



WALLER COUNTY
STATE OF TEXAS

INVITATION TO BID
240320-77

Project Title
Required Oils and Asphalts

Solicitation Closing Date
Tuesday, May 14, 2024 at 3:00 p.m. (CST)

1. Introduction

A. Project Overview: Waller County (County) is soliciting proposals from qualified Companies to provide required oils and asphalts for County projects. It is the County's intent to award a contract to the Contractor which meets or exceeds all specifications contained in Appendix A—Scope of Services and Specifications and submits the lowest and best bid.

B. Questions:

i. RFP Clarifications: All questions related to requirements, processes, or Scope of Work/Specifications for this RFP should be submitted in writing via e-mail to rfpquery@wallercounty.us no later than 3:00 p.m. on Friday, May 3, 2024.

ii. Replies: Responses to all inquiries relating to this RFP will be issued in writing via addendum and will be uploaded to the County's website (<https://www.co.waller.tx.us/page/BidsAndProposalRequests>) on Tuesday, May 7, 2024 by 5:00 p.m.. All such addenda issued by the County prior to the submittal deadline shall be considered part of the RFP. The County shall not be bound by any reply to an inquiry unless such reply is made by such formal written addendum.

iii. Acknowledgement of Addenda: Should it become necessary for the County to issue one or more addendum to the RFP, the Respondent is required to acknowledge receipt of each addendum issued. **RFP changes per addendum should be noted within the responses as well.**

C. Notification of Errors or Omissions: Due care and diligence have been used in preparation of this RFP Solicitation and it is believed to be substantially correct. The responsibility for determining the full extent of the exposure and the verification of all the information presented herein shall rest solely on the Respondent. The County and its representatives shall not be responsible for errors or omissions in these specifications, nor for failure on the part of the Respondent to determine the full extent of the exposure. Respondents must promptly notify the County of any and all omissions, ambiguity, inconsistency, or error it may discover upon examining this RFP. The County is not responsible or liable for any errors and/or misrepresentation which result from Proposal Submittals which are inadvertently incomplete, ambiguous, inconsistent or obviously erroneous.

D. Deviations: A Respondent must clearly note and explain in detail any and all limitations, exceptions, qualifications, special conditions, or other deviations from what is set forth in this RFP at the time it is submitted.

The County may seek clarification from and/or communicate with a Respondent regarding a submitted deviation, consistent with general procurement principles of fair competition.

Other than any deviation submitted in writing and accepted by the County, the County will hold a Respondent accountable to perform in strict compliance with these Terms and Conditions and the item specifications as written.

E. Required Forms: A Respondent must include as part of its completed Proposal Submittal the following Required Forms. All forms can be found on the County's website (<https://www.co.waller.tx.us/page/BidsAndProposalRequests>) under the file name "Required Forms: RFP for Required Oils and Asphalts."

i. Child Support Statement for Negotiated Contracts and Grants

- ii. Debarment Certification
- iii. Resident/Nonresident Certification
- iv. No Israel Boycott Certification
 - v. No Excluded Nation or Foreign Terrorist Organization Certification
- vi. Historically Underutilized Business Certification
- vii. Deviation and Compliance
- viii. Respondent's Business Name
- ix. No Energy Company Boycott Certification
 - x. No Discrimination Against Firearm and Ammunition Industries Certification
- xi. Certification on Indebtedness to County
- xii. Agreement to Provide Certificate of Insurance
- xiii. Certificate of Interested Parties Texas Ethics Commission (Form 1295)
- xiv. Conflict of Interest Questionnaire
- xv. Addendum Acknowledgement Form (If Applicable)

2. Definitions

- A. "Waller County" and "County" means Waller County, Texas.
- B. "Respondent" and "Contractor" may be used synonymously.
- C. "Commissioners' Court" means the Waller County Commissioners' Court.
- D. "Contract" means the written agreement the County enters into with the Respondent eventually selected for award of a contract for the goods and Services set forth within this RFP in its entirety.
- E. "Must," "shall," or "will" mean that compliance with the intent of the statement is mandatory.
- F. "Scoring Committee" means the Waller County officials and/or employees responsible for evaluating a Proposal Packet in accordance with the evaluation factors set forth in Appendix A.

3. General Information

- A. **Advertising:** Unless otherwise required by law, a Respondent to this RFP shall not publish and shall keep confidential their intentions and actions respecting and response to the RFP.
- B. **Point of Contact:** Queries concerning this procurement and its process must be submitted in writing to RFPquery@wallercounty.us. Contacting any County employee or representative directly during the solicitation process could result in disqualification. Do not rely on oral instructions or clarifications. Requests from interested Companies for additional information or interpretation of the information included in the specifications should be directed in writing to RFPquery@wallercounty.us .
- C. **Requirements of the Texas Public Information Act—Confidential Information:** The County strictly adheres to the Texas Public Information Act (Texas Government Code Chapter 552.001, et seq.) and all other governing statutes, regulations, and laws regarding the disclosure of RFP information. Submittals are not available for public inspection until after the contract award. If a Respondent has notified the County, in writing, that the Proposal Submittal contains trade secrets or confidential information, the County will generally take reasonable steps to prevent disclosure of such information, in accordance with the Public Information Act. This is a statement of general policy only, and in no event shall the County be liable for disclosure of such information by the County in response to a request, regardless of the County's failure to take any such reasonable steps, even if the County is negligent in failing to do so.
- D. **Legal Relations and Responsibilities:** A Respondent shall maintain adequate records to justify all charges, expenses and costs incurred in performing the Services for a period of at least Five (5) years following the termination date of a contract resulting from this Solicitation. The County shall have

full and complete access to all records, documents and information collected and/or maintained by the Respondent in the course of the administration and performance of the Contract. This information shall be made accessible at a Respondent's local place of business for purposes of inspection, reproduction, and audit without restriction

- E. Equal Employment Opportunity (EEO) Disclosures: Respondent agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which the Contractor's primary place of business is located. In accordance with such laws, regulations, and executive orders, Respondent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, disability, or genetic information, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the Respondent under a Contract which arises in connection with this Solicitation. Upon request, Respondent will furnish information regarding its nondiscriminatory hiring and promotion policies.
- F. Statement of Inclusion/Applicability: All information contained in this RFP and a Contractor's response are an integral part of any contract which is awarded in association with this RFP Solicitation. A bid accepted and approved by the Waller County Commissioners' Court shall be incorporated into an ensuing Contract. No oral agreements, either expressed or implied, shall be valid. No different or additional terms will become part of an ensuing Contract unless agreed upon by both parties.
- G. Legal Liability Information: A Respondent shall disclose all legal liability information by listing any pending or anticipated litigation that it is involved in, including but not limited to, potential or actual legal matters with private parties and any local, state, federal, or international governmental entities. A Contractor shall disclose if it is the target or subject of any investigation, accusation or charges by any federal, State or local law enforcement, licensing or certification body.
- H. Information Acquired Through Work: Respondent expressly agrees that it will not use any direct or incidental confidential information that may be obtained while working in a governmental setting for its own benefit, and agrees that it will not access unauthorized areas or confidential information. Respondent agrees it will not disclose any information to unauthorized third parties, and will take care to guard the security of the information at all times. No report, maps, or other documents produced in whole or in part under an ensuing contract shall be the subject of an application for copyright by or on behalf of the Respondent.
- I. Proposal Signatures: A Respondent must sign its Proposal Submittal in strict accordance with the County's instructions, including having a company representative duly authorized by the Contractor to execute the Proposal. By signing, the signatory warrants that they have read and agree to the terms of the Proposal Submittal and are authorized to execute same as a legally binding act of Respondent, including any resulting contract.
- J. Governing Law: This RFP is governed by the competitive bidding requirements of the County Purchasing Act of the Texas Local Government Code. Respondents shall comply with all applicable federal, state, and local laws and regulations. It is a Respondent's responsibility to make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that, in any matter, affect the conduct of the work requested in this solicitation.

