



INVITATION TO BID (ITB)

**Emulsion Materials
Roosevelt County Road Department**

ITB No. 2024-03
Released: Thursday, Aug. 31, 2023

BID Due Date: Tuesday, Sept. 26, 2023 at 2:00 p.m. (MST)

GENERAL INFORMATION

Advertisement of Invitation to bid: Sept. 3, 2023
Bids Due: Tuesday, Sept. 26, 2023 at 2:00 p.m. (MST)
Award Date: Oct. 3, 2023

On behalf of the Board of Roosevelt County Commissioners and pursuant to and in compliance with the NM State Procurement Code, Roosevelt County hereby invites competitive sealed bids for emulsion materials throughout Roosevelt County for the Road Department.

The Board of Roosevelt County Commissioners reserves the right to reject any and all bids, to accept the bid which in its judgment is most suitable and in the County's best interest, to be the sole interpreter of the intent of any clauses of the specifications and the sole judge as to whether an offer complies with specifications. Sealed bids will be accepted until the date specified. Opening will take place at the Roosevelt County Courthouse Administrative Office located at 109 W. First St. Portales New Mexico

IMPORTANT:

BIDS ARE DUE and must be received by the Roosevelt County Purchasing Department no later than, Tuesday, Sept. 26, 2023 at 2:00 P.M. Mountain Time

Mail or hand-deliver bids to the following address:

Roosevelt County Administration

Attn: Procurement Officer

109 W. First St.

Portales, NM 88130

NOTE: Delivery by hand or courier is highly recommended and encouraged to help ensure bid is received prior to the dead line date and time. It is recommended delivery status be verified, if not already confirmed, prior to bid opening.

NO BIDS WILL BE ACCEPTED BY FAX OR EMAIL.

Bids must be submitted in a sealed envelope that is clearly marked.

“Bid No. 2024-03 – Do Not Open”

“Emulsion Materials – Roosevelt County Road Department”

“SEALED BID” along with the BIDDER’S NAME AND ADDRESS must appear clearly on the outside sealed envelope or package of all bids.

Bids must be received by 2:00 p.m. on Tuesday, Sept. 26, 2023 Mountain Time. Any bids received after 2:00 p.m. will be kept on file unopened and will be opened and considered only in the event all other bids are unresponsive.

SPECIFICATIONS

This Invitation for Bid is for furnishing and/or application of emulsion materials. Roosevelt County will require a distributor and operator for some of the materials procured through this bid. All quantities are to be measured by the Road Superintendent or his designee and shall be considered to be final and all payments for the same will be made on this basis. The following sections of the New Mexico State Department of Transportation Standard Specification for Highway and Bridge Construction (current edition), shall be an integral part of these specifications:

Section 104 – Scope of Work

Section 105 – Control of Work

Section 106 – Control of Materials

Section 402 - Asphalt materials, Hydrated Lime, and Liquid Anti-Stripping Agents

Section 408 - Prime Coat

Together with and including all current Special Provisions and Supplemental Specifications.

Roosevelt County has issued this ITB for the emulsion materials required and have specified when equipment is necessary. Roosevelt County will be completing all required road rehabilitation and preparing for material applications. Roosevelt County will be providing traffic control, signage, and water as needed. Roosevelt County does not stripe County Maintained Roadways. Please refer to the Roosevelt County Road Policy Ordinance for any additional clarification, which is available on the County website at <http://www.rooseveltcountry.com/wp-content/uploads/2013/06/2017-05RoosevelCountyMaintainedRoadPolicy.pdf>.

All materials will be required to meet the noted sections of the NMDOT Standard Specifications for Highway and Bridge Construction (current edition). Specific Material Type is specified under “Materials” in this ITB.

Sampling and Testing

When supplying emulsion products to the County, the selected provider shall abide by the following in addition to Section 402.2.1.5 Sampling and Testing: The selected provider will send certificates of compliance with each load of emulsion product delivered to the jobsite. The certifications of compliance will be given to the Road Superintendent or Designee at the jobsite. All tankers shall be sealed when they arrive to the jobsite.

