



**Original Information**

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 17-266

Effective Date: 10/18/2017 Termination Date: 10/17/2018 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$ 300,575.00  Revenue Amount: \$ \_\_\_\_\_

Funding Source(s): DOT Maintenance Operating Fund/Highway User Revenue Fund (HURF)

Cost to Pima County General Fund: \$0.00

Contract is fully or partially funded with Federal Funds?  Yes  No  Not Applicable to Grant Awards

Were insurance or indemnity clauses modified?  Yes  No  Not Applicable to Grant Awards

Vendor is using a Social Security Number?  Yes  No  Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Expense  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

Contact: Michael Warren, Commodity/Contracts Officer *Am* *Amend* *5/31/17*

Department: Procurement *May 22* *5/31/17* Telephone: 724-3730

Department Director Signature/Date: *[Signature]* *6/1/17*

Deputy County Administrator Signature/Date: *[Signature]* *6/5/17*

County Administrator Signature/Date: *C. P. [Signature]* *6/6/17*  
*(Required for Board Agenda/Addendum Items)*



**NOTICE OF RECOMMENDATION FOR AWARD**

Date of Issue: 6/6/2017

The Pima County Procurement Department hereby issues formal notice to respondents to Solicitation No. **256158** for **Asphalt Emulsions**, that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after June 20, 2017.

Award is recommended to the responsive and responsible bidder.

<u>AWARDEE NAME</u>	<u>BID AMOUNT</u>	<u>AWARD AMOUNT</u>
Western Emulsions, Inc.	\$273,250.00	\$300,575.00 (including sales tax)

**OTHER RESPONDENT NAMES**

None

Issued by: Michael Warren CPPB, Commodity/Contracts Officer

Telephone Number: (520) 724-3730

This notice is in compliance with Pima County Procurement Code §11.20.010(C).

Copy to: Pima County SBE via e-mail at SBE@pima.gov



# MASTER AGREEMENT

## PIMA COUNTY, ARIZONA

THIS IS NOT AN ORDER - TRANSMISSION CONSTITUTES  
CONTRACT EXECUTION

Master Agreement No: 1700000000000000266

MA Version: 1

Page: 1 of 2

Description: ASPHALT EMULSIONS

<b>I S S U E R</b>	Pima County Procurement Department
	130 W. Congress St. 3rd Fl
	Tucson AZ 85701
	Issued By: MICHAEL WARREN
	Phone: 5207243730
	Email: michael.warren@pima.gov

<b>T E R M S</b>	Initiation Date: 10-18-2017
	Expiration Date: 10-17-2018
	<b>NTE Amount: \$300,575.00</b>
	<b>Used Amount: \$0.00</b>

<b>V E N D O R</b>	<b>WESTERN EMULSIONS INC</b>	Contact: ANNE MILLER
	7165 N Pima Canyon Dr #151	Phone: 520-622-7203
	Tucson AZ 85718	Email: anne.miller@westernemulsions.com
		Terms: 5.00 %
		Days: 15

Shipping Method:	Vendor Method
Delivery Type:	Standard Ground
FOB:	FOB Dest, Freight Prepaid
<b>Modification Reason</b>	
This Master Agreement is for an initial term of one (1) year in the annual award amount of \$300,575.00 and includes four (4) one-year renewal options. Attachment: Offer Agreement.	

This Master Agreement incorporates the attached documents, and by reference all instructions, Standard Terms and Conditions, Special Terms and Conditions, and requirements that are included in or referenced by the solicitation documents used to establish this agreement. All transactions and conduct are required to conform to these documents.



# MASTER AGREEMENT DETAILS

**PIMA COUNTY**

Master Agreement No: 17000000000000000266

MA Version: 1

Page: 2 of 2

Line	Description					
1	ASPHALT, EMULSIFIED, CSS-1H					
	<b>Discount</b>	<b>UOM</b>	<b>Unit Price</b>	<b>Stock Code</b>	<b>VPN</b>	<b>MPN</b>
	0.0000 %	TON	\$765.00	20108		
2	POLYMER MODIFIED EMULSION - PASS					
	<b>Discount</b>	<b>UOM</b>	<b>Unit Price</b>	<b>Stock Code</b>	<b>VPN</b>	<b>MPN</b>
	0.0000 %	TON	\$900.00	27464		
3	ASPHALT, EMULSIFIED, CRS-2					
	<b>Discount</b>	<b>UOM</b>	<b>Unit Price</b>	<b>Stock Code</b>	<b>VPN</b>	<b>MPN</b>
	0.0000 %	TON	\$765.00	20107		
4	Bituminous Distributor Truck and Driver					
	<b>Discount</b>	<b>UOM</b>	<b>Unit Price</b>	<b>Stock Code</b>	<b>VPN</b>	<b>MPN</b>
	0.0000 %	HOUR	\$185.00	27464		



## PIMA COUNTY NOTICE OF INVITATION FOR BIDS (IFB)

Solicitation Number: 256158

Title: Asphalt Emulsions

**DUE IN AND OPENS: MAY 22, 2017 AT OR BEFORE 1:00 P.M. LOCAL ARIZONA TIME (MST)**

**Submit Bid to:**

Pima County Procurement Department  
130 W. Congress St., 3rd Floor,  
Mailstop # DT-AB3-126  
Tucson, Arizona 85701

**Pre-Bid Conference:**

**MAY 8, 2017 AT 10:00 A.M. LOCAL ARIZONA TIME (MST)**  
Pima County Procurement Department  
130 W. Congress, 3rd Floor  
Tucson, Arizona 85701

**SOLICITATION:** Pima County ("County") is soliciting bids from Offerors qualified, responsible and willing to provide the following Goods and/or Services in compliance with all solicitation specifications and requirements contained or referenced herein.

**GENERAL DESCRIPTION:** Pima County is seeking to establish an "as required" contract to provide **Asphalt Emulsions** in the estimated annual amount of **\$295,000.00** per specifications and requirements defined herein.

You may download a full copy of this solicitation at [www.pima.gov/procure/ifbrfp.htm](http://www.pima.gov/procure/ifbrfp.htm) by selecting the solicitation number. Offerors are required to check this website for addenda prior to the Due In and Opens date and time to assure that the bid incorporates all addenda. Prospective Offerors may also pick up a copy, Monday through Friday excluding legal holidays, 8 am to 5 pm LOCAL ARIZONA TIME (MST), at the address listed above.

County will hold a Pre-Bid Conference for the purpose of clarifying requirements and answering prospective offeror questions. It is the responsibility of Prospective Offerors to familiarize themselves with all requirements of the solicitation and to identify any issues at the conference. Attendance is optional and encouraged.

Offerors must submit bids as defined in the Instructions to Offerors, in accordance with the Standard Terms and Conditions, and all solicitation documents either referenced or included herein. Failure to do so may be cause for County to reject a bid as *non-responsive*.

Offerors must complete and return those documents identified in Section 4, Submission of Bids of the Instruction to Offerors document.

Offerors may not withdraw Bids for 60 days after opening except as allowed by Pima County Procurement Code.

Bonds are not required.

**OFFERORS ARE REQUIRED TO READ THE ENTIRE SOLICITATION, INCLUDING ALL REFERENCED DOCUMENTS, ASSURE THAT THEY ARE WILLING AND ABLE TO COMPLY, AND TO INCORPORATE ALL ASSOCIATED COSTS IN THEIR BID.**

**County will not accept verbal requests for clarifications or interpretations.** Offerors must submit questions or deviation requests in writing to County's Procurement Department, Attention: Michael Warren, CPPB email: [michael.warren@pima.gov](mailto:michael.warren@pima.gov) or Fax: (520) 222-1484

All submittals shall reference the Solicitation Number and Title; County may not answer any questions or deviation requests that Offerors submit within eight (8) days of the solicitation *Due in and Open Date and Time*.

