



INVITATION TO BID (ITB)

**Chip Seal Aggregate Materials
Roosevelt County Road Department**

ITB No. 2024-05
Released: Oct. 13, 2023

Proposal Submittal Due Date: Nov. 2, 2023 at 2 p.m.

GENERAL INFORMATION

Advertisement of Invitation to bid: Oct. 15, 2023

Bids Due: Nov. 2, 2023 at 2 p.m.

Award Date: Nov. 14, 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 chip seal aggregate for the Roosevelt County Road Department. Roosevelt County reserves the right to request a Performance Bond after the award of the contract. Quantities are estimated and may vary. Materials will be picked up by Roosevelt County's hauler. The materials will be paid for by the ton. The Contractor must load the material. It is the responsibility of the contractor to weigh the material on a certified scale and furnish copies of the weigh ticket for each load. The aggregate must be washed to remove fine materials.

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. This ITB may result in more than one award. 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, Thursday, November 2, 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. 2024-05 – Do Not Open"

"Chip Seal Aggregate 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.

SPECIFICATIONS

The supplier shall agree to supply Roosevelt County with 3/8" inch minus, 1/2" inch minus, 5/8" inch minus, and 3/4" inch minus chip seal aggregate with at least three fractured faces, to be picked up by Roosevelt County's hauler.

The supplier shall agree that all aggregate it supplies shall meet the specifications in the "New Mexico Department of Transportation's Standard Specifications for Highway and Bridge Construction, and all special provisions, unless otherwise noted." It is the responsibility of the Supplier to furnish tests results, performed by a testing laboratory, on the materials sold to the County. Requirements shall be one (1) sieve analysis for each 500 tons delivered for each type of material. Materials not meeting the specifications will not be accepted. If materials are marginal in meeting the specifications, the requirement shall be one (1) sieve analysis for each 200 tons picked up. The contract shall be for a one (1) year term with a right of renewal for three (3) consecutive terms upon mutual agreement of all the parties involved.

Supplier is required to specifically identify the actual physical location from which Roosevelt County, it's agents or assigns can pick up the aggregate for delivery to Roosevelt County, so as to allow County to accurately calculate the estimated FOB costs County will incur in paying for the delivery of such aggregate to County. **County shall use such FOB costs of delivery of aggregate to an acceptable point of delivery as a factor in making it's award to the supplier with the lowest overall actual cost to County.**

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 (60) Days:** All bids submitted shall be binding for sixty (60) 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 Procurement Officer 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 Procurement Officer 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 4) 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.***

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 13-1-198 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 not being obtained, and will not guarantee that addenda will be forwarded or available if the original packets were not obtained as directed.

BIDS

To be considered, each firm must submit a **complete** response to this bid. 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.

As permitted by 13-1-115 NMSA 1978; offerors submitting proposals may be afforded an opportunity for discussion and revisions of proposals and revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers; and negotiations may be conducted with responsible offers who submit proposals found to be reasonably likely to be selected for award.

BID OPENING

Competitive sealed bids will be accepted until **Thursday, Nov. 2, 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. 2024-05 – Do Not Open”

“Chip Seal Aggregate 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. This procurement may result in multiple awards. The awardee hereby offers to furnish and deliver the products as specified above at the prices and terms there stated, and in strict accordance with the specifications and general conditions of the Invitation to Bid, all of which are made a part of this offer.

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.

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.

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.

BID CONTENTS

All bids and other material submitted become the property of the County and may be returned only at the County’s option.

QUESTIONS

Questions regarding the specifications stated within the bid or the bidding process should be emailed directly to Procurement Officer Liliana Rivera at lrivera@rooseveltcountry.com.

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.

COMPLIANCE WITH LAWS AND REGULATIONS

It shall be a condition of all bids submitted that the contractors will fully and completely comply with all applicable Federal, State and Municipal laws and County regulations, resolutions, laws and orders.

NEW MEXICO BIDDER'S PREFERENCE NUMBER

Credit will be given for vendors with a New Mexico Preference Number according to the provisions of Section 13-1-12, NMSA, as amended. Such number must be written on the Quotation Sheet in the space provided and also include a copy of the certificate in order to receive the preference.

AWARD

The award may be made to the bidder providing a responsive, responsible bid which results in the lowest cost to the County. 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.

County shall use such FOB costs of delivery of aggregate to an acceptable point of delivery as a factor in making it's award the supplier with the lowest overall actual cost to County.

CONTRACT

Payment will be made **after receipt of an invoice and approval from Roosevelt County Road Department that the product has been picked up as required in these specifications.** 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.

The vendor will have the number of tons on the invoice as well as the price on each invoice given to Roosevelt County.

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 November 14, 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 ten (10) years, including all extensions and renewals.

