

Contract Review Sheet

PW-5538-23

Price Agreement #: PW-5538-23 Amendment #: _____

Contact: Jeniffer Scales Department: Public Works Department

Phone #: (503) 588-5036 Date Sent: Wednesday, July 5, 2023

Title: Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements

Contractor's Name: Knife River

Term - Date From: July 1, 2023 Expires: June 30, 2024

Original Contract Amount: \$400,000.00 Previous Amendments Amount: \$0.00

Current Amendment: \$0.00 New Contract Total: \$400,000.00 Amd% 0%

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0260 Request for Proposal RFP# PW-1379-23

Description of Services or Grant Award

In April 2023 a request for written quotes for the purchase of commercial asphalt concrete pavement and CSS-1 asphalt cements products was solicited on Oregon Buys. The department will obtain materials from the vendor with the lowest combination of price and County transportation costs to the work site. This provides a fair distribution of public money and a savings to the citizens of Marion County.

Desired BOC Session Date: 8/2/2023 BOC Planning Date: 7/20/2023

Files submitted in CMS: 7/12/2023 Printed packet & copies due in Finance: 7/18/2023

BOC Session Presenter(s) Scott Wilson

FOR FINANCE USE

Date Finance Received: 7/14/2023 Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

DocuSigned by:
Camber Schlag
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7/17/2023
Finance - Contracts Date

Contract Specialist Date

Legal Counsel Date

Chief Administrative Officer Date



MARION COUNTY BOARD OF COMMISSIONERS


Board Session Agenda Review Form

Meeting date: August 2nd, 2023

Department: Public Works Agenda Planning Date: July 20th, 2023 Time required: 5 Mins.

Audio/Visual aids PowerPoint slide

Contact: Scott Wilson Phone: 503-365-3129

Department Head Signature:
DocuSigned by:

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TITLE

Consider approval of price agreements for Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements for FY 2023-2024.

Issue, Description & Background

In May 2023 a Request For Proposal PW1379-23 for the purchase of Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements was advertised through Oregon Buys and Oregon Daily Journal of Commerce. Quotes for the solicited products were received by the following firms with plants in the listed cities: Houck Construction Materials, Inc. (Salem); Knife River Corporation - Northwest (Salem);

The department will obtain materials from the vendor based on the combination of product availability, price and transportation to the work site. This provides a fair distribution of public money and a savings to the citizens of Marion County.

Financial Impacts:

For FY22-23, Public Works has budgeted approximately \$660,000 for Commercial Asphalt Concrete Pavement.

Impacts to Department & External Agencies

There will be no impact to other County Departments, and the firms providing these products will benefit from a better distribution of public funds to purchase these products.

Options for Consideration:

1. Approve the contracts for Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements with all of the contracts as described above.
2. Deny approval of the contracts for Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements.

Recommendation:

It is the recommendation of the Public Works department that the Board chooses option 1, approve the contracts for Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements.

List of attachments:

Contract Review Sheet
Contract

Presenter:

Scott Wilson

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

jscales@co.marino.or.us

REQUEST FOR AUTHORIZATION OF CONTRACT PW-5538-23

Date: 7/5/23
To: Chief Administrative Officer
Cc: Contract File
From: Jeniffer Scales

I. Subject: Retroactive

The Marion County Public Works Department is requesting approval of a retroactive contract as described in Section 10-0580 of the Marion County Public Contracting Rules. The contract is with Knife River for Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements with a value of \$400,000 and will be effective retroactive to 7/1/2023 upon approval.

A. BACKGROUND

Marion County Public Works purchases asphalt materials from several suppliers throughout Marion County. Our operations department maintains the county road system by paving, shoulder rocking, graveling, grading, etc. and these materials are an essential component.

B. As required in Section 10-0580(2)(a), Department staff will provide an explanation of why the contract was not submitted before performance began:

The RFP process was started in April 2023 and due to a backlog of other contracts, employee transitions and new employees, the awarded contracts were not executed by July 1. The prior contracts expired on June 30, 2023.

C. As required in Section 10-0580(2)(b), Department staff will provide a description of the steps being taken to prevent similar occurrences in the future:

Complete training of new employees and begin the next RFP process earlier to allow more time for negotiation and processing.

Submitted by:

DocuSigned by:
Jeniffer Scales
EC27CEB8C3DC4C3

Jeniffer Scales
Public Works Department

Reviewed by:

DocuSigned by:
Camber Schlag
C5B2E3DE257E444

Contracts & Procurement

Acknowledged by:

DocuSigned by:
Brian Nicholas
9793BA7ACD6D443

Department Head

Acknowledged by:

Jan Fritz, CAO

**MARION COUNTY
PRICE AGREEMENT
PW-5538-23**

This Price Agreement is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and Knife River Corporation, hereinafter called Contractor.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Section 3.