**Mail/deliver bid to the following address:**

Pima County Procurement Department, 130 W. Congress, 3rd Floor, Mailstop # DT-AB3-126, Tucson, AZ 85701

Michael Warren, CPPB  
Commodity/Contracts Officer

**Publish:** The Territorial: APRIL 25, 26, 27 and 28 of 2017

## INSTRUCTIONS TO OFFERORS

FAILURE TO COMPLY MAY CAUSE COUNTY TO IMPROPERLY EVALUATE THE BID OR TO CONSIDER THE BID TO BE NON-RESPONSIVE

### **1. PREPARATION OF RESPONSES:**

Offerors must make all bids using the forms contained in this package. Offerors must print or typewrite all prices and notations. **Erasures are not permitted.** Offerors may cross out errors and print in ink or typewrite corrections adjacent to the error and the person signing the bid will initial any such correction. County prefers typewritten responses.

All bids must, if appropriate indicate the registered trade name, stock number, and packaging of items included in the bid.

Any surety that this solicitation requires may be in the form of a bond, cashier's check or certificate of deposit made payable to *Pima County*. Personal or company checks are not acceptable.

### **2. OFFER AGREEMENT (Contract): Asphalt Emulsions (13 pages)**

The attached or referenced Offer Agreement when completed, signed and submitted by the Offeror is a binding offer that results in a legal contract when Pima County accepts and executes it as defined by this solicitation. An authorized representative of Offeror must complete and sign the Offer Agreement document certifying that the firm is willing and able to meet all requirements of the solicitation.

#### **Contractor Minimum Qualifications:**

Contractor Minimum Qualifications are intended to establish the Offeror's capacity and responsibility for providing the services or products solicited. To be evaluated and considered for award of contract Offeror shall submit with the Offer Agreement all documents specified in the *Contractor Minimum Qualifications* section of the Offer Agreement. If requested in that section, Offeror shall denote the license numbers/descriptions and other information requested.

#### **Unit Prices & Bid Certification:**

Offerors shall fully complete and sign the *Compensation & Payment and Bid/Offer Certification* sections of the Offer Agreement utilizing the forms provided by this solicitation.

Unless otherwise stated, Offeror must provide a Unit Price for all items defined by the Offer Agreement Unit Prices schedule. Offeror must provide requested information and data in the precise manner requested. Product descriptions must provide sufficient information for the product being offered. All unit prices shall remain firm for the initial term of the executed agreement, with the exception that should Offeror during the term of the agreement offer to another buyer pricing for like or similar quantity, products or services at a price more favorable than those given to Pima County ("COUNTY"), Offeror must offer the same pricing to County effective on the date that price is offered to another buyer. Offeror's unit prices must include all costs required to implement and actively conduct and document cost control and reduction activities. Offeror must separately invoice taxes applied to the unit price and legally applicable to Pima County purchase transactions and not include them in the item unit price. Unit Prices shall include all costs incidental to the provision of the requirements defined by the solicitation and Offer Agreement and unless otherwise specified by the Delivery Article shall be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination"). County will not pay any additional charges and Offeror will not invoice them. Unit prices prevail in the event of an extension error. Price each item separately. Delivery time if stated as a number of days' means "calendar" days.

COUNTY reserves the right to question, clarify and correct obvious errors.

### **3. SPECIFICATIONS & DEVIATIONS:**

The specifications included in this solicitation intend to identify the kind and quality of goods and/or services to be provided without being unnecessarily restrictive, and to allow Offeror to provide the information needed for the development of consistent and comprehensive bids.

Equipment brand names, models and numbers, when given, intend to identify a level of quality, equivalent performance and dimensional specifications, and are for reference only, unless otherwise specified in the solicitation.

Failure to perform appropriate research, discovery, examine any drawings, specifications, and instructions will be at the Offeror's sole risk.

Items included in Offeror's bid shall meet the specifications and requirements set forth by the solicitation.

**INSTRUCTIONS TO OFFERORS** (continued)

Deviation requests shall specifically document and clearly illustrate the deviation to the particular specification or the requirement set forth by this solicitation and fully explain the requested deviation's impact on the end performance of the item. Offerors must submit deviation requests to County prior to the initial solicitation due date. County may not answer requests submitted within 8 days of the solicitation due date. Acceptance or rejection of said deviation request is at the sole discretion of County in accordance with the Pima County Procurement Code.

County may consider conditional bids that do not conform to or that request exceptions to the published solicitation and addenda as non-responsive and may not evaluate them.

All equipment shall be models of current production, latest design and technology, new and unused unless otherwise specified. The successful Offeror shall provide manufacturer and Offeror documentation, including and not limited to the following not later than 14 days after request by the County and at no additional cost: warranty; caution-informational warnings; recommended maintenance schedule and process; recommended spare parts list; operating, technical and maintenance manuals including drawings, if appropriate; product brochures; and safety data sheets (SDS).

**4. SUBMISSION OF BIDS:**

Submissions are binding offers and will result in a binding contract upon acceptance by Pima County by issuance of a properly executed contract document referencing said offer.

The submittal shall include all information requested by the solicitation, and must use without modification the forms provided by the solicitation. Offerors are to execute and submit the original Offer Agreement after completing following bid documents:

Complete the following items in the attached *Offer Agreement*:

- Page 1, Section 3 – CONTRACTOR MINIMUM QUALIFICATIONS
- Page 2, Section 5 – SUSTAINABILITY
- Page 3, Section 8 – OPTIONAL EARLY PAYMENT DISCOUNT TERM
- Page 4, Section 8 – UNIT PRICES
- Page 6, Section 14 – ACKNOWLEDGEMENT OF SOLICITATION ADDENDA (if applicable)
- Page 7, Section 16 – BID/OFFER CERTIFICATION

County must receive and time-stamp bids at the specified location at or before the Bid Due Date and Time as defined by the Invitation for Bid. County's time-stamp is the official time used to determine the timeliness of the submittal. County will not accept Bids and modifications that County receives after the Bid Due Date and Time and County may return them unopened. County will open and record timely submittals promptly after the Bid Due Date and Time.

An authorized agent of Offeror must sign bids and submit them in a sealed envelope marked or labeled with the Offeror's firm name, solicitation number, title, solicitation due date and time, to the location and not later than the Bid Due Date and Time that the invitation for Bid specifies.

**County will not accept facsimiles of bids.**

Failure of Offeror to comply with the solicitation requirements, including submittals that modify the solicitation requirements, may be cause for County to reject Offeror's bid as *non-responsive* and not evaluate it.

**5. COMPLIANCE WITH AGREEMENT:**

County will execute an agreement with the successful offeror by issuance of a Master Agreement ("MA").

Offeror agrees to establish, monitor, and manage an effective administration process that assures compliance with all requirements of the agreement. In particular, Offeror agrees that it shall not provide goods or services in excess of the executed agreement items, item quantity, item amount, or agreement amount without prior written authorization by revision or change order that County has properly executed. Any items that Offeror provides in excess of the quantity stated in the agreement is at Offeror's own risk. Offerors shall decline verbal requests to deliver items in excess of the agreement and shall report all such requests in writing to the Pima County Procurement Department within 1 workday of the request. The report shall include the name of the requesting individual and the nature of the request.



