description:
Surcharge for PG Binder 64H-22

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
24	30121600			TON	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Off-Season Plant Opening - First Day

Extended Description:
Off-Season Plant Opening - First Day

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
25	30121600			TON	0.000000
	Service From	Service To	Service Contract Amount		
			0.00		

Commodity Line Description: Off-Season Plant Opening - Each Additional Day

Extended Description:
Off-Season Plant Opening - Each Additional Day

VENDOR NOTE: Bid evaluation will be based on the accurate completion and submission of solicitation documentation. Any pricing or notations entered into wvOASIS commodity line comment areas will not be considered.

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 the 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 zero (0) 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 of 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.

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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: _____ 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.

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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.

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.

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) Jim Zimmerman Sales Manager
(Address) 3912 Brumbaugh Road New Enterprise, PA 16664
(Phone Number) / (Fax Number) 717-267-5961
(email address) jczimmerman@nesl.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.

New Enterprise Stone & Lime Co., Inc.

(Company) Jim Zimmerman

Digitally signed by Jim Zimmerman
Date: 2024.10.31 10:11:28 -04'00'

(Signature of Authorized Representative)

Jim Zimmerman Sales Manager w/Signature Auth 10/31/2024

(Printed Name and Title of Authorized Representative) (Date)
717-267-5961

(Phone Number) (Fax Number)
jczimmerman@nesl.com

(Email Address)

REQUEST FOR QUOTATION
Asphalt Material Pick Up by Agency

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Division of Highways to establish a multiple award, open-end contract for WVDOH Agency pick-up of asphalt material from Vendor plant locations, for use in repair projects and preventative maintenance of roadways 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 **“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.

 - 2.2 **“Approved Source,” “Approved Plant,” “Approved Product,” or “Approved Vendor”** - terms which refers to the Approved Product Lists (APL) of certified manufacturers and/or products that meet acceptable levels of quality as determined by WVDOH Materials Control, Soils and Testing Division (MCS&T). These lists are updated periodically, and it is the Vendors responsibility to refer to the MCS&T website to ensure compliance. Reference:
https://transportation.wv.gov/highways/mcst/Pages/APL_By_Number.aspx.

 - 2.3 **“Asphalt,” “Hot Mix Asphalt” and “HMA”** - terms used interchangeably for asphalt.

 - 2.4 **“Contract Item(s)”** - the list of items available for Vendor to provide pricing as identified in Section 3 of this Solicitation and referenced throughout.

 - 2.5 **“Contractor” or “Vendor”** - 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.

 - 2.6 **“ESAL”** – means Equivalent Single Axle Load and establishes a damage relationship for comparing the effects of axles carrying different loads.

 - 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.

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- 2.8** “MCS&T” - The WVDOH Materials Control, Soils and Testing Division, who perform all procedures necessary with sampling, testing, reporting and inspection of products and materials to maintain a reliable quality assurance system. Reference: <https://transportation.wv.gov/highways/mcst/Pages/default.aspx>.
- 2.9** “MP” - refers to a Materials Procedure per the Materials Control, Soils, and Testing Division of the West Virginia Division of Highways, as amended. Reference: <https://transportation.wv.gov/highways/mcst/Pages/WVDOH-Materials-Procedures.aspx>
- 2.10** “PG” – means Performance Graded.
- 2.11** “Plant Run” is an asphalt mixture available for purchase through the Vendor, which was not initially produced for WVDOH use, but is available for WVDOH purchase as a substitute. At the determination and request of the WVDOH District Engineer, or their designee, Plant Run material may be substituted at a flat rate for Contract Items 1 through 17.
- 2.12** “Pricing Pages” - the schedule of prices attached hereto as Attachment A Pricing Pages (ATT A) which are used to evaluate the Solicitation responses. The sourced asphalt plant name and location shall be identified on each Pricing Page submission. Bids with multiple asphalt plants will require multiple Pricing Page submissions, one for each plant listed.
- 2.13** “Solicitation” - the official notice of an opportunity to supply the State with goods or services.
- 2.14** “Standard Specs” - 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.
- 2.15** “WVDOH” or “Agency” - interchangeable terms referring to the West Virginia Division of Highways.

