

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Mark McCauley, County Administrator

From: Monte Reinders, P.E., Public Works Director/County Engineer 

Agenda Date: May 1, 2023

Subject: Execution of Purchase & Sale Agreement for Supply of Aggregate for Jefferson County BST Program.

Statement of Issue: Execution of an Agreement with Northwest Rock for aggregate to be used in the Public Works Road Operations 2023-2024 BST Programs.

Analysis/Strategic Goals/Pro's & Con's: The Board awarded a bid to Northwest Rock Inc, on Monday 17 of April for supply of crushed aggregate to be used in the County's Bituminous Surface Treatment Programs. This program is consistent with County goals in that it provides for preservation of County roadway pavement and infrastructure.

Fiscal Impact/Cost Benefit Analysis: Purchase of this material is accounted for in Public Works Road Operations Budgets. The estimated value of this contract is \$513,397.00 (plus Washington State Sales Tax).

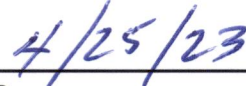
Recommendation: Public Works recommends the Board to approve the Purchase & Sales Agreement with Northwest Rock Inc, by signing the two (2) Agreements (attached) where indicated, and return one signed Agreement to Public Works for final processing.

Department Contact: Conor Ferry, Project Manager, 360-385-9168.

Reviewed By:



Mark McCauley, County Administrator



Date

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

PW 2023-037

CONTRACT WITH: TBD

Contract No:

Contract For: Supply of BST Aggregate

Term: 12/21/24

COUNTY DEPARTMENT: Jefferson County Public Works

Contact Person: Conor Ferry

Contact Phone: 360-385-9168

Contact email: cferry@co.jefferson.wa.us

AMOUNT: \$513,397.00 Estimate

Revenue: 1800000.311.10.00.0000

Expenditure: 1800000.54200.48.0000

Matching Funds Required:

Sources(s) of Matching Funds

Fund #

Munis Org/Obj

PROCESS:

- ☐ Exempt from Bid Process
- ☐ Cooperative Purchase
- ☒ Competitive Sealed Bid
- ☐ Small Works Roster
- ☐ Vendor List Bid
- ☐ RFP or RFQ
- ☐ Other:

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒ N/A: ☐

Signature

Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☒ N/A: ☐

Signature

Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 3/15/2023.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 3/14/2023.

Spacing in Paragraph 14 looks off. Please fix.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2023, between the COUNTY OF JEFFERSON, acting through the Jefferson County Commissioners and the Director of Public Works under and by virtue of RCW Title 36 as amended, hereinafter referred to as BUYER, and Northwest Rock, Inc of Aberdeen, WA, hereinafter called the SELLER.

WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do agree as follows:

GENERAL PROVISION: This Agreement contains the entire Agreement and understanding concerning the subject matter hereof between the parties and supersedes and replaces all prior negotiations, proposed agreements and agreements, written or oral. Each of the parties hereto acknowledges that no other party hereto or any agent or attorney of such party has made any promise, expressed or implied, not contained in this Agreement to induce it to execute this Agreement. Each of the parties further acknowledges that it is not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement. This Agreement is to be construed as if it were prepared and reviewed by both parties.

1. SALE OF GOODS

Seller shall manufacture, sell, transfer/deliver or make available for transfer/delivery to Buyer on or before May 1 contract year 2023, the following described products:

Aggregate for use by the Jefferson County Department of Public Works Road Operations Division in their bituminous surface treatment (BST) program in quantities and by dates indicated in the Bid Proposal documents. This Agreement is for supply of specified aggregate(s) in calendar years 2023 and 2024.

2. CONSIDERATION

Buyer shall accept the goods and pay unit prices in accordance with the Contract Provisions and the Seller's Proposal dated 3/27/2023.

3. IDENTIFICATION OF GOODS

Identification of the goods to this agreement shall not be deemed to have been made until both buyer and seller have specified that the goods in question are as prescribed in the performance of this agreement.

4. PAYMENT ON RECEIPT

Buyer shall make payment for received goods after inspection and approval by the buyer. Buyer shall make payment within approximately 30 days after receiving invoice and approval of goods as per the referenced Minimum Specifications and Special Provisions.