A Contractor is further advised that these requirements shall be fully governed by the laws of the

State of Texas and that Waller County may request and rely on advice, decisions, and opinions of the Attorney General of Texas and the Waller County Criminal District Attorney concerning any portion of these requirements.

A Respondent further agrees that any work performed under this resulting contract will be executed in compliance with the most current professional standards and specifications which may be applicable at the time in which services are being rendered.

4. RFP Withdrawal and Amendments

- A. Withdrawal: The County, in its discretion, reserves the right to withdraw this RFP for any reason.
- B. RFP Amendments: The County, in its discretion, reserves the right to amend this RFP by formal written Addenda prior to the Submittal Due Date. It is a Respondent's responsibility to regularly check the County's website (<https://www.co.waller.tx.us/page/BidsAndProposalRequests>) for any and all Amendments made to the RFP pursuant to an Addendum. A Respondent is responsible for incorporating any and all Amendments and Addenda into its Submittal Packet. Failure to do so will result in disqualification.

5. Statement of Qualification Submittal Requirements

- A. Submittal Packet: Please remit one (1) Original Proposal, three (3) copies, and one (1) electronic response on CD or flash drive. CD or flash drive must contain only one (1) file in PDF format and must match the original and copies of the response identically. Submittal Packets must be remitted in sealed envelopes and be clearly marked on the outside of the envelope with the following information:
 - i. RFP Number;
 - ii. Respondent's Company Name; and
 - iii. "County-Wide Required Oils and Asphalts"
- B. Due Date: Complete Submittal Packets must be remitted to Alan Younts, Waller County Auditor, Waller County Joe Kuciemba Annex, 425 FM 1488, Suite 119, Hempstead, Texas 77445 by 3:00 p.m. on Tuesday, May 14, 2024. Proposal Packets will be accepted by hand or mail according to the specifications contained in this RFP. The time and date of receipt as recorded in the County Auditor's Office shall serve as the official time of receipt. The County is not responsible for late delivery of USPS or any other carrier. **Late Submittal Packets will not be accepted under any circumstances.**
- C. Alteration of RFP: Proposer shall in no way alter the County's published RFP package. If any alteration is made, the County's RFP as published by the County shall control. Further, if an alteration of any kind to the County's published RFP is discovered only after the Contract is executed, the Contract is subject to immediate cancellation by County without penalty of any kind to the County.
- D. Alteration of Proposal: Any interlineations, alteration, or erasure made before the Solicitation Due Date must be initialed by the signer of the Proposal Packet guaranteeing authenticity. Written notice must be submitted to the County in advance of the Submittal Due Date.

- E. Withdrawal of Proposal: A Respondent may withdraw its Proposal prior to the Due Date and time specified in this RFP. A request for withdrawal must be made in writing, and signed by an individual authorized to enter into contracts on Respondent's behalf and indicate the individual's title. Submittal Packets in the County's possession at the Due Date and time shall be deemed final, conclusive, and irrevocable. No Submittal Packet will be subject to withdrawal, amendment, or correction after the Proposal Due Date and time specified in the Solicitation.
- F. Format of Submittal Packet: Respondents are required to submit all information requested in Appendix A, Appendix B, Exhibit 1 and the requested Required Forms. A Respondent's Submittal Packet must adhere to the below format. Submittal Packets must be remitted by mail or hand-delivery; all other formats, including fax or e-mail, will be rejected by the County. A Submittal Packet must include a complete Proposal and all Required Forms requested pursuant to this RFP. Failure to include all requested information will result in a Submittal Packet's rejection.
- i. Single-Space Type;
 - ii. Standard 8-1/2" x 11" vertically-oriented pages;
 - iii. One-Sided Hard-Copies;
 - iv. Numbered Pages; and
 - v. Handwriting on Required Forms must be legibly written in ink.
- G. Validity Period: Once the submittal deadline has passed, any Proposal submitted shall constitute an irrevocable agreement to provide the commodities and/or services set forth in the Scope of Services and Specifications on the terms set forth herein, with such Proposal being irrevocable until the earlier of the expiration of sixty (60) days from the submittal deadline, or until a contract has been awarded by the County.
- H. Taxpayer Identification: Selected Contractor must provide the County with a current W-9 "Request for Taxpayer Identification and Certification" after an award of a contract and before goods or services can be procured from the Respondent.
- I. Requirements: A Respondent which submits a Proposal is agreeing to provide the County with the specified Goods and Services described in this Solicitation in accordance with the terms and conditions and in compliance with the specifications included herein and any Addenda issued by the County prior to the Submittal Due Date.

6. Proposal Evaluation and Contract Award

- A. Process: Contract award for the Services set forth within this RFP Solicitation will be made using sealed competitive bids in accordance with Chapter 262 of the Texas Local Government Code. A Proposal submitted in accordance with this RFP will be evaluated for award. A Proposal may be disqualified at any time during the Evaluation Process for failure to meet any terms or conditions contained anywhere in this RFP. Failure to include all required information may result in a Proposal being disqualified.

The County will award the Contract to the Respondent whose Proposal is the lowest and best, and determined to be the most advantageous to the County. Proposal evaluations will be based upon the criteria set forth below in Appendix A, Section 3.

Respondents are prohibited from directly or indirectly communicating with County employees, appointed officials, or elected officials regarding its or another Respondent's qualifications or any other matter relating to the eventual award of a contract for the services requested under this RFP. A

Respondent is prohibited from contacting County personnel regarding its qualifications or the award of a contract unless it is in response to an inquiry from a staff member after Commissioners' Court has made a decision and selected a Contractor. Any violation will result in immediate disqualification of the respondent from the selection process.