1. TERM. This Price Agreement is effective July 1st, 2023, and expires on June 30, 2024. The County may extend this Price Agreement for up to an additional 3 years provided that the term of the Price Agreement does not extend beyond June 30, 2027. The maximum term of the Price Agreement shall be 4 years.

2. CONSIDERATION.

The rates to be paid to Contractor under this Price Agreement are included within the Cost Proposal Submission Form. See Exhibit 1.

All terms, including Standard Specifications and General Conditions, defined within the Request for Proposals #PW1379-23 are incorporated herein. See Exhibit 2.

3. SERVICES.

Contractor shall supply Asphalt Concrete Pavement and/or CSS-1 Asphalt Cements in strict accordance with Standard Specifications and General Conditions set forth in the Request for Proposals #PW1379-23. See Exhibit 2.

4. CONTRACT EXHIBITS

This Price Agreement includes the following exhibits, each of which is incorporated into the Price Agreement as though fully set forth herein:

- Exhibit 1 - Cost Proposal Submission Form
- Exhibit 2 - Request for Proposals #PW1379-23: Section 5. Scope of Work, Subsections 1.0 General Information/Requirements through 3.0 Public Contracts - ORS Chapter 279B.

5. PROCESS.

County may order Goods and Services during the Term of this Agreement using an ordering instrument described in this section.

A. ORDERING INSTRUMENT:

- I. The County will place an order with Contractor for purchase of Asphalt Concrete Pavement and/or CSS-1 Asphalt Cements.
- II. This Price Agreement is one of a series of Price Agreements for Asphalt Concrete Pavement and/or CSS-1 Asphalt Cements. When the County requires Goods and/or Services under the Price Agreement series, the County must determine which Price Agreement under the series provides the best value for the specific goods and services required, and will be based on any or all the following criteria:
 - Product availability
 - Price

- Schedule availability
- Distance from plant to jobsite
- Plant capacity
- Traffic congestion issues between plant and jobsite
- Availability of experienced distributor drivers
- Past performance on previous projects
- Out-of-season availability, if applicable
- Any other factor that will benefit Marion County

III. Contractor's distribution prices, freight/transportation prices, miscellaneous prices and product prices are set forth in the Cost Proposal Submission Form. See Exhibit 1.

IV. Contractors are advised that there is no guarantee of any specific number of purchases under any Price Agreement or the Price Agreement series.

B. INVOICING:

Payment will be made in accordance with Contractor's adherence to Set Standards and General Conditions defined within section 2.0 - Special Provisions. Exhibit 2.

The Contractor shall submit invoices to the address indicated on the Purchase Order

The invoice shall include the following:

- Purchase Agreement number and Purchase Order number
- Name of Marion County employee who placed the order.
- Include the following:
 - a. The quantity of goods ordered.
 - b. The quantity of goods delivered.
 - c. The date the goods were delivered.
 - d. The price per unit, including escalation or de-escalation, if applicable
 - e. Total cost for goods

All charges or credits pertaining to an order shall be included on the same invoice. Separate invoices for escalation or de-escalation, demurrage, or other charges will not be accepted.

Invoices that do not comply with the requirements of this section or contain errors will promptly be returned to the contractor for corrections and then must be resubmitted. An invoice will not be considered received unless it complies with all requirements.

**Marion County Public Works
Department Operations Division
Attn: Road Operations
Supervisor 5155 Silverton Rd. NE
Salem, OR 97305**

6. COMPLIANCE WITH STATUTES AND RULES.

A. County and the Contractor agree to comply with the provisions of this Price Agreement and all applicable federal, state, and local statutes and rules.

Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor. Failure of the Contractor or the County to comply with the provisions of this Price Agreement and all applicable federal, state, and local statutes and rules shall be cause for termination of this Price Agreement as specified in sections concerning recovery of funds and termination.

County's performance under this Price Agreement is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Price Agreement), 279B.230 and 279B.235 (if applicable to this Price Agreement), which are incorporated by reference herein.

B. Contractor must, throughout the duration of this Price Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 23. C. (i) through (iv) of this Price Agreement.

i. Any violation of subsection B of this section shall constitute a material breach of this Price Agreement. Further, any violation of Contractor's warranty, in subsection 23.3 of this Price Agreement, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Price Agreement. Any violation shall entitle the County to terminate this Price Agreement, to pursue and recover all damages that arise from the breach and the termination of this Price Agreement, and to pursue any or all the remedies available under this Price Agreement, at law, or in equity, including but not limited to:

- a. Termination of this Price Agreement, in whole or in part.
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and

C. These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

7. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT and TITLE VI OF THE CIVIL RIGHTS ACT. Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

8. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance of this Price Agreement.