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 Section 401, as amended.

Free electronic copies of the Standard Specs and Supplementals are available at: <https://transportation.wv.gov/highways/TechnicalSupport/specifications/Pages/default.aspx>. Hard copies of these publications may be purchased from the Technical

REQUEST FOR QUOTATION
Asphalt Material Pick Up by Agency

Support Division by completing the Specification Order Form provided within the website.

- 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.

3.2.1 Asphalt Material - Contract Items 1 through 17 are considered asphalt material. Material from this contract SHALL ONLY be purchased when the pick-up of those materials is by WVDOT forces or other agency as described in Section 5.3.

3.2.2 Plant Run Asphalt - Contract Item 18 may be substituted for **Contract Items 1 through 17** only when the use of Plant Run has been requested by the WVDOT District Engineer, or their designee, having determined that the Plant Run material is suitable for use; and only when all other equivalent items of material are not available. All Plant Run material shall meet the Standard Specs, or in instances where the Plant Run material was produced for a neighboring state, must meet the specifications of the adjacent state highway department, unless otherwise deemed acceptable by the WVDOT District Engineer, or their designee.

3.2.3 Performance Graded Binder - Contract Items 19 through 21 are surcharges to compensate the Vendor for supplying Asphalt when PG Binder is substituted for the standard binder.

3.2.4 ESAL Surcharge - Contract Items 22 and 23 are surcharges to compensate Vendor for supplying other necessary aggregates or mix types when the asphalt design mix requires an ESAL rating of 3 million or greater. Mixes requiring less than 3 million ESAL's do not qualify for this surcharge.

3.2.5 Seasonal Readiness: It is WVDOT's intention that WVDOT forces shall commence spring pothole patching as early as the weather permits and once started, early pothole patching work shall be continuous, as weather permits. Awarded Vendors should have their asphalt plant(s) operational and available for asphalt production, upon WVDOT request and weather permitting, no later than March 16th. As per Section 7.1, if the low bid Vendor is not operational and available for asphalt production, WVDOT will consider this as a Delivery Order refusal, and the WVDOT will obtain the goods or services from the next low bid Vendor who is available.

3.2.6 Off-Season Plant Opening - Contract Items 24 and 25 are necessary if a Vendor is required to open their plant in the off-season to service the needs of the WVDOT, in which case an additional payment will be made. The Vendor will be paid an additional day charge for each additional

REQUEST FOR QUOTATION
Asphalt Material Pick Up by Agency

consecutive day that the plant is open after the first day to service the needs of the WVDOH. If the plant produces no material for any use on any calendar day, either during the week or on the weekend, the WVDOH will pay the first day rate for off-season plant opening on the next day of the WVDOH usage. Payment for this item is subject to the following conditions:

3.2.6.1 Payment for this item can only be authorized and made during the winter months, i.e., between December 15th and March 15th, and then only if the plant would not have otherwise been open. These dates may be revised by the WVDOH District Engineer or their designee, if necessary, to meet specific needs in the field. Any such revision of dates will be in writing and shall be attached to the Vendor's invoice at the time payment is requested.

3.2.6.2 Payment will always be made at the full contract awarded bid price for the first day of plant opening; however, the amount paid from each additional day of plant opening will be reduced as follows:

3.2.6.2.1 Payment for additional day charge will not be made if the plant has produced over 500 tons on that day. If between 300 and 500 tons have been produced, payment for additional day charge will be made equal to one-half of the contract awarded bid price for the additional day charge. The quantity produced to make this determination shall include all material produced that day, which includes tonnage bought by the WVDOH, other local governments and all private work.