- B. Completeness: If a Proposal is incomplete or otherwise fails to conform to the requirements of the RFP, the County alone will determine whether the variance is so significant as to render the Proposal non-responsive, or whether the variance may be cured by the Respondent or waived by the County, such that the Proposal may be considered for award.
- C. Ambiguity: Any ambiguity in the Proposal as a result of omission, error, lack of clarity or non-compliance by a Respondent with specifications, instructions and all conditions shall be construed in favor of the County. In the event of a conflict between these standard RFP requirements and details provided in Appendix A – Scope of Services and Specifications or Appendix B – Specifications Verification, the Appendices shall prevail.
- D. Controlling Document: In the case of a discrepancy between this solicitation and the formal contract, the formal contract will prevail and control.
- E. Additional Information: County may request any other information necessary to determine a Respondent's ability to meet the minimum standards required by this RFP.
- F. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion: Respondent certifies that it is not ineligible for participation in federal or state assistance programs under Executive Order 12549, "Debarment and Suspension." It further agrees to include this certification in all contracts between itself and any subcontractors in connection with the services performed or goods provided under this Contract. Respondent also certifies that it will notify Waller County in writing immediately if it is not in compliance with Executive Order 12549 during the term of this Contract. Respondent agrees to refund Waller County for any payments made to the Contractor while ineligible.
- G. Authority to Submit Proposal and Enter Contract: The person signing on behalf of a Respondent certifies that the signer has authority to submit the Proposal on behalf of the Contractor and bind it to any resulting contract.
- H. Interpretation of Solicitation Documents: The County is the final judge of the meaning of any word(s), sentences, paragraphs or other parts of the solicitation documents. Respondents are encouraged to seek clarification, before submitting a Proposal, of any portion of the RFP Solicitation which appears to be ambiguous, unclear, inconsistent, or otherwise in error. Clarifications will be in writing.
- I. Withdrawal of Submittal Packet: A Respondent may withdraw a Submittal Packet prior to the Submission Deadline by notifying the County Auditor, Alan Younts, in writing via e-mail at a.younts@wallercounty.us. Submittal Packets may not be withdrawn once publicly opened by Commissioners' Court on Wednesday, May 15, 2024. Submittal Packets which have been withdrawn will not be considered by the County.
- J. Disqualification of Respondent: The County may disqualify a Respondent and its Submittal Packet for any of the following reasons (***Nb**: List is not exhaustive):

- i. Collusion among Respondents;
- ii. Respondent's default on an existing or previous contract with the County;
- iii. Respondent's involvement in a current or pending lawsuit with the County;
- iv. Respondent's attempt to influence the outcome of the RFP solicitation through unauthorized contact with County officials or employees outside of those listed in this RFP Solicitation;
- v. A Respondent's inability to provide the quality and timeliness of Goods and Services set forth herein; and/or
- vi. Respondent's attempt to offer gifts, gratuities, or bribes to any County employee or elected official in connection with this or any other RFQ/RFP Solicitation.

APPENDIX A: SCOPE OF SERVICES & SPECIFICATIONS

1. **Scope of Services:** The County is seeking a qualified Contractor to provide required oils and asphalts. Contractor shall include as part of its proposal Exhibit 1, and clearly state any and all proposed costs associated with the scope of services and specifications set forth herein.

2. Specifications

A. Conditions of Award and Regulations

- i. Contractor must maintain at least \$1,000,000 liability insurance along with workers' compensation and present certificate of insurance with bid. A performance bond will be required for the total amount of the contract, if awarded.
- ii. Contractor must provide a minimum of three (3) reference from counties in Texas. References will be checked before awarding the bid.

B. Dates and Duration

- i. The Term of any ensuing Contract is May 29, 2024 to December 31, 2024.
- ii. The County reserves the right to extend the Contract associated with an accepted bid provided that all terms and conditions of the Contract remain unchanged and in full force and effect. Exceptions to this section shall be made for extensions of the contract period and adjustment of any price cited in the Contract. The County's option to renew shall be in writing and shall be signed by both parties prior to the expiration of any Contract which ensues from this Solicitation. The total period of this Contract, including all extensions as a result of exercising this option, may not exceed a maximum of one (1) year.

C. Invoicing

- i. Contractor shall submit invoices to the Waller County Road and Bridge Department at 775 Business Hwy 290E, Hempstead, TX 77445. Invoice shall be paid for at the awarded bid price. Payments will be processed after confirmation that all materials/services have been received and performed satisfactorily and no unauthorized materials/services have been received and performed. Full compensation for furnishing all labor, materials, supervision, equipment, and supplies required to complete all items of work specified herein will be remitted after the appropriate confirmations are established. The Contractor shall notify the Road Superintendent for an inspection of the completed site and the Road Superintendent will inspect and approve completed work.
- ii. Waller County terms of invoice are net thirty (30) days from statement date.

- D. Price Escalation: Bidder shall furnish the required materials at the price quoted and will not raise the price for the first sixty (60) days of contract regardless of price increase. Due to the volatility of the market, Waller County will review the costs of materials on a monthly basis after the initial sixty (60) days of contract. The Contractor will be required to submit an affidavit on a monthly basis substantiating that any increase in bid costs represents an increase in the cost for services or materials and in no way represents an increase of profits, labor, or other overhead. The Contractor must justify its request for an increase by submitting evidence from the suppliers detailing the price changes, the effective date for change, and any other information requested by the County to verify the price change. Any product delivered to or picked up by the County at the proposed new price without a properly executed statement is made at the Contractor’s risk. Consequently, in the event that such statement or affidavit is not received and approved by the County, the Contractor hereby releases the County from any and all liability whatsoever to pay for delivered materials at the new price prior to the Contractor’s notification to the County. All increases will be subject to approval by Commissioners’ Court. Conversely, if costs in services or materials decreases, the same amount of decrease in costs shall be passed on to the County. The County may request information to verify pricing throughout the term of the contract.
- E. Applicable Federal and State Requirements-All bids shall meet all applicable Federal and State requirements. References to the Texas Department of Transportation Publication, Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges (2014), called “THD,” are used in the specifications. Changes to these specifications are not in the bid documents, if applicable. It is a Contractor’s responsibility to make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that, in any manner, affect the conduct of the work requested herein.
- F. Miscellaneous: The County reserves the right to purchase materials/services from another Contractor if the successful Respondent cannot fill an order when needed.

3. Evaluation Factors

- A. Criteria: Commissioners’ Court, in its sole discretion, will determine the Respondent which is best qualified to provide the requested Goods and Services. A Proposal submitted in accordance with this RFP will be evaluated by the Scoring Committee which will make a recommendation to Commissioners’ Court. A Submittal Packet may be disqualified at any time during the evaluation process for failure to meet any terms or conditions contained anywhere in this RFP. Failure to include all required information may result in disqualification. The County reserves the right to reject any and all Submittals in part or in whole, and may waive any technicalities related to the bidding process for the benefit of the County, granted that such waive is allowed under federal and state laws.

Submittal Packets will be evaluated based on the following criteria:

CRITERIA	MAXIMUM POINTS
Cost Proposal	45
Ability of Respondent to perform the Scope of Work and provide all requested Goods and Services	45
Overall Completeness of Proposal	5
References (minimum of three (3) required)	5

4. Submittal Requirements

- A. Cover Letter. Letter should not exceed two (2) pages. It must be signed by an authorized representative of the entity committing Respondent to provide the Goods and Services set forth herein;
- B. Company Profile, including, but not limited to, Contractor’s official registered name, state of incorporation, brief company history, ownership, office location(s), and goods and/or services offered;
- C. References. Respondent must provide a minimum of three (3) references for contracts of similar scope which have been successfully completed within the past five (5) years. References must include Contact’s name, e-mail address, and telephone number. Respondent should also briefly list goods and services provided to each client. References should demonstrate Contractor’s experience in providing goods and services of similar nature for other government agencies;
- D. Cost Proposal. Respondent is required to complete Exhibit 1-Requested Bid Form and disclose any charges or fees beyond what is included that the County would incur with the Respondent before, during, and after implementation; and
- E. Additional information to demonstrate Respondent’s ability to provide the requested Goods and Services successfully.