The Road Superintendent or Designee will provide the selected provider with the project scope, type and amount of material needed, as well as the date and time needed each week. The supplier shall agree to supply Roosevelt County Road Department with emulsion material to jobsite per ton or square yard. The price must be F.O.B to Roosevelt County.

Materials:

High Float Emulsions

HFE 90 delivered per ton

HFE 100P delivered per ton

Polymer Modified High Float Emulsions

CSS-1P/1:1 delivered per ton

PMM delivered and applied and mobility per ton

Emulsions provided under this Price Agreement shall be free from contaminants. Emulsion quantity shall be measured by the ton, with weight tickets provided at time of delivery. The selected provider is required to, but not limited to, meet the project schedule, ensuring that materials and equipment (if required) are at the jobsite as scheduled, ensuring that samplers, supplied by the selected provider, are available to sample when requested and within the required time limits to ensure that all material delivered to the project meet or exceed specifications. The selected provider will be responsible for all costs incurred, by the provider, which the County determines as not being applicable to the project.

Demurrage

Demurrage may be charged by the selected provider in the event a loaded tanker truck is onsite at the specified time, but is unable to unload materials due to delays caused by the County. In the event demurrage chargers are required by the selected provider, demurrage charges shall begin at two (2) hours after the tanker truck arrives at the jobsite at the specified time and end once the tanker truck begins to unload. A two (2) hour unloading allotment time shall be provided by the selected provider at no charge.

Freight for Returns

Freight for returns may be charged by the selected provider in the event a fully or partially loaded tanker is returned back to the supplier by the County Road Superintendent or his designee. Freight for returns can only be charged if the loaded tanker arrived onsite at the specified time, with the specified load, but was unable to be utilized on the project due to circumstances beyond the selected provider's control. Freight for returns applies to costs incurred by the selected provider and shall be quantified and paid by the number of tons returned. Pump and hose charges associated with the return shall be inclusive of the selected providers bid for the item freight for return.

The vendor shall be responsible for all spillage, which may occur during transit and unloading operations. The vendor shall immediately report spillage to the ordering office and clean up the spillage according to EPA and State Guidelines and Requirements, if applicable. The vendor shall also be responsible for all clean up required to all users agency's property, storage facilities, and equipment as a result of noncompliance with specifications.

GENERAL CONDITIONS

- 1. Bid Forms:** Bids shall be submitted only on the bid forms provided by the County. All pages included in this Invitation to Bid that are marked **Bid Form 1, 2, and 3 must be completed and returned as part of the bid document.** All bids must be completed and securely sealed prior to submitting to the purchasing office. No un-sealed, faxed or e-mailed bids are acceptable.
- 2. Bids Binding Sixty (45) Days:** All bids submitted shall be binding for forty-five (45) calendar days following bid opening date, unless the bidder(s), upon request of the County Manager, agrees to an extension.
- 3. Payment Terms:** Payment shall be made net thirty (30) days from invoice date after receipt of goods/services unless otherwise specified on bid form or as otherwise agreed by both parties. All invoices shall be submitted directly to the Roosevelt County Finance Department at 109 W. First St., Portales, NM 88130. Contractor must have submitted a completed W9 and Campaign Contribution form on file with the County.

4. **Clarifications:** If there is any clarification, problem, ambiguity or question regarding this bid, you must contact the County Manager or designee prior to the bid opening. "Clarifications" and addenda will be considered prior to the bid opening. Answers provided regarding the bid specifications or bid package MUST be answered by the County Manager or designee. Questions answered by any other person or County official shall be considered completely non-applicable to the legal provisions of this bid, except as specifically authorized by the County Manager.

5. **Restrictive Specifications:** It is the responsibility of the prospective bidder to review the entire Invitation to Bid (ITB) packet and to notify the purchasing department if the specifications are formulated in a manner which would unnecessarily restrict competition. Any such protest or question regarding the specifications or bidding procedures must be received in the purchasing department not less than seventy-two (72) hours prior to the time set for bid opening.