3.2.6.2.2 The WVDOH will only pay its share of the amount determined to be due for additional day charge as described above. For example, if the plant produces 375 tons and the WVDOH takes 150 tons of the total, 40% of the plant's daily production, payment for additional day charge would be calculated as follows: Since the total daily production is between 300 and 500 tons, the Vendor is due 50% of the additional day charge. Because the WVDOH's share of this daily production is 40%, the WVDOH would pay 40% of one-half of the additional day charge, or in this case, 20% of the additional day charges.

3.2.6.3 A certified statement shall accompany the invoice stating the total quantity produced on the additional day. If payment does not qualify due to tonnage produced, the next consecutive day of plant

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operation, if any, will qualify for payment at the additional day rate rather than the first day rate for plant opening.

- 3.3 Price Adjustment of Asphalt Cement:** Due to the uncertainty in estimating the cost of petroleum products that will be used during the life of this contract, adjustment in compensation for **Contract Items 1 through 18** is provided for in the Standard Specs Section 109, as amended. Refer to the table in Figure 3.1.

Figure 3.1

Contract Item	Description	AC (Average Asphalt Content)
1	Section 401 – Base I	3.9
2	Section 401 – 25mm Superpave	4.4
3	Section 401 – Base II	5.0
4	Section 401 – Patch and Level	5.0
5	Section 401 – Wearing IV	5.2
6	Section 402 – Wearing IV	5.1
7	Section 401 – 19mm Superpave	4.7
8	Section 401 – Scratch Course	6.2
9	Section 402 – 9.5mm Superpave	6.1
10	Section 401 – Wearing I	6.1
11	Section 402 – Wearing I	6.0
12	Section 401 – 4.75mm Superpave	7.6
13	Section 402 – 4.75mm Superpave	7.2
14	Section 401 – Wearing III	7.3
15	Section 402 – Wearing III	7.5
16	Section 401 – 12.5mm Superpave	5.6
17	Section 402 – 12.5mm Superpave	5.6
18	Plant Run	5.7

- 3.4 Price Adjustment of Fuel Oil No. 2 (Diesel Fuel):** Due to the uncertainty in estimating the cost of diesel fuel that will be used during the life of this contract, adjustment in compensation for applicable items shall be per Standard Specs 109.9, as amended, with the exception that Factor “C” in the Price Adjustment for Fuel formula is to be broken down by component, as shown in Figure 3.2.

The Price Adjustment for Fuel formula to be utilized for this contract is:

$$Pa = [(Mbp \div Cbp) - 1.00] \times Cbp \times C \times Q$$

Where: Pa = Price Adjustment

Mbp = Monthly base price at time of placement

Cbp = Contract Base Price at time of bidding

C = Cost Adjustment Factors per Unit, as per Figure 3.2

Q = ‘As Constructed’ Quantity

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Figure 3.2

Description	Factor	Unit	Applicable Item
Asphalt Material	0.43	Tons	Contract Items 1-18

Note: The bidding index for Asphalt Binder will be listed on the Contract Administration website for Fuel, Asphalt and Cement Prices Adjustments listed for August 2024. Contract Base Price at time of bid will be based on August 2024. Reference:

<https://transportation.wv.gov/highways/contractadmin/Lettings/Pages/FuelandAsphaltPrices.aspx#FuelPrices>

4. **ACCEPTANCE PLAN:** Quality control at the plant shall be the responsibility of the Vendor and shall meet the requirements of MP 401.03.50. Compaction quality control shall be in accordance with Section 401 of the Standard Specifications. Acceptance testing shall be the responsibility of the WVDOH. Quality assurance of the material shall be as set forth in MP 401.02.27 for Marshall Mix designs or MP 401.02.29 for Superpave mix designs. Reference: <https://transportation.wv.gov/highways/mcst/Pages/MP-400s.aspx>.

5. CONTRACT AWARD:

- 5.1 **Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. All qualified responsible Vendors shall be awarded a contract for those Contract Items bid which meet all mandatory requirements of these contract specifications. The low bid vendor will be determined at the time of need.