5. KEY DATES*

- A. **Nb:* All dates subject to change based on the needs of Waller County.

Solicitation Release Date	Monday, April 22, 2024
Deadline for Submittal of Written Questions	Friday, May 3, 2024 at 3:00 p.m.
Responses to Queries are Posted Online via Addendum	Tuesday, May 7, 2024 at 5:00 p.m.
Sealed Submittal Packets Due	Tuesday, May 14, 2024 at 3:00 p.m.
Sealed Submittals Opened by County	Wednesday, May 15, 2024
Anticipated Scoring Committee Review Date	Monday, May 20, 2024
Anticipated Notice of Award	Wednesday, May 29, 2024

APPENDIX B: SPECIFICATIONS VERIFICATION

By submitting this Proposal Packet, the undersigned hereby certifies that said Proposal has been independently arrived at and that terms or conditions appearing or applicable hereto have not and will not be disclosed by or on behalf of the Respondent to another Contractor.

The undersigned by his/her signature represents that he/she is authorized to bind the Respondent to fully comply with the Terms and Conditions of the RFP, and that Respondent is ready, willing, and able to perform if awarded a contract for the Goods and Services set forth herein.

By signing below, you certify that you have read the entire document and agreed to the terms herein. You further certify that all of the information contained in Respondent's Submittal Packet is truthful to the best of your knowledge and belief, and that the Submittal Packet is made without prior understanding, agreement, connection, discussion, or collusion with an officer, employee, or agent of Waller County, Texas. **You must sign below in ink; failure to sign and return WILL disqualify a Respondent. A Submittal Packet must be typewritten or written in ink.**

Company Name: _____

Address: _____

Contact Name: _____

City, State, Zip: _____

Contact Title: _____

Phone Number: _____

Signature: _____

Fax Number: _____

APPENDIX B: SPECIFICATIONS VERIFICATION (Cont.)

I. A RESPONDENT MUST SUBMIT ALL OF THE FOLLOWING INFORMATION IN ORDER FOR A SUBMITTAL PACKET TO BE CONSIDERED COMPLETE AND ELIGIBLE FOR EVALUATION BY THE SCORING COMMITTEE.

1. Proposed Goods and Services

- A. Description: Respondent should clearly and succinctly describe the Goods and Services it will provide the County in accordance with the required Scope of Work and Specifications as identified in Appendix A.

The Contractor shall furnish all labor, equipment, supplies, and transportation in accordance with all specifications, scope of work, terms, and conditions included herein.

- B. Delivery Date: The requested Goods and Services shall be performed between May 29, 2024 and December 31, 2024.

2. Cost of Proposed Goods

- A. Costs associated with Proposal: A Respondent understands and acknowledges that the County will not reimburse or pay it for any expenses the Contractor incurs in preparing its Proposal or providing additional information required in connection with this RFP Solicitation.

- B. Pricing: Respondent must complete Exhibit 1- Bid Form. Proposals will be evaluated based upon the information contained therein. Quantities indicated in the bid are estimated based upon information at the time bids are requested. The County reserves the right to increase or decrease the quantities by any amount it deems necessary to meet its needs without any adjustment in the contract price.

- C. Firm Prices: Unless stated otherwise in its Submittal Packet, a Respondent's price(s) remain firm for sixty (60) days from the date the County publicly opens Proposal Submittals, and upon award, remain in effect for the contract period set forth herein.

3. Term of Contract and Renewal

- A. Any contract which results from this RFP shall be effective from the Notice to Proceed letter provided to the Selected Respondent by the County until December 31, 2024.
- B. The extension of any ensuing Contract associated with an accepted bid is contingent upon necessary funds by Commissioners' Court for the fiscal year in question. Upon the failure of Commissioners' Court to so appropriate in any fiscal year, Contractor may elect to terminate this agreement, with no additional liability to the County.

County and Contractor agree that termination shall be Contractor's sole remedy under this circumstance.

- C. All terms and conditions of the Contract shall remain unchanged and in full force and effect. Exceptions to this section shall be made for extensions of the contract period and adjustment of any price cited in the Contract. The County's option to renew shall be in writing and shall be signed by both parties prior to the expiration of any ensuing Contract. The total period of any ensuing Contract, including all extensions as a result of exercising this renewal option, may not exceed a maximum of one (1) year.

4. Respondent's Experience & Key Personnel

- A. Project Team: A Respondent shall identify all members of its team, including management, who will be providing any Services proposed herein. Respondent should include information which details said members' experience.
- B. Business Establishment: Respondent shall provide the number of years it has been established and operating and number of employees it currently employs. If Respondent's company has changed names or if the principal(s) operating it operate similar business(es) under different names, or have operated any other business(es) or changed the legal status or form of the business(es) within the last five (5) years, all names of predecessor business, affiliated entities, and previous business entities operated by the principals, if different than present, must be provided.
- C. Project-Related Experience: Submittal Packet must include detailed information which demonstrates Respondent's experience and expertise in providing the requested Goods and Services, and clearly set forth Respondent's ability to successfully plan and deliver the requested Goods and Services.
- D. Control of Work: Respondent shall provide the requested Goods and Services in conformity with the Scope of Work and Specifications outlined in Appendix A. Respondent must obtain the County's approval, in writing, prior to deviating from the Scope of Work and Specifications. Failure to promptly notify the County of any errors or concerns with the Scope of Work or Specifications will constitute a waiver of all claims for misunderstanding or ambiguities which result from the errors, omissions, or discrepancies discovered.

5. References

- A. A Respondent must provide three (3) references demonstrating successful completion of projects similar to what is requested pursuant to the Scope of Work and Specifications. A Reference must include:
 - i. Client/Company Name;
 - ii. Contact Name;
 - iii. Contact Title;
 - iv. Contact Phone Number;

- v. Contact E-mail Address; and
- vi. Date and Scope of Work/Goods Provided

6. Confidential Information

- A. Respondent must clearly identify information in its Submittal Packet which it considers proprietary or confidential. Respondent must describe such confidential information and the basis for its assertion that such material qualifies for legal protection from disclosure. The County will treat such information as confidential only to the extent allowable under the Texas Public Information Act or similar applicable disclosure law. Under no circumstance shall a Respondent's entire Submittal Packet or its technical responses be labeled proprietary or confidential.