6. **In-State Preference (Bid Form 2):** Credit will be given to all resident New Mexico businesses that have been issued certification by the State of New Mexico. **To qualify for the preference, the bidder must complete and fill in the New Mexico Bidder's Preference Number, and submit a copy of the certificate with the bid.** If you have a question regarding a Resident Business (or Resident Veteran Business, Bid Form 3) Certification, or wish to be given a number, you may contact the New Mexico State Department of Taxation and Revenue at 505-827-0951. This number is valuable to have as it allows the county to consider your bid at five to ten percent less than the amount submitted, and could mean a difference in award. Please note that this number is NOT your State CRS Number (i.e. 01-503047-004).

7. **Variations:** Bidders shall list on a separate sheet of paper any variations from or exceptions to the conditions and specifications of this bid. ***This sheet shall be labeled "Exception(s) to Bid Conditions" and shall be included with bid.*** Bidders shall use the attached Quotation Sheet to submit their bid

8. **Equivalency:** The County hereby reserves the right to approve as equivalent, or to reject as not being equivalent, any item the bidder proposes to furnish which contains variations from specification requirements but may comply substantially therewith. Such decisions are strictly at the discretion of the County.

9. **Non-collusion:** Bidders, by submitting a signed bid, certify that the accompanying bid or proposal is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under New Mexico or United States law.

10. **Non-discrimination:** Bidders, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, color, religion, creed, political ideas, sex, national origin, age, marital status or physical or mental disability except where such is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. By signing and submitting a bid, bidder agrees to comply with this paragraph.

11. Procurement Code: The State of New Mexico's Procurement Code, Section 13-1-28 through Section 13-1- 199 NMSA 1978, imposes civil and criminal penalties for its violations. In addition, the New Mexico Criminal Statutes imposes felony penalties for illegal bribes, gratuities and kickbacks.

12. Right to Reject: Roosevelt County reserves the right to reject any bid from a bidder who previously failed to perform properly, or complete on time, contracts of similar nature, or to reject the bid of a bidder who is not in a position to perform such a contract satisfactorily. Such is at the discretion of the County.

13. Indemnification: The successful bidder agrees to protect, defend and save the County, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the County, under this agreement.

14. Refusal to Perform: If a bidder to whom a bid is awarded refuses to accept the award or, fails to deliver in accordance with the contract terms and conditions, the County may, in its discretion, suspend the bidder/contractor for a period of time from entering into any contracts with Roosevelt County.

15. Venue for Dispute: This solicitation is governed by the laws of the State of New Mexico. By signing and submitting a bid, the parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract or purchase order, must be brought in the Ninth Judicial District in and for Roosevelt County, State of New Mexico, and each party shall pay its own costs and attorney fees.

16. Warranty: The bidder warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified herein by the County.

17. Compliance: Successful bidder must, in performance of work on this project, agree to fully comply with all applicable federal, state and local laws, rules and regulations.

18. Addenda: It is the responsibility of the bidder to ensure that any addenda issued related to this Invitation to Bid have been received prior to submitting a bid. The County guarantees that any addenda issued will be distributed and available to every party on the Distribution List for this solicitation. The County will not accept responsibility for addenda no being obtained, and will not guarantee that addenda will be forwarded or available if the original packets was not obtained as directed.

19. Acceptance of Bid Content: The contents of this ITB and the bid will become contractual obligations, if a contract ensues. Failure of the selected consultant to accept these obligations may result in cancellation of the award.

20. **Bid Contents:** All bids and other material submitted become the property of the County and may be returned only at the County's option.

BIDS

To be considered, each firm must submit a **complete** original response to this bid and three copies. No other distribution of proposals is to be made by the submitter. An official authorized to bind the submitter to its provisions must sign the proposal in ink. The bid must include a statement as to the period during which the proposal remains valid. This period must be at least 45 days from the due date for this ITB.

