


Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Monte Reinders, PE, Public Works Director/County Engineer 

Agenda Date: February 18, 2014

Subject: Execution of Purchase & Sale Agreement for Supply of Aggregate for County Roadway BST Program in Calendar Years 2014 & 2015.

Statement of Issue:

Execution of a two (2) year Purchase & Sale Agreement with Pyramid Materials of Silverdale, WA for aggregate 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 to the above party on January 6, 2014 for supply of crushed aggregate to be used in the County's Bituminous Surface Treatment Program in Calendar Years 2014 & 2015. This Program is consistent with County goals in that it provides for preservation of road pavement and infrastructure.

Fiscal Impact/Cost Benefit Analysis:

Purchase of this material is accounted for in the 2014 and 2015 Road Operations Budgets. The estimated purchase amount over the two (2) years is \$109,800.00 plus Washington State Sales Tax.

Recommendation:

Public Works recommends the Board execute the Purchase & Sale Agreement with Pyramid Materials by signing the three (3) Agreements where indicated, and then returning two (2) Agreements to Public Works for final processing.

Department Contact:

Dale Seward, Project Manager 385-9160

Reviewed By:


Philip Morley, County Administrator

2/13/14
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 Pyramid Materials of Silverdale, 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:

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. The Agreement is for supply of aggregate in calendar years 2014 and 2015.

2. CONSIDERATION

BUYER shall accept the goods and pay unit prices in accordance with the Proposal dated December 4, 2013 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 General Contract Provisions and Material Specifications.

5. RECEIPT CONSTRUED AS DELIVERY

Goods shall be deemed received by BUYER when delivered to the BUYER per the referenced Minimum Specifications and General Contract Provisions.

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.

10. RIGHT OF INSPECTION/REJECTION

BUYER shall have the right to inspect the goods prior to delivery and will accept or reject goods prior to taking delivery. The date the BUYER takes delivery of goods shall constitute the Date of Acceptance.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.
2. The General Contract Provisions of the Jefferson County bid documents.
3. The Bid Proposal of the contractor herein dated December 4, 2013.

18. 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

Pyramid Materials, Inc
Name of Vendor

John Austin, Chair

Brian Carleton
Vendor Representative (Please print)

Phil Johnson, Member

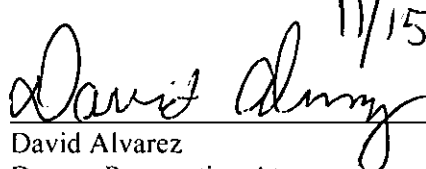

(Signature)

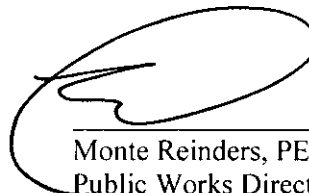
David W. Sullivan, Member

Treasurer
Title

02/03/04
Date

Approved as to form only.

 11/15/13
David Alvarez Date
Deputy Prosecuting Attorney

 5.10.14
Monte Reinders, PE, Date
Public Works Director/County Engineer

**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 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.

Pyramid Materials, Inc.
Name of Contractor

Brian Carleton, Treasurer
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 Pyramid Materials, Inc., of Renton, Washington, as Principal, and North American Specialty Insurance Company, 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 21st day of January, A.D., 2014, the said Pyramid Materials, Inc., Principal herein, executed a certain contract with the County of Jefferson, by the terms, conditions and provisions of which contract the said Pyramid Materials, Inc., 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:

Supply aggregate products 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 General Contract Provisions in calendar years 2014 and 2015 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 6th day of February, 2014.

Pyramid Materials, Inc.
PRINCIPAL

By: [Signature]

North American Specialty Insurance Company
SURETY COMPANY

By: [Signature]

By: Christopher Kinyon
Attorney-in-fact

Address of local office and agent of
Surety Company:

Propel Insurance

1201 Pacific Ave Suite 1000

Tacoma, WA 98402

NAS SURETY GROUP

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Manchester, New Hampshire, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Schaumburg, Illinois, each does hereby make, constitute and appoint:

ERIC A. ZIMMERMAN, ANNE E. STRIEBY, CHRISTOPHER KINYON, JENNIFER L. SNYDER, KAREN SWANSON, JAMIE DIEMER, JAMES B. BINDER, PETER J. COMFORT, PEGGY A. FIRTH, KYLE HOWAT, JULIE R. TRUITT, CARLEY ESPIRITU and BRENT HEILESEN

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of: FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By [Signature]
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company



By [Signature]
David M. Layman, Vice President of Washington International Insurance Company
& Vice President of North American Specialty Insurance Company

IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 19th day of November, 2013.

North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Cook ss:

On this 19th day of November, 2013, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and David M. Layman, Vice President of Washington International Insurance Company and Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



[Signature]
Donna D. Sklens, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 6th day of February, 2014

[Signature]
Jeffrey Goldberg, Vice President & Assistant Secretary of
Washington International Insurance Company & North American Specialty Insurance Company