7. Federal, State, or Local Identification Information

- A. Centralized Master Bidders List Registration Number
- B. Prime Contract HUB/MWBE Registration Number
- C. An Individual acting as a sole proprietor must enter his/her Social Security Number

II. CONTRACT TERMS AND CONDITIONS—EXCEPT WHERE RESPONDENT MAKES SPECIFIC EXCEPTION IN ITS SUBMITTED PROPOSAL, ANY CONTRACT RESULTING FROM THIS SOLICITATION WILL CONTAIN THE FOLLOWING TERMS AND CONDITIONS, WHICH RESPONDENT HEREBY ACKNOWLEDGES, AND TO WHICH IT AGREES TO BY SUBMITTING A COMPLETE SUBMITTAL PACKET

1. Standard Terms and Conditions

- a. Application: These standard terms and conditions shall apply to all County solicitations and procurements, unless specifically accepted in the solicitation specifications.
- b. Legal Compliance: Proposer must comply with all Federal, State and Local laws, statutes, ordinances, regulations and standards in effect at the time of delivery of goods and services, and must maintain any and all required licenses and certificates required under the same laws, statutes, ordinances, regulations and standards for services and/or goods provided in response to this solicitation
- c. Interpretation: This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade is relevant to supplement or explain any terms used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract is not relevant to and does not determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.
- d. Independent Contractor: Respondent agrees that it and its employees and agents have no employer-employee relationship with County. Respondent agrees that if it is selected and awarded a contract, County shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, Federal or State unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other

- insurance payments, nor will County furnish any medical or retirement benefits or any paid vacation or sick leave.
- e. Conformity to Item Specifications and Contract Award: Respondent warrants that the goods or services it provides under the Contract conform to the item specifications and other requirements of this RFP, and are free from all defects in material, workmanship, and title. If Respondent deviates from an item specification (unless agreed to by County), including delivering a product other than the specific brand and model of the product awarded, the County may reject the product when delivered and terminate the purchase order at no cost or penalty to the County. Respondent further warrants that all products and services provided under the Contract meet all applicable legal standards and requirements, including OSHA standards and regulations, and that any electrical items bear the appropriate listing from US, FMRC, NEMA, or UL laboratories.
 - f. General Obligations and Reliance: A Respondent shall perform all services and/or provide all goods, as well as those reasonably inferable and necessary for completion and provision of services and/or goods required hereunder. The Contractor shall keep the County informed of the progress and quality of the goods and services. The Contractor agrees and acknowledges that the County is relying on its represented expertise, licensures, and ability to provide the goods and/or services described herein. The Respondent agrees to use its best efforts, skill, judgment, and abilities to perform its obligations in accordance with the highest standards used in the profession and to further the interests of the County in accordance with the County's requirements and procedures. The Respondent's duties, as set forth herein, shall at no time be in any way diminished by reason of any approval by the County, nor shall the it be released from any liability for itself, its employees, subcontractors, agents, or consultants by reason of such approval by the County. It is understood that the County at all times is ultimately relying upon the Contractor's skill and knowledge in performing the services and providing any goods required hereunder
 - g. Limits on Subcontractors: A Respondent may **not** use subcontractors for this project.
 - h. County's Right to Stop Work: If the Respondent fails to correct work which is not in accordance with the requirements of the Contract, the County may order the Respondent to stop work, or any portion thereof, until the cause for such order is eliminated.
 - i. County's Right to Continue Work: If Respondent defaults or neglects to carry out the work in accordance with the Contract, and fails within a thirty (30)-day period after receipt of notice from the County to provide an acceptable plan to correct such default, the County may correct such deficiencies and may deduct the reasonable cost thereof from the payment due the Respondent.
 - j. Contract Termination: An ensuing contract shall remain in effect until expiration, completion, and acceptance of goods and/or services or default. The County reserves the right to terminate the contract immediately if the successful Respondent fails to (1) meet delivery or completion schedules; or (2) otherwise perform in accordance with the accepted proposal, including, but not limited to, defaults in the performance of the terms and conditions contained herein or material breach of any contractual provision.

Breach of contract or default authorizes the County to award to another Respondent or purchase elsewhere and charge the full increase cost to the defaulting Contractor. Waller County reserves the right to terminate the Contract if Contractor becomes insolvent or commits acts of bankruptcy.

Either party may terminate this contract by providing thirty (30) days written notice to the other party. The Respondent must state therein the reasons for such cancellation. Prior written notice must be delivered in person or sent by registered or certified mail, return receipt requested, proper postage paid, and properly addressed to the other party at the address on the affidavit for the contractor or to the Waller County Auditor, Waller County Joe Kuciemba Annex, 425 FM 1488, Suite 119, Hempstead, Texas 77445.

Respondent's failure to comply with the terms and conditions of an ensuing Contract associated with an accepted bid shall be a basis for the determination of the contract by the County. The County shall not pay for supplies or services which it deems unsatisfactory. The County may give Contractor a reasonable opportunity before termination to correct the deficiencies; however, this in no way shall be construed as negating the validity of the County's termination for non-performance.

If a court of competent jurisdiction determines that any term of the contract associated with an accepted bid is invalid or unenforceable to any extent under applicable law, the remainder of the contract associated with an accepted bid (and the applicable of this agreement to the other) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

- k. **Remedies for Default and Termination of Contract:** Except as otherwise provided for in the RFP Solicitation or contract Terms and Conditions, either the County or Respondent may terminate the Contract in whole or in part in the event of the other party's substantial failure to fulfill its obligations under the Contract through no fault of the terminating party; provided, however, that the defaulting party is given at least ten (10) business days prior written notice of the default and intent to terminate. Written notice shall be delivered by certified mail, return receipt requested, or other method that similarly documents receipt. To the extent that the default is capable of being cured, the defaulting party may be given a ten (10) business day opportunity to remedy the default to the satisfaction of the terminating party.

At the County's option, and in addition to any other remedies it may have available, the County may terminate the Contract if Respondent fails to adhere to or violates any of the provisions of these Terms and Conditions, including certifications. Without limiting the scope of the foregoing, one or more of the following constitutes grounds for termination:

Delivery of product(s) or service(s) that fail to meet the item specifications;

Delivery of product(s) or service(s) that are defective or substandard or fail to pass product inspection;

Delivery of a product substitution, except as specifically authorized;

Failure to meet required delivery schedules;

Failure to timely supply the awarded products or services at the contract price;

Failure to provide, within a reasonable time and where required by the Contract or this RFP, information reasonably requested by the County;

Respondents refusal, inability or loss of ability, to offer or provide awarded goods or services to the County unless caused by a Force Majeure event.

Notwithstanding any other provision of this section, in the event of Respondent's default under or breach of any provision of this Contract, the County reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the County or necessary or appropriate to protect or provide best value to the County.

In the event that the County terminates the Contract, the County reserves the right to award the terminated Contract to the next most qualified Respondent.

The County may sue for breach of contract and specific performance and, in addition to contract damages, recover attorney's fees and costs. Respondent shall be liable for any and all damages permitted by law, and any deviation submitted by Respondent in its Proposal seeking to limit its liability to the County shall be deemed rejected.

The County will not be liable to Respondent for any damages, including but not limited to, loss of profits, loss of business, or any special, consequential, exemplary, or incidental damages resulting from termination based on Respondent's default or breach of contract.

If any delay or failure of performance is caused by a Force Majeure event described in these Terms and Conditions, the County may, in its sole discretion, terminate the Contract, provided such termination complies with the procedures set out above. Any Contract termination resulting from any cause other than a Force Majeure event will be deemed a valid reason for the County to not consider any future proposals from the defaulting Respondent.