BID DUE

Bids must be received at the Roosevelt County Courthouse, Administrative Offices located on the 3rd Floor, 109 West First Street in Portales, New Mexico by **Tuesday, Sept. 26, 2023 at 2:00 P.M. Mountain Time**. Any bids received after 2:00 p.m. will be kept on file unopened and will be opened and considered only in the event that all other bids are unresponsive.

BID OPENING

Competitive sealed bids will be accepted until **Tuesday, Sept. 26, 2023 at 2:00 P.M. Mountain Time** at the Roosevelt County Administration Office, 109 West First Street in Portales, New Mexico. At that time and place, the bids will be publicly opened. **Bids must be submitted in a sealed envelope that is clearly marked.**

“Bid No. 2024-03 – Do Not Open”

“Emulsion Materials – Roosevelt County Road Department”

“SEALED BID” along with the BIDDER’S NAME AND ADDRESS must appear clearly on the outside sealed envelope or package of all bids.

AWARD

The award may be made to the bidder providing a responsive, responsible bid which results in the lowest cost to the County. The award will be made by the Roosevelt County Commission at their regularly scheduled meeting. A potential vendor or the Contractor agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employee. If the vendor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the contract may be canceled effective immediately. The Board of Commissioners reserves the right to reject any and all bids, to waive any technicalities and to accept the bid(s) which in its judgement is the most advantageous to the County. Multiple bids may be awarded to achieve the lowest cost to the County.

The awardee hereby guarantees that services will conform to the specifications in this bid. Failure of the bidder to comply with providing a service which meets minimum specifications may result in termination of the award of that item or termination of contract.

RECEIPT OF ITB

The Procurement Officer or his designee is the sole authority to provide the Invitation for Bid to interested companies or individuals. Bidders, who are working from an ITB obtained from any other source, may be working from an incomplete set of documents. The County assumes no responsibility for a bidder's errors, omissions, or misinterpretations resulting from a bidder's use of an incomplete ITB.

QUESTIONS

Questions regarding the specifications or bidding process should be directed to Chief Procurement Officers Liliana Rivera at lriviera@rooseveltcountry.com. All questions shall be submitted by email and will be answered by email. A pre-bid conference is **not** scheduled.

INSURANCE

The vendor shall furnish Roosevelt County with protective liability insurance naming the County of Roosevelt as an additional insured in the following amounts, at a minimum:

- 1) For claims made by Roosevelt County against the vendor for damage to the County's property or for bodily injury or death to County employees, a minimum amount of \$1,000,000 for all claims arising out of each occurrence; and,
- 2) For claims against Roosevelt County by third parties in the amount of \$100,000 for damage to or destruction of property arising out of each occurrence, the amount of \$300,000 to any person for any number of claims arising out of each occurrence for all damages other than property damage as permitted under New Mexico's Tort Claims Act, and the amount of \$1,000,000 for all claims arising out of each occurrence; and,
- 3) Liability insurance of not less than \$500,000 for each occurrence with an aggregate of \$1,000,000 for the term of the policy with respect to property damage.

The vendor will be required to furnish evidence that the drivers, employed by the vendor to operate equipment included in the contract, will be covered by insurance, as required in the New Mexico Worker's Compensation Act. The vendor will be required to submit a copy of the Certificate of Insurance, which will become part of the contract.

All required insurance shall be in effect during the term of the contract. If the vendor is an "owner - operator", the County of Roosevelt and/or the New Mexico Department of Transportation shall assume no responsibility, financial or otherwise, for any injuries sustained by the "owner - operator" or their employees during the performance of the contract.

CONTRACT

Payment will be made **after receipt of an invoice and approval from Roosevelt County Road Department on a monthly basis, with net thirty (30) terms**. The vendor will not be an employee or agent of the county. The vendor will be responsible for their own payroll, gross receipts and all other taxes. Roosevelt County is exempt from all Federal Excise Taxes. *See Appendix A for sample contract.*

As required by 13-1-191 NMSA 1978, reference is made to 30-24-1 and 30-24-2, NMSA 1978 prohibiting bribery of public officers and employees; and to 30-41-3, NMSA 1978, prohibiting the solicitation or receiving of kickbacks.