- 5.1.1 **Determining Low Bid Per Project:** To determine the low bid Vendor for individual projects, the WVDOH District Engineer or their designee will calculate the lowest overall total cost of the Contract Items required for individual projects. A written Delivery Order will be issued to the Vendor with the lowest overall total cost. The WVDOH District Engineer or their designee shall factor in the proximity of the plant to the project site and related haul/fuel expenses when determining low bid vendor.

WVDOH reserves the right to request any one or combination of items for which bids are awarded at the lowest overall total as set forth in this section.

- 5.2 **Pricing Pages, Attachment A ("ATT A"):** Vendor shall complete the Pricing Pages spreadsheet by first reading the Vendor Instructions section at the top of the Pricing Pages, Attachment A (ATT A), then completing Parts I, II and III of the spreadsheet. All bids or pricing submitted shall be held and honored by the Vendor for 90 days after the bid opening date.

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5.2.1 Vendor Instructions:

- **Part I: Vendor Asphalt Plant Information (Required):** Vendor shall provide their name, Asphalt Plant Name, and Asphalt Plant Information (911 address). Failure to list the Asphalt Plant Name and Location will result in disqualification of all bids on associated Pricing Pages spreadsheet.
- **Part II: WVDOH Districts Served by Asphalt Plant (Required):** Vendor shall mark all WVDOH Districts which the stated Vendor and Asphalt Plant may serve.
- **Part III: Price Per Unit of Measure for Contract Items Bid (Required):** Vendor shall list their bid price, per unit of measure, for each Contract Items they intend to bid. Vendors may bid any or all Contract Items on the Pricing Pages spreadsheet. Bidding on any one Contract Item may not be conditioned on the acceptance of the bid on any other Contract Item(s).

5.2.2 The Pricing Pages contain a list of the Contract Items with no guarantee that any Contract Item will be purchased throughout the life of this contract. Estimated quantities are not available.

5.2.3 Vendors should type or electronically enter the information into the Pricing Pages spreadsheet to prevent errors in the evaluation. Vendors should not place formulas or any type of Excel calculations into the List Price column, only the actual bid price per Contract Item. 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

5.2.4 Changing a column or row description, Contract Item description, unit of measure on the **Pricing Pages, Attachment A (ATT A)**, shall result in the disqualification of the Contract Item bid on the altered line.

Submitting Pricing Pages other than those provided with this solicitation, as described in Section 5.2 shall result in the disqualification of 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.

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- 5.3 Cooperative Contracting:** The purchase prices on all Contract Items on this contract 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.
- 5.4 Contract Award Transition:** Upon award of this contract, the WVDOH Procurement 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.

6. ORDERING AND PAYMENT:

- 6.1 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 address 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.
- 6.2 Agency Delivery Order ("ADO"):** District personnel must issue an ADO from wvOASIS for specific quantities of material 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.
- 6.3 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

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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) for all necessary forms and instructions. Payment method may be dictated at WVDOT's discretion.

7. PROJECT ACCEPTANCE, DELIVERY AND RETURN:

7.1 Project Acceptance and Written Verification of Receipt: Upon receipt of a WVDOT Delivery Order, the Vendor shall notify the WVDOT within two (2) hours of receipt of their inability to provide the product, otherwise the WVDOT will consider the Delivery Order as accepted and will commence with pick up as stated on the Delivery Order. In the event of refusal, the WVDOT at its own discretion shall cancel the Delivery Order and may seek to obtain the goods or services from another low bid Vendor or proceed with an Emergency Purchase from the open market. Upon Vendor's acceptance, WVDOT should submit an ADO in wvOASIS.

7.2 Contract Item Availability: Vendor shall have ordered product available for pick up by Agency within no more than one (1) working day after the order is received. Vendors shall have material available for pick up in accordance with the dates assigned to each project per the Delivery Order and shall not hold orders until a minimum quantity is met

7.3 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 product availability that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division

7.4 Return of Unacceptable Items: The decision of the WVDOT 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. 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 of the purchase price, at the Agency's discretion.

REQUEST FOR QUOTATION
Asphalt Material Pick Up by Agency

- 7.5 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.