5. BUYER'S RIGHT TO OFFSET

Buyer may offset against any invoice from Seller any costs incurred by the Buyer as a result of event of default by Seller under this Contract or otherwise resulting from Seller's performance or non-performance under this Contract, including but not limited to any credits due as a result of over-billing by Seller or overpayments made by the Buyer. If the amount offset is insufficient to cover those costs, Seller is liable for and must promptly remit to the Buyer the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the Buyer.

6. RECEIPT CONSTRUED AS DELIVERY

Goods shall be deemed received by Buyer when delivered and installed to the Buyer per the referenced Minimum Specifications and Special Provisions at locations identified in the Contract Specifications. Receipt does not equal acceptance for the purpose of this Agreement.

7. RISK OF LOSS

The risk of loss from any casualty to the goods, regardless of cause, shall be on the Seller until the goods have been delivered and accepted by the Buyer.

8. WARRANTY OF NO ENCUMBRANCES

Seller warrants that the goods are now free, and that at the time of delivery shall be free from any security interest or other lien or encumbrance.

9. WARRANTY OF TITLE

Furthermore, Seller warrants that at the time of signing this Agreement, Seller neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Seller in the goods.

10. WARRANTY OF MERCHANTABILITY

Further, Seller warrants that the goods, which are the subject of this Agreement, are merchantable and are fit and suited for their intended purpose. This warranty shall survive past the Date of Acceptance by the Buyer and shall survive for one (1) year past the Date of Acceptance or for a time co-extensive with the manufacturer's warranty, whichever is shorter.

11. RIGHT OF INSPECTION/REJECTION

Buyer shall have the right to inspect the goods on arrival, and within 30 calendar days after delivery, Buyer must give notice to Seller of its intent to reject the goods, or any claim for damages on account of the condition, quality or grade of the goods, and Buyer must specify the basis of the claim of Buyer in detail. The failure of buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by buyer.

12. ACCEPTANCE

Unless Buyer notifies Seller of either Acceptance of the goods or Rejection of the goods in accordance with Section 11 above before 30 calendar days have passed since the delivery date of the goods, the Date of Acceptance for purposes of this Agreement shall automatically be the 31st calendar day after the date of delivery of the goods.

13. RIGHT OF CANCELLATION

Buyer shall have the right to cancel this Agreement on giving 30 days prior written notice of the intent to do so.

14. CURE OR DEFAULT NOTICE AND REMEDIES

The occurrence of any event of default permits the Buyer, at the Buyer's sole option, to declare Seller in default.

The Buyer will give Seller written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice").

If the Buyer issues a Default Notice, the Buyer will also indicate any present intent the Buyer may have to terminate this Contract. The decision to terminate is final and effective upon giving the notice. If the Buyer decides not to terminate, this decision will not preclude the Buyer from later deciding to terminate the Contract in a later notice, which will be final and effective upon the giving of the notice or on such later date set forth in the Default Notice. When a Default Notice with intent to terminate is given, Seller must discontinue any performance, unless otherwise directed in the notice.

After giving a Default Notice, the Buyer may invoke any or all of the following remedies:

- A. The right to take over and complete the contract's performance, or any part of them, at Seller's expense and as agent for Seller, either directly or through others, and bill Seller for the cost of the performance, and Seller must pay the difference between the total amount of this bill and the amount the Buyer would have paid Seller under the terms and conditions of this Contract for the performance that was completed by the Buyer as agent for Seller;
- B. The right to terminate this Contract as to any or all of the performance yet to be completed effective at a time specified by the Buyer;
- C. The right to seek specific performance, an injunction or any other appropriate equitable remedy;
- D. The right to seek money damages;
- E. The right to withhold all or any part of Seller's compensation under this Contract; and
- F. The right to deem Seller non-responsible in future contracts to be awarded by the Buyer.

15. APPLICABLE LAW

All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto, shall be brought only in the State of Washington and the parties hereto consent to jurisdiction and venue in such State.

16. ATTORNEYS FEES

In the event of any dispute under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fee and costs, in addition to all other relief to which it may be entitled.

17. AMENDMENTS

This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled, or waived in whole or in part except by written amendment signed by the parties hereto.

18. SEVERABILITY

If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. INSURANCE

Prior to commencing work, the Seller shall obtain at its own cost and expense the following insurance from companies licensed in the State with a Best's rating of no less than A:VII. The Seller shall provide to the County Risk Manager certificates of insurance with original endorsements affecting insurance required by this clause prior to the commencement of work to be performed.