9. FORCE MAJEURE. Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Price Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Price Agreement. County may terminate this Price Agreement upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Price

Agreement.

10. FUNDING MODIFICATION.

A. County may reduce or terminate this Price Agreement when state or federal funds are reduced or eliminated by providing written notice to the respective parties.

B. In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Contractor agrees to abide by any such decision including termination of service.

11. RECOVERY OF FUNDS.

Expenditures of the Contractor may be charged to this Price Agreement only if they (1) are in payment of services performed under this Price Agreement, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the Price Agreement period.

Any County funds spent for purposes not authorized by this Price Agreement and payments by the County more than authorized expenditures shall be deducted from future payments or refunded to the County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior Price Agreement period excess payments and unrecovered advanced payments provided by the County. Repayment of prior period obligations shall be made to the County in a manner agreed on.

12. ACCESS TO RECORDS.

A. Contractor shall permit authorized representatives of the County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the Contractor as they relate to the Price Agreement services to satisfy audit or program evaluation purposes deemed necessary by the County and permitted by law.

B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this Price Agreement shall be retained for a minimum of three (3) years after the end of the Price Agreement period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

13. REPORTING REQUIREMENTS. Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Price Agreement. Such reports provided by the Contractor shall be supported by documentation in Contractor's possession from third parties to the extent as applicable.

14. INDEMNIFICATION AND INSURANCE.

A. Contractor shall defend, save, indemnify, and hold harmless the County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Price Agreement. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of County without the approval of County Legal Counsel. County may, at its election and

expense, assume its own defense and settlement.

B. Contractor shall obtain the insurance required under Section 19 prior to performing under this Price Agreement and shall maintain the required insurance throughout the duration of this Price Agreement and all warranty periods.

C. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

15. EARLY TERMINATION. This Price Agreement may be terminated as follows:

A. County and Contractor, by mutual written agreement, may terminate this Price Agreement at any time.

B. County in its sole discretion may terminate this Price Agreement for any reason on 30 days written notice to Contractor.

C. Either County or Contractor may terminate this Price Agreement in the event of a breach of the Price Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Price Agreement at any time thereafter by giving a written notice of termination.

D. Notwithstanding section 14C, County may terminate this Price Agreement immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Price Agreement.

16. INDEPENDENT CONTRACTOR.

A. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor's activities and responsibilities for the purpose of implementing the provisions of this Price Agreement, and maintains the appropriate license/certifications, if required under Oregon Law. This Price Agreement shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an "independent contractor" and is not an employee of County and accepts full responsibility for taxes or other obligations associated with payment for services under this Price Agreement. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to Price Agreement with other parties for the duration of the Price Agreement.

B. **SUBCONTRACTING/NONASSIGNMENT.** No portion of the Price Agreement may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

17. GOVERNING LAW AND VENUE. This Price Agreement shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Price Agreement shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

18. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to the County by Contractor shall become the sole and exclusive property of the County. All material prepared by Contractor under this Price Agreement may be subject to Oregon's Public Records Laws.

19. NO THIRD-PARTY BENEFICIARIES.

A. County and Contractor are the only parties to this Price Agreement and are the only parties entitled to enforce its terms.

B. Nothing in this Price Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Price Agreement and expressly described as intended beneficiaries of this Price Agreement.

20. INSURANCE.

A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor’s expense the insurance specified in this section prior to performing under this Price Agreement and shall maintain it in full force and at its own expense throughout the duration of this Price Agreement and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017, and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. **COMMERCIAL GENERAL LIABILITY.** Covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Bodily Injury/Death:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

iii. **AUTOMOBILE LIABILITY INSURANCE.** Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Bodily Injury/Death:

- Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

B. **ADDITIONAL INSURED.** The Commercial General Liability insurance required under this Price Agreement shall include Marion County, its officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Price Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. **NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Price Agreement and shall be grounds for immediate termination of this Price Agreement by County.

D. **CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Price Agreement. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

21. NOTICE. Except as otherwise expressly provided in this Price Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when given to the designated person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Price Agreement shall be mailed by first class postage delivered to:

To Contractor:

Knife River Corporation
32260 Old Hwy 34
Tangent OR 97389

To County:

Procurement & Contracts Manager
555 Court Street NE, Suite 5232
P.O. Box 14500
Salem, Oregon 97309

Copy to:

Marion County Public Works Department
Operations Division
Scott Wilson
5155 Silverton Rd. NE
Salem, OR 97305
503-365-3129
SWWilson@co.marion.or.us

22. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Price Agreement, except for the rights and obligations set forth in sections 2, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 21 and 22.