**INSTRUCTIONS TO OFFERORS** (continued)**6. INQUIRIES & NOTICE OF RECOMMENDATION FOR AWARD (NORFA):**

County will not provide results of this procurement in response to telephone inquiries. Interested parties may attend the public opening at the time and date stated in this solicitation. A tabulation of submittals will be on file at the Procurement Department. No oral interpretations or clarifications made to any Offeror as to the meaning of any of the solicitation documents will be binding on Pima County. If a prospective Offeror believes a requirement of the solicitation documents to be needlessly restrictive, unfair, or unclear, the Offeror shall notify the Pima County Procurement department in writing identifying the solicitation number, page and paragraph number and clearly stating the issue and suggested solution prior to the *Due In and Open* date set for receipt of the bid or proposal. County will respond by written addendum sent to all known potential Offerors. County may not answer issues identified less than 8 days prior to the *Due In and Opens* date.

The Pima County protest procedures are in Chapter 11.20 of the Pima County Procurement Code, available through <http://www.pima.gov/cob/code/>. The five-day period to file a protest of the award will be measured from the date the Notice of Recommendation for Award is posted on the Pima County Procurement website at <http://www.pima.gov/procure/awards/> **without regard to whether individual notices were issued**. It is the responsibility of bidders, proposers and offerors to check the website.

**7. ORDER OF PRECEDENCE-CONFLICTING DOCUMENTS:**

In the event there are variations or conflicts between these instructions and the standard terms and conditions or the offer agreement document, the standard terms & conditions and offer agreement shall govern.

**8. VENDOR RECORD MAINTENANCE:**

By submitting a response to this solicitation, Offeror agrees to establish and maintain a complete Pima County Vendor record, including the provision of a properly completed and executed "Request for Taxpayer Identification Number and Certification" document (Form W-9), within ten calendar days of the solicitation due date. Offeror also agrees to update the information within ten calendar days of any change in that information and prior to the submission of any invoice or request for payment. The preferred method for creating or updating this record is via the Internet utilizing the Pima County Vendor Self Service (VSS). The registration requires that Offeror establish and maintain email functionality. In addition to providing the means for an Offeror to create and maintain its Vendor record, VSS also provides for email notice to Offeror regarding solicitations published by Pima County for commodities of interest as defined by the Vendor record. Internet links for Vendor Registration are located at the Procurement Internet page: <http://www.pima.gov/procure/venreg.htm>.

**9. SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE:**

Any contract funded in any amount with federal funds is not eligible for this preference.

For those bids that do not exceed \$500,000 per contract year, a 5% bid preference will be given to firms submitting SBE Certificates Issued by the City of Tucson WITH THEIR BID; said certification is subject to verification and acceptance by Pima County. If the certification is accepted by Pima County, the bid will be evaluated at 95% of the bid amount to determine the low and responsive bid. If an award of contract is made, the contract will be formed utilizing the Unit Prices, or Lump Sum, as bid.

**To be eligible for the price preference, SBE firms must include with their bid documents a copy of their current certification certificate** which may be acquired from the City of Tucson; Department of Procurement, (520) 837-4000, 225 W Alameda, 6th Floor, Tucson, AZ 85726-7210. Their SBE website, which typically includes an SBE Application Form and a Directory listing firms holding SBE Certification, is located at: [http://www.tucsonprocurement.com/bidders\\_SBE.aspx](http://www.tucsonprocurement.com/bidders_SBE.aspx)

The process of acquiring SBE Certification may take several weeks. Please contact the Pima County Vendor Relations Division at (520) 724-8465 for assistance or further information.

**10. DOCUMENTS MARKED CONFIDENTIAL:**

**Disclosure.** Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to this solicitation, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

Records Marked Confidential; Notice and Protective Order. If Offeror reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Offeror must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Offeror of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Offeror has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

Any information marked as CONFIDENTIAL must be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a Public Record and shall not include any information considered confidential.

The Offeror agrees to waive confidentiality of any price terms in the event of an awarded contract.

**END OF INSTRUCTIONS TO OFFERORS**

**OFFER AGREEMENT****1. INTENT:**

This document is intended to establish a Master Agreement ("MA") to provide Pima County ("County") with **Asphalt Emulsion** products on an "as required basis" by issue of Delivery Order ("DO") or Delivery Order Maxlmo ("DOM").

As defined by the Pima County Standard Terms and Conditions Included herein, this contract is non-exclusive and County may terminate it for any reason without penalty or cost.

This contract will conform to Pima County's Living Wage ordinance.

All Goods and Services that Contractor offers or provides pursuant to the contract will conform to the requirements defined by or referred to by the solicitation documents including *Solicitation Addenda, Instructions to Offerors, Standard Terms and Conditions*, and this *Offer Agreement*, all of which are incorporated herein.

This document, including all attachments and documents incorporated by reference, constitutes the entire contract between the parties pertaining to the subject matter hereof, and merges all prior or contemporaneous agreements and understandings, oral or written, herein.

**2. CONTRACT TERM, RENEWALS, EXTENSIONS & REVISIONS:**

The initial term of the Master Agreement will be for a one (1) year period and include four (4) one-year renewal options that the parties may exercise upon written agreement as follows:

Contract extensions, renewals, or revisions will occur through the issuance by County to Contractor of a revised Master Agreement document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms, conditions, scope modifications and/or specifications within ten (10) calendar days of issuance by County will signify acceptance of all such changes by Contractor and the revision will be binding upon the parties, effective on the date of issuance.

**3. CONTRACTOR MINIMUM QUALIFICATIONS:**

The Contractor certifies that it is competent, willing and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this contract. Contractor certifies that it possesses all licenses required by applicable Agencies to satisfy the requirements of this contract.

ITEM NO	MINIMUM QUALIFICATIONS	CHECK <input checked="" type="checkbox"/> appropriate response certifying agreement with the requirement.
1	Contractor certifies it has at least one (1) storage facility located within three (3) miles of Tucson city limits.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2	Contractor certifies it can locally stock sufficient quantities up to 150 but no more than 1000 gallons of asphalt emulsion materials to meet Pima County daily demands.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3	Contractor certifies it can provide Certified Scales and Certified Weigh Master at its storage facility.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4	<del>Contractor certifies it is capable of supplying on an as-needed basis, and within 24 hours of request, equipment rental services for bituminous distributor trucks, including drivers, to deliver and spread emulsified asphalt product at various locations throughout Pima County.</del>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**4. PRODUCT OR SERVICE SPECIFICATIONS & SCOPE:**

GENERAL SPECIFICATIONS: Asphalt emulsions shall conform to the *Standard Specifications for Public Improvements for Pima County and the City of Tucson*. <http://www.dot.pima.gov/transeng/stdspecsdet/>  
See Appendix A – SPECIFICATIONS, SCOPE OF WORK AND SERVICES

**5. SUSTAINABILITY:** In accordance with BOS Resolution 2007-84, Pima County values and encourages sustainable practices. Please **CHECK**  which of the following your business incorporates:

Waste prevention/reduction or material recycling/reuse?

Alternative energy/fuels (such as solar/wind energy, bio-diesel, alternative fuels, hybrid vehicles) in your program's preparation, transportation, and demonstration?

Environmentally preferable materials (such as recycled materials; locally produced/manufactured products)?

Sustainable practices that lessen impact on non-renewable resources and global climate change (such as reduction in water/energy/paper use; minimization of hazardous materials; use of compressed/flexible work schedules)?

