

SPECIAL TERMS & CONDITIONS

The State of Wisconsin - Department of Transportation (herein after called Department) through its Purchasing Unit (herein after called Purchasing) requests bids for ROAD SALT, STATEWIDE as shown on the enclosed price sheet. When these special terms and conditions differ from the standard terms and conditions these special terms and conditions apply.

1. BID SUBMITTAL:

- A. Bids must be received on Wednesday, April 22, 2009 by 2:00 P.M., CDT, in Room 751 at the Hill Farms State Transportation building located at 4802 Sheboygan Ave. in Madison. The time/date stamper in Room 751 is the official recorder for time of bid receipt. Late bids must be rejected. Bids submitted by facsimile will not be accepted.
- B. Bids must be submitted in duplicate on the following forms provided in this bid solicitation:
 - (1) Official Sealed Bid Form
 - (2) Price Sheet/Bid Lines
 - (3) Vendor's Data Sheet
 - (4) Depot/Distribution Sheet
 - (5) MBE Sub-Contracting & Commitment Plan

The Official Sealed Bid Form must be signed by an authorized company official. Failure to include any of these forms may be cause for rejection of the bid.

- C. Bids submitted via U.S. Postal Service should be addressed to:

PURCHASING
Wisconsin Department of Transportation
4802 Sheboygan Ave. Room 751
P O Box 7396
Madison WI 53707-7396

- D. Bids submitted via UPS, Federal Express or other courier service should be addressed to:

PURCHASING
Wisconsin Department of Transportation
4802 Sheboygan Ave. Room 751
Madison, WI 53705

- E. Revisions to any part of this bid may be made only by an official written amendment issued by Purchasing. Bidders may attach additional relevant information to the bid. Any correspondence documents, price lists, etc. must include the solicitation number and must be sent to Purchasing, 4802 Sheboygan Ave., Room 751, PO Box 7915, Madison WI 53707-7915 to be acknowledged.

- F. Special terms and conditions of bid that include the word “must” or “shall” describe a mandatory requirement. All specifications are defined as mandatory minimum requirements unless otherwise stated. Failure to meet a mandatory requirement may disqualify the bid.
- G. If no bidder is able to comply with a given specification or special term or condition of bid, Purchasing reserves the right to delete that specification or special term or condition of bid.

2. BID OPENING:

Bids will be opened at 2:00 P.M. CDT on Wednesday, April 22, 2009. Those attending the bid opening, should come to the reception area in Room 501 (Eau Claire conference room).

3. CONTRACT DOCUMENT:

Retain a copy of these Special Terms and Conditions of Bid. When the contract is awarded, these Special Terms and Conditions of Bid become part of the contract terms and conditions.

4. DEPARTMENT CONTACTS:

- A. The point of contact for questions and all other matters pertaining to this solicitation is Steve Martinelli at (608) 266-0894.
- B. Upon award of contract(s), the point of contact is Lisa Meinholz (608) 266-3651, the contract administrator.

5. CONTRACT TERM:

Contract(s) created through this bid begin on date of award and expire April 30, 2010. Either party may request renewal of the contract. Renewal shall be effective upon mutual agreement on the terms of renewal. The option to renew shall be for up to two additional one-year periods. Renewals shall be negotiated annually on a bid line by bid line basis.

6. CONTRACT CANCELLATION:

In addition to Standard Terms and Conditions sections 23 and 24, this contract may be terminated by either party if at any time a petition for bankruptcy shall be filed against the contractor and such petition is not dismissed within 90 calendar days, or if a receiver or trustee of contractor's property is appointed and such appointment is not vacated within 90 calendar days, the Department has the right, in addition to any other rights of whatever nature that it may have at law or in equity, to terminate this contract by giving 90 calendar days notice in writing of such termination.

7. FIRM PRICES:

Prices shall be freight prepaid and included (FOB) to any delivery point in the county and firm for the entire contract period for the quantity stated on each bid line on the price sheet. The single bid line will include guaranteed early fill, guaranteed seasonal fill, and vendor reserve salt.