8. VENDOR DEFAULT:

- 8.1** The following shall be considered a vendor default under this Contract.
- 8.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
 - 8.1.2** Failure to comply with other specifications and requirements contained herein.
 - 8.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
 - 8.1.4** Failure to remedy deficient performance upon request.
- 8.2** The following remedies shall be available to Agency upon default.
- 8.2.1** Immediate cancellation of the Contract.
 - 8.2.2** Immediate cancellation of one or more release orders issued under this Contract.
 - 8.2.3** Any other remedies available in law or equity.

9. MISCELLANEOUS:

- 9.1 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.
- 9.2 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.

REQUEST FOR QUOTATION
Asphalt Material Pick Up by Agency

- 9.3 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.
- 9.4 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: CRFQ DOT2500000017
Telephone Number: 717-267-5961
Fax Number: _____
Email Address: iczimmerman@nesl.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.

Asphalt Material Pick Up by Agency 6624C095
ATT A Pricing Pages

VENDOR INSTRUCTIONS:

Vendor shall complete Parts I, II and III below in their entirety. **Failure to provide the Asphalt Plant Name and Asphalt Plant Location will result in the disqualification of corresponding bid.** Vendor must complete a separate Pricing Page (ATT A) for EVERY sourced Asphalt Plant providing Contract Items for Pick Up by WVDOH forces.

PART I: VENDOR & ASPHALT PLANT INFORMATION (Required)

Vendor Name: New Enterprise Stone & Lime Co., Inc.
Asphalt Plant Name: Ashcom Balcktop
Asphalt Plant Location: 526 Ashcom Road
(911 Address) Everett PA 15537
Latitude Coordinate: 40.00433
Longitude Coordinate: -78.419395

PART II: WVDOH DISTRICTS SERVED BY ABOVE ASPHALT PLANT (Required). Mark all Districts which include one or more counties served by the Asphalt Plant listed above in Part I.

☐	District 1: Boone, Clay, Kanawha, Mason and Putnam counties
☐	District 2: Cabell, Lincoln, Logan, Mingo and Wayne counties
☐	District 3: Calhoun, Jackson, Pleasants, Ritchie, Roane, Wirt and Wood counties
☐	District 4: Doddridge, Harrison, Marion, Monongalia, Preston and Taylor counties
☒	District 5: Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral and Morgan counties
☐	District 6: Brooke, Hancock, Marshall, Ohio, Tyler and Wetzel counties
☐	District 7: Barbour, Braxton, Gilmer, Lewis, Upshur and Webster counties
☐	District 8: Pendleton, Pocahontas, Randolph and Tucker counties
☐	District 9: Fayette, Greenbrier, Monroe, Nicholas and Summers counties
☐	District 10: McDowell, Mercer, Raleigh and Wyoming counties

PART III: PRICE PER UNIT OF MEASURE FOR CONTRACT ITEMS BID.

Contract Item #	Contract Item Description	Unit of Measure	List Price
1	Asphalt Section 401 - Base I	TON	70.00
2	Asphalt Section 401 - 25mm Superpave	TON	70.00
3	Asphalt Section 401 - Base II	TON	75.00
4	Asphalt Section 401 - Patch and Level	TON	75.00
5	Asphalt Section 401 - Wearing IV	TON	90.00
6	Asphalt Section 402 - Wearing IV	TON	100.00
7	Asphalt Section 401 - 19mm Superpave	TON	80.00
8	Asphalt Section 401 - Scratch Course	TON	90.00
9	Asphalt Section 402 - 9.5mm Superpave	TON	90.00
10	Asphalt Section 401 - Wearing 1	TON	90.00
11	Asphalt Section 402 - Wearing 1	TON	100.00
12	Asphalt Section 401 - 4.75mm Superpave	TON	190.00
13	Asphalt Section 402 - 4.75mm Superpave	TON	200.00
14	Asphalt Section 401 - Wearing III	TON	130.00
15	Asphalt Section 402 - Wearing III	TON	140.00
16	Asphalt Section 401 - 12.5mm Superpave	TON	90.00
17	Asphalt Section 402 - 12.5mm Superpave	TON	100.00
18	Asphalt Plant Run	TON	90.00
19	Surcharge for PG Binder 58-28S	TON	10.00
20	Surcharge for PG Binder 64H-22	TON	10.00
21	Surcharge for PG Binder 64E-22 - ordered in 400 ton increments	TON	0.00
22	ESAL Surcharge - 3 million to 20 million ESALs	TON	0.00
23	ESAL Surcharge - Greater than 20 million ESALs	TON	0.00
24	Off-Season Plant Opening - First Day	DAY	8000.00
25	Off-Season Plant Opening - Each Additional Day	DAY	4000.00