The insurance policies required shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the County Risk Manager by registered mail, return receipt requested, for all of the following stated insurance policies.

If any of the insurance requirements are not complied with at the renewal date of the insurance policy, payments to the Seller shall be withheld until all such requirements have been met, or at the option of the County, the County may pay the renewal premium and withhold such payments from the moneys due the Seller.

All notices shall name the Seller and identify the agreement by contract number or some other form of identification necessary to inform the County of the particular contract affected.

- A. Workers Compensation and Employers Liability Insurance. The Seller shall procure and maintain for the life of the contract, Workers Compensation Insurance, including Employers Liability Coverage, in accordance with the laws of the State of Washington.
- B. General Liability (1) - with a minimum limit per occurrence of one million dollars (\$1,000,000) and an aggregate of not less than two million dollars (\$2,000,000) for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance coverage shall contain no limitations on the scope of the protection provided and indicate on the certificate of insurance the following coverage:
 - 1. Broad Form Property Damage with no employee exclusion;
 - 2. Personal Injury Liability, including extended bodily injury;
 - 3. Broad Form Contractual/Commercial Liability including completed operations (contractors only);
 - 4. Premises - Operations Liability (M&C);
 - 5. Independent Contractors and Subcontractors; and
 - 6. Blanket Contractual Liability.
- C. Automobile (2) - with a minimum limit per occurrence of \$1,000,000 for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance shall indicate on the certificate of insurance the following coverage:
 - 1. Owned automobiles;
 - 2. Hired automobiles; and,
 - 3. Non-owned automobiles.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of the contract by the County. At the option of the County, the insurer shall reduce or eliminate

deductibles or self-insured retention or the Seller shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Seller shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all of the requirements stated herein.

Failure of the Seller to take out and/or maintain any required insurance shall not relieve the Seller from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.

It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above-described insurance policies shall be assumed by and be at the sole risk of the Seller.

It is agreed by the parties that judgments for which the County may be liable, in excess of insured amounts provided herein, or any portion thereof, may be withheld from payment due, or to become due, to the Seller until such time as the Seller shall furnish additional security covering such judgment as may be determined by the County.

The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Seller must provide in order to comply with this Agreement.

If the proof of insurance or certificate indicating the County is an "additional insured" to a policy obtained by the Seller refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Seller to obtain the full text of that endorsement and forward that full text to the County.

The County may, upon the Seller's failure to comply with all provisions of this contract relating to insurance, withhold payment or compensation that would otherwise be due to the Seller.

20. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, all conditions of the Jefferson County bid documents (general, special and supplementary and other conditions, drawings, specifications, and addenda) and other documents listed below issued prior to the execution of this Agreement and all modifications and change orders issued subsequent thereto. These form a contract and all are as fully a part of the contract as if attached to this agreement or repeated herein. An enumeration of the contract documents is set forth below:

1. This Agreement; and
2. The General and Contract Provisions of the Jefferson County bid documents

3. The Bid Proposal of the Seller herein dated _____, 2023.

21. CONFLICT BETWEEN DOCUMENTS

In the event of a conflict or discrepancy between the Provisions of the Jefferson County bid documents and the Provisions of this Agreement, the Provisions of the Jefferson County bid documents shall be controlling.

IN WITNESS WHEREOF, the parties here-to have executed this Agreement to be effective on the date of its signing by the BUYER.

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

NORTHWEST ROCK, INC.

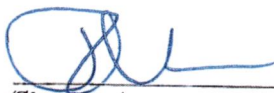
Name of Vendor

Kate Dean, District 1

Jason Messmer

Vendor Representative (Please print)

Heidi Eisenhour, District 2



(Signature)

Greg Brotherton, District 3

Secretary

Title

April 24, 2023

Date

Approved as to form only;



March 14, 2023

Philip C. Hunsucker
Chief Civil Deputy Prosecutor

Date



Monte Reinders, P.E.
Public Works Director/County Engineer

4/24/23
Date

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

The Seller certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State, or local department or agency;
- (2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- (4) Have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Seller is unable to certify to any of the statements in this certification, such Seller shall attach an explanation.

NORTHWEST ROCK, INC.

Name of Seller

Jason Messmer, Secretary

Name and Title of Authorized Representative



Signature of Authorize Representative

☐ I am unable to certify to the above statement. An explanation is attached.