- l. Remedies Cumulative: The remedies available to the County under this RFP or Contract are in addition to any other remedies that may be available under law or in equity.
- m. Change of Ownership: If ownership of Contractor should change during the term of a resulting Contract, the County must be notified as soon as possible in writing within (10) days and a new declaration of relationship shall be submitted immediately to the Department Contact. Failure by the Respondent to provide written notification of change of ownership may result in cancellation of a resulting contract.
- n. Assignment: A successful Respondent shall not sell, assign, transfer, or convey a contract, in whole or part, without prior written consent of Commissioners' Court.
- o. Change or Modification: No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting Contract. All changes to the Contract must be approved by Commissioners' Court and will be made in writing to the Department Contact.
- p. Governing Forms: In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event

of any conflict of interpretation of any part of this overall document, Waller County's interpretation shall govern.

- q. Governing Law and Venue: This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Waller County, Texas. Unless otherwise provided for by statute, any litigation arising from this Contract shall lie in Waller County, Texas.
- r. Governmental Immunity: The County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas or under the laws of the United States.
- s. Conflict of Interest: Consistent with the Waller County Purchasing Policy and Texas Local Government Code, Chapter 171, Commissioners' Court shall not approve the expenditure of any funds in favor of a business entity in which a county official or employee either directly or indirectly owns a substantial interest unless prior to any vote or decision on any matter involving the business entity, the Commissioners are made aware of the interest of the official or employee and provide further that the official or employee take no part in the negotiating, making, accepting, or approving any payment, agreement, or contract affecting the business entity and performs no duty for Waller County in connection with the business entity.

Each Respondent must disclose any existing or potential conflict of interest relative to the performance of the requirements of this RFP. Any personal or business relationship between the Respondent, its principal(s), affiliate, employee, or subcontractor with an employee or official of the County or its suppliers must be disclosed. Any such relationship that might be perceived or represented as a conflict must be disclosed. Failure to disclose any such relationship or reveal personal relationships with the County employees or officials shall be cause for Contract termination. A Conflict of Interest form should be filed with the Waller County Clerk prior to the submission of a Proposal. A copy of the file-stamped Conflict of Interest form must accompany the submission of a proposal.

No County elected official, appointed official, employee, or representative shall have interest in any contract resulting from a RFP Solicitation.

Respondent affirms that it has not given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a County official or employee, or representative of the same in connection with this procurement.

A Respondent is prohibited from submitting a bid or proposal for goods or services on a Waller County project of which the Respondent was a designer or previous contributor, or was an affiliate, subsidiary, joint venture, or was in any other manner associated by ownership to any party that was a designer or other previous contributor. If such Respondent submits a prohibited bid or proposal, that bid or proposal shall be disqualified on the basis of conflict of interest, no matter when the conflict is discovered by the County.

- t. Required Licenses: Respondent certifies that all members of the proposed Project Team hold all licenses required by the State of Texas for a provider of the goods and/or services described by the Scope of Services herein.

- u. Permits and Approvals: All work done under this contract shall comply with all local and state codes having jurisdiction and with the requirements of the companies whose services may be used. Where code requirements are less than those shown in the contract documents, the contract documents shall control. The selected Respondent shall obtain any and all permits, inspections, and approvals as required by all authorities having jurisdiction. All fees and costs for these items shall be paid for by the Respondent.
- v. Background Checks: The County may require background checks on a Respondent's employees, and may require Respondent to pay the cost of obtaining criminal history information.
- w. Drug and Alcohol Policy: All Respondents shall provide any and all notices as may be required under the Drug-Free Work Place Act of 1988, 28 CFR Part 67, to its employees and all subcontractors. At all times any agent, officer, representative, or employee of the Respondent shall be present upon property owned by the County, the terms and conditions of the Drug and Alcohol Policy currently adopted by the County shall be deemed applicable to such persons. Violations of terms/conditions while present on the premises owned by the County shall be grounds for termination of any contract between the County and Respondent. A copy of this policy is available upon request. The successful Respondent expressly grants Waller County the right to review drug-testing records of any personnel involved in this proposed project. The County may require, at Respondent's expense, drug testing for Respondent's personnel if no drug testing records exist or if such test results are older than six (6) months.
- x. E-mail Address Consent: Respondent affirmatively consents to the disclosure of its email addresses that are provided to Waller County or any of its Departments. This consent is intended to comply with the requirements of the Texas Public Information Act, Texas Government Code §522.137, as amended, and shall survive termination of this agreement. This consent shall apply to e-mail addresses provided by Respondent, its employees, officers, and agents acting on Respondent's behalf and shall apply to any email addresses provided in any form for any reason whether related to this RFP, Contract, or otherwise.
- y. Force Majeure: To the extent either party of this agreement shall be wholly or partially prevented from the performance of the term specified, or of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the parties' control and not attributable to its malfeasance, neglect, or nonfeasance. In such event, the time for performance of such obligation or duty shall be suspended until such disability to perform is removed. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.
- z. Liens: Respondent shall indemnify and save harmless the County against any and all liens and encumbrances for all labor, goods, and services which may be provided to the County by Respondent or its vendor(s), and if the County requests, a proper

release of all liens or satisfactory evidence of freedom from liens shall be delivered to the County.

- aa. Outstanding Liabilities: Respondent shall not have outstanding, unpaid liabilities owed to the County. Liabilities may include, but are not limited to, property taxes, hotel occupancy taxes, and license or permit fees. Proposals will be considered non-responsive and not given further consideration if submitted by a Respondent with such outstanding liabilities.
- bb. Offset: Any indebtedness or obligation owed by a Respondent or its affiliates to the County may be appropriated and applied by the County at any time, and from time to time, on any indebtedness or other obligation owed by the County to Respondent or its affiliates, whether such indebtedness or other obligations are now existing or hereafter arise, and whether under the Contract or otherwise. It is further understood and agreed that this right of setoff is in addition to, and not in lieu of, any other right, remedy, or recourse which is available to the County either at law or in equity, and that failure to exercise such right of setoff in any instance shall not constitute a waiver of such right.
- cc. Gratuities/Bribes: Respondent certifies that no bribes in the form of entertainment, gifts, or otherwise, were offered or given by the successful Contractor, or its agent or representative, to any County officer, employee or elected representative, with respect to this RFP or any contract with the County, and that if any such bribe is found to have been made this shall be grounds for voiding the contract.
- dd. Financial Participation: Respondent certifies that it has not received compensation from the County to participate in preparing the specifications or RFP on which the Proposal is based and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- ee. Made in the U.S.A.: As appropriate and to the extent consistent with law, when funding a procurement in whole or in part through Federal grant money, the County, to the greatest extent practicable, provides a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Respondent agree to include this requirement in all contracts with any subcontractors or sub-subcontractors related to the Contract, whether they concern goods and/or services.
- ff. Right to Assurance: Whenever the County, in good faith, has reason to question Respondent's intent to perform, the County may demand that the Contractor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the County may treat the failure as an anticipatory repudiation of the Contract.
- gg. Severability: If any section, subsection, paragraph, sentence, clause, phrase, or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications, and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion has been omitted.
- hh. Notices: Unless otherwise provided by this RFP, any written notice or other

communication required by the Contract or by law will be conclusively deemed to have been given and received on the third business day after such written notice has been deposited in the U.S. Mail, properly addressed, and with sufficient postage affixed thereto, provided that actual notice may also be given in any other manner used in commerce.