23. SEVERABILITY. If any term or provision of this Price Agreement is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that

shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Price Agreement did not contain the term or provision held to be invalid.

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to the County that:

A. Contractor has the power and authority to enter and perform this Price Agreement.

B. This Price Agreement, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.

C. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Price Agreement, faithfully has complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318.
- ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor.
- iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

25. AGREEMENT DOCUMENTS; ORDER OF PRECEDENCE: The Price Agreement consists of the Price Agreement and the attached Exhibits. In the event of a conflict, the order of precedence is as follows:

- A. Price Agreement, less its exhibits
- B. Exhibit 1: Cost Proposal Submission Form
- C. Exhibit 2: Request for Proposals #PW1379-23 Section 5. Scope of Work: 1.0 General Information/Requirements through Section 3.0 - Public Contracts - ORS Chapter 279B

26. CERTIFICATIONS AND SIGNATURE. THIS PRICE AGREEMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Price Agreement and to execute this Price Agreement on behalf of Contractor.

MARION COUNTY SIGNATURES

BOARD OF COMMISSIONERS:

Chair _____ Date _____

Commissioner _____ Date _____

Commissioner _____ Date _____

Authorized Signature: *Brian Nicholas* 7/17/2023

DocuSigned by:
Brian Nicholas
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Department Director or designee _____ Date _____

Authorized Signature: _____

Chief Administrative Officer _____ Date _____

Reviewed by Signature: _____

Marion County Legal Counsel _____ Date _____

Reviewed by Signature: *Camber Schlag* 7/17/2023

DocuSigned by:
Camber Schlag
C582E3DF257F444...

Marion County Contracts & Procurement _____ Date _____

CONTRACTOR SIGNATURE

Authorized Signature: _____

_____ Date _____

Title: _____

Exhibits

Exhibit 1: Cost Proposal Submission Form

Exhibit 2: Exhibit 2 - Request for Proposals #PW1379-23: Section 5. Scope of Work, Subsections 1.0 General Information/Requirements through 3.0 Public Contracts - ORS Chapter 279B.

Exhibit 1 - Cost Proposal Submission Form

I (WE), the undersigned, having read all the requirements of this Request for Proposal together with all the instructions and Specifications set forth herein, and agree in every particular and will furnish Commercial Asphalt Concrete Pavement and/or CSS-1 Emulsified Asphalt at the following base prices per ton, as designated below, on a daily need basis to Marion County Public Works Department.

ITEM	UNIT PRICE / TON	
1	LEVEL 1, "D" - MIX (FINE), PG 64-22, CACP	\$ No Bid
2	LEVEL 2, 3/8" DENSE, PG 64-22, CACP	\$ 73.29
3	LEVEL 2, 1/2" DENSE, PG 64-22, CACP	\$ 71.03
4	LEVEL 3, 1/2" DENSE, PG 64-22, CACP	\$ 69.15
5	LEVEL 3, 3/4" DENSE, PG 64-22, CACP	\$ 65.39
6	COLD MIX	\$ 160.00
7	CSS-1 EMSULSIFIED ASPHALT	\$ 900.00

Delivery Available: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> for Commercial Asphalt Concrete Pavement Only
Additional Cost for Delivery: \$ <u>2.25</u> /Ton-Mile or \$ <u>180.00</u> /Hour
Standby Time Allowed Before Standby Charge is Applied: <u>15</u> Minutes
Standby Charge: \$ <u>180.00</u> /Hour

Knife River Corporation Northwest

 Company Name

33260 Old Highway 34	Tangent, OR 973289	541-918-5400
Mailing Address	City, State, Zip	Phone Number

9710 Wheatland Rd North	Salem OR	503-391-6955
Address or Location of Material Plant/Stockpile	City, State, Zip	Phone Number

Griffin Peal
Contact Name

Griffin.Peal@kniferiver.com
E-Mail Address

EXHIBIT 2

Request for Proposals #PW1379-23 Section 5. Scope of Work: 1.0 General Information/Requirements through Section 3.0 - Public Contracts - ORS Chapter 279B