Other practices which coincide with the County's definition of sustainable practices (such as alternative modes of transportation; transportation minimization; life-cycle costs; product/packaging "take back" practices; preference to firms located within Pima County)?

**6. OFFER ACCEPTANCE AND ORDER RELEASES:**

County will accept an offer and execute this contract by issue of a MA (recurring requirements) to be effective on the document's date of issue without further action by either party. The MA will document the term of the agreement.

Pursuant to the executed MA, County departments requiring the goods or services defined herein will issue a DO or DOM to the Contractor. County will furnish the DO or DOM to Contractor via facsimile, e-mail or telephone. **If County gives the order verbally, the County Department issuing the order will transmit a confirming order document to Contractor within five (5) workdays of the date it gives the verbal order.**

**Contractor must not supply materials or services that are not specified on the MA and are not documented or authorized by a DO or DOM at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County DO or DOM.**

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this contract. In particular, Contractor will not provide goods or services in excess of the executed contract items, item quantity, item amount, or contract amount without prior written authorization by contract revision that County has properly executed and issued. Any items Contractor provides in excess of those stated in the contract are at Contractor's own risk. Contractor will decline verbal requests to deliver items in excess of the contract and will report all such requests in writing to the County Procurement Department within one (1) workday of the request. The report must include the name of the requesting individual and the nature of the request.

**7. ACCEPTANCE OF GOODS AND SERVICES:**

The County Department designated on the issued order (DO or DOM) will accept goods and services only in accordance with this contract. Such acceptance is a prerequisite to the commencement of payment terms.

**8. COMPENSATION & PAYMENT:**

Contractor will submit Request(s) for Payment or Invoices to the location and entity defined by County's DO or DOM document.

All Invoice documents will reference the County's DO or DOM number under which the services or products were ordered. **ALL** Invoice line items will utilize the item description, precise unit price and unit of measure defined by the County's order document. County may return invoices that include line items or unit prices that do not match those documented by the County's order to Contractor unprocessed for correction. **Contractor will not accept orders, or provide services or products that cumulatively exceed the contract amount.**

Standard payment terms are net thirty (30) days from the date of valid invoice document and do not commence until the later of 1) the receiving County Department receives goods or services into County's payment system or 2) County Financial Operations receives and verifies Contractor's invoice.

**OPTIONAL EARLY PAYMENT DISCOUNT TERM:** Pima County Administrative Procedure No. 22-35 section 2.2.4 defines County's practice regarding discounts for early payment. Contractor offers the following discounts to those prices to be used for all orders issued pursuant to this contract. County will utilize the existing payment code that best matches that offered and does not exceed the offered discount percentage. Payment days cannot be less than ten (10) calendar days. Contractor shall submit valid invoice document consistent with the associated DO or DOM to County Finance Department at least seven (7) calendar days prior to the date on which the discounted payment is due. If desired, for any order issued pursuant with this contract, Contractor may offer early payment discounts that exceed this Standard Early Payment Discount.

**Standard Early Payment Discount Percent:** 5 % if payment tendered within 15 Days as above.

The MA issued to accept Offeror's response will define the not-to-exceed amount of the contract.

The parties may negotiate and establish unit pricing in writing under the contract for items included in the scope of the contract that has not previously defined unit pricing.

Unless the parties otherwise agree in writing, all pricing will be *F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination")*. Contractor will deliver and unload products or services at the destination(s) that the delivery article of this contract or accepted *Order* indicates. The offered Unit Price must include all freight costs.

Although an order may not fully define State and City sales tax, County will pay such taxes as are DIRECTLY applicable to Pima County and Contractor invoices such taxes as a separate line item. Contractor must not include such taxes in the item unit price.

**Price Warranty.** Contractor will give Pima County the benefit of any price reduction before actual time of shipment.

**Price Escalation (Non-Bituminous Materials and Services).** All unit prices include compensation for Contractor to implement and actively conduct cost and price control activities. Pricing will remain firm during the initial year of the contract term after which the parties may consider price increases no more frequently than once per year. Contractor will submit a written request to County that includes supporting documents justifying requested increases at least ninety (90) days prior to the renewal date. Contractor will provide evidence, cite sources, demonstrate specific conditions and document how those conditions affect the cost of its performance, and identify specific efforts Contractor has taken to control and reduce those and other costs to avoid the need to increase prices. County will review proposed pricing and determine if it is allowable, fair and reasonable, and in the best interest of County to accept the proposal. County reserves the right to continue, accept or reject the price proposal, or terminate and re-solicit the contract.

**Price Escalation (Bituminous Materials Only).** See Appendix B – BITUMINOUS MATERIALS PRICING.

All pricing will conform to Pima County's Living Wage ordinance if applicable, including required annual adjustments of the wage.

Quantities in this solicitation are estimates only. County reserves the right to increase or decrease quantities and amounts or add other items at a mutually agreed upon price. **County makes no guarantee regarding actual orders for items or quantities during the term of the agreement.** County is not responsible for Contractor inventory or order commitment.

Contractor's unit prices must include all incidentals and associated costs required to comply with and satisfy all requirements of this solicitation, which includes the *Instructions to Offerors, Standard Terms and Conditions*, and Offer Agreement. County will make no payments for items not in the contract.

Contractor will provide detailed documentation in support of payment requests, which should be consistent with and not exceed County's DO or DOM document. Contractor will bill County within one (1) month after the date on which Contractor's right to payment accrues ("Payment Accrual Date"), which, unless this contract specifically provides otherwise, is the date Contractor delivers goods, performs services or incurs costs. Invoices must assign each billed amount to an appropriate line item of County's order and document each Payment Accrual Date. County may refuse to pay any amount that Contractor bills in which does not conform to County's DO or DOM document. County will refuse to pay any amount that Contractor bills more than six (6) months after the Payment Accrual Date, pursuant to A.R.S. § 11-622(C).

**UNIT PRICES (Net 30-day Payment Terms)**

See Appendix B – BITUMINOUS MATERIALS PRICING for ADOT index pricing information.

ITEM #	ITEM NAME Items to include and satisfy all Solicitation & Offer Agreement requirements, General & Item Specifications	ESTIMATED ANNUAL USAGE QUANTITY	UOM	UNIT PRICE \$	EXTENDED AMOUNT \$
1	Asphalt, Emulsified, CSS-1H	200	TON	\$ 765	\$153,000
2	Polymer Modified Emulsion - PASS	50	TON	\$ 900	\$ 45,000
3	Asphalt, Emulsified, CRS-2	50	TON	\$ 765	\$ 38,250
4	Bituminous Distributor Truck Rental and 1 driver	200	HOURS	\$ 185	\$ 37,000
FREIGHT TERMS: FOB Destination/Unloaded; include cost of freight in unit price.				TOTAL BID AMOUNT	\$273,250
SALES TAX: Although County will pay taxes if applicable, do NOT include sales tax in unit price.					

The next section is for items that Contractor did not list or price above but are within the defined scope of this contract. Contractor may provide these items under this contract. Contractor will submit Master Price List (MPL) documents, diskette or compact disc and file names or identify website address, identifying all other items offered pursuant to this contract to include Description and Discounted Unit Price, or Unit Price and Discount % (Unit Price x Discount % = Discounted Unit Price). The resulting Unit Prices shall be of similar discount off List Prices for those items specifically defined above. Item Unit Prices above will govern in case of conflict with the Master Price List.