8. SALT CATEGORIES:

- A. Guaranteed Early fill - This salt is expected to be delivered to the destination by direct transfer from a ship, barge, or rail car and not from another storage facility, especially a stockpile. Delivery dates are at the discretion of the Vendor with proper notice to the Purchaser (see 15 C), but delivery must be completed by November 13, 2009. Vendor is guaranteed 100% of the quantity bid as early fill will be purchased. Vendor is obligated to deliver 100% of the quantity bid as early fill. If early fill delivery is not complete by November 13, 2009, and a later date has not been mutually agreed to, in writing, between vendor and purchaser, the purchaser may procure the salt from alternate sources. Any additional costs to purchaser for such alternate procurement shall be the liability of the vendor and may result in the purchaser invoking the performance bond, certified check, or irrevocable letter of credit. The purchaser is obligated to accept delivery of early fill salt upon proper notification by vendor (see 15 C). When the vendor has made a good faith effort to establish delivery dates and make delivery arrangements, and the purchaser declines delivery without a later delivery date having been mutually agreed to, the Vendor can request compensation under paragraph 19 I herein.
- B. Guaranteed Seasonal fill - This salt may be delivered from a stockpile or from a ship, barge or rail car. Delivery dates are at the request of the Purchaser but delivery must be completed by April 30, 2010. Vendor is guaranteed 100% of the quantity bid as seasonal fill will be ordered.
- C. Vendor Reserve - This salt may be delivered from a stockpile or from a ship, barge or rail car. Delivery dates are at the request of the Purchaser. Vendor must be able to supply the vendor reserve quantity bid during the term of the contract. The Purchaser may purchase all or part of the vendor reserve salt but is under no obligation to purchase any of it.

9. BIDDER QUALIFICATIONS

The enclosed Vendor Data Sheet must be completed in detail and be included in the bid. Incomplete detail may be cause for rejection of the bid. Before the award of a contract, the contract administrator shall be satisfied that the information on the data sheet satisfactorily qualifies the bidder. It is the responsibility of the bidder to acquaint the contract administrator with satisfactory data if required.

10. METHOD OF BID:

Bidders must submit the enclosed price sheet specifying a unit price per ton FOB any delivery point in each county and an extended total for each bid line for which a bid is made.

11. METHOD OF CONTRACT AWARD:

- A. Award shall be made to the lowest line item net unit price(s) bid by a responsible, responsive bidder which are judged to be in the best interest of the Department. The Department reserves the right to reject any and all bids.

- B. In the event the quantity of tons potentially to be awarded to the low bidder exceeds the tons that bidder represents on its Vendor Data Sheet as being available to Wisconsin, the Department reserves the right to limit the amount of tons awarded to the low bidder to that amount shown on the vendor data sheet, and to make the award in the manner most advantageous to the Department. Independent documentation of available tonnage may be required prior to award of the contract.
- C. Costs for the use of unloading equipment (slinger, conveyor, etc.) and cost to store undelivered salt after April 30, 2010 required on the vendor data sheet will not be considered in determining the low bidder.

12. QUANTITIES AND DISTRIBUTION DEPOTS:

- A. The Department is purchasing on a bid line by bid line basis as summarized on the price sheet. The quantities shown as guaranteed early fill on price sheets are guaranteed to be purchased by the Department, and shall be delivered by the vendor prior to November 13, 2009, unless a later delivery date is mutually agreed to, in writing, with the Purchaser. The quantity shown as guaranteed seasonal fill on price sheets is guaranteed to be purchased and shall be delivered no later than April 30, 2010.
- B. The Vendor shall supply salt to each unit of government listed as a participating municipality in this request for bid. The Vendor shall supply the guaranteed purchase and the non-guaranteed quantity shown as vendor reserve under the same delivery and price terms as bid to the Department.
- C. At the discretion of the Department, Vendor shall store undelivered guaranteed purchase salt after April 30, 2010 at the price per ton per month stated on the Vendor Data Sheet.
- D. On or before December 30, 2009, all guaranteed tons awarded to the low bidder that remain undelivered shall be stored in Wisconsin or at:

(1) Minneapolis, MN	(2) Saint Paul, MN
(3) Winona, MN	(4) Duluth, MN
(5) Dubuque, IA	(6) East Dubuque, IL

The Department will also consider acceptance of storage within approximately 30 miles of the Wisconsin state border. The Department will be the sole judge of the acceptability of any alternative storage location as being in the best interest of the State of Wisconsin.

- E. The Department reserves the right to verify the delivered and stored quantities by any appropriate means, including but not limited to reviewing receiving, shipping and inventory documents of the Vendor relevant to the tonnage committed under an awarded contract. Such documents shall be made available by Vendor to the Department upon request during normal business hours.