- ii. Waiver: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The County's failure to require strict performance of any provision of the Contract does not waive or diminish the County's right thereafter to demand strict compliance with that or any other provision.
- jj. Exceptions: The Respondent shall state any exceptions desired to these Terms and Conditions and may suggest alternate wording that addresses the intent of the term or condition. The County may accept or reject any suggestions in accordance with law.

2. Delivery of Services

- a. Delivery: All goods shall be delivered in appropriate packaging to assure safe, undamaged delivery F.O.B. Destination unless otherwise authorized herein. C.O.D. shipments or deliveries are not permitted. The Contractor will coordinate the delivery of all project materials, if applicable, with the Department Contact.
- b. Payment Terms: A Respondent shall, at the appropriate time(s), submit an original invoice for each delivery and/or negotiated project milestone that requires payment directly to the Waller County Road and Bridge Department, 775 Business 290 East, Hempstead, TX 77445. Invoices must include (1) the Company name and address; (2) the County's name and address or delivery location; (3) the contract number; (4) the name of the project; and (5) be itemized. Itemization for product(s) must include, at a minimum, a detailed description of the product(s), the quantity delivered, item number, product code, item description, and total number of containers. Itemizations for milestone(s) associated with the invoice must include a detailed description of the service(s), and a written certification that all aspects of that particular milestone have been successfully completed, delivered, and approved in accordance with contract requirements. Invoices must separately itemize any transportation and/or delivery charges, and include associated documentation, include a properly signed copy of the delivery receipt, and be mailed directly to the County.

Prior to any and all payments made for goods and/or services provided under this Contract, the Respondent shall provide its Taxpayer Identification Number or social security number as applicable. This information must be on file with the Waller County Auditor's Office. Failure to provide this information may result in a delay in payment and/or back up withholding as required by the Internal Revenue Service.

Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned to the Respondent for correction.

Payment to Contractor is due after the County's receipt and acceptance of ordered product(s) or service(s) and the documentation identified above, including a complete

and correct invoice, in accordance with the Prompt Payment Act, Chapter 2251 of the Texas Government Code. The County is not responsible for product(s) and/or service(s) delivered or invoiced without a valid purchase order. Payments will be processed after confirmation that all materials/services have been received satisfactorily and no unauthorized materials/services have been received.

The County's obligation to Contractor is payable only and solely from funds available for the purpose of the purchase. The laws of the State of Texas prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Anticipated orders or other obligations that may arise past the end of the current Waller County fiscal year shall be subject to budget approval.

Any contract entered into by the County that is to be paid from grant funds shall be limited to payment from the grant funding, and the Proposer understands that the County has not set aside any County funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the Respondent shall be to terminate any further services under the Contract and the Contract shall be null and void.

This RFP or resulting Contract may be terminated by the County without notice and without penalty or liability in the event that (1) the County lacks sufficient funds for this agreement; (2) funds for this agreement are not appropriated by Waller County Commissioners' Court; and (3) funds for this agreement that are or were to be provided by grant or through an outside service are withheld, denied, or are otherwise not available to the County.

All payments made to Waller County shall be made by the 15th of the month.

- c. Warranty of Products and Services: Respondent must not limit or exclude any implied warranties and shall extend such warranties on the awarded products(s) or service(s), as well as the installation thereof if such installation is provided by Respondent, as are normally provided to other customers of the Respondent. All services shall be performed in a good and workmanlike manner consistent with industry standards. Unless otherwise specified by this RFP, a minimum of a ninety (90)-day product or service guarantee or the manufacturer's standard commercial warranty, whichever is greater, will apply to all awarded products and services. At a minimum, all product warranties must provide for replacement of defective merchandise, parts, and labor, and include pick-up of the defective merchandise from the location specified by the County and delivery of the replacement(s) to the same location. Such warranty shall include curing any defects in connection with any Respondent installation of the product at no additional cost to the County. The warranty period is effective from the date the County accepts the product, or the date service is completed and accepted by the County.

Respondent warrants that products sold to the County shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, the

County may return the product for correction or replacement at the Respondent's expense. If the Respondent fails to make the appropriate correction within a reasonable time, the County may correct at the Respondent's expense.

Respondent shall respond to any reasonable requests for information from the County or its representatives in regards to concerns regarding public health and safety regarding awarded products and/or services, including such documentation as may be reasonably requested. In the event of any product recalls affecting awarded products, as soon as practicable, Respondent shall notify in writing the County for such recalled products and proposed action. At a minimum and without waiving any other requirements under law, this RFP, or Contract, Respondent shall be required with respect to the County to take all action required by law or any greater remedy as may be offered by the Contractor to other customers with respect to recalled products, including but not limited to, prompt replacement and/or refunds.

Proposer may not limit or exclude any implied warranties. Any attempt to do so shall render the Contract voidable at the option of the County.

3. **Financial Responsibility Provisions**

- a. Funding: Texas law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Anticipated orders or other obligations that may arise past the end of the current Waller County fiscal year shall be subject to budget approval.
- b. Taxes: Waller County is by statute exempt from the State Sales Tax and Federal Excise Tax. If such taxes are listed on a successful Respondent's future invoice(s), it will not be paid.
- c. Insurance Coverage Requirements: Any Respondent that conducts business with Waller County, whether it is for goods and/or services, shall secure and maintain, throughout the duration of the Contract, insurance of such types and in such amounts as may be necessary to protect the Respondent and the County against all hazards or risks of loss associated with the successful Respondent's performance of the Contract. The form and limits of such insurance, together with the insurer, shall be acceptable to the County, with the County listed as an "Additional Insured." Insurance Requirements are set forth in Exhibit 2.

It shall be the responsibility of the Respondent to maintain adequate insurance coverage at all times. Failure of the Respondent to maintain adequate coverage shall not relieve the Respondent of any contractual responsibility or obligation; however, such failure shall be grounds for the County to terminate the Contract in its sole discretion. All insurance requirements, including workers' compensation and liability, as outlined under State law, shall be met prior to any services rendered and shall remain in effect during the full duration of the contract associated with an accepted bid. Payments shall not become due and payable until such certificates have been filed.

- d. **Waiver of Subrogation:** Respondent and its insurance carrier waive any and all rights whatsoever with regard to subrogation against Waller County as an indirect party to any suit arising out of personal or property damages resulting from Contractor or its employees' performance under this Contract.

4. **Indemnification and Hold Harmless Agreement**

- a. Respondent agrees to defend, indemnify, and hold harmless the County, its officials, officers, agents, employees, and representatives from and against all third-party claims, actions, suits, liability, liens, loss, and damage of any character, type, or description, including without limitation all expenses of litigation, court costs and attorney's fees, arising out of or related to (1) injury or death to any person or damage to any property related to the acts and omissions of Respondent or its agents, subcontractors, employees, or representatives in the execution of or performance under the Contract; and (2) Respondent's negligence, misconduct, breach of contract, or other failure to comply with its obligations in the execution or performance under the Contract. The Respondent's duty to defend, indemnify, and hold the County harmless shall be absolute. It shall not abate or end on the expiration or termination of the Contract unless otherwise agreed to by the County in writing. The provisions of this section shall survive the termination of the Contract and shall remain in full force and effect with respect to all such matters concerning the performance of the Respondent arising under or related to the Contract, no matter when they arise.