List MPL Document by Title, MPL Media & Filenames or MPL Internet Address and Title(s)	Qty of Pages	Dated	Percentage Discount (Unit Price x Discount % = Discounted Unit Price)
Additional Items MPL (Flash drive includes digital PDF copy of Attachments)	4	5/24	

**9. DELIVERY:**

"On-Time" delivery is an essential part of the consideration that Contractor is to provide to County under the contract. Contractor will make delivery in accordance with the Standard Terms and Conditions and to the location(s) or address specified by County upon placing the order as follows:

- County Pick Up of Material at Supplier's Facility: 7:00am–3:30pm, M-F (excluding County observed holidays)
- Supplier Bituminous Distributor Truck Rental, Delivery, and Spreading Services: Within 24 hours of notification

Contractor guarantees delivery of product or service in less than twenty-four (24) hours after issue of order. If necessary to satisfy the guaranteed delivery time, Contractor will utilize premium freight method at no additional cost to County.

**10. TAXES, FEES, EXPENSES:**

County is exempt from federal excise taxes for goods. County is subject to State and City sales tax. County will pay no separate charges for delivery, drayage, express, parcel post, packing, insurance, license fees, permits, costs of bonds, surcharges, or bid preparation except as follows:

- A.R.S § 44-1799.41 – "A person in the business of renting heavy equipment property located in this state shall include in the rental agreement a one and one-half per cent surcharge of the gross rental receipts for any items of heavy equipment rented by a customer". Contractor will bill, and County shall pay, the state-mandated 1.5% surcharge separately on all invoices.

**11. OTHER DOCUMENTS:**

Contractor and County in entering into this contract have relied upon information provided or referenced by Pima County Solicitation No. 256158 including the Invitation for Bids, Instructions to Offerors, Standard Terms and Conditions, Solicitation Addenda, Contractor's Bid Offer, documents submitted by Contractor or References to satisfy Minimum Qualifications and any other information and documents that Contractor has submitted in its response to County's Solicitation. The Contract incorporates these documents as though set forth in full herein, to the extent not inconsistent with the provisions of this contract.

**12. INSURANCE:**

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit, the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII. Pima County in no way warrants that the minimum Insurer rating is sufficient to protect the Contractor from potential Insurer insolvency.

**Minimum Scope and Limits of Insurance:**

Contractor shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. The Contractor is free to purchase additional insurance that required by the County. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

**Commercial General Liability (CGL)** – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, and broad form contractual liability coverage, and products – completed operations.

**Business Automobile Liability** – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.

**Workers' Compensation and Employers' Liability** - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$1,000,000.

**Sole Proprietor:** The Workers' Compensation requirement shall not apply to a Contractor that is exempt under A.R.S. § 23-901, and when such Contractor executes the appropriate "Pima County Sole Proprietor/Independent Contractor Waiver Form".

**Professional Liability (Errors and Omissions) Insurance** – This insurance is required when soliciting work from licensed professionals. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance policy shall cover professional misconduct or negligent acts of anyone performing any services under this contract.

**Claim-Made Insurance Coverage** - If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

**Additional Insurance Requirements:**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

**Additional Insured:** The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

**Subrogation:** The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**Primary Insurance:** The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance.

Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

**Verification of Coverage:**

Contractor shall furnish Pima County with certificates of insurance as required by this Contract. An authorized representative of the Insurer shall sign the certificates.

All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**Notice of Cancellation:**

For each insurance policy required by the insurance provisions of this contract, the Contractor must provide to Pima County within thirty (30) business days of receipt of notice, if a policy is suspended, voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the Pima County Contracting Representative. Notice shall include the Pima County project or contract number and project description.

**Approval and Modifications:**

The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement; or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or Insurer(s), constitutes a waiver of any of the Insurance Requirements.

13. **PERFORMANCE BOND:** Not Required.

14. **ACKNOWLEDGEMENT of SOLICITATION ADDENDA:**

Contractor acknowledges that it incorporates the following solicitation addenda in its offer and this contract:

Addendum #	Date	Addendum #	Date	Addendum #	Date
1	05/08/2017				
2	05/19/2017				

15. **SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION:**

Is your firm SBE-certified as defined by the solicitation "Instruction to Offerors" section? Yes  No  (Select one)

If 'Yes', have you included your certification document? Yes  No  (Select one)

NOTE: If you do not submit the SBE Certification document with your bid, County will not apply the SBE Preference.

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16. **BID/OFFER CERTIFICATION:**

CONTRACTOR LEGAL NAME: Western Emulsions Inc.

BUSINESS ALSO KNOWN AS: \_\_\_\_\_

MAILING ADDRESS: 3450 E. 36<sup>th</sup> St.

CITY/STATE/ZIP: Tucson, Arizona 85713

REMIT TO ADDRESS: PO Box 50538

CITY/STATE/ZIP: Idaho Falls, ID 83405

CONTACT PERSON NAME/TITLE: Devin Crighton / Arizona Sales Rep.

PHONE: 602-819-5404 FAX: \_\_\_\_\_

CONTACT PERSON EMAIL ADDRESS: d.crighton@westernemulsions.com

EMAIL ADDRESS FOR ORDERS & CONTRACTS: d.crighton@westernemulsions.com

CORPORATE HEADQUARTERS ADDRESS: 2535 N. 15<sup>th</sup> E. Idaho Falls, ID 83401

WEBSITE: www.idahoasphalt.com www.westernemulsions.com

By signing and submitting these Offer Agreement documents, the undersigned certifies that they are legally authorized to represent and bind Contractor to legal agreements, that all information submitted is accurate and complete, that Contractor has reviewed the Pima County Procurement website for solicitation addenda and has incorporated all such addenda to its offer, that Contractor is qualified and willing to provide the items requested, and that Contractor will comply with all requirements of the solicitation. The Unit Pricing includes all costs incidental to the provision of the items in compliance with the above documents; no additional payment will be made. Conditional offers that modify the solicitation requirements may be deemed not 'responsive' and County may not evaluate them. Contractor's submission of a signed offer agreement shall constitute a firm offer and upon the issuance of a MA or PO document issued by the Pima County Procurement Director or authorized designee will form a binding contract that will require Contractor to provide the goods or services and materials described in this solicitation. The undersigned hereby offers to furnish the goods or services in compliance with all terms, conditions, specifications that the solicitation defines or references, which includes Pima County Standard Terms & Conditions, this Offer Agreement and other documents as listed in this Offer Agreement's "Other Documents" article.

SIGNATURE:  DATE: 05/24/2017

Devin Crighton / Arizona Sales Rep.  
PRINTED NAME & TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE EXECUTING OFFER

PHONE AND E-MAIL: 602-819-5404 d.crighton@westernemulsions.com

Approved as to form:

  
Deputy County Attorney  
**TOBIN ROSEN**

5/5/17  
Date

**PIMA COUNTY STANDARD TERMS AND CONDITIONS****1. OPENING:**

Pima County ("County") will publicly open responses and will read each respondent's name, and if a Bid the amount, on the date and at the location defined in the *Invitation for Bid (IFB)* or *Request for Proposals (RFP)*. County will open proposals so as to avoid disclosure of the contents of any proposal to competing offerors during the process of negotiation. County invites all interested parties to attend the bid opening.

**2. EVALUATION:**

County will evaluate responses to determine which are most advantageous to County considering evaluation criteria, conformity to the specifications and other factors.

If County makes an award, County will enter into an agreement with the one or multiple respondent(s) that submitted the lowest responsive bid(s) that County determined to be responsible for supplying the required goods or services. Unless the Bid/Offer document specifies otherwise, County will determine the low/lowest bids considering the total bid amount.