1.0 GENERAL INFORMATION/REQUIREMENTS

1.1 Proposer and County Obligations

- 1) The County will enter into a series of Price Agreements for the procurement of Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements.
- 2) The County intends to issue Price Agreements to all qualified Proposers, and purchases will be made on an on-call basis through the issuance of a Purchase Order.
- 3) Proposers are advised that there is no guarantee of any specific number of purchases under any Price Agreement or the Price Agreement series. Notwithstanding the award of one or more Price Agreements, County may conduct separate solicitations or award project-specific contracts or purchase orders for goods similar to what is described within this Request for Proposals using any method allowed by law.
- 4) Contractor Selection. This Price Agreement is one of a series of Price Agreements for the procurement of Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements. When the County requires Goods and/or Services under the Price Agreement series, the County must determine which Price Agreement under the series provides the best value for the specific Goods and/or Services required, and will be based on any or all the following criteria:
 - a. Product availability
 - b. Price
 - c. Schedule availability
 - d. Distance from plant to jobsite
 - e. Plant capacity
 - f. Traffic congestion issues between plant and jobsite
 - g. Availability of experienced drivers
 - h. Past performance on previous projects
 - i. Out-of-season availability, if applicable
 - j. Any other factor that will benefit Marion County
- 5) The County and Proposer agree to comply with the provisions within the Price Agreement and all applicable federal, state, and local statutes and rules. Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employees shall be the sole responsibility of the Proposer. Failure of the Proposer or the County to comply with provisions of this Price Agreement and all applicable federal, state, and local statutes and rules shall be cause for termination of this Agreement.

1. 2 Supplier Obligations

- 1) Upon submission of this proposal, the Proposer agrees as hereinafter set forth as conditioned herein, to deliver Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements of the kind and quality specified, and to perform the services submitted in the proposal at prices no higher than the net prices offered in this proposal and Attachment A - Cost Proposal Submission Form. The Proposer further agrees that if and when his or her regular published net prices at the time and point of delivery are lower than the net prices quoted for corresponding deliveries at such point, the County shall be given the benefit of such lower prices.
- 2) The Proposer submitting this proposal agrees to furnish the daily requirements of the County within one (1) day of the County's order. Should the Proposer fail to furnish any Commercial Asphalt Concrete Pavement and/or CSS-1 Asphalt Cements for which he has submitted a quote, the County reserves the right to withdraw the order and place it with another Supplier without liability to the County. In such event it shall be further understood that for the remainder of the period, the County, at its own option, may for such cause withhold any or all additional orders to the Proposer who fails to make the items available within the period specified.
- 3) Prices quoted within the proposal and Attachment 4 - Cost Proposal Submission Form shall be net prices on Commercial Asphalt Concrete Pavement and CSS-1 Asphalt Cements, Free on Board (FOB) from Proposer's plant or stockpile. Proposer shall include with its quote a list of the locations where County may obtain materials at the prices quoted. The quoted prices shall include loading costs where Commercial Asphalt Concrete Pavement is loaded into County trucks. In addition, Proposer shall indicate in the space provided in the quote, the cost per ton-mile for delivery of the material to County's job or stockpile site in Proposer's own trucks with minimum capacity of 10 cubic yards.

1.3 County Obligations

- 1) The County will make payment within thirty (30) days of receipt of the Proposer's invoice for materials ordered and received by the County.

1.4 Pricing

- 1) Prices listed in the proposal and resulting Price Agreement, Attachment 4 - Cost Proposal Submission Form, are the maximum price the Proposer may charge under any Purchase Order. Proposer may charge less than the listed prices, or request the prices listed in the Price Agreement be decreased at any time by requesting the change from the Marion County Contract and Procurement Manager.
- 2) The period of obligation under this Price Agreement shall be one year, July 1, 2023, through June 30, 2024. The County may extend this Price Agreement for up to 3 additional years provided that the term of the Price Agreement does not extend beyond June 30, 2027.
- 3) The Proposer may request a unit price increase, reflecting increase in operating or raw material costs, by submitting a request to the Marion County Contract and Procurement Manager, including sufficient price documentation to substantiate the request. The adjustment must be based on the

latest West Region Consumer Price Index (all items), 12-month available as of July 1 of the second and third years of the Agreement. Any such increase shall not exceed 3% of the previous year's rate.

- 4) The Proposer may request to add products to its Price Agreement at any time during the term of the Price Agreement. The request must contain the name of the product, price per ton, and any other costs associated with the Specifications. If the product is not included in the latest version of 2021 edition of the Oregon Standard Specifications for Construction the Proposer shall submit the following product information for approval by Marion County Contract and Procurement Manager.
- Specifications
 - Use

Requests must be submitted to Marion County.