13. PERFORMANCE BOND:

- A. A performance bond, certified check or an irrevocable letter of credit equal to 20% of the awarded contract's value shall be provided to the Department. Purchase orders for the Department will not be issued until after the Department receives evidence of compliance with this requirement.

Such evidence must be submitted within ten business days following contract award. Absent compliance within ten business days, the Department reserves the right to award to the next lowest bidder.

- B. The department will invoke the performance bond, certified check or irrevocable letter of credit to recover costs incurred in resolving matters resulting from Vendor non-performance under this contract not addressed by liquidated damages including, but not limited to, default as a result of non-compliance with terms 8 A, 12 D, 12 E, and 16 D herein.
- C. Only the department can invoke the performance bond. A local unit of government may request that the department invoke the performance bond on their behalf, but the decision to do so will be at the sole discretion of the department.

14. PURCHASE ORDERS:

- A. Initial Department purchase orders, containing instructions, will be issued within ten business days after July 1, 2009 following Department receipt of evidence that the Vendor's performance bond is in force. Delivery of guaranteed early fill salt may begin upon Vendor receiving a purchase order, giving proper notice to purchaser, and receiving acknowledgement from purchaser, as described in 15 C. Delivery of guaranteed seasonal fill salt may begin upon Vendor receiving a purchase order and a form DT2208 from the person authorized by Purchaser to request delivery.
- B. Initial Municipality purchase orders under this contract will be issued within ten business days following the post marked date of Department's distribution of the Salt Bid Informational Packet. Including form DT2208 with the purchase order assures compliance with the contract and provides the municipality with the appropriate documentation necessary to collect liquidated damages under section 19.

15. REQUEST FOR DELIVERY:

- A. The required method for Purchaser, Vendor or Vendor's subcontractor to use in making arrangements for delivery is the form DT2208. Vendor or Vendor's subcontractor response to the receipt of form DT2208 from Purchaser may be made by telephone but must be followed by written confirmation by both parties using form DT2208 as documentation for reconciliation.
- B. When requesting delivery, the Purchaser shall provide the Vendor a list of destinations in priority order for delivery, delivery dates, time of day, number of tons requested for each destination and the hours available for delivery to be

made. The Vendor must accept the requested delivery terms or negotiate alternative delivery terms and confirm the agreed upon terms within two days of receiving the request for delivery. Confirmation shall be by fax, email, or U.S. Postal service, to the contact person listed on form DT2208.

- C. When intending to deliver guaranteed early fill salt (prior to November 13, 2009), the Vendor must arrange with the Purchaser to take delivery by giving the Purchaser a ten business day notice of intent to deliver. The Purchaser must acknowledge the notice using form DT2208. The Vendor must confirm delivery arrangements by telephone or written document to the Purchaser's contact person.

16. DELIVERY REQUIREMENTS:

- A. Guaranteed early fill salt deliveries are expected to be made by direct transfer from a ship, barge or rail car to a truck for delivery to the destination. Salt discharged onto a receiving pad is defined as direct transfer if the salt is not held more than five business days.
- B. Delivery shall be made using end dump trucks and/or trailers of a size that will enter a building with a door ten feet wide and twelve feet high.
- C. Each delivery vehicle, at all times between loading and unloading, shall have a water proof covering over the load such that rain or snow melt flows outside the cargo box.
- D. Deliveries to destinations requested by Purchaser shall commence within five business days and be completed within ten business days from the date agreed upon under 15 B and 15 C above unless other arrangements are agreed to in writing. Failure to deliver within the time specified may result in procurement from alternate sources. Additional costs to Purchaser due to procurement from alternate sources shall be the liability of the Vendor and may result in invoking the performance bond, certified check or irrevocable letter of credit.
- E. All deliveries shall be made at the destination requested by the Purchaser and in the sequence specified on form DT2208 between the hours of 7:30 AM and 3:00 P.M., excluding Saturdays, Sundays and holidays, unless other arrangements are agreed to, in writing, by authorized representatives of the Vendor and Purchaser.
- F. Unless other arrangements are agreed to, in writing, by authorized representatives of the parties, deliveries, once begun at a given delivery location covered on a delivery request, shall be continuous at a rate averaging three trucks per hour with no more than 90 minutes between any two deliveries to that delivery location. Deliveries begun to a given location but not completed within one work day shall resume at a rate averaging three trucks per hour with no more than 90 minutes between any two deliveries the following work day(s) until completed. (See section 17.C. for changing the delivery requirements.)