County, at its sole discretion, reserves the following rights: 1) to waive informalities in the bid or bid procedure; 2) to reject the response of any persons or corporations that have previously defaulted on any contract with County or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in County Code Chapter 11.32; 3) to reject any and all responses; 4) to re-advertise for bids previously rejected; 5) to otherwise provide for the purchase of such equipment, supplies materials and services as may be required herein; 6) to award on the basis of price and other factors, including but not limited to such factors as delivery time, quality, uniformity of product, suitability for the intended task, and bidder's ability to supply; 7) to increase or decrease the item quantity or eliminate any item of this solicitation prior to the award. County will base pricing evaluations on Contractor's pre-tax pricing.

**3. AWARD NOTICE:**

County will post a *Notice of Recommendation for Award* for IFB or RFP on the Procurement website for review. The Procurement Department will maintain a tabulation of responses.

**4. AWARD:**

Either the Procurement Director or the Board of Supervisors will make the award in accordance with the County Procurement Code. County reserves the right to reject any or all offers, bids or proposals or to waive irregularities and informalities in the best interest of County. Unless County expressly agrees otherwise, resulting contracts are not exclusive, are for the sole convenience of County, and County reserves the right to obtain like goods or services from other sources.

**5. WAIVER:**

Each offeror, by submission of an offer, bid or proposal waives any and all claims for damages against County or its officers or employees when County exercises any of its reserved rights.

**6. ACKNOWLEDGEMENT AND ACCEPTANCE:**

If Contractor's terms of sale are inconsistent with the terms of the resultant contract, the terms herein shall govern, unless County accepts Contractor's terms in writing. No oral agreement or understanding shall in any way modify this contract or the terms and conditions herein. Contractor's acceptance, delivery or performance called for herein shall constitute unqualified acceptance of the terms and conditions of the resultant contract.

**7. INTERPRETATION, APPLICABLE LAW and VENUE:**

The laws of the State of Arizona govern the interpretation and construction of this contract. Any action pursuant to this Contract must be filed and maintained in a court of the state of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during an agreement apply, but do not require an amendment or revisions. If any of Contractor's terms or conditions is not in agreement with County's terms and conditions as set forth herein, County's shall govern. This contract incorporates the complete agreement of the parties with respect to the subject matter of this contract. No oral agreement or other understanding will in any way modify the terms and conditions of this contract.

**8. WARRANTY:**

Contractor warrants goods or services to be satisfactory and free from defects.

**9. QUANTITY:**

Contractor will not exceed or reduce the quantity of goods ordered without written permission from County in the form of a properly executed Master Agreement (MA), Purchase Order (PO) Delivery Order (DO) or Delivery Order Maximo (DOM) revision or amendment as required by County Procurement Code. All quantities are estimates and County provides no guarantee regarding actual usage.

**10. PACKING:**

Contractor will make no extra charges for packaging or packing material. Contractor is responsible for safe packaging conforming to carrier's requirements.

**11. DELIVERY:**

On-time delivery of goods and services is an essential part of County's consideration. Contractor must provide a guaranteed delivery date, or interval period from order release date to delivery if the contract so requires. Upon receipt of notification of delivery delay, County at its sole option and at no cost to County may cancel the order or extend delivery times, which extension of delivery time will be valid only if in writing by an authorized representative of County.

To mitigate or prevent damages caused by delayed delivery, County may require Contractor to deliver additional quantity utilizing express modes of transport, and or overtime, all costs to be Contractor's responsibility. County reserves the right to cancel any delinquent order, procure from alternate source, or refuse receipt of or return delayed deliveries, at no cost to County. County reserves the right to cancel any order or refuse delivery upon default by Contractor concerning time, cost, or manner of delivery.

County will not hold Contractor responsible for unforeseen delays caused by fires, strikes, acts of God, or other causes beyond Contractor's control, provided that Contractor provides County immediate notice of delay.

**12. SPECIFICATION CHANGES:**

County has the right to make changes in the specifications, services, or terms and conditions of an order. If such changes cause an increase or decrease in the amount due under an order or in time required for performance, County will make an acceptable adjustment and will modify the order in writing. Nothing in this clause reduces Contractor's responsibility to proceed without delay in the delivery or performance of an order.

**13. INSPECTION:**

County may inspect or test all goods and services at their place of manufacture, destination or both. County will hold goods failing to meet specifications of the order or contract at Contractor's risk and may return them to Contractor with costs for transportation, unpacking, inspection, repacking, reshipping, restocking or other like expenses to be the responsibility of Contractor. In lieu of return of nonconforming supplies, County, at its sole discretion and without prejudice to County's rights, may waive any nonconformity, receive the delivery, and treat the defect(s) as a warranty item, but waiver of any condition will not be a waiver of that condition for subsequent shipments or deliveries.

**14. SHIPPING TERMS:**

Unless stated otherwise by the contract, delivery terms are to be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination") and Contractor is to include them in the Unit Price.

**15. PAYMENT TERMS:**

Payment terms are net thirty (30) days, unless the contract otherwise specifies.

**16. ACCEPTANCE OF MATERIALS AND SERVICES:**

County will not execute an acceptance or authorize payment for any service, equipment or component prior to delivery and verification that the delivered goods or services have met all specification requirements.

**17. RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT:**

In the event any item that Contractor furnishes in the performance of the contract fails to conform to the specifications thereof, or to the sample submitted by Contractor, County may reject same, and it thereupon becomes the duty of Contractor to reclaim and remove the same, without expense to County, and to immediately replace all such rejected items with others conforming to the specifications or samples. Should Contractor fail, neglect, or refuse immediately to do so, County has the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any monies due or that may become due to Contractor the difference between the price named in the Master Agreement or Purchase Order and the actual cost to County.

In the event Contractor fails to make prompt delivery as specified of any item, the same conditions as to the rights of County to purchase in the open market and to invoke the reimbursement condition above apply, except when delivery is delayed by fire, strike, freight embargo, or acts of god or of the government. In the event County cancels the Master Agreement, Purchase Order or associated orders, either in whole or in part, by reason of the default or breach by Contractor, Contractor will bear and pay for any loss or damage that County sustains in procuring any items which the Contractor agreed to supply. The rights and remedies of County provided above are not exclusive and are in addition to any other rights and remedies that the law or the contract provide.

**18. FRAUD AND COLLUSION:**

Each Contractor, by submission of a bid, certifies that no officer or employee of County or of any subdivision thereof: 1) has aided or assisted Contractor in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other Contractor; 2) has favored one Contractor over another by giving or withholding information or by willfully misleading the bidder in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done; 3) will knowingly accept materials or supplies of a quality inferior to those called for by any contract; 4) has any direct or indirect financial interest in the offer or resulting contract. Additionally, during the conduct of business with County, Contractor will not knowingly falsely certify, or induce others to falsely certify to a greater amount of labor or to the receipt of a greater amount or different kind of material or supplies than Contractor has actually delivered to County. If County discovers at any time that Contractor has in presenting any offer(s) colluded with any other party or parties for the purpose of preventing any other offer, then County will terminate any affected contract and that person or entity shall be liable for all damages that County sustains.

