

## Exhibit "A"

Hidalgo County (For all Hidalgo County funding sources, programs and entities)

### MS-1 Emulsified Asphalt

Bid No 2009-075-0\*-\*\*-YZV

#### I SPECIFICATIONS:

MS-1 – Emulsified Asphalt

Material – bid price by the gallon delivered by vendor:

#### II TERMS AND CONDITIONS:

##### 1. LOCATIONS/DELIVERY INSTRUCTIONS:

All deliveries will be made to the address(es) specified on the purchase order during normal working hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, unless otherwise authorized by the user department.

a) Precinct #1 – Sunrise Hill Mile 11 North 1 ½ East of 1015, Mercedes, Texas

b) Precinct #2- does not have storage facilities but will make arrangements with other county precincts' for temporary storage.

c) Precinct #3- 7 Mile Line & Iowa Road

d) Precinct #4 – 1102 North Doolittle, Edinburg, Texas

All delivery charges – freight, inside delivery, and all costs associated with this purchase are included in bid proposal. Delivery and service will be F.O.B. all charges for assembly, installation and set-up shall be included in the bid price. Unless otherwise stated, assembly, installation and set-up will be required.

##### 2. QUANTITY:

Hidalgo County will purchase material "ON AN AS NEEDED BASIS ONLY". Thus it is agreed and understood that the County will purchase no more material than is needed.

##### 3. CONTRACT TERM:

Option 1 – The term for the purchase of MS-1 Emulsion Asphalt required by Hidalgo County will be for three (3) months with the County's sole discretion to extend the contract for an additional three (3) –three (3) month terms and contingent upon cost to remain unchanged and awarded vendor(s) to supply and deliver to Hidalgo County location(s) upon meeting all required insurances.

Option 2 – The term for the purchase of MS-1 Emulsion Asphalt required by Hidalgo County will be for six (6) months with the County's sole discretion to extend the contract for an additional one (1) six (6) month term and contingent upon cost to remain unchanged and awarded vendor(s) to supply and deliver to Hidalgo County location(s) upon meeting all required insurances.

The contract shall remain in effect until contract expires, delivery/completion of services ordered or terminated by Hidalgo County within a thirty (30) day written notice prior to cancellation. The successful bidder must state therein the reasons for such cancellation. Hidalgo County reserves the right to award canceled contract to next lowest bidder as it deems to be in the best interest of the County

**4. PRODUCT QUALITY:**

To insure the highest product quality, Hidalgo County reserves the right to request from vendor(s) the current TxDOT approval batch number for the testing of material.

**5. VENDORS PERFORMANCE:**

Hidalgo county reserves the right to enforce the performance for this contract in any manner prescribed by law or deemed to be in the best interest of the county in the event of breach or default of this contract. Non-Performance of the bidder in terms of specifications and/or requirements shall be a basis for the termination of the contract by the County.

**6. DEFAULT:**

The County shall not pay for work, equipment, services or supplies which are unsatisfactory. Contractor may be given a reasonable opportunity twenty-four (24) hours prior to termination to correct any deficiency. This however shall in no way be construed as negating the basis for termination for non-performance.

Bidder(s) agree(s) that in the event "MS-1 Emulsified Asphalt" is unavailable from bidder(s) own inventory, bidder(s) will be responsible for locating an alternative supplier and for providing the product to Hidalgo County at the same rates/fees, terms and conditions. After the bid is awarded and in the event the awarded bidder(s) cannot provide "MS-1 Emulsified Asphalt" to Hidalgo County, HIDALGO COUNTY will seek goods/services from the next compliant vendor or other sources and will charge the successful bidder the difference for any additional cost incurred by Hidalgo County for such item.

**7. TERMINATION:**

Termination in whole or part, by the county may be made at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this contract, by giving thirty (3) days written notice to the Contract with the understanding that all work being performed under this contract shall cease upon the date specified in such notice.

**8. BID AWARD:**

a) Option 1 – The term for the purchase of "MS-1 Emulsion Asphalt" required by Hidalgo County will be for three (3) months with the County's sole discretion to extend the contract for an additional three (3) three (3) months terms and contingent upon cost to remain unchanged and awarded vendor(s) to supply and deliver to Hidalgo County location(s) upon meeting all required insurances.

Option 2 - The term for the purchase of MS-1 Emulsion Asphalt required by Hidalgo County will be for Six (6) months with the County's sole discretion to extend the contract for an additional one (1) six (6) month term and contingent upon cost to remain unchanged and awarded vendor(s) to supply and deliver to Hidalgo County locations(s) upon meeting all required insurances.

- b) Hidalgo County reserves the right to reject any/all bids, to waive any/all formalities or technicalities, or to accept the bid considered the best and most advantageous to the County.
  - c) Hidalgo County reserves the right to award to one or more bidders whichever is in the best interest of the County.
  - d) The contract for the material shall remain in effect until contract expires, delivery/completion of services ordered or terminated by either party with a thirty (30) day written notice prior to any cancellation. The successful bidder must state herein the reasons for such cancellation. Hidalgo County reserves the right to award canceled contract to next lowest bidder as it deems to be in the best interest of the County,.
  - e) Insurance certificates as per "exhibit C" must be submitted to the Purchasing Department prior to any services being performed by the awarded bidder.
  - f) In the event the material furnished does not meet the entire County's requirement (regardless of weather, test's acceptability, method of repair or other conditions), the county reserves the option to require the material supplier to replace or to reimburse the County for unused portion of material found to be unsatisfactory.
9. **Market Volatility and Unit Price Adjustments:** Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:
- a) **Requesting Price Adjustment:** Upon written request of the Vendor to the County Purchasing Agent, the county may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.
    - i. A Vendor must tie any price change clause to an industry-wide or otherwise nationally recognized index or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the vendor of the price changes.
    - ii. The Vendor must put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
    - iii. The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
    - iv. No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
    - v. The County may only grant a price increase if the evidence presented is deemed reliable. Should the county allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
  - b) **Price Reduction:** Vendor shall notify the county at the time when the Vendor's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the county of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
  - c) **Time frame for Adjusted Price Increases:** Price increases are only valid for the quarter in which they are requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the county in writing

within then (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension. The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

- d) Allowable Review periods: Price adjustment reviews may only be requested by the Vendor on a quarterly basis. However, the County may at its own discretion, conduct temporary price adjustment reviews at any time. The County Purchasing Agent and/or the county Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
- e) Dollar Limit to Price Changes: The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.

**ADDITIONAL INFORMATION:**

Hidalgo County is requesting that any and all questions, inquiries, and clarifications regarding quotes, bids, proposals, or statements of qualifications be addressed to, Martha L. Salazar, CPPB, Purchasing Agent, 2802 South Business Hwy 281, Edinburg, Texas 78539. **TELEPHONE INQUIRIES WILL NOT BE ACCEPTED. ALL WRITTEN INQUIRES WILL BE ACCEPTED VIA FACSIMILE OR EMAILED TO: [yolanda.velasquez@co.hidalgo.tx.us](mailto:yolanda.velasquez@co.hidalgo.tx.us)** NO LATER THAN, Wednesday, Month \*\*, 2009 5:00 p.m. Responses will be sent to all applicants via facsimile by no later than, 5:00 p.m., Friday, Month \*\*, 2009.