G. All truck deliveries shall be documented by a legible delivery ticket (also called a scale ticket) in TRIPLICATE for each load. The ticket must contain the following information:

- (1) the name of the trucking firm making delivery.
- (2) The gross, tare, and net weights of the delivered load. Gross weights shall not exceed statutory truck weight limits. Weight information shall be imprinted on the delivery ticket by means of an indelible recording device or typed registering beam.
- (3) The date of delivery.
- (4) The signature or mechanically imprinted name of the person responsible for weighing the load.
- (5) If a conveyor, slinger, or other equipment provided by the Vendor is used in the delivery of a load, its use must be noted on the delivery ticket and that use specifically acknowledged in writing on the ticket by the person accepting the delivery.

H. Originals and all duplicate copies of the delivery tickets shall be signed by the person accepting the delivery when delivery is made. The original and one copy shall be retained by the person accepting delivery on behalf of the Department or the participating municipality. One signed copy shall be available from the Vendor for inspection by the Department or participating municipality during the contract term or until final payment is made.

I. The Department reserves the right to itself and its representatives to require the hauling vehicle gross or tare weight or both listed on the delivery ticket to be validated at a certified scale located at a point in the destination county for the load. This location will be designated by the receiving party unless a location outside the destination county is mutually agreed upon by the parties.

17. DELIVERY MODIFICATIONS:

- A. The Purchaser or its designated representative and the Vendor may upon written agreement modify the requirements to be less restrictive than stated in sections 15 and 16 herein.
- B. In the event of inclement weather, the business day requirements under 16 D herein may be lengthened by the Purchaser upon the written request of the Vendor.
- C. When the Purchaser and the Vendor mutually agree in writing to modify any delivery requirement, the modified requirement supersedes all prior statements of that delivery requirement for the purpose of taking liquidated damages by the Purchaser.

18. MATERIAL AND EQUIPMENT SPECIFICATIONS:

- A. The material specified is rock salt to be used for winter road maintenance purposes.

B. Chemical and mixture specification

- (1) The delivered product may be a mixture and shall be comprised of no less than ninety-five percent rock salt by weight.
- (2) The rock salt shall be comprised of no less than ninety-five percent sodium chloride.
- (3) The delivered product at the time of delivery at a requested destination shall contain not more than two percent moisture.

C. Physical Specifications

- (1) The delivered product shall conform to the American Society of Testing Materials Specification, Designation: D-632, 5.1.1 (Type I, Grade 1) when tested by means of laboratory sieves as follows:

Sieve Size	Percent by Weight of Material Passing
1/2" (12.5 mm)	100
3/8" (9.5 mm)	95 to 100
No.4 (4.75 mm)	20 to 90
No.8 (2.36 mm)	10 to 60
No.30 (600 μ m)	0 to 15

- (2) The delivered product at the time of delivery at a requested destination shall be free flowing with sufficient non-caking additive incorporated into the mixture to keep it free flowing.

- D. The Department reserves the right to test material stored in stockpiles or indoors at distribution depots for compliance with chemical, mixture and physical specifications prior to awarding a contract. Any such tests would be conducted during normal working hours and could be conducted throughout the term of the contract. Material found to not meet chemical or mixture or physical specifications may be rejected. The Department test results are final.
- E. Unloading equipment, if any, used at a delivery destination shall be capable of placing unloaded material a minimum of fifteen feet from the discharge gate of the hauling unit to a height not less than ten feet.

19. LIQUIDATED DAMAGES:

- A. Twenty five percent of the price of each load shall be deducted from the invoice amount for each load that arrives at the destination site not covered according to specification 16C.

B. Moisture specification non compliance

- (1) Ten percent of the price of each load shall be deducted from the invoice amount for each load that arrives at the destination site which exceeds two percent moisture. For each 0.1 percent moisture above 2.0 percent an additional three percent deduction will apply. For example, 2.01% to 2.09% will be 10%; 2.1% to 2.19% will be 13%; 2.2% to 2.29% will be 16%, etc.
- (2) The Purchaser may, in lieu of deducting payment as described in 19.B.1, reject delivery of any load that arrives at the destination site showing evidence of moisture exceeding maximum moisture specifications.
- (3) In addition, the Purchaser may take samples for testing from the Vendor's stockpile and may refuse future deliveries from any stockpile from which samples testing greater than two percent moisture are taken.

