

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Frank Gifford, Public Works Director *FG*

Agenda Date: February 11, 2013

Subject: Execution of Purchase & Sale Agreement for 2013 Supply of Liquid Asphalt Products for Bituminous Surface Treatment Program.

Statement of Issue:

Execution of a Purchase & Sale Agreement with Albina Asphalt of Vancouver, WA for liquid asphalt products to be used in the Public Works Department Road Operations Annual BST Program.

Analysis/Strategic Goals/Pro's & Con's:

The Board awarded a bid on Monday, January 14, 2013 for supply of liquid asphalt products for the Road Operations 2013 BST Program. This program is consistent with County goals in that it provides for pavement preservation of roadway infrastructure. The Contractor has provided the required contract bond and insurance certificate, which are on file at the office of the Department of Public Works.

Fiscal Impact/Cost Benefit Analysis:

Purchase of liquid asphalt products is accounted for in the 2013 Road Operations Budget. The estimated purchase amount is \$418,000 plus Washington State Sales Tax.

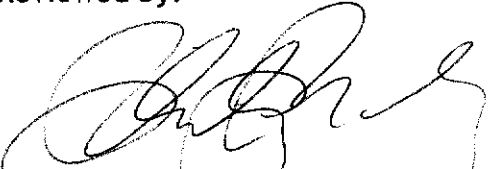
Recommendation:

Public Works recommends the Board approve the Purchase & Sale Agreement with Albina Asphalt of Vancouver, WA, and requests the Board to sign the three (3) Agreements where indicated, and return two (2) signed Agreements to Public Works for further processing.

Department Contact:

Dale Seward, Project Manager 385-9160

Reviewed By:



Philip Morley, County Administrator

2/6/13

Date

PURCHASE AND SALE AGREEMENT

This AGREEMENT, made and entered into this _____ day of _____, 20____, 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 Albina Asphalt of Vancouver, WA hereinafter referred to as 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 for BUYER the following described products:

Liquid Asphalt Products for use by the Jefferson County Department of Public Works Road Operations Division for their bituminous surface treatment (BST) program in quantities and by dates indicated in the General Contract Provisions documents. The Agreement is for supply of liquid asphalt products in calendar year 2013.

2. CONSIDERATION

BUYER shall accept the goods and pay unit prices in accordance with the Proposal date 12/20/12 and the General Contract Provisions.

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

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 General Contract Provisions.

5. RECEIPT CONSTRUED AS DELIVERY

Goods shall be deemed received by BUYER when delivered to and installed for the BUYER per the referenced Minimum Specifications and General Contract Provisions. Receipt does not equal acceptance for the purpose of this Agreement.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 any claim for damages on account of condition, quality or grade of the goods, and BUYER must specify the basis of the claim of BUYER in detail.

11. ACCEPTANCE

Unless BUYER notifies SELLER of either Acceptance of the goods or Rejection of the goods in accordance with Section 10 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. INSURANCE

Prior to commencing work, the Contractor 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 Contractor 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 Contractor 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 Contractor.

All notices shall name the Contractor 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 Contractor 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 Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Contractor 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 Contractor to take out and/or maintain any required insurance shall not relieve The Contractor 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 Contractor.

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 Contractor until such time as The Contractor 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.

18. 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 contractor herein dated 12/20/12.

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

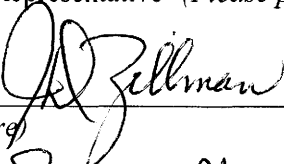
JEFFERSON COUNTY
BOARD OF COMMISSIONERS

ALBINA ASPHALT
Name of Vendor

Chair

J. D. ZILLMAN
Vendor Representative (Please print)

Member

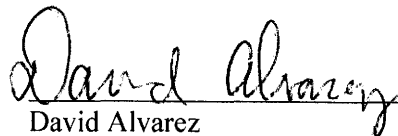

(Signature)

Member

SALES MGR
Title

1/22/13
Date

Approved as to form only this ____ day of
DECEMBER 10, 2012


David Alvarez
Deputy Prosecuting Attorney

 1/31/13
Frank Gifford Date
Public Works Director

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

The Contractor 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.

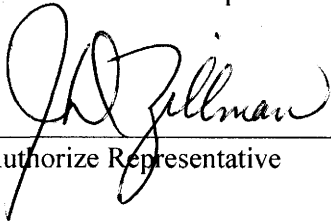
Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation.

ALBINA ASPHALT

Name of Contractor

J. D. ZILLMAN, SALES MGR.

Name and Title of Authorized Representative



Signature of Authorize Representative

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

**CONTRACT BOND
JEFFERSON COUNTY, WASHINGTON**

KNOW ALL MEN BY THESE PRESENTS:

That Albina Holdings Inc dba: Albina Asphalt, of 801 Main St, Vancouver, WA 98660, as Principal, and Travelers Casualty and Surety Company of America as Surety, are jointly and severally held and bound unto the COUNTY OF JEFFERSON, the penal sum of One Hundred Thousand Dollars (\$ 100,000), for the payment of which we jointly and severally bind ourselves, or heirs, executors, administrators, and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such that WHEREAS, on the ___ day of _____, A.D., 20___, the said Albina Holding Inc dba: Albina Asphalt, Principal herein, executed a certain contract with the County of Jefferson, by the terms, conditions and provisions of which contract the said Albina Holdings Inc dba: Albina Asphalt Principal herewith, agrees to furnish all materials and do certain work, to-wit: That the said Principal herein will undertake and complete the following described work:

Deliver liquid asphalt products for use by the Jefferson County Department of Public Works Road Operations Division bituminous surface treatment (BST) program in quantities and by dates indicated in the General Contract Provisions in calendar year 2013 in Jefferson County, Washington, as per specifications made a part of said contract, which contract as so executed, is hereunto attached, and is now referred to and by this reference is incorporated herein and made a part hereof as full for all purposes as if here set forth at length.

NOW THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of said contract, in all respects and shall well and truly and fully do and perform all matters and things by the said Principal undertaken to be performed under said contract, upon the terms proposed therein, and within the time prescribed therein, and until the same is accepted, and shall pay all laborers, mechanics, subcontractors and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and shall in all respects faithfully perform said contract according to law, then this obligation to be void, otherwise to remain in full force and effect.

WITNESS our hands this 25th day of January, 2013.

Albina Holdings Inc dba: Albina Asphalt

PRINCIPAL

By: *Jeffery A. Cantson*

Travelers Casualty and Surety Company of America

SURETY COMPANY

By: *Jenifer McCormick*

By: Jenifer McCormick
Attorney-in-fact

**Address of local office and agent of
Surety Company:**

Elliott, Powell, Baden & Baker Inc
1521 SW Salmon St
Portland, OR 97205
(503)445-8404



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 224045

Certificate No. 004774129

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Kathy Cerkoney, Wolter Van Doorninck, Coralee Aho, James S. Ewald, Jenifer McCormick, and Dave Van Gordon

of the City of Portland, State of Oregon, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 19th day of March, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 19th day of March, 2012, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 25th day of January, 2013.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.