

COUNCIL AGENDA: JULY 15, 2014

SUBJECT: AUTHORIZATION TO "PIGGY-BACK" ON EXISTING CONTRACT

SOURCE: Public Works Department – Field Services Division

COMMENT: At the August 6, 2013, meeting, Council authorized staff to purchase cold mix asphalt by "piggy-backing" on the existing Tulare County contract with Jaxson Enterprises that expired June 30, 2014.

After soliciting bids, Tulare County has awarded their FY 2014/2015 Cold Mix contract to Jaxson Enterprises, and staff is requesting authorization to "piggy-back" onto the new contract for the purchase of cold mix for the 2014/2015 FY Asphalt Overlay Program.

Funds for asphalt purchase are available in the 2014/2015 Asphalt Overlay Program budget.

RECOMMENDATION: That the City Council authorize the purchase of cold mix asphalt utilizing the existing contract between Tulare County and Jaxson Enterprises.

ATTACHMENT: County of Tulare Material Contract

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Item No. 12



County of Tulare PURCHASING DEPARTMENT

Courthouse Room 3, 221 So. Mooney Blvd., Visalia CA 93291-4593
Telephone 559-636-5245 Fax 559-733-6759

June 3, 2014

Jaxon Enterprises,
dba Deer Creek Asphalt
Attn. Chris McNabb
23351 Avenue 18 ½
Madera, CA 93638

Email: cmcnabb@jaxonaggregates.com

SUBJECT: MATERIAL CONTRACT NO. 1247 – ½" COLD MIX MATERIAL- SOUTH COUNTY

Please print two (2) copies of the attached Material Contract No. 1247 for Cold Mix Material for your signature. Please sign and return all copies to the Purchasing Department by June 11, 2014, so we can finalize the contract. After the contract has been finalized a copy will be mailed to you.

Please call me at (559) 636-5245 if you have any questions regarding this contract.

Thank you,

A handwritten signature in cursive script that reads "Karla Doyer".

Karla Doyer
Contract Coordinator



County of Tulare PURCHASING DEPARTMENT

Courthouse Room 3, 221 So. Mooney Blvd., Visalia CA 93291-4593
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June 3, 2014

Jaxon Enterprises,
dba Deer Creek Asphalt
Attn. Chris McNabb
23351 Avenue 18 ½
Madera, CA 93638

Email: cmcnabb@jaxonaggregates.com

SUBJECT: MATERIAL CONTRACT NO. 1247 - ½ " COLD MIX MATERIAL - SOUTH COUNTY

GENERAL: This is to notify you that the Tulare County Purchasing Agent is accepting your Bid No. 15-004 dated May 27, 2014 for the supplying of ½ " Cold Mix Material to the County of Tulare as indicated on the attached sheets. The above contract number has been issued and the contract will be effective, subject to the terms and conditions of the bid and to the provisions as incorporated herein through the period beginning July 1, 2014 and ending June 30, 2015.

PRICES: The prices as bid are to be the maximum charged for the period of the contract, subject to the Compensation adjustments for price index fluctuations - liquid asphalt, attached as Exhibit A. The attached sheets and enclosures enumerate the prices applicable herein.

Prices are F.O.B. Destination to various County Departments or Governmental Entities.

Federal Excise Tax Exempt.

State Sales Tax to be added.

ATTACHED SHEETS: The attached sheets and enclosures are herewith made a part of this contract.

CASH DISCOUNT TERMS: 10% -30 days

USAGE: Usage of materials will be interspersed and periodic during the contract year, and as such will not be subject to shipment of the total estimated requirements at any one time.

DELIVERIES: County personnel or their representative will pick up material from the plant location as indicated by the successful bidder. Frequency of pick ups will be determined by the needs of the using department or agency and will be interspersed throughout the contract year. The successful bidder shall be expected to maintain a normal delivery time which is established as being within forty-eight (48) hours after receipt of order.