CONTRACT TERM

The duration of the contract resulting from this ITB shall be for one (1) year from the date of award Oct. 3, 2023. This Contract can be renewed on an annual basis, for up to three (3) additional one (1) year terms at the discretion of both parties. Further provided, this contract may be terminated by either party, with or without cause upon sixty (60) days written notice. In

accordance with Section 13-1-150 NMSA 1978, no term for a contract, including extensions and renewals, shall exceed four (4) years, except as set forth in Section 13-1-150 NMSA 1978. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed eight (8) years, including all extensions and renewals. Multiple bids may be awarded to achieve the lowest cost to the County.

CONTRACT ADMINISTRATOR

Following the negotiating and signing of the contract, all communications concerning the contract must be directed to: Amber Hamilton, County Manager, 109 West First Street, Portales, NM 88130.

**BID FORM 1
QUOTATION SHEET**

High Float Emulsions

HFE 90 delivered per ton _____
Delivered to County Wide Locations, as per Bid Specifications

HFE 100P delivered per ton _____
Delivered to County Wide Locations, as per Bid Specifications

Polymer Modified High Float Emulsions

CSS-1P/1:1 delivered per ton _____
Delivered to County Wide Locations, as per Bid Specifications

PMM delivered and applied and mobility per ton _____
Delivered to County Wide Locations, as per Bid Specifications
Distributor and Operator Included

NOTE: The bid will be awarded on the lowest cost to the County and multiple bids may be awarded as a result of this procurement.

**BID FORM 2
BIDDER'S CERTIFICATION**

I hereby certify that I have read all items of the ITB and fully understand the requirements listed herein. I further certify that I am an authorized agent of the Firm and may be held liable for any and all remedies that may become due to Roosevelt County Government due to nonperformance under the contract.

Firm Submitting Bid: _____

Address: _____

Telephone: _____

Email: _____

NM Bidders Preference Number: _____

(A copy of the certificate must be included with the submitted bid in order to be considered.)

Signature _____

Printed Name: _____

Title _____

Date _____

BID FORM 3

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two (2) years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two (2) year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Names of Applicable Public Official(s) if any: Dennis Lopez, Rodney Savage, Roy Lee Criswell, Tina Dixon, Paul Grider, Stevin Floyd, Layle Sanchez, Javier Sanchez, Kendell Terry, Mandi Park.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

BID FORM 4

Resident Veterans Preference Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one line only

_____ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

_____ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

_____ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

_____ "I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate."

_____ "In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract form a public body as the case may be."

_____ "I understand that knowingly giving false or misleading information on this report constitutes a crime."

_____ "I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime."

(Signature of Business Representative)

(Date)

***Must be an authorized signatory for the Business.**

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven to be incorrect.

APPENDIX A

AGREEMENT FOR PROVISION OF EMULSION MATERIALS TO ROOSEVELT COUNTY, NEW MEXICO

THIS AGREEMENT is made and entered into by and between ROOSEVELT COUNTY (hereinafter, “County”) and _____ (hereinafter, “Vendor”), on this the 3rd day of October, 2023.

WHEREAS, the County has issued ITB2024-03 requesting and soliciting Bids for Emulsion Materials; and

WHEREAS, the parties above desire to enter into an agreement for the Vendor to provide emulsion materials for the County as described herein.

WHEREAS, the County is authorized to enter into this Agreement pursuant to Section 13-1-97 et seq. NMSA 1978 and has bid this Agreement pursuant to state law.

NOW THEREFORE, for good and valuable consideration it is hereby understood and agreed by and between the parties hereto as follows:

1) SCOPE OF SERVICE

Contractor shall provide the Emulsions set forth in paragraph 2 of this Contract which are to be delivered to locations throughout Roosevelt County. Contractor shall provide its own asphalt distributor, vehicles and operators. In doing so, Contractor shall provide competent, licensed and trained drivers/operators together with vehicles that are properly maintained and capable in providing Asphalt Emulsions as set forth herein.