Contractor's duty to defend, indemnify, and hold the County harmless shall be absolute. It shall not abate or end by reason of the expiration or termination of any ensuing Contract unless otherwise agreed by the County in writing. The provisions of this section shall survive the termination of any ensuing Contract and shall remain in full force and effect with respect to all such matters no matter when they arise.

The Respondent shall indemnify the County in the event the County is found to have been negligent for having selected the Respondent to perform the work described in this RFP. The Respondent's provision of insurance shall not limit the liability of the Respondent under the Contract.

Contractor shall have fully authority to resolve any and all matters being defended by it provided that such settlement(s) shall not involve any finding(s) adverse to the County and/or shall not involve or require any payments or contributions by the County.

In the event that any such matter being so defended by the Contractor also involves any claim of negligence or wrongful action by the County, the County shall have the obligation to participate in the defense of the matter through separate legal counsel.

Successful Respondent shall defend, indemnify, and save harmless Waller County and all its officers, agents, and employees from all suits, actions, or other claims of any character, name, and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act, omission, or fault of the successful Respondent, or of any agent, employee, subcontractor, or supplier in the execution of, or performance under any contract which may result from proposal award. Successful Respondent shall pay any judgment

with cost which may be obtained against Waller County growing out of such injury or damages. The contractor also agrees to save harmless the County from any and all expenses including attorney fees incurred by the County in litigation or otherwise resisting said claims or liabilities as a result of the contractor's employee activities. Further, the contractor agrees to protect, indemnify, and save harmless every kind and character brought by an employee of the contractor against the County due to personal injuries and/or death to such employee resulting from any alleged negligent act by either commission or omission.

The County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of the Contractor and/or Trade Contractor providing such insurance.

Exhibit 1

Bid Form

A Respondent must remit the below Bid Form. Pricing shall be valid through the first sixty (60) days of any ensuing Contract regardless of price increases. The County is exempt from federal excise and State sales tax. Respondent shall not include taxes in its bid.

Respondent is **required** to disclose any and all charges or fees the County would incur associated with the requested goods and services. The County will not be responsible for any charges/fees unless expressly disclosed on this Bid Form. Prior to commencing work, a meeting will take place with the Selected Contractor and County to discuss start date and scope of project.

The County wishes to emphasize that this Contract is nonexclusive and neither restricts the County's ability to competitively bid for the same or similar materials and/or services nor disallows, in its sole discretion, the County's ability to contract for such materials and/or services with other Contractors.

2024 PROPOSAL FOR OILS AND ASPHALTS PRODUCTS AND SERVICES

**All prices are F.O.B. Waller County Road and Bridge Department
(unless indicated)**

**Hempstead Yard -775 Bus 290 East, Hempstead, Texas 77445
or
Brookshire Yard 5004 Gassner Rd, Brookshire, Texas 77423**

ITEM					
PRODUCT	Full Load \$/Gallon Hempstead Yard 5,000+ Gallons	Tank Fee	Small Load \$/Gallon Hempstead 3,000 to 5,000 Gallons		\$/Gallon Waller County Jobsite
SS1 EMULSION - Tank Delivered					
CRS-2					
Pump & Hose					
Demurrage after 2 hrs.					
PUGMILL SERVICES	Price per ton to perform service at: 775 Business Hwy 290E, Hempstead, TX				
ASPHALT – CMA AND HMA	Vendors Location	\$/Ton at Plant	FOB Hempstead Yard	FOB Waller County	

Location				Jobsite
ASPPM – DMS 9202				
DENSE GRADED HMA, TYPE D, SAC B, PG 64-22				
DENSE GRADED HMA, TYPE B, PG 64-22				
TOPPING ROCK	Pit Location	FOB Pit	FOB Hempstead Yard	FOB Brookshire Yard Jobsite
3/8" Pea Gravel				
TYPE F 3/8" Ice Rock				
Grade 3 Limestone				
Grade 4 Limestone				
Grade 3 Precoat (PB3)				
Grade 4 Precoat (PB4)				

Submitted by:

Company Name: _____

Signature: _____

Title: _____

Print Name: _____

Date: _____

Address: _____

Phone Number: _____

Email: _____

This agreement is nonexclusive and in no way restricts the County's ability to competitively bid for the same or similar materials and services or the County's sole discretion to contract for such materials and services with other contractors.

Exhibit 2

Insurance Requirements

1. All contractors must submit, WITH BID, a certificate of insurance indicating coverage in the amounts stated below. In lieu of submitting a Certificate of insurance, contractors may submit, WITH BID, a notarized statement from an Insurance Company, authorized to conduct business in the State of Texas, and acceptable to the County, guaranteeing the issuance of an insurance policy, with the coverage stated below, to the contractor named therein, if successful, upon award of the contract.
2. The successful contractor shall obtain at its sole expense, and shall submit to the Office of the County Purchasing Agent, certificates of insurance satisfactory to the County, naming the County, the contractor and its employees as insured:
 - a. Employer's Liability: \$500,000
 - b. General liability including:
 - (1.) Premises/Operations
 - (2.) Products/Completed Operation
 - (3.) Contractual
 - (4.) Owner's Protective
 - (5.) Personal Injury/Advertising Liability
 - (6.) Mobile EquipmentGeneral liability limits shall be equal or greater than:
\$100,000 Bodily Injury per person
\$300,000 Bodily Injury per occurrence
\$100,000 Property Damage per occurrence; *or*
 - (2.) \$500,000 Bodily Injury and Property damage combined, single limit.

Specify annual aggregate, if any. The minimum available annual aggregate for the purposes of this agreement shall be \$1,000,000. Claims – made policies shall not be acceptable. All policies shall be on an occurrence basis.
 - c. Automobile Liability:
All owned, non-owned or hired vehicles must be covered. Liability limits shall be greater than or equal to:
 - (1) \$100,000 Bodily Injury per person.
\$300,000 Bodily Injury per occurrence.
\$100,000 Property Damage per occurrence;
 - (1.) \$500,000 Bodily Injury and Property Damage combined, single limit.
 - d. Excess Liability coverage shall be greater than or equal to \$1,000,000 combined, single limit.
Specify aggregate, if any.
3. Contractor shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by the County.
4. No cancellation of or changes to the certificates, or the policies, may be made without sixty (60) days prior, written notification to the County.
5. Approval of the insurance by the County shall not relieve or decrease the liability of the Contractor.

REQUIRED FORMS

All Required Forms referenced herein can be found on the County's Website (<https://www.co.waller.tx.us/page/BidsAndProposalRequests>) under the file name "Required Forms: Required Oils and Asphalts."

It is a Respondent's responsibility to complete all necessary Required Forms and follow any instructions contained therein.

The County reserves the right to disqualify a Respondent who does not complete all Required Forms or submits Required Forms which have been completed incorrectly.