C. Physical or chemical specification non compliance

- (1) Twenty five percent of the price of each load shall be deducted from the invoice amount for each load that arrives at the destination site which does not meet chemical or physical specifications, or
- (2) The Purchaser may, in lieu of deducting 25%, reject delivery of any load that arrives at the destination site showing evidence of not meeting chemical or physical specifications.
- (3) In addition, the Purchaser may take samples for testing from the Vendor's stockpile and may refuse future deliveries from any stockpile from which samples do not meet chemical or physical specifications.

D. Twenty five percent of the price of each load shall be deducted from the invoice amount for each load that arrives at the destination site and is unloaded outside the delivery hours specified under 16 E herein or outside different delivery hours agreed to and confirmed by Purchaser and Vendor or depot. In lieu of deducting twenty five percent, purchaser may refuse delivery and require the delivery to be rescheduled during specified delivery hours.

E. A \$200.00 deduction from the total price of all loads to a specific destination may be taken for each day at each destination for which delivery is requested on form DT2208 where the delivery arrival rate averaging three or more loads per hour with no more than 90 minutes between any two deliveries, or other mutually agreed to rate, is not maintained.

F. All rejected material shall remain the property of the Vendor whether remaining on the delivery vehicle or unloaded. Vendor shall not receive compensation or cost reimbursement from the Purchaser for the material, transportation charges, demurrage charges, reloading charges, temporary storage charges or any other cost associated with rejected material. The Vendor shall promptly take custody of and then dispose of the rejected material within three days. If Vendor fails to dispose of the material within three days, the Purchaser may dispose of the material and deduct the costs of the disposal from any future payments due the Vendor.

- G. Salt off loaded without a signed delivery ticket becomes the property of the purchaser without compensation to the Vendor.
- H. In the event the tare weight of a delivery vehicle plus the net weight of the material being delivered exceeds the statutory weight limit for that vehicle type, there will be no compensation paid to the Vendor for the delivered material equal to the tons exceeding the statutory weight limit for that vehicle.
- I. In the event Purchaser does not perform its obligations under the terms of the contract or a mutually agreed to written modification of the contract, the Vendor may request recovery of actual documented costs incurred by the Vendor as a result of Purchaser's non-performance.
- J. When un-resolved issues between the vendor and purchaser require mediation and resolution, including liquidated damages or penalties, the Contract Administrator will require all copies of written documentation including request for delivery (form DT2208), delivery tickets, invoices, etc.

20. INVOICING:

- A. Invoices must include the following information:
 - (1) Number of each delivery ticket for each load being billed.
 - (2) Number of tons (not pounds) for each load being billed.
 - (3) The number of the purchase order under which loads on this invoice are being billed.
 - (4) The name of the trucking firm(s) delivering invoiced loads.
 - (5) Notation and acknowledgment of use, if any, of unloading equipment.
- B. Invoiced amounts must be supported by the quantity of tons shown on legible delivery tickets that are signed by an authorized representative of the Purchaser.
- C. Participating municipalities that are Purchasers must be directly invoiced by Vendor.
- D. Invoices presented for payment must be submitted in accordance with instructions contained in the purchase order. Invoices must be submitted to the correct address for processing.
- E. Invoices containing omissions or errors may be returned for correction and re-invoicing. Invoices must be error free in order to receive approval for payment.

21. PAYMENT OF INVOICES

- A. The purchaser pays properly submitted invoices within thirty day of receipt of the invoice providing goods and services that have been delivered and installed (if required) and accepted as meeting contractual specifications and requirements. The State's prompt payment law (ss.16.528 and 16.53(2) (11)) provides for payment of interest on state orders that are not made in a timely manner. If the Department determines that interest payments are appropriate, payments shall be processed in accordance with section V.7 of the State Accounting Manual.
- B. Payment will not be made for loads based on delivery tickets that are not signed by the Purchaser's representative. Salt off loaded without a signed delivery ticket becomes the property of the purchaser without compensation to the Vendor.
- C. Liquidated damages are deducted from the total invoice amount. Documentation for the deduction will be provided along with the payment check.
- D. A reconciliation by the Department and the Vendor of Department purchase orders will be completed. The reconciliation requires the following:
 - (1) Submittal of final invoices prior to May 31, 2010
 - (2) Final payment prior to June 30, 2010.
 - (3) Sign off by the Vendor and the Department.

22. MINORITY BUSINESS PARTICIPATION:

See MBE Sub-Contracting & Commitment Plan