Material Contract
Page One

CONTRACT NO. 1247

1241600
CONTRACT SUPPLIER: JAXON ENTERPRISES
DBA DEER CREEK ASPHALT
23351 AVENUE 18 ½
MADERA, CA 93638

BID NO. 15-004
PHONE: 559 645-4411
FAX: 559 645-4623
EMAIL: cmnabb@jaxonaggregates.com

REMITTANCE: JAXON ENTERPRISES
PO BOX 994248
REDDING, CA 96099-4248
PHONE: 530 241-2112

SUBJECT: ½ " COLD MIX MATERIAL - SOUTH COUNTY

COMMODITY CODE: 74514 ASPHALTIC CONCRETE, COLD LAID

PERIOD: JULY 1, 2014 THROUGH JUNE 30, 2015

DELIVERY: F.O.B. PLANT LOCATION

TERMS: 10% - 30 DAYS

SALES TAX: IN ADDITION TO PRICES SHOWN

MINIMUM ORDER: 400 TONS

PRICES: SEE EXHIBIT A – COMPENSATION ADJUSTMENTS FOR PRICE
INDEX FLUCTUATIONS APPLY TO THIS CONTRACT

SPECIFICATIONS

Plant Run Cold Mix – ½" mix as per CalTrans Specs. Section #39 or as requested by County representative. SC-800 or SC-3000 grade oil as per CalTrans Spec. #93 in conformance with the latest editions and amendments of the Standard Specifications of the State of California, Department of Transportation, Division of CalTrans for such Plant Run Cold Mix or as requested by County representative.

DELIVERIES: Deliveries are to be made at the vendor's plant and/or storage location as required. Approximately two hundred (200) tons to two thousand (2,000) tons per day. County representative will give 48 hours notice of delivery date.

GUARANTEE OF DELIVERY: A continued, uninterrupted and guaranteed availability of Cold Mix Material is important and necessary to the County for the economic completion of its road work projects.

PRICES: Prices shall be F.O.B. Plant Location and shall exclude Federal Excise Taxes, for which the County is exempt. California State Sales Tax will be allowed on the net bid price. The price per ton shall include all fees for the duration of the contract. Example, environmental fees, etc.

NOTE: For the purpose of this Request for Bid, TON is determined to be 2,000 pounds avoirdupois.

DEER CREEK ASPHALT

CONTRACT NO. 1247

1/2" PLANT RUN COLD MIX with OIL:

\$ 54.50 PER TON

7,000 Tons total estimated quantity for South County through June 30, 2015.
Applicable sales tax will be added in addition to the price indicated above.

The amount of liquid asphalt added to produce Plant Run Cold Mix shall be determined by the Engineer.

Applicable Sales Tax in addition to the price indicated.

PLANT LOCATION/SHIPPING POINT:

27671 Avenue 120, Porterville, CA,
Smara Mine ID 91-54-0021

PARTICIPATING DEPARTMENTS:

RMA Road Yard #1, Porterville
RMA Road Yard #2/3 Visalia
RMA Road Yard #4, Dinuba
RMA Road Yard #5, Terra Bella

EXHIBIT A

COMPENSATION ADJUSTMENTS FOR PRICE INDEX FLUCTUATIONS - LIQUID ASPHALT

The compensation payable for liquid asphalt used in Plant Run Cold Mix (PRCM) will be increased or decreased in conformance with the provisions of this section for liquid asphalt price fluctuations exceeding 5 percent (lu/lb is greater than 1.05 or less than 0.95) which occur during performance of the work.

The adjustment in compensation will be determined in conformance with the following formulae when PRCM is included in the monthly billing.

- A. Total monthly adjustment = AQ
B. For an increase in liquid asphalt price index exceeding 5 percent:

$$A = 0.90(lu/lb - 1.05) lb$$

- C. For a decrease in liquid asphalt price index exceeding 5 percent:

$$A = 0.90(lu/lb - 0.95) lb$$

- D. Where:

A = Adjustment in dollars per ton of liquid asphalt used to produce PRCM rounded to the nearest \$0.01.

lu = The California Statewide Paving Asphalt Price index which is in effect on the first business day of the month within the pay period in which the quantity subject to adjustment was used.

lb = The California Statewide Paving Asphalt Price Index for the month in which the bid opening for the project occurred.