2.0 SPECIAL PROVISIONS

The Standard Specifications applicable to this RFP and project are located within the 2021 Oregon Standard Specifications for Construction, Parts 00200 through 03000, published by the Oregon Department of Transportation (ODOT) available at the following URL:

https://www.oregon.gov/odot/Business/Specs/2021_STANDARD_SPECIFICATIONS.pdf

The General Conditions applicable to this RFP and project are located within the General Conditions for Construction for Marion County, v2021, Part 00100, available at the Marion County URL:

https://www.co.marion.or.us/PW/Engineering/Documents/2021_MCPW_General_Conditions.pdf

SECTION 00190 - MEASUREMENT OF PAY QUANTITIES

Comply with Section 00190 of the Standard Specifications modified as follows:

00190.20(a) General - Replace the paragraph that begins "Unless otherwise provided in the Contract, Pay ..." with the following paragraph:

Unless otherwise provided in the Contract, Pay Items to be measured by weight shall include all Contractor costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; for electronic weigh memo system(s); and for transporting Materials to the scales or to check weighing.

00190.20(f)(1) Scale with Automatic Printer - Replace the paragraph that begins "If the scales have an automatic weigh memo printer ..." with the following paragraph:

If the scales have an automatic weigh memo printer or an approved electronic weigh memo system that does not require manual entry of gross weight information, the Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

00190.20(f)(2) Scale Without Automatic Printer - Replace the sentence that begins "The Contractor shall inform the Engineer of ..." with the following sentence:

The Contractor shall inform the Engineer of its intent to use a scale without an automatic printer at least 3 working Days before weighing begins or before the Contractor changes to a scale that does not have an automatic printer.

Add the following paragraph after the paragraph that begins "If the scales require manual entry...":

Pay costs for the weigh witness at \$35.00 per hour.

00190.20(f)(3) Duties of Weigh Technician - Replace the bullet that begins "Furnish a legible, serially numbered weigh memo ..." with the following bullets:

- Furnish a legible, serially numbered weigh memo for each load of Materials to the Agency's Materials receiver at the point of delivery, or as directed by the Engineer. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of the vehicle and weigh technician. If approved by the Engineer an electronic weigh memo system may be used. Requests to use an electronic weigh memo system shall be submitted to the Engineer according to 00150.37, providing sufficient detail for the Engineer to perform an evaluation. If approved, the Contractor shall provide training, technical support, reports, and weigh memo information to the Engineer at no additional cost to the Agency. The electronic weigh memo system shall be:
 - Capable of recording and securely retaining the same required "weigh memo" information identified above. For retention see 00170.07(c).
 - Fully integrated with the provided weigh scale system.
 - Designed in such a way that the data electronically read from scales cannot be altered by the Contractor, Subcontractor, Supplier, Engineer, or other system users.
 - Designed to allow the Engineer remote access to all the weigh memo data in real-time and allow the Engineer to add comments to the individual weigh memo regarding waste, temperature, stations, yield, or other information. The system shall identify the system user or individual that adds comments to the electronic weigh memo or otherwise access the system. The Contractor shall provide the Engineer a means to access the data if the Engineer cannot use an Agency provided handheld device for access.
 - Capable of providing all the weigh memo information, including any added comments, in an electronic data file the Engineer can easily access without proprietary software.

00190.20(g) Agency-Provided Weigh Technician - Delete this section.

00190.30 Plant Scales - Add the following paragraph after the paragraph that begins "The Contractor, with the Engineer's written...":

If approved by the Engineer an electronic weigh memo system may be used in place of a printer system. See 00190.20(f)(3).

SECTION 00195 - PAYMENT

Comply with Section 00195 of the Standard Specifications modified as follows:

00195.10 Payment for Changes in Materials Costs - Replace this subsection with the following subsection:

00195.10 Asphalt Cement Material Price Escalation/De-escalation - An asphalt cement escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

(a) Monthly Asphalt Cement Material Price (MACMP) - The Monthly Asphalt Cement Material Price (MACMP) is established by the Agency each month. For the actual MACMP, go to the Agency website at:

<https://www.oregon.gov/ODOT/Business/Pages/Asphalt-Fuel-Price.aspx>

The MACMP is based on selling prices of asphalt cement published by Poten & Partners, Inc. for primarily PG 64-22 paving grades in the Portland, Oregon area and typical non-modified paving grades in the Boise, Idaho area. The MACMP for a given month is the average of the weekly published prices for each area reported each Friday in that month. If any portion of the Project Site is located within the boundaries of ODOT Maintenance District 13 or 14, the MACMP will be based on the prices for the Boise, Idaho area. If no portion of the Project Site is within the boundaries of ODOT Maintenance District 13 or 14, the Contractor may elect to have the MACMP based on the prices of either the Portland, Oregon area or the Boise, Idaho area. If electing to use Boise, Idaho area prices for determination of the MACMP, the Contractor shall notify the Engineer in writing of the Contractor's election before or within 7 Calendar Days after the date of the preconstruction conference. This election, once acknowledged by the Engineer, will be binding for the entire duration of the Contract. If no such written notification is made, the Portland, Oregon area prices will be used as the basis of the MACMP. The area selected as the basis of the MACMP, once chosen, will become the sole area to be used as the basis for all asphalt cement used on the Project.