PERFORMANCE BOND

The vendor shall supply to the County a performance bond in the amount of one hundred percent (100%) of the estimated contract value of two hundred fifty-thousand dollars (\$250,000). Such performance bond must be delivered to the Roosevelt County Administration Office within ten (10) working days from the date of award. Failure to supply evidence of obtaining the performance bonds shall render all agreements between Roosevelt County and the vendor null and void. Contractor shall provide performance and payment bond for all sub-contractors whose contract for work to be performed on the Project is one hundred twenty-five thousand (\$125,000.00) dollars or more, pursuant to New Mexico Statutes §13-1-148.1.

PAYMENTS

The vendor must submit a detailed invoice to the Roosevelt County Finance Department for payment. The invoice shall include the weight for each load and calculated tonnage, and also include weight tickets stamped by certified scales. All invoices received by the County shall be paid within thirty (30) days of receipt of the same. The County reserves the right to question, audit and review any invoice.

VARIATIONS

Any variations from, or exceptions to, the conditions and specifications of this bid shall be listed on a separate sheet labeled "Exception(s) to Bid Specifications," and shall be attached to the bid proposal. Bidders shall use the attached Quotation Sheet to submit their bid.

COUNTY RESERVATIONS

Roosevelt County reserves the right to reject any or all bids, to waive any technicalities, to accept in whole or in part such bid or bids as may be deemed in the best interest of the County.

We look forward to your bid submission.

IF THERE IS ANY PROBLEM REGARDING THE BID SPECIFICATIONS OR CONDITIONS THAT WOULD PREVENT YOU FROM SUBMITTING A BID, CONTACT THE PROCUREMENT OFFICER IMMEDIATELY FOR CLARIFICATION OR CONSIDERATION OF AN ADDENDUM.

Bids may be mailed to: Roosevelt County Administration
109 W. First St.
Portales, NM 88130
ATTN: Procurement Officer

Or hand/courier-delivered to: Roosevelt County Administration
109 W. First St.
Portales, NM 88130
ATTN: Procurement Officer

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.

**BID FORM 1
QUOTATION SHEET**

Price per ton for NMDOT Spec. Chip Seal Aggregate:

_____ 3/8" inch minus

_____ 1/2" inch minus

_____ 5/8" inch minus

_____ 3/4" inch minus

Physical Address for Location for Aggregate Pick-up: _____

READ CAREFULLY:

The undersigned hereby offers to furnish Chip seal aggregate, as specified above, at the prices and terms there stated; and, in strict accordance with the specifications and general conditions of the bid, all of which are made a part of this offer. This offer is good for a minimum of sixty (60) days after the bid opening.

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.

Signature _____

Title _____

Date _____

Name of Firm Submitting Bid

**BID FORM 2
BIDDER CONTACT SHEET**

Company Submitting Bid: _____

Address: _____

Telephone: _____ **Fax:** _____

Email: _____

New Mexico Bidders Preference Number: _____
***Must be registered with the State and provide a copy of the certificate.**

Company Contact/Designee: _____

Title: _____

Signature: _____ **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.

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.

CONTRACT TO SUPPLY CHIP SEAL AGGREGATE

THIS CONTRACT entered into on this 14th day of November, 2023 by and between County of Roosevelt (hereinafter “County”), and _____ (hereinafter “Supplier”);

AND WHEREAS County issued its invitation for bids for the purchase of Chip Seal Aggregate pursuant to the provisions of the New Mexico Procurement Code;

AND WHEREAS Supplier submitted the lowest bid for Chip Seal Aggregate for use by the County Road Department;

NOW THEREFORE the parties for valuable consideration consisting of the mutual promises and agreements of the parties, and payment of one-dollar (\$1.00), the parties contract and agree as follows:

INDEPENDENT CONTRACTOR

1.0 Supplier has entered into this Agreement as, and shall continue to be an Independent Contractor. All services performed under this Agreement shall be performed only by Supplier and/or Supplier’s employees. Under no circumstances shall Supplier or any of Supplier’s employees hold themselves out as a partner, agent, and principal of County. Supplier or any of Supplier’s employees shall not be entitled to any benefits accorded to County’s employees including without limitation worker’s compensation, disability insurance, vacation or sick pay period. The County, nor its agents or representatives, shall have the right to control or direct the manner, details, or means by which Supplier accomplishes and performs its services under this Agreement.

Nevertheless, Supplier shall be bound to fulfill the duties and responsibilities contained in this Agreement.

MATERIAL TO BE PROVIDED

2.0 When requested, Supplier has agreed to supply Roosevelt County with 3/8 inch minus, 1/2 inch minus, 5/8 inch minus, 3/4” minus chip seal aggregate. Supplier agrees that all aggregate it supplies shall meet the specifications in the “New Mexico State Highway Department Standard Specifications for Road and Bridge Construction, (current edition). It is the responsibility of the Supplier to furnish tests results, performed by a testing laboratory, on the materials sold to the County. Requirements shall be one (1) sieve analysis for each 500 tons delivered for each type of material. Materials not meeting the specifications will not be accepted. If materials are marginal in meeting the specifications, the requirement shall be one (1) sieve analysis for each 200 tons delivered.