Q = Quantity in tons of liquid asphalt that was used in producing the monthly quantity of PRCM.

The adjustment in compensation will also be subject to the following:

- A. The Contractor shall be liable to the County for decreased compensation adjustments and the County may deduct the amount thereof for moneys due or that may become due the Contractor.
- B. Adjustment in compensation for liquid asphalt shall be the lowest amount of the following: 1) the actual amount used, 2) the calculated amount based on a percentage, as determined by the Engineer, of the total tonnage of PRCM.
- C. In the event of an overrun of contract time, adjustment in compensation for liquid asphalt during this overrun period will be determined using the California Statewide Paving Asphalt Price Index in effect on the first business day of the month within the month in which the overrun began.

The California Statewide Paving Asphalt Price Index is determined each month on the first business day of the month by Caltrans using the median of posted prices in effect as posted by Chevron, Mobil, and Unocal for the Buena Vista, Huntington Beach, Kern River, Long Beach, Midway Sunset, and Wilmington fields.

In the event that the companies discontinue posting their prices for a field, Caltrans will determine an index from the remaining posted prices. Caltrans reserves the right to include in the index determination the posted prices of additional fields.

The California Statewide Paving Asphalt Price Index is available at the Division of Engineering Services website:

http://www.dot.ca.gov/hq/ese/oe/asphalt_index/astable.html

0-30-01

0-30-01

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The Contractor shall be expected to load materials into County's trucks in a professional and responsible manner, with care not to cause contamination of materials.

QUANTITY & QUALITY OF MATERIALS OR SERVICE: The Contractor shall furnish and deliver the quantities designated by the Purchasing Agent. Packing slips which clearly identify the merchandise and the County of Tulare's Purchase Order number or agreement must accompany every delivery. All materials, supplies or services furnished under an agreement or Purchase Order resulting from this agreement shall be in accordance with the County's specifications. Materials or supplies, which in the opinion of the Purchasing Agent are not in accordance and conformity with such specifications, shall be rejected and promptly removed from the County's premises at the Contractor's expense. A resulting contract does not guarantee a specific amount of business.

INCLUSION IN THE CONTRACT: The County departments and governmental entities listed are those which will participate in the Contract. However, the right is reserved by the Purchasing Agent, at his discretion, to include any other County department and/or Governmental Entity in the Contract at the accepted prices.

RESPONSIBILITY FOR GOVERNMENTAL ENTITIES OTHER THAN THE COUNTY: Those Governmental Entities other than the County and its departments who are listed in the Request-For-Bids or who are subsequently included have signified their intention to participate in the Tulare County Contract. Participation will not impose any responsibility for payment of claims on the Tulare County Board of Supervisors or the County Purchasing Agent. Each such Governmental Entity will be billed separately, and payments will be made by warrants drawn on the appropriate funds for the Governmental Entity.

CONTRACT EXCLUSIVE: The provisions of the contract shall in no way prohibit the County from making incidental purchases from another suppliers for the same commodities as herein listed.

MERCHANDISE RETURNABLE FOR FULL CREDIT: Contractor agrees to give full credit for any merchandise sold by him on contract, if returned in good condition by the County.

GUARANTEE AGAINST DEFECTS: All items are to carry a full guarantee against defects in materials and workmanship and guarantee against breakage and other malfunctions when performing work for which they are designed.

PURCHASE ORDERS: Purchase Orders will be issued throughout the contract year to the Contractor for the requirements as needed for the department or agency.

INVOICING: All invoices are to be mailed in duplicate to the various locations designated on the "Invoice Address" on each purchase order. Reference shall be made to the purchase order number. Invoice shall be paid once a month on all deliveries made during the month.

RIGHT TO AUDIT: The County of Tulare reserves the right to verify, by examination of Contractor's records, all invoiced amounts when firm prices are not set forth in the purchase agreement.

CASH DISCOUNT: In connection with any cash discount specified on this contract, time will be computed from the date of complete delivery of the supplies or equipment as specified, or from date correct invoices are received if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the County warrant or check. (It is generally the County's policy to take any and all discounts regardless of date of delivery or invoice.)