**19. COOPERATIVE USE OF RESULTING CONTRACT:**

As allowed by law, County has entered into cooperative procurement agreements that enable other Public Agencies to utilize procurement agreements that County develops. Participating agencies may contact Contractor to provide services and products pursuant to the pricing, terms and conditions that the County Master Agreement or Purchase Order defines. The parties may make minor adjustments by agreement to accommodate additional cost or other factors not present in the County's agreement and to satisfy particular Public Agency code or functional requirements within the intended scope of the solicitation and resulting contract. Any such usage shall be in accordance with State, County and other Public Agency procurement rules, regulations and requirements and shall be between the requesting party and Contractor. Contractor holds harmless County, its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. A list of agencies that are authorized to use County contracts is available on the Procurement Department internet home page: <http://www.pima.gov/procure> by selecting the link titled *Authorized Use of Pima County Contracts*.

**20. PATENT INDEMNITY:**

Contractor will indemnify, defend and hold County, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Master Agreement, Purchase Order, and associated orders. County may require Contractor to furnish a bond or other indemnification to County against any and all loss, damage, costs, expenses, claims and liability for patent or copyright infringement.

**21. INDEMNIFICATION:**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Pima County, and its departments, districts, officials, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

**22. UNFAIR COMPETITION AND OTHER LAWS:**

Responses must be in accordance with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable County, State, and Federal laws and regulations.

**23. COMPLIANCE WITH LAWS:**

Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. In the event any services provided under this contract require a license issued by the Arizona Registrar of Contractors (ROC), Contractor certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona.

**24. ASSIGNMENT:**

Contractor may not assign its rights to the contract, in whole or in part, without prior written approval of County. County may withhold approval at its sole discretion, provided that County will not unreasonably withhold such approval.

**25. CONFLICT OF INTEREST:**

This contract is subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of all County Master Agreements or Purchase Orders as if set forth in full therein.

**26. NON-DISCRIMINATION:**

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this contract as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of this contract, Contractor must not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

**27. NON-APPROPRIATION OF FUNDS:**

County may cancel this contract pursuant to A.R.S. § 11-251(42) if for any reason the County Board of Supervisors does not appropriate funds for the stated purpose of maintaining the contract. In the event of such cancellation, County has no further obligation, other than payment for services or goods that County has already received.

**28. PUBLIC RECORDS:**

Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

Records Marked Confidential: Notice and Protective Order. If Contractor reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

The Contractor agrees to waive confidentiality of any price terms.

**29. CUSTOM TOOLING, DOCUMENTATION AND TRANSITIONAL SUPPORT:**

Contractor must include costs to develop all tooling and documentation, such as and not limited to dies, molds, jigs, fixtures, artwork, film, patterns, digital files, work instructions, drawings, etc. necessary to provide the contracted services or products and unique to the services or products that Contractor will supply to County in the agreed upon Unit Price unless the contract specifically states otherwise. Such tools and documentation are the property of County and Contractor will mark them as is practical, as the "Property of Pima County". If County so requests, Contractor will deliver a copy of the tooling and documentation to County within twenty (20) days of acceptance by County of the first article sample, or not later than ten (10) days of termination of the contract associated with their development, without additional cost to County. Contractor also agrees to act in good faith to facilitate the transition of work to a subsequent Contractor if and as County reasonably requests at no additional cost. Should exceptional circumstances be present that may justify an additional charge, Contractor may submit said justification and proposed cost and negotiate an agreement acceptable to both Contractor and County, but Contractor may not withhold any requested tooling, document or support as defined above that would delay the orderly, efficient and prompt transition of work. Should conduct by Contractor result in additional costs to County, Contractor will reimburse County for said actual and incremental costs provided that County had given Contractor reasonable time to respond to County's requests for support.

**30. AMERICANS WITH DISABILITIES ACT:**

Contractor will comply with all applicable provisions of the Americans with Disabilities Act (public law 101-336, 42 USC 12101-12213) and all applicable federal regulations under the act, including 28 CFR parts 35 and 36.

**31. NON-EXCLUSIVE:**

Contracts resulting from this solicitation are non-exclusive and are for the sole convenience of County, which reserves the right to obtain like goods and services from other sources for any reason.

**32. PROTESTS:**

An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award. Protests must be filed in accordance with the Pima County Procurement Code, Section 11.20.010.

**33. TERMINATION:**

County reserves the right to terminate any Master Agreement, Purchase Order, Delivery Order, Delivery Order Maximo or award, in whole or in part, at any time, without penalty or recourse, when in the best interests of County. Upon receipt of written notice, Contractor will immediately cease all work as directed by the notice, notify all subcontractors of the effective date of termination and take appropriate actions to minimize further costs to County. In the event of termination under this paragraph, all documents, data, and reports prepared by Contractor under the contract become the property of County and Contractor must promptly deliver them to County. Contractor is entitled to receive just and equitable compensation for work in progress, work completed and materials that County has accepted before the effective date of the termination. The cost principles and procedures defined by A.A.C. R2-7-701 apply.

**34. ORDER OF PRECEDENCE-CONFLICTING DOCUMENTS:**

In the event of inconsistencies between contract documents, the following is the order of precedence, superior to subordinate, that will apply to resolve the inconsistency: Master Agreement, Delivery Order or Delivery Order Maximo, Purchase Order, offer agreement or contract attached to a Master Agreement, Purchase Order, Delivery Order or Delivery Order Maximo; these standard terms and conditions; any other solicitation documents.

**35. INDEPENDENT CONTRACTOR:**

The status of Contractor is that of an independent Contractor. Contractor and Contractor officer's agents or employees are not considered employees of County and are not entitled to receive any employment-related fringe benefits under the County Merit System. Contractor is responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes. Contractor is solely responsible for its program development and operation.

**36. BOOKS AND RECORDS:**

Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

**37. COUNTERPARTS:**

The parties may execute the Master Agreement or Purchase Order pursuant to this solicitation in any number of counterparts and each counterpart is considered an original, and together such counterparts constitute one and the same instrument. For the purposes of the Master Agreement and Purchase Order, the signed offer of Contractor and the signed acceptance of County are each considered an original and together constitute a binding Master Agreement, if they meet all other requirements for execution.

**38. AUTHORITY TO CONTRACT:**

Contractor warrants its right and power to enter into the Master Agreement or Purchase Order. If any court or administrative agency determines that County does not have authority to enter into the Master Agreement or Purchase

Order, County is not liable to Contractor or any third party by reason of such determination or by reason of the Master Agreement or Purchase order.

**39. FULL AND COMPLETE PERFORMANCE:**

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of the Master Agreement, Purchase Order, Delivery Order or Delivery Order Maximo to be performed on the

part of the other, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

#### **40. SUBCONTRACTORS:**

Contractor is fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts Contractor may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

#### **41. SEVERABILITY:**

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

#### **42. LEGAL ARIZONA WORKERS ACT COMPLIANCE:**

Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract Subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article is the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay will be excusable delay for which Contractor is entitled to an extension of time, but not costs.

#### **43. CONTROL OF DATA PROVIDED BY COUNTY:**

For those projects and contracts where County has provided data to enable the Contractor to provide contracted services or products, unless otherwise specified and agreed to in writing by County, Contractor will treat, control and limit access to said information as confidential and will under no circumstances release any data provided by County during the term of this contract and thereafter, including but not limited to personal identifying information as defined by A.R.S. § 44-1373, and Contractor is further prohibited from selling such data directly or through a third party. Upon termination or completion of the contract, Contractor will either return all such data to County or will destroy such data and confirm destruction in writing in a timely manner not to exceed sixty (60) calendar days.

#### **44. ISRAEL BOYCOTT CERTIFICATION:**

Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the County up to and including termination of this Contract.