While operating their vehicles pursuant to and/or under this Contract, Contractor will ensure that the operators of its vehicles secure and have in their position at all times, proper vehicle operator licenses as may be required by the Laws of the State of New Mexico.

The trucks/vehicles used for hauling shall be in good condition with drivers or operators who will operate and maintain the equipment and first-class working condition. All operating expenses, fuel, oil, repair parts and other items are to be furnished by the Contractor at the Contractor’s expense during the term of this Contract and any extension hereof.

Contractor shall abide by the following sections of the New Mexico State Department of Transportation Standard Specification for Highway and Bridge Construction (current addition): Section 104 – Scope of Work; Section 105-Control of Work; Section 106 Control of Materials; Section 402 Asphalt Materials, Hydrated Lime, and Liquid Anti-Stripping Agents; Section 408 Prime Coat; together with and including all current provisions and Supplemental Specifications. The Contractor shall send certificates of compliance with each load of asphalt product delivered to the jobsite, the certifications of compliance will be given to the County Road Superintendent or Designee at the jobsite. All tankers shall be sealed when they arrive to the jobsite.

Contractor shall receive one (1) week notice prior to the first hauling date. Project Scope, Type of Material, Amount of Material needed and Date and Time material is needed will be given to Contractor no less than one (1) week before the commencement of each job. The Contractor must meet the project schedule, ensuring that materials and equipment (tanker and distributors) are at the job site as scheduled, ensuring that samplers, supplied by the Contractor, are available to sample when requested and within the required time limits and ensure that all material delivered to the project meet or exceed specifications.

County will have the right to inspect any piece of equipment, at the time of use. In the event that equipment is found by county to be in unsatisfactory condition, County shall have the right to either permit the Contractor sufficient time to for repairing or replacing said equipment in satisfactory condition or cancelling this agreement at any time as to any piece of equipment covered thereby.

2) COST

- a. High Float Emulsions
 - HFE 90** delivered per ton _____
 - Delivered to County Wide Locations, as per Bid Specifications
 - HFE 100P** delivered per ton _____
 - Delivered to County Wide Locations, as per Bid Specifications

- b. Polymer Modified High Float Emulsions
 - CSS-1P/1:1** delivered per ton _____
 - Delivered to County Wide Locations, as per Bid Specifications
 - PMM** delivered and applied and mobility per ton _____
 - Delivered to County Wide Locations, as per Bid Specifications
 - Distributor and Operator Included

All quantities are to be measured by the Road Superintendent or designee and shall be considered to be final and all payments for the same will be made on this basis.

Demurrage may be charged by the Contractor in the event a loaded tanker truck is on-site at the specified time, but is unable to unload asphaltic materials due to delay caused by the County. In the event demurrage charges are required by the Contractor, demurrage charges shall begin two (2) hours after the tanker truck arrives on site t the specified time and end once the tanker truck begins to unload. A two (2) hour unloading allotment time shall be provided by the Contractor at no charge.

Freight for returns may be charged by the Contractor in the event a fully or partial loaded tanker is returned back to the supplier’s plant by the county Road Superintendent or his designee. Freight for returns can only be charged if the loaded tanker arrived on-site at the specified time, with the specified load, but was unable to be utilized on the project due to circumstances beyond the Contractor’s control. Freight for returns applied to costs incurred by the Contractor and shall be quantified and paid by the number of tons returned. Pump and hose charges associated with return shall be inclusive of the Contractors bid for the item freight for return.

Unless Questions or issues are discovered by County, all invoices received by County shall be paid within thirty (30) days of receipt of the same. County reserves the right to question, audit and review any invoice. final payment of the amounts due under the contract shall operate as a release of County, its officers, and employees from any and all liabilities, claims and/or obligations, whatsoever arising from or under this Contract.