DEFAULT BY CONTRACTOR: In case of default by Contractor by non-delivery of article(s) and or service(s) on or before the delivery date, the County may procure the article(s) and or service(s) from another source and may recover costs from Contractor. The Contractor may be charged, cost of transportation, the difference in cost of article(s) and or service(s) based on Contract information. The County reserves the right to be compensated deducting monies owed to Contractor from the Contract information and or invoicing the Contractor upon notification of the default.

Inspection on deliveries which do not meet specifications, will be at the expense of successful bidder.

CONTRACTOR ASSISTANCE: Contractor shall furnish, at no cost to the County, a representative to assist County departments in determining their product requirements.

LIABILITIES: The Contractor shall hold the County of Tulare, its officers, agents, and employees harmless from liability of any nature or kind because of the use of any copyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used under this bid, and agrees to defend, at Contractor's own expense, any and all actions brought against the County of Tulare or Contractor because of the unauthorized use of such articles.

INDEPENDENT CONTRACTOR STATUS: This Contract is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Contract as an independent contractor. Nothing in this Contract shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Contract that they are not employees, agents or officers of COUNTY. CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- a. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- b. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- c. Withhold state or federal income tax from payments to CONTRACTOR.
- d. Make disability insurance contributions on behalf of CONTRACTOR.
- e. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, COUNTY, through the Purchasing Agent, shall have the right to designate the sites at which services are to be performed, and to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Contract.

INDEMNIFICATION: CONTRACTOR shall hold harmless, defend and indemnify the COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to any property, including COUNTY property arising out of the acts or omissions of CONTRACTOR or its agents, officers and employees under this Contract. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Contract, the cost of any penalty or sanction imposed by any agency with regulatory authority over the activities carried out by CONTRACTOR, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et Seq. (California Fair Employment and Housing Act). CONTRACTOR specifically agrees to hold harmless and indemnify COUNTY for any and all claims arising out of any injury, disability, or death of CONTRACTORS employees or agents. This indemnification obligation shall continue beyond the term of this Contract as to any acts or omissions occurring under this Contract or any extension of this Contract.

It is the policy of the County of Tulare Board of Supervisors that in connection with all work performed under a purchase order or agreement with Tulare County, there shall be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, sex, or religious creed, and therefore, the Contractor agrees to comply with applicable Federal and California laws regarding employment practices. In addition, the Contractor agrees to require like compliance by all sub-contractors employed on the work by Contractor.

The foregoing obligations will continue beyond the term of the contract as to any act or omission that occurred during the term of the contract or any extension to the contract.

RENEWAL: The Contract may be renewed, by mutual written consent, for an additional TWO (2) ONE (1) year terms provided the prices, terms, and conditions remain the same.

NON-FUNDING CLAUSE: Funds provided for commodities or service under the terms of this contract are contingent on availability of public funds. Should sufficient funds not be allocated during those terms, this contract may be modified or terminated at any time by the County upon thirty (30) day notice. Notice shall be fully given in writing or through service in person or by first class mail.

TERMINATION OF CONTRACT: The County of Tulare may by giving ten (10) days written notice to the Contractor, terminate the contract prior to **JUNE 30, 2015**. Due cause for termination of contract shall be, but not limited to, failure to deliver in quantities required within a reasonable time period, failure of the product to meet specifications, and/or for reasons of unsatisfactory service.

The County may, upon giving thirty (30) days written notice to the Contractor, terminate the contract, with or without cause.

GOVERNING LAW: This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.

HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

COMPLIANCE WITH LAW: CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

CONFLICT OF INTEREST:

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

FORM DE-542: CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

CONSTRUCTION: This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

WAIVERS: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

EXHIBITS AND RECITALS: The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

OTHER PROVISIONS:

ACCEPTED:

COUNTY OF TULARE

Date _____

By _____
Purchasing Agent

ACCEPTED:

JAXON ENTERPRISES
DBA DEER CREEK ASPHALT

Date _____

By _____

Title _____

Date _____

By _____

Title _____

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.