**END OF PIMA COUNTY STANDARD TERMS AND CONDITIONS**

**APPENDIX A – SPECIFICATIONS, SCOPE OF WORK AND SERVICES****Specifications:**

Asphalt emulsions shall conform to the latest editions and revisions of the *Standard Specifications for Public Improvements for Pima County and the City of Tucson*. Copies of these specifications may be obtained from the following:

- <http://www.dot.pima.gov/transeng/stdspecsdet/>
- Engineering Information Management Section  
Geographic Information Systems Division  
Pima County Department of Transportation  
201 N. Stone Avenue  
Tucson, AZ 85701-1207  
Telephone: (520) 740-6332
- City of Tucson Department of Transportation  
201 N. Stone Avenue  
6<sup>th</sup> Floor – North Wing  
Tucson, AZ 85701-6332  
Telephone: (520) 791-4371

**Scope of Work:**

1. County intends to pick up the majority of asphalt emulsion material included in this agreement and will only require occasional as-needed bituminous distributor truck rental, delivery, and spreading services for overlaying or chip sealing County designated sections of roadway.
2. Contractor's minimum quantities for pick up of asphalt emulsion material by County shall be no greater than one five (5) gallon (U.S. liquid gallon) pail.
3. Contractor shall not allow County personnel to wait in excess of 30 minutes at Contractor's location where County is picking up material.
4. Bituminous Distributor Truck Rental, Delivery, and Spreading Service:
  - a) Contractor will provide on an as-need basis, and within 24 hours of notification by County, a one-man bituminous distributor truck rental service(s) to deliver and spread asphalt emulsion material throughout Pima County.
  - b) Bituminous distributor truck shall have a minimum capacity of at least 1,300 U.S. liquid gallons.
  - c) Bituminous distributor truck shall comply with the latest edition and revision of *ADOT Standard Specifications for Road and Bridge Construction, Section 404*.
  - d) Bituminous distributor truck shall be equipped with a computerized distribution system.
  - e) Contractors' pricing for bituminous distributor truck rental, delivery, and spreading services shall be on a per-hour basis, fully operated and maintained for one-man operation. Contractor's minimum truck rental, delivery, and spreading period shall not exceed four hours.
  - f) All services, equipment, materials, or parts shall be models of current production, latest design and technology, new and unused unless otherwise specified.



**APPENDIX A – SPECIFICATIONS, SCOPE OF WORK AND SERVICES (cont)**

5. Manufacturer and Contractor documentation including, but not limited to, the following shall be provided by the successful respondent not later than 14 days after request by the County and at no additional cost:
  - Warranty
  - Caution-informational warnings;
  - Recommended maintenance schedule and process;
  - Recommended spare parts list;
  - Operating, technical and maintenance manuals including drawings, if appropriate;
  - Product brochures;
  - Material safety data sheets (MSDS)
  
6. All defective materials and services shall be replaced and exchanged by Contractor. Contractor shall pay all County costs associated with the transportation, unpacking, inspection, repacking, reshipping, or other like expenses incurred by County in connection with such defective materials and services. The County shall receive all replacement materials and services within seven (7) calendar days of County's notification to the Contractor.
  
7. Contractor must provide, throughout the term of this agreement and within **48** hours of request, written quotation(s) for other items within the defined scope of this agreement that the County seeks to procure and that are not specifically listed and priced in this *Offer Agreement*. Items included on quotations deemed acceptable by County shall be added to this agreement via line item additions to County's Blanket Contract documents. Contractor's written quotations for additional items shall be subject to the same terms and conditions that govern this *Offer Agreement* including, but not limited to, delivery and price escalation and adjustment terms unless otherwise specified by County.

**(END APPENDIX A)**

**APPENDIX B – BITUMINOUS MATERIALS PRICING**

- The term "bituminous materials" as used herein shall include asphalt cement, liquid asphalt, and asphalt emulsions. Prices shall be in effect for the duration of the Master Agreement (MA) at the unit prices offered, with quarterly price adjustments as follows:
- The "**Base Index Price**" of bituminous materials as used herein shall mean the price per English ton as determined by the **ADOT Price Adjustment for Bituminous Material** (hereafter referred to as the **ADOT Index**) in effect as of the County's Master Agreement award date. The "**Current Index Price**" of bituminous materials as used herein shall mean the price per English ton as determined by the **ADOT Index** currently in effect. If the **ADOT Index** is unavailable for any reason other than minor publication delays by the State of Arizona, the Contractor and County shall mutually agree upon an alternative index to use until such time the **ADOT Index** is available. For historical and source data on the **ADOT Index** visit <http://www.azdot.gov/highways/CNS/bitmat.asp>.
- The unit price for each item in this agreement that contains bituminous material will be considered to include all costs of materials as required, including the "**Base Index Price**" of bituminous material. The price adjustment for bituminous materials will be based on the **ADOT Index** as follows:
- Adjusted pricing, increase or decrease, for bituminous materials will follow the dollar amount change in the **Base Index Price** and the **Current Index Price**. This adjustment will apply only to the actual percentage of residual bituminous material contained in the item and shall **NOT** be based on the overall unit cost for the item. The percentage of bituminous material for Asphalt Emulsions within the scope of this **Offer Agreement** will be as follows:

<b>Concentrated</b>	<b>60%</b>
<b>Diluted 2:1</b>	<b>40%</b>
<b>Diluted 1:1</b>	<b>30%</b>
- Price adjustments for bituminous materials will be based on the tons of bituminous material prior to dilution. For conversion purposes, one English ton of asphalt emulsion is equivalent to 240 U.S. liquid gallons.
- The monthly price adjustment shall be calculated by the County using Microsoft Excel® taken to the imbedded Excel calculation decimal point. The adjusted price shall be rounded the nearest one-hundredth cent.

**SAMPLE PRICE ADJUSTMENT FORMULA AND EXCEL® CALCULATION TABLE:**

BASE INDEX PRICE (A)	CURRENT INDEX PRICE (B)	COLUMN (B) LESS COLUMN (A) (C)	% BITUMINOUS MATERIAL (D)	INDEX PRICE CHANGE (C) X (D) (E)	AWARD PRICE PER ENGLISH TON (F)	ADJUSTED PRICE PER ENGLISH TON (E) + (F)
\$320.00	\$321.00	+ \$1.00	0.60	+ \$0.60	\$225.00	\$225.60
\$320.00	\$323.00	+ \$3.00	0.60	+ \$1.80	\$225.00	\$226.80
\$320.00	\$318.00	- \$2.00	0.60	- \$1.20	\$225.00	\$223.80
\$320.00	\$320.00	+ \$0.00	0.60	+ \$0.00	\$225.00	\$225.00

**INDEX PRICE CHANGE** = (Current Index price – Base Index price) x (% of bituminous material)

**ADJUSTED PRICE** = Index Price Change + Award Price

**NOTE:** ALL CALCULATIONS PER ENGLISH TON (1 English Ton Asphalt Emulsion = 240 U.S. Liquid Gallons)

- The County shall adjust prices for bituminous materials on a *quarterly* basis throughout the term of the agreement beginning with the *third* calendar month following award of a Master Agreement. Price adjustments will result in a Master Agreement revision that shall be effective on the first Monday of the scheduled adjustment month. County departments using this Master Agreement shall ensure that County Delivery Orders (DO) or Delivery Order Maximo (DOM) reflect the correct Master Agreement revision number and pricing prior to placing the order. Contractor shall ensure that invoices reflect the County's DO or DOM number and Master Agreement pricing in effect on the date the order was issued by County.