PERIOD OF PERFORMANCE

3.0 The initial period of performance of this contract shall be from the effective date of this Agreement above through twelve (12) months from the effective date of this Agreement above. This Agreement may be renewed for additional annual terms upon written mutual consent of the parties, but in no event may this Agreement be extended beyond a total of four (4) years from the initial effective date of this Agreement above. The Agreement prices are fixed for the initial term and subsequent extensions; unless a price adjustment is approved by both parties and shall not exceed three (3) percent annually.

PLACE OF PERFORMANCE

4.0 Supplier shall have available the item(s) and load the trucks for the County at their location as specified in the bid.

ESTIMATED COST

5.0 Supplier has agreed to supply Roosevelt County with:
3/8" inch minus, chip seal aggregate at \$ _____ per ton loaded and washed for Roosevelt County
1/2" inch minus chip seal aggregate at \$ _____ per ton loaded and washed for Roosevelt County
5/8" inch minus chip seal aggregate at \$ _____ per ton loaded and washed for Roosevelt County
3/4" inch minus chip seal aggregate at \$ _____ per ton loaded and washed for Roosevelt County during the period specified herein. No funds are obligated by this Agreement. The funds will be obligated by purchase orders on an "as needed" basis. The unit cost for the item(s) is based upon the unit pricing provided in the Supplier's bid response.

NOTICES AND INVOICES

6.0 Invoices shall be mailed to County's Finance Department, 109 W. 1st Street,

COUNTY:
Roosevelt County
Administrative Office
c/o County Manager
109 W. 1st Street
Portales, NM 88130
575-356-5307

SUPPLIER:

The invoice shall include the weight for each load and calculated tonnage, and also include weight tickets stamped by certified scales.

ASSIGNMENT OF CLAIMS

7.0 The Supplier shall not assign 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.

SUBCONTRACTING

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

PERSONAL LIABILITY

9.0 No elected or appointed official, employee, servant, agent or law enforcement officer of the County shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or Governmental duty and responsibility.

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

10.0 The Supplier 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 Supplier's provision of services under this Agreement. The County shall hold the Supplier 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.

PERFORMANCE BOND AND PAYMENT BOND

Contractor shall provide County with a Bid and Performance Bond of two hundred fifty-thousand dollars (\$250,000). Said Bond shall be valid and remain in effect for the duration of the contractual award.

Contractor shall have County and all of the Contractor's, suppliers and sub-contractors added as named insureds on all said policies and Contractor shall provide proof of insurance to County at or upon the signing and approval of this Contract or, in under no circumstances, later than the beginning of any and all Work under and/or pursuant to the terms of this Contract. Contractor shall insure that all sub-contractors have added County as a named insured on all their insurance policies.

Contractor shall notify County of any and all changes, modifications, terminations, or cancellations, in whole or in part, of any and all said insurance required under this Contract.

Contractor shall provide performance and payment bond for all sub- contractors whose contract for work to be performed on the Project is one hundred twenty-five thousand (\$125,000.00) dollars or more, pursuant to New Mexico Statutes §13-1-148.1.

INSURANCE

The supplier 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 supplier 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 supplier 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.

AMENDMENTS

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

TERMINATION

12.0 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 Supplier shall be paid for any unpaid invoices issued to County prior to the effective date of termination upon submittal of the final payment request.

COMPLIANCE WITH GOVERNING LAWS

13.0 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.

PROCUREMENT CODE

14.0 The Procurement Code, § 13-1-21 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.

14.1 As per the Procurement Code, § 13-1-129, NMSA 1978 as amended, Supplier 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.

SEVERABILITY

15.0 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.

ATTORNEY'S FEES

16.0 County shall be entitled to recover its attorney fees in enforcing this agreement.

WAIVER

17.0 Any waiver by the County of any breach of any covenant, term, or condition in this Agreement to be kept and performed by Supplier 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

FORCE MAJEURE

18.0 In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority of local, State or Federal governments or because of riots, war, terrorism, explosions, acts of civil or military authority, acts of public enemy, public disturbances, lack of adequate security escorts, strikes, lockouts, differences with workers, earthquakes, fires, floods, Acts of God or any other reason whatsoever which is not reasonably within the control of the party's whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent; the party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder during the period such cause continues.

DUPLICATE ORIGINALS

19.0 This Agreement may be executed in two identical originals, each of which shall be considered an original and all of which shall constitute but one and the same instrument.

SUPPLIER

COUNTY OF ROOSEVELT

BY: _____
Name, Title

BY: _____
Amber Hamilton, *County Manager*

Approved as to legal form:

BY: _____
Michael Garcia, *Attorney*