If Contractor or any sub-contractors or others providing services or acquiring or purchasing materials/equipment of the services provided under this Contract will be applying or intends to apply for any tax rebates or credits of any kind, for any services provided under this Contract or any materials, goods or products purchased under this Contract or any systems designed, developed or acquired under or pursuant to this Contract shall notify County in writing regarding the same. Any and all tax credits, other credits or benefits belong to County. County is willing to negotiate with any person or any entity regarding off-set of any compensation due said individual or entity pursuant to this Contract for any set tac incentives or tax credits.

3) APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the County for the performance of this Contract. If sufficient appropriations and authorizations are not made by the County, this Contract shall terminate upon written notice given by County to Contractor. The County's decision as to whether sufficient appropriations and authorizations exist shall be accepted by Contractor and shall be final.

4) CONTRACT TERM

This Contract shall become effective on the 3rd day of October, 2023 and run for a one-year term. Upon written agreement of County and Contractor, the term of this contract can be extended no further than the 2nd day of October 2024.

All prices, costs and conditions submitted by Contractor and its response to County's invitation to bid shall remain fixed and valid after the closing of the term of this Contract. County shall have the option of renewing this Contract, with the approval of the Board of Roosevelt County Commissioners, or requesting new Bids for services at the end of any one-year Contract. The rates may be negotiated for each year of the Contract. The terms and conditions herein shall be binding upon and continue until terminated by either party, as set forth herein.

Contractor shall receive one (1) week notice prior to the first hauling date. Project Scope, Type of Material, Amount of Material needed and Date and Time material is needed one (1) week before the commencement of each job.

This Contract shall not become effective until the same is approved in writing by the Roosevelt County Board of County Commissioners.

5) PLACE OF PERFORMANCE

Vendor shall have available the item(s) and deliver same to the appropriate County department as stated in the Invitation to Bid (ITB).

6) NOTICES AND INVOICES

Invoices shall be mailed to County's Accounts Payable Office, 109 W. 1st Street, Portales, New Mexico, 88130. All other correspondence shall be submitted jointly to:

COUNTY:

Roosevelt County
Amber Hamilton
County Manager
109 W. 1st Street
Portales, NM 88130
575-356-5307

VENDOR:

7) ASSIGNMENT OF CLAIMS

The Vendor shall not assign, sublease, or delegate any interest in this Agreement or transfer any interest or assign any claims for money due or to become due under this Agreement, without the written consent of the County.

8) SUBCONTRACTING

The Vendor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the County.

9) SOVEREIGN IMMUNITY

By entering into this Agreement, the County and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act, supra.

10) INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

The Vendor shall indemnify, defend and hold harmless County, and its public officers, agents and employees as defined in the New Mexico Tort Claims Act, supra against and from any and all claims, losses, fines, demands judgments, damages, liabilities, lawsuits, arbitrations, and proceedings of any nature arising from or out of, connected with, resulting from or related to the Vendor's provision of services under this Agreement. The County shall hold the Vendor harmless from any and all claims and/or actions of any kind and nature resulting from or relating to the County's or its employees' negligence or intentional acts, errors and omissions in the County's performance under this Agreement.

The agreements in this Section shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Agreement for any reason and shall survive the cancellation or expiration of the term or any renewal or any other modification of the Agreement, for negligence, acts, errors or omissions occurring during the term of this Agreement.

11) TERMINATION

Either party may terminate this Agreement with or without cause by providing written notice to the other party sixty (60) days in advance of the termination. In the event of contract termination, the Vendor shall be paid for any unpaid invoices issued to County prior to the effective date of termination upon submittal of the final payment request.

12) CONFLICT OF INTEREST

The Vendor warrants that it presently has no interest, and shall not acquire any interest during the term of this Agreement, which would have the potential to conflict with the performance of the services required under this Agreement. In the event such a conflict arises, it shall be brought to the attention of the County and appropriate action acceptable to the County shall be taken. The Vendor's failure to inform the County of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Agreement by the County.