If the weekly prices cease to be available from Poten & Partners, Inc. for any reason, the Agency, in its discretion will select and begin using a substitute price source or index to establish the MACMP each month. The Agency does not guarantee that asphalt cement will be available at the MACMP.

(b) Base Asphalt Cement Material Price (Base) - The base asphalt cement material price for this Project is the MACMP published on the Agency website for the month immediately preceding the Bid Opening date.

(c) Monthly Asphalt Cement Adjustment Factor - The monthly asphalt cement adjustment factor will be determined each month as follows:

- If the MACMP is within $\pm 5\%$ of the Base, there will be no adjustment.

- If the MACMP is more than 105% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (1.05 \times \text{Base})$$

- If the MACMP is less than 95% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (0.95 \times \text{Base})$$

(d) Asphalt Cement Price Adjustment - A price adjustment will be made for the items containing asphalt cement listed below. The price adjustment as calculated in (c) above will use the MACMP for the month the asphalt is incorporated into the Project. The price adjustment will be determined by multiplying the asphalt incorporated during the month for subject Pay Items by the Adjustment Factor.

The Pay Items for which price adjustments will be made are:

Pay Item(s)

- Emulsified Asphalt for Tack Coat
- Asphalt in Emulsified Asphalt Chip Seal
- Asphalt in Multiple Application Emulsified Asphalt Surface Treatment
- Emulsified Asphalt in Mixture
- Recycling Agent

00195.12(d) Steel Materials Pay Item Selection - Add the following paragraph to the end of this subsection:

No Pay Items under this Contract qualify for the steel escalation/de-escalation program for this Project.

00195.50(a) Progress Payments - Replace the paragraph that begins "The estimates upon which progress payments are ..." with the following paragraph:

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the Contractor uses these estimates as a basis for making payments to Subcontractors and Suppliers, the Contractor assumes all risk and bears any losses that result.

SECTION 00730 - EMULSIFIED ASPHALT TACK COAT

Comply with Section 00730 of the Standard Specifications modified as follows:

00730.11 Emulsified Asphalt – Replace the first paragraph in this section with the following:

Furnish CSS-1. Dilution of CSS-1 may be allowed to a maximum ratio of 1:1. Determine the proportion of water to be added to the emulsified asphalt, add the water to the emulsified asphalt and mix according to the asphalt supplier.

In the paragraph that begins "Obtain samples according to AASHTO T 40..." replace the words "AASHTO T 40" with the words "AASHTO R 66".

0730.90 Payment – The accepted quantities of CSS-1 will be paid at the contract unit price, per unit of measurement.

Pay Item	Unit of Measurement
(a) CSS-1.....	Ton

Payment will be in full for furnishing all equipment, labor, and incidentals to furnish CSS-1.

No additional payment will be made for water used to dilute the emulsified asphalt, according to 00730.11.

SECTION 00740 - COMMERCIAL ASPHALT CONCRETE PAVEMENT (CACP)

Comply with Section 00740 of the Standard Specifications modified as follows:

00740.00 Scope – This work consists of furnishing commercial grade asphalt pavement.

00740.01 Acronyms

ACP – Asphalt Concrete Pavement

00740.10 Commercial Asphalt Concrete Pavement (CACP) – Furnish CACP that is a well graded, uniform, durable commercial mix. All new materials, or a combination of new materials and reclaimed asphalt pavement (RAP), may be used.

Provide a copy of the JMF to the Engineer.

00740.11 Asphalt Cement – Use PG 64-22 asphalt cement conforming to the requirement of ODOT’s publication “Standard Specifications for Asphalt Materials”. Copies are available from ODOT’s web site.

00740.12 Aggregates – Furnish aggregates, and RAP aggregate meeting the following requirements:

- (a) New Course and Fine Aggregates - Furnish new aggregate and RAP aggregate meeting the following requirements:

Blend sand is allowed for levels 2 and 3 mixes. Do not use more than 6 percent crushed or blended sand, by weight, in the total aggregate. Provide a means of verifying and documenting the sand added to aggregates.