Asphalt Material Pick Up by Agency 6624C095
ATT A Pricing Pages

VENDOR INSTRUCTIONS:

Vendor shall complete Parts I, II and III below in their entirety. Failure to provide the Asphalt Plant Name and Asphalt Plant Location will result in the **disqualification** of corresponding bid. Vendor must complete a separate Pricing Page (ATT A) for EVERY sourced Asphalt Plant providing Contract Items for Pick Up by WVDOH forces.

PART I: VENDOR & ASPHALT PLANT INFORMATION (Required)

Vendor Name:	New Enterprise Stone & Lime Co., Inc.
Asphalt Plant Name:	Chambersburg Blacktop
Asphalt Plant Location:	2921 Stone Quarry Road
(911 Address)	Chambersburg Blacktop
Latitude Coordinate:	39.879684
Longitude Coordinate:	-77.649452

PART II: WVDOH DISTRICTS SERVED BY ABOVE ASPHALT PLANT (Required). Mark all Districts which include one or more counties served by the Asphalt Plant listed above in Part I.

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☐	District 3: Calhoun, Jackson, Pleasants, Ritchie, Roane, Wirt and Wood counties
☐	District 4: Doddridge, Harrison, Marion, Monongalia, Preston and Taylor counties
x	District 5: Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral and Morgan counties
☐	District 6: Brooke, Hancock, Marshall, Ohio, Tyler and Wetzel counties
☐	District 7: Barbour, Braxton, Gilmer, Lewis, Upshur and Webster counties
☐	District 8: Pendleton, Pocahontas, Randolph and Tucker counties
☐	District 9: Fayette, Greenbrier, Monroe, Nicholas and Summers counties
☐	District 10: McDowell, Mercer, Raleigh and Wyoming counties

PART III: PRICE PER UNIT OF MEASURE FOR CONTRACT ITEMS BID.

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4	Asphalt Section 401 - Patch and Level	TON	75.00
5	Asphalt Section 401 - Wearing IV	TON	90.00
6	Asphalt Section 402 - Wearing IV	TON	100.00
7	Asphalt Section 401 - 19mm Superpave	TON	80.00
8	Asphalt Section 401 - Scratch Course	TON	90.00
9	Asphalt Section 402 - 9.5mm Superpave	TON	90.00
10	Asphalt Section 401 - Wearing I	TON	90.00
11	Asphalt Section 402 - Wearing I	TON	100.00
12	Asphalt Section 401 - 4.75mm Superpave	TON	190.00
13	Asphalt Section 402 - 4.75mm Superpave	TON	200.00
14	Asphalt Section 401 - Wearing III	TON	130.00
15	Asphalt Section 402 - Wearing III	TON	140.00
16	Asphalt Section 401 - 12.5mm Superpave	TON	90.00
17	Asphalt Section 402 - 12.5mm Superpave	TON	100.00
18	Asphalt Plant Run	TON	90.00
19	Surcharge for PG Binder 58-28S	TON	10.00
20	Surcharge for PG Binder 64H-22	TON	10.00
21	Surcharge for PG Binder 64E-22 - ordered in 400 ton increments	TON	0.00
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23	ESAL Surcharge - Greater than 20 million ESALs	TON	0.00
24	Off-Season Plant Opening - First Day	DAY	8000.00
25	Off-Season Plant Opening - Each Additional Day	DAY	4000.00