13) INDEPENDENT CONTRACTOR

Nothing in this Agreement is intended, or should be construed in any way, to create or establish a partnership relationship between the parties or to establish the Vendor as an agent, representative or employee of the County for any purpose or any manner whatsoever. Vendor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. Vendor is an independent contractor of the County. The Vendor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the county and shall not bind the County in any respect.

14) COMPLIANCE WITH GOVERNING LAWS

This Agreement is to be performed in the State of New Mexico and the County of Roosevelt, and shall be construed under the Laws of the State of New Mexico and Roosevelt County. The Vendor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Vendor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Agreement. The Vendor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicaps; the Age Discrimination in Employment Act; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR part 80 (relating to race, color, and national origin), 45

CFR part 84 (relating to handicap), 45 CFR part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

15) PROCUREMENT CODE

The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

As per the Procurement Code, § 13-1-129, NMSA 1978 as amended, Vendor hereby agrees to allow other County entities to procure the items provided for in this contract under this existing contract for the specified quantities. As such, Counties other than the contracting County of Roosevelt can utilize the price agreement that this contract allows without complying with certain competitive bid requirements.

16) CONFLICTS

Contractor represents to County that the services to be provided to County pursuant to this Agreement are not in violation of or contrary to the terms and the provisions of the New Mexico Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 2008. Contractor also agrees that in the performance of this Contract shall comply with those terms and conditions set forth in said Governmental Conduct Act that apply or may apply to those services provided by Contractor to County pursuant to this Agreement.

17) PERA NOTICE

If Contractor is a retired member of the New Mexico Employee Retirement Benefit Plan (PERA), then, Contractor shall have the obligation and shall be solely responsible for complying with administrative Rule 2.80.1100.40, NMAC, 2010. It shall be Contractor's sole responsibility to notify PERA of the terms and conditions of this Contract and the compensation payable to Contractor. Contractor shall also have the responsibility to notify County that it is a retired PERA member; however, Contractor shall have sole responsibility for complying with Rule 2.80.1100.40B, NMAC with regard to PERA benefits.

18) PENALTIES FOR VIOLATION UNDER LAW

In addition to the Governmental Conduct Act, the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation, in addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

19) FORCE MAJEURE

Neither party will be liable to the other for any delay or interruption in performance as to any obligation hereunder resulting from governmental emergency orders, judicial or governmental action, emergency regulations, fires, floods, sabotage, riots, wars, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.

20) BREACH

In the event Contractor breaches any obligation contained in this Contract, prior to instituting any action, County shall give Contractor written notice of such breach. In the event Contractor fails to remedy the breach within five (5) working days of receiving such written notice, County, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy Contractor's breach and recover any and all costs and expenses including its reasonable attorney's fees in so doing from Contractor.

21) SEVERABILITY

If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable, then it is the intention of the parties hereto that the remainder of the Agreement shall remain in full force and effect. However, in the event that either party can no longer reasonably perform pursuant to the remaining Agreement terms, or if the purpose of the Agreement can no longer be carried out by either party, the Agreement is void and no damages shall accrue to either party.

22) ATTORNEY'S FEES

County shall be entitled to recover its attorney's fees if required to enforce any provision in the Contract.

23) WAIVER

Any waiver by the County of any breach of any covenant, term, or condition in this Agreement to be kept and performed by Vendor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a default for any succeeding breach either of the same covenant, term, or condition or another. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

24) RIGHT TO INDEPENDENT TESTING

County reserves the right to test accuracy of any and all of Vendor's pumps which are providing gasoline to County vehicles. County may perform the test itself or can hire an independent party to perform testing for it. In the event that a discrepancy is discovered, Vendor shall take whatever steps are necessary to correct any billing errors.

25) AMENDMENTS

This Agreement shall not be altered, changed or amended except by written instrument signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their official acts by their respective representative, each of which is duly authorized to execute the same.

AGREED TO AND ACCEPTED AS STATED ABOVE:

ROOSEVELT COUNTY

VENDOR

Amber Hamilton, County Manager

Date

Date

Approved as to form:

Michael Garcia, County Attorney