- (1) **Soundness** – Provide coarse aggregate with a weighted loss not to exceed 12 percent when subjected to five of the soundness tests using sodium sulfate solution according to AASHTO T 104.
- (2) **Durability** – Provide aggregate not exceeding the following maximum values:

Test	Test Method		
	ODOT	AASHTO	Aggregate Course
Abrasion		TM 96	30.0%
Degradation Passing No. 20 Sieve	TM 208		30.0%
Sediment Height	TM 208		3.0 “

- (3) **Fractured Faces** – Provide crushed aggregate with not less than the minimum number of fractured faces as determine by AASHTO T 335 as follows:

Percent of fracture (by weight)		
Type	Material Retained on 1”, 3/4”, and 1/2” and No. 4 Sieve (Two fractured faces)	Material Retained on No. 3 sieve (one fractured face)

All ACP	75	75

(4) Harmful Substances – Do not exceed the following maximum allowance:

Test	Test Method		Aggregates	
	ODOT	AASHTO	Course	Fine
Lightweight pieces		T 113	1.0%	
Wood particles	TM 225		0.10%	
Elongated pieces (on a ratio of 5:1)	TM 229		10.00 %	
Plasticity Index		T 90		0 or NP
Sand Equivalent		T 176		45 min

(b) Reclaimed Asphalt Pavement – RAP material used in the production of new ACP is optional. No more than 30 percent RAP material will be allowed in the new ACP Pavement. Use RAP that is no larger than the specified maximum allowable size before entering the cold feed. Blend RAP with new aggregate to provide a mixture conforming to the JMF within the tolerances specified.

(c) Recycled Asphalt Shingles – Recycled asphalt shingles shall not be used in any CACP.

00740.13 Mix Types and Broadband Limits – Furnish the mix type specified in the contract within the broadband limits according to the following:

(a) Mix Type – Furnish Level 1, Level 2, and Level 3 CACP.

(b) Broadband Limits - Furnish a JMF for the specified mix type within the control points listed below:

Sieve Size	3/4" CACP Control Points (% passing By Weight		1/2" CACP Control Points (% passing By Weight		3/8" CACP Control Points (% passing By Weight		"Type D" CACP Control Points (% passing By Weight	
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
1"	100							
3/4"	90	100	100					
1/2"	-	90	90	100	100			
3/8"	-	-	-	-	90	100		100
1/4"	-	-	-	-	-	-	88	100
No. 4	-	-	-	-	-	90	81	71
No. 8	23	49	28	58	32	67	-	-
No. 16	-	-	-	-	-	-	-	32
No.30	-	-	-	-	-	-	-	22
No. 50	-	-	-	-	-	-	-	15
No. 100	-	-	-	-	-	-	-	12
No. 200	2.0	8.0	2.0	10.0	2.0	10.0	2	8.8

(c) Air Voids – Provide CACP with air voids that meet the following requirements:

Level 1	Level 2	Level 3
NA	4%	4%

00740.40 Acceptance – All material will be accepted by visual inspection by the Engineer.

00740.80 Measurement – The quantities of CACP will be measured on the weight basis.

When materials are delivered by others, measurement will be measured on the length basis per mile, or on a time basis per hour from the source to the site.

00740.90 Payment – The accepted quantities of commercial asphalt concrete pavement will be paid at the contract unit price, per unit of measurement, for the following items:

Pay Item	Unit of Measurement
(a) Level 1, “Type D” Fine, PG 64-22 CACP.....	Ton
(b) Level 2, 3/8” Dense, PG 64-22 CACP.....	Ton
(c) Level 2, 1/2” Dense, PG 64-22 CACP.....	Ton
(d) Level 3, 1/2” Dense, PG 64-22 CACP.....	Ton
(e) Level 3, 3/4” Dense, PG 64-22 CACP.....	Ton

Payment will be in full for furnishing all equipment, labor, and incidentals to furnish Commercial Asphalt Concrete Pavement.

No separate or additional payment will be made for reclaimed asphalt pavement and asphalt cement.

Payment for the accepted quantity of materials delivered by others will be paid at the unit price per mile or per hour according to the contract bid schedule.

SECTION 00742 - COLD MIX

Section 00742, which is not a Standard Specification, is included in this Project by Special Provision.

Comply with this section modified as follows:

00742.00 Scope – Furnish a commercially available cold mix consisting of Cationic Bitumen Emulsions and aggregates.

00742.80 Measurement – The quantities of cold mix will be on the weight basis.

00742.90 Payment – The accepted quantities of cold mix will be paid for at the contract unit price per ton.

3.0 PUBLIC CONTRACTS - ORS CHAPTER 279B

1) As required for public contracts subject to ORS Chapter 279B, the Proposer must comply with the following:

A. Proposer shall not employ any person performing work under this Price Agreement for more.

than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. Proposer shall pay all individuals performing work under this Price Agreement at least time-and-a-half pay:

- for all overtime more than eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday.
 - for all overtime more than 10 hours a day or 40 hours in any one week when the work is four consecutive days, Monday through Friday; and
 - for all work performed on Saturday or Sunday and any legal holiday specified in ORS 279B.020.
2. Proposer must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

*End of Price Agreement.